

This document prepared by
after recording return to:

Brian D. Cunningham, Esq.
Snell & Wilmer L.L.P.
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
By: ZJM, DEPUTY - WI 17 P.

ASSIGNMENT OF DEVELOPMENT AGREEMENT

Project Commonly Known as
"Jordan Heights"
(Phase II Loan)

THIS ASSIGNMENT OF DEVELOPMENT AGREEMENT (the "*Assignment*") is entered into as of the 30th day of March, 2011, by and between **BOYER JORDAN HEIGHTS, L.C.**, a Utah limited liability company as successor in interest to **THE BOYER COMPANY, L.C.**, a Utah limited liability company (the "*Borrower*"), and **KEYBANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns (the "*Lender*").

RECITALS

A. On or about the date hereof, Borrower and Lender entered into that certain Loan Agreement ("*Loan Agreement*") whereby the Lender agreed to make a loan (the "*Loan*") available to Borrower in the maximum aggregate amount at any time outstanding not to exceed the sum of Two Million One Hundred Three Thousand Four Hundred Eighty-Nine and No/100 Dollars (\$2,103,489.00) ("*Loan*") to refinance certain indebtedness currently encumbering certain property located at the Northwest corner of 11400 South and Bangerter Highway in South Jordan, Salt Lake County, State of Utah (the "*Project*"). The Project is legally described in **Exhibit A** attached hereto and made a part hereof. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

B. In connection with the Loan, Borrower has executed and delivered a promissory note (the "*Note*") in favor of Lender of even date herewith in the amount of the Loan payment of which is secured by (i) a Deed of Trust made by Assignor in favor of Lender on the Project, and (ii) the other Loan Documents. All instruments, agreements and certificates governing, evidencing, guaranteeing or securing the Loan, as the same may be amended, modified, supplemented, extended, or renewed from time to time, are referred to in this Assignment as the "*Loan Documents*."

C. In connection with the Project, Borrower and the City of South Jordan, a Utah municipal corporation ("*South Jordan*"), have entered into that certain Development Agreement dated February 21, 2006 (the "*Development Agreement*"), whereby, *inter alia*, the Borrower intends to develop and operate the Project and certain improvements to be constructed thereon (the "*Improvements*") in accordance with the Development Agreement, all subject to the terms and conditions of the Development Agreement.

E. As a condition precedent to the funding of the Loan by Lender under the Loan Agreement, Lender has required, as security for the performance of Borrower's obligations under the Loan Documents, that Borrower execute and deliver to Lender an assignment of Borrower's interest in the Development Agreement, and that South Jordan consent to said assignment on the terms and conditions contained herein.

NOW, THEREFORE, with reference to the foregoing Recitals, all of which are incorporated herein by this reference, and in order to induce Lender to enter into the Loan Agreement and make the advances thereunder, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto covenant and agree as follows:

12725261

LTC # 50515

1. Assignment; Security Interest. As additional security for Borrower's obligations under the Loan Documents and all other obligations of Borrower which are secured by the Deed of Trust in favor of Lender, Borrower hereby assigns, conveys and transfers to Lender, and grants to Lender a first priority security interest in, all of Borrower's right, title, interest, privileges, benefits and remedies in, to and under the Development Agreement. It is expressly understood and agreed by Borrower and South Jordan, by its execution of the attached South Jordan City Consent, that Lender does not hereby assume any of Borrower's obligations or duties concerning the Development Agreement, unless and until Lender exercises its rights hereunder and under the Development Agreement.

2. Definitions. For purposes of this Assignment, terms which are denoted in this Assignment by the first letter of each word being capitalized, but which are not otherwise defined in this Assignment, shall have the respective meanings assigned to such terms in the Loan Agreement.

3. Actions by Lender. Lender shall not exercise its rights under this Assignment until the occurrence and continuation of an Event of Default (as defined in the Loan Agreement) under the Loan Documents. Upon the occurrence of such an Event of Default, Lender may, at its option, upon written notice to South Jordan expressly stating its intention to exercise its rights under this Assignment and to satisfy all of Borrower's obligations under the Development Agreement, exercise any or all of the rights and remedies granted to Borrower under the Development Agreement as if Lender had been an original party to the Development Agreement. Upon giving such notice expressly stating its intention to exercise its rights under this Assignment and to satisfy all of Borrower's obligations under the Development Agreement to South Jordan, Lender shall satisfy all obligations of Borrower, including all defaults of Borrower under the Development Agreement occurring prior to the time Lender gives such notice to South Jordan; provided, however, in the event a default by Borrower is not reasonably curable by Lender within any time limitations or deadlines under the Development Agreement, Lender shall have such longer period of time as may be reasonably necessary to effect such cure, so long as Lender promptly cures such defaults and at all times diligently pursues such cure. Any notice given by Lender to South Jordan under this Assignment shall be given in the same manner and at the same address for South Jordan as set forth in the Development Agreement.

4. Power of Attorney. Upon the occurrence and continuation of an Event of Default, Lender shall have the right (and Borrower hereby irrevocably constitutes and appoints Lender as its attorney-in-fact, which power is coupled with an interest, to do so) to demand, receive and enforce Borrower's rights with respect to the Development Agreement, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower, and to do any and all acts in the name of Borrower in the name of Lender with the same force and effect as Borrower could do if this Assignment had not been made.

5. Representations, Warranties and Covenants of Borrower. Borrower hereby certifies, represents, warrants and covenants to Lender as follows:

- (a) The Development Agreement is in full force and effect.
- (b) Borrower has full title and right to assign its interest in the Development Agreement to Lender pursuant to this Assignment.
- (c) No consent or approval of any person, other than Development Agreement, is required for the execution and delivery of this Assignment.
- (d) Borrower has delivered to Lender a true and complete copy of the executed counterpart of the Development Agreement, together with all amendments and modifications thereto, which Development Agreement is attached hereto as **Exhibit B**.
- (e) Except for this Assignment, no other assignment of all or any part of any interest of Borrower in and to the Development Agreement has been made which remains in effect.

(f) There exists no monetary default under the Development Agreement, nor, to the best knowledge of Borrower, any non-monetary default or any event or conditions which, with notice or the passage of time or both, would constitute such a monetary or non-monetary default or would result in a breach of the Development Agreement or would give any party thereto the right to terminate the Development Agreement.

(g) No offsets, credits or defenses to the payment or performance of any obligation under the Development Agreement exist.

(h) Borrower shall not assign, transfer or hypothecate (other than to Lender) the whole or any part of its interest under the Development Agreement.

(i) Borrower shall obtain the prior written consent of Lender, before entering into any agreement that amends, alters, modifies or terminates the Development Agreement. Lender shall not unreasonably withhold or delay its consent to an amendment or modification of the Development Agreement, so long as Borrower shall have consented to such amendment or modification and as long as such amendment or modification does not materially and adversely affect Lender's security for the Loan or the rights and benefits of Borrower under the Development Agreement.

(j) Borrower agrees to perform and comply in all respects with all the terms, conditions, covenants and requirements by it to be performed or observed in this Assignment and the Loan Documents.

6. Performance by Borrower. Borrower shall at all times diligently enforce its rights in, under and to the Development Agreement, unless otherwise directed by Lender in writing, and shall, at Borrower's sole cost and expense, appear in and defend Lender in any action or proceeding in any way connected with the Development Agreement, and shall pay all reasonable costs and expenses, including, without limitation, attorneys' fees, which Lender may incur in connection with Lender's appearance, voluntarily or otherwise, in any such action or proceeding in any way connected with the Development Agreement.

7. Indemnification by Borrower. Borrower hereby agrees to pay and protect, defend, and indemnify and hold Lender harmless from, for and against, any and all claims, demands, liabilities, losses, lawsuits, judgments, and costs and expenses (including, without limitation, reasonable attorneys' fees) to which Lender may become exposed, or which Lender may incur, in connection with the Development Agreement exercising its rights under this Assignment.

8. Limitation on Liability. Nothing in this Assignment shall be deemed to be or construed to be an agreement by Lender to perform any covenant of Borrower under the Development Agreement unless and until it obtains title to the Unit by power of sale or judicial foreclosure or deed in lieu thereof or obtains possession of the Unit pursuant to the terms of the Deed of Trust or otherwise.

9. Waiver. No course of dealing on the part of Lender and no delay or failure by Lender to exercise any right which Lender may have hereunder shall be deemed a waiver thereof or otherwise prejudice any of its respective rights, remedies or powers hereunder unless so agreed in writing by Lender, and the waiver by Lender of a default by Borrower hereunder shall not constitute a continuing waiver or any other default or of the same default on any other occasion.

10. Cumulative Remedies. The rights and remedies of Lender under this Assignment are cumulative and are not in lieu of, but are in addition to, any other rights or remedies which Lender may have under the Loan Agreement or the other Loan Documents at law, or otherwise.

11. Severability. If any provision of this Assignment shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality and enforceability of any other provisions of this Assignment or of the other Loan Documents.

12. Amendment. This Assignment may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the party against whom enforcement of the waiver, amendment, change, modification or discharge is sought.

14. Successors and Assigns. This Assignment shall be binding upon Lender and Borrower and their respective successors and assigns, and shall inure to the benefit of Lender and its respective successors and assigns.

13. Termination. Upon the satisfaction of all obligations of Borrower to Lender under the Loan Agreement, the Note and the other Loan Documents and the due recordation of the release or reconveyance of all deeds of trust now or hereafter securing said obligations, this Assignment shall automatically terminate. Lender hereby agrees, upon termination of this Assignment to execute a release of this Assignment and all further documents, if any, necessary or required in order to evidence the termination of this Assignment.

14. Governing Law. THIS ASSIGNMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES (REGARDLESS OF THE PLACE OF BUSINESS, RESIDENCE, LOCATION OR DOMICILE OF BORROWER, SOUTH JORDAN OR LENDER OR ANY PRINCIPAL THEREOF).

15. Notices. All notices given under this Assignment shall be in writing and shall be given by personal delivery, overnight receipted courier or by registered or certified United States mail, postage prepaid, sent to the party at its address appearing below. Notices shall be effective upon receipt (or on the date when proper delivery is refused). Addresses for notices may be changed by any party by notice to all other parties in accordance with this Section. Service of any notice on any one Borrower shall be effective service on Borrower for all purposes.

If to Lender: KeyBank National Association
 1675 Broadway, Suite 400
 Denver, Colorado 80202
 Attention: Senior Vice President/
 Real Estate Capital Income Property Group
 and
 KeyBank National Association
 36 South State Street, 25th Floor
 Salt Lake City, Utah 84111
 Attention: Real Estate Capital Income Property Group

With a copy to: Snell & Wilmer L.L.P.
 15 West South Temple, Suite 1200
 Salt Lake City, Utah 84101
 Attention: Brian D. Cunningham, Esq.

If to Borrower: Boyer Jordan Heights, L.C.
 90 South 400 West, Suite 200
 Salt Lake City, Utah 84101
 Attention: H. Roger Boyer

With a copy to: Parr Brown Gee & Loveless
 185 South State, Suite 1800
 Salt Lake City, Utah 84111
 Attention: David E. Gee, Esq.

18. Counterpart. This Assignment may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered shall be an original, but also such counterparts shall together constitute one and the same instrument.

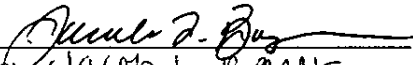
19. Priority. The parties acknowledge that the lien and charge of Lender's Deed of Trust is superior to the lien and charge, if any, of the Development Agreement upon the Project.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the date first set forth above.

BOYER JORDAN HEIGHTS, L.C.
a Utah limited liability company

By: THE BOYER COMPANY, L.C.
a Utah limited liability company,
its manager

By: 
Name: Jacob L. Boyer
Title: manager

"Borrower"

KEYBANK NATIONAL ASSOCIATION
a national banking association

By: _____
Name: _____
Title: Vice President

"Lender"

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the date first set forth above.

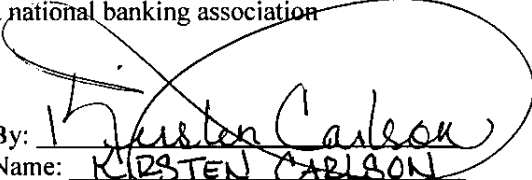
BOYER JORDAN HEIGHTS, L.C.
a Utah limited liability company

By: THE BOYER COMPANY, L.C.
a Utah limited liability company,
its manager

By: _____
Name: _____
Title: _____

"Borrower"

KEYBANK NATIONAL ASSOCIATION
a national banking association

By: 
Name: KIRSTEN CARLSON
Title: Vice President

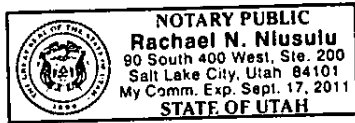
"Lender"

STATE OF UTAH)
 : ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me this 23rd day of March, 2011, by Jacob L. Boyer, a manager of THE BOYER COMPANY, L.C., a Utah limited liability company and the manager of **BOYER JORDAN HEIGHTS, L.C.**, a Utah limited liability company, for and on behalf of such limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]



Rachael N. Niusulu
NOTARY PUBLIC

STATE OF UTAH)
 :ss
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this ____ day of March, 2011, by _____, a Vice President of **KEYBANK NATIONAL ASSOCIATION**, a national banking association, on behalf of such association.

NOTARY PUBLIC
Residing at _____

STATE OF UTAH)
 : ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me this ____ day of March, 2011, by _____, a manager of THE BOYER COMPANY, L.C., a Utah limited liability company and the manager of BOYER JORDAN HEIGHTS, L.C., a Utah limited liability company, for and on behalf of such limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC

[Seal]

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 30th day of March, 2011, by Kirsten Carter a Vice President of KEYBANK NATIONAL ASSOCIATION, a national banking association, on behalf of such association.

Lori L. Newey

NOTARY PUBLIC
Residing at Salt Lake, UT

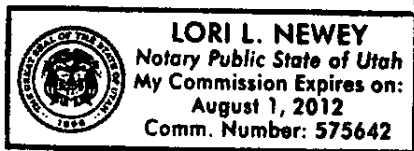


EXHIBIT A

PROPERTY DESCRIPTION

That certain real property located in Salt Lake County, State of Utah, and more particularly described as follows:

Beginning at a point which is South 0°08'05" East 1,326.20 feet along the section line and South 89°58'09" West 1,316.07 feet from the Northwest corner of Section 20, Township 3 South, Range 1 West, Salt Lake Base and Meridian (said point being on the North line of the Southeast 1/4 of the Northeast 1/4 of Section 19, said Township and Range); and running thence along said North line North 89°58'09" East 1,273.57 feet to the West line of 4000 West Street; thence South 0°08'05" East 196.11 feet to a point of curvature of a 557.50 foot radius curve to the right; thence Southerly along said curve 123.27 feet (chord bears South 6°11'58" West 123.01 feet); thence South 12°32'01" West 207.82 feet to a point of curvature of a 642.50 foot radius curve to the left; thence Southerly along said curve 274.06 feet (chord bears South 0°18'49" West 271.98 feet); thence South 51°50'04" West 314.20 feet; thence South 47°08'49" West 149.50 feet; thence South 36°47'01" West 86.73 feet; thence North 82°40'41" West 14.30 feet to a point on a 3,467.00 foot non-tangent curve to the right, (center bears North 8°18'22" East); thence 334.32 feet Westerly along said curve (chord bears North 78°55'52" West 334.19 feet) to a point of compound curvature with a 2,311.00 foot radius curve to the right; thence Westerly along said curve 492.43 feet (chord bears North 70°03'52" West 491.50 feet) to a point on the West line of the Southeast quarter of the Northeast quarter of Section 19, said Township and Range; thence along said West line North 0°05'12" West 924.30 feet to the point of beginning.

[NOTE: The above described land is also described in the official records of the Salt Lake County Recorder as: "PARCEL A (FUTURE PHASE)", JORDAN HEIGHTS PLANNED UNIT DEVELOPMENT PHASE 1, pursuant to that certain plat filed in Book "2006P" of Plats, at Page 237 of the Official Records of the Salt Lake County Recorder.]

Tax Parcel No. 27-19-200-010

EXHIBIT B

DEVELOPMENT AGREEMENT

[See Attached.]

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 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.

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 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.

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 114th 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:

By: Anna West
Anna West, City Recorder



CITY OF SOUTH JORDAN
a Utah municipal corporation

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

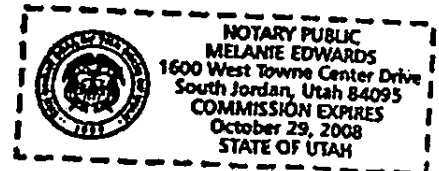
APPROVED AS TO FORM:

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

STATE OF UTAH)
)ss
County of Salt Lake)

The foregoing instrument was acknowledged before me this 17 day of March 2008, 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: _____
Title: _____

STATE OF UTAH)
)ss
County of Salt Lake)

The foregoing instrument was acknowledged before me this 10th day of 2006, by Dawn M. Glenn, on behalf of The Boyer Company, L.C.

Rachael N. Niusulu Notary Public

My Commission Expires: 8-20-07

