

FS-4196

CROSS EASEMENT AGREEMENT

THIS CROSS EASEMENT AGREEMENT is entered into as of this 22nd day of November, 1995 among WESTSIDE CANADIAN PROPERTIES COMPANY, a partnership ("Westside"), and RED HAWK LAND CO., L.L.C., a Utah limited liability company ("Red Hawk").

RECITALS:

A. Westside is the owner of a certain tract of real property located in Summit County, Utah, more particularly described as Sections 6 and 7, Township 1 South, Range 4 East, Salt Lake Base & Meridian (the "Westside Parcel").

B. Red Hawk is the owner of a certain tract of real property adjacent to the Westside Parcel more particularly described as Sections 5 and 8, Township 1 South, Range 4 East, Salt Lake Base & Meridian (the "Red Hawk Parcel").

C. In order to accommodate the development of the Westside Parcel and the Red Hawk Parcel, Westside and Red Hawk desire to grant to each other a cross easement across, under and through the Westside Parcel and the Red Hawk Parcel, respectively.

In consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, and in consideration of the mutual promises, covenants, conditions and agreements contained herein, Westside and Red Hawk hereby agree as follows:

00443078 Bk00926 Pg00572-00577

AGREEMENT

ALAN SPRIGGS, SUMMIT COUNTY RECORDER
1995 NOV 24 14:44 PM FEE \$20.00 BY DMG
REQUEST: FOUNDERS TITLE CO

1. Grant of Easement Across Westside Parcel for the Benefit of the Red Hawk Parcel. Westside hereby grants to Red Hawk for the benefit of Red Hawk and its successors and assigns in the ownership, development and occupancy of any portion of the Red Hawk Parcel a non-exclusive easement and right-of-way for ingress, egress and the extension of utility lines, which easement shall be one hundred (100) feet in width over the Westside Parcel (the "Westside Easement"). The Westside Easement shall be subject to substitution and location in accordance with the terms of the balance of this Cross Easement Agreement.

2. Grant of Easement Across Red Hawk Parcel for the Benefit of the Westside Parcel. Red Hawk hereby grants to Westside for the benefit of Westside and its successors and assigns in ownership, development and occupancy of any portion of the Westside Parcel a non-exclusive easement and right-of-way for ingress, egress and the extension of utility lines, which easement shall be one hundred (100) feet in width over the Red Hawk Parcel (the "Red Hawk Easement"). The Red Hawk Easement shall be subject to substitution and location in accordance with the terms of the balance of this Cross Easement Agreement.

3. Substitution, Specification and Location of Easement Corridor.

The Westside Easement and the Red Hawk Easement shall be subject to substitution of a specific continuous cross easement corridor to be located upon the Westside Parcel and the Red Hawk Parcel for the benefit and use of the Westside Parcel and the Red Hawk Parcel (the "Easement Corridor"). The Easement Corridor shall generally be located in accordance with the road pattern shown on attached Exhibit A, and shall be specified and located upon the Westside Parcel and the Red Hawk Parcel by the parties hereto within a reasonable time after the engineering of development plats for the Westside Parcel and the Red Hawk Parcel are complete. If either the Westside Parcel or the Red Hawk Parcel is ready to proceed with development without the other, each shall have an easement across the other parcel as generally depicted in Ex. A., subject to the substitution rights contained elsewhere in this agreement.

a. Easement Design. The specific location and course of the Easement Corridor through the Westside Parcel and the Red Hawk Parcel shall conform to each parcel's respective development plat and shall be subject to each party's prior approval, said approval not to be unreasonably withheld provided the Easement Corridor conforms generally to the road locations shown on Exhibit A, is continuous and may be constructed in accordance with all Summit County approvals for the project. The parties acknowledge that the location and alignment of certain roadways, utilities and other facilities through the Easement Corridor, as well as the location of the Easement Corridor itself, will be submitted to Summit County for review at the time of the application for development approval of any project on the Westside Parcel and the Red Hawk Parcel and that the final location of such roadways, utilities and other facilities, including the location of the Easement Corridor, shall be subject to the approval of Summit County.

b. Substitute Legal Description. Within thirty days after the specific location and course of the Easement Corridor has been determined as contemplated by this Cross Easement Agreement, the parties agree to develop a specific legal description for the Easement Corridor, and execute, acknowledge and record an amendment to this Cross Easement Agreement reflecting the specific legal description of the Easement Corridor in substitution for the Westside Easement and the Red Hawk Easement.

c. Dedication. The parties contemplate that the Easement Corridor, as located and approved in accordance with this Cross Easement Agreement, shall not be dedicated to Summit County for public purposes, but either party retains the right to dedicate such portions of the Easement Corridor for public purposes so long as the other party retains the right of access either by private easement or by reason of the public dedication.

d. Duration of Easement. The Easement Corridor shall be perpetual unless the parties, their successors or assigns, otherwise mutually agree in writing.

e. Adjustment to Location of Easement Corridor. After the development of the specific course and location of the Easement Corridor, the parties may need flexibility to adjust the legal description of the Easement Corridor. The parties agree that either party may adjust the legal description of the Easement Corridor from the location specified in any recorded amendment to this Cross Easement Agreement in order to permit (i) more practicable or economical development of the Westside Parcel or the Red Hawk Parcel, whichever is applicable, and/or (ii) compliance with all applicable Summit County road standards, provided that such adjustment does not adversely and materially impact the ability of the other party to connect with and continue the contemplated road through the other parcel in compliance with all applicable county standards. The right to adjust the location of the Easement Corridor shall terminate with respect to any portion of the Easement Corridor included within a recorded subdivision plat.

4. Enforcement. Each party may enforce the obligations of the other party under this Cross Easement Agreement by a suit or judicial proceeding for injunctive relief, specific performance or damages, as may be appropriate.

5. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if signed by the respective persons giving them or by their attorneys and delivered by hand, or deposited in the mail, certified, return receipt requested, properly addressed and postage prepaid, as follows:

(a) If to Westside:
Larry Robinson
6758 Muirlands Drive
LaJolla, CA 92037

Thomas A. Ellison
STOEL RIVES
201 South Main, Suite 1100
Salt Lake City, Utah 84111

(b) If to Red Hawk:
c/o Michael Nielsen
3445 Saddleback Road
Park City, Utah 84060

00443078 Bk00926 Pg00574

Russell G. Redenbaugh
c/o Kairos, Inc.
P.O. Box 58668
Philadelphia, PA 19102

6. Benefit. This Cross Easement Agreement and the benefits and burdens created thereby are hereby confirmed by the parties hereto and those benefits and burdens shall continue to run with the land described in this Cross Easement Agreement and shall be binding upon and inure to the benefit of the assigns, successors, tenants and invitees of the parties hereto in the ownership or occupancy of the Westside Parcel or the Red Hawk Parcel, respectively. This Cross Easement shall also extend for the benefit of lien holders secured by the Red Hawk Parcel or the Westside Parcel, respectively.

7. No Termination. This Cross Easement shall not be terminated by operation of the doctrine of merger or by written agreement of the successors to the parties to this Agreement unless the written agreement is obtained of each successor of record to each of the parties to this Agreement, including each mortgage or other lien holder claiming by, through or under any party to this Agreement or any successor of any such party.

8. Counterparts. This Cross Easement Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9. Attorney's Fees. In the event any action or proceeding is brought by any party, against any other party, to enforce the provisions of this Cross Easement Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney fees, whether such sums are expended with or without suit, at trial or on appeal.

10. Entire Agreement; Modification. This Cross Easement Agreement contains the entire agreement between the parties, and there are no representations, agreements, arrangements or understandings, oral or written that are not fully expressed in this Cross Easement Agreement. This Cross Easement Agreement shall not be modified except by an instrument in writing signed by the parties hereto and each of their respective successors of record owning or encumbering any portion of the properties covered by this Agreement.

11. Interpretation: The article and section headings contained in this Cross Easement Agreement are solely for the purpose of reference, are not part of the agreement of the parties and will not in any way affect the meaning or interpretation of this Cross Easement Agreement.

IN WITNESS WHEREOF, this Cross Easement Agreement has been executed by the Westside and Red Hawk as of the date first written above.

Westside:

WESTSIDE CANADIAN PROPERTIES
COMPANY

By: Randey K. Robinson
Its: GENERAL PARTNER

Red Hawk:

RED HAWK LAND CO., L.L.C.

By: [Signature]
Its: Member

[acknowledgement page follows]

00443078 Bx00926 Pg00576

STATE OF ~~UTAH~~ California)
 : ss.
COUNTY OF San Diego)

The foregoing instrument was acknowledged before me this 13th day of November, 1995, by Lindsey K. Robinson, who is the General Partner of Westside Canadian Properties Company, and who executed this instrument on behalf of Westside Canadian Properties Company with proper authority.



Shae L. Hertner
NOTARY PUBLIC
Residing at: La Jolla, CA

My Commission Expires:

9/6/97

STATE OF UTAH)
 : ss.
COUNTY OF Summit)

The foregoing instrument was acknowledged before me this 16 day of November, 1995, by C. Michael Nielser who is the member of Red Hawk Land Co., L.L.C., and who executed this instrument on behalf of Red Hawk Land Co., L.L.C., with proper authority.

Sann R. Schultz
NOTARY PUBLIC
Residing at: Salt Lake City, Utah

My Commission Expires:

1/20/99

