

WHEN RECORDED RETURN TO:

Thomas A. Ellison, Esq.
STOEL RIVES LLP
One Utah Center
201 South Main Street, #1100
Salt Lake City, Utah 84111

00642056 Bk01498 Pg00428-00436

ALAN SPRIGGS, SUMMIT CO RECORDER
2002 DEC 20 14:39 PM FEE \$46.00 BY MAT
REQUEST: FIRST AMERICAN TITLE CO UTAH

**FIRST AMENDMENT TO
RED STONE VILLAGE
AIR RIGHTS DECLARATION**

RS-
RS-1 THRU 21

**THIS FIRST AMENDMENT TO RED STONE VILLAGE AIR RIGHTS
DECLARATION** (this "First Amendment") is made and executed as of this 11th day of April, 2002, by BOYER SPRING CREEK, L.C., a Utah limited liability company and FOX POINT AFFORDABLE HOUSING, L.C., a Utah limited liability company (together, the "Owners").

RECITALS

A. The Owners own all of that certain real property located in Summit County, Utah, as more particularly described in Exhibit "A", attached hereto and made a part hereof (the "Property").

B. The Property is subject to that certain Red Stone Village Air Rights Declaration, dated as of February 2, 2001 (the "Existing Air Rights Declaration"), which is recorded in the land records of Summit County, Utah at Book 1352, Pages 632-657. Capitalized terms used herein and not otherwise defined shall have the meanings given them in the Existing Air Rights Declaration.

C. Pursuant to and in accordance with Section 16(f) of the Existing Air Rights Declaration, the Owners desire and have agreed to amend the Existing Air Rights Declaration to accommodate the construction of buildings and improvements on the Property as provided in the Plans and the Mortgagees listed on the attached Consent are willing to consent to such amendments.

AMENDMENT

The Owners agree that the Existing Air Rights Declaration is hereby amended as follows:

1. Exhibit "A" to the Existing Air Rights Declaration containing a legal description of the Property is hereby deleted in its entirety and is replaced with the new Exhibit "A" attached to this First Amendment.

2. Exhibit "B" to the Existing Air Rights Declaration containing a legal description of the Mixed-use Parcels is hereby deleted in its entirety and is replaced with the new Exhibit "B" attached to this First Amendment.

3. Exhibit "C" to the Existing Air Rights Declaration containing a legal description of the Air Parcels and Garage Parcels is hereby deleted in its entirety and is replaced with the new Exhibit "C" attached to this First Amendment.

4. Section 1 of the Air Rights Declaration is hereby amended by adding the following new defined term thereto in the appropriate alphabetical order and sequentially renumbering each subsequent definition accordingly:

“ ‘Party Wall’ means the wall running along a portion of the common boundary line between the Commercial Parcel and the contiguous Garage Parcels as provided in the Plans, such boundary line lying within the width of such wall, and such wall being jointly shared by the Improvements located on the Commercial and Garage Parcels, respectively.”

5. Section 1 of the Air Rights Declaration is hereby amended by adding the following sentence to the definition of the term “Structural Elements” contained therein:

“In addition, the Party Wall shall be considered a Structural Element benefiting both the Commercial and Residential Parcels.”

6. Section 3 of the Air Rights Declaration is hereby amended by adding the following sentence to the end of subsection (a) thereof:

“In addition to the foregoing, there shall be a non-exclusive easement for the encroachment upon the Garage Parcels of any footings, foundations or other Structural Elements benefiting the Commercial Parcel and a non-exclusive easement for the encroachment upon the Commercial Parcel of the footings, foundations and other Structural Elements of the Party Wall benefiting the Garage Parcels.”

7. Section 4 of the Air Rights Declaration is hereby amended by adding the following new subsection (e) thereto immediately after subsection (d) thereof:

“(e) Party Wall. Except as modified or expanded elsewhere in this Declaration, all legal and equitable principles relating to party walls shall govern and apply to the Party Wall.”

8. Section 5 of the Air Rights Declaration is hereby amended by deleting clause (ii) of subsection (a) thereof in its entirety and by inserting the following new clause (ii) in lieu thereof:

“(ii) all Structural Elements of the Building, including the entire Party Wall, notwithstanding that a portion of such Structural Elements may be located outside the Mixed-use Parcels;”

9. Section 7 of the Air Rights Declaration is hereby amended by adding the following provision to the end thereof:

BK1498 PG0429

“Notwithstanding any other provision of this Declaration, the obligations of the Commercial Owner with regard to the Party Wall, including without limitation with regard to maintenance, service, repair, replacement, insurance and restoration due to damage or destruction thereof, shall not apply to any alterations made to the Party Wall by the Residential Owner pursuant to this Section unless the Commercial Owner shall expressly agree otherwise in writing. Mere consent to such an alteration shall not constitute agreement by the Commercial Owner to undertake such obligations with respect to that alteration.”

10. Section 9 of the Air Rights Declaration is hereby amended by adding the following sentence to the end of subsection (b) thereof:

“Any aggregate coverage obtained pursuant to this subsection (b) shall include the entire Party Wall notwithstanding that a portion of the wall may be located outside the Mixed-use Parcels.”

11. Section 10 of the Air Rights Declaration is hereby amended by inserting the following provision at the end of the first sentence of subsection (b) thereof:

“provided, that for purposes of this sentence only, the Commercial Owner shall be considered the sole owner of the Party Wall.”

12. Section 13 of the Air Rights Declaration is hereby amended by deleting the term “Mixed-use Parcels” from paragraphs (a) and (b) thereof and by adding the term “Property” in lieu thereof.

13. Miscellaneous.

(a) This First Amendment shall be governed by the laws of the State of Utah, without giving effect to any choice of law provisions thereof.

(b) The Owners hereby submit to the exclusive jurisdiction and venue of any court within Salt Lake City, Utah in connection with any matter arising out of this First Amendment.

(c) This First Amendment may be executed in any number of counterparts, all of which when taken together shall constitute one and the same document.

(d) All of the provisions of this First Amendment shall be effective as of the date on which a counterpart of this First Amendment is filed for record in the office of the County Recorder of Summit County, Utah.

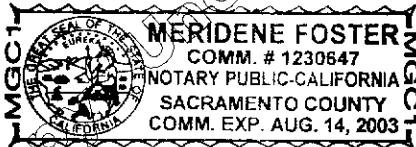
BK1498 PG0430

State of California

County of Placer

On April 29, 2002, before me, Meridene Foster, Notary Public, personally appeared Ted Bodnar, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Meridene Foster

BK1498 PG0433

**AIR RIGHTS
EXHIBIT A
Boyer Spring Creek**

REVISED BOYER PARCEL (TO INCLUDE TRANSFER PARCEL FROM SGD EQUIMARK)

BEGINNING AT A POINT ON THE EAST LINE OF LOT 7, THE VILLAGE AT KIMBALL JUNCTION, A SUBDIVISION IN THE WEST HALF OF SECTION 19, TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING N 0°16'14"W 1238.18 FEET FROM THE SOUTHEAST CORNER OF SAID LOT 7; THENCE N 00-16-14 W 826.33 FEET; THENCE S 89-43-46 W 1115.17 FEET; THENCE S 00-27-00 W 15.00 FEET; THENCE N 89-33-00 W 165.00 FEET; THENCE S 00-27-00 W 232.83 FEET; THENCE S 89-33-00 E 186.82 FEET; THENCE S 31-25-02 W 187.40 FEET; THENCE S 58-34-58 E 191.33 FEET; THENCE S 31-25-02 W 33.35 FEET; THENCE S 58-34-58 E 21.15 FEET; THENCE S 31-25-02 W 17.61 FEET; THENCE S 58-34-58 E 81.60 FEET; THENCE N 31-25-02 E 79.22 FEET; THENCE N 76-25-02 E 65.53 FEET; THENCE S 58-34-58 E 45.91 FEET; THENCE N 31-25-02 E 48.44 FEET; THENCE S 58-34-58 E 80.94 FEET; THENCE S 31-25-02 W 21.00 FEET; THENCE S 58-34-58 E 44.00 FEET; THENCE S 31-25-02 W 17.50 FEET; THENCE S 58-34-58 E 206.00 FEET; THENCE N 31-25-02 E 31.50 FEET; THENCE S 58-34-58 E 44.00 FEET; THENCE N 31-25-02 E 13.55 FEET; THENCE S 58-34-58 E 215.00 FEET; THENCE S 31-25-02 W 5.00 FEET; THENCE S 58-34-58 E 88.00 FEET; THENCE N 31-25-02 E 5.00 FEET; THENCE S 58-34-58 E 52.87 FEET; THENCE N 31-25-02 E 88.90 FEET; THENCE S 58-34-58 E 29.67 FEET; THENCE N 89-43-46 E 114.03 FEET TO THE POINT OF BEGINNING. CONTAINS 18.57 ACRES OR 808,849 SQ. FT.

~~VKS 7A~~

EXHIBIT B
Mixed Use Parcels

VKS-7-A
REVISED MIXED USE PARCEL #1

BEGINNING AT A POINT WHICH IS N 0°16'14" W 1376.41' ALONG THE EAST LINE OF SAID LOT 7 AND S 89°43'46" W 372.23' FROM THE SOUTH EAST CORNER OF SAID LOT 7; THENCE S 31°25'02" W 70.90 FEET; THENCE N 58°34'58" W 93.23 FEET; THENCE S 31°25'02" W 13.55 FEET; THENCE N 58°34'58" W 44.00 FEET; THENCE S 31°25'02" W 31.50 FEET; THENCE N 58°34'58" W 206.00 FEET; THENCE N 31°25'02" E 17.50 FEET; THENCE N 58°34'58" W 44.00 FEET; THENCE N 31°25'02" E 21.00 FEET; THENCE N 58°34'58" W 80.94 FEET; THENCE S 31°25'02" W 5.44 FEET; THENCE N 58°34'58" W 86.85 FEET; THENCE N 31°25'02" E 82.89 FEET; THENCE S 58°34'58" E 172.64 FEET; TO A POINT ON A 18.00 FOOT RADIUS NON-TANGENTIAL CURVE TO THE LEFT, THE CENTER OF WHICH BEARS A BEARING OF S 31°25'02" W, THROUGH A CENTRAL ANGLE OF 32°34'18" A DISTANCE OF 10.23 FEET, SAID CURVE HAVING A CHORD WHICH BEARS S 42°17'49" E 10.10 FEET; THENCE S 26°00'40" E 89.09 FEET; THENCE N 64°04'23" E 18.00 FEET; TO A POINT ON A 91.48 FOOT RADIUS NON-TANGENTIAL CURVE TO THE LEFT, THE CENTER OF WHICH BEARS A BEARING OF N 63°52'50" E, THROUGH A CENTRAL ANGLE OF 65°53'02" A DISTANCE OF 105.19 FEET, SAID CURVE HAVING A CHORD WHICH BEARS S 59°03'41" E 99.49 FEET; THENCE S 02°01'09" E 18.00 FEET; THENCE N 87°59'24" E 85.05 FEET; TO A POINT ON A 18.00 FOOT RADIUS NON-TANGENTIAL CURVE TO THE LEFT, THE CENTER OF WHICH BEARS A BEARING OF S 31°25'02" W, THROUGH A CENTRAL ANGLE OF 33°25'38" A DISTANCE OF 10.50 FEET, SAID CURVE HAVING A CHORD WHICH BEARS S 75°17'47" E 10.35 FEET; THENCE S 58°34'58" E 97.59 FEET TO THE POINT OF BEGINNING. CONTAINING 42,769 SQ. FT. OR 0.98 ACRES

VKS-7-A
REVISED MIXED USE PARCEL #2

BEGINNING AT A POINT WHICH IS N 0°16'14" W 1178.12' ALONG THE EAST LINE OF SAID LOT 7 AND S 89°43'46" W 185.98' FROM THE SOUTH EAST CORNER OF SAID LOT 7; THENCE N 58°34'58" W 52.87 FEET; THENCE S 31°25'02" W 5.00 FEET; THENCE N 58°34'58" W 88.00 FEET; THENCE N 31°25'02" E 5.00 FEET; THENCE N 58°34'58" W 77.78 FEET; THENCE N 31°25'02" E 70.90 FEET; THENCE S 58°34'58" E 218.65 FEET; THENCE S 31°25'02" W 70.90 FEET TO THE POINT OF BEGINNING. CONTAINING 0.37 acres (15,941 SQ. FT.) MORE OR LESS.

BK1498 PG0435

EXHIBIT C
Parcels 1&2 Mixed Use
(matches condo plat)

THAT PORTION OF THE FOLLOWING 2 AIR RIGHTS PARCELS WHICH ARE LOCATED ABOVE THE TOP OF THE JOISTS DEFINING THE CEILING FOR THE COMMERCIAL SPACE AND SUPPORTING THE FLOOR FOR THE AIR PARCELS:

REVISED AIR PARCEL #1

BEGINNING AT A POINT WHICH IS N 0°16'14" W 1376.41' ALONG THE EAST LINE OF SAID LOT 7 AND S 89°43'46" W 372.23' FROM THE SOUTH EAST CORNER OF SAID LOT 7; THENCE S 31°25'02" W 70.90 FEET; THENCE N 58°34'58" W 93.23 FEET; THENCE S 31°25'02" W 13.55 FEET; THENCE N 58°34'58" W 44.00 FEET; THENCE S 31°25'02" W 31.50 FEET; THENCE N 58°34'58" W 206.00 FEET; THENCE N 31°25'02" E 17.50 FEET; THENCE N 58°34'58" W 44.00 FEET; THENCE N 31°25'02" E 21.00 FEET; THENCE N 58°34'58" W 80.94 FEET; THENCE S 31°25'02" W 5.44 FEET; THENCE N 58°34'58" W 86.85 FEET; THENCE N 31°25'02" E 82.89 FEET; THENCE S 58°34'58" E 172.64 FEET; TO A POINT ON A 18.00 FOOT RADIUS NON-TANGENTIAL CURVE TO THE LEFT, THE CENTER OF WHICH BEARS A BEARING OF S 31°25'02" W, THROUGH A CENTRAL ANGLE OF 32°34'18" A DISTANCE OF 10.23 FEET, SAID CURVE HAVING A CHORD WHICH BEARS S 42°17'49" E 10.10 FEET; THENCE S 26°00'40" E 89.09 FEET; THENCE N 64°04'23" E 18.00 FEET; TO A POINT ON A 91.48 FOOT RADIUS NON-TANGENTIAL CURVE TO THE LEFT, THE CENTER OF WHICH BEARS A BEARING OF N 63°52'50" E, THROUGH A CENTRAL ANGLE OF 65°53'02" A DISTANCE OF 105.19 FEET, SAID CURVE HAVING A CHORD WHICH BEARS S 59°03'41" E 99.49 FEET; THENCE S 02°01'09" E 18.00 FEET; THENCE N 87°59'24" E 85.05 FEET; TO A POINT ON A 18.00 FOOT RADIUS NON-TANGENTIAL CURVE TO THE LEFT, THE CENTER OF WHICH BEARS A BEARING OF S 31°25'02" W, THROUGH A CENTRAL ANGLE OF 33°25'38" A DISTANCE OF 10.50 FEET, SAID CURVE HAVING A CHORD WHICH BEARS S 75°17'47" E 10.35 FEET; THENCE S 58°34'58" E 97.59 FEET TO THE POINT OF BEGINNING. CONTAINING 42,769 SQ. FT. OR 0.98 ACRES

REVISED AIR PARCEL #2

BEGINNING AT A POINT WHICH IS N 0°16'04" W 1178.12' ALONG THE EAST LINE OF SAID LOT 7 AND S 89°43'46" W 185.98' FROM THE SOUTH EAST CORNER OF SAID LOT 7; THENCE N 58°34'58" W 52.87 FEET; THENCE S 31°25'02" W 5.00 FEET; THENCE N 58°34'58" W 88.00 FEET; THENCE N 31°25'02" E 5.00 FEET; THENCE N 58°34'58" W 77.78 FEET; THENCE N 31°25'02" E 70.90 FEET; THENCE S 58°34'58" E 218.65 FEET; THENCE S 31°25'02" W 70.90 FEET TO THE POINT OF BEGINNING. CONTAINING 0.37 acres (15,941 SQ. FT.) MORE OR LESS.

REVISED FOXPOINT GARAGE AND PARKING PARCEL

A TRACT OF LAND LOCATED IN SECTION 19, TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN, SUMMIT COUNTY, UTAH, BEING A PORTION OF LOT 7 OF THE VILLAGE OF KIMBALL JUNCTION, AS RECORDED AS ENTRY #355411 OF SUMMIT COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS N 0°16'14" W 1178.12 FEET ALONG THE EAST LINE OF SAID LOT 7 AND S 89°43'46" W 185.98 FEET FROM THE SOUTH EAST CORNER OF SAID LOT 7; THENCE N 58°34'58" W 52.87 FEET; THENCE S 31°25'02" W 5.00 FEET; THENCE N 58°34'58" W 88.00 FEET; THENCE N 31°25'02" E 5.00 FEET; THENCE N 58°34'58" W 215.00 FEET; THENCE S 31°25'02" W 13.55 FEET; THENCE N 58°34'58" W 44.00 FEET; THENCE S 31°25'02" W 31.50 FEET; THENCE N 58°34'38" W 206.00 FEET; THENCE N 31°25'02" E 17.50 FEET; THENCE N 58°34'58" W 44.00 FEET; THENCE N 31°25'02" E 21.00 FEET; THENCE N 58°34'58" W 80.94 FEET; THENCE S 31°25'02" W 66.68 FEET; THENCE S 58°34'59" E 93.19 FEET; THENCE S 39°08'56" E 30.49 FEET; THENCE S 58°34'58" E 212.00 FEET; THENCE N 82°54'36" E 71.88 FEET; THENCE S 58°41'43" E 96.98 FEET; THENCE S 58°37'39" E 243.65; THENCE N 31°25'02" E 38.25 FEET TO THE POINT OF BEGINNING. CONTAINING 31,202 SQ. FEET OR 0.716 ACRE

AKS-T-B