

E 2244904 B 4221 P 585-591
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
2/15/2007 12:05:00 PM
FEE \$57.00 Pgs: 7
DEP eCASH REC'D FOR FIRST AMERICAN TITLE

WHEN RECORDED, PLEASE RETURN TO:

BVE, LLC
C/O W. Scott Kjar
SKY Properties, Inc.
585 West 500 South, Suite #110
Bountiful, Utah 84010

Lot Serial #: 01-107-0060; 01-107-0061; ~~01-107-0094; 01-107-0096;~~
01-290-0008; 01-107-0101 THRU AND INCLUDING 01-107-0106
01-356-0009; 01-356-0010; 01-356-0011;
01-379-0001 thru and including 01-379-0017; and
01-380-0001 thru and including 01-380-0007.
4758176

PARTIAL RELEASE AND SUBORDINATION OF RIGHT OF FIRST OPPORTUNITY

14th THIS PARTIAL RELEASE OF FIRST OPPORTUNITY (the "Partial Release") dated as of the day of February, 2007 is executed by **GRANITE CONSTRUCTION COMPANY**, a California corporation ("Contractor"), whose address for the purpose hereof is 1075 North Warm Springs Road, Salt Lake City, Utah 84126; **BVE, LLC**, a Utah limited liability company, whose address is 585 West 500 South, #110, Bountiful, Utah 84010 ("BVE"); and **EDGEWOOD NSL DEVELOPMENT, INC.**, a Utah corporation, whose address is 585 West 500 South, #110, Bountiful, Utah 84010 ("Edgewood") (BVE and Edgewood are collectively the "Owners").

RECITALS:

A. Contractor and Eagle Holding, L.L.C., a Utah limited liability company ("Eagle Holding") executed that certain AGREEMENT OF RIGHT OF FIRST OPPORTUNITY (the "First Opportunity Agreement") recorded January 30, 2001 as Entry No. 1636650, in Book 2742, at Page 916, in the records of the Davis County Recorder, wherein Eagle Holding granted to Contractor the first opportunity to perform all excavation, rough and finish grading and installation of the "Improvements" (as such term is defined therein) upon the real property (the "Burdened Property") more particularly described on Exhibit A of the First Opportunity Agreement.

B. EP Land II, L.L.C., acquired the interests of Eagle Holding in the Burdened Property, and BVE, and Edgewood subsequently acquired the interests of EP Land II, L.L.C., in the Burdened Property.

C. Contractor desires to give notice that the First Opportunity Agreement is fully satisfied, terminated, and released as to (but only as to) those portions of the Burdened Property more particularly described on the attached Exhibit A (the "Released Property");

D. Owners and Contractor desire to give notice that the First Opportunity Agreement is still in full force and effect as to the remainder of the Burdened Property (the "Bella Vida Property"), but Contractor is subordinating the First Opportunity Agreement on the Bella Vida Property to the

Revolving Credit Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing executed by BVE in favor of U.S. BANK NATIONAL ASSOCIATION on December 15, 2006.

NOW, THEREFORE, the Contractor and Owners agree as follows:

1. **Partial Release from the First Opportunity Agreement.** The Contractor hereby declares that the First Opportunity Agreement is fully satisfied, terminated, and released as to (but only as to) those portions of the Burdened Property more particularly described on the attached Exhibit A.

2. **First Opportunity Agreement Subordinated to the US Bank Deed of Trust.** Contractor hereby subordinates the First Opportunity Agreement on the Bella Vida Property to the Revolving Credit Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing executed by BVE in favor of U.S. BANK NATIONAL ASSOCIATION) ("US Bank") for the benefit of US Bank on December 15, 2006, and recorded FEBRUARY 15, 2007 as Entry No. 2244853, in Book 4221, at Page 406, in the records of the Davis County Recorder (the "US Bank Deed of Trust"). If US Bank, its successors, or assigns, take title through foreclosure of the US Bank Deed of Trust or by deed in lieu of foreclosure, Contractor hereby acknowledges that the Right of First Opportunity Agreement with respect to the Bella Vida Property shall be automatically terminated and released without further documentation.


3. **The First Opportunity Agreement in Full Force and Effect as to the Bella Vida Property.** Subject to Section 2 above, the Contractor and Owners hereby certify that the First Opportunity Agreement is and shall remain in full force and effect as to the Bella Vida Property.

Contractor:
GRANITE CONSTRUCTION COMPANY,
a California corporation



By: Tom Case, Branch Manager

Owners:
EDGEWOOD NSL DEVELOPMENT, INC.,
a Utah Corporation

By: 

W. Scott Kjar, Vice President

BVE, LLC,
a Utah limited liability company

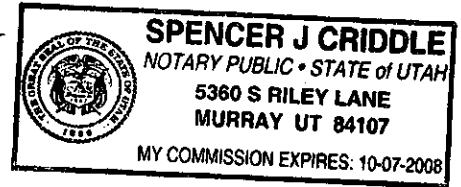
By: Its Manager
Excel Investment Corporation
a Utah corporation

By: 
W. Scott Kjar, Vice President

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

On this 13 day of February, 2007, the foregoing instrument was acknowledged before me by TOM CASE the Branch Manager of Granite Construction Company, a California corporation.

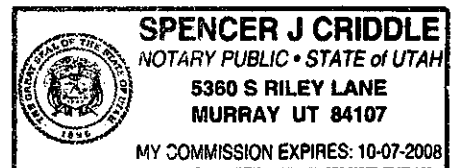
Spencer Criddle
NOTARY PUBLIC



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

On this 14th day of February, 2007, personally appeared before me W. SCOTT KJAR, and who, being by me duly sworn, says that he/she is the Vice President of EDGEWOOD NSL DEVELOPMENT, INC., the corporation that executed the above and foregoing instrument and that said instrument was signed by him/her in behalf of said corporation by authority of its by-laws, (or by authority of a resolution of its board of directors, as the case may be) and said W. SCOTT KJAR acknowledged to me that said corporation executed the same.

Spencer Criddle
NOTARY PUBLIC



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

On this 14th day of February, 2007, personally appeared before me W. SCOTT KJAR, and who, being by me duly sworn, says that he is the Vice President of EXCEL INVESTMENT CORPORATION, which corporation is the manager of BVE, LLC, the limited liability company that executed the above and foregoing instrument and that said instrument was signed by him/her by authority of its by-laws, (or by authority of a resolution of its board of directors, as the case may be) in behalf of said corporation in its capacity of manager of said limited liability company.

Spencer Criddle
NOTARY PUBLIC

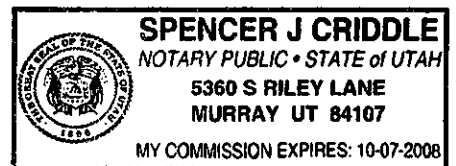


EXHIBIT A

to

PARTIAL RELEASE AND SUBORDINATION OF RIGHT OF FIRST OPPORTUNITY

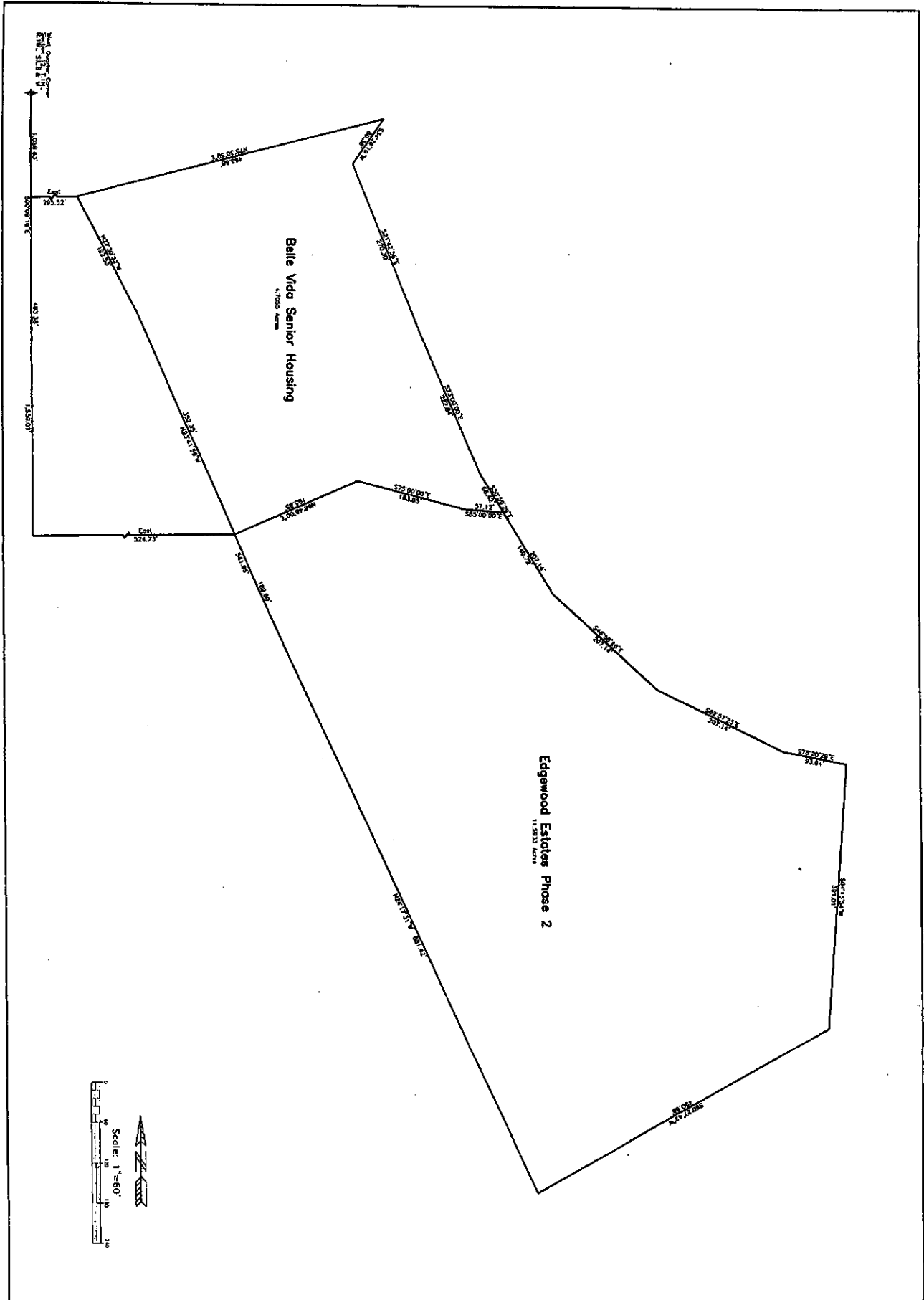
Property to Be Released from First Opportunity Agreement

The following described real property is located in Davis County, Utah:

Beginning at a point which is S0°09'16"E 1,550.01 ft. along the Section Line and East 524.73 ft. from the West Quarter Corner of Section 12, T.1N., R.1W., S.L.B.& M. and running thence N66°48'00"E 195.85 ft.; thence S75°00'00"E 163.05 ft.; thence S85°00'00"E 57.11 ft.; thence S30°59'29"E 140.74 ft.; thence S46°58'26"E 207.14 ft.; thence S62°57'23"E 207.14 ft.; thence S78°20'29"E 93.94 ft.; thence S4°15'54"W 391.01 ft.; thence S60°27'42"W 490.68 ft.; thence N24°17'31"W 881.42 ft.; thence N23°41'59"W 189.62 ft. to the point of beginning.

Containing 11.5933 Acres.

Lot Serial #s: 01-107-0060; 01-107-0061; 01-107-0094; 01-107-0096;
01-356-0009; 01-356-0010; 01-356-0011;
01-379-0001 thru and including 01-379-0017; and
01-380-0001 thru and including 01-380-0007.

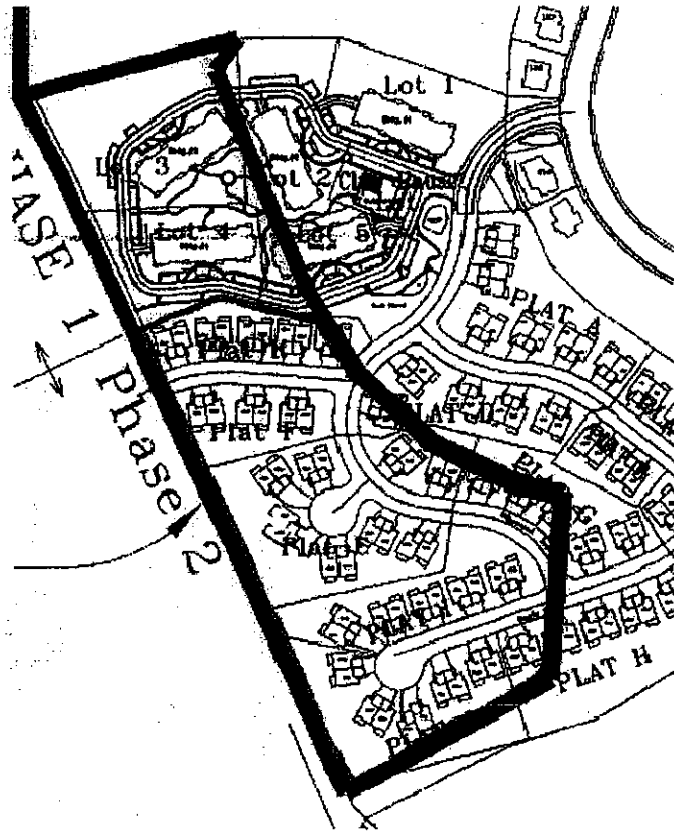


Sheet 1 of 2	Surveyor	Revisions			Edgewood Estates Right of First Boundary For: Sky Properties	 Balling Engineering Civil Engineering • Surveying • Planning 323 E. Pagen Lane Centerville, Utah 84014 Phone: (801) 295-7237 Fax: (801) 295-0419
	Date Surveyed	Date	Description	By		
	Drafting					
	Checked By					
	Date Approved					
	File Number					

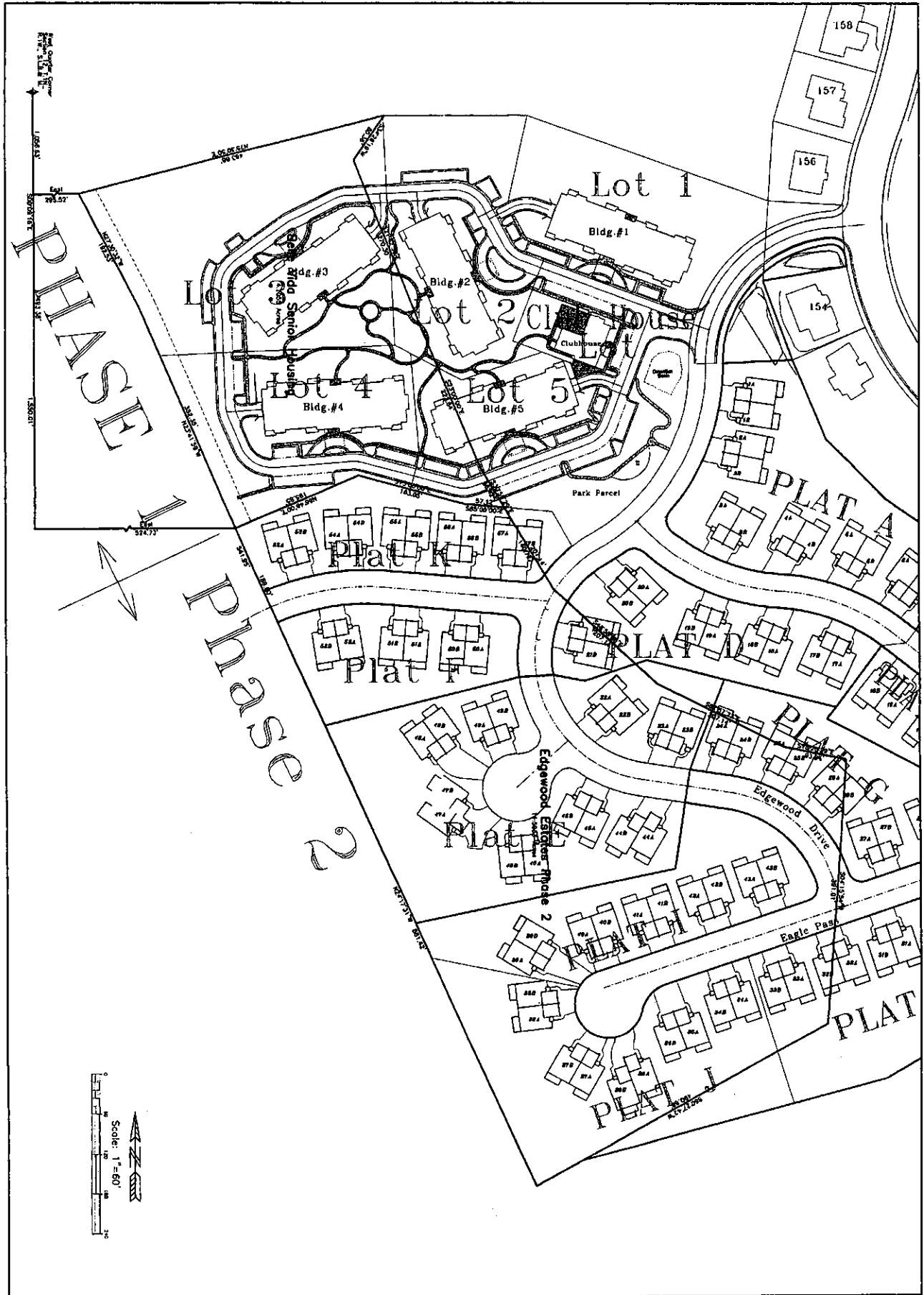
Black = Boundary Area of Right of First Opportunity

Red = Area to be Released

Yellow = Area to be Subordinated



This needs to be a dimensioned drawing so we can track the legal description in Exhibit A



Sheet 2 of 2 2	Revisions			Edgewood Estates Right of First Boundary with Roads ENR Sky Property		Balling Engineering	
	Surveyor _____ Date Surveyed _____ Drafting _____ Checked By _____ Delo Approved _____ File Number _____	Date _____ Description _____ _____ _____	By _____ _____ _____ _____			Civil Engineering • Surveying • Planning 323 E. Fagen Lane Centerville, Utah 84014 Phone: (801) 295-7227 Fax: (801) 295-0419	