

RETURNED

RECORDING REQUESTED BY:
FOXBORO TERRACE ASSOCIATES, L.C.

DEC 13 2004

0230

AND WHEN RECORDED MAIL TO:
FOXBORO TERRACE ASSOCIATES, L.C.
139 E. South Temple, Suite 310
Salt Lake City, Utah 84111

E 2037710 B 3683 P 230-238
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
12/13/2004 09:25 AM
FEE \$28.00 Pgs: 9
DEP RT REC'D FOR FOXBORO TERRACE A
SSOC L C

107A, Foxboro 1A Amd
SE 34-2n-1w

01-305-0107
06-082-0038,0035

PARTITION FENCE AGREEMENT

THIS PARTITION FENCE AGREEMENT (herein "Agreement") is made and entered into this 15th day of November, 2004, by and between **FOXBORO TERRACE ASSOCIATES, L.C.**, a Utah limited liability company (hereinafter referred to as "Foxboro"), **LEO THURSTON AND SAUNDRA B. THURSTON**, husband and wife as joint tenants (hereinafter referred to as "Thurston") and **REDWOOD LAND, L.L.C.**, a Utah limited liability company (hereinafter referred to as "Redwood").

RECITALS

A. Foxboro is the owner of that certain parcel of real property located in North Salt Lake, Davis County, State of Utah, and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (herein the "Foxboro Parcel").

B. Thurston is the owner of that certain parcel of real property located in North Salt Lake, Davis County, State of Utah, and more particularly described on Exhibit "B" attached hereto and incorporated herein by reference (herein the "Thurston Parcel").

C. Redwood is the owner of that certain parcel of real property located in North Salt Lake, Davis County, State of Utah, and more particularly described on Exhibit "C" attached hereto and incorporated herein by reference (herein the "Redwood Parcel").

D. The parcels owned by Foxboro, Thurston and Redwood are adjacent to each other, with the northern boundary of the Foxboro Parcel abutting portions of the southern boundaries of the Thurston Parcel and the Redwood Parcel.

E. The common boundary of the respective parcels, as established by deeds held by the parties, is neither uncertain nor in dispute by the parties.

F. Foxboro desires to construct a Partition Fence (as defined herein) upon the common boundary of the Foxboro Parcel, Thurston Parcel and Redwood Parcel and to specify herein the respective obligations with respect to the Partition Fence to be constructed. The obligations specified herein are intended to modify the requirements of Utah Code Annotated, Section 4-26-5 (1995, Replacement) (herein "Section 4-26-5") as they relate to the Partition Fence to be constructed by Foxboro.

G. Thurston and Redwood are willing to allow the construction and maintenance of the Partition Fence upon the common boundary in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of these recitals and for the mutual benefits and obligations set forth in this Agreement, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Foxboro shall cause the construction of a Partition Fence (as defined in this Agreement) to be constructed upon the common boundary between (a) the Foxboro Parcel and the Thurston Parcel, and (b) the Foxboro Parcel and the Redwood Parcel. The location of the Partition Fence shall be centered upon the common boundaries as specified above to the extent reasonably possible, but each party acknowledges that portions of the Partition Fence shall be located upon the Foxboro Parcel, the Thurston Parcel and the Redwood Parcel and consent for the location and construction of the Partition Fence is hereby granted.

2. Contrary to the requirements of Section 4-26-5, Foxboro shall be solely responsible for the cost of locating and constructing the Partition Fence, including but not limited to any and all surveys or permits required for the same and all construction and material related costs thereto.

3. The fence to be erected and maintained pursuant to this Agreement, and referred to herein as the "Partition Fence," shall be a decorative concrete panel fence, with decorative concrete posts installed at intervals sufficient to support such panels, such panels not to exceed, on average, eight (8) feet in height (or such lesser height as shall be permitted by governmental regulation) from the surface of the parcels as the same are improved. Unless evidenced by an amendment to this Agreement executed by the then owners of the Foxboro Parcel, the Thurston Parcel and the Redwood Parcel, respectively, the type and style of the Partition Fence originally installed shall not be modified in any material manner. Foxboro shall be solely responsible for obtaining all governmental approvals necessary for the construction of the Partition Fence and such Partition Fence shall be constructed and maintained according to such governmental approvals.

4. Except as provided herein, Foxboro and its successors and assigns shall be solely responsible, at its own cost and expense, for: (a) the structural maintenance and

replacement of the Partition Fence attributable to normal wear and tear; (b) any and all damage to the Partition Fence occasioned by the acts and/or omissions of Foxboro and its successors, assigns, tenants, guests and invitees, and (c) the maintenance of the south facing surface of the Partition Fence, keeping the same free of any materials and substances that might be destructive to the Partition Fence. Thurston and Redwood and their respective successors and assigns shall be responsible, at their own respective cost and expense, for: (a) maintenance of the north facing surface of the Partition Fence as it abuts or is located upon such party's parcel, keeping the same free of any materials and substances that might be destructive to the Partition Fence; and (b) any and all damage to the Partition Fence occasioned by the acts and/or omissions of Thurston and/or Redwood, respectively, and each of their successors, assigns, tenants, guests and invitees, other than normal wear and tear. Foxboro, Thurston and Redwood, and their respective successors, assigns, contractors and agents, shall have the right to access such Partition Fence from the Foxboro Parcel, the Thurston Parcel or the Redwood Parcel to the extent reasonably necessary to maintain, repair and restore the Partition Fence; provided, however, that any party utilizing such access shall notify the other affected party or parties of the need and expected dates of such access, shall restore the affected Parcel to its prior condition before such access, including but not limited to the repair or replacement of landscaping and facilities damaged or destroyed by such activities, and shall indemnify and hold the other parties harmless (including but not limited to attorneys' fees and costs) from any and all damages or injuries caused by such access. **THE RIGHT OF ACCESS PROVIDED TO EACH OF THE PARTIES AS SET FORTH IN THIS PARAGRAPH 4 SHALL NOT BE CONSTRUED AS AN EASEMENT ON OR ACROSS ANY OF THE AFFECTED PARCELS BUT SHALL BE A LICENSE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH ABOVE.**

5. This Agreement and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Foxboro, Thurston and Redwood, and all parties who hereafter acquire any interest in the Foxboro Parcel, the Thurston Parcel or the Redwood Parcel shall be subject to the terms of this Agreement. Failure to comply with any of requirements of this Agreement shall be grounds for an action by an aggrieved owner for the recovery of damages, or for injunctive relief, or both.

6. This Agreement constitutes the entire agreement between the parties relative to the subject matter hereof, and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on any party except to the extent incorporated in this Agreement.

7. Any modification of this Agreement or additional obligation assumed by any of the parties in connection with this Agreement shall be binding only if in writing, signed by all parties or an authorized representative of each party.

8. In the event any action is filed in relation to this Agreement, the unsuccessful party(ies) in the action shall pay to the successful party(ies), in addition to all other sums that the other party(ies) may be called on to pay, a reasonable sum for the successful party's attorneys' fees.

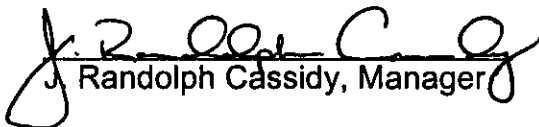
9. It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Utah.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above appearing.

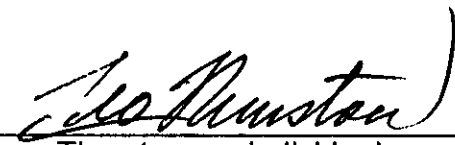
FOXBORO:

FOXBORO TERRACE ASSOCIATES,
L.C., a Utah limited liability company

By its Manager, Foxboro Terrace
Management, L.C., a Utah limited
liability company

By: 
J. Randolph Cassidy, Manager

THURSTON:


Leo Thurston, an individual


Sandra B. Thurston, an individual

REDWOOD:

Redwood Land, L.L.C., a Utah limited
liability corporation

By: 
Fred N. Stromness, Manager

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

On the 15th day of November, 2004, personally appeared before me J. Randolph Cassidy, Manager of Foxboro Terrace Management, L.C., a Utah limited liability company, as Manager of Foxboro Terrace Associates, L.C., a Utah limited liability company, the signer of the within instrument, who duly acknowledged to me that Foxboro Terrace Associates, L.C., executed the same.

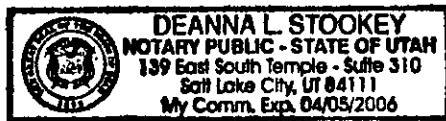


Deanna L. Stookey
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

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

On the 16th day of November, 2004, personally appeared before me Fred N. Stromness, Manager of Redwood Land, L.L.C., a Utah limited liability company, who duly acknowledged to me that Redwood Land, L.L.C., executed the same.



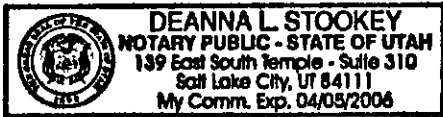
Deanna L. Stookey
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

0235

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

On the 10th day of ~~November~~ ^{DECEMBER}, 2004, personally appeared before me Leo Thurston, an individual, who duly acknowledged to me that he executed the same.

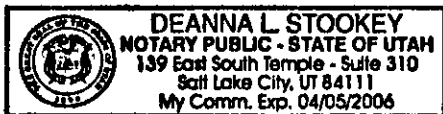


Deanna L. Stookey
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

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

On the 10th day of ~~November~~ ^{DECEMBER}, 2004, personally appeared before me Sandra B. Thurston, an individual, who duly acknowledged to me that she executed the same.



Deanna L. Stookey
NOTARY PUBLIC
Residing at: _____

My Commission Expires:

EXHIBIT "A"

0236

(Foxboro Parcel)

Lot 107A, Foxboro Plat 1A Amended, according to the Official Plat thereof on file and of record in the Davis County Recorder's Office.

EXHIBIT "B"

0237

(Thurston Parcel)

Beginning 276 1/21 rods and 626.5 feet South from the Northeast Corner of Section 34, Township 2 North, Range 1 West, Salt Lake Base and Meridian; thence South 194.5 feet; thence West 1056 feet; thence North 194.5 feet; thence East 1056 feet to point of beginning.

EXHIBIT "C"

0238

(Redwood Parcel)

Beginning at a point 276 1/21 rods and 434.5 feet South and 1,576.25 feet West from the Northeast Corner of Section 34, Township 2 North, Range 1 West, Salt Lake Meridian; and running thence South 385.5 feet, more or less, to the South line of Section 34; thence East 520.25 feet, more or less, along said Section line; thence North 193.59 feet; thence East 1,059.57 feet; thence North 192 feet to the South side of a 50 foot street; thence West 1,576.25 feet to the point of beginning.