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 RICHARD T. MAUGHAN  
 DAVIS COUNTY, UTAH RECORDER  
 9/27/2006 9:35:00 AM  
 FEE \$28.00 Pgs: 10  
 DEP eCASH REC'D FOR THE TALON GROUP

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WHEN RECORDED RETURN TO:  
 The Talon Group  
 200 East South Temple, Suite 200  
 Salt Lake City, Utah 84111

## PARTY WALL AGREEMENT

10-028-0057

THIS AGREEMENT ("Agreement") dated as of the 25 day of Sept, 2006, is entered into by and between The Bartley K. Curtis Investment Trust u/a/d August 24, 1999 (Curtis Investment Trust") and 1550 Associates LLC ("1550 Associates").

WHEREAS, CURTIS INVESTMENT TRUST is the sole owner of the legal and beneficial title to certain real property located generally at 1596 North Hillfield Road, Layton, Davis County, Utah, (the "CURTIS INVESTMENT TRUST Property"), more particularly described as follows:

Beginning at the Southeast corner of that certain property described in that certain Warranty Deed dated 16 November 1996 and recorded 19 November 1996 as Entry no. 1288099 in Book 2065 at Page 1240 of official records, said point being located South 89°54'50" West 680.42 feet and North 0°09'12" East 290.46 feet from the East Quarter Corner of Section 17, Township 4 North, Range 1 West, Salt Lake Base and Meridian and running thence North 89°46'06" West along the South Line of said parcel 286.50 feet; thence North 0°08'48" East 65.23 feet; thence South 89°46'06" East 74.13 feet to the Southeast corner of an existing block building and an existing party wall line; thence North 0°14'13" East along said party wall line and the extension thereof 346.39 feet to a point on the South line of the Foxcreek Apartment Complex; thence South 89°50'48" East along said South line of said Foxcreek Apartment Complex 211.88 feet; thence South 0°09'12" West 411.91 feet to the point of beginning.

Contains 92,198.91 sq. ft. or 2.12 Acres

WHEREAS, 1550 Associates is the sole owner of the legal and beneficial title to certain real property contiguous to and situated to the west of the CURTIS INVESTMENT TRUST Property and located generally at 1550-1590 North Hillfield Road, Layton, Davis County, Utah, (the "1550 Associates Property"), more particularly described as follows:

Beginning at a point on the South line of that certain property described in that certain Warranty Deed dated 16 November 1996 and recorded 19 November 1996 as Entry no. 1288099 in Book 2065 at Page 1240 of official records, said point being located South 89°54'50" West 680.42 feet and North 0°09'12" East 290.46 feet to said South Line and North 89°46'06" West along said South Line 286.50 feet from the East Quarter Corner of Section 17, Township 4 North, Range 1 West, Salt Lake Base and Meridian and running thence North 89°46'06" West along said South Line 305.92 feet to the East Line of 400 West Street; thence North 0°08'48" East along said East Line 411.10 feet to the Southwesterly corner of the Foxcreek Apartment Complex; thence South 89°50'48" East along the South line of said Foxcreek Apartment Complex 380.59 feet to a point on the extension of a party wall line; thence South 0°14'13" West along said party wall

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Talon Group No 9649

line and the extension thereof 346.39 feet to the Southeast corner of an existing block building; thence North 89°46'06" West 74.13 feet; thence South 0°08'48" West 65.23 feet to the point of beginning.

Contains 151,595.62 sq. ft. or 3.48 Acres

WHEREAS, there presently exists a party wall which runs along a portion of the dividing line between the CURTIS INVESTMENT TRUST Property and the 1550 Associates Property (the "Wall"), as depicted on that certain Survey prepared by Larsen & Malmquist, Inc., dated March 4, 2003, which survey is attached hereto as Exhibit "A" (the "Survey"). The Wall also acts as a bearing wall for roof structures on the parties' respective properties and the respective roof structures share common material including metal flashings. The legal description of the location and course of the Wall is along that line located in Davis County, Utah, more particularly described as follows:

Beginning at the Southeast corner of an existing block building and an existing party wall line said point being located South 89°54'50" West 680.42 feet and North 0°09'12" East 290.46 feet and North 89°46'06" West 286.50 feet and North 0°08'48" East 65.23 feet and South 89°46'06" East 74.13 feet from the East Quarter Corner of Section 17, Township 4 North, Range 1 West, Salt Lake Base and Meridian and running thence North 0°14'13" East along said party wall line 336.02 feet to the Northeast corner of said existing building.

WHEREAS, the parties hereto have reached an agreement with respect to the Wall, as more fully described herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Wall is hereby declared to be a party wall and the parties shall have the right to use it jointly. To the extent necessary, each party hereto does by these presents grant a right, privilege and servitude for the purposes of the Wall expressed herein. The parties hereto grant each other reciprocal easements to the extent reasonably necessary for the purposes of maintaining, repairing or replacing the Wall as set forth herein.

2. Should the Wall be damaged or destroyed by the default, negligence, or other act or omission of one of the parties, its tenant or invitees, such party to this Agreement shall rebuild or repair the Wall as necessary and shall compensate the other party for any damages to the property of the other party caused by such damage or destruction.

3. Should the Wall at any time while in use by both parties as aforesaid be injured by any cause other than the act or omission of either party, the wall shall be repaired or rebuilt at their joint and equal expense. Both parties shall maintain insurance in commercially reasonable forms and amounts to provide standard insurance coverage as normally available against such injury or destruction. The proceeds of any such insurance policy shall be applied to that respective party's obligations hereunder.

4. If it becomes otherwise necessary to repair or rebuild the whole or any part of the Wall, the repairing or rebuilding expense shall be borne equally by the parties, or by their successors

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and assigns.

5. All sums assessed under this agreement, shall be secured by a lien against the respective parties property subject to this agreement. To evidence a lien for sums assessed, the party which has paid its portion of the assessed cost, if such payment was necessary, may prepare a written notice of lien setting forth the amount due under this Agreement, the date due, the name of the Owner of the property which has failed to pay the amount due and a legal description of said Owner's property. Such a notice shall be signed and acknowledged and may be recorded in the official records of the Davis County Recorder (the "Official Records"). Such lien may be enforced by foreclosure as allowed by state law.

6. In the event the Wall is ever demolished or altered in such a way that the Wall does not exist, and the parties to this agreement, or their respective successors and assigns, agree in writing that the Wall shall not be rebuilt, then the right, privilege and servitude created hereby shall automatically terminate and be of no further force or effect. In such event, the parties to this agreement or their respective successors and assigns agree to execute an instrument acknowledging the same which shall be recorded in the Official Records.

7. With respect to the common roofing materials, the parties shall have the right to use the common roof jointly and each party hereto does grant each other reciprocal easements to the extent reasonably necessary for the purposes of maintaining, repairing, or replacing the common roofing materials and the parties' respective roofing structures. The parties hereto further grant each other reciprocal easements for drainage from the parties respective roof structures as existing, or similar thereto as, of the date of this Agreement. Terms set forth in this Agreement pertaining to maintenance, repair or replacement of the Wall shall also apply to common roofing materials.

8. Duration. This Agreement, the covenants set forth herein and the easements and rights created hereby shall be perpetual.

9. Not a Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the CURTIS INVESTMENT TRUST Property or the 1550 Associates Property (collectively, the "Business Park") for the general public or for any public purposes whatsoever, it being the parties' intention that this Agreement be strictly limited to and construed for the purposes expressed herein.

10. Appurtenances to Parcels. Each easement, right and other obligation contained in or created by this Agreement is an appurtenance to the property benefited by such easement, and may not be transferred, assigned, or encumbered except as an appurtenance to such benefited property. For purposes of each such easement each benefited property shall constitute the dominant estate and each burdened property shall constitute the subservient estate.

11. Covenants Run With Land. Each easement, right and other obligation contained in or created by this Agreement shall: (a) create an equitable servitude on each subservient estate in favor of each dominant estate; (b) shall constitute a covenant running with the land; (c) shall benefit and bind every person having any fee, leasehold, mortgage lien, or other interest in any portion of the property concerned to the extent that such portion is affected or bound by the easement in question, or to the extent that such easement is to be performed on such portion; (d) shall inure to the benefit and bind any owner whose title is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise; and (e) shall be binding upon CURTIS INVESTMENT TRUST and 1550 Associates and their respective successor(s) and assign(s) as to

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their respective property, as well as their respective tenants, invitees, licensees, agents, and employees.

12. Transfer of Property. If any owner transfers all or any portion of the Business Park, the transferee shall automatically be deemed to have assumed and agreed to be personally bound by the covenants contained in this Agreement, and if the transferring owner has by such transfer transferred all of such owner's ownership interest in the Business Park, such transferring owner shall be released and discharged from all obligations under this Agreement that accrue after the date of recording said instrument effecting such transfer in the Official Records.

13. No Partnership. By executing this Agreement the parties hereto do not by this Agreement in any way or for any purpose become partners or enter into a joint venture with each other.

14. Subordination by Lenders. The parties recognize the need promptly to obtain recordable subordination agreements from the mortgagees or other lien holders of the parties hereto (the "Lenders") holding mortgages, liens or other security or beneficial interests in or encumbering the Business Park (the "Security Documents") whereunder the Lenders will subordinate the effect of their respective Security Documents to the effect of this Agreement. The parties expeditiously shall seek, and thereafter shall use their best, good faith efforts to obtain and record such subordination agreements from their respective Lenders.

15. Severability. In the event that any provision(s) herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other provision(s) herein contained. If such provision(s) shall be deemed invalid due to its scope or breadth, such provision(s) shall be deemed valid to the extent of the scope or breadth permitted by law.

16. Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement. To be effective, any waiver must be signed by all the parties hereto.

17. Remedies. The rights and remedies of the parties hereto shall be construed cumulatively. In general, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other party for a breach or threatened breach of any provision hereof, it being the intention of this Paragraph to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

18. Modification. This Agreement and any easement, condition, or restriction contained in this Agreement may not be terminated, extended, modified, or amended without the consent of all of the parties hereto, and any such termination, extension, modification, or amendment shall be effective upon recordation in the Official Records of a written document effecting the same, executed and acknowledged by each owner; provided, however, that no such termination, extension, modification, or amendment shall affect the rights of any mortgagee holding a mortgage consisting a lien on any property unless such mortgagee consents to the same in writing.

19. Governing Law, Jurisdiction, and Venue. This Agreement shall be interpreted, construed

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and enforced according to the laws of the State of Utah, and jurisdiction and venue shall be exclusively vested in the Courts of Davis County, State of Utah.

20. Costs and Expenses of Enforcement. In the event of the failure of either party hereto to comply with any provisions of this Agreement, the defaulting party shall pay any and all costs and expenses, including reasonable attorney's fees, arising out of or resulting from such default, incurred by the injured party in enforcing its rights and remedies, whether such right or remedy is pursued by filing a lawsuit or otherwise.


21. Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received upon personal delivery or actual receipt thereof by hand delivery, or within three (3) days after such notice is deposited in the United States mail, postage prepaid and certified or registered and addressed to the respective addresses set forth above or to such other address(es) as may be supplied by a party to the other from time to time in writing.

22. Additional Acts. The parties hereto shall do such further acts and things and shall execute and deliver such additional documents and instruments as may be necessary or desirable to carry out the intent to this Agreement or as the other party, or its counsel, may reasonably require in order to consummate, evidence, or confirm the provisions that are contained herein.

23. Integration Clause. There are no representations, warranties, covenants, or agreements between the parties as to the subject matter of this Agreement except as are specifically set forth in this Agreement. This Agreement contains the entire agreement between the parties hereto pertaining to the matters that are set forth herein and supersedes all prior verbal or written agreements of the parties in relation thereto.

THE PARTIES have executed this Agreement as of the date first set forth above.

**The Bartley K. Curtis Investment Trust u/a/d August 24, 1999**

By:   
Chad K. Curtis

Its: Co-Trustee

By: MDF Estate Planning Services, Inc.

Its: Co-Trustee

By:   
M. Don Forbush

Its: Trust Officer

**1550 ASSOCIATES LLC, a Utah limited liability company**

By: Chateau Development Company, L.C., a Utah limited liability company

Its: Manager

By: See attached.  
Khosrow Shirzad, Manager

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and enforced according to the laws of the State of Utah, and jurisdiction and venue shall be exclusively vested in the Courts of Davis County, State of Utah.

20. Costs and Expenses of Enforcement. In the event of the failure of either party hereto to comply with any provisions of this Agreement, the defaulting party shall pay any and all costs and expenses, including reasonable attorney's fees, arising out of or resulting from such default, incurred by the injured party in enforcing its rights and remedies, whether such right or remedy is pursued by filing a lawsuit or otherwise.

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**The Bartley K. Curtis Investment Trust u/a/d August 24, 1999**

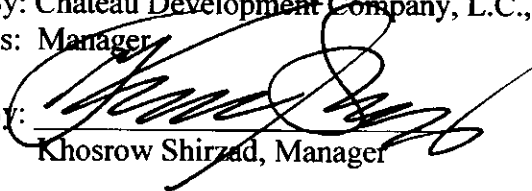
By: \_\_\_\_\_  
Chad K. Curtis  
Its: Co-Trustee

By: MDF Estate Planning Services, Inc.  
Its: Co-Trustee

By: \_\_\_\_\_  
M. Don Forbush  
Its: Trust Officer

**1550 ASSOCIATES LLC, a Utah limited liability company**

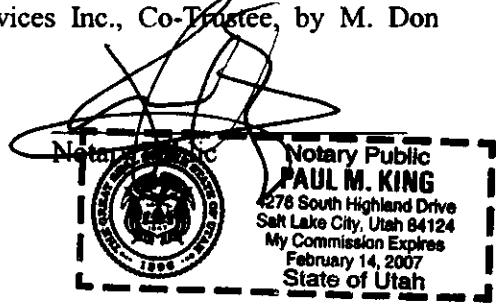
By: Chateau Development Company, L.C., a Utah limited liability company  
Its: Manager

By:   
Khosrow Shirzad, Manager

PARTY WALL AGREEMENT  
NOTARY PAGE

STATE OF UTAH )  
 :SS  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of Sept, 2006, by The Bartley K. Curtis Investment Trust u/a/d August 24, 1999, by Chad K. Curtis, Co-Trustee and by MDF Estate Planning Services Inc., Co-Trustee, by M. Don Forbush, Trust Officer.



~~STATE OF \_\_\_\_\_ )  
 :SS  
COUNTY OF \_\_\_\_\_ )~~

~~The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by 1550 Associates LLC, by its Manager Chateau Development Company, L.C. by Khosrow Shirzad, Manager.~~

~~See attached.~~

~~\_\_\_\_\_  
Notary Public~~

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

BK 4126 PG 206

State of California

County of Los Angeles

On Sept. 23<sup>rd</sup>, 2006 before me, Christopher R. Neely, Notary

personally appeared Khusrow Shirzad

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

Name(s) of Signer(s)

personally known to me OR-  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Christopher R. Neely  
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

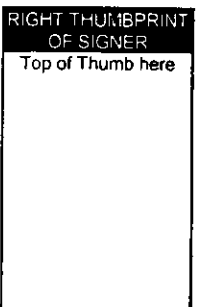
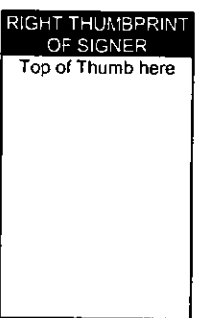
Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer
- Titles(s): \_\_\_\_\_
- Partner -  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer
- Title(s): \_\_\_\_\_
- Partner -  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



EXHIBIT "A" TO PARTY WALL AGREEMENT  
LARSEN & MALMQUIST SURVEY

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