

11918

WHEN RECORDED, RETURN TO:

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

00581759 Bk01352 Pg00632-00657

ALAN SPRIGGS, SUMMIT CO RECORDER
2001 FEB 05 16:08 PM FEE \$70.00 BY DMG
REQUEST: PARK CITY TITLE

RED STONE VILLAGE

AIR RIGHTS DECLARATION

THIS AIR RIGHTS DECLARATION (this "Declaration") is made by BOYER SPRING CREEK, L.C., Utah limited liability companies (together, the "Declarant") on the 2nd day of February, 2001.

Recitals

A. Declarant is the owner of certain real property located in Summit County, Utah and more particularly described in Exhibit A attached hereto (the "Property"). The Declarant has caused or will cause the Property to be subject to a Master Declaration of Covenants, Conditions and Restrictions (the "Master Declaration").

B. Declarant desires to subdivide a portion of the Property into parcels to be used for both commercial purposes on the ground floor and residential purposes, including for overnight stay, above a specified elevation above the ground floor, as more particularly described on Exhibit B attached hereto (the "Mixed-use Parcels"). The Mixed-use Parcels are subject to the terms of the Master Declaration as well as the terms of this Declaration.

C. Declarant desires to subdivide each Mixed-use Parcel into an air parcel, defined as that portion of the Mixed-use Parcel above a specified elevation to be established in a separate recorded instrument referencing this Declaration to be recorded after construction of improvements on the Mixed-use Parcel (as described more fully below, an "Air Parcel"), which Air Parcel is to be used for residential purposes, and a remaining parcel, below the specified elevation, to be used for commercial purposes, in accordance with the terms and conditions of this Declaration.

D. Declarant intends to submit (or to cause Developer's successor in the ownership of the Residential Parcel to submit) the Air Parcels and the contiguous Garage Parcels identified on Exhibit C) to the Utah Condominium Ownership Act (the "Condominium Act") by separate instrument, thereby creating a condominium project (the "Condominium") on the

Residential Parcel and authorizing the Association to act on behalf of all of the owners of units within the Condominium.

Declaration

Declarant, as the current Commercial Owner and Residential Owner, grants the following easements and makes the following covenants, which are intended to burden or benefit, and to run with, the Commercial Parcel and the Residential Parcel and to be binding upon and enforceable against the Commercial Owner and the Residential Owner, as applicable.

1. Definitions

1.1 "Air Parcels" mean those parcels consisting of portions of the Mixed-use Parcels above an elevation or elevations established in one or more separate recorded instruments referencing this Declaration to be recorded after construction of improvements on one or more of the Mixed-use Parcels. Unless otherwise specified in the separate recorded instrument, the top of the commercial portion of each Mixed-use Parcel will be at the top of the joists defining the ceiling for the commercial space and supporting the floor for the Air Parcels.

1.2 "Association" means the association of unit owners of the Condominium or the association of owners within the Residential Parcel.

1.3 "Building" means, collectively, the structures on the Mixed-use Parcels encompassing the Commercial Improvements and those Residential Improvements located within the Air Parcels and excluding the Residential Improvements located on the Garage Parcels.

1.4 "Commercial Improvements" means the improvements to be constructed within the Commercial Parcel in accordance with the Plans, as well as any restoration or replacement thereof.

1.5 "Commercial Owner" means the record owner of the Commercial Parcel, or, if there is more than one record owner of the Commercial Parcel at any given time, such record owners collectively.

1.6 "Commercial Parcel" means, collectively, those portions of the Mixed-use Parcels other than the Air Parcels.

1.7 "Equipment" means the equipment to be installed on or in connection with either the Residential or the Commercial Parcel in accordance with the Plans, including, without limitation, engines, furnaces, boilers, transformers, pumps, heaters, fans, blowers, vents, electrical apparatus, heating, plumbing, lifting, and ventilating apparatus, air-cooling and air-conditioning or refrigeration apparatus, power apparatus, gas and electrical fixtures,

elevators and cables, tracks, wires, and weights for use in connection with elevators, escalators, radiators, compressors, vacuum cleaning systems, call systems, and fire prevention and extinguishing apparatus. To the extent reasonably feasible, all Equipment for the Commercial Parcel will be installed separately from the Equipment for the Residential Parcel. No Equipment for the Residential Parcel shall be installed within the Commercial Parcel. Equipment benefitting the Commercial Parcel may be installed on the roof and within Facilities located within the Residential Parcel.

1.8 "Facilities" means the facilities to be constructed or installed on or in connection with the Mixed-use Parcels in accordance with the Plans, and to be used in connection with the Utilities, including, without limitation, ducts, lines, cables, conduits, pipes and flues. To the extent reasonably feasible, all Facilities for the Commercial Parcel will be installed separately from the Facilities for the Residential Parcel.

1.9 "Garage Parcels" mean the parcels identified on Exhibit "C" upon which shall be constructed ground-level garages and parking areas for the exclusive use of the occupants of the Air Parcels, and which shall be deemed, for all purposes hereof, to be a portion of the Residential Parcel. Garage Parcels are not included within Mixed-use Parcels.

1.10 "Improvement Taxes" means Taxes on or allocable to the improvements and/or equipment situated on the Mixed-use Parcels.

1.11 "Land Taxes" means Taxes on or allocable to the land included in the Mixed-use Parcels.

1.12 "Means of Access" means the pedestrian and mechanical means to provide access to the Air Parcels in accordance with the Plans, and by which the easement for access granted in Section 2(a) is to be used and enjoyed, including, without limitation, corridors, stairways and shafts. The Means of Access will be located entirely or substantially within the adjacent Garage Parcels and not within the Mixed-Use Parcels.

1.13 "Mortgage" means a recorded mortgage or a recorded deed of trust.

1.14 "Mortgagee" means the mortgagee or beneficiary under a Mortgage.

1.15 "Owners" or "Owner" means the Commercial Owner and the Residential Owner, or either one, as applicable.

1.16 "Plans" means the plans and specifications for the construction of improvements within the Mixed-use Parcels as approved by Summit County, Utah, as such plans and specifications may be modified from time to time with the approval of the Owners.

1.17 "Residential Improvements" means the improvements to be constructed within the Residential Parcel in accordance with the Plans, including the Means of Access, as well as any restoration or replacement thereof.

1.18 "Residential Owner" means the Association; provided, however, that prior to the formation of the Association, "Residential Owner" means the record owner of the Residential Parcel, or, if there is more than one record owner of the Residential Parcel at any given time, such record owners collectively.

1.19 "Residential Parcel" means, collectively, the Air Parcels and the contiguous Garage Parcels.

1.20 "Specified Interest Rate" means the higher of eighteen percent (18%) per annum or five percent (5%) over the prime interest rate set from time to time by Wells Fargo Bank, N.A., or another national banking association with an office in Salt Lake City.

1.21 "Structural Elements" means the structural elements to be constructed on or in connection with the Mixed-use Parcels in accordance with the Plans, including, without limitation, beams, columns, members, footings, foundations, structural walls, membranes and roofs.

1.22 "Taxes" means all taxes, assessments, charges, and fees imposed, assessed, or levied by any governmental or public authority against or upon the Mixed-use Parcels and/or the improvements and equipment situated thereon.

1.23 "Unit Owners" means the unit owners of the Condominium.

1.24 "Utilities" means the utility services to be used on or in connection with the Mixed-use Parcels, including, without limitation, water, air, gas, steam, electricity, energy, drainage, sewage and communications. To the extent reasonably feasible, all Utilities for the Commercial Parcel will be installed and contracted for separately from the Utilities for the Residential Parcel, unless any Utility company requires common installation.

2. Easements Appurtenant to Residential Parcel

The following easements shall run in favor of the Owner of the Residential Parcel and the Unit Owners, and with respect to access, the guests and invitees of the Residential Parcel.

(a) Encroachment and Easement Relating to Means of Access. The Means of Access are intended to be located within the Garage and Air Parcels. In the event that any portion of the Means of Access encroaches or comes to encroach upon the Commercial Parcel as a result of minor errors or inadequacies in the Plans, as a result of minor errors in construction, or as a result of the minor shifting, settlement or movement of the Means of Access, and such encroachment does not materially interfere with the use of any of the

commercial space located within the Commercial Parcel, there shall be an exclusive easement for such encroachment and for the continuance and maintenance thereof so long as such encroachment exists. Only to the extent that any portion of the Means of Access encroach on the Commercial Parcel, there shall be an easement for ingress and egress by pedestrian traffic through the Commercial Parcel to and from the Residential Parcel, with such easement being capable of use on a 24-hour-a-day, seven-day-a-week basis.

(b) Other Encroachments. In the event that any other portion of the Residential Improvements encroaches or comes to encroach upon the Commercial Parcel as a result of minor errors or inadequacies in the Plans, as a result of minor errors in construction, or as a result of the minor shifting, settlement or movement of the Residential Improvements, and such encroachment does not materially interfere with the use of any of the commercial space located within the Commercial Parcel, there shall be an exclusive easement for such encroachment and for the continuance and maintenance thereof so long as such encroachment exists.

(c) Structural Elements, Facilities and Utilities.

(i) Maintenance, Repair and Replacement. There shall be an easement to construct, install, maintain, inspect, service, repair and replace Structural Elements, Facilities and Utilities within the Commercial Parcel that serve or benefit the Residential Parcel in accordance with the Plans; provided, however, that (i) no use of such easement shall increase the structural requirements of the Residential Parcel on the Commercial Parcel beyond the requirements contemplated by the Plans, (ii) except in the case of an emergency, such easement shall not permit the Residential Owner to have access to the Commercial Parcel or to construct, install, maintain, service, repair or replace any Structural Elements or Facilities within the Commercial Parcel prior to giving the Commercial Owner notice and reasonable opportunity to conduct the activity and without receiving the prior written consent of the Commercial Owner, and (iii) such easement shall be subject to the condemnation, destruction and termination provisions of this Agreement.

(ii) Use. There shall be an easement to use and enjoy the Structural Elements, Facilities and Utilities constructed or installed within the Commercial Parcel, to the extent that such Structural Elements, Facilities, and Utilities benefit the Residential Parcel. Such easement shall be exclusive to the extent that any such Facilities or Utilities solely benefit the Residential Parcel, and shall otherwise be nonexclusive.

(d) Additional Utilities. Any additional Utilities required to serve the Air Parcels shall be provided through the Garage Parcels.

(e) Entry in Aid of Other Rights. There shall be an easement to enter in and upon the Commercial Parcel and any improvements therein with persons, materials and tools to the extent, at the times, and for the periods reasonably necessary to enable the Residential Owner: (i) to perform all of the construction, maintenance, inspection, repair, and replacement

referred to in the preceding Paragraphs of this Section 2; and/or (ii) to accomplish any other matters which the Residential Owner is entitled or required to accomplish under the provisions of this Declaration. Entry shall be accomplished with 48 hour prior written notice except in case of an emergency. In the event of an emergency, access may be obtained after verbal notice to the Commercial Owner. The party obtaining emergency access shall be accompanied by a representative of the Commercial Owner and any affected tenant of the Commercial Parcel where reasonably possible. Any construction activity shall be scheduled and performed with the agreement of the Commercial Owner at times and in a manner so as to not unreasonably disturb or disrupt activities within the Commercial Parcel. Notwithstanding any inconsistent provision of this Agreement, the Commercial Owner shall have the first right to perform any construction, maintenance, repair or replacement required within the Commercial Parcel, whether relating to a Structural Element or Facility that is of mutual benefit or of benefit exclusively to the Air Parcel. In the event the Commercial Owner fails to commence any such required action within the longer of 30 days after receipt of written notice by the Commercial Owner or such longer time as may be reasonably required to order materials and to obtain essential services, the action may then be performed by the Residential Owner after the notice periods provided in this paragraph.

(f) Limitation. Notwithstanding any provision of this Section 2 to the contrary, the Commercial Owner shall be entitled to limit or restrict any or all of the easements provided for in this Section 2 or to relocate such easements in order to carry out any planned or unplanned maintenance or construction activities affecting the Commercial Parcels, to modify the design or layout of Commercial Improvements in any manner not affecting the integrity of the Structural Elements or otherwise to further the business purposes of the Commercial Parcels.

(g) Residential Equipment. There shall be no residential Equipment located within the Commercial Parcel.

3. Easements Appurtenant to Commercial Parcel

The following easements shall run in favor of the Owner of the Commercial Parcel and its tenants, and with respect to access, the guests and invitees of the Commercial Parcel.

(a) Encroachments. In the event that any portion of the Commercial Improvements encroaches or comes to encroach upon the Residential Parcel as a result of errors or inadequacies in the Plans, as a result of minor errors in construction, or as a result of repair, shifting, settlement or movement of the Commercial Improvements, there shall be an exclusive easement for such encroachment and for the continuance and maintenance thereof so long as such encroachment exists.

(b) Structural Elements, Facilities, Equipment and Utilities.

(i) Construction and Maintenance. There shall be an easement to construct, install, maintain, inspect, service, repair and replace, within the Residential Parcel, Structural Elements, and Facilities, Equipment and Utilities benefitting the Commercial Parcel. There shall be a further easement to construct, install, maintain, inspect, service, repair and replace, within the Residential Parcel, the visible surfaces of the Building. All such Structural Elements, Facilities, Equipment and Utilities and the skin of the Building may be constructed, installed, maintained, inspected, serviced, repaired and replaced by the Commercial Owner. The Residential Owner shall have no right or responsibility to undertake any such activities.

(ii) Use. There shall be an easement to use and enjoy the Structural Elements, Facilities, Equipment and Utilities constructed or installed within the Residential Parcel to the extent that such Structural Elements, Facilities, Equipment and Utilities benefit the Commercial Parcel. Such easement shall be exclusive to the extent that any such Facilities, Equipment or Utilities solely benefit the Commercial Parcel, and shall otherwise be nonexclusive.

(c) Additional Equipment and Utilities. Provided that detailed plans and specifications therefor have first been submitted to and approved by the Residential Owner, which approval shall not be unreasonably withheld or delayed, there shall be an easement to construct and install in the Residential Parcel, in full compliance with such approved plans and specifications, such additional Equipment and Utilities as the Commercial Owner at any time or times may determine to be necessary or convenient for the reasonable use of the Commercial Parcel (but in no event shall any such construction or installation materially diminish the amount of usable floor space contained in the Residential Parcel beyond the floor space otherwise designated for the Facilities or materially interfere with the full use and function of the Residential Parcel), together with the same easements to maintain, inspect, service, repair, replace, use and enjoy such additional equipment and utilities as are provided in Section 3(b). This paragraph shall also include the right of the Commercial Owner to use portions of the exterior of the building within the Residential Parcel for the location and maintenance of signs relating to the Commercial Parcel.

(d) Reconstruction by Commercial Owner. There shall be an easement to reconstruct from time to time within the Commercial Parcel, in the same location or in any other reasonable and suitable location, all at the sole expense and risk of the Commercial Owner, any Structural Elements or Facilities which exist entirely or partially for the benefit of the Residential Parcel; provided, however, that (i) such reconstruction shall be undertaken only after the expiration of at least thirty (30) days following receipt by the Residential Owner of written notice of such reconstruction; (ii) no such reconstruction shall be undertaken which would materially impair the support of the Residential Improvements, without the prior written consent of the Residential Owner, which consent may be withheld in the Residential Owner's sole discretion; and (iii) any such Structural Elements or Facilities as reconstructed pursuant to the provisions hereof shall be of substantially the same usability to the Residential Parcel as they were prior to such reconstruction.

(e) Entry in Aid of Other Rights. There shall be an easement to enter in and upon the Residential Parcel and any improvements therein with persons, materials, and tools to the extent, at the times, and for the periods reasonably necessary to enable the Commercial Owner (i) to perform all of the construction, maintenance, inspection, repair, and replacement referred to in the preceding Paragraphs of this Section 3, (ii) to accomplish any other matters which the Commercial Owner is entitled or required to accomplish under the provisions of this Declaration, (iii) to enforce any covenants contained in this Declaration, and/or (iv) to cure any breach of this Declaration by any Residential Owner. Entry shall be accomplished with 48 hour prior written notice except in case of an emergency. In the event of an emergency, access may be obtained after verbal notice to the Residential Owner or to any affected Unit Owner. The party obtaining emergency access shall be accompanied by a representative of the Residential Owner, any affected Unit Owner where reasonable possible. Any construction activity shall be scheduled and performed with the agreement of the Residential Owner and any affected Unit Owner at times and in a manner so as to not unreasonably disturb or disrupt activities within the Residential Parcel or any unit within the Condominium.

4. Use of Parcels

(a) Compliance with Legal Requirements. Each Owner shall use its respective Parcel in a manner such as not to violate any law, regulation, agreement or any other legal requirement applicable to such Owner or such Parcel, to the extent that such a violation would adversely affect the other Parcel or the other Owner.

(b) Operation of Commercial Parcel. The Commercial Parcel may be used for any commercial purpose permitted under applicable law.

(c) Occupancy of Residential Parcel. The Residential Parcel shall be used for the construction and occupancy of dwellings, which may be occupied on a permanent, rental or overnight stay basis. Occupancy shall be limited to not more than two persons per bedroom.

(d) Residential Covenants. The Unit Owners shall comply with, and the Residential Owner shall enforce, the following standards:

(i) Sound, Odor and Water Containment. The Residential Improvements shall be constructed so as to contain within the Residential Parcel all sounds, odors and leaking water. The Plans for Residential Improvements shall be subject to the review and approval of the Commercial Owner to ascertain compliance with this requirement. Any special studies necessary to confirm the adequacy of the engineering of solutions for these issues will be borne by the Residential Owner.

(ii) Unsignificance. The visual appearance of the Residential Improvements within the Residential Parcel must be consistent with the appearance of the Commercial Improvements within the Commercial Parcel. The Unit Owners shall maintain the

balcony areas of the Residential Parcel free from any unsightliness, the storage of items of personal property, the placement of flags, towels, satellite dishes, antennae or other similar visible items or any other use that would detract from the visual appearance of the Residential Parcel when viewed from any commercial area, building or street within the Redstone Village.

(iii) Window Treatment. All windows within the Residential Parcel shall have a substantially uniform appearance when viewed from any commercial area, building or street within the Redstone Village. The Commercial Owner may specify and require each Unit Owner to install a common drapery backing or other standard for window treatment to achieve this objective.

(iv) Compliance with Applicable Covenants. The Residential Owner shall comply with and enforce, for the benefit of the Commercial Parcel, the covenants of the Master Declaration and the condominium declaration applicable to the Residential Parcels.

5. Maintenance

(a) Maintenance by Commercial Owner. The Commercial Owner shall maintain, inspect, service, repair and replace (i) the Commercial Parcel and the Commercial Improvements, including such portions of the Commercial Parcel and the Commercial Improvements as are burdened by easements appurtenant to the Residential Parcel, to the extent reasonably necessary to enable such easements to be used and enjoyed by the Residential Owner; (ii) all Structural Elements, regardless of whether located in the Commercial Parcel or the Air Parcel; (iii) Facilities and Utilities as are located within the Commercial Parcel and as benefit the Residential Parcel, to the extent reasonably necessary to enable such Facilities and Utilities to be used and enjoyed by the Residential Owner; and (iv) the north, east and west faces of the Building within the Residential Parcel, including costs of installing, planting and maintaining second-story planters, if any. The costs for such work shall be allocated as provided in Section 6.

(b) Maintenance by Residential Owner. The Residential Owner shall maintain, inspect, service, repair and replace (i) the Residential Parcel and the Residential Improvements, including such portions of the Residential Parcel and the Residential Improvements, as are burdened by easements appurtenant to the Commercial Parcel, to the extent reasonably necessary to enable such easements to be used and enjoyed by the Commercial Owner, but excluding the Structural Elements and the north, east and west faces of the Building within the Residential Parcel, which are the responsibility of the Commercial Owner; and (ii) the Means of Access. The costs for such work shall be allocated and paid as provided in Section 6.

6. Expenses

(a) Records. Each Owner shall maintain complete records of the costs and expenses that such Owner incurs pursuant to its obligations hereunder ("Expenses"). Such

records shall, to the extent reasonably possible and practical, reveal the item in connection with which each Expense is incurred. Each Expense shall be limited to the actual reasonable cost to the Owner incurring such Expense of performing the obligation giving rise to such Expense, including, without limitation, reasonable management and supervision charges.

(b) Allocation. Expenses incurred in connection with the work described in Section 5 shall be allocated to the Owners in accordance with the following principles, to be applied in the following order of priority:

(i) The cost of any maintenance, repair or replacement required by reason of either the excessive use of either Owner or an event of damage caused by the negligence of any party shall be borne by the responsible Owner or party.

(ii) Expenses incurred in connection with items benefitting or intended to benefit both Parcels, including without limitation all maintenance, repair and replacement of Structural Elements, including the roof and roof membrane, and the Facilities which serve both the Residential Parcel and the Commercial Parcel and including all costs allocated to the Mixed-use Parcel under the terms of the Master Declaration, shall be allocated to and borne by equally by both Owners.

(iii) Expenses incurred in connection with items benefitting or intended to benefit one Parcel shall be allocated to and borne by the Owner of such Parcel, regardless of which Owner performs the work and regardless of where the work is performed. This principle is intended to allocate to the Residential Owner the cost of maintaining the exterior portions of the Residential Parcel maintained by the Commercial Owner.

(iv) Any other expenses incurred by an Owner with reference to the applicable Parcel of that Owner shall be borne by the Owner in question.

(c) Budget. At least annually, the Commercial Owner shall submit to the Association an annual budget reflecting the estimated total annual expenses to be incurred in connection with the work described in Section 5. for the following year (the "Budgeted Expenses"). The Association shall not unreasonably withhold or delay its approval of such budget. The Association shall give the Commercial Owner written notice of its approval or disapproval of such budget within thirty (30) days after receipt. If the Association fails to give such notice within such thirty (30) day period, the Association shall be deemed to have approved such budget. Any disapproval of such budget shall be accompanied by a reasonably detailed explanation for such disapproval. The Commercial Owner and the Association shall reasonably cooperate to address and resolve the reasons for any such disapproval as soon as reasonably possible to arrive at a budget which is approved or deemed approved by the Association.

(d) Payment.

(i) The Commercial Owner shall invoice the Association for the Association's share of Budgeted Expenses on a monthly basis and the Association shall pay the amount shown on such invoice within five (5) business days. Within ninety (90) days after the end of each calendar year, the Commercial Owner shall furnish the Association with a reasonably detailed final statement of the actual expenses incurred in connection with the work described in Section 5. during the preceding year (the "Actual Expenses"). If such final statement reveals that the monthly installments made by the Association aggregate less than the Association's share of Actual Expenses for such calendar year, the Association shall pay the amount owing to the Commercial Owner within thirty (30) days after such final statement is furnished. If such final statement reveals that the monthly installments made by the Association aggregate more than the Association's share of Actual Expenses for such calendar year, the Commercial Owner shall return such excess amount to the Association, or at the Association's option, apply such amount to any amount subsequently due and owing the Commercial Owner in accordance herewith.

(ii) From time to time (but not more frequently than once each calendar month and not less frequently than once each calendar quarter) each Owner shall submit to the other a statement, in such detail and with such supporting evidence as the other Owner may reasonably require, for those Expenses chargeable to the other Owner which have been incurred since the time such a statement was last submitted, other than the Budgeted Expenses. Such statement shall be paid by the other Owner within thirty (30) days after the submission thereof. If the amount due from an Owner is not paid within such period, such amount shall bear interest, from and after the end of such period, at the Specified Interest Rate until paid. The obligation of any party to retain records shall be limited to three full calendar years. Further, any claim for reimbursement or accounting must be made within two years from the date any expense is incurred.

(e) Residential Assessment Required. To pay the Residential Owner's share of costs and expenses pursuant to this Section, the Association shall establish and fund through monthly assessments of Unit Owners both (i) an annual budget reflecting the estimated annual maintenance costs to be allocated to Residential Parcel and (ii) reserves to cover longer term maintenance, and capital repairs and replacements. The amount of the maintenance budget, reserves and the assessments to Unit Owners to fund the budget and reserves shall be subject to the approval of the Commercial Owner, which approval shall not unreasonably be withheld. Further, the Association shall enforce the assessment provisions against the Unit Owners in accordance with the procedures to be established in the condominium declaration. The terms of the condominium declaration shall be subject to the approval of the Commercial Owner with respect to matters relating to the use and maintenance of the Residential Parcel and the funding of the Residential Owner's obligations under this Agreement.

7. Alterations

Subject to the provisions hereof providing for the installation of additional Equipment and Utilities, no improvements shall be constructed on the Mixed-use Parcels other than the Commercial Improvements and the Residential Improvements. The Commercial Improvements and the Residential Improvements may be altered in accordance with the following limitations:

(a) The Commercial Owner shall have total control and the right to modify the exterior improvements and finishes of the Building other than the size or location of second floor windows without the consent of the Residential Owner, including the right to modify main floor windows, doors, signs and other elements affecting the exterior of the Building; (b) either Owner may undertake alterations to the interiors of the Residential Improvements or the Commercial Improvements, respectively, provided, however, that neither Owner shall undertake any such alterations without the prior written consent of the other Owner, which consent may be withheld in such other Owner's sole discretion, if such alterations would (i) require material modification of the Structural Elements or otherwise materially impair the support or use of the Commercial Improvements or the Residential Improvements or otherwise affect the structural capacity or integrity of the Structural Elements, or (ii) materially impair the use by the other Owner of the easements appurtenant to the other Owner's Parcel without providing supplemental or replacement easements.

8. Taxes

(a) Separate Taxation. The Owners shall attempt to cause the taxing authorities to assess and tax the Mixed-use Parcels and the improvements and Equipment thereon in such a way that: (i) improvements and Equipment contained in each Parcel are assessed separately from improvements and Equipment contained in the other Parcel, and Improvement Taxes are separately levied with respect to the Residential Parcel and the Commercial Parcel; and (ii) a portion of the land embraced within the Mixed-use Parcels is for assessment purposes allocated to each of the Residential Parcel and the Commercial Parcel, each portion of land so allocated is assessed separately from the other portion, and Land Taxes are separately levied with respect to each such Parcel. If and to the extent that such separate assessment and taxation occurs, the respective Owners shall be obligated to pay before delinquency all Taxes on their respective Parcels; provided, however, that any Taxes which are levied in a lump sum amount, but which may be paid in installments over a period of time, may be paid as such installments fall due.

(b) Aggregate Taxation. If and to the extent that separate assessment and taxation of the Parcels does not occur, the Commercial Owner shall be obligated to pay before delinquency all Land Taxes and/or Improvement Taxes (as the case may be in view of the extent to which such separate assessment and taxation occurs); provided, however, that any Taxes which are levied in a lump sum amount, but which may be paid in installments over a period of time, may be paid as such installments fall due. Concurrently with the Commercial Owner's payment of such Taxes, and upon the Commercial Owner's demand, the Residential

Owner shall reimburse the Commercial Owner for those of such Taxes which are allocable to the Residential Parcel pursuant to the following items (i) and (ii):

(i) The portion of Improvement Taxes allocated to the Commercial Parcel shall be determined as follows: Either of the Owners may at any time apply to the taxing authorities for a determination of the respective assessed values of the improvements and Equipment then contained in the Residential Parcel and the improvements and Equipment then contained in the Commercial Parcel. If such a determination is obtained, it shall continue to apply for purposes hereof either until a more current determination of like character is obtained (in which event such more current determination shall thereafter be used for purposes hereof) or until changes material to a determination of assessed values are made in the improvements and/or Equipment contained in either Parcel (in which event either a current determination of assessed values shall be obtained which takes account of the changes involved or the allocation method described below shall be used for purposes hereof). So long as a determination of assessed values obtained in accordance with the foregoing provisions continues to apply (as indicated in such provisions), the portion of Improvement Taxes allocated to the Commercial Parcel shall be equal to the total Improvement Taxes imposed against the improvements and Equipment situated on the Mixed-use Parcels multiplied by a fraction whose numerator is the thus determined assessed value of the improvements and Equipment contained in the Commercial Parcel and whose denominator is the thus determined assessed values of the improvements and equipment contained in the Mixed-use Parcels. If and so long as the above-referenced determined assessed values are not obtained, cannot be obtained, or cease to be applicable for purposes hereof (as indicated in the foregoing provisions), then the portion of Improvement Taxes allocated to the Residential Parcel shall be determined in accordance with the foregoing formula, except that in lieu of determined assessed values a reasonably current appraised value shall be used.

(ii) The Land Taxes shall be allocated equally to the Commercial Parcels and the Residential Parcels.

Alternatively, the Commercial Owner may elect to have the Residential Owner pay to The Commercial Owner one-twelfth of the estimated amount of such Land Taxes and Improvement Taxes allocable to the Residential Owner under the standards set forth above, and the Commercial Owner shall thereafter be obligated to pay before delinquency the full amount of such Taxes assessed against the Mixed-use Parcel.

(c) Reimbursement and Delinquency. If any reimbursement to an Owner called for by the foregoing provisions of this Section is not paid when due by the other Owner, the amount involved shall bear interest, from and after the time such reimbursement was due, at the Specified Interest Rate until paid. If either Owner fails or refuses to pay to the taxing authorities those Taxes which it is obligated to so pay under this Section (unless the collection of the Taxes involved and any sale or forfeiture of property for nonpayment of such Taxes is prevented or suspended through appropriate legal proceedings), the other Owner may itself pay such Taxes, in which event the defaulting Owner shall upon demand reimburse the Owner

which made the payment, together with interest from and after the time demand is made at the Specified Interest Rate until paid.

(d) Receipts, Notices and Right to Contest. Each Owner which makes payment of Taxes hereunder to a taxing authority shall within a reasonable time thereafter furnish the other Owner with copies of receipts for such payment. Promptly upon receipt thereof, each Owner which receives any notice of assessed valuation, any tax bill, or any other like material shall furnish the other Owner with a copy thereof. In the event either Owner desires to contest, appeal, or challenge (whether formally or informally) any assessed valuation made or Taxes imposed by the taxing or assessing authorities, such Owner shall promptly give the other owner written notice thereof.

9. Insurance

(a) Separate Coverage. The Owners shall at all times and at their sole cost and expense insure and keep insured, with insurers of recognized responsibility authorized to do business in the State of Utah, all improvements and equipment contained in their respective Parcels, against loss or damage by fire, lightning, explosion (including by steam boiler, pressure vessel, or other such apparatus), earthquake, flood, windstorm, hail, riot, civil commotion or insurrection, sprinkler leakage, smoke damage, vehicles, air craft, vandalism, malicious mischief, such other perils (if any) as are included in so-called "extended coverage" and such other perils (if any) to the extent commercially available insurance covers such perils in the case of improvements and equipment similar in construction, general location, use, and occupancy. It is the intent of this Declaration to cause the Owners to obtain the broadest insurance coverage commercially available. In each case the amount of such insurance shall not be less than the full insurable value of the improvements and Equipment covered. Each policy of insurance obtained pursuant to this Section shall name as additional insureds the Owner of the other Parcel and such other party or parties (if any) having an insurable interest as the Owner of the Parcel containing the insured improvements and equipment may specify, as the interests of all of the foregoing may appear, and, to the extent obtainable, shall provide that such policy shall not be canceled without at least ten (10) days prior written notice to each insured named therein. The requirement of the preceding sentence that the Owner of the other Parcel be named as an additional insured is imposed only for purposes of enabling such Owner to ensure that at all times there is in force insurance coverage sufficient to enable restoration of the improvements and equipment contained in the Parcel not owned by such Owner and to ensure that the proceeds of such insurance are used to accomplish such restoration (to the extent restoration is required by this Section); accordingly, such Owner shall have no right to or interest in any of the proceeds of such insurance which may not be needed to accomplish such restoration. Each Owner shall have the right, at its request and at any reasonable time, to be furnished with certificates evidencing that the required insurance is then in force.

(b) Aggregate Coverage. Notwithstanding the foregoing, the Commercial Owner at its option may, until such time as the construction of both the Commercial Improvements and the Residential Improvements has been completed (if such completion has

not heretofore occurred), insure all improvements and equipment located on the Mixed-use Parcels under a single policy of insurance which otherwise meets the requirements of this Section. Similarly, if at any time and for any reason it is not reasonably possible to obtain separate casualty insurance coverage relative to each Parcel, or if at any time and for any reason the Owners should determine that such separate coverage should not be maintained, or in the event, the Commercial Owner determines that a single insurance policy is the best method to obtain comprehensive insurance coverage on the Building, the Commercial Owner shall obtain insurance covering all improvements and Equipment located on the Mixed-use Parcels under a single policy which otherwise meets the requirements of this Section. If for any of the foregoing reasons the Commercial Owner obtains insurance covering all improvements and equipment located on the Mixed-use Parcels, then concurrently with payment by the Commercial Owner of the cost of such insurance, and upon the Commercial Owner's demand, the Residential Owner shall reimburse the Commercial Owner for that part of such total cost as is fairly allocable to the Residential Parcel. In determining what part of such total insurance cost is fairly allocable to the Residential Parcel, consideration shall be given to the respective replacement values of those improvements and items of Equipment which are contained in each of the Parcels, any different insurance risk factors that may apply thereto, and the like.

(c) Reimbursement and Failure to Perform. If any reimbursement to the Commercial Owner called for by the foregoing provisions of this Section is not paid when due by the Residential Owner, the amount involved shall bear interest, from and after the time such reimbursement was due, at the Specified Interest Rate until paid. If either Owner fails or refuses to obtain and pay for the insurance coverage which it is obligated to maintain under this Section, the other Owner may, without the need for compliance with any notice and opportunity to cure provisions set forth elsewhere in this Declaration, itself obtain and pay for such coverage, in which event the defaulting Owner shall upon demand reimburse the Owner which obtained such coverage, together with interest from and after the time demand is made at the Specified Interest Rate until paid.

10. Damage and Destruction

(a) Insured Damage. If the Residential Improvements or the Commercial Improvements are damaged or destroyed in whole or in part by a casualty covered by any insurance required hereunder, the damaged Improvements shall be restored in accordance with the following provisions: Each Owner shall provide such deductible and co-insurance as may be required by any applicable insurance in connection with the event of casualty. The Commercial Owner shall be given control of the insurance proceeds and deductibles so paid. The Commercial Owner shall first restore the Structural Elements, including roof structure and membrane, and the shell of the Building with insurance proceeds from both the Commercial Improvements policy and the Residential Improvements policy, and shall apply the balance of insurance from the Commercial Improvements policy to restore the balance of the Commercial Improvements, to the extent of the full replacement value thereof, in accordance with the Plans. The Residential Owner shall also apply the balance of insurance from the Residential

Improvements policy to restore the balance of the Residential Improvements, to the extent of the full replacement value thereof, in accordance with the Plans. Notwithstanding the foregoing, the following options shall apply under the following described circumstances, but only to the extent the parties are relieved of the obligation to construct and maintain affordable housing within the Residential Parcel: (i) in the event of a total destruction of the Commercial Improvements, the Commercial Owner shall have the option of not restoring the Building, in which event the insurance proceeds shall be distributed to the respective Owner in accordance with the market value of such Improvements and this Declaration shall terminate; and (ii) in the event of a total destruction of the Residential Improvements under circumstances where the Commercial Owner is restoring the Building, the Residential Owner may elect not to restore the Residential Improvements, and the balance of the Residential Improvements insurance less any amounts necessary to restore the Building shell and Structural Elements, including roof and membrane, shall be allocated to the Residential Owner for distribution to the Unit Owners in accordance the terms of the condominium declaration covering the Residential Parcel and this Declaration shall terminate. Any work shall be commenced no later than the latter of 60 days after the date of the casualty or 10 days after the release of insurance proceeds to the Commercial Owner and the Owners shall use reasonable efforts to complete such work within 6 months after commencement of the work. Any termination under this paragraph shall be effective upon such Owner's giving notice thereof to the other Owner, which notice shall be given within thirty (30) days of such damage or destruction.

(b) Uninsured Damage. If (i) the Residential Improvements or the Commercial Improvements are substantially damaged or destroyed by a casualty, (ii) the Owners have obtained all commercially available insurance for the Improvements and (iii) a substantial portion of the damage or destruction is not covered by any insurance, the Owner of such Improvements shall have the option to elect not to restore the Improvements, in which event this Declaration shall terminate. Such termination shall be effective upon such Owner's giving notice thereof to the other Owner, which notice shall be given within thirty (30) days of such damage or destruction. In any other case, if the Residential Improvements or the Commercial Improvements are substantially damaged or destroyed by a casualty not covered by any insurance, the Owner of such Improvements shall be obligated to restore such Improvements.

11. Condemnation

(a) Total Condemnation. If the whole of the Mixed-use Parcels is taken by condemnation, this Declaration shall terminate as of the date of vesting of title in the condemning authority.

(b) Partial Condemnation. If a part of the Mixed-use Parcels is taken by condemnation, this Declaration shall be unaffected by such taking, provided, however, that if a substantial part of the Mixed-use Parcels is taken by such condemnation and the remaining part shall not be sufficient for either Owner to continue to use or occupy its Parcel (in such Owner's reasonable judgment), such Owner may terminate this Declaration by giving the other

Owner notice to that effect within thirty (30) days after the date of vesting of title in the condemning authority. Such termination shall be effective as of the date of such notice.

(c) Allocation of Award. In the event of any condemnation of the Mixed-use Parcels, any award for such condemnation shall be allocated between the Owners in proportion to value of each Owner's Parcel.

12. Default and Remedies

(a) Default and Enforcement. In the event an Owner defaults in performance of any of its obligations under this Declaration, the other Owner shall have the right, upon the expiration of at least fifteen (15) days following written notice of such default given to the defaulting Owner (unless efforts to effect a cure of a non-monetary default have been commenced within such period and are thereafter diligently pursued to completion), to perform in the defaulting Owner's stead and thereafter to be reimbursed by the defaulting Owner, upon demand, for all costs, expenses, and damages expended or incurred by reason of the default, together with interest thereon at the Specified Interest Rate and reasonable attorneys' fees. If any action is brought because of a default under or to enforce or interpret any of the easements, covenants, provisions, or requirements of this Declaration, the party prevailing in such action shall be entitled to recover from the unsuccessful party reasonable attorneys' fees, the amount of which shall be fixed by the court and made a part of any judgment rendered.

(b) Lien and Foreclosure. Each payment, reimbursement, or contribution required to be made by either Owner under any provision of this Declaration shall be the personal obligation of such Owner at the time the payment, reimbursement, or contribution in question falls due, and, together with interest thereon at the Specified Interest Rate and reasonable attorneys' fees, shall be enforceable or collectible as such. If not paid when due, any such payment, reimbursement, or contribution required to be made by either Owner to the other, plus such interest and attorneys' fees, may, at the option of the other Owner, be secured by a lien against the Parcel owned by the delinquent Owner (which in the case of the Residential Owner shall include the Condominium units owned by the Unit Owners), which lien shall be evidenced by a Notice of Lien or like instrument filed for record by the other Owner with the County Recorder of Summit County, Utah. Any such lien may be foreclosed in the same manner as is provided for the foreclosure of mortgages covering real property and shall be subject and subordinate to (i) each Mortgage affecting the interests of the delinquent Owner at the time such Notice of Lien or like instrument is filed; (ii) this Declaration and all of the provisions hereof; (iii) each (recorded or unrecorded) utility easement or like interest affecting the delinquent Owner's Parcel at the time such Notice of Lien or like instrument is filed; and (iv) the interests of the tenant or lessee under each lease or similar instrument (whether recorded or unrecorded) affecting the delinquent Owner's Parcel or interests in the delinquent Owner's Parcel which is in effect at the time such Notice of Lien or like instrument is filed.

13. Indemnification

(a) Indemnification by Commercial Owner. The Commercial Owner shall indemnify, defend and hold harmless the Residential Owner, its members, partners, directors, officers, agents, employees and Unit Owners from and against any claims, damage or losses arising out of (i) the failure of the Commercial Owner or any of its members, partners, directors, officers, agents or employees (each, a "Commercial Party") to perform any of its obligations hereunder; (ii) any negligence or wilful misconduct on the part of any Commercial Party in the performance of any of its obligations hereunder; or (iii) the use or occupancy of the Mixed-use Parcels by (A) any Commercial Party; (B) any lessee of any Commercial Party or; (C) any invitee of any Commercial Party or of any lessee of any Commercial Party.

(b) Indemnification by Residential Owner. The Residential Owner shall indemnify, defend and hold harmless the Commercial Owner, its members, partners, directors, officers, agents and employees from and against any claims, damage or losses arising out of (i) the failure of the Residential Owner or any of its members, partners, directors, officers, agents, employees or Unit Owners (each, a "Residential Party") to perform any of its obligations hereunder; (ii) any negligence or wilful misconduct on the part of any Residential Party in the performance of any of its obligations hereunder; or (iii) the use or occupancy of the Mixed-use Parcels by (A) any Residential Party; (B) any lessee of any Residential Party; or (C) any invitee of any Residential Party or of any lessee of any Residential Party.

(c) Limitation on Indemnification. Notwithstanding the foregoing provisions of this Section, no party shall be obligated to indemnify, defend or hold harmless any other party hereunder for any claims, damage or losses to the extent that such claims damage or losses arise out of the negligence or wilful misconduct of, or violation of this Declaration by, the party to be indemnified, defended or held harmless.

15. Arbitration

(a) Procedures. At the request of either Owner, any dispute between the Owners arising out of this Declaration shall be resolved by arbitration, in accordance with the following procedures:

(i) The Owner seeking arbitration shall notify the other Owner in writing, specifying the issue or issues in dispute. Within five (5) days thereafter, the Owners shall agree upon one arbitrator to be the single arbitrator of the dispute. If the Owners are unable so to agree after five (5) days, then within two (2) additional days each Owner shall select one arbitrator (but if either Owner fails or refuses to timely select an arbitrator, then the arbitrator selected by the other Owner shall be the single arbitrator of the dispute). The two arbitrators so selected shall, within seven (7) days thereafter, select a third arbitrator with expertise in the subject matter of the dispute, and the three arbitrators so selected shall be the arbitrators of the dispute. In the event the two arbitrators selected by the Owners are unable to

agree on a third arbitrator, the third arbitrator shall be appointed by the American Arbitration Association.

(ii) The arbitrator(s) shall meet with the Owners immediately after their appointment to determine a schedule for arbitration, including whether and to what extent discovery is required. The arbitrator(s) shall apply the procedural rules of the American Arbitration Association to the extent that those rules are not inconsistent with the procedures set forth herein or the other terms and conditions of this Declaration. The arbitrator(s) may set the matter for an evidentiary hearing, or oral argument, or may determine to dispose of the dispute based upon written submissions only. If an evidentiary hearing is held, the normal rules of evidence shall be relaxed, pursuant to the discretion of the arbitrator(s). Each Owner may determine the most effective and efficient method for the presentation of its case. The Owners may present evidence through live testimony, written reports and affidavits, or the argument of counsel or its representative at the hearing. The Owners may be represented by any person of their choice at proceedings before the arbitrator(s), irrespective of whether the representative is an attorney. If the prevailing Owner is represented by an attorney, such Owner shall be entitled to recover reasonable attorneys' fees, the amount of which shall be fixed by the arbitrator(s).

(iii) The arbitrator(s) shall be authorized to issue both equitable and legal remedies. The decision of the arbitrator(s) shall be binding on the Owners and may be judicially enforced.

(b) Costs and Expenses. The costs and expenses of the arbitrator(s) shall be shared equally by and between the parties, unless the arbitrator(s) rule otherwise.

16. Miscellaneous Provisions

(a) Limitation on Easements. Each easement described in this Declaration and the use thereof shall be deemed limited to that which is reasonably necessary to achieve the purposes such easement is intended to serve. No easement affecting either Parcel shall be deemed to have been described, created, granted, or reserved solely by implication due to the arrangement established by this Declaration. Except to the extent that a contrary intention is expressed relative to the particular easement concerned, each easement described in this Declaration shall be nonexclusive, to the end that, whenever reasonable and practical, the use of such easement shall be in common with other parties having similar easements or possessory interests in the Parcel burdened by such easement.

(b) Mechanics' Liens. Except as provided in paragraph 12, nothing in this Declaration and no act or omission by either Owner pursuant to any provision contained in this Declaration is intended to be or shall be construed to be any agreement, consent, or acquiescence that any mechanic's, materialman's, or other lien may or shall attach to or affect a Parcel other than the Parcel for the benefit of which the construction or other activity giving rise to the lien concerned took place.

(c) Title and Mortgage Protection. A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Parcel. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee or trustee interested under any Mortgage affecting the interests of either Owner or a Unit Owner in either Parcel (an "Interested Mortgagee") shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration. No amendment to this Declaration shall in any way affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of such amendment or the rights of any successor in interest or title to such Mortgagee. Any Owner, on delivering to another Owner any notice, demand or other communication pursuant to the provisions of this Declaration, shall at the same time deliver by certified mail, return receipt requested, copies of such notice to each Interested Mortgagee at the latest address provided to such Owner by another Owner or such Interested Mortgagee. Although otherwise effective with respect to the Owner receiving such notice, no notice delivered to any Owner shall affect any rights or remedies of any Interested Mortgagee unless a copy of such notice has been delivered to such Interested Mortgagee in accordance with the immediately preceding sentence.

(d) Estoppel. The Commercial Owner, in the case of a Commercial Parcel, or the Association, in the case of a Residential Parcel, shall within fifteen (15) days after the request of any Owner, execute and deliver to the requesting Owner an estoppel certificate in favor of the requesting Owner and such other persons as the requesting Owner shall designate setting forth the following:

- (i) that, to the knowledge of the Commercial Owner, or the Association (as the case may be), such Owner is not in default under this Declaration or, in the alternative, such Owner is in default under this Declaration, setting forth in reasonable detail the nature of such default;
- (ii) that, to the knowledge of the Commercial Owner, or the Association (as the case may be), the Declaration is in full force and effect and has not been modified or amended, except as may be set forth in such estoppel certificate;
- (iii) any reasonably requested information regarding common expenses and liens recorded in accordance with this Declaration to the extent that the common expenses and such liens relate to such Owner's parcel; and
- (iv) such other information as the requesting Owner may reasonably request.

The requesting Owner's Interested Mortgagees and purchasers shall be entitled to rely on any estoppel certificate executed by the Commercial Owner or the Managing Residential Association (as the case may be) pursuant to this Section.

(e) Notices. Any notice, consent or other communication given pursuant to this Declaration shall be in writing and delivered to the applicable address below or to such other address as either Owner may designate from time to time by notice to the other Owner, a copy of which notice is recorded in the Official Records of the Summit County recorder against the Mixed-use Parcels. Any such notice, consent or other communication may be delivered personally, by courier or by telecopier and shall be effective upon delivery or transmission, as applicable.

Commercial Owner: Boyer Spring Creek, L.C.
c/o The Boyer Company
127 South 500 East
Salt Lake City, Utah 84111
Attn: Lew Swain

Residential Owner: To Be Specified in Recorded Document

(f) Amendment. Any provision contained in this Declaration may be amended by an instrument filed for record with the County Recorder of Summit County, Utah that is executed by each of the Owners.

(g) Governing Law. This Declaration shall be governed by the laws of the State of Utah, without giving effect to any choice of law provisions thereof.

(h) Jurisdiction and Venue. 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 Declaration.

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


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

(k) Non-merger. Declarant intends that this Declaration shall remain in effect, and the estates and interests created hereby shall not be merged together, notwithstanding the fact that the Residential Parcel and the Commercial Parcel may from time to time be owned by the same party. This Declaration may be terminated only by written instrument recorded in the office of the County Recorder of Summit County, Utah.

IN WITNESS WHEREOF, the undersigned, being the Declarant hereof, has caused this Declaration to be executed by its duly authorized officer or other representative on the date set forth below, to be effective as of the day and year first above written.

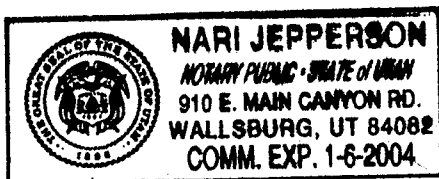
BOYER SPRING CREEK, L.C.,
a Utah limited liability company, by its Manager

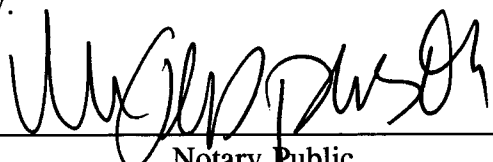
THE BOYER COMPANY, L.C., a Utah limited liability company

By: _____
H. Roger Boyer
Chairman and Manager

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

The foregoing instrument was acknowledged before me this 2nd day of Feb. 2001 by H. Roger Boyer, Chairman and Manager of The Boyer Company, as manager of Boyer Spring Creek, L.C., a Utah limited liability company.





Notary Public

EXHIBIT "A"

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 North $0^{\circ}16'14''$ West 1238.18 feet from the Southeast corner of said Lot 7; thence North $0^{\circ}16'14''$ West 826.33 feet; thence South $89^{\circ}43'46''$ West 304.84 feet; thence South $0^{\circ}16'14''$ East 40.00 feet; thence South $89^{\circ}43'46''$ West 70.00 feet; thence North $0^{\circ}16'14''$ West 40.00 feet; thence South $89^{\circ}43'46''$ West 740.33 feet; thence South $0^{\circ}27'00''$ West 15.00 feet; thence North $89^{\circ}33'00''$ West 165.00 feet; thence South $0^{\circ}27'00''$ West 234.33 feet; thence South $89^{\circ}33'00''$ East 185.91 feet; thence South $31^{\circ}25'02''$ West 185.66 feet; thence South $58^{\circ}34'58''$ East 191.33 feet; thence South $31^{\circ}25'02''$ West 33.35 feet; thence South $58^{\circ}34'58''$ East 21.15 feet; thence South $31^{\circ}25'02''$ West 17.61 feet; thence South $58^{\circ}34'58''$ East 81.60 feet; thence North $31^{\circ}25'02''$ East 79.23 feet; thence North $76^{\circ}25'02''$ East 55.53 feet; thence South $58^{\circ}34'58''$ East 45.91 feet; thence North $31^{\circ}25'02''$ East 48.44 feet; thence South $58^{\circ}34'58''$ East 80.94 feet; thence South $31^{\circ}25'02''$ West 21.00 feet; thence South $58^{\circ}34'58''$ East 44.00 feet; thence South $31^{\circ}25'02''$ West 17.50 feet; thence South $58^{\circ}34'58''$ East 206.00 feet; thence North $31^{\circ}25'02''$ East 31.50 feet; thence South $58^{\circ}34'58''$ East 44.00 feet; thence North $31^{\circ}25'02''$ East 13.55 feet; thence South $58^{\circ}34'58''$ East 215.00 feet; thence South $31^{\circ}25'02''$ West 5.00 feet; thence South $58^{\circ}34'58''$ East 88.00 feet; thence North $31^{\circ}25'02''$ East 5.00 feet; thence South $58^{\circ}34'58''$ East 44.00 feet; thence North $31^{\circ}25'02''$ East 88.90 feet; thence South $58^{\circ}34'58''$ East 38.54 feet; thence North $89^{\circ}43'46''$ East 114.04 feet to the point of beginning. VKJ-7-A

(Reference 18.482 acres BOYER SPRING CREEK)

EXHIBIT "B"

Mixed-Use Parcel #1:

Beginning at a point which is North $0^{\circ}16'14''$ West 1513.91 feet along 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; and South $89^{\circ}43'46''$ West 742.41 feet from the Southeast corner of said Lot 7; thence North $58^{\circ}34'58''$ West 162.00 feet; thence North $31^{\circ}25'02''$ East 63.00 feet; thence South $58^{\circ}34'58''$ East 165.00 feet; thence South $31^{\circ}25'02''$ West 26.00 feet; thence North $58^{\circ}34'58''$ West 3.00 feet; thence South $31^{\circ}25'02''$ West 37.00 feet to the point of beginning. (10,284 s.f./ 0.24 acre)

Mixed-Use Parcel #2:

Beginning at a point which is North $0^{\circ}16'14''$ West 1410.24 feet along 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; thence South $89^{\circ}43'46''$ West 647.76 feet from the Southeast corner of said Lot 7; thence North $58^{\circ}34'58''$ West 91.00 feet; thence North $31^{\circ}25'02''$ East 17.50 feet; thence North $58^{\circ}34'58''$ West 44.00 feet; thence North $31^{\circ}25'02''$ East 58.00 feet; thence South $58^{\circ}34'58''$ East 47.00 feet; thence South $31^{\circ}25'02''$ West 17.50 feet; thence South $58^{\circ}34'58''$ East 88.00 feet; thence South $31^{\circ}25'02''$ West 58.00 feet to the point of beginning. (7,883 s.f./ 0.18 acre)

Mixed-Use Parcel #3:

Beginning at a point which is North $0^{\circ}16'14''$ West 1316.08 feet along 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; and thence South $89^{\circ}43'46''$ West 409.47 feet from the Southeast corner of said Lot 7; thence North $58^{\circ}34'58''$ West 93.23 feet; thence South $31^{\circ}25'02''$ West 13.55 feet; thence North $58^{\circ}34'58''$ West 44.00 feet; thence South $31^{\circ}25'02''$ West 31.50 feet; thence North $58^{\circ}34'58''$ West 91.00 feet; thence North $31^{\circ}25'02''$ East 58.00 feet; thence South $58^{\circ}34'58''$ East 71.17 feet; thence North $79^{\circ}59'37''$ East 68.10 feet; thence South $58^{\circ}34'58''$ East 106.00 feet; thence South $31^{\circ}25'02''$ West 58.00 feet to the point of beginning. (13,577 s.f./ 0.31 acre)

Mixed-Use Parcel #4:

Beginning at a point which is North $0^{\circ}16'14''$ West 1232.13 feet along 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; thence South $89^{\circ}43'46''$ West 163.06 feet from the Southeast corner of said Lot 7; thence South $31^{\circ}25'02''$ West 58.00 feet; thence North $58^{\circ}34'58''$ West 44.00 feet; thence South $31^{\circ}25'02''$ West 5.00 feet; thence North $58^{\circ}34'58''$ West 88.00 feet; thence North $31^{\circ}25'02''$ East 5.00 feet; thence North $58^{\circ}34'58''$ West 69.00 feet; thence North $31^{\circ}25'02''$ East 58.00 feet; thence South $58^{\circ}34'58''$ East 72.00 feet; thence South $31^{\circ}25'02''$ West 5.00 feet; thence South $58^{\circ}34'58''$ East 82.00 feet; thence North $31^{\circ}25'02''$ East 5.00 feet; thence South $58^{\circ}34'58''$ East 47.00 feet to the point of beginning. (11,688 s.f./ 0.27 acre)

All VKJ-7-A

00581759 Bk01352 Pg00655

EXHIBIT "C"

THAT PORTION OF THE FOLLOWING DESCRIBED FOUR AIR RIGHTS PARCELS WHICH ARE LOCATED ABOVE THE FIRST LEVEL TOP OF JOIST:

Air Rights Parcel #1:

Beginning at a point which is North $0^{\circ}16'14''$ West 1513.91 feet along 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; and South $89^{\circ}43'46''$ West 742.41 feet from the Southeast corner of said Lot 7; thence North $58^{\circ}34'58''$ West 162.00 feet; thence North $31^{\circ}25'02''$ East 63.00 feet; thence South $58^{\circ}34'58''$ East 165.00 feet; thence South $31^{\circ}25'02''$ West 26.00 feet; thence North $58^{\circ}34'58''$ West 3.00 feet; thence South $31^{\circ}25'02''$ West 37.00 feet to the point of beginning. (10,284 s.f./ 0.24 acre)

Air Rights Parcel #2:

Beginning at a point which is North $0^{\circ}16'14''$ West 1410.24 feet along 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; thence South $89^{\circ}43'46''$ West 647.76 feet from the Southeast corner of said Lot 7; thence North $58^{\circ}34'58''$ West 91.00 feet; thence North $31^{\circ}25'02''$ East 17.50 feet; thence North $58^{\circ}34'58''$ West 44.00 feet; thence North $31^{\circ}25'02''$ East 58.00 feet; thence South $58^{\circ}34'58''$ East 47.00 feet; thence South $31^{\circ}25'02''$ West 17.50 feet; thence South $58^{\circ}34'58''$ East 88.00 feet; thence South $31^{\circ}25'02''$ West 58.00 feet to the point of beginning. (7,883 s.f./ 0.18 acre)

Air Rights Parcel #3:

Beginning at a point which is North $0^{\circ}16'14''$ West 1316.08 feet along 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; and thence South $89^{\circ}43'46''$ West 409.47 feet from the Southeast corner of said Lot 7; thence North $58^{\circ}34'58''$ West 93.23 feet; thence South $31^{\circ}25'02''$ West 13.55 feet; thence North $58^{\circ}34'58''$ West 44.00 feet; thence South $31^{\circ}25'02''$ West 31.50 feet; thence North $58^{\circ}34'58''$ West 91.00 feet; thence North $31^{\circ}25'02''$ East 58.00 feet; thence South $58^{\circ}34'58''$ East 71.17 feet; thence North $79^{\circ}59'37''$ East 68.10 feet; thence South $58^{\circ}34'58''$ East 106.00 feet; thence South $31^{\circ}25'02''$ West 58.00 feet to the point of beginning. (13,577 s.f./ 0.31 acre)

Air Rights Parcel #4:

Beginning at a point which is North $0^{\circ}16'14''$ West 1232.13 feet along 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; thence South $89^{\circ}43'46''$ West 163.06 feet from the Southeast corner of said Lot 7; thence South $31^{\circ}25'02''$ West 58.00 feet; thence North $58^{\circ}34'58''$ West 44.00 feet; thence South $31^{\circ}25'02''$ West 5.00 feet; thence North $58^{\circ}34'58''$ West 88.00 feet; thence North $31^{\circ}25'02''$ East 5.00 feet; thence North $58^{\circ}34'58''$ West 69.00 feet; thence North $31^{\circ}25'02''$ East 58.00 feet; thence South $58^{\circ}34'58''$

East 72.00 feet; thence South $31^{\circ}25'02''$ West 5.00 feet; thence South $58^{\circ}34'58''$ East 82.00 feet; thence North $31^{\circ}25'02''$ East 5.00 feet; thence South $58^{\circ}34'58''$ East 47.00 feet to the point of beginning. (11,688 s.f./ 0.27 acre)

All VKJ-9-A

Residential Garage & Surface Parking Parcel #1:

BEGINNING at a point that is North $0^{\circ}16'14''$ West 1316.08 feet along the East line of Lot 7 and South $89^{\circ}43'46''$ West 409.47 feet from the Southeast corner of said Lot 7, of the VILLAGE AT KIMBALL JUNCTION, according to the official plat thereof, on file in the office of the Summit County Recorder; thence South $31^{\circ}25'02''$ West 23.00 feet; thence North $58^{\circ}34'58''$ West 90.23 feet; thence South $31^{\circ}25'02''$ West 13.55 feet; thence North $58^{\circ}34'58''$ West 44.00 feet; thence South $31^{\circ}25'02''$ West 31.50 feet; thence North $58^{\circ}34'58''$ West 212.00 feet; thence North $31^{\circ}25'02''$ East 17.50 feet; thence North $58^{\circ}34'58''$ West 121.94 feet; thence North $31^{\circ}25'02''$ East 44.00 feet; thence South $58^{\circ}34'58''$ East 80.94 feet; thence South $31^{\circ}25'02''$ West 21.00 feet; thence South $58^{\circ}34'58''$ East 44.00 feet; thence South $31^{\circ}25'02''$ West 17.50 feet; thence South $58^{\circ}34'58''$ East 206.00 feet; thence North $31^{\circ}25'02''$ East 31.50 feet; thence South $58^{\circ}34'58''$ East 44.00 feet; thence North $31^{\circ}25'02''$ East 13.55 feet; thence South $58^{\circ}34'58''$ East 93.23 feet to the point of beginning. (12,655 s.f. 0.29 acre)

VKJ-7-B

Residential Garage & Surface Parking Parcel #2:

BEGINNING at a point that is North $0^{\circ}16'14''$ West 1182.78 feet along the East line of Lot 7 and South $89^{\circ}43'46''$ West 193.53 feet from the Southeast corner of said Lot 7 of the VILLAGE AT KIMBALL JUNCTION, according to the official plat thereof, on file in the office of the Summit County Recorder; thence South $31^{\circ}25'02''$ West 23.24 feet; thence North $58^{\circ}34'58''$ West 201.00 feet; thence North $31^{\circ}25'02''$ East 23.24 feet; thence South $58^{\circ}34'58''$ East 69.00 feet; thence South $31^{\circ}25'02''$ West 5.00 feet; thence South $58^{\circ}34'58''$ East 88.00 feet; thence North $31^{\circ}25'02''$ East 5.00 feet; thence South $58^{\circ}34'58''$ East 44.00 feet to the point of beginning. (4231 s.f. 0.097 acre)

VKJ-7-B