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South Davis Sewer District  
PO Box 4000  
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RICHARD T. MAUGHAN, DAVIS CNTY RECORDER  
2004 APR 13 1:04 PM FEE 18.00 DEP LHL  
REC'D FOR SOUTH DAVIS SEWER DISTRICT

01-305-0107

**NOTICE OF WARNING**  
*BUILDING SEWER STANDARDS WAIVER*

**RETURNED**

**APR 13 2004**

This Agreement is entered into effective this 1st day of April, 2004, by and between the **SOUTH DAVIS SEWER DISTRICT** ("District") and **FOXBORO TERRACE ASSOCIATES, L.C.**, ("Owner") and the heirs, successors and assigns of Owner.

The parties covenant and agree as follows:

1. This Agreement covers Lot **107A of FOXBORO PLAT 1A AMENDED** (also known as Foxboro Terrace Apartments consisting of 180 units) according to the Official Plat thereof recorded in the office of the Recorder of Davis County, Utah, more particularly described in attached Exhibit "A" which is incorporated herein by this reference (the "Parcel"). Owner represents and warrants that Owner is the fee title and beneficial owner of Parcel in its entirety.

2. District, a supplier of sanitary sewer services, pursuant to Resolution No. 105-2, paragraph 3, "Regulations for Use of Public Sewer," requires a separate service lateral or building sewer to connect each single "living or building" unit to the public sewer. Owner has requested and District is willing to grant an exception to allow two or more living units (which may be in the same building) or buildings within the Parcel to be connected to the same sewer lateral conditioned upon the requirements of this Agreement.

3. Owner acknowledges that, while sewer service laterals installed as allowed in paragraph 2 arguably may satisfy International Plumbing Code § 701.3, such installation does not meet District standards. It is not uncommon for sanitary sewer blockage and overflows to result from the use of a common sewer lateral. Owner and Owner's heirs, successors and assigns covenant and agree to assume all risk and liability for damage from sanitary sewer blockage and overflows, excluding only blockage in the District's main sanitary sewer line that backs into a Parcel sewer lateral. All sewer laterals serving the Parcel shall at all times be and remain the property of Owner (including Owner's heirs, successors and assigns) and Owner and Owner's heirs, successors and assigns shall solely be responsible for the installation, repair, maintenance and replacement of the same. No connection may be made to the District's sewer main without express written permission from the District and the connection shall be made in accordance with the District's specifications and standards (including Resolution No. 104, as amended) and subject to District inspection and approval, all at the cost of Owner. Owner agrees to defend, indemnify and hold the District free and harmless from and against any loss, cost, damage, liability, claim or expense whatsoever arising or resulting directly or indirectly from sanitary sewer overflows relating to the use of one or more common building and/or living unit sewer laterals serving the Parcel.

4. This Agreement does not constitute a commitment by the District to provide sewer collection service to the Parcel or any part thereof. The District imposes requirements, including the payment of applicable impact and hookup fees, that must be satisfied before sewer service to the Parcel or part thereof will commence. Sewer service to the Parcel or part thereof shall at all times be subject to the policies, procedures, rules and regulations of the District, as modified or amended from time to time, and Owner agrees at all times to comply with the same.

5. This Agreement constitutes a covenant running with the land and shall be binding on all parties to this Agreement and all persons claiming by, through or under them and, in particular, shall be binding on all successive future owners of the Parcel, including portions thereof. All of the Parcel shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, improved and enjoyed pursuant and subject to the covenants, conditions, restrictions and requirements of this Agreement, each and all of which are declared and agreed to be for the benefit of the District. Each and all of the covenants, conditions, indemnifications and agreements contained herein shall be deemed and construed to be continuing and to run with the land and shall be a burden to the land and to Owner, Owner's successors and assigns, and to any entity or person acquiring, renting, leasing or owning an interest in all or any part of the Parcel, and to their respective heirs, personal representatives, successors and assigns, and shall benefit the District.

6. Should any mortgage or deed of trust be foreclosed on the Parcel or part thereof, then the title acquired by such foreclosure, and the person or persons who thereupon and thereafter become the owner or owners of the Parcel, or any part thereof, shall be subject to and bound by all of the covenants, conditions, indemnifications and agreements enumerated herein.

7. No waiver of any breach of any of the covenants, conditions and agreements herein contained shall be construed to be a waiver of any other breach of the same, or other covenants, conditions and agreements; nor shall failure to enforce any one of such covenants, conditions and agreements be construed as a waiver of any other covenant, condition or agreement.

8. The acceptance of a deed on the Parcel, or any part thereof, shall constitute an acceptance of all of the terms, covenants, conditions, limitations and agreements set forth in this Agreement. Every entity and person who owns, occupies or acquires any right, title or estate in the Parcel, or any part thereof, shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and requirement contained in this Agreement, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Parcel or any portion thereof and, from and after acquisition of an interest in the Parcel, shall be bound as Owner under this Agreement respecting such interest the same as if the entity or person was an original signatory hereto.

9. District shall have the right to enforce any covenants, conditions or agreements contained herein by any appropriate means, at District's option.

10. The provisions of this Agreement shall be liberally construed to effectuate its purposes.

11. Attorney fees and costs shall be awarded to the substantially prevailing party in litigation arising hereunder.

12. It is expressly agreed that, if any covenant, condition or agreement herein contained, or any portion thereof, is invalid or void, such invalidity or voidness shall in no way affect any other covenant, condition or restriction.

13. This Agreement may, in District's sole discretion, be recorded in the office of the Davis County, Utah Recorder. Any and all fees associated with such recording shall be paid by Owner at signature and execution.

This Agreement is executed effective as of the date set forth above.

**SOUTH DAVIS SEWER DISTRICT**

**FOXBORO TERRACE ASSOCIATES, L.C.,**  
a Utah Limited Liability Company

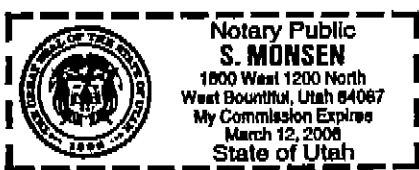
By: *Dal D. Wayment*  
Dal D. Wayment, General Manager

By its Manager,  
FOXBORO TERRACE MANAGEMENT, L.C.  
A Utah Limited Liability Company

By: *J. Randolph Cassidy*  
J. Randolph Cassidy, Manager

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF DAVIS            )

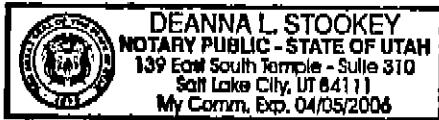
On the 1st day of April, 2004, personally appeared before me DAL D. WAYMENT, who, being by me duly sworn, did say that he is the General Manager of the SOUTH DAVIS SEWER DISTRICT and that the foregoing instrument was signed on behalf of the South Davis Sewer District.



*S. Monsen*  
.. Notary Public ..

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

On the 12<sup>TH</sup> day of APRIL, 2004, personally appeared before me J. RANDOLPH CASSIDY, Manager of FOXBORO TERRACE MANAGEMENT, L.C., Manager of FOXBORO TERRACE ASSOCIATES, L.C., signer of the foregoing instrument who, being by me duly sworn, did acknowledge to me that he executed the same.



Deanna L. Stookey  
.. Notary Public

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**LOT 107A**

**FOXBORO PLAT 1 A AMENDED**

**(also known as Foxboro Terrace Apartments, consisting of 180 units)**

**TAX SERIAL NO.: 01-305-0107**

A parcel of land located in the Northeast Quarter of Section 3, T1N, R1W, SLB&M, City of North Salt Lake, Davis County, Utah, described as follows:

BEGINNING at a point on the north line of Section 3, T1N, R1W, SLB&M and the west right-of-way line of Cutler Drive, said point being S 89°50'51" West 656.99 ft. from the Northeast Corner of said Section 3, and thence along said west right-of-way line the following three courses: S 00°37'35" E 397.54 ft. to a point of tangency of a 14.00 ft. radius curve to the right, Southwesterly 21.99 ft. along said curve through a central angle of 90°00'00" and a long chord of S 44°22'25" W 19.80 ft. and S 00°37'35" E 53.00 ft; thence S 89°22'25" W 200.58 ft. to a point of tangency of a 97.00 ft. radius curve to the left; thence Southwesterly 115.35 ft. along said curve through a central angle of 68°08'15" and a long chord of S 55°18'18" W 108.68 ft.; thence S 21°14'11" W 404.70 ft. to the northerly right-of-way line of Foxboro Drive; thence along said northerly right-of-way line the following six courses; N 68°45'49" W 53.00 ft. to a point of non-tangency of a 14.00 ft. radius curve to the right, Southwesterly 21.99 ft. along said curve through a central angle of 90°00'00" and a long chord of S 66°14'11" W 19.80 ft, N 68°45'49" W 64.09 ft. to a point of tangency of a 290.00 ft. radius curve to the left, Westerly 63.14 ft. along said curve through a central angle of 12°28'27" and a long chord of N 75°00'03" W 63.01 ft. to the southeast corner of Lot 101, Foxboro Plat 1B; thence along the easterly line of said Foxboro Plat 1B and its extension N 853.51 ft. to said north line of said Section 3; thence N 89°50'51" E 633.56 ft. to the POINT OF BEGINNING.

Said parcel contains 411,533 sq. ft. or 9.44 acres, more or less.