

THIRD AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
ESTABLISHING A PLAN OF TOWN HOMES OWNERSHIP FOR
WINGATE VILLAGE TOWN HOMES,
A TOWN HOME COMMUNITY

This Third Amended and Restated Declaration (the "Declaration" is made this 20TH day of AUGUST 2003, by the Wingate Town Home Owners Association ("the Association"), and the Declarant.

A. On November 17, 1995, a Declaration of Covenants, Conditions and Restrictions Establishing a Plan of Town Home Ownership for Wingate Village Town Homes, a Town Home Community (the "Original Declaration"), was recorded at the Salt Lake County Recorder in Book 7272, at Page 1480, as Entry No. 6215814.

B. On June 19, 1998, a First Amended and Restated Declaration of Covenants Conditions, and Restrictions Establishing a Plan of Town Home Ownership for Wingate Village Town Homes, a Town Home Community (the "First Amended Declaration") was recorded at the Salt Lake County Recorder in Book 8012, beginning at page 2237, as Entry No. 7001791.

C. On January 18, 2002, an Amendment to Declaration of Covenants Conditions, and Restrictions of Wingate Village Town Homes, A Town Home Community (the "Second Amended Declaration") was recorded at the Salt Lake County Recorder in Book 8556, at page 5531, as Entry No. 8126484.

D. This Declaration is intended to amend and restate in their entirety the Original Declaration, the First Amended Declaration, and the Second Amended Declaration, in addition to adding the final and last expansion to the project.

E. Each Owner, as defined below, has received or will receive title to a Town Home plus an undivided fractional interest as tenant-in-common to the Common and Limited Common Areas located within the Project. Each Town Home shall have appurtenant to it a membership in the Association.

F. This Declaration is intended to provide for the efficient preservation of the values and amenities in said Project, to create an Association to which all will be delegated and assigned the powers and duties of maintaining, administering, and enforcing the within covenants and disbursing the charges and assessments hereinafter created.

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09/05/2003 01:54 PM 154.00
Book - 8877 Pg - 784-833 A-B
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
WINGATE PTRS
1048 TRIMBLE CREEK DR
WEST JORDAN UT 84088
BY: LOT, DEPUTY - WI 20 P.
52 P

**ARTICLE I
DEFINITIONS**

1.1 Association. Shall mean and refer to Wingate Town Home Owner's Association and its successors and assigns. References to the Association herein shall, when appropriate, also refer to and include the Board of Trustees, acting for and on behalf of the Association.

1.2 Board of Trustees. Shall mean the governing board of the Association.

1.3 Common Areas/Common Facilities. Shall mean the Project, except for those portions thereof which lie within the description of any Town Home or which are Limited Common Areas. Without limiting the generality of the foregoing, Common Areas shall also include:

(a) All installations for and all equipment connected with the furnishing of the Project with any and all common utility services, including, but not limited to, electricity, gas, water, and sewer.

(b) The outdoor lighting, fences, landscaping and maintenance systems, sidewalks, curb and gutters, parking areas and road(s) or roadway and driveways, and water drainage system.

1.4 Common Assessment. Shall mean an assessment levied to offset Common Expenses or for any other reason.

1.5 Common Expenses. Shall mean any of the following:

(a) The expenses of or reasonable reserves for, the maintenance, management, operation, protection, preservation, repair, replacement for the Common and Limited Common Areas, including the cost of unpaid Special Assessments.

(b) The cost of capital improvements to the Common and Limited Common Areas which the Association may from time to time authorize.

(c) The expenses of management and administration of the Association, including compensation paid the Association to managers, accountants, attorneys, or other employees or agents.

(d) Any other item or items designated by this Amended Declaration of the Bylaws of the Association to be Common expenses, and any other expenses reasonably incurred by the Association on behalf of the Owners.

1.6 Declarant. Shall refer to Wingate Partners Limited Liability Company.

1.7 Eligible Mortgage Holder. A holder of a first mortgage on a Town Home estate who has requested notice of certain matters from the Association.

1.8 Limited Common Areas. Shall mean those portions of the Common Areas which are limited to and reserved for the exclusive use of individual Owners, specifically the designated parking spaces, carpets, patios and/or balconies, and storage areas, if any, appurtenant to a Town Home. Such Limited Common Areas are more particularly described on the Map, and are incorporated herein by this reference.

1.9 Map. Shall mean all survey maps, or recorded plats or vicinity maps of Wingate Village Town Homes prepared and recorded at the County Recorder's Office, County of Salt Lake, State of Utah.

1.10 Member. Shall mean a member of the Association.

1.11 Owner. Shall mean and refer to the Owner of record (in the County Recorder's Office, County of Salt Lake, State of Utah), whether one or more persons or entities, of a Town Home in the Project which shall include but not be limited to those lots designated in Wingate Village Town Houses Plat A, Wingate Village Town Houses Plat B, and Wingate Village Town Houses Plat C, as recorded at the Salt Lake County Recorder's office. The total number of Owners shall be 92. The term "Owner" shall not mean or include the mortgagee or beneficiary or trustee under a deed of trust unless such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. Limitations or restrictions placed on an Owner; however, for purposes of this Declaration shall similarly apply to any and all persons claiming rights by or through said Owner.

1.12 Project. Shall mean the area described in Exhibit A which has been incorporated into the Association through the initial declaration and expansions including the Common and Limited Common areas and Town Homes, including all structures and improvements. Owners of lots in the Project are subject to these Declarations.

1.13 Rules. Shall mean the Rules governing the use of the areas within the Project, duly adopted by the Association.

1.14 Special Assessments. Shall mean an assessment for Special Expenses.

1.15 Special Expenses. Shall mean any of the following:

(a) The expenses incurred by the Association for the repair of damages or loss so the Common Areas of the property of other Owners caused by the act of neglect of an Owner which is not covered by insurance.

(b) The expenses of repair or reconstruction of a building damaged or

destroyed by fire or other casualty or damage for which there shall be no insurance coverage and the repair or reconstruction of which will directly benefit less than all of the Owners.

(c) Any other item or items designated by other provisions of this Declaration, the Bylaws, or by the Association to be Special Expenses.

ARTICLE II PROPERTY RIGHTS

2.1 Owner's Easements of Enjoyment. Every Owner shall have a fee simple interest in a Town Home, as defined herein, together with a right and easement of enjoyment in and to the Common Areas and Limited Common Area which shall be appurtenant to and shall pass with the title to every Town Home, subject to any other rights of the Association, or limitations as set forth in this Declaration.

2.2 Delegation of Use. Any Owner may designate his right of enjoyment to the Common Areas to the member of his family who reside with him in his Town Home, or to his tenants or contract purchasers who reside in his Town Home and to the guests or invitees of any of the foregoing. The rights and privileges of such delegate shall be subject to restriction, suspension, or limitation in all respects in the same manner and to the same extent as those of the Owner and the Owner shall be entirely responsible for any action taken by such persons while in the Project.

2.3 Allocation of Interests in Common Areas. The undivided interest in the Common Areas of each Owner appurtenant to each Owner's Town Home shall be equal with each other owner and shall be a fractional interest of the total ownership of the Common Areas.

2.4 Owners Rights to Decorate. Each Owner shall have the right at his sole expense, to maintain, repair, paint, paper, panel, plaster, tile, and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim, inside perimeter walls of the Owner's Town Home, and surfaces of the bearing walls and the partitions located within such Town Home. Each Owner shall also have the right to substitute new finished surfaces in the place of those existing on the ceilings, floors, and walls. The Owner shall have the right and duty to maintain inside floors and inside walls. The Owner shall have the right to maintain, repair, paint, finish, alter, substitute, and add or remove any fixtures attached to such ceiling, floors, and walls. Notwithstanding the foregoing, windows can be covered only by drapes, shades, or blinds and cannot be painted or covered by foil, paper, blankets, sheets or other materials. Except as otherwise provided for herein, an Owner shall not be allowed to modify, repair, maintain, or decorate any exterior portion of a Town Home, including the balcony, patio, fixtures, walls, or other exterior portion or portions of any Town Home without the prior written approval of the Association.

2.5 Fixtures and Appliances. An Owner shall be the Owner of the light fixtures,

plumbing fixtures, refrigerator, stove, oven, dishwasher, cabinets, and other fixtures located within his Town Home.

2.6 Other Easements. Notwithstanding any of the provisions of this Declaration to be contrary, each Owner shall have an unrestricted right to ingress and egress to such Owner's Town Home, which right shall be perpetual and appurtenant to Town Home ownership. If any portion of the Common Areas encroaches upon any Town Home or any Town Home encroaches on the Common Areas or another Town Home as the result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, including, without limitation, a modification in the construction of any Town Home in the original construction process, a valid easement for the encroachment and for the maintenance of the same shall exist in favor of the Association and/or the Owner, so long as such encroachment exists. This easement shall not extend to any construction, reconstruction, repair, or other direct action to modify any Unit by an Owner, unless previously approved of in writing by the Association.

ARTICLE III PROJECT ADMINISTRATION

3.1 Administration of Project. The Project shall in all respects be administered by the Association, which shall act for all purposes except as otherwise indicated in this Declaration by and through its Board of Trustees and who shall be elected in accordance with this Declaration and whose duties will be governed by this Declaration. The Association may employ a professional management agent to perform, subject to the supervision of the Board of Trustees, such duties and services as the Board of Trustees shall direct, including, but not limited to, management, repair and maintenance of the Common Areas and Limited Common Areas, and the collection of and accounting for assessments made by the Association.

3.2 Rules. The Association shall have the power to establish rules further governing the Project. They may add to or further define any rights and obligations found in this Declaration. The Rules may include the provision of fines or other punishment for violation of the rules, the Declaration, and any other rules or laws applicable to the Project. The Board of Trustees shall enforce compliance with the Rules and may amend the same from time to time. A copy of such Rules or amendment thereto shall be delivered or mailed to each Member promptly upon the adoption thereof.

3.3 Common Utilities. The Association shall be responsible for the monthly payment of Common Area utility services that are provided by public utilities. The Association shall prorate those costs to the Town Home Owners on an equitable basis.

ARTICLE IV MEMBERSHIP; VOTING RIGHTS; TRANSFER OF CONTROL

4.1 Membership. Each Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of the Town Home. Ownership of a Town Home shall be the sole qualification for membership. The membership held by an Owner shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of such Town Home, and then only to the purchaser or mortgagee of such Town Home. If more than one person is the Owner of a Town Home, such Persons shall jointly hold one Association membership.

4.2 Voting Membership. Owners, as defined in Paragraph 1.11 above shall be entitled to one vote for each Town Home owned.

4.3 Voting, Multiple Ownership. The vote attributable to and exercisable in connection with Town Home ownership shall be equal to the percentage of undivided Ownership interest in the Common Areas and Facilities which is appurtenant to each Town Home. In the event there is more than one Owner of a particular Town Home, the vote relating to such Town Home shall be exercised as such Owners may determine among themselves; however, no more than one vote per Town Home shall be possible. In case of any dispute among co-owners regarding a particular vote, that vote shall not be counted.

4.4 Suspension of Voting Rights. The voting rights of any Member shall automatically be suspended during any period in which he is delinquent in the payment of assessments or other amounts, expenses, or fees due the Association.

4.5 Control of Homeowner's Association. Declarant or Declarant's managing agent or other persons authorized by Declarant shall have the right to appoint and remove some or all of the management committee or some or all of the officers of the Association until the transfer of control occurs as provided in 4.6 below. For purposes of this Declaration, the term "Control" means the right of Declarant to control the Association, the Association Board, the Project or the Owners, as indicated herein, which shall not include the right of Declarant to vote for Lots owned by Declarant, which shall be treated on the same basis as votes pertaining to sold Town Homes.

4.6 Transfer of Control. Declarant shall control the Association to the Town Home Owners no later than the earlier of:

- (a) After Units to which three-fourths of the undivided interests in the Common Areas and Facilities appertain have been conveyed, or,
- (b) Eight (8) years following the conveyance of the first Town Home estate in the Project.

ARTICLE V

REPAIR AND MAINTENANCE OF PROJECT

5.1 Duties of Association. The Association shall have the exclusive responsibility of maintaining, repairing, replacing, and otherwise keeping in good condition any and all portions of the Project not required in this Article to be maintained by the Owners, specifically the Common Areas and Limited Common Areas. In addition, the Association shall have a reasonable right of entry upon any Town Home to make emergency repairs and to do other work reasonably necessary for the proper maintenance or operation of the Project. The Association shall also have the right to grant permits, licenses, and easements over the Common Areas for utilities, road, and other purposes necessary for the proper operation of the Project. Except as otherwise provided herein, the Association shall have the responsibility for the maintenance and repair of the exterior of all Town Homes.

5.2 Duties of Owners.

(a) Fence Each Owner shall, within a reasonable time following the purchase of such Owner's Town Home, install or cause to be installed a fence surrounding the Limited Common Area appurtenant to such Town Home. Such fence shall be six (6) feet in height and made of white vinyl or such other material as the Board of Trustees shall approve. Each Owner shall obtain the approval of the Board of Trustees for the materials to be installed prior to installation.

(b) Town Home Maintenance. Each Owner, at his expense, shall be responsible for the maintenance and repair of the interior of his Town Home, the windows of his Town Home, the appliances and equipment located in his Town Home, plumbing, heating, electrical and other systems servicing his Town Home, whether such services are located within, above, or underneath the Town Home or within the exterior or interior bearing walls of such Town Home, and the fence surrounding the Limited Common Area appurtenant to such Town Home. The Association shall be responsible for the maintenance and repair of any of the above-described items if such work involves equipment or facilities used in common by all or any of the Owners; provided, however, that in the event such maintenance or repair is attributable in the extraordinary use or abuse of an Owner or of a few Owners, the cost of such work may be assessed to such Owner or Owners.

ARTICLE VI ASSESSMENTS

6.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Town Home by acceptance of a deed therefore whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and (3) any other assessments by the Board of Trustees pursuant to these Declarations or the Rules they may adopt. Each such person understands and

agrees that any assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interests, costs, and reasonable attorney's fees, shall also be the personal obligation of the Owner. A lien for delinquent assessments shall not be a personal obligation of any successors in title unless expressly assumed by them but shall survive any transfer in title, except by foreclosure. For purposes of this Article VI under no circumstances shall Declarant (as defined in the First Declarations) be required to pay any assessment on any Town Homes not yet sold to an Owner, nor shall any assessments accrue against unsold Town Homes.

6.2 Use of Assessments. Assessment levied and collected by the Association shall be used to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Project, as the Board of Trustees shall in their absolute discretion decide.

6.3 Annual Budget. Not less than thirty (30) day prior to the commencement of each fiscal year (as determined by the Board of Trustees), the Board of Trustees shall establish an annual budget for such fiscal year, including therein all anticipated items of Common Expense, together with a reasonable reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Areas and those Limited Common Areas which the Association is obligated hereby to maintain. Such funds shall be maintained out of regular assessments as common expenses.

6.4 Annual Common Assessment. By the adoption of the annual budget by the Board of Trustees, there shall be established an annual Common Assessment for the payment of which each Owner shall be personally liable in the same percentage as his percentage Ownership in the Common Areas. Each Owner shall pay his percentage share in even monthly installments of one-twelfth (1/12) thereof on the first day of each month during the fiscal year.

6.5 Special-Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special-assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto.

6.6 Uniform Rate of Assessment. Both annual and special-assessments must be fixed at a uniform rate for all Town Homes, except as otherwise provided herein and shall be collected on a monthly basis.

6.7 Individual Assessments. Assessments may be levied by the Board of Trustees against particular Owners as a fine or penalty for the violation of these Declarations or the Rules, to rectify the failure to maintain a unit, or for such other reasons permitted in this Declaration or the Rules. Such Individual Assessments shall be made in writing and shall be due and payable to

the Association upon demand, unless the Owner requests a hearing. Upon the Assessment of any Individual Assessments, the Owner shall have ten days to request the opportunity to present evidence on his behalf at a hearing before the Board of Trustees. To request a hearing, the Owner must deliver a written request for a hearing to the Association. The Board of Trustees shall set a hearing date and the Owner may present evidence regarding the Individual Assessment. The Board of Trustees may designate rules and time periods for the presentation of evidence and shall make the final determination as to whether the assessment is levied. Upon any decision by the Board of Trustees that Owner shall pay any remaining assessment immediately.

6.8 Effect of Nonpayment of Assessments, Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of ten percent (10%) per annum. The Association may pursue its rights pursuant to Utah law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Town Home. The Association may foreclose a lien in the same manner as the foreclosure of Trust Deeds under Utah law, through a judgment and execution, or any other method for foreclosing a mortgage or trust deed under Utah law. In any such foreclosure, the Association or its counsel shall be entitled to act as the Trustee and the Association shall be entitled to take title to the Unit in any foreclosure sale. In the event the Association exercises its right to foreclose for nonpayment of amounts due, the Owner shall be required to pay a reasonable rental for the Town Home during the time Owner is in possession thereof.

6.9 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein, or other charges the Association has on a Town Home will be subordinate to the first mortgage on the Town Home, if the mortgage was recorded before the delinquent assessment was due, unless otherwise restricted by Utah law. Sale or transfer of any Town Home shall not affect the assessment lien, unless a foreclosure of a first mortgage is involved. No sale or transfer shall relieve such Town Home from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VII INSURANCE

7.1 Insurance Coverage. The Association shall obtain and pay premiums upon, as a Common Expense, the following insurance policies, as may be required:

- (a) Hazard Insurance
- (b) Liability insurance; and
- (c) Fidelity bond coverage

All such insurance policies shall comply in all respects with the FNMA insurance requirements as set forth in Chapter 3. Part 5 (Sections 501-504) of the FNMA Lending Guide, dated January 3, 1983, as amended or supplemented.

7.2 Course of Construction Insurance. Pursuant to Title 38 Code of Regulations Section 36.4360(a)(5), and if required by law, Declarant has purchased or will purchase, prior to Construction, a (general) liability insurance policy in an amount not less than One Million Dollars (\$1,000,000), for each occurrence to cover any liability which owners of previously sold Town Homes are exposed to as a result of further Town Home project development.

ARTICLE VIII MORTGAGES, INSURERS' GUARANTORS

8.1 Notices. Any Owner who mortgages his Town Home shall furnish the Association with the name and address of such Mortgagee, and the Association shall maintain such information in a book entitled "Mortgages of Town Homes." If provided with the information from the Owner, the Association shall provide timely written notice to such mortgagee of:

- (a) Any condemnation or casualty loss that effects either a material portion of the Project or of the Town Home securing its mortgage;
- (b) Any sixty (60) days delinquent in the payment of assessments or charges owed by the Owner of any Town Home on which it holds the mortgage;
- (c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) Any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

In addition, any mortgage holder, insurer, or guarantor of any Town Home located within the Project shall be entitled to the information referred to in this paragraph upon presenting a written request for such to the Association, which request shall state the name, address, and the Town Home number or address of the Town Home in which the mortgage holder, insurer, or guarantor has an interest. The Association's right to foreclose on a Town Home or take other action allowed under these Declarations shall not be barred by any failure to comply with the notice requirements in this section.

8.2 Right to Examine. Mortgagees shall have the right to examine the books and records of the Association upon request and to require annual reports of the financial status of the Association.

**ARTICLE IX
ARCHITECTURAL CONTROL**

9.1 Creation of Committee. No building, fence, wall or other structure shall be commenced, erected, or maintained upon the Project, nor shall any exterior addition to or alteration therein be made until the plans and specifications showing the nature, and shape, height, materials, and location of the same shall have been substituted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Trustees of the Association, or by an Architectural committee composed of three (3) or more representatives appointed by the said Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specification have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

**ARTICLE X
RESTRICTIONS**

10.1 Residential Use. Except as otherwise provided in Article II hereof, each Town Home may be occupied or used by Owner(s), or by the tenants of any such Owner(s) as a dwelling unit and occupied by one family per Town Home; *provided, however,* that to the extent such use is not prohibited by local community council or Salt Lake City ordinance, rule, or regulation, a Town Home may be occupied and used by tenants, family, or social guests of any such Owner or tenant as the law allows. The Board of Trustees may adopt Rules regarding the rental and/or non-owner occupancy of Town Homes which may bar and eliminate renting and non-owner occupancy completely, limit rentals or non-owner occupied Town Homes to a particular number, provide for an application process for rental or non-owner occupancy of Town Homes, and/or implement any Rule the Board of Trustees deems appropriate.

10.2 Commercial Use. Except as otherwise provided in the Declaration no part of the Project shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, mineral extraction or other such nonresidential purpose or purposes.

10.3 Antennas and External Fixtures. No television or radio poles, antennas, satellite dishes, flag poles, clothes lines, or other external fixtures other than those originally installed by Declarant or approved by the Association and any replacements, shall be constructed, erected, or maintained on or within the Project or any structures within it. Notwithstanding the foregoing, Owners shall have the right to install a satellite dish (not to exceed 18" in diameter) to service such Owner's Town Home. No wiring, insulation, air conditioning, or other machinery or equipment other than that originally installed by Declarant or approved by the Association, and their replacements, shall be constructed, erected, or maintained on or within the Project, including any structures, within it.

10.4 Fences. No fences, swings, sunshades, or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Project, except those that are installed in accordance with the original construction of the Project, the requirements in this Declaration, or as are authorized and approved by the Association. No Owner shall make structural alterations or modifications to his Town Home or any of the Common Areas or Limited Common Areas, except as otherwise approved by the Association in writing. The Association shall not approve any alterations, decorations, or modifications which would jeopardize or impair the soundness, safety, or appearance of the Project.

10.5 Signs. No sign of any kind shall be displayed to the public view on or from any Town Home or any other portions of the Project without the approval of the Association. However, one sign of customary and reasonable dimensions advertising a Town Home for sale or for rent may be placed within each Town Home or within the Common Area immediately adjacent thereto by the Owner of such Town Home, the location and size of such shall be subject to approval by the Association.

10.6 Offensive Conduct Nuisances. No obnoxious or offensive activities, including, but not limited to, repair of automobiles or other motorized vehicles (other than emergency repairs), shall be carried on within the Project. Nothing shall be done within individual Town Homes or within the Project that may be or may become an annoyance or nuisance to the residents of the Project, or that in any way interferes with the quiet enjoyment of the occupants of the Town Homes. Unless otherwise permitted by the Association, no Owner shall (i) use power tools or maintain a hobby shop and or, (ii) serve food or beverages, cook, barbeque, or engage in similar activities, except within such Town Home or Common Area appurtenant to such Town Home. No Owner shall store any dangerous explosive or inflammable materials either in his Town Home or upon the Common Areas, or permit anything to be done or keep or permit to be kept in his Town Home or on the Common Areas anything that will increase the rate of insurance, or increase the possibility of danger or injury to any persons or to the Project.

10.7 Restricted Use of Recreational Vehicles. No boat, truck, trailer, camper, recreational vehicle, or tent shall be used as a living area while located on or within Project. However, trailers or temporary structures for use incidental to the initial construction of Town Homes in the Project or any subsequent construction thereto, or the initial sale of Town Homes may be maintained within the Project, but shall be promptly removed on completion of all initial construction and all initial sales.

10.8 Use of Common Areas. The Common Areas shall not be used for storage of supplies or personal property. Stairs, entrances, sidewalks, yards, driveways, or parking areas shall not be obstructed in any way nor shall unauthorized persons use them for other than their intended purposes. In general, no activities shall be carried on nor condition maintained by any Owner either in his Town Home or upon the Common Areas which despoils the appearance of the Project.

10.9 Animals. No animals, reptiles, rodents, birds, fish, livestock, or poultry shall be kept in any Town Home or elsewhere within the Project, except that fish in aquariums, birds in cages, and one animal per Town Home, if (i) they are not kept, bred, or raised for commercial purposes; (ii) are approved by the Association, (iii) they are kept on a leash or other appropriate restraining device at all times when not in the Owner's Town Home or within a fenced enclosure; and (iv) the Owner does not allow such animal to defecate or otherwise create waste, or immediately cleans any such waste, on any Common Area or the Limited Common Area of any other Owner. The Association can prohibit animals entirely or modify this restriction on the maintenance of pets or any animal in the sole and exclusive discretion of the Board of Trustees. Each person bringing or keeping a pet on the Project shall be liable pursuant to the laws of the State of Utah to other Owners and/or the Association, their family members, guests, invitees, tenants, and contract purchasers, and their respective family members, guests, and invitees, for any damage to persons or property and/or any costs of repair, cleanup, and maintenance, caused by any such pet brought on or kept on the Project by such person or by members of his family, his guests, or invitees.

10.10 Trash Disposal. Trash, garbage, or other waste shall be kept only in sanitary containers or receptacles, which containers or receptacles, unless otherwise directed by Salt Lake City, shall be placed at the direction of the Association. No Owner of a Town Home or tenant shall permit or cause any trash or refuse to be kept on any portion of the Project other than in the receptacles customarily used for it, which shall be located only in places specifically designed for such purpose or within the Owner's Town Home (except on the scheduled day for trash pick-up).

10.11 Outside Drying and Laundering. No exterior clothes lines shall be erected or maintained, and there shall be no exterior drying or laundering of clothes or other items of personal property on balconies, patios, porches, railings, or other areas.

10.12 Structural Alterations. No structural alterations to the interior of any Town Home shall be made and no plumbing or electrical work within any bearing or common walls shall be made by any Owner or permitted to be made, without the prior written consent of the Association.

10.13 Exterior Alterations. No Owner shall at his expense or otherwise make or permit to be made any alterations for modifications (including painting) to the exterior of the buildings, or to Town Homes, fences, railings, walls, or landscaping situated within the Project, without the prior written consent of the Association (who shall consider harmony with external design, color, and location with the Project as a whole).

10.14 Limited Common Areas. Included in the Project shall be Limited Common Areas as described in paragraph 1.8 hereof. Notwithstanding any provision in this Declaration to the contrary, the Owner of each such Town Home shall have an exclusive appurtenant easement to use such appurtenant Limited Common Area whether or not such is specifically described in the deed for such Town Home. Each such area shall be subject to the terms of this Declaration.

Each such Owner shall have the right to place furniture and potted plants upon his patio and/or balcony area, if any. Except as provided in this paragraph, nothing contained herein shall give any Owner the right to paint, decorate, remodel, or alter said Limited Common Area without the prior written consent of the Association.

10.15 Parking Restrictions Use of Parking Area. Unless otherwise permitted by the Association, no automobile, boat, trailer, or recreational vehicle, camper, truck, or commercial vehicle shall be parked or left on any street or any part of the Project other than in any parking area designated by the Association for the parking and storage of such vehicles, including Limited Common Areas. However, parking by commercial vehicles for the purpose of making deliveries, shall be permitted in accordance with Association rules. Except with the written consent of the Association, no Owner shall park anywhere in the Project more motor vehicles than there are Parking spaces owned by or assigned to such Owner.

10.16 Compliance With Laws. Nothing shall be done or kept in any Town Home or in the Project that might increase the rate of, or cause the cancellations of, insurance on the Project, or any portion of the Project, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his Town Home that violates any permanent law, ordinance, statute, rule, or regulation of any local, county, state, or federal body. No Owner shall allow any furniture, furnishings, or other personal property belonging to such Owner to remain within any portion of the Project, except in such Owner's Town Home or exclusive use areas and except as may otherwise be permitted by the Association.

ARTICLE XI DEFAULT

11.1 Definition. Failure of an Owner of any Tenant or Agent of any Owner to comply with any of the terms of this Declaration, the Articles of Incorporation of Bylaws of the Association, or the duly adopted Rules and Regulations of the Association, shall constitute an event of default and shall be grounds for relief, which may include without limitation the assessment of a money fine or personal assessment or an action to recover sums due for damages and injunctive relief, any combination thereof, or any other right allowed by Utah Law or this Declaration.

11.2 Discontinuance of Services. Except as may be limited by law, in addition to all other remedies herein contained or as may be provided by law, the Association may discontinue the furnishings of any services (excluding utilities) to an Owner who is in default of his obligations to the Association or other Owners as set forth herein upon thirty (30) days' written notice. The Association shall give notice to such Owner of its intent to do so.

11.3 Costs. In any proceeding arising because of any alleged default by any Owner,

the Association, if successful, shall be entitled to recover from such Owner all amounts incurred in connection therewith, including the costs of the proceedings, and reasonable attorneys' fees, and costs in enforcing, or collecting, any judgment or injunctive relief rendered therein.

11.4 No Waiver. The failure of the Association or of any Owner to enforce any right, provision, covenants, or condition which may be granted by the Act, this Declaration, the Articles of Incorporation or the Rules, shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies, and privileges shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other additional rights, remedies, or privileges, as may be available to such party at law or in equity.

ARTICLE XII GENERAL PROVISIONS

12.1 Association as Representative. The Association shall represent Town Home Owners, (i) in any condemnation proceedings or in negotiations, settlements, and agreements with any condemning authority for acquisition of the Common Areas or any part thereof; and (ii) with respect to any insurance maintained by the Association pursuant to Article VII hereof. Each owner hereby irrevocably names, constitutes, and appoints the Association as his true and lawful attorney-in-fact for the purpose of allowing the Association to represent such owner in any such proceedings, negotiations, or insurance matters.

12.2 Limitations in Actions of Association. In case of condemnation or substantial loss to the Town Homes and/or Common Area of the Project, unless at least two-thirds (2/3) of the first mortgagees (based on one vote for each mortgage owned) or Owners (other than Declarant) of the individual Town Homes have given their prior written approval, the Association may not:

- (a) By act or omission seek to abandon or terminate the Project;
- (b) Change the pro rata interest or obligations of any Town Home in order to levy assessments or charges, allocate distributions of hazard insurance proceeds of condemnation awards, or determine the pro rata share of ownership of each Town Home in the Common Areas;
- (c) Partition or sub-divide any Town Home;
- (d) Seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area by act or omission. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area as otherwise provided in this Declaration, shall not be considered a transfer for purposes of this Declaration;
- (e) Use hazard insurance proceeds for losses to any Town Home or to the

Common Area to other than the repair, replacement, or restriction of the Town Home or the Common Area.

Notwithstanding the foregoing, in the event of a taking or acquisition of part or all of the Common Areas by a condemning authority, or if the Project or a portion thereof is not sold but is instead taken, the award shall be distributed among the Owners and their respective mortgagees pursuant to UTAH CODE ANN. §57-8-32.5 (1985).

12.3 Acceptance or Governing Rules. The Association all present or future Owners, tenants or future tenants, or any other persons using the facilities of the Project are subject to and shall comply with this Declaration, the Articles of the Association, and the Rules, and the acquisition, occupancy, or rental of a Town Home shall signify that all such documents, the documents are accepted and ratified. In the event of a conflict in any of the provisions of any such documents, the documents shall govern or control in the following order or preference: (a) this Declaration; (b) the Articles of Incorporation of the Association; (c) the Bylaws of the Association (which may be incorporated into this Declaration); and (d) the Rules.

12.4 Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

12.5 Delivery of Notices. All notices or other documents required herein to be delivered by the Association or Owners may be delivered either personally or by mail. If delivered personally to have been delivered when actually received by the Owner or when left at the front door of his Town Home. If mailed, the same shall be deemed delivered when deposited in the United States mail addressed to the Owner at his address as it appears on the records of the Association with postage thereon prepaid.

12.6 Severability. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, or word, or the application thereof in any circumstances shall be invalidated, such invalidity shall not affect the validity of the remained of this Declaration, and the application or any provisions, paragraph, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

12.7 Covenants and Restrictions. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date of Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

12.8 Amendment. Owners shall have the right to amend this Declaration, the Articles

of Incorporation of Wingate Village Town Home Owner's Association, and Bylaws of Wingate Village Town Home Owner's Association (the "Project Documents") as set forth herein. Amendments of a material nature must be agreed to by Owners representing at least sixty-seven percent (67%) of the total votes in the Association. In addition, approval must be obtained from eligible first mortgage holders representing at least fifty-one percent (51%) of the votes of Town Home estates that are subject to mortgages held by eligible holders.

12.9 Merger/Amendment. If applicable, the Town Home regime may not be amended or merged with a successor Town Home regime without prior written approval of the Administrator of the Department of Veterans Affairs and until the successor Town Home has been legally established and construction completed. Declarant may add phases to this expandable Town Home project as outlined hereinafter.

12.10 Material Changes. For purposes of this paragraph, a change to any of the following provisions contained in this Amendment Declaration shall be considered material;

- (a) Voting rights,
- (b) Assessments, assessment liens, or subordinate of assessment liens;
- (c) Reserves for maintenance, repair, and replacement of Common Areas;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in a general or Limited Common Areas, or rights to their use;
- (f) Boundaries of any Town Home;
- (g) Convertibility of Town Homes into Common Areas or vice-versa;
- (h) Expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project;
- (i) Insurance or fidelity bonds;
- (j) Amendment to the provisions governing the leasing or renting of Town Homes;
- (k) The placing of any restriction on a Town Home Owner's right to sale or transfer his Town Home;
- (l) A decision by the Association to establish self management when

professional management has been required previously by an eligible mortgage holder;

(m) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project documents; or

(n) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs or any provision or provisions that expressly benefit mortgage holders, insurers, or guarantors.

Except as otherwise limited by Utah law, if the Owners desire to terminate the legal status of the Project for reasons other than substantial destruction or condemnation of the Property, the eligible mortgage holders representing at least sixty-seven percent (67%) of the votes of the mortgaged Town Homes must agree.

In addition, as amendment to the Project documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. The Project documents may provide that an eligible mortgage holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

12.11 Paragraph Titles. Paragraph titles are used in this Declaration for convenience of reference and are not intended to limit, enlarge, or change the meaning of the contents of the various paragraphs.

12.12 Lease; Rental. Notwithstanding any other provision of this Declaration to the contrary, no Owner may lease or rent a unit or enter an agreement to lease or rent a unit for a period of less than thirty (30) days. And such lease or rental agreement must be in writing and shall in all respects be subject to the requirements of the Project documents and the Association. The Board may create such rules and regulates related to the leasing of units as it may desire in its sole discretion, including but not limited to: establishing application forms and procedures for the rental of units, requiring that landlords provide copies of leases to the Association, limiting the number of, or eliminating, rental units in the project, and requiring landlords to accept responsibility for damages caused by occupants and visitors of rental units.

12.13 Gender. Any reference to gender throughout this Declaration shall be interpreted to include both genders.

12.14 Rights of Action. The Association and any aggrieved Owner shall have a right to action against Owners who fail to comply with the provisions of the Project documents, or decisions or actions made or taken by the Association. Owner shall have the same right(s) or action against the Association.

ARTICLE XIII

RIGHTS AND RESPONSIBILITIES OF DECLARANT

13.1 Easements; Voting Rights. Declarant is granted hereby an easement over the Common Areas for completion of improvements and for making repairs to improvements and for purposes of marketing unsold Town Homes. Declarant shall retain voting rights for any unsold Town Homes.

13.2 Prior Contract. Declarant is hereby given the right to execute professional management contracts for the management of the Project prior to the transfer of control over the Project from Declarant to the Association, except that:

(a) Such professional management contracts may not be for a period exceeding two (2) years, and

(b) The Association is hereby given a right of termination of any such professional management contracts, with or without cause, which right of termination is exercisable without penalty of any kind at any time after transfer of control, upon not more than thirty (30) days prior written notice to the other party thereto.

13.3 Declarant Town Home Fees. Declarant is hereby granted an exclusion from payment of Town Home Fees for any and all undeveloped and/or unfinished additional land and/or improvements, including additional phases, if any, and at no time shall it be construed that Declarant shall owe Town Home Fees for undeveloped and/or unfinished additional land and/or improvements.

(a) Declarant shall participate in the payment of Town Home fees for units that are constructed but not yet sold.

ARTICLE XIV EXPANSION

14.1 None. The property shall not be subject to any further rights of expansion.

ARTICLE XV AVAILABILITY OF PROJECT DOCUMENTS

15.1 Project Documents. The Association shall at all times maintain current copies of this Declaration, the Association's Articles of Incorporation and Bylaws (if any), and the Rules and Regulations concerning the Project, as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of first mortgages that are secured by Town Homes in the Project. Such documents shall be available during normal business hours, or upon reasonable prior request. Any mortgage holder may, at its

own expense, prepare added financial statements for the preceding fiscal year of the Association, and the Association shall provide such access as may be necessary for the preparation of such audited statements. In the event the Association chooses to have audited statements prepared, such audit statements shall be made available for inspection by such mortgage holder according to the terms and conditions of this paragraph.

ARTICLE XVI BOARD OF TRUSTEES

16.1 Number and Qualification. The affairs of the Project shall be governed by the Board of Trustees. The Board of Trustees shall be composed of three persons, all of whom shall be the owners, spouses of owners or mortgagees of the condominium units; or, in the case of partnership owners or mortgagees, members or employees of such partnership, or in the case of corporate owners or mortgagees, officers, shareholders or employees of such corporations; or in the case of fiduciary owners or mortgagees, fiduciaries or officers or employees of such fiduciaries.

16.2 Powers and Duties. The Board of Trustees shall have the powers and duties necessary for the administration of the affairs of the Association, except as such powers and duties as by law or by the Declaration may not be delegated to the Board of Trustees by the Owners. The powers and duties to be exercised by the Board of Trustees shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep and maintenance of the common and limited common areas;
- (b) Determination of the amounts required for operation, maintenance, and other affairs of the Project;
- (c) Collection of the assessments from the Town Home owners;
- (d) Employment and dismissal of personnel as necessary for the efficient maintenance and operation of the Project;
- (e) Adoption and amendment of Rules covering the details of the operation and use of the Project and providing for fines and penalties for the violation of such Rules;
- (f) Opening of bank accounts on behalf of the Project and designating the signatories required therefor;
- (g) Obtaining insurance for the Project, including the Project Town Homes, pursuant to the provisions contained in this Declaration; and
- (h) Making repairs, additions and improvements to, or alterations of, the

Project, and repairs to and reconstruction of the property in accordance with the provisions of this Declaration after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;

(i) Acquiring by purchase or lease such capital assets and equipment as may be necessary for the management of the Project, including, but not limited to, all office furniture, office equipment, maintenance equipment, trucks and the like;

(j) Taking all steps necessary to incorporate the Association of Town Home owners.

16.3 Managing Agents and Manager. The Board of Trustees may employ for the Project a professional managing agent and a manager at the compensation established by the Board of Trustees to perform such duties and services as the Board of Trustees shall authorize.

16.4 Election and Term of Office. At the first annual meeting of the Town Home owners, following the recording of this Declaration, the term of office of the three initial members of the Board of Trustees shall be fixed at three years, two years, and one year. At the expiration of the initial term of office of each respective member of the Board of Trustees, his successor shall be elected to serve for a term of three years. The members of the Board of Trustees shall hold office until their respective successors shall have been elected by the Town Home Owners.

16.5 Removal of Members of Board of Trustees. At any regular or special meeting of Owners, any one or more of the members of the Board of Trustees may be removed with or without cause by a majority of the Owners and a successor may then and there or thereafter be elected to fill the vacancy thus created. Any member of the Board of Trustees whose removal has been proposed by the Owners shall be given an opportunity to speak at the time of the meeting.

16.6 Vacancies. Vacancies in the Board of Trustees caused by any reason other than the removal of a member thereof by a vote of the Town Home owners, shall be filled by a vote of a majority of the remaining Board members at a special meeting of the Board of Trustees held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected shall be a member of the Board of Trustees for the remainder of the term of the member so removed and until a successor shall be elected at the next annual meeting of the Owners.

16.7 Regular Meetings. Regular meetings of the Board of Trustees may be held at such time and such place as shall be determined from time to time by a majority of the members of the Board of Trustees, but at least two such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Trustees shall be given to each member of the Board of

Trustees, by mail or telephone at least seven business days prior to the day named for such meeting.

16.8. Special Meetings. Special meetings of the Board of Trustees may be called by the president on three business days notice to each member of the Board of Trustees, given by mail or telephone, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Trustees shall be called by the president or secretary in like manner and on like notice on the written request of at least two members of the Board of Trustees.

16.9 Waiver of Notice. Any member of the Board of Trustees may, at any time, waive notice of any meeting of the Board of Trustees in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Trustees at any meeting of the Board of Trustees shall constitute a waiver of notice by him of the time and place thereof. If all of the members of the Board of Trustees are present at any meeting of the Board of Trustees, no notice shall be required and any business may be transacted at such meeting.

16.10 Quorum of Board of Trustees. At all meetings of the Board of Trustees, a majority of the members thereof shall constitute a quorum for the transaction of business, and the vote of a majority of the members of the Board of Trustees present at a meeting in which a quorum is present shall constitute the decision of the Board of Trustees. If at any meeting of the Board of Trustees there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourn meeting at which a quorum is present, any business which might have been transacted at the meeting originally called, may be transacted without further notice.

16.11 Fidelity Bonds. The Board of Trustees shall obtain adequate fidelity bonds for all officers, directors, managers, trustees, volunteers and employees of the Project handling or responsible for Project funds, which fidelity bond shall be in an amount of one and one-half times the estimated annual operating expenses and reserves for each year, with the owners association of the Project being the named insured thereon. The premiums on such bonds shall constitute a common expense.

16.12 Compensation. No member of the Board of Trustees shall receive any compensation from the Project for acting as such.

16.13 Liability of Board of Trustees. The members of the Board of Trustees shall not be liable to the Owners for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each member of the Board of Trustees against all contractual liability to others arising out of contracts made by the Board of Trustees on behalf of the Project, unless such contract shall have been made in bad faith or contrary to the provisions of the Declaration. The members of the Board of Trustees shall have no personal liability with respect to any contract made by them on behalf of the association of Owners. It is intended that the liability of any Owner arising out of

any contract made by the Board of Trustees or out of the indemnity in favor of the members of the Board of Trustees shall be limited to such proportion of the total liability thereunder as his interest in the common elements bears to the interest of all the Owners in the common elements. Every agreement made by the Board of Trustees or by the managing agent or by the manager on behalf of the Project shall provide that the members of the Board of Trustees or the managing agent or the manager, as the case may be, are acting only as agents for the Owners and shall have no personal liability thereunder (except as Owners), and that each Town Home owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the common elements bears to the interests of all Owners in the common elements.

ARTICLE XVII OWNERS' MEETINGS

17.1 Annual Meeting. An annual meeting shall be held within thirty days of the adoption of this Declaration. At such meeting the officers and directors of the Declarant shall resign as member of the Board of Trustees and all responsibility and obligations Declarant may have shall cease, and all Owners, including the Declarant, shall elect a new Board of Trustees which shall immediately assume all such responsibilities and obligations on behalf of the Owners. Thereafter, the annual meetings of the Owners shall be held on the 15th day of January of each succeeding year, unless such date shall occur on a Saturday or Sunday, in which event the meeting shall be held on the succeeding Monday. At such meetings the Board of Trustees shall be elected by ballot of the Owners in accordance with the requirements of these Declarations. The Owners may transact such other business at such meetings as may properly come before them.

17.2 Place of Meeting. Meetings of the Owners shall be held at such suitable place convenient to the owners as may be designated by the Board of Trustees.

17.3 Special Meeting. It shall be the duty of the president to call a special meeting of the Owners if so directed by the resolution of the Board of Trustees or upon a petition signed and presented to the secretary by the Owners owning a total of at least twenty-five percent (25%) of common interest. The notice of any special meeting shall state the time, place and purpose of the meeting. No business shall be transacted at a special meeting, except as stated in the notice.

17.4 Notice of Meeting. The secretary shall mail to each Town Home owner of record a notice of each annual or special meeting of the Owners, at least ten (10) days, but not more than twenty (20) days, prior to such meeting, stating the purpose thereof as well as the time and place where it is to be held, at the building or at such other address as such Town Home owner shall have designated by notice in writing to the secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

17.5 Order of Business. The order of business at all meetings of the Owners shall be as follows:

- (a) Report of officers;
- (b) Report of Board of Trustees;
- (c) Report of committees;
- (d) Election of inspectors of election (when so required);
- (e) Election of members of the Board of Trustees (when so required);
- (f) Unfinished business; and
- (g) New Business.

17.6 Voting. The Owner or Owners of each Town Home, or some persons designated by such Owner or Owners to act as proxy on his or their behalf and who need not be an Owner, shall be entitled to cast the votes appurtenant to such Town Home at all meetings of Owners. The designation of any such proxy shall be made in writing to the secretary and shall be revocable at any time by written notice to the secretary by the Owner or Owners so designating.

17.7 Quorum. Except as otherwise provided in this Declaration, the presence in person or by proxy of Owners having ten percent (10%) of the total authorized votes of all Owners shall constitute a quorum at all meetings of the Owners.

17.8 Majority Vote. The vote of a majority of Owners at a meeting at which a quorum shall be present shall be binding upon all Owners for all purposes except where a higher percentage vote is required by law or by this Declaration.

ARTICLE XVIII OFFICERS

18.1 Designation. The principal officers of the Project shall be the president, the vice-president, the secretary/treasurer, all of whom shall be elected by the Board of Trustees. The president and secretary/treasurer must be members of the Board of Trustees.

18.2 Election of Officers. Officers shall be elected annually by the Board of Trustees at the first meeting of each new Board of Trustees after the annual meeting of the Owners and shall hold office at the pleasure of the Board of Trustees.

18.3 Removal of Officers. Upon the affirmative vote of a majority of the members of the Board of Trustees any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board of Trustees or at any special meeting of the Board of Trustees called for such purpose.

18.4 President. The president shall be the chief executive officer of the Association. The president shall preside at all meetings of the Owners and of the Board of Trustees. The president shall have all of the general powers and duties which are incident to the office of president of a corporation organized under the Business Corporation Act of the State of Utah, including, but not limited to, the power to appoint from among the Owners any committee which he decides is appropriate to assist in the conduct of the affairs of the Project.

18.5 Vice-President. The vice-president shall take the place of the president and perform his duties whenever the president shall be absent or unable to act. If neither the president nor the vice-president is able to act, the Board of Trustees shall appoint some other member of the Board of Trustees to act in the place of the president on an interim basis. The vice-president shall also perform such other duties as shall from time to time be imposed upon him by the Board of Trustees or by the president.

18.6 Secretary. The secretary shall keep the minutes of all meetings of the Owners and of the Board of Trustees. He shall have charge of such books and papers as the Board of Trustees may direct and he shall, in general, perform all the duties incident to the office of secretary of a corporation organized under the Business Corporation Act of the State of Utah.

18.7 Treasurer. The treasurer shall have the responsibility for Project funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial statements. He shall be responsible for the deposit of all moneys and other valuable effects in the name of the Board of Trustees or the managing agent in such depositories as may from time to time be designated by the Board of Trustees and he shall, in general, perform all the duties incident to the office of treasurer of a corporation organized under the Business Corporation Act of the State of Utah.

18.8 Agreements, Contracts, Deeds, Checks, Etc. All agreements, contracts, deeds, leases, checks and other instruments of the Project shall be executed by any two officers of the Association or by such other person or persons as may be designated by the Board of Trustees.

18.9 Compensation of Officers. No officer shall receive any compensation from the Project for acting as such.

ARTICLE XIX STATUS OF MOSQUITO ABATEMENT PROPERTY

19.1 Inclusion. The project includes property previously owned by the Salt Lake County Mosquito Abatement District. This parcel of land was conveyed pursuant to a Special Warranty Deed attached hereto as Exhibit B and is subject to the provisions of the Stipulation and Consent Agreement attached as Exhibit C. These documents allow and govern continued

access to the parcel by the Mosquito Abatement District for the purpose of taking corrective action related to existing chemical ground contamination. This parcel of land is included as part of the Association's Common Area.

**ARTICLE XX
STATUS OF SALT LAKE CITY LEASED PROPERTY**

20.1 Inclusion. The project includes property leased from Salt Lake City pursuant to a lease attached hereto as Exhibit D. This lease requires the payment of an annual lease rate over the next 99 years by the Association. This payment increases over time pursuant to the terms of the lease. The Association is obligated to make this payment and to maintain the leased property as provided for in the lease.

**ARTICLE XXI
DISCLOSURE OF INFRASTRUCTURE COSTS**

21.1 Private Infrastructure. The roads and parking areas in the common area on the Project are private areas owned by the Association.

21.2 Notice to Purchasers. The infrastructure is privately owned and the maintenance, repair, replacement, and operation of the infrastructure is the responsibility of the property owners and will not be assumed by Salt Lake City.

21.3 Initial Estimates of costs for maintenance and capital improvements of infrastructure. Declarant hereby provides estimates for the cost of maintaining and replacing capital improvements in the Project, which are located in exhibit E.

21.4. Maintenance Responsibilities. The Owners are collectively and individually responsible on a pro-rata basis, for operating, maintaining, repairing and replacing infrastructure to the extent necessary to ensure that access to the planned development is available to the city for emergency and other services and to ensure that the condition of the private infrastructure allows for the city's continued and uninterrupted operation of public facilities to which the private infrastructure may be connected or to which it may be adjacent.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration the day and year first written above. This declaration includes amendments which have been approved of through the amendment process found in the prior Declarations by all existing Town Homes. Declarant

hereby certifies to that process and the result that the Amendments herein were approved of as provided in the prior Declarations.

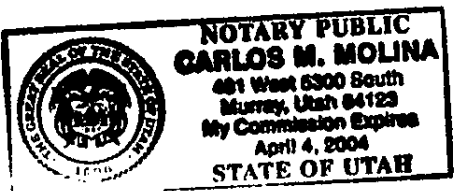
(Sign here) *Justin Redfearn*
Wingate Partners Limited Liability Company

by JUSTIN REDFEARN
[print name of person signing above]

Its VICE PRESIDENT

State of Utah)
) :SS
County of Salt Lake)

On the 20th day of June, 2003, personally appeared before me *Justin Redfearn*
an individual and PARTNERS of Wingate Partners Limited Liability Company,
who being by me duly sworn did say that he is the above named officer of the above named
company, duly acknowledging that he executed he same for its intended purpose on behalf of the
company.



Carlos M. Molina
Notary Public

"EXHIBIT "A"

PARCEL 1:

Beginning 1023 feet North and 145.15 feet West from the Center of Section 34, Township 1 North, Range 1 West Salt Lake Meridian; thence North 0°11'39" East 297 feet; West 436.92 feet; thence South 383 feet; thence East 309.2 feet; thence North 86 feet; thence East 127.1 feet to the point of Beginning.

PARCEL 2:

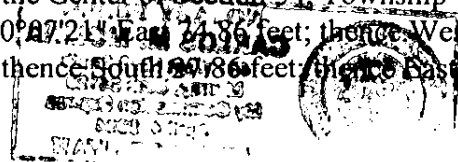
Beginning 1023 feet North and 145.15 feet West from the Center of Section 34, Township 1 North, Range 1 West, Salt Lake Meridian; thence West 127.1 feet; thence South 49.5 feet; thence East 127.1 feet; thence North 0°11'39" East 49.5 feet to the point of Beginning,

PARCEL 3:

Beginning 937.035 feet North and 145.15 feet West from the Center of Section 34, Township 1 North, Range 1 East, Salt Lake Meridian; thence North 0°11'39" East 36.5 feet; thence West 127.1 feet; thence South 36.5 feet; thence East 127.1 feet to the point of Beginning.

PARCEL 4:

Beginning 846.14 feet North and 145.53 feet West from the Center of Section 34, Township 1 North, Range 1 West, Salt Lake Meridian; thence North 0°17'21" East 24.86 feet; thence West 436.08 feet, thence South 50 feet; thence West 100 feet; thence South 29.86 feet; thence East 535.92 feet to the point of Beginning.



1.2

WHEN RECORDED MAIL TO:

Wingate Partners LLC
633 South 500 West
Bountiful Utah 84010

8181128
03/20/2002 04:28 PM 24.00
Book - 8578 Pg - 5366-5372
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE
BY: RDJ, DEPUTY - WL 7 P.

Space above this line for Recorder's use

FIRST AMERICAN TITLE
INSURANCE CO.

RE# 122865

SPECIAL WARRANTY DEED

8181128

SALT LAKE CITY MOSQUITO ABATEMENT DISTRICT, a mosquito abatement district created pursuant to Title 17A, Utah Code Annotated 1953, as amended, with its principal office at 2020 North Redwood Road, Salt Lake City, County of Salt Lake, State of Utah 84116,

Grantor,

hereby CONVEYS AND WARRANTS against all claiming by through or under it to

WINGATE PARTNERS LLC, A UTAH LIMITED LIABILITY

of

8805327
A-B
52 pgs

for the sum of TEN DOLLARS AND OTHER GOOD AND VALU the following described tract of land (the "Property") in Salt Lake C

See Exhibit "A" attached hereto and

SUBJECT TO permitted exceptions on Exhibit "B" attached hereto

* There are some pages that ~~the~~ the scanner may not pick up. They say: ~~Exhibit B~~ Exhibit, B, Exhibit C, + Exhibit A

AND ALSO SUBJECT TO the easements and restrictive covenants attached here to as Exhibit "C" and made apart hereof.

The officer(s) who sign this deed hereby certifies that this deed and the transfer represented thereby was duly authorized under the policies and procedures of the grantor at a lawful meeting duly held and attended by a quorum.

In witness whereof, the grantor has its corporate name affixed hereto by its duly authorized officer this 20th day of March A.D., 2002.

Salt Lake City Mosquito Abatement District,

Sammie Lee Dickson

By: Sammie Lee Dickson

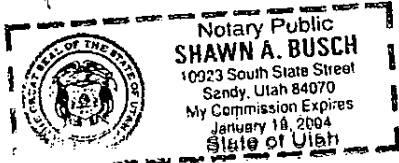
BK8578PG5366

585

BK 8877 PG 0812

STATE OF UTAH :
: ss.
County of Salt Lake :

On the 20th day of MARCH, 2002, personally appeared before me SHAWN A. BUSCH having duly been sworn.



[Handwritten Signature]

NOTARY

Residing at

Expires: See
1-18-04

CO. RECORDER
- COPY -

~~BK 8579 P 5387~~

SLD

Exhibit "A"

Legal Description

A part of Section Thirty-Four (34) in Township One (1) North of Range One (1) West, Salt Lake Base & Meridian, and also being a part of Lot Ten (10) Block Three (3) of Jordan Plat "A", and particularly described as follows,

Beginning at a point fifty-six (56) rods North and six and one-half ($6 \frac{1}{2}$) rods West of the center of said Section; running thence West five hundred seventy-four and two-tenths (574.2) feet; running thence North three hundred ninety-six (396) feet; running thence East one hundred (100) feet; and running thence South three hundred eighty-three (383) feet; running thence East four hundred seventy-four and two-tenths (474.2) feet; and running thence South thirteen (13) feet more or less to point of beginning.

Additionally, the Land described as:

Beginning Fifty-six (56) rods North and Six and one-half ($6 \frac{1}{2}$) rods West of center of Section Thirty-four (34) T.1 N., R. 1 W. SLB & M; thence South Three (3) feet; thence West Four hundred seventy-four and two-tenths (474.2) feet; thence South Fifty (50) feet; thence west One hundred (100) feet; thence north Fifty-three (53) feet; thence East Five hundred seventy-four and two-tenths (574.2) feet; to point of beginning.

Except the Land described as:

A parcel of land in fee for a highway known as Project No. 0136 being part of an entire tract of property in Lot 10 of Block 3 Jordan Plat "A" a subdivision of Section 34, T. 1 N., R. 1 W., S.L.B. & M. The boundaries of said parcel of land are described as follows:

Beginning at the SE corner of said entire tract, which point is 921.0 ft. north and 6.5 rods (which equals 107.25 ft.) West from the center of said Section 34; thence North 16 ft.; thence West 38.08 ft.; thence $8.0^{\circ} 11' 39''$ W. 16 ft; thence East 38.12 ft. to the point of beginning as shown on the official map of said project on file in the office of the Utah Department of Transportation. The above described parcel of land contains 0.014 acre, more or less.

BK 8578 PG 5368

SLD

Exhibit "B"

Permitted Exceptions

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easements or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments and any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof, water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this commitment.
8. Taxes for the year 2001 were exempt. Tax ID No. 08-34-177-005-0000.
9. Said land is included within the incorporated city limits of Salt Lake City, a municipal corporation of the State of Utah, and is subject to any charges and assessments made thereby.
10. (Affects this and other property)
Abstract of Findings and Order recorded July 23, 1996 as Entry No. 6411789 in Book 7449 at Page 524 of Official Records.

~~BK 8578 PG 5369~~

SLD

and Easements created hereby shall inure to the benefit of, and be binding upon, not only Grantor and Grantee but also their successors and assigns.

- c. **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purposes whatsoever, it being the intention of the Grantor and Grantee that this Agreement shall be strictly limited to and for the purposes herein expressed.
- d. **Severability.** Should any provision of this Agreement shall be held invalid or unenforceable, all remaining provisions shall remain in full force and effect.
- e. **Choice of Law.** This Agreement shall be construed and forced in accordance with the laws of this State of Utah, except its choice of law provisions.

C:\.dan\SLCMAD\Special Warranty Deed for SLCMAD

BK8578PG5372

SRD

BK 8877 PG 0816

Exhibit C



State of Utah

DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF SOLID AND HAZARDOUS WASTE

Michael O. Leavitt
Governor
Dianne R. Nielson, Ph.D.
Executive Director
Dennis R. Downs
Director

288 North 1460 West
P.O. Box 144880
Salt Lake City, Utah 84114-4880
(801) 538-6170
(801) 538-6715 Fax
(801) 536-4414 T.D.D.
[www.deq.state.ut.us Web](http://www.deq.state.ut.us/Web)

December 2, 1998

Sammie Lee Dickson, Manager
Salt Lake City Mosquito Abatement District
2020 North Redwood Road
Salt Lake City, Utah 84116-1248

Dear Mr. Dickson:

Enclosed you will find a signed and dated original copy of the final Stipulation and Consent Order that was approved by the Utah Solid and Hazardous Waste Control Board in its meeting held on November 12, 1998. This is a copy for your records.

If you have any questions or concerns, please contact me at 538-6170

Sincerely,

A handwritten signature in cursive script, appearing to read "T. Allan Moore".

T. Allan Moore, Manager
Hazardous Waste Management Section
Utah Division of Solid and Hazardous Waste

TAM/cb

Enclosures

BEFORE THE UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD

-- oo0oo --

In the Matter of: : STIPULATION AND CONSENT
 Salt Lake City Mosquito Abatement District : AGREEMENT
 : No. 9703001

-- oo0oo --

This STIPULATION AND CONSENT AGREEMENT (the Agreement) is issued by the UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD (the Board) pursuant to the Utah Solid and Hazardous Waste Act (The Act), 19-6-101, et seq., Utah Code Annotated 1953, as amended (the Code).

STIPULATIONS

1. Salt Lake City Mosquito Abatement District is the current owner of the land located at approximately 463 North Redwood Road, Salt Lake City, Utah ("Property"). Salt Lake City Mosquito Abatement District ("Mosquito Abatement") is currently located at 2020 North Redwood Road, Salt Lake City, Utah 84116.
2. Mosquito Abatement occupied the site from 1946-1993. Pesticides were stored, mixed, and transferred to spray trucks on the Property. Management and handling of pesticides at the site have impacted soils, road base material on the soil surface, and groundwater in the upper aquifer.
3. The parties wish to resolve this matter by entering into this Agreement to perform activities as outlined in the Site Management Plan (SMP) discussed in this document such that the pesticide contaminated soil and groundwater detected during environmental site investigations will not increase above risk-based closure remediation levels as required by R315-101 of the Utah Administrative Code ("the Rules").
4. Mosquito Abatement is subject to all applicable provisions of the Rules.
5. The parties agree that the Board has jurisdiction over this matter.

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CONCLUSIONS OF LAW

6. The organochloride pesticides are a "hazardous waste" as that term is defined in R315-2-3 of the Rules.
7. Under R315-1-1 of the Rules, a spill is defined as the accidental discharge, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes, into or on any land or water.
8. Under R315-9-1 of the Rules, in the event of a spill of hazardous waste or material which, when spilled, becomes hazardous waste, the person responsible for the material at the time of the spill shall immediately take appropriate action to minimize the threat to human health and the environment.
9. Under R315-9-3 of the Rules, the person responsible for the material at the time of the spill shall clean up all the spilled material and any residue or contaminated soil, water or other material resulting from the spill or take action as may be required by the Executive Secretary so that the spilled material, residue, or contaminated soil, water or other material no longer presents a hazard to human health or the environment. Such cleanup or other required actions shall be at the expense of the person responsible for the spill.
10. Mosquito Abatement was responsible for the hazardous waste or material (the "material") at the time of the spill. Mosquito Abatement will be financially responsible for all corrective action costs and for all costs related to environmental monitoring, inspecting, maintaining, and repairing any remedial systems, monitoring components, and corrective structures until project closure. Project Closure shall be thirty years after Closure Certification.

AGREEMENT

Based on the foregoing Stipulations and Conclusions of Law, Mosquito Abatement, and the Board hereby agree as follows:

11. For the purpose of this Agreement, the parties agree and stipulate to the above stated Stipulations and Conclusions of Law. None of the stipulations except stipulation 5, concerning jurisdiction, related herein shall be considered admissions by any party and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis of this Agreement.

12. Mosquito Abatement shall perform and submit a Risk Assessment to the Executive Secretary according to R315-101-5 of the rules for approval. The Executive Secretary will approve the Risk Assessment or notify Mosquito Abatement of deficiencies in writing.
13. A Site Management Plan (SMP) which is supported by the findings in the approved Risk Assessment shall be submitted to the Executive Secretary within 60 days of approval of the Risk Assessment report. This plan may be submitted along with the Risk Assessment and must include a schedule for implementation. The SMP must contain procedures for corrective action if the level of risk present at the site is greater than 1×10^4 for carcinogens or a Hazard Index of greater than one for non-carcinogens based on a Risk Assessment conducted in accordance with R315-101-5.2(b)(2) of the rules.
14. Mosquito Abatement shall implement the approved SMP according to the specifications and schedule contained in the SMP. Based on information contained in the Risk Assessment, Mosquito Abatement will initiate remedial actions at the site as required and approved.
15. Within sixty (60) days of completing all remediation activities required by the approved SMP, Mosquito Abatement shall certify in writing to the Executive Secretary that all requirements of the approved SMP have been satisfied. The certification must be signed by Mosquito Abatement and an independent Utah registered professional engineer. Documentation supporting the certification shall include the results of all work conducted pursuant to the SMP and shall be compiled and presented in a report to the Executive Secretary. Upon review and acceptance of the information provided by Mosquito Abatement, within sixty (60) days, the Executive Secretary shall provide Mosquito Abatement with a letter indicating that the work completed meets the requirements of the SMP.
16. Within sixty (60) days after installation and sampling of any required groundwater monitor wells as approved in the SMP, Mosquito Abatement shall submit to the Executive Secretary for review, information which will include groundwater analysis data and groundwater flow direction interpretations. The groundwater samples shall be collected in accordance with the procedures and methods described in the SMP. All samples shall be delivered to a Utah-certified analytical laboratory under proper chain-of-custody. Mosquito Abatement shall submit to the Executive Secretary for review, a Groundwater Monitoring Report within sixty (60) days of receipt of the groundwater analysis results. Reporting shall continue until Project Closure which is defined as the date thirty years after Closure Certification.
17. If required by the SMP, within sixty (60) days of Closure Certification, Mosquito Abatement shall develop and record with the local zoning authority, a notation on the deed to the property - or on some other instrument which is normally examined during title search - that will in perpetuity notify any potential purchaser of the property that:

- (a) The land has been used to manage hazardous wastes; and
 - (b) Any remedial systems, monitoring components, and corrective structures installed pursuant to the SMP approved by the Executive Secretary shall not be removed, broken, disturbed or modified in any way without approval from the Executive Secretary; and
 - (c) A survey plat and record of the type, location, and approximate quantity of hazardous waste at the site has been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Executive Secretary; and
 - (d) Mosquito Abatement shall submit a signed certification that the deed notation specified above has been recorded and a copy of the document in which the notation has been placed, to the Executive Secretary.
18. Following completion of corrective action as required by the SMP, if a subsequent risk analysis as defined in the SMP, indicates that the level of risk present at the site is greater than 1×10^{-4} for carcinogens or a Hazard Index of greater than one for non-carcinogens based on a Risk Assessment conducted in accordance with R315-101-5.2(b)(2), a Site Remediation Plan (SRP) will be required to address the remediation of soil and groundwater. This SRP shall include at a minimum: a remediation proposal that includes a groundwater monitoring plan; a soil and groundwater clean up standard; a cost estimate; a quality control/quality assurance plan; a health and safety plan; and a schedule for completion. The SRP shall be submitted within sixty (60) days of submittal of the annual risk analysis indicating the risk present at the site is greater than 1×10^{-4} for carcinogens or a Hazard Index of greater than one for non-carcinogens.
19. The Executive Secretary shall approve or disapprove the SRP within ninety (90) days of submittal. If the Executive Secretary does not approve the SRP, he shall provide Mosquito Abatement with a detailed written statement of the reasons for disapproval. Mosquito Abatement shall then submit a revised SRP for approval within sixty (60) days after receiving such a statement. The Executive Secretary shall approve or modify this revised SRP within sixty (60) days. If the Executive Secretary modifies this SRP, this modified SRP shall become the approved SRP.
20. Within thirty (30) days of approval of the SRP, Mosquito Abatement shall implement the SRP according to the specifications and schedule approved therein.
21. Within sixty (60) days of completing all activities required by the approved SRP, Mosquito Abatement shall certify in writing to the Executive Secretary that all requirements and obligations in the approved SRP have been satisfied. The certification must be signed by Mosquito Abatement and an independent Utah registered professional engineer. Such certifications shall include the results of all work conducted pursuant to the SRP, including

- analytical data, which shall be compiled, interpreted and presented in a final report to the Executive Secretary.
22. Mosquito Abatement shall provide at least seven (7) days prior notice to the State of any activities pertaining to field work, as required in this Agreement at the site. The State reserves the right to acquire splits of any samples collected for analysis as required in this Agreement by Mosquito Abatement at the site. Mosquito Abatement will be offered the opportunity to split any samples collected at the site by the State. Mosquito Abatement shall provide access to its site upon request by the Executive Secretary or any authorized representative(s) for the purpose of enforcing, monitoring, photographing, sampling, and observing activities conducted under this Agreement.
 23. The State or any of its employees, or any member of the Board or the Executive Secretary shall not be liable for any injury or damage to persons, property, or natural resources which result from acts or omissions by Mosquito Abatement, their agents or contractors in carrying out activities pursuant to this Agreement. The Executive Secretary and his representatives shall comply with all reasonable requirements established by Mosquito Abatement for the protection of health, safety, and security while on its property or property under its control. Some of the activities conducted pursuant to this Agreement may pose certain health and safety risks. Mosquito Abatement shall be responsible for the health and safety of their own personnel or their own contractors.
 24. Upon the occurrence of an unanticipated event which could not have been prevented or avoided by the exercise of due care or foresight, and which causes or may cause delay in achievement of any requirement under this Agreement, Mosquito Abatement shall notify the Executive Secretary in writing within twenty (20) days of the day Mosquito Abatement knew or reasonably should have known of the event, describing in detail the anticipated length of the delay, all of the anticipated consequences of the delay, the measures taken and to be taken by Mosquito Abatement to prevent or minimize the delay, and the timetable by which such measures will be implemented. Mosquito Abatement shall adopt all reasonable measures to avoid and minimize delays. Failure to comply with the notice provision of this paragraph shall be grounds for the Board to deny Mosquito Abatement an extension of time for performance. If the parties agree that the delay or anticipated delay in the achievement of any requirement of this Agreement has been or will be caused by circumstances beyond the control of Mosquito Abatement or its agents or contractors, the parties shall stipulate to the extension of the particular compliance requirement affected by a period not exceeding the delay caused by such circumstances, and they shall apply to the Board for an appropriate modification of this Agreement. In the event that Mosquito Abatement and the Executive Secretary cannot agree as to length or right of extension, then any party shall submit the matter to the Board for resolution. The burden of proving that any delay is caused by circumstances beyond the control of Mosquito Abatement shall rest with Mosquito Abatement. Decisions of the Board

under this paragraph are subject to judicial review as provided in the Utah Administrative Procedures Act.

25. Mosquito Abatement shall reimburse the Executive Secretary for all reasonable costs in overseeing compliance with this Agreement and in reviewing the SMP, Groundwater Monitoring Reports, Risk Analysis Reports, and SRP (if an SRP becomes necessary). The Executive Secretary shall submit periodic invoices to Mosquito Abatement identifying the oversight and review costs of State employees in accordance with the fee collection schedule in the Utah Appropriations Act. Within thirty (30) days of receipt of each such invoice, Mosquito Abatement shall remit a check to the State for the full amount of those costs, payable to the Utah Department of Environmental Quality, c/o Dennis R. Downs, Executive Secretary, Utah Solid and Hazardous Waste Control Board, State of Utah, Salt Lake City, Utah 84114-4880.
26. In the event of any disagreement by Mosquito Abatement regarding these costs, Mosquito Abatement may commence a proceeding before the Board under the Utah Administrative Procedures Act and applicable administrative rules of the Board to resolve this dispute.
27. At such time that the Executive Secretary has determined that Mosquito Abatement has fulfilled all requirements and obligations under provisions contained in the approved SMP and State invoices have been paid in full, Mosquito Abatement shall receive a written notice from the Executive Secretary that all provisions of this Agreement have been fulfilled. The Executive Secretary reserves the right to initiate further action against Mosquito Abatement in regard to added investigations, remediations, and cost recovery if and when any additional information becomes available pertaining to actual or potential contamination at the site.
28. This Agreement expressly contemplates submission of certain information, proposals and reports by Mosquito Abatement to the Executive Secretary. The Executive Secretary shall determine the adequacy and applicability of such submissions. In addition, Mosquito Abatement may petition the Executive Secretary to make decisions on certain technical requirements. If agreement by Mosquito Abatement and the Executive Secretary cannot be reached regarding submissions by Mosquito Abatement or the Executive Secretary's decision on any information, proposal or report, or part thereof, under this Agreement, Mosquito Abatement or the Executive Secretary may commence a proceeding under the Utah Administrative Procedures Act and applicable administrative rules of the Board to resolve any disputed decision or submission. Mosquito Abatement shall proceed with any undisputed elements of the proposed activity.
29. The Executive Secretary, the Board, or any entity of the State shall not be deemed to have waived any rights which it may otherwise exercise under applicable laws and administrative rules including, but not limited to, such actions as may be necessary to prevent pollution of groundwater, protect the public health and environment, protect and maintain its natural

resources, abate an imminent hazard or public nuisance, recover costs for State expenditures, and/or recover damages for loss, destruction or replacement of natural resources. Nor shall the Board be precluded from initiating enforcement action, including seeking civil penalties, for Mosquito Abatement noncompliance with this Agreement, the Utah Solid and Hazardous Waste Act, and applicable administrative rules not resolved by this Agreement. The State shall not be precluded in any way from taking appropriate action to abate an imminent endangerment to public health or the environment should such a situation arise at the facility.

- 30. This Agreement contains the entire agreement between the parties hereto concerning the subject matters treated herein and may not be amended, supplemented, or modified except through a writing executed by all parties hereto. This Agreement shall be binding on all parties, their respective successors and assigns and all persons or entities acting under, through or for them. Mosquito Abatement consents to entry of this Agreement and agrees to be bound thereby.
- 31. Data or information provided by Mosquito Abatement under this Agreement, upon request by Mosquito Abatement may be treated as confidential by the Board and the Executive Secretary to the extent and under the procedures set forth in Utah Code Annotated 63-2-101 et seq. and 19-1-306 (1953, as amended) and applicable administrative rules.
- 32. This Agreement shall become effective upon execution by Mosquito Abatement and the Executive Secretary of the Utah Solid and Hazardous Waste Control Board.

Dated this 30 day of November, 1998

By: Jamie Lee Dickson
Title: SLC M AD Manager
Salt Lake City Mosquito Abatement District

By: Dennis R. Downs
Dennis R. Downs, Executive Secretary
Utah Solid and Hazardous Waste Control Board

- COPY -
CO. RECORDER

SKD

Exhibit D

CO. 1111111111
- 1111111111
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LEASE AGREEMENT

THIS LEASE AGREEMENT, hereinafter "Lease", is made and entered into as of _____, by and between SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah, whose address is 451 South State Street, Room 245, Salt Lake City, Utah 84111, hereinafter "City", and WINGATE VILLAGE TOWN HOME OWNERS ASSOCIATION, INC., a Utah corporation, whose address is 1048 Trimble Creek Drive, West Jordan, Utah 84088, hereinafter "Lessee".

WITNESSETH:

WHEREAS, City is the fee owner of property which abuts Lessee's property located in Salt Lake City at approximately 1768 West 400 North, hereinafter the "Premises", and more particularly described and shown on Exhibit A, attached hereto and by this reference made a part hereof; and

WHEREAS, to comply with the density requirements of the original rezoning and site plan approval which allow the construction of 92 additional units on Lessee's property, Lessee desires to lease the Premises from City for landscaping.

NOW THEREFORE, in consideration of the Premises, the parties agree as follows:

1. **LEASED PREMISES AND TERM:** City hereby leases to Lessee, and Lessee accepts, the Premises in its present condition for a period of ninety-nine (99) years from the date hereof.

2. **RENTAL:** (a) In consideration for the lease of the Premises, and the rights provided pursuant hereto, Lessee agrees to pay to Lessor the sum of **ONE THOUSAND AND NO/100 DOLLARS** (\$1,000.00), annually, with the initial payment due and tendered concurrently herewith. Each subsequent annual payment for thirty-five (35) years from the date hereof, hereinafter "Initial Term", shall be due and payable annually on or before each anniversary date hereof during the term of this Lease and shall be in the amount of the immediately preceding year's rental payment, adjusted by the percentage increase or decrease, if any, in the Consumer Price Index herein specified for the immediately preceding 12-month period ending the last day of July. The Consumer Price Index unit for this purpose shall be the "U.S. City Average Geographic Index" for the components, including "all items" as published for said month by the Bureau of Labor Statistics of the Federal government. If publications of said Consumer Price Index should cease, such annual percentage increase shall be determined by reference to such similar index as shall replace it, or as agreed upon in writing by the parties. The annual rental payment for the remainder of this Lease shall be recalculated by City within sixty (60) days of the end of the Initial Term and shall be based upon the fair rental value of the Premises at the end of the Initial Term. This initial fair rental value, which shall not be less than \$3,000 per year, shall be due on or before the first day of the balance of the term of the Lease. Each subsequent annual payment shall be due on or before each anniversary date hereof during the balance of the term of this Lease and shall be adjusted as specified herein.

(b) Rental payments shall be made payable to Salt Lake City Corporation and sent to the City's Director of Public Utilities at 1530 South West Temple Street, Salt Lake City, Utah 84115. In addition to any other right the City

may have, a delinquency or late charge of 10% of any subsequent lease payment shall be assessed on any lease payment made ten (10) days after the due date.

3. **USE OF PREMISES:** Lessee shall use the Premises for landscaping and shall have the right to use, repair and maintain the Premises, as approved in Paragraph 5 below. The Premises shall not be used for any other purpose by Lessee.

4. **CARE OF THE PREMISES:** Lessee will keep the Premises reasonably clean and in good order and repair, ordinary wear and tear excepted. In the event that Lessee fails to properly maintain the Premises, City shall send notice of such violation to Lessee. Lessee shall have 10 days to remedy such failure. In the event that Lessee fails to perform such maintenance as required in the notice, City can perform such required maintenance and either file liens against the properties in the development until the costs to the City are paid in full or the City may file a law suit to recover such costs.

5. **CONSTRUCTION:** Before any construction begins on the Premises, Lessee agrees to submit all plans and specifications to, and obtain the prior written approval of, City's Director of Public Utilities. No structures shall be constructed on the Premises.

6. **PERSONAL PROPERTY:** All equipment or other personal property attached to or otherwise brought onto the Premises by the Lessee shall at all times be personal property until affixed to the Premises at which time it shall be considered real property and shall remain with the Premises unless City gives its written permission for the removal of such equipment

7. **WASTE:** Lessee will not commit any waste on the Premises, nor shall it use or permit the use of or any acts on the Premises in violation of any present or future law of the United States, or any of its agencies, the State of Utah, or Salt Lake City ordinance. Except in connection with the construction of said landscaped area, Lessee further agrees that it will not disturb the surface of the Premises unless prior authorized in writing by the City's Director of Public Utilities.

8. **UTILITIES:** Lessee shall pay all charges for any utilities used on the Premises including, without limitation, power, lights and water.

9. **TAXES, LICENSES AND PERMITS:** Lessee agrees to pay any and all taxes and assessments levied against the Premises or Lessee's use thereof and any facilities placed thereon in accordance with state law, and to obtain and pay all applicable license and permit fees.

10. **VANDALISM AND DAMAGE:** The City assumes no responsibility for vandalism or any other damage of any nature whatsoever to the Premises or the facilities installed by Lessee.

11. **ESTOPPEL:** Lessee and the City agree that at any time and from time to time at reasonable intervals, within ten (10) days after written request by the other, the requested party will execute, acknowledge and deliver to the other party, a certificate in such form as may from time to time be provided, ratifying this Lease and certifying (a) that

Lessee has entered into occupancy of the Premises and the date of successive entry if such is the case, (b) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way (or if there has been any assignment, modification, supplement or amendment, identifying the same), (c) that this Lease represents the entire agreement between City and Lessee as to the subject matter hereof (or identifying any changes), (d) the date of commencement and expiration of the term, (e) that to the knowledge of the signor of such writing no default exists in the performance or observance of any covenant or condition in this Lease and there are no defenses or offsets against the enforcement of this Lease by the other party, (f) that all rent has been paid, and if not, the extent to which it has been paid.

12. **RULES OF THE CITY:** Lessee shall be subject to such reasonable rules and regulations as City may make for the safety, protection and convenience of those using the Premises, including but not limited to providing additional lighting on the Premises and organizing and maintaining neighborhood watch programs within the Lessee's development, provided that compliance with any such rules and regulations does not prevent use of the Premises for its intended purpose or be in conflict with any Federal law, statute or regulation.

13. **BREACH:** In the event of a breach of the terms of this lease, including but not limited to failure to maintain the Premises, or failure to make the rental payment when due, the City shall give Lessee written notice of such breach, providing a ten (10) day period during which Lessee may cure the breach. In the event that Lessee fails to cure such breach within that ten day period, City may either file liens against each individual property in the development until the breach is cured and any associated costs to the City are paid in full, or the City may file a law suit to enforce the terms of this Lease, or both.

14. **TERMINATION - EXPIRATION:** (a) City may terminate this Lease for breach or default if after ten (10) days' prior written notice to Lessee, the breach or default remains uncured.

(b) Lessee may terminate this Lease only with City's written approval.

Upon the termination or expiration of this Lease, Lessee agrees that all fencing and landscaping upon the Premises shall remain with Premises. At City's sole option, Lessee agrees to remove any fencing and landscaping and, at City's option, to reseed the disturbed ground and restore it, as nearly as possible, to its condition prior to disturbance, and to City's reasonable satisfaction, all of which shall be accomplished within thirty (30) days of the termination or expiration of the Lease, and solely at the expense of Lessee; and Lessee agrees to pay City's costs, including attorney's fees for enforcement, provided, however, that City and Lessee may mutually agree to any other disposition of the fencing and landscaping including, but not limited to, resale or gift of the facilities to the City. If City agrees to the sale or gift of the fencing and landscaping and such become the property of City, Lessee shall be relieved of its responsibilities to restore the Premises to as nearly as possible its condition prior to disturbance.

15. **CITY ACCESS TO PREMISES:** City shall have the right to 24-hour-a-day, 7 days-a-week access to the Premises across Lessee's property. Such access shall be for maintenance and repair of City facilities located within the Premises.

16. **DAMAGE BY CITY:** Except where caused by City's employees', agents', or contractors' gross negligence or willful acts, City shall not be liable for any damages or injury to Lessee's facilities or property for any reason whatsoever. City shall not be required to pay the cost of replacing or repairing landscaping or facilities damaged by equipment used in required maintenance or emergency repair of City's facilities located on the Premises.

17. **WAIVER:** It is agreed that the waiving of any of the covenants of this Lease by either party, shall be limited to the particular instance and shall not be deemed to be a waiver of any other breaches of such covenant or any provision herein contained.

18. **EXCUSE FOR DEFAULT:** Any failure on the part of either party of this Lease to perform any obligation hereunder, and any delay in doing any act required hereby, shall be excused if such failure or delay is caused by any strike, lockout, governmental restriction or any similar cause beyond the control of the party failing to perform, to the extent and for the period that such cause continues, save and except the provisions of this paragraph shall not excuse any nonpayment of rent and other sums due hereunder on its due date.

19. **ASSIGNMENT AND SUBLETTING:** Lessee may (a) pledge or assign as security its leasehold interest in the Premises to any mortgagee or trust deed beneficiary of Lessee's adjacent property, or (b) assign this Lease to any successor owner of Lessee's adjacent property, at any time provided that written notice of any such assignment must be provided within thirty (30) days to City. Except as provided in the foregoing provisions on this Paragraph 19, Lessee's interest in the Premises shall not be assigned.

20. **TIME:** Time is of the essence of this Lease and every term, covenant and addition herein contained.

21. **ATTORNEY'S FEES:** In any successful action or proceeding which City may be required to prosecute to enforce its rights hereunder, the Lessee agrees to pay all cost incurred by the City, including reasonable attorney's fees, to be fixed by the court, and said costs and attorney's fees shall be made a part of the judgment in said action.

22. **INSURANCE:** Lessee agrees to obtain and maintain during the entire existence of the Lease a comprehensive general liability policy of insurance with minimum coverage amounts as required by City from time to time, but for the present, a minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate. All policies of insurance provided shall be issued by insurance companies qualified to do business in the State of Utah and listed on the United States Treasury Department's current Listing of Approved Sureties (Department Circular 570) (as amended), or having a general policyholder's rating of not less than "A-" in the most current available A.M. Best Co., Inc.'s Best Insurance Report. Said insurance shall provide for a minimum of thirty (30) days prior written notice of cancellation to the City, but cancellation shall not relieve Lessee of its obligation to provide insurance. On all such coverage, City shall be named as an additional insured, and Lessee agrees to furnish to City, concurrent herewith and as changes occur in policies or coverage as needed during the course of this Lease, appropriate Certificates of Insurance verifying such present and continued coverage.

23. **INDEMNITY:** Lessee agrees to indemnify, save harmless and defend City, its agents and employees, from and against any and all suits, actions, liens, damages, claims, liability and expense, including attorney's fees, in connection with or arising out of the Lessee's, its agents', employees' or invitees' use of the Premises, and any acts or omissions or failure to act by Lessee, its agents or employees hereunder.

24. **NOTICES:** All notices shall be directed to the following addresses:

CITY

SALT LAKE CITY CORPORATION
Director of Public Utilities
1530 South West Temple
Salt Lake City, Utah 84115

COURTESY COPY

SALT LAKE CITY CORPORATION
Property Management
451 South State Street, Room 245
Salt Lake City, Utah 84111

LESSEE

Wingate Village Town Home Owners Association
C/o Justin Redfean
7070 South 2300 East, Suite 110
Salt Lake City, Utah 84121
(801) 453-1166

25. **ENTIRE AGREEMENT:** This Lease constitutes the entire agreement between the parties and incorporates all prior correspondence, communications or agreements between parties, and cannot be altered, amended or supplemented except in a in writing signed by both parties.

26. **AUTHORITY TO EXECUTE:** Each person executing this Lease individually and personally represents and warrants that he is duly authorized to execute and deliver the same on behalf of the entity for which he is signing.

27. **APPLICABLE LAW:** This Lease shall be interpreted in accordance with and enforced under the laws of the State of Utah.

28. **Representation Regarding Ethical Standards for City Officers and Employees and Former City Officers and Employees:** Lessee represents that it has not (1) provided an illegal gift or payoff to a City officer or employee or former City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

29. **DISCLOSURE OF LEASE:** Lessee will disclose the existence of this Lease in the Covenants, Conditions, & Restrictions and indicate that the Lessee and each individual unit owner will be responsible to make

payments and perform other obligations under this Lease, and that if they fail to do so, City may file a lien against each individual unit.

30. **MEMORANDUM OF LEASE:** Concurrently with the execution and delivery of this Lease, City and Lessee shall enter into, and they may cause to be recorded against each individual unit within Lessee's entire property, a Memorandum of this Lease in form and substance reasonably satisfactory to City and Lessee.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the day and year first above written.

SALT LAKE CITY CORPORATION

ATTEST & COUNTERSIGN:

By _____
Deputy Director of Public Utilities

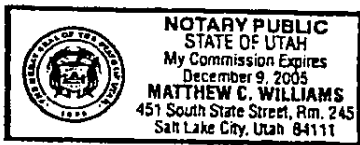
Chief Deputy City Recorder

WINGATE VILLAGE TOWN HOME OWNERS
ASSOCIATION, INC.

By [Signature]
its OFFICER, WINGATE HOA

STATE OF UTAH)
) ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me this 21st day of May, 2003 by JUSTIN REDFEARN, in his capacity as President of WINGATE VILLAGE TOWN HOME OWNERS ASSOCIATION, INC.



[Signature]
NOTARY PUBLIC, residing in
Salt Lake County, Utah

- COPY -
CO. RECORDER

EXHIBIT A

08-34-177-004

Exhibit E

Exhibit E

	Estimated Maintenance & Replacement Costs						Total
	<u>Years 1-10</u>	<u>Years 11-20</u>	<u>Years 21-30</u>	<u>Years 31-40</u>	<u>Years 41-50</u>	<u>Years 51-60</u>	
Sidewalk	0	10,000	0	12,000	0	16,000	38,000
Curb/Gutter	0	0	0	36,000	0	40,000	76,000
Road/Asphalt	0	7,600	7,600	214,000	7,600	214,000	450,800
Landscaped Common	3,600	3,600	3,600	3,600	3,600	3,600	21,600
Drainage	0	2,000	0	3,200	0	22,000	27,200
Sewer Lines	0	4,000	0	4,000	0	120,000	128,000
Water Lines	0	0	0	0	0	85,000	85,000
Park	12,000	12,000	12,000	30,000	40,000	40,000	146,000