

ENT 17153 BK 3642 PG 108  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
1995 MAR 21 1:11 PM FEE .00 BY NR  
RECORDED FOR PROVO CITY

M 1377 So 350 E  
Provo 84604

SEWER EASEMENT AGREEMENT

We, HEBER LEE DAVIS and JOANN W. DAVIS, of Route 1, Box 311A, Provo City, Utah County, State of Utah, Grantors, in consideration of the sum of TEN (\$10.00) DOLLARS and other valuable consideration, receipt of which is hereby acknowledged, and the prospective benefits to be derived by reason of the locating, establishing, constructing and maintenance of a certain sewer line under the supervision of the City of Provo, Utah, as hereinafter described, do hereby convey and release to WESTGATE DEVELOPMENT, L.C., a Utah limited liability company, 2230 North at University Parkway, Bldg 6D, Provo, Utah 84604, Grantee, an easement and right of way for a certain sewer line, hereinafter more particularly designated and described, over and across lands owned by us and situated in the County of Utah, State of Utah, and more particularly described in Exhibit "A" attached hereto and to which reference is hereby made.

This grant of easement is made, subject to the following terms and conditions and pursuant to the following agreement:

1. DOMINANT ESTATE

This easement is granted for the benefit of property described in Exhibit "B", attached hereto, and grantors property, and

Grantors property and for no other property without the prior written consent of Grantors first had and obtained.

2. PLAT AND LOCATION OF EASEMENT

The location of said sewer line in said easement shall be set forth in the plat of the area as shown in Exhibit "C" attached hereto as prepared by Sowby and Berg, Consulting Engineers, and to which reference is hereby made.

3. POINTS OF INGRESS AND EGRESS

Grantee shall have the right of ingress and egress from said easement only from the east end thereof, except as otherwise expressly permitted by Grantors. Grantee shall have the right and be required to install, maintain and use gates in all fences which now cross or shall hereafter cross said easement.

4. RIGHT TO CONSTRUCT AND MAINTAIN

Grantee shall have the right at its sole expense to construct and maintain within said easement a sewer line for the benefit of the property referred to in Exhibit "B", which sewer line shall be constructed and maintained in accordance with all applicable code provisions and regulations of Provo City, Utah. During construction Grantee, with the prior consent of Grantor, shall have the right to make temporary use of Grantor's property outside the described easement as may reasonably be necessary to accomplish construction, subject to satisfactory restoration of Grantors' premises as herein provided.

5. COVENANTS OF GRANTEE

Grantee, in accepting this easement, covenants and agrees as

follows:

(a) Said sewer line will be completed and Grantors' property fully restored as hereinafter provided on or before the 15th day of September, 1992.

(b) Grantee shall not fence or obstruct the easement area.

(c) Grantee shall promptly, to the reasonable satisfaction of Grantors, restore, repair and provide as required fences, gates, culverts, water lines and ditches which may be affected by construction of said sewer line. All new material will be used in the restoration of said property unless otherwise agreed to by Grantors.

(d) Grantee shall promptly compact and grade any excavated area, reseed any pasture area affected, and regravel and reslag any feed yards and/or road affected by such construction.

(e) The manholes, and any other features of the project, shall be constructed and located so as to minimize disruption of the area, and in such connection, all manholes shall be constructed at ground level, and all pipe shall be buried as deep as possible and at least one foot below ground level.

(f) Grantee shall indemnify Grantors, their heirs and assigns, against any loss and damage which may be caused by said construction, or the exercise of the right of ingress and egress for repairs or other purposes, or for any wrongful or negligent act or omission by Grantee, its agents or employees.

(g) The Westgate storm drain system will be designed and constructed at grantees (Westgate) expense to accommodate future

development of Grantors' property based on the assumption that, Grantor's property would be developed to the density of Grantee's approved project, The Villages of Westgate. No connection shall be made to said storm drain line within the boundaries of Grantors' property by anyone other than Grantors without the prior written consent of Grantors and then only upon such further terms and conditions as Grantors may require.

(h) The Grantee shall assure that all persons connected with the project shall be informed and recognize that said easement is through private property. Grantors shall have the right to refuse entry to anyone who abuses the property or livestock of Grantors, or who refuses to abide by the terms of this Agreement.

(i) Any excess dirt or other material generated as a result of the construction shall be the property of the Grantors and Grantee agrees to remove and deliver such dirt to whatever location (not in excess of one (1) mile) Grantors shall specify.

(j) Temporary fences and gates shall be constructed and used by the Grantee at the expense of Grantee where needed to maintain Grantors' livestock operation.

(k) Grantee shall assume and pay attorney's fees and other expenses incurred in the preparation or modification of this Agreement.

#### 6. RESERVATIONS BY GRANTORS

Grantors expressly reserve the following:

(a) The right to use said easement area for purposes which will not interfere with Grantee's full enjoyment of the rights

herein granted.

(b) The right to connect onto said sewer line, including lines adjacent to or bordering on Grantors' property, to serve any future approved development of Grantors' property, such connections to be without charge to Grantors for any costs relative to Grantee's construction and maintenance of said sewer line and easement.

7. INTENT

The intent of the parties in entering into this Agreement is to provide for the present and future development of their respective properties.

8. DEFAULT

Each party hereto agrees that in the event of default by either, such defaulting party shall pay to the other all costs, damages and expenses incurred in enforcing this Agreement, or in protecting any of the rights conferred hereunder, including reasonable attorneys' fees, whether suit be brought or not.

9. SUCCESSORS AND ASSIGNS

The provisions of this Agreement shall inure to and be binding upon the parties hereto and their successors or assigns.

(The balance of this page is intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the 13 day of August, 1992, the same being done on behalf of Grantee pursuant to its Operating Agreement duly authorizing the indicated managers to execute and deliver the same.

## GRANTORS:

Heber Lee Davis  
HEBER LEE DAVIS

Joann W. Davis  
JOANN W. DAVIS

## GRANTEE:

WESTGATE DEVELOPMENT, L.C.

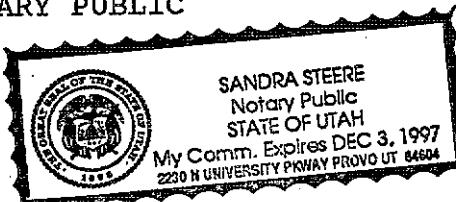
By: David K. Gardner Co-Manager

By: H.M. Magleby Co-Manager

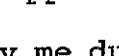
STATE OF UTAH )  
COUNTY OF UTAH ) : ss.

On this 13 day of August 1992, personally appeared before HEBER LEE DAVIS and JoANN W. DAVIS, his wife, two of the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

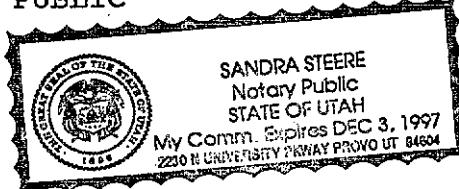
Sandra Steen  
NOTARY PUBLIC



STATE OF UTAH )  
: ss.  
COUNTY OF UTAH )

On this B day of August 1992, personally appeared before me, David K. Gardner and H.M. Magleby, who, being by me duly sworn, did say that they are the Co-Managers of WESTGATE DEVELOPMENT, L.C., a Utah limited liability company, that said instrument was signed by them in behalf of said company pursuant to authority; and that said company executed the same. 

*Sandra Stess*  
NOTARY PUBLIC



ACCEPTANCE BY PROVO CITY CORPORATION

Comes now PROVO CITY CORPORATION and hereby accepts and approves the foregoing Sewer Easement Agreement and agrees to be bound by the terms thereof to the extent that PROVO CITY may be affected thereby.

DATED this 13<sup>th</sup> day of August, 1992.

PROVO CITY CORPORATION

By Gosmt

Attest, Marilyn Perry  
City Recorder

EXHIBIT 'A'

Commencing at a point 338.61 feet South and 1998.13 feet West of the Southeast corner of the Northeast quarter of Section 3, Township 7 South, Range 2 East, Salt Lake Base and Meridian, running thence North 909.58 feet; thence South 85°05' West 595.18 feet; thence South 01°02' West 575.53 feet; thence North 87°02' East 106.74 feet; thence South 280.17 feet; thence South 89°00' East 496.70 feet to the point of beginning. Area 11.4 acres.

## Exhibit B

Beginning at a point located North 89 deg. 27'54" East along section line 689.88 feet and South 1737.63 feet from the North quarter corner of Section 3, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence East 274.66 feet; thence North 50.81 feet; thence East 118.53 feet; thence North 82 deg. 00'00" East 292.54 feet; thence South 35 deg. 26'05" East 118.42 feet; thence South 89 deg. 07'01" East 133.11 feet; thence South 24 deg. 52'50" East 133.25 feet; thence South 89 deg. 07'01" East 428.92 feet; thence South 02 deg. 48'59" East 217.48 feet; thence East 247.59 feet; thence South 03 deg. 31'33" East 150.09 feet; thence the following fifteen courses along the southeasterly boundary of Westgate Pointe PUD, plat "A": South 03 deg. 31'33" East 80.76 feet, North 88 deg. 21'54" East 200.99 feet, South 03 deg. 43'46" East 85.42 feet, South 87 deg. 28'08" West 155.98 feet, South 01 deg. 39'33" East 84.00 feet, South 87 deg. 38'08" West 76.58 feet, South 58 deg. 07'08" West 35.70 feet, South 87 deg. 40'20" West 46.44 feet, South 03 deg. 27'15" East 219.06 feet, North 89 deg. 17'35" West 161.01 feet, North 86 deg. 42'05" West 49.71 feet, North 88 deg. 53'54" West 54.81 feet, South 89 deg. 10'58" West 85.47 feet, South 87 deg. 19'47" West 69.48 feet, and South 89 deg. 46'22" West 139.91 feet; thence the following six courses along a chain link fence: South 89 deg. 46'22" West 511.97 feet, South 02 deg. 14'42" East 173.98 feet, North 81 deg. 32'52" West 150.29 feet, North 85 deg. 49'37" West 33.90 feet, North 89 deg. 33'46" West 219.38 feet and South 86 deg. 00'46" West 76.60 feet; thence North 567.12 feet; thence East 8.63 feet; thence North 00 deg. 44'50" East along a fence line 256.58 feet; thence North 14 deg. 41'39" West 31.67 feet; thence North 00 deg. 33'13" East along a fence line 294.82 feet to the point of beginning. Area = 36.1175 acres

## EXHIBIT 'C'

DAVIS

A 36 foot wide easement for the construction, operation, and maintenance of a sewer line, the centerline of said easement being described as follows:

Beginning at a point located North 89°27'54" East 95.14 feet and South 2296.08 feet from the North quarter corner of Section 3, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence East 596.78 feet to a point on a fence line located North 89°27'54" East along section line 691.95 feet and South 2301.65 feet from the North quarter corner of said Section 3.

WESTGATE DEVELOPMENT L.C.

*CottonTree Square*  
2230 North at University Parkway  
Suite 6-D  
Provo, Utah 84604

ENT 17153 BK 3642 PG 119

Telephone (801) 374-0033

Telecopier (801) 375-0502

August 11, 1992

Heber Lee Davis and JoAnn W. Davis  
Route 1 Box 311-A  
Provo City, Utah County, UT

RE: Boundary Property Exchange Agreement

Dear Lee and JoAnn:

This letter agreement will serve as our understanding relative to the western boundary line of property which we recently purchased from the Kirkpatricks and which has a common line with the eastern boundary of your property. Unfortunately, we initially thought the western fence line of the lane between the two properties was the boundary line and our initial platting for two of our subdivisions, Westgate Landing Plat "A" and Westgate Townhomes Plat "A", were plotted based on this misunderstanding, notwithstanding that we had discussed with you that the boundary went down the middle of the lane between two fences which had been your agreement with the Kirkpatricks for many years. We appreciate your willingness to help us resolve our problem by exchanging equivalent area parcels such that we can maintain our original plat for Westgate Landing and Westgate Townhomes with a conveyance of the full lane parcel to us and an adjustment further south (in a future development not yet platted) for the exchanged parcel we will be deeding to you.

Attached hereto are two pages which reflect the exchange parcels, your parcel to us on page one (in red) and our parcel to you on page two (in blue). This is to be an even exchange of quit-claim deeds. However, inasmuch as we have not yet closed on the Oveson property, it is understood that our deed to you will be given at that time, on or before October 31, 1992. We will need to have your quit-claim deed to us immediately, as we will have to have that recorded prior to recordation of Westgate Landing Plat "A" which we are ready to do now. We anticipate no hang-ups in closing on the Oveson parcel before the end of October, 1992. In the event our exchange property to you is burdened by wetlands, we will either mitigate such wetlands or increase the buildable portion to an equivalent area of that which we received.

Heber Lee Davis and JoAnn W. Davis

2

August 11, 1992

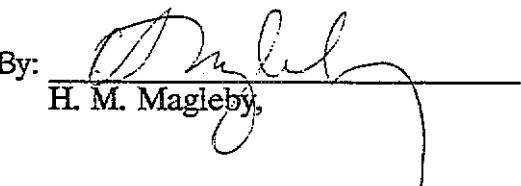
Also attached are forms of the proposed deeds. Originals will be signed and delivered as and when indicated above. There should be no tax implications to either party to this exchange transaction and your tax base in the property you convey to us will be carried over to that parcel you receive from us.

Again, we appreciate your willingness to help rectify this situation. Please indicate your agreement with and acceptance of the above arrangement by signing this and the enclosed copy where indicated and retaining either for your records, returning the other to us for ours.

Sincerely,

WESTGATE DEVELOPMENT, L.C.

By:   
David K. Gardner

By:   
H. M. Magleby

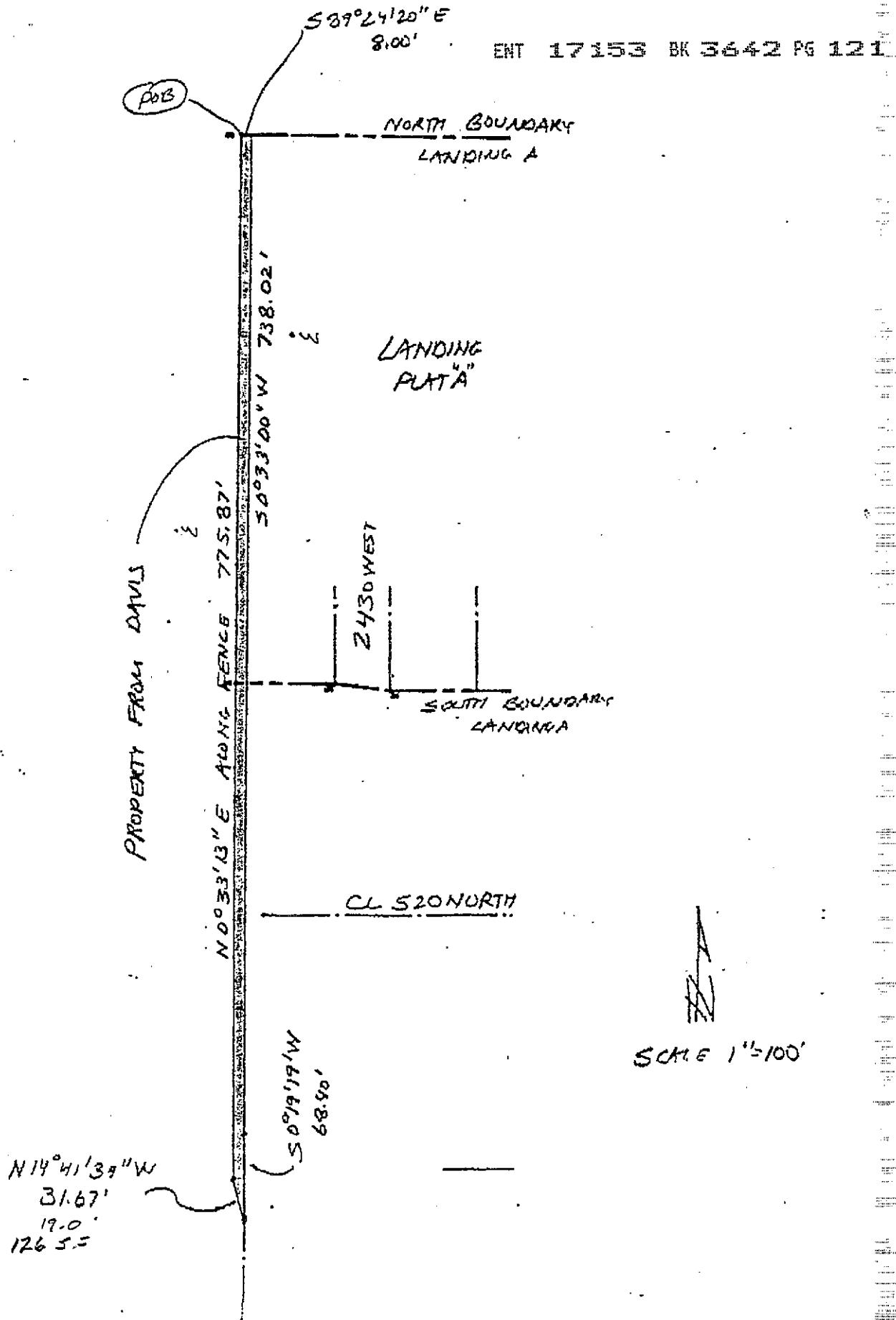
jk  
enclosures

**UNDERSTOOD AND AGREED:**

Dated August 13, 1992

Heber Lee Davis  
Heber Lee Davis

JoAnn W. Davis  
JoAnn W. Davis



SCALE 1"=100'

ENT 17153 BK 3642 PG 122

$N 14^{\circ} 41' 34'' W$   
31.67'

$S 0^{\circ} 19' 19'' W$   
68.40'

EAST 8.63'

POB

$N 0^{\circ} 44' 50'' E$   
10.71'  
ALONG FENCE

PROPERTY TO OWNERS

$N 0^{\circ} 30' 40'' E$  557.37 ALONG FENCE  
SOUTH 567.12

CL 2430W  
FUTURE

CL 450NORTH  
FUTURE

SOUTH SIDE  
OF 450 N

RETREAT

CHAIN LINK FENCE

$S 86^{\circ} 00' 46'' W$   
13.77'  
ALONG FENCE

RECORDED AT THE REQUEST OF:

WHEN RECORDED, RETURN TO GRANTEE AT:

2230 North at University Parkway  
 Suite 6-D  
 Provo, UT 84604

Mail tax notices to Grantee at above address.

## QUIT-CLAIM DEED

HEBER LEE DAVIS and JOANN W. DAVIS, Grantors, hereby QUIT-CLAIM to WESTGATE DEVELOPMENT, L.C., a Utah limited liability company, Grantee, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, all of their interest in and to the following tract of land in Utah County, Utah:

Beginning at a point in a fence line located North 89°27'54" East along section line 694.53 feet and South 1256.65 feet from the North quarter corner of Section 3, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence South 89°24'20" East 8.00 feet; thence South 00°33'00" West 738.02 feet; thence South 00°19'19" West 68.40 feet; thence North 14°41'39" West 31.67 feet to a fence line; thence North 00°33'13" East along said fence line 775.87 feet to the point of beginning. Area = 0.1460 acres (6359 S.F.)

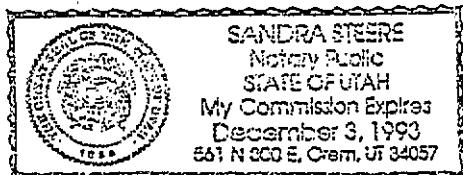
WITNESS the hand of said Grantors, this 13th day of August, 1992.

Heber Lee Davis  
 Heber Lee Davis

JoAnn W. Davis  
 JoAnn W. Davis

STATE OF UTAH )  
 : ss.  
 COUNTY OF UTAH )

On the 13th day of August, 1992, personally appeared before me Heber Lee Davis and JoAnn W. Davis, the signers of the above instrument, who duly acknowledged to me that they executed the same.



Sandra Steers  
 Notary Public

RECORDED AT THE REQUEST OF:

WHEN RECORDED, RETURN TO GRANTEE AT:

2230 North at University Parkway  
Suite 6-D  
Provo, UT 84604

Mail tax notices to Grantee at above address.

**QUIT-CLAIM DEED**

HEBER LEE DAVIS and JOANN W. DAVIS, Grantors, hereby QUIT-CLAIM to WESTGATE DEVELOPMENT, L.C., a Utah limited liability company, Grantee, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, all of their interest in and to the following tract of land in Utah County, Utah:

Beginning at a point in a fence line located North 89° 27' 54" East along section line 694.53 feet and South 1256.65 feet from the North quarter corner of Section 3, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence South 89° 24' 20" East 8.00 feet; thence South 00° 33' 00" West 738.02 feet; thence South 00° 19' 19" West 68.40 feet; thence North 14° 41' 39" West 31.67 feet to a fence line; thence North 00° 33' 13" East along said fence line 775.87 feet to the point of beginning. Area = 0.1460 acres (6359 S.F.)

WITNESS the hand of said Grantors, this \_\_\_\_\_ day of August, 1992.

\_\_\_\_\_  
Heber Lee Davis

\_\_\_\_\_  
JoAnn W. Davis  
\_\_\_\_\_  
JoAnn W. Davis

STATE OF UTAH )  
: ss.  
COUNTY OF UTAH )

On the \_\_\_\_\_ day of \_\_\_\_\_, 1992, personally appeared before me Heber Lee Davis and JoAnn W. Davis, the signers of the above instrument, who duly acknowledged to me that they executed the same.

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

RECORDED AT THE REQUEST OF:

WHEN RECORDED, RETURN TO GRANTEE AT:

ENT 17153 BK 3642 PG 125

Route 1 Box 311-A  
Provo City, Utah County, UT

Mail tax notices to Grantee at above address.

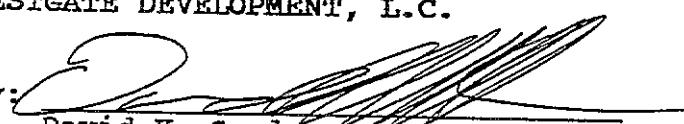
QUIT-CLAIM DEED

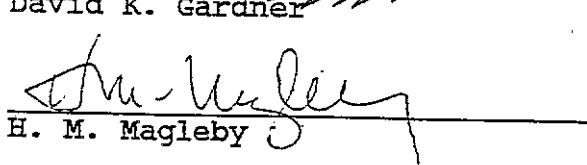
WESTGATE DEVELOPMENT, L.C., a Utah limited liability company, Grantor, hereby QUIT-CLAIMS to HEBER LEE DAVIS and JOANN W. DAVIS, Grantees, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, all of its interest in and to the following tract of land in Utah County, Utah:

Beginning at a point in a fence line located North 89°27'54" East along section line 691.72 feet and South 2319.65 feet from the North quarter corner of Section 3, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence East 8.63 feet; thence South 567.12 feet to a chain link fence line; thence South 86°00'46" West along said fence line 13.77 feet; thence North 00°30'40" East along a fence line 557.39 feet; thence North 00°44'50" East along a fence line 10.71 feet to the point of beginning. Area = 0.1460 acres (6359 S.F.)

WITNESS the hand of said Grantor, this 28 day of October, 1994.

WESTGATE DEVELOPMENT, L.C.

By:   
David K. Gardner

By:   
H. M. Magleby

STATE OF UTAH )  
: ss.  
COUNTY OF UTAH )

On this 28 day of October, 1994, personally appeared before me, David K. Gardner and H. M. Magleby, who, being by me duly sworn, did say that they are the Managers of Westgate Development, L.C., a Utah limited liability company; that said instrument was signed in behalf of said limited liability company by authority and pursuant to its Articles of Organization and its Operating Agreement; and they did further acknowledge to me that said limited liability company executed the same.

NOTARY PUBLIC

SANDRA STEERE  
Notary Public  
STATE OF UTAH  
My Comm. Expires DEC 3, 1997  
2210 N UNIVERSITY PKWY PROVO UT 84604