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**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**SUNSET PLATEAU SUBDIVISION**

**KNOW ALL MEN BY THESE PRESENTS:** That Dean T. Terry Investments, a Utah corporation, hereinafter referred to as the "Developer", is the owner of the following described property, hereinafter referred to as "the property", located in St. George, Washington County, Utah, to wit:

All of Sunset Plateau Subdivision, Phase I-A, according to the official plat thereof on file in the Office of the Washington County Recorder.

**WHEREAS,** It is the intention of the Developer to include all of the property in said plat, to divide the property into lots as shown on said plat, and to dedicate the streets shown on said plat to the City of St. George. The easements indicated on said plat are hereby perpetually reserved for public utilities and for any other uses as designated thereon or set forth herein, and no structures other than for such utility or other indicated purposes are to be erected within the lines of said easements; and

**WHEREAS,** certain covenants, conditions and restrictions must be established and observed in order to insure harmonious relationships, protect property values, eliminate hazardous conditions, and preserve the natural beauty of the area.

**NOW, THEREFORE,** the Developer hereby declares that all of the property described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following limitations, covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the property and are established and agreed upon for the purposes of enhancing and protecting the value, desirability and attractiveness of the property and every lot, part or portion thereof. The acceptance of any deed to or conveyance of any lot, part or portion of the property by the grantees therein named or by their legal representatives, heirs, executors, administrators, successors or assigns, shall constitute their covenant and agreement with the Developer and its successors or assigns, and with each other to accept, hold, improve, use and convey the property described and conveyed in or by such deed of conveyance subject to said covenants, conditions and restrictions as follows, to wit:

**ARTICLE I**

**DEFINITIONS**

1. **Owner**. Owner shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the property, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

2. **Developer**. Developer shall mean and refer to Dean T. Terry Investments, a Utah corporation, and its successors and assigns.

3. **Residence**. Home shall mean and refer to a single family dwelling constructed on a lot.

4. **Declaration**. Declaration shall mean and refer to the Declaration of Protective Covenants, Conditions and Restrictions.

5. **Development**. Development shall mean and refer to the property, and any additions thereto, including all future phases and improvements thereon.

6. **Lot**. Lot shall mean and refer to any plot of land shown upon any recorded subdivision map of the property, with the exception of the common area.

7. **Member**. Member shall mean and refer to every person or entity who holds membership in the Association.

8. **Conveyance**. Conveyance shall mean and refer to actual conveyance of fee title to any lot to any owner by a Warranty Deed or other document of title.

9. **Common Area**. Common area shall mean and refer to property designated on the subdivision plat or in the declaration, to be owned by the Homeowners Association and reserved for the use of all members of the Association. The common area is intended to be used as a park/recreation area. The common area to be owned by the Association at the time of the conveyance of the first lot is described in Exhibit "A", attached hereto.

10. **Association**. Association shall mean and refer to the Sunset Plateau Homeowner's Association, a Utah non-profit corporation, its successors and assigns, said Association being comprised of all lot owners in all phases of the development, according to the official plat thereof.

11. **Board of Directors**. Board of Directors shall mean and refer to the governing board of the Homeowners Association defined above.

12. Yards. The yard area of all lots shall be defined as follows: Front yard shall mean and refer to that portion of the lot which is located between the front lot line and a perpendicular line running from the front corners of the residence to the side lot lines; Back yard shall mean and refer to that portion of the lot which is located between the back lot line and a perpendicular line running from the back corners of the residence to the side lot lines; Side yards shall mean and refer to that portion of the lot which is located between the residence and the side lot lines and the front and back yards. On a corner lot both sides of the residence facing the streets shall be deemed the front of the residence for purposes of defining the front corners of the residence.

## ARTICLE II

### HOMEOWNERS ASSOCIATION

#### A. PROPERTY RIGHTS.

1. OWNER'S EASEMENTS OF ENJOYMENT: Every lot owner shall have a right and easement of use and enjoyment in and to the common area, as described above, which easement shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

a. The right of the Association to charge reasonable admission and other fees to non-owners for the use of any common areas, provided that such fees charged by the Association shall in no way affect its status as a non-profit corporation.

b. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the common area and in aid thereof to mortgage said property.

c. The right of the Association to suspend the voting rights of a member and to deny said member use of the common area for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its By-laws, rules and regulations.

d. With the approval of two-thirds of the members, the right of the Association to sell, exchange, hypothecate, alienate, encumber, release or transfer all or part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. The granting of easements for public utilities or other public purposes consistent with the intended use of such common areas by the Association shall not

be deemed a transfer within the meaning of this clause. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds of the members has been recorded.

e. The right of the Association to take such steps as are reasonably necessary or desirable to protect the common area against foreclosure.

f. The right of the Developer and of the Association to grant and reserve easements and rights-of-way through, under, over, and across the common area, for the installation, maintenance and inspection of lines and appurtenances for public or private utilities.

g. The right of the Developer to enter upon the common area during the development phase, as described herein, for the purpose of constructing and completing improvements on the same.

h. The right of the Developer to add additional lots to the subdivision, in phases, provided however that the total number of lots in the subdivision, including all phases, shall not exceed 150.

2. **DELEGATION OF USE:** Any member may designate, in accordance with the Bylaws, his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers, any of whom must reside on the property.

3. **TITLE TO THE COMMON AREA:** The Developer covenants for himself, his heirs and assigns, that he will convey fee simple title to the common area to the Association, free and clear of any encumbrances and liens, except, (i) any state of facts and accurate survey may show, (ii) covenants, restrictions, easements, encumbrances and liens created by or pursuant to this declaration, (iii) easements and rights of way of record, and (iv) a covenant to maintain the common area in good repair and condition at all times and to operate the same at its own expense in accordance with high standards, which shall be deemed to run with the land and shall be binding upon the Association and its successors and assigns.

4. **RIGHT-OF-WAY ACCESS TO COMMON AREA:** The Developer hereby grants to the Association a 10 foot easement over the Developer's property which is contemplated by the Developer to be added as additional phases to the subdivision, said easement to be for the exclusive purpose of access to the common area from lots in recorded phases, and to be located at the sole discretion of the Developer.

**B. MEMBERSHIP AND VOTING RIGHTS.**

1. **MEMBERSHIP:** Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by this declaration to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership, and shall automatically commence upon a person becoming such owner and shall automatically terminate and lapse when such ownership in said property shall terminate or be terminated.

2. **VOTING RIGHTS:** All lot owners, with the exception of the Developer which shall have no voting rights, shall be entitled to one vote for each lot owned. When more than one person owns an interest in a lot, all such persons shall be members. The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot. In the event such persons fail to agree, then their vote shall be cast rateably among the respective interests. A vote cast at any Association meeting by any of such owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the lot concerned unless an objection is immediately made by another owner of the same lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

3. **BOARD OF DIRECTORS:** The governing board of the Association shall be a Board of Directors consisting of not less than three (3) nor more than five (5) members of the Association. Said Board shall be elected, govern the affairs of the Association, and serve terms as set forth in the By-laws of the Association.

**C. COVENANT FOR MAINTENANCE AND ASSESSMENTS.**

1. **CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS:** The Developer, for each lot owned within the properties, hereby covenants and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the association: (a) annual assessments, if any, (b) special assessments, if any, and (c) capital assessments, if any, such assessments to be levied, fixed, established and collected from time to time as herein below provided. The assessments, together with interests, costs and reasonable attorney's fees, as hereinafter provided, shall be charged on the land and shall be continuing upon the lot upon which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such lot at the time when the assessment



became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**2. PURPOSE OF ASSESSMENTS:** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members and in particular for the improvement, repair and maintenance of the common areas, services and facilities devoted to this purpose and related to the use and enjoyment of the common areas situated upon the property. They shall include, but are not limited to, funds for the actual cost of the Association of all taxes and insurance and shall include a reserve for repairs, replacement and maintenance of those elements of the common areas, caring for the grounds, landscaping, garbage pickup, and other charges required by this declaration or that the Board of Directors shall determine to be necessary to meet the primary purposes of the Association. Special and capital improvements assessments shall be used exclusively for the purposes for which such assessments were levied as provided for in this declaration.

**3. BASIS AND MAXIMUM OF ANNUAL ASSESSMENTS:** Until the first meeting of the Board of Directors of the Association, the maximum annual assessment for each lot, with or without a single residence, shall be \$24.00 per lot. This amount may be collected monthly as determined by the Board of Directors. For any lot owned by the Developer, but on which construction of a residence has not yet begun, the annual assessment shall be 25% of the base assessment. From and after January 1, 1991, the maximum annual base assessment may be increased each year not more than 10% above the maximum base assessment for the previous year without a vote of the membership. From and after January 1, 1991, the maximum annual base assessment may be increased more than 10% only by a vote of 2/3 of members who are voting in person or by proxy, at a meeting duly called for this purpose. The Board of Directors shall fix the annual base assessment at an amount not in excess of the maximum.

**4. CAPITAL IMPROVEMENT ASSESSMENTS:** In addition to annual assessments, with the approval of 2/3 of the vote of the members, the Association may levy, for any assessment, capital improvement assessments, applicable to the assessment, only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the common area.

**5. SPECIAL ASSESSMENTS:** In addition to the annual assessments and capital improvement 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, any excess cost of any construction, reconstruction, repair or replacement of any capital improvement, upon the common area, including fixtures and personal

property related thereto, provided that any such assessment shall have the approval of 2/3 of the votes of all members who are voting in person or by proxy at a meeting duly called for this purpose.

6. NOTICE AND QUORUM REQUIREMENTS: Written notice of any meeting called for the purpose of taking any action authorized under the preceding paragraphs, shall be sent to all members not less than 30 days, nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast 67% of all votes of the total membership shall constitute a quorum. If the required quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum of the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meetings shall be held more than 30 days following the preceding meeting.

7. RATE OF ASSESSMENT: Annual, special and capital assessments shall be fixed at uniform rates for all lots and may be collected on a monthly basis.

8. DATE OF COMMENCEMENT OF REGULAR ASSESSMENTS; DUE DATES: The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the common areas to the association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least 30 days in advance of each annual assessment. The annual assessment period shall be based upon the calendar year. Written notice of any change in the annual assessment shall be sent to every owner subject thereto. The due dates for payment of said assessment, which may be on a pro rated monthly basis, shall be established by the Board of Directors.

The Association shall, upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth the assessments on a specified lot have been paid. Furthermore, a first mortgage holder, upon request, is entitled to a written certificate from the association advising of any default by the lot owner of any obligation not cured within 60 days. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

9. EFFECTIVE NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION: Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within 30 days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 12% per annum, or such other rate as the Board of Directors may establish from time to time. The Association may bring an action at law against the owner personally

obligated to pay the same, or foreclose the lien against the property, and interest, cost of suit, and reasonable attorney's fees incurred shall be added to the amount of such assessment.

Each such owner by his acceptance of a deed to a lot, hereby expressly grants to the Association, its successors, assigns, or agents, the right and power to bring all actions against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust, and such owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other lot owners. The Association, acting on behalf of the lot owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

10. **NONUSE AND ABANDONMENT:** No owner may waive or escape personal liability for the assessments provided for herein, nor release the lot owned by him from the liens and charges hereof, by nonuse of any common area or abandonment of his lot.

11. **RIGHTS OF HOLDERS OF FIRST MORTGAGES:** The lien created hereunder upon any lot shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any first mortgage (meaning a mortgage with a first priority over other mortgages) or equivalent security interest on any lot, made in good faith and for value, recorded prior to the date any such assessments become due. Any holder of a first mortgage lien or equivalent security interest on a lot who comes into possession by virtue of foreclosure of a mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale will take said lot and the improvements appurtenant thereto free of any claims for unpaid assessment charges against said lot which accrue prior to the time such holder comes into possession of the lot, except for claims for a share of such expenses or charge resulting from a reallocation of such assessment or charges to all lots including the mortgaged lot. No such sale or transfer shall relieve such lot from liability for any assessment which thereafter become due or from the lien thereof.

12. **EXEMPT PROPERTY:** The following property subject to this declaration shall be exempt from the assessments created herein:

- (a) All properties dedicated to and accepted by a local public authority;
- (b) The common areas.

However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

13. **MANAGEMENT AGREEMENTS:** The Board of Directors may employ a manager or other person or persons who may contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association. Any contract with a person or firm appointed as a manager or managing agent shall not exceed three years in duration and shall be terminable by the Association with or without cause upon 30 days written notice thereof. Any such contract, and any other contract (except prepaid casualty and/or liability insurance policies not to exceed three years duration where the policy permits short term cancellation by the insured) with a third person wherein the third person is to furnish goods or services for any common area or the association, shall be limited to a duration of one year; provided, however, that such contracts may be renewable for four successive one year periods with the approval of each such period, by a vote or written consent of a majority of the members of the Association.

14. **INSURANCE ASSESSMENTS:** The Board of Directors, or its duly authorized agent, shall have the authority and shall also obtain a broad form public liability policy covering all common areas, including any buildings thereon, and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance coverage shall be written in the name of the Association as Trustee for each of the lot owners. It shall be the individual responsibility of each owner at his own expense to provide, as he sees fit, homeowners liability insurance, theft, and other insurance coverage, all real and personal property damage and loss. In the event of damage or destruction by fire or other casualty to any properties covered by insurance or written in the name of the association, the Board of Directors shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damage or destroyed portions of the properties to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, whose accounts are insured by federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third of the members of the Board of Directors. The Board of Directors shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction, or rebuilding of such destroyed common property and improvements thereon. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors may levy a special assessment against all lot owners in such proportions as the Board of Directors deem fair and equitable in light of the damage sustained.

D. **AMENDMENT:** The Developer reserves the right to amend this declaration as it may deem necessary, from time to time during

the development phase of the subdivision, as defined herein, for the purpose of bringing this declaration into compliance with the rules and regulations of any lending institution or governmental agency created for the purpose of making, underwriting, purchasing, or guaranteeing the repayment of loans for the purchase or construction of residential housing. This right of Developer to amend shall not require the vote or approval of any lot owner or Association member, and shall be independent of all other rights granted to or reserved by the Developer in this declaration and shall continue until all lots, in all phases of the subdivision, have been conveyed.

**E AVAILABILITY:** Upon request, and during normal business hours, the Association shall make available to all lot owners, lenders and the holders and insurers of first mortgages on any lot or residence located thereon, for the purpose of inspection or photocopying, current copies of this declaration, the Articles of Incorporation, By-laws and other rules and regulations governing the Association, together with the most recent financial statements of the Association.

### ARTICLE III

#### GENERAL RESTRICTIONS

1. **LAND USE AND BUILDING TYPE:** All lots shall be used for single family residential purposes and no business or commercial use shall be made of the same, nor any portion thereof, nor shall any resident's use of a lot endanger the health or disturb the reasonable enjoyment of any other owner or resident. The restriction against business or commercial use shall include, but not be limited to home occupations, such as day care centers, beauty and barber shops, dog breeding or grooming services, and automotive repair shops. The only buildings or structures permitted to be erected, placed or permitted to be located on any lot within the subdivision shall be a detached single family dwelling, or other approved structure as defined herein. All construction shall be of new materials, except used brick may be used so long as it conforms with the building or subdivision ordinances of the City of St. George, Utah. All structures shall be constructed in accordance with these zoning and building ordinances of the City of St. George, Utah, in effect from time to time. "Family" is defined to mean persons related by blood or marriage, by legal adoption, or by operation of law.

2. **MINIMUM SQUARE FOOTAGE AND MULTILEVEL RESTRICTIONS:** In no event shall the total finished square living area of any residence constructed on any lot within the subdivision, exclusive of porches, balconies, patios and garages, be less than 1600 square feet. The minimum total finished square footage of living area on the first level above ground and located within the area of a foundation for any residence constructed on any lot within the

subdivision, exclusive of porches, balconies, patios and garages shall not be less than 1600 square feet, with the following exceptions: Those residences constructed with a basement, that is living area on a level which does not extend above ground more than two feet, shall be allowed to have a total finished square footage of living area on the first level above ground of not less than 1400 square feet provided said dwelling is constructed with an attached two-car garage, as defined below; residences constructed with a second level of living area above the ground level, commonly referred to as a second story, shall be allowed to have a total finished square footage of living area on the first level of not less than 1400 square feet. Finished square footage of living area shall be defined as living area containing lighting fixtures, permanent floor coverings and painted or paper or vinyl covered walls and ceilings.

3. MULTILEVEL RESTRICTIONS: The following lots shall be restricted to single level structures or single level with a basement: lots 1 through 5 and 33 through 41, inclusive. Single level shall be defined as a residential dwelling in which the living area on the first level above ground is not located more than 12 inches from the natural ground level of the lot and shall exclude "split-level" structures.

4. GARAGES AND CARPORTS: All residences constructed on any lot in the subdivision shall be constructed with a fully enclosed, private attached or detached garage, built to accommodate not less than two (2), nor more than five (5) vehicles. The minimum size for any such garage shall be 20 feet by 20 feet. The height of the garage door headers shall not exceed 10 feet, subject to the following: one garage door header may exceed 10 feet if there are at least two garage door headers not exceeding 10 feet. All garages, whether attached or detached, shall be constructed of the same exterior materials as and in harmony and be architecturally compatible with the residence constructed on the lot. Detached garages shall not be constructed directly behind the residence. Plans for the construction of a detached garage shall first be submitted to the Architectural Control Committee for approval, according to the same procedures set forth herein for the approval of dwelling plans and shall in all respects comply with the provisions of this declaration with respect to the construction of residences. The construction of carports shall be subject to approval of the Architectural Control Committee.

5. LOT SIZE: Lot sizes as described on the recorded plat of the subdivision are considered minimum lot sizes and no persons shall further subdivide any lot other than as shown on the recorded plat of said subdivision.

6. BUILDING LOCATION: All buildings shall be located on all lots so as not to be in violation of St. George City ordinances with respect to minimum setbacks. The above notwithstanding, in no

event shall any portion of any building, including eaves or steps, encroach upon any other lot.

7. DRIVEWAYS AND WALKWAYS: The primary driveway, that is the driveway leading from the street to the garage, and primary walkways, that is walkways leading from the street or driveway to the entrance of the residence, shall be constructed of concrete, tile or brick pavers. All other driveways and walkways shall be constructed of a material commonly used for such purposes, however, in no event shall a driveway or walkway be constructed of dirt, sand, clay or roadbase material.

8. EXTERIOR MATERIALS: Exterior construction materials will be limited to stone, stone vernier, brick, brick vernier, stucco, metal siding, or other materials approved for use by the Architectural Control Committee. The following restrictions shall apply to all exterior construction materials: (1) stone or stone vernier shall not be used on more than 50% of the exposed front exterior surface; (2) metal siding shall not be used on more than 50% of the exposed front exterior surface; (3) all exterior materials shall be new materials, with the exception of brick or brick vernier which may be constructed of used brick; (4) No exposed wood construction materials shall be allowed, with the exception of wood accents, soffits, facie, and trim which shall be painted, varnished and/or stained and shall not constitute more than 10% of the exposed exterior surface of the structure; (5) the sides of any structure shall be constructed of the same materials and match architecturally the exposed front exterior surface of the structure; (6) structures constructed with more than 80% of the exterior surface comprising stucco or stucco-like material must be approved by the Architectural Control Committee, said approval to be based on the appearance and style of the structure, reserving to the Architectural Control Committee the right to suggest modifications to enhance the appearance of the structure.

9. ROOFING MATERIAL: Roofing material shall be limited to tile and wood shake varieties or other such materials approved for use by the Architectural Control Committee. No asphalt shingles or roof covering will be allowed in any form, with the exception of a strip or pathway of asphalt shingles as may be needed to install and service roof mounted heat pump or air conditioning units on tile roofs, in which event the asphalt shingles shall be of a commercial grade and weight, in a color to match the surrounding roof materials and of a width not to exceed two (2) feet on each side of the heat pump or air conditioning unit.

10. ARCHITECTURAL RESTRICTIONS: The following architectural restrictions shall apply to all dwellings built on all lots: (1) the front exterior face of each dwelling shall be broken up with a variation of at least three feet; (2) no flat roofs, with or without facades; (3) no mansard roofs; (4) all roof

surfaces shall have a minimum slope of 4/12.

11. EASEMENTS: Easements for installation and maintenance of any and all utilities and drainage facilities are reserved as shown on the recorded plats. Within these easements no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or replacement of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible. The title holder of each lot shall from time to time grant rights over, across, on, under and upon these easements for such additional uses of services as may be provided from time to time by a public authority or private utility company. Developer or any public authority shall have the right of access to such easements for the purpose of installing, repairing, maintaining, removing or replacing any such utilities or portions thereof and for removing and clearing any vegetation which could interfere with such utilities or drainage as aforesaid.

12. TEMPORARY OR OTHER STRUCTURES: No structure of a temporary nature and no trailer, bus, basement, tent, shack, garage, or other outbuildings shall be used at any time as a residence, either temporarily or permanently, nor shall any such structures be erected or placed on any lot at any time. No old or second-hand structure shall be moved onto any said lots, it being the intention that all dwellings and other buildings be erected on said lots, or within said subdivision, shall be new construction of good quality, workmanship, and materials.

13. NUISANCES: No noxious or offensive activity shall be carried on upon any lot, part or portion of the property, nor shall anything be done thereon which may become an annoyance to the neighborhood.

14. OIL AND MINING OPERATIONS: No oil drilling, quarrying or mining operations of any kind shall be permitted upon or in any lot, part or portion of the property, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon or in such lot, part or portion of the property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot or portion of the property.

15. ANIMALS: No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, part or portion of the property except that dogs, cats or other domesticated household pets may be kept in a residence constructed on a lot, or on a lot in a suitable enclosure, provided they are not kept on any lot so



as to be visible from other lots or residences, and they are not kept, bred or maintained for any commercial purpose. Such animals as are permitted shall be strictly controlled and kept pursuant to all applicable laws and ordinances.

16. **GARBAGE AND REFUSE DISPOSAL:** No lot, part or portion of the property, shall be used or maintained as dumping ground for rubbish, rubble, trash, garbage or other waste. Such trash, rubbish, rubble, garbage or other waste shall not be kept except in sanitary containers. No rubbish, trash, papers, junk or debris shall be burned upon any lot, part or portion of the property.

17. **BUILDING MATERIALS:** No lot, part or portion of the property shall be used or maintained as a storage for building materials except during a construction phase. Once a dwelling is occupied or made available for sale, all building materials shall be removed or stored inside such dwelling.

18. **WATER SUPPLY:** No individual water supply system shall be used or permitted to be used on any lot, part or portion of the property.

19. **SEWAGE DISPOSAL:** No individual sewage disposal system shall be permitted on any lot, part or portion of the property.

20. **BOATS, RECREATIONAL AND MOTOR VEHICLES:** No boats, motorcycles, trailers, buses, motorhomes, campers or other vehicles shall be parked or stored upon any lot except in the side or back yard area. In no event shall any such vehicles be parked on the driveway or in the front yard area of any lot or on any street located within the subdivision. All such vehicle shall be properly registered and licensed, or meet such other governmental approval as may be required.

21. **ANTENNA:** No external radio, television, dish or other antenna of any kind or nature, or device for the reception or transmission of radio, microwaves or other similar signals shall be constructed or maintained on any lot or residence in such a manner as to extend above the height of the residence on the lot nor shall such devices be located on any lot or on any residence on any lot so as to be visible from the street fronting said lot. Satellite dishes shall only be allowed in backyard areas and only if screened from the view of other lots.

22. **SAFE CONDITION:** Without limiting any other provision of this declaration, each owner shall maintain and keep such owner's lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other owners of their respective lots.

23. **SITE DISTANCE AT INTERSECTIONS:** No structure, fence, wall, hedge or shrub planting which obstructs sightlines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the streetlines or in the case of a rounded property corner from the intersection from the street property lines extended. The same sightline limitation shall apply on any lot within the 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at such height to prevent obstruction of such sightlines.

24. **LANDSCAPING:** Within six (6) months after the completion of construction of the residence upon a lot, the owner shall complete the landscaping in the front yard and side yards of the lot. Within one (1) year from the completion of construction of the residence upon a lot, the owner shall complete the landscaping in the back yard of the lot. Landscaping shall include, but not be limited to, the planting of lawn, grass, trees, or other appropriate ground cover or shrubbery. No poisonous or noxious plants or vegetation shall be allowed, including, but not limited to, plants such as oleanders. The planting of trees, shrubs and grass are encouraged however, landscaping using a desert or arid motif is permitted, subject to compliance with the restrictions and conditions contained herein. All landscaping and yards shall be kept and maintained in an orderly and sightly manner, free of weeds and garbage. Should any lot owner fail to comply with the provisions of this section, the Architectural Control Committee shall have the right to seek an order from a court of proper jurisdiction requiring specific performance to comply with the provisions hereof, and shall also have the authority to complete or clean up the landscaping and require the lot owner to pay a reasonable amount for such completion or clean up. All attorney's fees and costs incurred in any such action, and all expenses incurred in connection with such completion shall constitute a lien on such lot owner's lot, and shall also be a personal obligation of said lot owner, enforceable at law, until such payment is therefor made.

25. **EXCAVATIONS AND FILL:** Except for excavations for an approved foundation, basement or walk-out basement, no excavations or removal of dirt are permitted on any lot below 12 inches below the present grade of such lot. The surface of no lot shall be raised above the natural surface, that being the surface on the date of purchase, or 18 inches above the level of the curb, whichever is greater.

26. **OUTSIDE LIGHTING REQUIREMENTS:** Any light used to illuminate garages, patios, parking areas, driveways, walkways, or

for any other purpose shall be so arranged as to reflect light away from adjacent residences and away from the vision of passing motorists.

27. **DAMAGE TO STREET, CURB OR GUTTER:** Any damage inflicted on existing improvements such as curbs, gutters, streets, concrete sidewalks and such by the purchasers or owner and/or their agents of any lot must be repaired as soon as possible after such damage is discovered, and the expense of such repair shall be borne by the purchaser or owner.

28. **STORAGE OR UTILITY BUILDINGS:** All storage or utility buildings, or such structures intended for such uses must be built in the same architectural style and constructed from the same exterior construction materials as the residential dwelling on the lot. Plans for the construction of such buildings shall be submitted to the Architectural Control Committee in the same manner as with residential structures and be subject to its approval as set forth in this declaration.

30. **DOMES STRUCTURES:** No dome structures of any type are allowed.

31. **WALLS AND OTHER BARRIERS:** Walls, fences and barriers shall be constructed of materials manufactured for such purposes and erected in a proper and safe manner. Prior to construction, plans for walls, fences, and barriers shall be submitted to the Architectural Control Committee for approval. Permitted materials shall be wood, chain link, concrete, poured concrete, concrete block, cinder block, brick, stone, or stucco of a color which blends with the exterior of the structure on the lot, said materials only to be used in compliance with the conditions herein contained. Wood fences shall be constructed of common wood fencing material and shall be painted, sealed, treated, stained or varnished. No wire mesh is allowed as a fencing material and poured concrete or concrete sections are allowed only if such materials are constructed with a finished surface. Chain link fencing shall only be allowed in the back yard and side yards. Walls and fences shall not exceed two (2) feet in height in the front yard, with the exception of the wall or fence along the side lot lines in the front yard which shall not exceed four (4) feet in height. Walls and fences in the side and back yards shall not exceed six (6) feet in height. All walls and fences must comply in all respects with St. George City ordinances. All walls, fences and barriers shall be kept and maintained in a visually pleasing manner and a state of good repair, and the owner's failure to do so may result in action by the Architectural Control Committee to enforce the conditions herein contained.

32. **ROOF MOUNTED HEAT PUMPS AND SOLAR PANELS:** Solar panels, heat pumps and/or air conditioning units shall be allowed to be mounted on roofs only if they cannot be viewed or seen from

the street in front of the lot.

**33. CONSTRUCTION COMPLETION:** Once construction on a residence is commenced, construction shall proceed in a substantial manner until the residence is completed. Construction shall be completed, that is the residence shall be certified for occupancy within 9 months from the date of start of construction.

**34. TIME SHARING PROHIBITED:** Neither the Developer nor the owner of any lot shall allow or permit any form of time-share ownership.

**35. LEASES:** In a lease or rental agreement between a lot owner and lessee, lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this declaration and By-laws and rules and regulations of the Association, and that any failure by lessee to comply with the terms of this Declaration or Association By-laws or rules and regulations shall be a default under the terms of the lease. Furthermore, all such leases shall be in writing and shall include language to the effect that the lessee has received a copy of the Declaration and Association By-laws, has read and understands them, and agrees to be bound by their terms. In no event shall a lease agreement be for a term less than 30 days.

**36. SIGNS:** No billboard or sign of any character shall be erected, posted, painted or displayed upon or about any lot, part or portion of the property. No sign of any kind, except signs used for the advertisement of a lot or residence for sale or rent, limited to one sign per lot of not more than five square feet in size, shall be used, placed, or displayed to the public view on any lot, part or portion of the property. The above notwithstanding, signs used by the Developer to advertise the development and/or initial sale of any lot, part or portion of the property shall be excluded from this restriction. During the construction of a residence on a lot, one sign, not more than 16 square feet in size, advertising or publicizing the contractor of the residence, shall be allowed. Any such sign shall be removed upon completion of construction, as defined herein. The Architectural Control Committee shall have the power to remove or cause the removal of any billboard or sign erected in violation of this section, and any cost or expense incurred in conjunction with such removal shall be borne by the lot owner.

**37. INOPERABLE MOTOR VEHICLES:** No type of motor vehicle which is inoperable for any reason shall be permitted to be parked upon any street, lot, part or portion of the property, except in an approved, enclosed garage. In the event any inoperable motor vehicle remains outside upon any street, lot, part or portion of the property for a period exceeding 30 days, the Developer, or Architectural Control Committee may remove the inoperable motor vehicle after a 10 day written notice. The cost and expense of

such removal shall be borne by the lot owner on which or in front of which the inoperable vehicle was parked. For the purpose of this section, "inoperable motor vehicle" shall mean any motor vehicle which is unable to be operated in a normal manner upon the streets under its own power, or is unlicensed or unregistered for a period of not less than 90 days.

38. TRUCKS AND TRAILERS: Trailers and motorhomes with a length in excess of 50 feet and trucks of a gross vehicle weight over 10,000 pounds are not allowed to be placed, parked, or stored upon any street, lot, part or portion of the property.

#### ARTICLE IV

##### DURATION, ENFORCEMENT, AMENDMENT

1. DURATION OF RESTRICTIONS: The covenants and restrictions contained herein shall run with and bind the land for a period of 50 years from the date this document is recorded, after which such time said covenants and restrictions shall be automatically extended for successive periods of 10 years each, subject to amendment as herein set forth. During the development phase (defined below) the covenants and restrictions contained herein may be modified, amended or repealed in whole or in part at any time from time to time by the developer or his successors or assigns, by recorded instrument. The "development" phase shall be the time from the date of the recording of the plat of the first phase of the subdivision until such time as Developer transfers legal title to more than 90% of the number of lots in all phases of the subdivision to bona fide purchasers.

Upon completion of the development phase, as defined above, the covenants and restrictions contained herein may be amended by a recorded instrument signed by no less than the owners of 75% of the number of lots. Any amendment after the completion of the development phase shall require a 30 day written notice of any such proposed amendment be sent to every owner of any lot, part or portion of the property.

2. PERPETUITIES: If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints upon alienation, or (c) any other applicable statute, law or analogous thereto or otherwise imposing limitations upon a time for which such covenants may be valid, then the applicable provisions shall continue and endure only until the expiration of 21 years after the death of the last to survive of the class of persons consisting of all the lawful descendants of Dean T. Terry living at the date of the recording of this document.

3. NOTICES: Any notice required under the provisions of

this document to be sent to any lot owner shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such owner.

4. **CONSTRUCTION AND SEVERABILITY:** All other restrictions, covenants and conditions contained in this document shall be construed together. Invalidation of any one of said restrictions, covenants or conditions, or any part thereof, shall in no wise affect the enforceability or applicability of any of the remaining restrictions, covenants or conditions, or parts thereof.

5. **VIOLATION CONSTITUTES NUISANCE:** Every act or omission whereby any restriction, covenant or condition in this document set forth is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by appropriate legal action by the Developer or any owner or owners from time to time of any lot or portion of the property. Remedies hereunder shall be deemed cumulative and not exclusive.

6. **ENFORCEMENT:** Each and all other restrictions, covenants and conditions contained in this document is and are for the benefit of the developer, and of the owner or owners from time to time of any lot, part or portion of the property, each such restrictive covenant and condition shall inure to the benefit of and pass with each and every lot, part or portion of the property, and shall apply to and be binding upon each and every successor in interest. Said restrictions, covenants and conditions are and shall be deemed covenants of equitable servitude, and the actual or threatened breach thereof or the continuance of any such breach may be enjoined, abated, or remedied by appropriate proceedings at law or in equity by the developer or owner or owners from time to time of any lot, part or portion of the property; provided, however, that no such breach shall effect or impair the lien of any bona fide mortgage or trust deed which shall have been given in good faith and for value, except that any subsequent owner of said lot, part or portion of the property shall be bound and obligated by said restrictions, covenants and conditions, whether such ownership is obtained by foreclosure at a trustee's sale, or otherwise.

7. **RIGHT TO ENFORCE:** The provisions contained in this declaration shall bind and enure to the benefit of and be enforceable by the Developer, by the owner or owners from time to time of any lot, part or portion of the property, their and each of their legal representatives, heirs, successors and assigns, and failure by the developer or any such owner, or their respective legal representatives, heirs, successors, or assigns, to enforce any of said restrictions, covenants, or conditions shall in no event be deemed a waiver of the right to do so thereafter. In addition, the City of St. George may enforce the terms of this declaration rather than the terms of the subdivision building and zoning ordinances. In the event any covenant, condition or restriction contained herein is inconsistent or in conflict with

restrictions set forth in the subdivision building, zoning or other ordinances of the City of St. George, the ordinances shall govern so long as the restrictions contained in said ordinances are more restrictive than the terms of this declaration. Where the terms of this declaration are more restrictive than those contained in the ordinances contained in the City of St. George, the covenants, conditions and restrictions contained in this declaration shall govern.

**8. ARCHITECTURAL CONTROL COMMITTEE:** The Architectural Control Committee which is vested with the powers described herein shall consist initially of at least three persons appointed by the Developer, without regard as to whether or not said persons reside within the development. In the event any member of the Architectural Control Committee is unable to serve or act upon matters brought before the Architectural Control Committee, for whatever reason, the Developer may appoint temporary members of the Architectural Control Committee to act in their stead. Prior to the commencement of any excavation, construction or remodeling of any structure or of any addition of any structure, there shall first be filed with the Architectural Control Committee two complete sets of building plans and specifications, together with a site or plot plan indicating the exact part of the building site which the building site which the improvements will cover, and no such work shall commence unless and until the Architectural Control Committee shall endorse on one set of such plans its written approval that such plans are in compliance with the covenants, conditions and restrictions herein set forth and with the standards herein or hereafter established by said committee pursuant hereto. Said committee shall have the right to refuse to approve any such plans or specifications and shall have the right in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings and the effect of said building or other structure so planned and the outlook from adjacent or neighboring property. The committee may promulgate and maintain a list of standards for guidance in approving or disapproving plans and specifications pursuant to this section. The second set of such plans shall be filed as a permanent record with the Architectural Control Committee. In the event said committee fails to approve or disapprove in writing any such plans within 15 days after their submission thereof to the committee, then such approval shall be deemed to have been given. The Developer shall have the right to appoint all members of the Architectural Control Committee until such time as title to more than 90% of the number of lots in the development have been conveyed to bona fide purchasers. When title to more than 90% of all of the lots in the development has been conveyed by the Developer, a majority of the owners of lots, parts or portions of the property subject to this declaration shall elect and appoint members of the Architectural Control Committee, which committee shall thereafter be vested with the powers described herein and

shall have jurisdiction over all of the properties subject to this declaration.

9. ASSIGNMENT OF POWERS: Any and all rights and power of the Developer herein contained may be delegated, transferred or assigned. Wherever the term "Developer" is used herein it includes Developer and its successors and assigns.

10. AMENDMENT: Except as otherwise provided herein, this declaration may be amended by an instrument signed by not less than two-thirds of the owners of all lots, which amendment shall be effective upon recordation in the office of the recorder of Washington County, State of Utah. Prior to any material amendment to this declaration, written notice shall be sent to all lot owners and all holders of first mortgage liens, as heretofore provided.

IN WITNESS WHEREOF, the undersigned has hereunto executed this document this 6th day of March, 1990.

DEAN T. TERRY INVESTMENTS,  
a Utah corporation, Developer

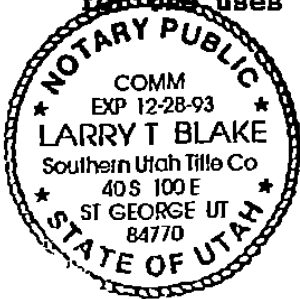
*Dean T. Terry*  
By: Dean T. Terry, President

ATTEST:

*Carol F. Terry*  
Carol F. Terry, Secretary

STATE OF UTAH                    )  
                                          ) SS.  
COUNTY OF WASHINGTON)

On the 6th day of March, 1990, personally appeared before me Dean T. Terry, President of Dean T. Terry Investments, a Utah corporation, and Carol F. Terry, Secretary of said corporation, who being first by me duly sworn did say that they executed the foregoing instrument for and on behalf of said corporation by authority of a resolution of its Board of Directors for the uses and purposes set forth therein.



*Larry T. Blake*  
NOTARY PUBLIC LARRY T BLAKE  
Residing at: St George, Utah 84770  
My Commission Expires: 12-28-93





**BULLOCH BROTHERS ENGINEERING INC.**  
**ENGINEERS · SURVEYORS PLANNERS**

P.O. BOX 1405  
CEDAR CITY UTAH 84720  
(801) 886-8582

2 WEST ST GEORGE BLVD.  
ST GEORGE UTAH 84770  
(801) 828-4700  
FAX (801) 828-4785

P.O. BOX 885  
MESQUITE, NEVADA 89024  
(702) 348-5101

*March 1, 1990*

*Description for Dean Terry  
(Sunset Plateau Park)*

*Beginning at a point N 89° 15' 13" E, 1341.46 feet along the section line and S 0° 56' 03" E, 1868.84 feet along the 1/16th section line from the North 1/4 corner Section 22, Township 42 South, Range 16 West, Salt Lake Base and Meridian, thence S 89° 15' 36" W, 166.50 feet, thence N 1° 01' 33" W, 450.00 feet, thence N 89° 15' 36" E, 119.80 feet, thence S 9° 01' 42" E, 336.83 feet to said 1/16th section line; thence S 0° 56' 03" E, 116.68 feet along said 1/16th line to the point of beginning. Containing 1.5423 acres.*

*Subject to a 50 foot wide easement for roadway purposes, the exact location to be determined.*

*wp50memo1768des2*

EXHIBIT "A"

0361817 Bk 0552 Pg 0786