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DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR SUNCREST, A PLANNED COMMUNITY

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**DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR SUNCREST, A PLANNED COMMUNITY**

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR SUNCREST, A PLANNED COMMUNITY, is dated December 21, 1999. It is made by DAE/WESTBROOK, L.L.C. a Delaware limited liability company.

RECITALS:

- A. Capitalized terms in this Declaration are defined in Article I.
- B. Declarant holds legal title or has the option to purchase certain real property which consists of approximately three thousand six hundred and seventy-eight (3,678) acres of land located in Salt Lake County, Utah, and Utah County, Utah.
- C. Declarant desires to develop, in stages, the aforesaid lands into a planned community consisting of residential, office, commercial, recreational and other areas and uses.
- D. At full development it is intended, without obligation, that said community will collectively have several residential neighborhoods, office parks, recreational areas which may include, without obligation, tennis courts, swimming pool and clubhouse, open spaces, walkways, a trail system, drives and other social, commercial, civic and cultural buildings and facilities.
- E. As part of the various stages of development of the aforesaid lands, Declarant intends, without obligation, to record various Plats; to dedicate portions of SunCrest to the public for streets, roadways, drainage, flood control, parks and general public use; and to record various Neighborhood Declarations and Supplemental Declarations covering portions of SunCrest, which Neighborhood Declarations and/or Supplemental Declarations will designate the purposes for which such portions of SunCrest may be used and may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to such portions of SunCrest.
- F. Declarant intends, without obligation, to annex the Additional Land into the SunCrest planned community, which land is not presently included in the SunCrest planned community.
- G. As part of the development of the aforesaid lands, Declarant intends, without obligation, to sell various parcels included in SunCrest to various Merchant Builders and to record Neighborhood Declarations and/or Supplemental Declarations containing restrictive covenants on the parcels sold, and those Merchant Builders with the Declarant's approval, may record Plats and make public dedications on the parcels purchased.

H. Declarant desires to form the Master Association as a non-profit corporation for the purpose of benefitting SunCrest and its Owners and Residents which non-profit corporation will (1) acquire, construct, operate, manage and maintain a variety of Community Areas and other areas within SunCrest; (2) establish, levy, collect and disburse the Assessments and other charges imposed hereunder; and (3) as the agent and representative of the Members of the Master Association and Residents of SunCrest, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of SunCrest.

I. Declarant is preparing the necessary documents for the incorporation and organization of the Master Association and may, without obligation, seek approval thereof by FNMA, FHLMC, FHA, VA and by any other governmental agencies or financial institutions whose approval Declarant deems necessary or desirable.

J. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners, Mortgagees, Residents, occupants or other holders of an interest in SunCrest, or any part thereof, certain easements and rights and certain mutually beneficial covenants, restrictions and obligations with respect to the proper development, use and maintenance of the various parcels and neighborhoods within the SunCrest planned community.

K. Declarant desires and intends that the Owners, Mortgagees, lessees and trustees under trust instruments or deeds, occupants, Residents and other persons hereafter acquiring any interest in or otherwise utilizing property at SunCrest, shall at all times enjoy the benefits of, and shall hold their interest subject to the rights, easements, privileges, covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the aesthetic and cooperative aspects of the SunCrest planned community and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the SunCrest planned community.

L. Declarant therefore wishes to subject all of SunCrest to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements hereinafter set forth.

M. In order to cause the Covenants to run with SunCrest and to be binding upon SunCrest and the Owners thereof from and after the date this Declaration is Recorded, Declarant hereby makes all conveyances of SunCrest, whether or not so provided therein, subject to the Covenants herein set forth; and by accepting deeds, leases, easements or other grants or conveyances to any portion of SunCrest, the Owners and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by all of the Covenants (including but not limited to the obligation to pay Assessments) hereinafter set forth except to the extent such persons are specifically excepted herefrom.

NOW, THEREFORE, DECLARANT hereby declares, covenants and agrees as follows:

ARTICLE I

DEFINITIONS

The following words, phrases or terms used in this Declaration (including that portion hereof headed "Recitals") shall have the following meanings:

1.1 "Additional Land" shall mean, refer to, and consist of the following described parcels of real property situated in Salt Lake County, Utah, and Utah County, Utah and described in Exhibit B to this Declaration which is attached hereto and incorporated herein by this reference. In addition, the Additional Land shall also consist of any other real property located not more than two miles from the exterior boundaries of the property described in Exhibit A or Exhibit B. A description of the Additional Land is set forth in this Declaration solely for purposes of identification. This Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon any portion of the Additional Land unless and until such portion is added to the existing SunCrest project in accordance with the provisions of Article XVI of this Declaration.

1.2 "Annual Assessment" shall mean the charge levied and assessed each year against each Lot, Parcel and the Owner thereof pursuant to Section 7.2, hereof.

1.3 "Apartment Development and/or Apartment Development Use" shall mean a Parcel or portion thereof which is dedicated for such purpose in a Neighborhood Declaration, Supplemental Declaration or in the Master Land Use Plan, and is comprised of Rental Apartments and surrounding areas which are intended, as shown by the site plan therefor approved by the Municipal Authority and the Design Review Board or otherwise, as one integrated apartment operation under the same ownership.

1.4 "Articles" shall mean the Articles of Incorporation of the Master Association as the same may from time to time be amended or supplemented.

1.5 "Assessable Property" shall mean any Lot or Parcel, except such part or parts thereof as may from time to time constitute Exempt Property.

1.6 "Assessment" shall mean an Annual Assessment, Special Assessment and/or Maintenance Charge imposed by the Master Association.

1.7 "Assessment Lien" shall mean the lien created and imposed by Article VII;

1.8 "Assessment Period" shall mean the term set forth in Section 7.6.

1.9 "Board" shall mean the Board of Trustees of the Master Association.

1.10 "Bylaws" shall mean the Bylaws of the Master Association as the same may from time to time be amended or supplemented.

1.11 "Church Use" shall mean use of property at SunCrest by a church or religious organization for a permanent church facility including a chapel used for religious services and which may be used for church cultural and recreational activities. Residential Areas and Commercial Areas may not be utilized for Church Use, except as permitted by a Neighborhood Declaration, Supplemental Declaration or the Declarant. No Dwelling Unit may be utilized for Church Use.

1.12 "Cluster Residential Development and/or Cluster Residential Use" shall mean Lots in planned unit developments or subdivisions with Dwelling Units intended for Single Family occupancy and may include those types of residential housing arrangements known as townhouses, clustered housing, duplexes, zero-lot line housing and similar arrangements, together with related areas intended for the use and enjoyment of the Owners and Residents of the Lots in the cluster development.

1.13 "Commercial or Commercial Area(s)" shall mean any Parcel or portion thereof owned or leased by one Person or a group of Persons, which is used for one or more commercial purposes, including, but not limited to the following: Apartment Development, Shopping Center Development, General Commercial Development, Office/Industrial Development, Resort, Hotel or Motel Development or at the option of Declarant, Timeshare Development, and other areas used for commercial or other non-Residential purposes. Commercial Areas shall not include any Community Areas owned by the Master Association or other Community Areas owned by a Neighborhood Association or owned in common by Residential Condominium Unit Owners. At such time as an Apartment Development is converted to a Residential Condominium Development, the property shall cease to be a Commercial Area and shall thereafter be a Residential Area.

1.14 "Commercial Condominium Development and/or Commercial Condominium Development Use" shall mean a Condominium Development intended for commercial use.

1.15 "Community Area" and "Community Areas" shall mean (a) all Master Association Land including (i) the Village Green Park as identified on the Master Land Use Plan which is utilized as the SunCrest entrance area excluding the Welcome Center Building, land and adjacent parking and (ii) entry monument areas including the entry monuments related to projects subject to Neighborhood Declarations and/or Supplemental Declarations constructed by developers or Merchant Builders; (b) all areas identified as open space on the Master Land Use Plan, including the Trail System, which may or may not be dedicated to the public or to a Municipal Authority, but only until such open space is dedicated to a Municipal Authority; (c) all land within SunCrest which the Declarant, by this Declaration or other recorded instrument, makes available for use by Members of the Master Association including enhanced parkways and median strips and areas between roadways and lots even if owned by a Municipal Authority; (d) all land within SunCrest which the Declarant indicates on a Plat, Neighborhood Declaration or Supplemental Declaration is to be used for landscaping, drainage, and/or flood control for the benefit of SunCrest and/or the general public and is to be dedicated to the public or a Municipal Authority upon the expiration of a fixed period of time, but only until such land is so dedicated; (e) all land or right-of-way easements within SunCrest which are dedicated to the public or to a Municipal Authority, but which such Municipal Authority or other governmental agency requires the Master Association to maintain; (f) areas on a Lot or Parcel within easements granted to the Master Association or its Members for the location,

construction, maintenance, repair and replacement of a wall, which easement may be granted or created on a Plat or Neighborhood Declaration or Supplemental Declaration or by a Deed or other conveyance accepted by the Master Association.

1.16 "Community Expense Fund" shall mean and refer to the fund created or to be created pursuant to the provisions of Article VII of this Declaration and into which all monies of the Master Association shall be deposited. Two separate and distinct funds shall be created and maintained thereunder, one for operating expenses and one for capital or reserve expenses which together shall constitute the Community Expense Fund.

1.17 "Community Expenses" shall mean and refer to those costs and expenses arising out of or connected with the maintenance and operation of SunCrest and the Master Association as described in Article VII hereof and which determine the Assessments made to Owners.

1.18 "Condominium Development" shall mean a condominium ownership regime established under the laws of the State of Utah including both Residential and Commercial Condominium Developments.

1.19 "Condominium Unit" shall mean a condominium unit (as defined under Utah Code Ann. § 57-8-1 et seq.), including its appurtenant interest in all Community Areas, established under Utah law. Such term shall not include a Rental Apartment in an Apartment Development.

1.20 "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

1.21 "Declarant" shall mean DAE/WESTBROOK, L.L.C., a Delaware limited liability company and the successors and assigns of Declarant's rights and powers hereunder.

1.22 "Declaration" shall mean this DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR SUNCREST, A PLANNED COMMUNITY, as amended or supplemented from time to time.

1.23 "Deed" shall mean a deed or other instrument conveying the fee simple title in a "Lot" or "Parcel".

1.24 "Design Guidelines" means those design guidelines for development of all the real property subject to this Declaration as established by the Declarant and/or the Design Review Board from time to time. Declarant or the Design Review Board reserves the right to modify the Design Guidelines. The Design Guidelines shall impose certain restrictions with respect to a Dwelling Unit's mandatory minimum and maximum square footage. The Design Guidelines also include certain signage guidelines for development of all the real property subject to this Declaration as established by the Declarant and/or the Design Review Board from time to time. There is no assurance that such Design Guidelines will not change from time to time and they may change with respect to unsold Parcels or Lots, subject to this Declaration, after one or more other such Parcels or Lots have been sold by Declarant.

1.25 "Design Review Board" shall mean the committee created pursuant to Article XI.

1.26 "Development Guidelines" shall mean those development guidelines for SunCrest which relate to the development and construction of roadways, major infrastructure and other matters related to both off-site and on-site development of Parcels and Lots, but excluding the guidelines for construction of Dwelling Units and buildings on Lots and Parcels which are governed and controlled by the Design Guidelines. The Development Guidelines are an exhibit to the Master Development Agreement between Declarant and Draper City.

1.27 "Dwelling Unit" shall mean any building or portion of a building situated upon a Lot or Parcel designed and intended for use and occupancy as a residence by a Single Family.

1.28 "Eligible Mortgagee" shall mean and refer to a Mortgagee which has requested notice of certain matters from the Master Association in accordance with Section 17.1 of this Declaration.

1.29 "Exempt Property" shall mean the following parts of SunCrest:

1.29.1 All land and Improvements owned by or dedicated to and accepted by the United States, a Municipal Authority, or any political subdivision thereof, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective including all Municipal Authority Property and all property utilized for General Public Uses;

1.29.2 All Master Association Land, for as long as the Master Association is the owner thereof;

1.29.3 All land utilized for Church Use.

1.29.4 Each other property, including each Lot or Parcel, while owned by Declarant or a Declarant related developer entity, until the earliest to occur of (i) the acquisition of its record title by a Merchant Builder or other Person, other than Declarant or a Declarant related developer entity, (ii) the 60th day after the Municipal Authority having jurisdiction thereover issues a certificate of occupancy for the first Dwelling Unit or building hereafter constructed thereon, or (iii) the 10th anniversary of the date on which the real property comprising such Exempt Property is subjected to this Declaration. Declarant or a Declarant related developer entity may expressly waive its right to an exemption from Assessments as to some or all Exempt Properties of which it is then the Owner, by a Supplemental Declaration identifying such Exempt Properties and signed by it and all Mortgagees of such Exempt Properties. In such event, such exemption shall terminate as to each such identified Exempt Property when such Supplemental Declaration is Recorded. Any such waiver shall run with the title to each such Exempt Property and bind its subsequent Owners, including Declarant or any Declarant related developer entity.

1.29.5 All Exempt Property described herein shall be exempt from Assessments and Membership in the Master Association (provided, however, the Declarant or a Declarant

related entity shall remain a Member in the Master Association at all times as a Class B Member with voting rights, notwithstanding its temporary exemption status from required Assessment payments) and its associated privileges and responsibilities, but shall nevertheless be subject to all other provisions of this Declaration, including but not limited to, the use restrictions and architectural controls. Provided, however, at the sole and exclusive option of Declarant, property described in Section 1.29.1 shall be fully exempt from all of the terms and provisions of this Declaration.

1.30 "FHA" shall mean and refer to the Federal Housing Administration.

1.31 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation.

1.32 "First Mortgage" means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.33 "First Mortgagee" means any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage.

1.34 "FNMA" shall mean and refer to Federal National Mortgage Association.

1.35 "General Commercial Development or General Commercial Use" shall mean those types of developments and uses in a Commercial Area designated by the Design Guidelines and/or Master Land Use Plan as General Commercial, including but not limited to Commercial Condominium Developments, Shopping Center Use, Office/Industrial Use, Resort, Hotel and Motel Use or any other development denominated as General Commercial Use by Declarant, including Timeshare Use.

1.36 "General Public Uses" shall mean those types of uses designated by the Master Land Use Plan as General Public Uses including but not limited to school sites and parks conveyed, assigned, or transferred by Deed or other written instrument to a Municipal Authority.

1.37 "Governing Documents" shall mean this Declaration and such recorded amendments, Neighborhood Declaration(s), Supplemental Declaration(s), the Bylaws, the Articles, the SunCrest Rules, the Design Guidelines, the Development Guidelines and the Board's resolutions.

1.38 "Improvement(s)" shall mean any improvement now or hereafter constructed in SunCrest and includes anything which is a structure for purposes of applicable Municipal Authority law including but not limited to any building, structure, shed, covered patio, fountain, pool, radio or television antenna or receiving dish, tree, shrubbery, paving, curbing, landscaping, tank, fence, mailbox, sign, newspaper vending and distribution machines, overnight delivery service drop boxes, any excavation or fill having a volume exceeding ten (10) cubic yards and any excavation, fill, ditch, diversion, dam, or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel.