



WHEN RECORDED, MAIL TO:

Washington City Public Works Bldg
Attn: Public Works Director
1305 E. Washington Dam Rd.
Washington City, UT 84780

TAX ID: W-209-D-1
(Terry Parcel)

TAX ID: W-5-2-1-122
(City Parcel)

AGREEMENT FOR THE INSTALLATION & PERPETUAL MAINTENANCE OF
LANDSCAPING & SLOPE IMPROVEMENTS & ATTENDANT EASEMENTS

This AGREEMENT FOR THE INSTALLATION & PERPETUAL MAINTENANCE OF LANDSCAPING & SLOPE IMPROVEMENTS & ATTENDANT EASEMENTS (the "**Agreement**") is made effective as of April 17, 2018, ("**Effective Date**") by and between WASHINGTON CITY, a Utah municipality, ("**City**" or "**Grantor**") and DEAN T. TERRY INVESTMENTS, LLC, a Utah limited liability company, 2121 W. Sunset Blvd., St. George, Utah, 84770, ("**Terry Investments**" or "**Grantee**"). City and Terry Investments are sometimes referred to individually as a Party ("**Party**") or collectively as the Parties ("**Parties**").

RECITALS

WHEREAS, Terry Investments is the owner and developer of an approximately forty-three and 33/100ths acre (43.33 ac.) parcel of land, identified as Washington County Property Tax I.D. No. W-209-D-1, described in the attached "**Exhibit B—Terry Property Description**", located generally along the public roadways of Commerce Way and Washington Parkway within Washington City and currently zoned by the City as Commercial (the "**Terry Property**").

WHEREAS, Terry Investments is currently undertaking general earth grading work on the Terry Property as part of its initial site development process. Terry Investments has requested use of a certain portion of City land located adjacent to and sloping down in elevation from a portion of the Terry Property ("**City Property**"), described in the attached "**Exhibit C—City Property Description**". Terry Investments seeks City permission to construct and install (and thereafter perpetually maintain) certain landscaping and slope improvements ("**Landscaping & Slope Improvements**"), which request also requires City approval of a temporary non-exclusive easement on the City Property to Terry Investments for the initial construction and installation of the Landscaping & Slope Improvements ("**Temporary Construction Easement**") and thereafter a non-exclusive and limited easement for maintaining the Landscaping & Slope Improvements ("**Maintenance Easement**").

WHEREAS, in collaboration with the City's Public Works Department, Terry Investments has provided a Landscaping & Slope Improvements plan, which reflects the improvements proposed to be made and perpetually maintained by Terry Investments (and/or its successor(s)-in-interest) upon the City Property pursuant to this Agreement. The proposed plan is attached hereto and incorporated herein as **Exhibit A** ("**Landscape & Slope Plan**").

WHEREAS, City and Terry Investments agree that the health, safety and welfare of the City and its citizens require that the Landscaping & Slope Improvements be properly installed/constructed by Terry Investments and thereafter perpetually maintained by Terry Investments and/or its successor(s)-in-interest consistent with the language and intent of this Agreement.

WHEREAS, City and Terry Investments believe that the proposed installation and perpetual maintenance of the Landscaping & Slope Improvements is beneficial to the Terry Property and to the City and its citizens, because, among other things, the City Property will be more visually appealing in the short term to the general public and the perpetual maintenance by Terry Investments (as more fully-described hereinafter) will be at no-cost to the public.

WHEREAS, the Parties desire to enter into an agreement consistent with the forgoing "Recitals".

AGREEMENT

NOW THEREFORE, in consideration of the above Recitals, which are incorporated herein as if fully rewritten, the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. GRANT OF NON-EXCLUSIVE EASEMENTS. In accordance with and in consideration of Terry Investments' acceptance of the obligations, terms, conditions and intent of this Agreement, City grants to Terry Investments a non-exclusive Temporary Construction Easement on the City Property for the initial construction and installation of the Landscaping & Slope Improvements for One Hundred Eighty (180) days beginning on the Effective Date. Following the faithful completion of the Landscaping & Slope Improvements and lasting perpetually (or until terminated or revoked by the City at the City's sole discretion) the City grants Terry Investments a non-exclusive, limited Maintenance Easement for maintaining the Landscaping & Slope Improvements as more fully-described herein.

2. GRANTEE'S OBLIGATIONS; CONDITIONS/LIMITATIONS OF GRANTEE'S AUTHORIZED USE OF CITY PROPERTY. Terry Investments' responsibilities, obligations, conditions and restrictions pursuant to the letter and intent of this Agreement are as follows, which shall be at no cost, charge or fees incurred by the City:

(a.) The Landscaping & Slope Improvements shall be made and constructed in a good and workmanlike manner by Terry Investments in accordance with the provisions of this Agreement, the Landscape & Slope Plan and any other reasonably-related and intended requirements of this Agreement. The Landscaping & Slope Improvements shall be undertaken with the approval of and under the direction of the City's Public Works Department. Terry Investments shall be responsible for all costs, fees, labor, and prevention of injuries or claims related to Terry Investments' use of the City Property, including the installation of the Landscaping & Slope Improvements.

(b.) During the Temporary Construction Easement period, access to and use of the City Property is specifically limited to the installation of the Landscaping & Slope Improvements, and access and use reasonably-related thereto.

(c.) Terry Investments (and/or its successor(s)-in-interest) shall perpetually maintain the Landscaping & Slope Improvements in good condition and in accordance with any and all City requirements, standards and other reasonably-related items as such are provided at the discretion of the City's Public Works Department during the Maintenance Easement period.

(d.) During the Maintenance Easement period, access to and use of the City Property is specifically limited to Terry Investments' obligations to provide perpetual maintenance of the

Landscaping & Slope Improvements. All such activities shall be with approval of and under the control/direction of the City's Public Works Department.

(e.) Obligations by Grantee to perpetually maintain the City Property shall include: Reasonably regular collection and appropriate disposal of trash, debris and other accumulation resulting from the location (and operation) of the Landscaping & Slope Improvements.

(f.) Erosion control and drainage improvements (included within the initial Landscaping & Slope Improvements) shall be perpetually maintained according to then-applicable standards, regulations and norms for such erosion control and drainage associated with the Landscaping & Slope Improvements. Terry Investments (and/or its successor(s)-in-interest) will make accommodations for the removal and proper offsite disposal of all accumulated trash and debris.

(g.) All used or impacted portions of the City Property beyond the improvements intended under this Agreement (and/or any other property owned by the City or other third-party so impacted) shall be restored to their original condition following the initial installation of the Landscaping & Slope Improvements as well as following any impacts resulting from maintenance obligations and activities related to this Agreement and the Landscaping & Slope Improvements.

(h.) Terry Investments also agrees to cooperate and comply with any other reasonably related conditions or requirements directed by the City Council or the City's Public Works Department, as such are reasonably consistent with the intent and purpose of this Agreement.

3. RULES AND REGULATIONS. Terry Investments (and/or its successor(s) in interest) will faithfully observe and comply with the attached Landscape & Slope Plan and all other reasonable and related design, construction or maintenance directions or standards of the City regarding the installation and maintenance of the Landscaping & Slope Improvements as such requests are made from the City's Public Works Department.

4. CITY PROVIDED REASONABLE ACCESS TO PROPERTY. To the extent required for adequate inspections, Terry Investments (and/or its successor(s)-in-interest) agrees to reasonably cooperate with any requests by the City for its employees, representatives or agents to enter upon the Terry Property to inspect the initial installation of—and thereafter, the maintenance of—the Landscaping & Slope Improvements; provided that the City makes reasonable efforts to contact Terry Investments (and/or its successor(s)-in-interest) (except in the case of an emergency, for which the City may proceed in such manner that is reasonable under the circumstances as determined by the Public Works Director or his/her delegate).

5. REMEDIES FOR PERFORMANCE OF REMEDIAL WORK. In the event that Terry Investments (and/or its successor(s)-in-interest) fails to maintain the Landscaping & Slope Improvements as required under this Agreement, the City shall provide written notice to the Terry Investments (and/or its successor in interest) detailing the City's concerns. Terry Investments (and/or its successor(s)-in-interest) agrees to promptly review and respond to such concerns, and, as appropriate, provide the City a schedule for completion of any warranted remedial measures. In the event the Terry Investments (and/or its successor(s)-in-interest) fails to perform any such remedial measures in accordance with the schedule provided, the City may, upon thirty (30) days' advance written notice, enter upon any portions of the Terry Property reasonably necessary to access the land within the City Property, which requires remedial measures to be undertaken by the City in order to complete any such unfinished remedial measures. Upon completion, the City shall be entitled to recover from Terry Investments (and/or its successor(s)-in-interest) any and all expenses, costs, professional fees (including the equivalent value for professional and labor from City employees, representatives or contract-personnel) incurred by the City in performing such remedial measures. Notwithstanding the foregoing, it is expressly understood and agreed that the City is

under no obligation to maintain or repair the Landscaping & Slope Improvements and in no event shall this Agreement be construed to impose any such obligation on the City.

6. MISCELLANEOUS. The following miscellaneous provisions apply to this Agreement:

ENTIRE AGREEMENT; NO REPRESENTATIONS BY CITY OF PRIOR OR FUTURE LAND-USE APPROVALS. This Agreement constitutes the entire agreement and understanding between the Parties hereto and supersedes all prior discussions, understandings and agreements, oral or written, between the Parties with respect to this Agreement. There are no representations or warranties, express or implied, between the City and Terry Investments with respect to the subject matter of this Agreement, except those specified in this Agreement. This Agreement has, or hereby does, incorporate by reference thereto each and every Recital. Invalidation of any one of the provisions of this Agreement shall in no way effect any other provisions and all other provisions shall remain in full force and effect. Nothing herein may be considered, interpreted, or otherwise, as an approval by the City, the City Council, other City land use authority, or any individual in his/her capacity as representing the City, of any current or future land use application or request by Terry Investments on the Terry Property or any other land within Washington City. By entering into this Agreement, Terry Investments specifically represents its understanding (to which the City is reasonably relying) thereof—specifically that the City has not represented prior (or promised future) approval of any current or future-land use application related to Terry Investments or the Terry Property.

RECORDING OF AGREEMENT; INTENT TO RUN WITH LAND & BIND SUCCESSORS-IN-INTEREST. This Agreement shall be recorded in the office of the Washington County Recorder and shall constitute a covenant running with the land (specifically recorded as a covenant running with and enforceable against the Terry Property and all parties holding an interest in any portion of the Terry Property) and shall be binding on and enforceable against Terry Investments, its assigns, and any other successor(s)-in-interest.

NOTICES. All notices or communications to be given under this Agreement shall be given in writing and shall be deemed given when deposited in the mail to the last known address of the party entitled to receive notice, postage prepaid, registered or certified.

INDEMNIFICATION OF CITY. Terry Investments (and/or its successor(s) in interest) hereby agrees to indemnify, defend and hold harmless (including fees, costs or expenses incurred) the City and its authorized agents, representatives and employees from and against any and all damages, accidents, casualties, occurrences or claims which arise or are asserted against the City as a result of the construction, installation or perpetual maintenance (as contemplated herein) of the Landscaping & Slope Improvements, or the failure to fulfill or comply with those affirmative obligations hereunder. Furthermore, this Agreement may be enforced by proceedings at law or in equity by or against the parties hereto and their respective successor(s)-in-interest.

[Remainder of this Page is Blank]

...

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the above referenced Effective Date.

WASHINGTON CITY

Kenneth F. Neilson
Kenneth F. Neilson, Mayor



Attest:
Danielle B. Bulloch
Danielle B. Bulloch, MMC, City Recorder

DEAN T. TERRY INVESTMENTS, LLC

By: *Dean Terry*
(Authorized Signature)

Name: DEAN T. TERRY
(Print) MANAGER

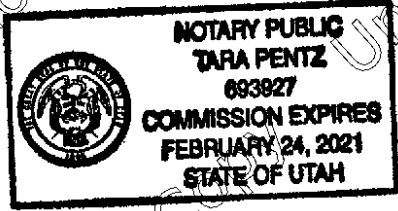
Title: MANAGER

STATE OF UTAH)
)
COUNTY OF WASHINGTON)

On the 18th day of April, 2018, personally appeared before me Dean T. Terry, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they is the Manager of DEAN T. TERRY INVESTMENTS, LLC, a Utah limited liability company, and he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or entity(ies) upon behalf of which the person(s) acted, (DEAN T. TERRY INVESTMENTS, LLC) executed the instrument.

WITNESS my hand and official seal.

My Commission Expires:



Tara Pentz
NOTARY PUBLIC
Residing at: Washington UT

Exhibit B

Legal Description Dean T. Terry Investments LLC

W-209-D-1

BEGINNING AT A POINT ON THE SOUTHEAST CORNER OF '1100 EAST STREET OF THE SIENNA HILLS DEVELOPMENT' ROAD DEDICATION PLAT, RECORDED AND ON FILE IN THE OFFICE OF WASHINGTON COUNTY RECORDER AND RUNNING THENCE S 15*42'12" E 51.00 FEET; THENCE S 78*44'25" W 141.98 FEET TO THE POINT OF A 1460.00 FOOT RADIUS CURVE TO THE LEFT, WITH A RADIUS WHICH BEARS S 15*42'12" E; THENCE 614.15 FEET SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH . A CENTRAL ANGLE OF 24*06'03"; THENCE N 39*48'16" W 40.00 FEET TO THE POINT OF A 1500.00 FOOT RADIUS NON TANGENT CURVE TO THE RIGHT, WITH A RADIUS WHICH BEARS S. 39*48'16" E, THIS POINT ALSO BEING THE SOUTHWEST RIGHT OF WAY CORNER OF SAID ROAD DEDICATION PLAT, RECORDED AND ON FILE IN THE OFFICE OF WASHINGTON COUNTY RECORDER; THENCE 630.96 FEET NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 24*06'03"; THENCE CONTINUING ALONG SAID RIGHT OF WAY N 74*17'48" E 141.56 FEET TO THE POINT OF BEGINNING.



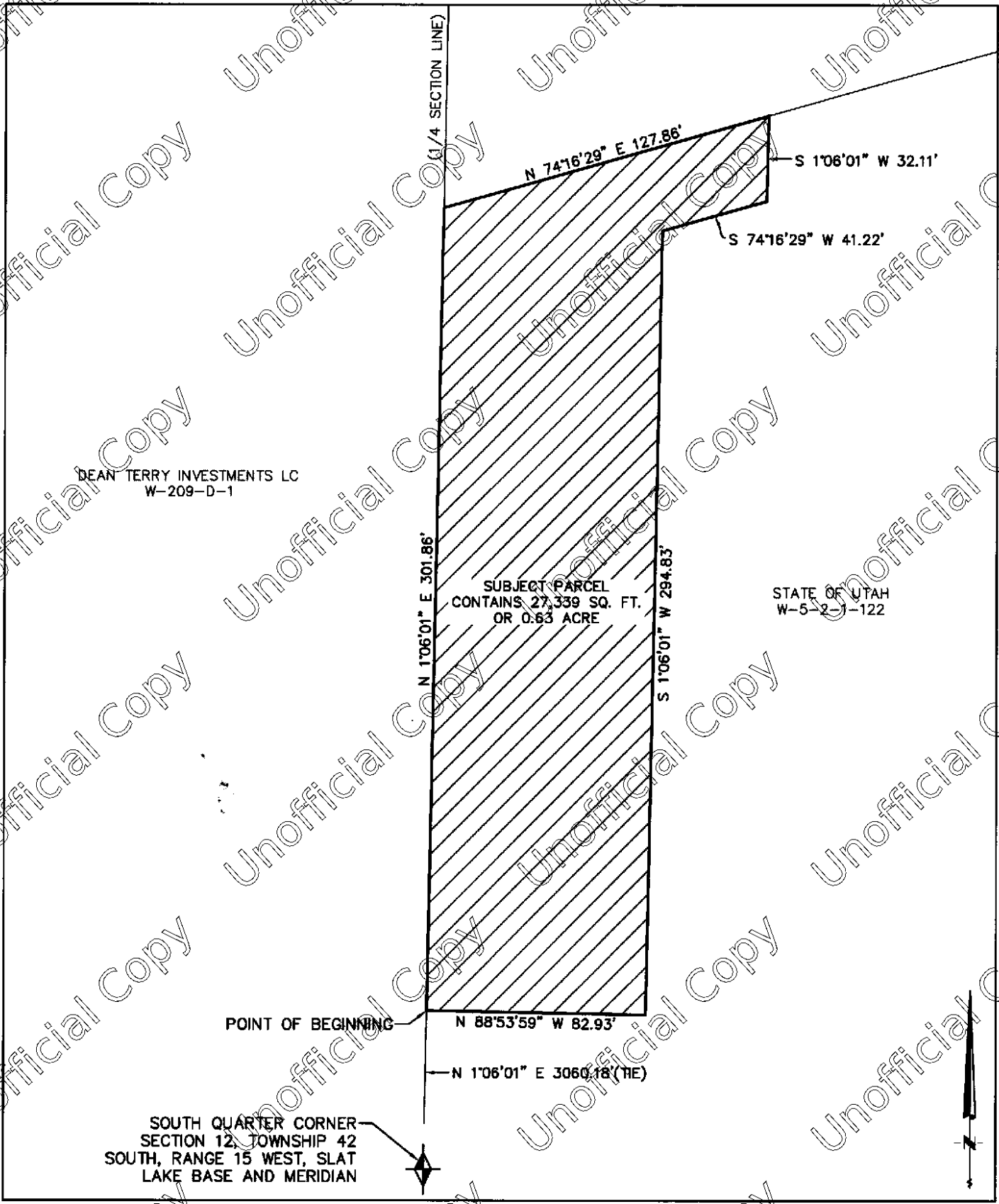
Bush and Gudgell, Inc.
Engineers • Planners • Surveyors
Salt Lake City - St. George
www.bushandgudgell.com

EXHIBIT “C”
(LANDSCAPE EASEMENT)

Beginning at a point that lies North 01°06'01" East along the section line 3060.18 feet from the South Quarter Corner of Section 12, Township 42 South, Range 15 West, Salt Lake Base and Meridian, Washington City, Washington County, Utah, and continuing along said section line North 01°06'01" East 301.86 feet; thence North 74°16'29" East 127.86 feet; thence South 01°06'01" East 32.10 feet; thence South 74°16'29" West 41.22 feet; thence South 01°06'01" East 294.83 feet; thence North 88°53'59" West 82.93 feet to the point of beginning.

X:\171067\Legal Descriptions\ Landscape Easement 20180427 (GM)

St. George: 205 East Tabernacle #4, St. George, UT 84770, Ph. 435-673-2337, Fax 435-673-3161
Salt Lake City: 655 East 4500 South #100, Salt Lake City, UT 84107, Ph. 801-364-1212, Fax 801-364-1225



DEAN TERRY INVESTMENTS LC
W-209-D-1

SUBJECT PARCEL
CONTAINS 27,339 SQ. FT.
OR 0.63 ACRE

STATE OF UTAH
W-5-2-1-122

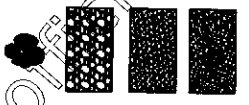
POINT OF BEGINNING
N 88°53'59" W 82.93'
N 1°06'01" E 3060.16' (1/4)

SOUTH QUARTER CORNER
SECTION 12, TOWNSHIP 42
SOUTH, RANGE 15 WEST, SLAT
LAKE BASE AND MERIDIAN

EXHIBIT C
LANDSCAPE EASEMENT
B&G #171067



BUSH & GUGGELL, INC
Engineers - Planners - Surveyors
205 East Tabernacle Suite #4
St. George, Utah 84770
Phone (435) 673-2337 / Fax (435) 673-8181



ROCK SLOPE LEGEND

ROCK TYPE 1: 2-3" COLOR 1 ROCK ON UPPER SLOPED AREAS, min. 4" DEEP (20% OF ROCK TO BE 6"+)
 ROCK TYPE 2: 3-4" COLOR 2 ROCK ON LOWER SLOPED AREAS, min. 4" DEEP (20% OF ROCK TO BE 6"+)
 ROCK TYPE 3: COLOR 3 2-3" TO BE PLACED min. 8" DEEP IN AREAS WITH SHOWN HATCH AS ACCENT

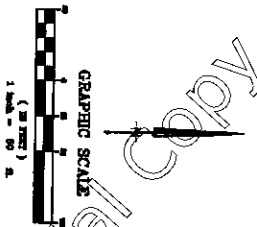
NATIVE SITE BOULDERS TYPICAL. INSTALL AS PER THE FOLLOWING. EXCAVATE SO THE 25% OF THE BOULDERS REMAIN. WHERE BOULDERS ARE GROUPED, VARY SIZES. PLACE ALL BOULDERS IN RANDOM PATTERNS AT LOCATIONS ON PLAN FOR OWNERS APPROVAL PRIOR TO INSTALLATION. CONTRACTOR TO VERIFY QUANTITIES AND LOCATIONS ON PLAN, AND USE DIFFERENT SIZED BOULDERS IN THE FOLLOWING QUANTITIES:

- 50% BOULDERS 1.5-2'
- 50% BOULDERS 2.5-4'

SOIL PREP PRIOR TO ROCK INSTALLATION:

CLEAR AND GRUB ALL SLOPE AREA THAT WILL HAVE ROCK PLACED ON IT.
 RIP ALL SLOPE AREA THAT WILL HAVE ROCK PLACED ON IT TO A MIN. DEPTH OF 8".

SPRAY OR SPREAD WITH A COMMERCIAL GRADE GRANULAR PRE EMERGENT; LET STAND FOR A MIN. OF 24 HOURS BEFORE PLACING ROCK. IF RAIN IS FORECASTED, LET STAND FOR MIN. 2 DAYS PAST RAIN EVENT. IF RAIN IS SUBSTANTIAL, RE-APPLY.



CHEVRON

DEAN TERRY INVESTMENTS
 TAX ID: W-209-D-1

2970
 2960
 2950
 2940

END OF WALL
 2941.35'

DECORATIVE LANDSCAPE ROCK AREA VARIES BASED ON LINE OF SIGHT FROM WASHINGTON PARKWAY
 APPROXIMATELY 84' ACTUAL SLOPE MAY VARY FROM PLAN SHOWN

EXISTING EASEMENT

WASHINGTON PARKWAY

OPEN SPACE

8' RETAINING WALL

PROPERTY LINE

EXHIBIT A
 DEAN TERRY INVESTMENTS
 LOCATED IN WASHINGTON, UTAH



BUSH & GUDGELL, INC.
 Engineers - Planners - Surveyors

205 East Tennessean Suite #4
 St. George, Utah 84770
 Phone (435) 673-2337 / Fax (435) 673-2481

18-18-18