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BE22048

**AFTER RECORDING, PLEASE RETURN TO:**  
Daniel Dunn  
D&V Construction & Management LLC  
PO Box 164  
Tremonton, UT 84337

✓ Lot 284528 Bl 1108 Pg 149  
Date 26-Oct-2009 2:37PM Fee \$33.00  
LuAnn Adams - Filed By d1  
Box Elder Co., UT  
For BOX ELDER LAND TITLE INS AGENCY INC

05-237-0026  
0027  
0028  
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## SUNSET ESTATES TOWN HOMES

Developed by D&V Construction & Management LLC

### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made on the date hereinafter set forth by D&V CONSTRUCTION & MANAGEMENT LLC, a Utah company, as "Declarant".

#### WITNESSETH:

WHEREAS, Declarant is the developer of certain property in the City of Tremonton, County of Box Elder, State of Utah, which is more particularly described on Exhibit A attached hereto and incorporated herein; and,

WHEREAS, Declarant has platted and subdivided the property in Exhibit A and it is the intent of Declarant to make the Exhibit A property subject to these conditions and restrictions; and

NOW THEREFORE, Declarant hereby declares that all of the property described as Exhibit A shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

#### ARTICLE I

#### DEFINITIONS

Section 1. "Association" shall mean and refer to THE SUNSET ESTATE TOWN HOMES HOMEOWNERS' ASSOCIATION, its successors and assigns. By filing this declaration with the County Recorder's office, the Association, along with its governing abilities, shall be in force with all authority and power as outlined herein.

Section 2. "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 Properties. The Owner shall include the

future owner of other parcels of exhibit A.

Section 3. "Occupant" shall mean any person living in the Dwelling Unit for more than 21 days in any 6-month period.

Section 4. "Dwelling Unit" shall mean any building on the Lot for which a permit of occupancy has been issued by the appropriate governmental agency.

Section 5. "Property" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 6. "Private Area" Shall mean and refer to:

6.1 The land, to be deeded for each town house unit. Each unit will have a front yard, drive way and sidewalks directly in front of the unit and extending to the public street and a back yard extending from the unit to the back fence line the width of respected units or on the end units the width of the unit plus the side yard as private area. This area will still be subject to architectural design limitations and approval.

Section 7. Common Areas and Facilities. The Common Areas and facilities shall consist of the areas and facilities described in the definitions. Without limiting the generality of the foregoing, the Common Areas and Facilities shall include the following:

7.1 The ground and land not conveyed to each unit owner;

7.2 All common structural parts of the building including, without limitation, foundations, columns, joists, beams, supports, supporting walls, floors, ceilings and roofs;

7.3 Any easement described herein or on the recorded plat.

7.4 Any common utility pipe or line or system servicing more than a single Unit, and all ducts, wires, conduits, and other accessories used therewith;

7.4 All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities;

7.5 All repairs and replacements of any of the foregoing.

Section 8. Easements shall include the following additional to any easements on the recorded platt.

8.1 An easement is herein described to provide access to the utilities (gas, power, phone and cable tv) provided to each unit. An easement is provided for maintenance access to the utilities described above, said easement shall run along the full length of the front of the building under the front eave and along the ceilings of each garage, the easement

shall run parallel to the front of the building extending from the face of the eave to the face of the buildings at the front doors, a distance of 9feet 6inches. The said easement shall be an access to the area above the main level ceiling and below the top of the level of the second floor. Said easement is provided for maintenance access to the utilities for each unit and is provided for each unit owner to avoid being unreasonably denied the ability to maintain services to their respective unit.

8.2 In the event that a unit owner must utilize the easement described in Section 8, 8.1 and must remove soffit, drywall or other finish materials. to access the utilities they shall be responsible to pay the full cost of returning the area to the same or better condition than before they disturbed the area. Said work to repair areas removed shall be done in a prompt time frame. The home owners association shall have full power to take action to repair areas and assess fees, fines, etc. upon any party having utilized the said easement and not repaired the area disturbed in a timely manner.

8.3 No Owner shall unreasonably deny a neighboring owner the ability to maintain their sprinkler system supply lines that runs from the water shut off valve in the front to their zone valve box on their respective unit, or the sprinkler zone lines that run from their respective zone valve box to the half of the common front grass areas allotted to their unit. In the event any maintenance of such lines is required the owner requiring access shall be responsible to pay the full cost of returning the area to the same or better condition then before they disturbed the area. Said work to repair areas removed shall be done in a prompt time frame. The home owners association shall have full power to take action to repair areas and assess fees, fines, etc. upon any party having utilized this right of maintenance access and not repaired the area disturbed in a timely manner.

8.4 A back yard access right of way has been provided for the owners of units 2 and 3. This access right of way extends along the east side of unit 1 outside of the east side fence line of unit 1 and outside the south fence line of units 1 and 2. The Owner of unit 1 shall not deny the owners of units 2 and 3 access along this right of way to enter their backyards from this area provided herein.

**Section 9.** "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

**Section 10.** "Declarant" shall mean and refer to D&V CONSTRUCTION & MANAGEMENT LLC, and its successors and assigns if such successors or assign shall acquire more than one undeveloped Lot from the Declarant for the purpose of development.

## ARTICLE II

### PROPERTY RIGHTS

**Section 1 Owners' easement of Enjoyment.** Every Owner shall have the right to a quite enjoyment of their respective property including all areas directly in front of their unit and shall privately enjoy the fenced yard behind their unit.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot that is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separate from ownership of any Lot that is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds 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.

Class B. The Class B member(s) shall be the Declarant and it shall be entitled to three (3) votes for each lot Owned. The Class B membership shall cease and be converted to Class A membership on the happening of the following event,

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

## ARTICLE IV

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association; (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in the title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. The maximum annual assessment shall be set first by the Declarant and recorded in the Association's minutes. Thereafter, the annual assessment shall be

governed as follows:

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

© The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

**Section 4. Special Assessments for Capital Improvements.** In Addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto; provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Notice and quorum for Any Action Authorized Under Section 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorize under Section 3 or 4 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 sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

**Section 6. Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

**Section 7. Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the first day of November. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status assessments on a lot is binding upon the Association as of the date of its issuance. Declarant shall not have to pay any assessments on any Lots or Properties it owns until Dwelling Unit on said Lot is completed and a permit of occupancy has been issued.

**Section 8. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment not paid within thirty (30 days) after the due date shall bear interest from the due date at the rate of 6

percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE V

### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made, including the exterior color used on any building on the Lot. No structures are permitted to be built on Common areas unless built with original project with City and Developer approval.

## ARTICLE VI

### RESTRICTIONS ON IMPROVEMENT

Section 1. Intent of Restrictions on Improvements. It is the intent of these covenant to restrict the design, materials used, and the landscaping improvements only to the extent necessary to ensure quality in external appearance and maintain property values on a long term basis.

Section 2. Architectural Review Committee. The Declarant hereby appoints an Architectural Review Committee, which shall consist of Daniel Dunn and Veronica Dunn. The functions of the Committees will be to review and approve improvement plans of Owners, consistent with the intent of these covenant. NO structures, residences, outbuildings, sports courts, swimming pools, walls, fences or other improvements shall be constructed upon any lot without following the Architectural Review Committee review process. This Committee will appoint the undersigned until such time as all Units have been sold. At such time, the undersigned, their successors and assigns and their assigned agents will be released from further involvement with the Architectural Review Committee. The Lot Owners, as such time may nominate members to serve as a new committee by majority vote. In voting, each lot Owner of record shall be entitled to one vote, and the action resulting from such vote is to be evidenced by written instrument signed and acknowledged by such Lot Owners and recorded in the County Recorder's Office of Box Elder, Utah. The new committee shall consist of Lot owners on their agents as directed by majority vote of the lot owners.

The purposes of the Architectural Committed is to determine that the improvements are in conformity and harmony in external design with the existing structures and development of the area, and as to location of improvements with respect to topography and finish ground elevations. For this reason the Architectural Committee is given the general power to review improvement design generally and may specifically disapprove of the design because of a lack of general harmony with the development of the

area. In the event such disapproval occurs it must be in writing and specifically state the basis of the disagreement.

### Section 1. Review Process.

- a. Preliminary Submission: This submission to the Committee is not required but is recommended. This submission should include a rough layout drawn to scale, showing proposed improvements, including but not limited to improvement design and location, driveways, and patios. The architecture at this stage could be conceptual, showing plans with basic dimensions. Information as to color and materials to be used could also be included. If the proposed improvements are not satisfactory to the Committee, a meeting with the Owner and/or his designer will be called to discuss possible changes for the final submission.
- b. Final Submission: This submission is required and must be a detailed description of proposed improvements. This site plan should be drawn to a scale of at least 1"-20", should show proposed grading at no more than two foot intervals with spot elevations for clarifications when necessary, should give detailed and accurate information concerning colors, and materials to be used. If the Architectural review Committee takes no action within thirty (30) days of the date of the final submission, the Owners will have the right to proceed with improvements as proposed, providing they notify the committee of their intent in writing.
- c. Committee's Right to Stop Improvements: The Committee reserves the right to stop construction on any improvement which does not conform to approved drawing bearing its approval.
- d. If the Declarant is the Owner and builder of the Dwelling Unit, it does not have to submit plans to the Committee for approval.

## ARTICLE VII

### SPECIFIC RESTRICTIONS

#### Section 1. Architectural Control.

- (a) Private Residences; said Lots shall be used for private residences only. Renting of a room is not allowed. Fencing: Location of any fences must be submitted to the Architectural Review Committee as described above before construction may begin. Once fence construction has begun, the fence must be fully completed within sixty days. Fence materials must be vinyl. Other materials will require written permission.
- (b) Landscaping: All landscaping must be completed within one hundred eighty (180) days after construction of the Dwelling unit is purchased, weather permitting. If completion is delayed by weather, then the landscaping must be completed as soon as possible.

© Signs: No sign shall be displayed on any of said Lots except as follows; there may also be displayed a sign advertising the fact that said parcel or said dwelling house is for sale or lease.

(d) Standards: The Architectural Committee reserves the right to disapprove of designs, depictions, colors, statues, or any other landscaping elements, etc., which are unusual or which may detract from the ongoing image of the area.

(e) Car Repairs; No car under repair or needing repair or which would be considered a junk vehicle or salvage vehicle shall be kept outside of an enclosed garage. In this determination, a vehicle which is unlicensed or which has not been moved for fifteen days or more shall be presumptively prohibited. The Architectural Committee has discretion to determine which of such automobiles are junk or salvage and to direct either their removal or relocation inside garages.

(f) Animals: The animal ordinance of Tremonton City is hereby incorporated as a part of these covenants and a failure to follow the same shall be considered a breach hereof. There shall be no barking dogs. All animals must dwell primarily in the Dwelling Unit and must be brought in at night. There are not animals allowed on chains in Common Areas. Any droppings, fecal matter, or other messes created by an animal will be removed by the person controlling said animal.

(g) Overnight Parking: Only 1 vehicle per unit will be allowed overnight parking on the driveway. The only exception being when Owners have Related Visitors visiting, then 2 vehicles will be permitted overnight parking in driveways, but in no event shall these accommodation exceed 21 days in any 6-month period.

(h) Each unit has a space immediately to the front of the unit that is designated as limited common area. Use of this area is limited to the unit it serves. Parking in these areas by any other than the owner of recorded or assigns is a violation of these covenants and restrictions and any violation of this restriction any result in offending vehicle being removed by the Association.

(i) Roadway Parking: No parking on the street is allowed, except for designated areas.

(j) Landscape Maintenance: The landscape maintenance and fence maintenance is the responsibility of each individual owner. Each Owner will have the responsibility to maintain their fence, lawn, driveways, sidewalks, personal flowerbeds, garden plots, planter boxes and similar personal landscape features. Each Owner will have the responsibility to maintain half of the lawn between the driveways.

(k) Sprinkler System Maintenance: Each Owner will be responsible for maintaining the sprinkler system for their respective lot and unit.

(l) Snow Removal: Each Owner is responsible for snow removal for their respective unit, areas of responsibility shall include but not be limited to the driveway, porch and sidewalks in front of their unit, also the portion of public sidewalk at the street that is in front of their unit.

(m) Utilities and Garbage Removal: Each Owner shall be responsible for payment all utilities required by their respective unit including but not limited to Water, Sewer, Gas, Power, Phone, Television Service, Etc. The sprinkler systems for each respective lot are metered with their main water service, each Owner shall pay for water required to sprinkle their respective lot. Each Owner will be responsible to contract with Tremonton City for a private garage can and pay the cost for this service.

Section 3. Maintenance of Lot. Buildings, fences, landscaping and other improvements shall be continuously maintained to preserve a well-kept appearance. If the appearance of a Lot fall below reasonable levels. The Architectural Review Committee, or other committee appointed by Lot Owners as provided for below, shall so notify the Owner in writing and the Owner shall have thirty (30) days thereafter to restore the property to an acceptable level of maintenance. Should the owner fail to do so, the Architectural Review Committee for the other committee may order the necessary work performed at the Owner's expense. No rubbish shall be stored or allowed to accumulate on Lots. Personal property of the Lot Owner in the process of being repaired shall not be left in the visible sight of neighbors for more than thirty (30) days, unless repairs occur. No excavation for stone, gravel or earth shall be made on Lots, unless such excavation is made in connection with the erection of a building or structure thereon.

The Owners of all Lots shall immediately upon the purchases of any lot, maintain and control all weeds on the said lot. If in the opinion of the Committee, a week control program is needed, then the Committee shall have all necessary weed control work completed. The committee shall thereupon bill the Owners of the lot for the costs of having the week control work done on their lot and the owner shall pay the Committee at the address designated on the statement, the sum so billed, within thirty days from the date of said billing.

## ARTICLE VII

### SINGLE FAMILY RESTRICTED

Section 1. Restricted to single Family Occupancy. All properties are restricted to single family occupancy. Single family means any number of individuals living together related by blood within two degrees of consanguinity, by marriage or adoption, or unless specified otherwise by Tremonton City, no more than 3 unrelated blood within two degrees of consanguinity, by marriage or adoption.

## ARTICLE VIII

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions that shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time

they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than seventy five percent (75%) of the lot Owners.

Section 4. Annexation. Additional residential property and Common Area may only be annexed to the Properties with the consent of two-third (2/3) of each class of members.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 26<sup>th</sup> day of October, 2009.

DECLARANT

D & V Construction L.L.C.

By: Daniel Dunn

DANIEL DUNN, PRESIDENT.

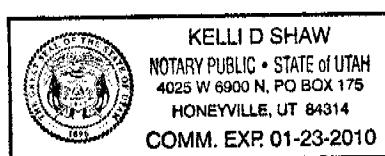
ACKNOWLEDGMENT

STATE OF UTAH )

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COUNTY OF BOX ELDER )

On this 26<sup>th</sup> day of October, 2009, personally appeared before me DANIEL DUNN, PRESIDENT OF D & V CONSTRUCTION & MANAGEMENT L.L.C., the Declarant, who being by me duly sworn, did acknowledge to me that he executed the same on behalf of the Company.



Kelli D. Shaw  
Notary Public

**EXHIBIT "A"**

05-237-0026, THRU 05-237-0029

UNITS 1,2,3, and 4, SUNSET ESTATES TOWNHOMES, ACCORDING TO THE OFFICIAL PLAT THEREOF  
RECORDED MARCH 25, 2009 AS ENTRY NO. 275929, RECORDS OF BOX ELDER COUNTY, UTAH.