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 RECORDER, SALT LAKE COUNTY, UTAH  
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**AMENDED AND RESTATED DECLARATION OF  
 COVENANTS, CONDITIONS AND RESTRICTIONS  
 FOR  
 DAYBREAK TOWNHOME 1 PROJECT**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR DAYBREAK TOWNHOME 1 PROJECT (this "**Declaration**") is made and executed as of September 21, 2005 by KENNECOTT LAND COMPANY, a Delaware corporation (the "**Declarant**").

**RECITALS:**

A. On February 27, 2004, Declarant and Kennecott Land Residential Development Company caused to be recorded that certain Community Charter for Daybreak, as Entry No. 8989518, in Book 8950, beginning at Page 7784, in the Official Records of Salt Lake County, Utah (the "**Master Residential Declaration**"), to govern the phased development of a community commonly known as "**Daybreak**" located in the City of South Jordan, Utah, and further to govern the Daybreak Community Association, Inc. (the "**Master Residential Association**").

B. In addition, on February 27, 2004, Declarant and Kennecott Land Residential Development Company caused to be recorded that certain Covenant for Community for Daybreak, as Entry No. 8989517, in Book 8950, beginning at page 7722, in the Official Records of Salt Lake County, Utah (the "**Covenant**"), to govern the phased development of Daybreak, and further to govern the Daybreak Community Council, Inc. (the "**Daybreak Community Council**").

C. Pursuant to Section 2.6 of the Master Residential Declaration, Declarant may establish a separate owners association to administer additional covenants applicable to a particular area within Daybreak.

D. Kennecott Land Residential Development Company previously recorded that certain subdivision map entitled "DAYBREAK TOWNHOME 1 SUBDIVISION" (the "**Plat**"), which Plat and a portion of the real property affected thereby are more particularly described on Exhibit A attached hereto and incorporated herein. The Plat is located within the boundary of Phase 1 of Daybreak. The Plat depicts sixty-four (64) Lots (as defined below), which are collectively referred to herein as the "**Project**". The Plat further depicts an area described thereon as "common area" which is not part of the Project and is not encumbered by this Declaration, but is subject to the Master Residential Declaration and the Covenant.

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E. A supplemental declaration, heretofore recorded confirmed that the Project is and will continue to be subject to the terms and conditions, covenants and restrictions set forth in the Master Residential Declaration and the Covenant, and will be governed by the Master Residential Association and the Daybreak Community Council.

F. Holmes Homes, Inc., a Utah corporation ("**Holmes Homes**") was the initial owner of the Project and has constructed and sold, or plans to construct and sell, attached residential units called "Townhomes" on the Lots comprising the Project.

G. Because of the attached nature of the Townhomes, the Project requires special services not provided to all property owners within Daybreak. Therefore, on January 31, 2005, Declarant (with the consent of Holmes Homes) recorded a certain instrument entitled "Declaration of Covenants, Conditions and Restrictions for Daybreak Townhome 1 Project," as Entry Number 9286755, in Book 9089, beginning on Page 1612 of the official records of Salt Lake County, Utah, to make the Project subject to said instrument (in addition to the Master Residential Declaration and the Covenant). This Declaration amends, restates and replaces said instrument in its entirety.

H. Daybreak Townhome 1 Owners' Association, Inc. (the "**Association**"), has heretofore been created by filing Articles of Incorporation therefore ("**Articles**") with the Utah Division of Corporations and Commercial Code. The Association shall be the governing body of the Project subject hereto and shall operate in accordance with the Association's Bylaws attached hereto as Exhibit C (the "**Bylaws**") and the Master Residential Declaration and the Covenant. The Association shall be a "Neighborhood Association" under the terms of the Master Residential Declaration.

I. As more fully set forth in Article 14 hereof, Declarant reserves the right to expand the Project to include certain additional real property and improvements thereto.

#### ARTICLE 1 DEFINITIONS

1.1 **Defined Terms.** Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article. All terms defined in the Recitals shall have the meanings set forth in the Recitals and in this Article.

1.2 "**Additional Land**" shall mean the following-described real property located in Salt Lake County, Utah:

See Exhibit B attached hereto and incorporated herein by this reference.

1.3 "**Association**" shall mean the Daybreak Townhome 1 Owners' Association, Inc., a Utah non-profit corporation.

1.4 "**Board**" shall mean the Board of Directors of the Association.

1.5 "**Building**" shall mean any building containing Dwellings constructed in the Project.

- 1.6 “**Common Expense Fund**” shall mean the fund created or to be created pursuant to the provisions of this Declaration and into which all funds of the Association shall be deposited.
- 1.7 “**Community-Wide Standard**” shall have the meaning assigned in the Master Residential Declaration.
- 1.8 “**Covenant**” shall mean the Covenant for Community for Daybreak, recorded as Entry No. 8989517, in Book 8950, beginning at page 7722 in the Official Records of Salt Lake County, Utah.
- 1.9 “**Daybreak**” shall mean the community commonly known as Daybreak located in South Jordan, Utah, subject to the Master Residential Declaration and/or the Covenant, as each may be expanded from time to time.
- 1.10 “**Daybreak Community Council**” shall mean the Daybreak Community Council, Inc.
- 1.11 “**Declarant**” shall mean Kennecott Land Company, a Delaware corporation.
- 1.12 “**Design Guidelines**” shall have the meaning assigned in the Master Residential Declaration.
- 1.13 “**Dwelling**” shall mean the portion of a Building situated upon a Lot designated and intended for use and occupancy as a single family residence. Each Dwelling shall be owned by the Owner of the Lot on which the Dwelling is situated subject to all of the terms, covenants, conditions, restrictions and easements of this Declaration, the Master Residential Declaration and the Covenant.
- 1.14 “**Founder**” shall mean Kennecott Land Company, a Delaware corporation.
- 1.15 “**Holmes Homes**” shall mean Holmes Homes, Inc., a Utah corporation.
- 1.16 “**Lot**” shall mean each individual parcel of real property shown on the Plat as a Lot (and from and after the time any portion of the Additional Land is added to the Project in accordance with the provisions of this Declaration, any Lot legally subdivided and created on such portion of the Additional Land), together with all improvements located thereon and all appurtenances thereunto appertaining. Each Lot shall be owned by the Owner or Owners of such Lot subject to all of the terms, covenants, conditions, restrictions and easements of this Declaration, the Master Residential Declaration and the Covenant. A Lot, as well as the Dwelling to be constructed on the Lot, is included in the definition of a “Unit” under Section 3.1 of the Master Residential Declaration and Section 1.6 of the Covenant.
- 1.17 “**Manager**” shall mean the person, firm, or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and the Project.

- 1.18 **“Master Residential Association”** shall mean the Daybreak Community Association, Inc.
- 1.19 **“Master Residential Declaration”** shall mean the Community Charter for Daybreak, recorded as Entry No. 8989518, in Book 8950, beginning at Page 7784 in the Official Records of Salt Lake County, Utah.
- 1.20 **“Member”** shall mean a member of the Association.
- 1.21 **“Mortgage”** shall mean any mortgage, deed of trust, or other security instrument by which a Lot or any part thereof is encumbered.
- 1.22 **“Mortgagee”** shall mean (i) any person named as the mortgagee or beneficiary under any Mortgage, or (ii) any successor to the interest of such person under such Mortgage.
- 1.23 **“Owner”** shall mean any person or entity or combination thereof at any time owning a Lot within the Project, as shown on the records of Salt Lake County, State of Utah. The term “Owner” shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or entity purchasing a Lot under contract until such contract is fully performed and legal title conveyed; provided, however, if a Lot is sold under a recorded contract of sale, and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. An Owner under this Declaration is also by definition an “Owner” under Section 2.4 of Master Residential Declaration and under Section 1.6 of the Covenant.
- 1.24 **“Plat”** shall mean the official plat entitled “DAYBREAK TOWNHOME 1 SUBDIVISION”, recorded July 21, 2004, as Entry No. 9125568 in Book 2004P beginning at Page 198 in the Official Records of Salt Lake County, Utah.
- 1.25 **“Project”** shall mean the sixty-four (64) Lots depicted on the Plat
- 1.26 **“Project DRC”** shall mean the design review committee for the Project, which is subject to the Design Review Committee described in the Master Residential Association.
- 1.27 **“Total Votes of the Association”** shall mean the total number of votes appertaining to the Lots in the Project as provided below.

## ARTICLE 2 SUBMISSION TO DECLARATION

All of the Project is and shall be subject to the covenants, conditions, restrictions, easements, uses, limitations, and obligations set forth herein and in the Master Residential Declaration and the Covenant, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of said Project and division thereof into Lots. Further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Declarant and Holmes Homes, as their interest may appear, their successors and assigns, and any person acquiring, leasing, or owning an interest in any Lot, their lessees, heirs, executors, administrators, devisees, successors and assigns.

### ARTICLE 3 IMPROVEMENTS

- 3.1 **Description of Project.** The Project initially consists of 64 Lots as shown on the Plat. Each of the Lots shall, when improved, contain one single family Dwelling. Holmes Homes intends to build 16 Buildings, each containing 4 Dwellings in the Project. Each Owner acknowledges that the design and construction of the Dwellings and the Buildings and all other initial improvements within the Project has been performed by Holmes Homes and not by Declarant, and Owner has relied and will rely solely on Holmes Homes with respect to any issues related thereto.
- 3.2 **Description and Legal Status of Lots.** The Plat shows the number of each Lot. All Lots shall be capable of being independently owned, encumbered, and conveyed.
- 3.3 **Building Area.** No house, garage or other improvement, other than landscaping, sidewalks, driveways, street lights and curb and gutter improvements, shall be located on any Lot outside of the original structure building area without the prior written approval of the Association. The Association shall have the right to restrain the Owner of any Lot from violating the restrictions set forth in this section, and in the event the party seeking to enforce these restrictions prevails in an action in court or otherwise, the Owner attempting to violate the restrictions shall be obligated to pay all of the costs, including reasonable attorneys' fees, incurred by the party enforcing these restrictions.
- 3.4 **Common Area.** The real property depicted on the Plat as "common area" is to be owned, managed and controlled by the Master Residential Association for the common use and enjoyment of the owners of Units in Daybreak, as more fully described in the Master Residential Declaration. Owners of Lots in the Project shall have no rights to use and enjoy such common area except as provided in the Master Residential Declaration. Any costs incurred in connection with such common areas shall be included in assessments levied by the Master Residential Association, as set forth in the Master Residential Declaration. There are no "common areas" included in the Project, subject to this Declaration, or owned or managed by the Association.

### ARTICLE 4 NATURE AND INCIDENTS OF OWNERSHIP

- 4.1 **Title.** Title to Lots may be held or owned by any person or entity or any combination thereof and in any manner in which title to any other real property may be held or owned in the State of Utah, including without limitation, joint tenancy or tenancy in common.
- 4.2 **Prohibition against Subdivision of Lot.** No Owner, by deed, plat or otherwise, shall subdivide or in any manner cause his Lot to be subdivided, partitioned or separated into physical tracts or parcels smaller than the whole Lot as shown on the Plat.
- 4.3 **Inseparability.** Title to any part of a Lot may not be separated from any other part thereof. Every devise, encumbrance, conveyance, or other disposition of a Lot, or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Lot, together with all appurtenant rights created by

law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth.

- 4.4 **Separate Mortgages by Owners.** Each Owner shall have the right separately to mortgage or otherwise encumber his Lot. Unless otherwise specifically provided herein, any Mortgage or other encumbrance of any Lot shall be subordinate to all of the provisions of this Declaration, the Master Residential Declaration and the Covenant, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.
- 4.5 **Separate Taxation.** Each Lot and all improvements located thereon shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. All such taxes, assessments, and other charges on each respective Lot shall be separately levied against the Owner thereof. No forfeiture or sale of any Lot for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Lot.
- 4.6 **Mechanics' Liens.** No labor performed or material furnished for use in connection with any Lot with the consent or at the request of an Owner or his agent or contractor shall create any right to file a statement, claim, or notice of mechanic's lien against the Lot of any other Owner not expressly consenting to or requesting the same even if existing by easement over the subject Lot.
- 4.7 **Description of Lot.** Every contract for the sale of a Lot and every other instrument affecting title to a Lot within the Project may describe a Lot by its identifying number or symbol as indicated in this Declaration or as shown on the Plat. Such description will be construed to describe the Lot and to incorporate all the rights incident to ownership of a Lot within the Project and all of the limitations on such ownership.
- 4.8 **Party Walls.** Certain of the Dwellings may have common or party walls with adjacent Dwellings. The boundary between two adjacent Dwellings shall be the vertical boundary running through the center of the party wall, equidistant from the outermost surfaces of studs and structural beams making up the party wall. Each Owner that owns a Dwelling adjoining another Dwelling is hereby granted an easement of support and shelter over the portion of any party, adjacent or retaining wall on the adjoining Dwelling. Each Owner covenants to continue to provide the support and shelter that presently exists (or will exist following construction) and as may be necessary to maintain the integrity of each Building. Each Owner has an easement for pipes, ducts, and utility ways and chases passing through the other Dwellings that serve his Dwelling. Physical structures including party walls serving two separate Dwellings will be shared through a mutual nonexclusive easement of enjoyment for all purposes for which the improvements and their replacements were intended.

#### ARTICLE 5 MAINTENANCE OF BUILDINGS AND LOTS

- 5.1 **Owner Responsibility Regarding Buildings and Dwellings.** With respect to the maintenance, repair, alteration, and remodeling of Buildings, each Owner shall maintain and be permitted to alter or remodel the interior non-supporting walls, the materials (such as, but not limited to, plaster, gypsum drywall, paneling, wall paper, paint, wall and floor tile and flooring) making up the finished surfaces of the perimeter walls, ceilings, and floors within such Owner's Dwelling, including any non-exterior doors and non-exterior windows. The Owner shall also maintain the surface of the interior supporting walls, and the Association shall maintain the structural integrity of interior supporting walls. Each Owner shall be responsible for the maintenance, repair and replacement of utility lines (such as power, natural gas, water, sewer, telecommunications, cable and any other future utility lines) that serve his or her Dwelling from the point of connection. The Owner shall not alter any utility lines, pipes, wires, conduits, or systems which serve one or more other Dwellings. Such utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Board. Such right to repair, alter, and remodel is coupled with the obligation to replace any materials removed with similar types or kinds of materials. An Owner shall maintain and keep in repair the interior of his or her Dwelling, including the fixtures thereof. All fixtures and equipment installed within the Dwelling shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act and shall perform no work that will or may impair the structural soundness or integrity of the Building in which such Owner's Dwelling is located, impair any easement or hereditament, or violate any laws, ordinances, regulations and codes of the United States of America, the State of Utah, the County of Salt Lake, the City of South Jordan, or any other agency or entity which may then have jurisdiction over said Lot/Dwelling. Any expense to the Association for investigation under this Article shall be borne by Owner if such investigation establishes a violation of this paragraph.
- 5.2 **Association Responsibility Regarding Buildings and Dwellings.** Except for the Owner's responsibilities set forth in this Article, the Association shall have the duty of maintaining, replacing and repairing the Buildings including, without limitation, footings and foundations, structural components, roofs and common sanitary sewer laterals (if any) and other common utilities (if any). The cost of said maintenance, replacement and repair shall be assessed to all of the Owners. The Board shall not need the prior approval of the Members to cause such maintenance, replacement or repairs to be accomplished, notwithstanding the cost thereof; subject, however, to Article 10 hereof.
- 5.3 **Maintenance of Lots.** The Association shall maintain the landscaping and related improvements on the Lots, as set forth herein. The areas maintained by the Association, including the exterior of the Buildings, shall be referred to herein as the "**Maintained Areas**". The Maintained Areas shall include the front lawn and garden areas, excluding any stand-alone planters, window boxes, fences, walls and enclosed areas within fences or walls. An Owner may only maintain or modify the landscaping in the rear yard if such area is enclosed.
- 5.4 **Maintenance Standard.** All maintenance, repair and replacement obligations shall be performed in a manner consistent with the Master Residential Declaration and the Community-Wide Standard.

- 5.5 **Right of Entry.** The Association shall have a right of entry and access to, over, upon, and through all of the Project, including each Lot and each Dwelling, to enable the Association to perform its obligations, rights, and duties pursuant hereto with regard to maintenance, repair, restoration, and/or servicing of any items, things or areas of or in the Project. In the event of an emergency, the Association's right of entry to a Dwelling may be exercised without notice; otherwise, the Association shall give the Owners or occupants of a Dwelling no less than twenty-four hours advance notice prior to entering a Dwelling.

#### ARTICLE 6 EASEMENTS

- 6.1 **Easements for Maintenance.** The Association shall have the irrevocable right to have access from time to time as set forth in Section 5.5 above.
- 6.2 **Easements Reserved by Declarant and Association.** The Association shall have power to grant and convey to any third party and Declarant hereby reserves unto itself easements and rights of way as set forth in Chapter 13 of the Master Residential Declaration. Further the Project shall continue to be subject to the applicable easements set forth in the Master Residential Declaration.
- 6.3 **Easements for Utilities.** Declarant hereby declares, and Holmes Homes consents to, a non-exclusive easement over, under, through and across the Lots and Dwellings for the location of any utility lines, including power, natural gas, telecommunications, cable and any future utilities installed to serve the Dwellings, and the maintenance, repair, and replacement of the same. All work associated with the exercise of this easement shall be performed so as to minimize interference with the use and enjoyment of the Lot and Dwelling burdened by the easement. Upon completion of the work, the person exercising the easement shall make reasonable efforts to restore the Lot and Dwelling, to the extent reasonably possible, to the condition existing prior to the commencement of the work.
- 6.4 **Easements Deemed Created.** All conveyances of Lots within the Project hereafter made shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

#### ARTICLE 7 RESTRICTIONS ON USE

- 7.1 **Design Guidelines.** Pursuant to the Master Residential Declaration, the Project is subject to certain "Design Guidelines" more particularly described therein. The Association, as may be delegated to the Project DRC or other "Reviewer" (as defined in the Master Residential Declaration), shall have the authority to implement and enforce the Design Guidelines for the Project, in the manner described in Article 5 of the Master Residential Declaration.
- 7.2 **Design Review Committee.** The Association shall have a design review committee for the Project (defined above as the "Project DRC") consisting of no fewer than three (3) nor more than five (5) individuals, who shall serve and be removed and replaced in the Board's discretion. The Declarant shall initially designate the members of the Project DRC. Upon Declarant's delegation of authority pursuant to the Bylaws, the Board shall



appoint the Project DRC. Project DRC members need not be Owners or representatives of Owners. The Association may compensate Project DRC members in such manner and amount, if any, as the Board may determine necessary (which amount shall be included as a Common Expense). Except as otherwise set forth herein, the Project DRC shall function in the same manner with the rights and obligations as, but subject to, the "Design Review Committee" described in Section 5.2 of the Master Residential Declaration.

- 7.3 **Residential Uses Only.** Each Lot contained in the Project is intended to be used for single family residential housing and is restricted to such use. No Lot shall be used for business or commercial activity except as approved in writing by the Board and as set forth in the Master Residential Declaration; provided, however, that nothing herein shall be deemed to prevent any Owner or his duly authorized agent from freely renting or leasing his Lot from time to time subject to the provisions of Section 7.3 of the Master Residential Declaration.
- 7.4 **No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on, in, or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or may cause embarrassment, disturbance, or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property. No trash, garbage, or other waste or unsightly materials shall be left outside of any enclosed structure.
- 7.5 **Restriction on Recreational Vehicles.** No boats, trailers, recreational vehicles, trucks, commercial vehicles, or inoperable vehicles shall be parked or stored within the Project as set forth in the Master Residential Declaration.
- 7.6 **Restriction on Signs.** Except as permitted by the Master Residential Declaration, no signs or advertising devices of any nature, including without limitation commercial, political, informational, or directional signs or devices, shall be erected or maintained on any portion of the Project.
- 7.7 **No Structural Alterations.** No Owner shall, without the prior written consent of the Board, make or permit to be made any structural alteration, improvement, or addition, including without limitation any fences, walls or patios, to the exterior of the Dwelling located on his Lot, or to the Maintained Areas on his Lot, without the prior written consent of the Board, which consent may be granted or withheld in the Board's sole discretion, consistent with the terms of the Master Residential Declaration, Design Guidelines and Community-Wide Standard.
- 7.8 **Prohibition of Damage and Certain Activities.** Except with the prior written consent of the Association, nothing shall be done or kept in or on any Lot or in any other part of the Project which may result in cancellation of any insurance on the Project or any part thereof, nor shall anything be done or kept in or on any Lot which may increase the rate of insurance on the Project or any part hereof over that which the Association, but for such activity, would have to pay. Nothing shall be done or kept in or on any Lot or in the

Project or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority.

- 7.9 **Rules and Regulations.** The Owners shall comply with all of the rules and regulations set forth in the Master Residential Declaration. In addition, the Board may adopt, amend, or revise additional rules and regulations pertaining solely to the Project and in accordance with the Bylaws.
- 7.10 **Construction Period Exemption.** During the course of actual construction of any structures or improvements which are permitted to be located on the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction, nothing shall be done which would result in a violation of any of said provisions, covenants, conditions, or restrictions following completion of such construction.
- 7.11 **Pets and Animals.** No animals or birds of any kind shall be raised, bred or kept in or on any Lot, except to the extent permitted by the Master Residential Declaration and any additional rules or regulations adopted by the Board.

#### ARTICLE 8 THE ASSOCIATION; BYLAWS

- 8.1 **Membership and Bylaws.** Each Owner shall be entitled and required to be a Member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Lot is held by more than one Owner, all Co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under this Declaration. An Owner shall be entitled to one membership in the Association for each Lot owned by said Owner. Each Lot shall have one vote in the Association appurtenant thereto, regardless of the number of Owners thereof. Each membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically by conveyance of that Lot. Ownership of a Lot within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance, or other disposition of a Lot shall be construed to be a devise, encumbrance, conveyance or other disposition, respectively, of the Owner's membership in the Association, and the rights appurtenant thereto. Except as otherwise provided in the Bylaws with respect to the Declarant, no person or entity other than an Owner may be a member of the Association and in no event shall membership in the Association be transferred except in connection with the transfer of a Lot.
- 8.2 **Board.** The Board of Directors (the "**Board**") shall initially consist of three (3) members which can be increased up to as many as seven (7) members in accordance with and upon the terms of the Bylaws. Declarant reserves the right to appoint all of the Board consistent with the terms of the Bylaws.
- 8.3 **Amplification.** The provisions of this Article may be amplified by the Articles of Incorporation and separately adopted Bylaws of the Association; provided, however, that

no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

#### ARTICLE 9 CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

- 9.1 **Manager.** The Association may by written contract delegate in whole or in part to a professional Manager such of the Association's duties, responsibilities, functions, and powers hereunder as are properly delegable. The services of any Manager retained by the Association shall be paid for with funds from the Common Expense Fund.
- 9.2 **Miscellaneous Goods and Services.** The Association may obtain and pay for the services of such personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project, the enforcement of this Declaration, or any other matter. In addition to the foregoing, the Association may (but is not obligated to) acquire and pay for out of the Common Expense Fund necessary or desirable utility services for the Project and insurance, bonds, and other goods and services common to the Lots.
- 9.3 **Real and Personal Property.** The Association may acquire, hold and own real, personal, and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise. The maintenance, repair and replacement of all such property shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall become part of such Fund.
- 9.4 **Rules and Regulations.** The Association, by action of the Board, may make reasonable rules and regulations governing the use of the Lots, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Association may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations of Owners arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, from the offending Owner.
- 9.5 **Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.
- 9.6 **Indemnification.** To the fullest extent permitted by law, the Association shall indemnify the following persons and entities against all expenses and liabilities including, but not limited to, attorneys' fees, reasonably incurred by or imposed upon such person in connection with any proceeding to which such person may be a party, or in which such person may become involved, by reason of such person being or having served in any

capacity on behalf of the Association (or by reason of having appointed, removed or controlled or failed to control members of the Board or the Project DRC):

- (a) every director and officer of the Association and every member of the Project DRC and any other committee of the Association;
- (b) every director, officer and employee of the Declarant and the Master Residential Association and the Daybreak Community Council, Inc.; and
- (c) every person serving as an employee of the Association.

Any such person shall be entitled to indemnification whether or not such person is a director, officer or member of the Association or of the Project DRC or any other committee of the Association or is serving in any other such specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that the person to be indemnified hereunder did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of its duties. The foregoing rights of indemnification shall be in addition to, and not in place of, all other rights to which such persons may be entitled at law or otherwise.

- 9.7 **Cooperation with Declarant.** Declarant or its affiliate is the owner of real property adjacent to or nearby the Project. The plans for such real property currently include development as mixed-use parcels. Different uses may be constructed at different times. Therefore Lots within the Project may be located near other uses when such adjacent or nearby real property is developed, including retail, civic and office property and apartments, townhouses and condominiums. Certain traits of each Lot and the Project may change over time depending on adjacent or nearby uses, such as the view, shade, perceived privacy and amount of traffic. The Association and each Owner hereby acknowledge the plans for adjacent mixed-use development and agree not to challenge or oppose such development with any of the Association, the Master Residential Association, the Daybreak Community Council, the City of South Jordan or the County of Salt Lake, State of Utah, or any other relevant governing body.

#### ARTICLE 10 ASSESSMENTS

- 10.1 **Agreement to Pay Assessments.** Each Owner of a Lot by the acceptance of instruments of conveyance and transfer therefore, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association all assessments, both regular and special, made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article. The obligation to pay assessments shall commence as to each Lot on the first day of the month following the date on which a certificate of occupancy is issued for a Dwelling, or a Dwelling is actually occupied, whichever first occurs.
- 10.2 **Regular Assessments.** Regular assessments shall be computed and assessed against all Lots in the Project as follows:

(a) Common Expenses.

- (1) Annual Budget. At least sixty (60) days before the beginning of each fiscal year, the Association shall prepare, or cause to be prepared, an operating budget setting forth an itemized statement of the anticipated expenses for the coming year and taking into account the general condition of the Project. The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained. The Board shall send a copy of such budget, together with the amount of the assessments to be levied pursuant to such budget, to each Member at least thirty (30) days prior to the due date of the assessments to be levied pursuant to such budget. The budget shall automatically become effective unless disapproved or amended by a vote of at least seventy-five percent (75%) of the Total Votes of the Association at a Member meeting set in accordance with the Bylaws. If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect, increased by ten percent (10%), shall continue in effect until a new budget is determined.
- (2) Basis of Annual Budget. The annual budget shall be based upon the Association's estimates of the cash required to provide for payment of expenses (the "**Common Expenses**") arising out of or connected with maintenance and operation of the Maintained Areas. Such actual expenses and estimated expenses may include, among other things, the following: expenses of management; governmental taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain; repairs and maintenance; wages for Association employees, including fees for a Manager, if any; utility charges, if any; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve; sinking or reserve funds required or allowed herein; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the Owners or by reason of this Declaration.
- (3) Annual Assessments. The Association shall establish a regular, equal monthly assessment to be paid by each Owner into the Common Expense Fund. The dates and manner of payment shall be determined by the Association. The foregoing method of assessing the Common Expenses to the Owners may be altered by the Association so long as the method it adopts is consistent with good accounting practice and requires that the portion of Common Expenses borne by each Owner be equal. Each monthly installment of the regular assessment shall bear interest at the rate of ten percent (10%) per annum (or such higher rate as the Board may establish, subject to the limitations of Utah law) from the date it becomes due and payable until paid. Failure of the Association to give timely

notice of any assessment as provided herein shall not affect the liability of the Owner of any Lot for such assessment.

- (b) **Inadequate Funds**. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth in Section 10.3 below, except that the vote therein specified shall not be necessary.

**10.3 Special Assessments.** In addition to the regular assessments authorized herein, the Association may levy, at any time and from time to time, upon affirmative vote of at least fifty one percent (51%) of the Total Votes of the Association, special assessments, payable over such periods of time as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Lots, Dwellings, Buildings or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration. This section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be apportioned equally among and assessed equally to all Owners, except as otherwise provided herein. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days after such notice shall have been mailed. All unpaid portions of any special assessment shall bear interest at the rate of ten percent (10%) per annum (or such higher rate as the Board may establish, subject to the limitations of Utah law) from the date such portions become due until paid.

**10.4 Lien for Assessments.** All sums assessed to the Owner of any Lot pursuant to the provisions of this Article, together with interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Association. To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, and a description of the Lot. Such notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the Salt Lake County Recorder. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in the State of Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including reasonable attorneys' fees, and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid in at any foreclosure sale, and to own, lease, mortgage or convey the subject Lot.

**10.5 Personal Obligation of Owner.** The amount of any regular or special Assessment against any Lot (along with any interest charged of such assessments, late charges as

determined by Board resolution, costs and reasonable collection and/or attorneys' fees incurred in connection with collection of the same) shall be the personal obligation of the Owner of such Lot to the Association. Suit to recover a money judgment for such personal obligation may be maintained by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by abandonment of his Lot, or by waiving any services or amenities. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

- 10.6 **Statement of Account.** Upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot and payment of any reasonable fee assessed, the Association shall issue a written statement setting forth the following: (a) the amount of the unpaid assessments, if any, with respect to such Lot, and (b) the amount of the current regular assessment with respect to such Lot and the date such assessment becomes or became due. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.
- 10.7 **Personal Liability of a Purchaser.** A purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Lot up to the time of the grant of conveyance; provided, however, that the provisions of this section shall not prejudice the purchaser's right to recovery from the seller of the amount of such assessments paid by the purchaser for such assessments.
- 10.8 **Assessments Part of Common Expense Fund.** All funds received from assessments under this Article shall be a part of the Common Expense Fund.
- 10.9 **Assessment Reserve.** Upon the transfer of title to a Lot, the purchaser of such Lot shall pay to the Association a reserve in the amount of three (3) months worth of regular assessments to be charged against such Lot and to be transferred into the association reserve fund.

#### ARTICLE 11 CASUALTY AND INSURANCE

- 11.1 **Casualty.** In the event of destruction or damage to part or all of the Buildings or other improvements in the Project, the provisions of this section shall apply:
- (a) If proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be promptly carried out.
  - (b) If proceeds of the insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all of the Owners affected by such casualty shall be subject to a special assessment for any deficiency, which special assessment shall be calculated in an equitable manner based upon the amount of the insurance deficiency and the extent of damage to such Owner's Lot or Dwelling.

- (c) Any insurance proceeds remaining after repairing or replacing the damaged improvements shall be applied to reserves for future repairs and replacements.
- (d) Any reconstruction or repair which is required to be carried out by this Article shall be accomplished at the request and direction of the Board.
- (e) The term "reconstruction," as used in this Article, shall mean restoring the damaged Building to substantially the same condition in which it existed prior to the fire or other disaster, with each Building having substantially the same vertical and horizontal boundaries as before.

## 11.2 Insurance.

- (a) Fire and Extended Coverage. The Board shall have the authority to, and shall obtain, insurance for all Buildings, structures, fixtures and equipment, and common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location, and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, issued in the locale of the Property, or, if the policy does not include an "all risks" endorsement, a policy that includes the "broad form" covered causes of loss, in amounts at all times (i) that is sufficient to prevent the Owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and (ii) that is not less than one hundred percent (100%) of the current insurable replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage). This insurance shall also:
  - (1) provide coverage for built-in or installed improvements, fixtures, and equipment that are part of a Dwelling, and shall provide for coverage of interior walls, windows and doors, and the frames, sashes, jambs and hardware therefore, even though these improvements may be parts of Dwellings, and/or maintained by the Owner;
  - (2) provide that no assessment may be made under the policy against a first mortgage lender, or its insurer or guarantor, and, that any assessment under such policy made against others may not become a lien on a Lot and its appurtenant interests superior to a interest of the first mortgage lender;
  - (3) be written in the name of the Association for the use and benefit of the Owners, or its authorized representative, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Owners;
  - (4) be written with a company authorized to do business in the State of Utah that satisfies the requirements of the Federal National Mortgage



Association or such other secondary mortgage market agencies or federal agencies as the Board determines appropriate;

- (5) have a deductible amount no greater than the lesser of one thousand dollars or one percent of the policy face amount, or such other amount as reasonably determined by the Board from time to time;
- (6) be paid for by the Association through annual assessments of the Owners;
- (7) contain a waiver of subrogation of rights by the carrier as to the Association, to its officers and directors, and to all Owners;
- (8) contain an inflation guard endorsement, to the extent available at a reasonable cost and terms;
- (9) provide that the insurance shall not be prejudiced by any acts or omissions of individual Owners who are not under the direct control of the Association; and
- (10) be primary, even if an Owner has other insurance that covers the same loss.

(b) Liability Insurance. The Association shall obtain and maintain a commercial policy of general liability insurance covering all of the Maintained Areas and any other areas under the Association's supervision, and Dwellings, if any, owned by the Association, even if leased to others, insuring the Association, the directors of the Board, and the Owners and occupants, with such limits as the Board may determine, but no less than the greater of (i) the amounts generally required by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (ii) one million dollars, for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" provision, or, if it does not, an endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, the Board, or other Owners, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of the Maintained Areas, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party.

(c) Fidelity Coverage. The Board shall obtain and maintain fidelity insurance providing coverage for the Association against dishonest acts on the part of directors, managers, trustees, employees, agents, and volunteers responsible for or handling funds belonging to or administered by the Association. The fidelity insurance policy must name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is in no event less than the greater of (i) an amount equal to the Association's reserve funds plus three months' assessments on all Lots, and (ii) the maximum amount that will be

in the custody of the Association or the Manager at any time while the policy is in force. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The policy shall provide that it shall not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association and any insurance trustee. Any Manager who handles funds of the Association shall maintain a policy of fidelity insurance providing coverage no less than that required of the Association, which bond or insurance policy names the Association as an additional obligee.

- (d) Hazard Insurance Carrier. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Utah which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports-international edition, a "BBBQ" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.
- (e) Other Association Insurance. In addition, the Board may purchase and maintain contractual liability insurance, trustees' and officers' liability insurance, and such other insurance as the Board may determine. At the request of the Declarant, the Board will add parties specified by Declarant as additional insured parties to any insurance policy held by the Association.
- (f) Insurance Representative: Power of Attorney. There may be named, under any policy obtained by the Association, as an insured on behalf of the Association, its authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy. Each Owner, by acceptance of a deed to a Lot, irrevocably appoints the Association or such designated representative, or such successor, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or such designated representative, or such successor, shall receive, hold, or otherwise properly dispose of any proceeds of insurance, in trust, for the Owners, as their interests may appear. This power is for the benefit of each and every Owner, the Association, and the Project, and runs with the land, and is coupled with an interest.

- (g) Owners' Insurance. Any Owner or occupant may carry such insurance in addition to that provided by the Association pursuant hereto as that Owner or occupant may determine, subject to the provisions hereof, and provided that no Owner or occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the insurance carried pursuant hereto by the Association which diminishes the Association's hazard insurance. In the event any Owner or occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Owner who acquired or whose occupant acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. Without limiting the foregoing, an Owner or occupant may obtain insurance against liability for events occurring within a Dwelling, losses with respect to personal property and furnishings, and losses to improvements owned by the Owner or occupant, provided that, if the Association obtains insurance for permanent improvements and built-in fixtures and equipment, then the insurance obtained by the Owner with respect to improvements within the Dwelling shall be limited to the type and nature of coverage commonly referred to as "tenants" improvements and betterments. All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and directors, and all other Owners and occupants.
- (h) Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, Mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner, and each Mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.
- (i) Worker's Compensation and Employer's Liability Insurance. The Board shall acquire workmen's compensation and employer's liability insurance and all other similar insurance in respect to employees of the Association in the amounts and in the forms now or hereafter required by law.
- (j) Directors and Officers Liability. The Association shall obtain and continue in effect insurance for the protection of the directors and officers of the Association from personal liability in the management of the Association's affairs.
- (k) Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Project and shall adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or such other qualified appraisers as the Association may select.

## ARTICLE 12 COMPLIANCE WITH DECLARATION AND BYLAWS

- 12.1 **Compliance.** Each Owner shall comply with the provisions of this Declaration, the Articles and Bylaws, rules and regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association or by an aggrieved Owner.
- 12.2 **Enforcement and Remedies.** The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or amended Declaration, enforceable against the Association, shall be enforceable by any Owner of a Lot by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or amended Declaration, enforceable against an Owner or any other person, shall be enforceable by Declarant or the Association by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid.
- 12.3 **Exemption of Declarant and Holmes Homes.** Notwithstanding anything in this Declaration to the contrary, none of the covenants, conditions, restrictions, easements or other provisions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant or Holmes Homes, their employees, agents and contractors, or parties designated by them in connection with the construction, management, administration, completion, maintenance, operation, sale, leasing, promotion or general development of the Project. This exemption shall not apply to Holmes Homes as an Owner of any Lot in the constructed Project.

### ARTICLE 13 MORTGAGEE PROTECTION

- 13.1 **Mortgage Protection.** No breach of any of the covenants, conditions, restrictions, and limitations contained herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions and limitations contained herein shall be binding upon an Owner whose title is derived through foreclosure or trustee's sale.
- 13.2 **Priority of Liens.** No enforcement of any lien provision herein contained shall defeat or render invalid the lien of any Mortgage. All sums assessed in accordance with the provisions herein shall constitute a lien on each respective Lot prior and superior to all other liens except (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any recorded Mortgage on such Lot made in good faith and for value and recorded prior to the date on which any such assessment or assessments become due.
- 13.3 **Prior Liens Relate Only to Individual Lots.** All taxes, assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to the individual Lot and not to the Project as a whole.

- 13.4 **Mortgage Holder Rights in Event of Foreclosure.** Any Mortgagee of a Mortgage of record which obtains title to a Lot by the foreclosure of the Mortgage on the Lot or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments and charges against the Lot which accrued prior to the date of the acquisition of title to such Lot by such acquirer. Any unpaid assessments shall be deemed to be Common Expenses collectible from all of the Lots in the Project, including the Lot that has been acquired in accordance with the provisions of this section.

#### ARTICLE 14 EXPANSION PROJECT

- 14.1 **Right to Expand and State of Title to New Lots.** There is hereby granted unto Declarant, and Declarant hereby reserves, the absolute right to expand the Project at any time (within the limits herein prescribed) and from time to time by adding to the Project the Additional Land or a portion or portions thereof. Notwithstanding any provision of this Declaration which might be construed to the contrary, such right and option may be exercised without obtaining the vote or consent of any other person (including any Owner, Mortgagee, or the Association) and shall be limited only as specifically provided in this Declaration. Any given portion of the Additional Land shall be deemed added to the Project and, subject to the terms of this Article 14, to the jurisdiction of the Association at such time as a duly approved subdivision plat and a supplement to this Declaration containing the information required by Section 14.3 have been recorded with respect to the portion of the Additional Land concerned. After the recordation of such supplement and plat, title to each Lot thereby created within the portion of the Additional Land concerned shall be vested in and held by Declarant, and none of the other Owners or the Association shall have any claim or title to or interest in such Lot.
- 14.2 **Rights and Statements Respecting Additional Land.** Declarant hereby furnishes the following information and statements respecting the Additional Land and Declarant's right and option concerning expansion of the Project by the addition thereto of the Additional Land or a portion or portions thereof:
- (a) All of the Additional Land need not be added to the Project if any of such Land is added. Rather, a portion or portions of the Additional Land may be added to the Project at any time (within the limits herein prescribed) and from time to time.
  - (b) There are no limitations or requirements relative to the size, location, or configuration of any given portion of the Additional Land which can be added to the Project or relative to the order in which particular portions of the Additional Land can be added to the Project.
  - (c) There are no limitations or requirements (other than zoning and subdivision restrictions as they may exist or be modified from time to time) relative to the layout, design, size, location, density, permitted uses, legal structure, or other characteristics of the Lots, Buildings, and Dwellings to be created on any portion of the Additional Land added to the Project. In any supplement to this Declaration which is recorded in conjunction with the addition to the Project of a

portion of the Additional Land, Declarant shall have the right in its sole discretion to specify building restrictions and standards applicable to such portion. In Declarant's sole discretion, the restrictions and standards so specified may be different than or in addition to the restrictions and standards set forth in this Declaration.

- (d) Any Building or Dwelling erected on a portion of the Additional Land added to the Project will be constructed in a good and workmanlike manner.
- (e) In conjunction with the addition to the Project of a portion of the Additional Land, Declarant shall have the right to reserve, in the instruments through which the addition is accomplished, rights-of-way and/or easements for purposes of enabling access to, furnishing utilities to, and facilitating or enabling development of, such of the Additional Land as has then not been added to the Project.
- (f) Assuming that the entirety of the Additional Land is added to the Project, the maximum number of Lots which may be created on the Additional Land is four thousand (4,000).

14.3 **Procedure for Expansion.** The supplements to this Declaration by which addition to the Project of any portion of the Additional Land is accomplished shall be executed by Declarant; shall be in recordable form; shall be filed for record in the office of the County Recorder of Salt Lake County, Utah, on or before twenty (20) years from the date that this Declaration is recorded; and shall contain the following information for that portion of the Additional Land which is being added to the Project:

- (a) Data sufficient to identify this Declaration and the plat respecting that portion of the Additional Land being added to the Project.
- (b) The legal description of the portion of the Additional Land being added to the Project.
- (c) Any amendments, supplements, or replacements to or for the standards and restrictions set forth in Article VII or elsewhere in this Declaration.
- (d) A statement that such portion of the Additional Land shall thereafter be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens set forth in this Declaration, as said Declaration may be amended or supplemented in accordance with the immediately foregoing Paragraphs (c) and (d).
- (e) Such rights-of-way and/or easements as are being reserved by Declarant pursuant to Paragraph (e) of the immediately foregoing Section 14.2.
- (f) Such other matters as Declarant may deem to be necessary, desirable, or appropriate.

Upon the recordation of any supplement contemplated above, it shall automatically supplement this Declaration and any supplements previously recorded. At any point in time, the Declaration for the Project shall consist of this Declaration, as amended and expanded by all supplements theretofore recorded pursuant to the terms hereof.

**14.4 Expansion May Include Common Areas or Limited Common Areas.**

Notwithstanding anything in this Declaration to the contrary, in Declarant's sole discretion, portions of the Additional Land that may be added to the Project pursuant to this Section 14 may include "Common Areas" and/or "Limited Common Areas" as defined herein. In the event that a supplement to this Declaration adds to the Project any "Common Area" or "Limited Common Area", such supplement shall contain terms and provisions setting forth the following (in addition to such terms and provisions as may be required or permitted under this Section 14):

- (a) Descriptions of easements in favor of and describing the Owners' (or in the case of Limited Common Areas, certain Owners') rights to use and enjoy the Common Areas and/or the Limited Common Areas, as applicable, as well as setting forth the Association's ability to suspend such use and enjoyment rights in the event that assessments are unpaid;
- (b) The apportionment of the Owners' (or with respect to Limited Common Areas, certain Owners') and the Association's responsibility to operate and maintain such Common Areas and/or Limited Common Areas;
- (c) The authority of the Association to charge the Owners (or, in the case of Limited Common Areas, certain Owners) assessments with respect to the Common Areas and/or the Limited Common Areas and the Owners' (or, in the case of Limited Common Areas, certain Owners') obligation to pay assessments to the Association for the operation and maintenance of such Common Areas and/or Limited Common Areas;
- (d) Rules, regulations, and other restrictions governing the use of the Common Areas and/or Limited Common Areas;
- (e) The types, amounts, and responsibility to obtain and maintain insurance with respect to the Common Areas and/or Limited Common Areas; and
- (f) The ability of the Declarant to require the Association to re-convey such Common Areas or Limited Common Areas to the Declarant pursuant to the terms of the Master Residential Declaration.

**"Common Areas"** as used herein shall mean and refer to all portions of the Project owned by the Association for the common use and enjoyment of the Owners, and shall include: (i) all portions of the Project not specifically included with the individual Lots and specifically designated by the Declarant as Common Area pursuant to a supplement to this Declaration or on a subdivision plat, and (ii) all installations, equipment, and lines, if any, now or hereafter located

on, over, or under the Common Areas and connected with or related to furnishing of the Project utility services such as water, sewage disposal, electricity, and telephone, and which are not owned by or dedicated to a governmental or quasi-governmental authority or public or private utility company and which are not reserved by Declarant. (Notwithstanding anything herein that might be construed to the contrary, there are no "Common Areas" or "Limited Common Areas" included in the area of the Project set forth on the Plat containing the first 64 Lots in the Project).

**"Limited Common Areas"** as used herein shall mean and refer to those Common Areas designated in a supplement to this Declaration or in a subdivision plat as reserved for the use of a certain Lot or Lots to the exclusion of the other Lots.

14.5 **No Obligation to Expand.** Except to the extent specifically indicated herein, this Declaration is not intended, and shall not be construed, so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (i) the addition to the Project of any or all of the Additional Land; (ii) the creation of, or construction on, any Lot within any particular time or in any particular manner; or (iv) the taking of any particular action with respect to any portion of the Additional Land. Except to the extent specifically indicated herein, no covenant, restriction, limitation, representation, or commitment in this Declaration concerning anything that is or is not to occur, apply, or be done on or relative to the Additional Land or any portion thereof shall be binding as to such of the Additional Land as is never added to the Project.

14.6 **Owners' Obligation Concerning Expansion of Project or Development of the Additional Land.** Each Owner, by acquiring his interest in the Project, agrees not to inhibit or oppose Declarant's future development of each portion of the Additional Land (whether or not added to the Project) and the obtaining of necessary approvals therefore. Without limiting the scope of the immediately foregoing sentence, no Owner shall oppose such development in public meetings, by petition, or by legal actions.

#### ARTICLE 15 GENERAL PROVISIONS

15.1 **Intent and Purpose.** The provisions of this Declaration and any supplemental or amended Declaration shall be liberally construed to effectuate the development and operation of the Project. Failure to enforce any provision, restriction, covenant, or condition in this Declaration, or in any supplemental or amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.

15.2 **Construction.** The provisions of this Declaration shall be in addition and supplemental to all applicable provisions of law. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define or otherwise affect the context, meaning, or intent of this Declaration or any Article, section or provision hereof. The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or



unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

- 15.3 **Registration of Mailing Address.** Each Owner shall register from time to time with the Association his current mailing address. All notices or demands intended to be served upon any Owner may be sent by first class U.S. mail, postage prepaid, addressed to the Owner at his registered mailing address, or, if no address has been registered, to the Lot of such Owner. All notice or demands intended to be served upon the Association may be sent by first class U.S. registered or certified mail, postage prepaid, addressed to the Association at the address of its offices as may be furnished to the Owners in writing from time to time. Any notice or demand referred to in this Declaration shall be deemed given three days after deposited in the U.S. mail, postage prepaid, and in the form provided for in this section.
- 15.4 **Audit.** Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association; provided, however, that such Owner shall not be entitled to request an audit or inspection more than once every eighteen (18) months.
- 15.5 **Amendment.** Declarant reserves the right to unilaterally amend this Declaration for any purpose during the "Declarant Control Period" defined and described in the Bylaws. Following such period, except as otherwise provided herein, this Declaration may be amended if Owners holding at least fifty one percent (51%) of the Total Votes of the Association consent and agree to such amendment at a meeting of the Owners duly held in accordance with the provisions of the Articles, Bylaws, and this Declaration; provided, however, that for the period of time that the Declarant is a Member of the Association as provided in the Bylaws, the Declarant's consent to such amendment shall be required, which consent may be given, withheld or conditioned in Declarant's sole discretion. Properly approved amendments shall be evidenced by instruments which are duly recorded in the office of the County Recorder for Salt Lake County, State of Utah.
- 15.6 **Effective Date.** This Declaration shall take effect upon recording in the Official Records of the Salt Lake County Recorder, State of Utah.
- 15.7 **Term and Termination.** This Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, and thereafter shall automatically extend for successive 10-year periods unless at least seventy-five percent (75%) of the then-Owners sign a document stating that this Declaration is terminated and that document is recorded within the year before any extension. In such case, this Declaration shall terminate on the date specified in the termination document.
- 15.8 **Agent for Service.** The person to receive service of process for the Association shall be the then current registered agent of the Association as shown on the records maintained in the of Office of the Division of Corporations and Commercial Code of the State of Utah.
- 15.9 **Limitation on Association's Liability.** The Association shall not be liable for any failure of water service or other utility service which may be obtained and paid for by the

Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or person in the Project, or resulting from electricity, water, rain, snow or ice. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs, maintenance or improvements to the Project or any part thereof, or from any action taken to comply with any law, ordinance or order of a governmental authority.

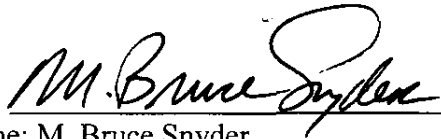
- 15.10 **Owner's Obligations.** All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting, or selling on contract his Lot. The Owner of a Lot shall have no obligation for expenses or other obligations accruing after he conveys title to such Lot.
- 15.11 **Declarant's Rights Assignable.** The rights of Declarant hereunder or in any way relating to the Project may be assigned. Upon assignment, references to the "Declarant" shall refer to such assignee.
- 15.12 **Master Residential Declaration's Full Force and Effect.** The Master Residential Declaration shall remain in full force and effect, provided, however, that in the event of a specific and clear conflict between the Master Residential Declaration and this Declaration, the terms of this Declaration shall control, but only in connection with the Project and the Lots.

[Signatures Begin on the Following Page]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration, to be effective as of the day and year first above written.

Declarant:

KENNECOTT LAND COMPANY,  
a Delaware corporation

By 

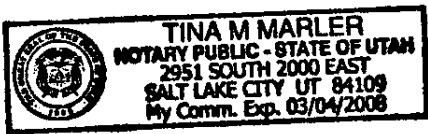
Name: M. Bruce Snyder

Title: Vice President, Commercial and  
Residential Development

STATE OF UTAH )  
 ) SS.  
COUNTY OF SALT LAKE )

On September 21, 2005 personally appeared before me, a Notary Public,  
M. Bruce Snyder, the V.P. Residential and Commercial Development of KENNECOTT LAND COMPANY  
personally known or proved to me to be the person whose name is subscribed to the above  
instrument who acknowledged to me that he executed the above instrument on behalf of  
KENNECOTT LAND COMPANY.

WITNESS my hand and official Seal.



Tina M. Marler  
Notary Public in and for said State

My commission expires: 03/04/2008

[SEAL]

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE "DAYBREAK TOWNHOME 1 PROJECT"**

Lots 1-64, inclusive, depicted on the "DAYBREAK TOWNHOME 1 SUBDIVISION", according to the official plat recorded July 21, 2004, as Entry No. 9125568 in Book 2004P beginning at Page 198 in the Official Records of Salt Lake County, Utah.

IND FLG	LOT/QUAR	PARCEL NUMBER
L	1	27-19-382-004-0000
L	2	27-19-382-005-0000
L	3	27-19-382-006-0000
L	4	27-19-382-007-0000
L	5	27-19-382-008-0000
L	6	27-19-382-009-0000
L	7	27-19-382-010-0000
L	8	27-19-382-011-0000
L	9	27-19-382-012-0000
L	10	27-19-382-013-0000
L	11	27-19-382-014-0000
L	12	27-19-382-015-0000
L	13	27-19-382-016-0000
L	14	27-19-382-017-0000
L	15	27-19-382-018-0000
L	16	27-19-382-019-0000
L	17	27-19-382-020-0000
L	18	27-19-382-021-0000
L	19	27-19-382-022-0000
L	20	27-19-382-023-0000
L	21	27-19-383-010-0000
L	22	27-19-383-011-0000
L	23	27-19-383-012-0000
L	24	27-19-383-013-0000
L	25	27-19-383-014-0000
L	26	27-19-383-015-0000
L	27	27-19-383-016-0000
L	28	27-19-383-017-0000
L	29	27-19-383-018-0000
L	30	27-19-383-019-0000
L	31	27-19-383-020-0000
L	32	27-19-383-021-0000
L	33	27-19-383-033-0000
L	34	27-19-383-032-0000
L	35	27-19-383-031-0000
L	36	27-19-383-030-0000
L	37	27-19-383-029-0000

IND FLG	LOT/QUAR	PARCEL NUMBER
L	37	27-19-383-029-0000
L	38	27-19-383-028-0000
L	39	27-19-383-027-0000
L	40	27-19-383-026-0000
L	41	27-19-383-025-0000
L	42	27-19-383-024-0000
L	43	27-19-383-023-0000
L	44	27-19-383-022-0000
L	45	27-19-382-044-0000
L	46	27-19-382-043-0000
L	47	27-19-382-042-0000
L	48	27-19-382-041-0000
L	49	27-19-382-040-0000
L	50	27-19-382-039-0000
L	51	27-19-382-038-0000
L	52	27-19-382-037-0000
L	53	27-19-382-036-0000
L	54	27-19-382-035-0000
L	55	27-19-382-034-0000
L	56	27-19-382-033-0000
L	57	27-19-382-032-0000
L	58	27-19-382-031-0000
L	59	27-19-382-030-0000
L	60	27-19-382-029-0000
L	61	27-19-382-028-0000
L	62	27-19-382-027-0000
L	63	27-19-382-026-0000
L	64	27-19-382-025-0000

**EXHIBIT B**  
**DESCRIPTION OF THE "ADDITIONAL LAND"**

**Note to recorder, clerk and title examiners:** This Declaration is not intended to create an encumbrance on title to the property described in this Exhibit "B."

Additional Property:

Any real property situated within 2 miles of the perimeter boundaries of the "Daybreak Townhome 1 Project" as described on Exhibit A.



**EXHIBIT C  
BYLAWS OF THE ASSOCIATION**

**BY-LAWS  
OF  
DAYBREAK TOWNHOME 1 OWNERS' ASSOCIATION, INC.**

**ARTICLE I  
OFFICES**

The Daybreak Townhome 1 Owners' Association, Inc. (the "Association") shall have its principal office in Salt Lake County, Utah and may have such other offices, within the State of Utah, as the Board of Directors (the "Board") may designate or as the business of the Association may require from time to time.

**ARTICLE II  
DEFINITIONS**

Except as otherwise provided herein or as otherwise required by the context, all terms defined in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Daybreak Townhome 1 Project (the "Declaration"), shall have such defined meanings when used in these By-Laws.

**ARTICLE III  
MEMBERS**

Section 1. Membership. The Association shall have two classes of membership, Owner membership and Declarant membership, as also set forth in the Master Residential Declaration. The Declarant holds the sole Declarant membership, which membership shall terminate two years after expiration of the Declarant Control Period (as defined herein) or on such earlier date as the Declarant determines. Provisions of the Master Residential Declaration pertaining to membership and voting are incorporated herein by this reference.

Section 2. Annual Meetings. The annual meeting of members of the Association shall occur within ninety (90) days before or after the close of the Association's fiscal year, beginning with the year following the year in which the Articles of Incorporation are filed, for the purpose

of electing Directors (if the members then have responsibility for so doing) and transacting such other business as may come before the meeting.

Section 3. Special Meetings. Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called from time to time by the president. In addition, the president or the secretary shall immediately call a special meeting if so directed by a resolution of the Board or upon the written request of members holding not less than twenty-five percent (25%) of the Total Votes of the Association, such written request to state the purpose or purposes of the meeting and to be delivered to the Board or the president. No business shall be transacted at a special meeting except as stated in the notice.

Section 4. Place of Meetings. The Board may designate any place in Salt Lake County, State of Utah, as the place of meeting for any annual meeting or for any special meeting called by the Board. A waiver of notice signed by all of the members may designate any place, within the State of Utah, as the place for holding such meeting.

Section 5. Notice of Meetings. The Board, president or secretary shall cause written or printed notice of the time, place, and purpose of all meetings of the members, whether annual or special, to be delivered, not more than fifty (50) nor less than ten (10) days prior to the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to have been delivered when deposited in the U.S. mail addressed to the member at his registered address, with first class postage thereon prepaid. Each member shall register with the Association such member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, the member's Lot address shall be deemed to be his registered address for purposes of notice hereunder.

Section 6. Waiver of Notice. Waiver of notice of an Association meeting shall be deemed the equivalent of proper notice. Any member may waive, in writing, notice of any Association meeting, either before or after such meeting. A member's attendance at a meeting shall be deemed a waiver by such member of notice of the time, date, purpose, and place thereof, unless the member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

Section 7. Fixing of Record Date. Upon purchasing a Lot in the Project, each Owner shall promptly furnish to the Association a certified copy of the recorded instrument by which ownership of such Lot has been vested in such Owner, which copy shall be maintained in the records of the Association. For the purpose of determining members entitled to notice of or to vote at any meeting of the members, or any adjournment thereof, the Board may designate a record date, which shall not be more than fifty (50) nor less than ten (10) days prior to the meeting. If no record date is designated, the date on which notice of the meeting is mailed shall be deemed to be the record date for determining members entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Association on such record date as the Owners of record of Lots in the Project shall be deemed to be the members of record entitled to notice of and to vote at the meeting of the members and any adjournments thereof.

Section 8. Quorum. At any meeting of the members, the presence of members holding, or holders of proxies entitled to cast, at least twenty percent (20%) of the Total Votes of the Association shall constitute a quorum for the transaction of business. In the event a quorum is not present at a meeting, the members present (whether represented in person or by proxy),

though less than a quorum, may adjourn the meeting to a later date. Notice thereof shall be delivered to the members as provided above. At the reconvened meeting, the members and proxy holders present shall constitute a quorum for the transaction of business.

Section 9. Proxies. At each meeting of the members, each member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the member himself or by his attorney thereunto duly authorized in writing. If a membership is jointly held, the instrument authorizing a proxy to act must have been executed by all holders of such membership or their attorneys thereunto duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the secretary of the Association or to such other officer or person who may be acting as secretary of the meeting.

Section 10. Votes. Each Lot shall have one vote, to be cast in person or by proxy, with respect to each matter submitted to a vote of the members. No vote shall be exercised for Lots that the Declarant or an affiliate of the Declarant owns; rather, the Declarant's consent shall be required for various actions of the Board as specifically provided for in these Bylaws, the Declaration, and the Master Residential Declaration. The affirmative vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the members, unless a greater proportion is required by the Articles of Incorporation, these By-Laws, the Declaration, the Master Residential Declaration, or Utah law.

Section 11. Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, form of proxies, and method of ascertaining members present shall be deemed waived if no objection thereto is made at the meeting.

Section 12. Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the members may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by more than fifty percent (50%) of the members entitled to vote with respect to the subject matter thereof.

#### **ARTICLE IV BOARD OF DIRECTORS**

Section 1. General Powers. The property, affairs, and business of the Association shall be managed by the Board. The Board may exercise all of the powers of the Association, whether derived from law, the Articles of Incorporation, these By-Laws, or the Declaration, except those powers which are by law or by the foregoing documents vested solely in the members. The Board shall, among other things, prepare or cause to be prepared, plan and adopt an annual budget in accordance with and as set forth in the Declaration and Master Residential Association, and cooperate with the Daybreak Community Council in levying, assessing and collecting assessments, and keep or cause to be kept sufficient books and records with a detailed account of the receipts and expenditures affecting the Project and its administration. The books and records shall be available for examination by all members by appointment and at convenient hours on working days that shall be set and announced for general knowledge. All books and records shall be kept in accordance with good accounting procedures and shall be audited as required by the Declaration. The Board may by written contract delegate, in whole or in part, to a professional management organization or person such of its duties, responsibilities, functions, and powers as are properly delegable. The Board' duties shall also include, but shall not be limited to, the following:

(a) maintaining the landscaping and related improvements on the Lots and maintaining, replacing and repairing the Lots all in accordance with the Declaration and the Master Residential Declaration;

(b) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(c) depositing all funds received on the Association's behalf in a bank depository which it shall approve, and using such funds to operate the Association; however, in the Board of Director's business judgment any reserve funds may be deposited in depositories other than banks;

(d) opening bank accounts on the Association's behalf and designating the signatories required;

(e) making, adopting, amending or revising rules and regulations pertaining to the Project in accordance with the Declaration;

(f) appointing, removing, and replacing members of the Project DRC in accordance with these Bylaws and the Declaration;

(g) cooperating with the Master Residential Association in upholding the Community Wide Standard;

(h) when requested, providing copies of the Master Residential Association and the Covenant to Owners;

(i) enforcing by legal means the provisions of the Declaration and bringing any proceedings which may be instituted on behalf of or against the Owners concerning

the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in the Master Residential Declaration and the Declaration;

(j) obtaining and carrying property and liability insurance, paying the cost thereof, and filing and adjusting claims, as appropriate and in accordance with the Declaration;

(k) paying the cost of all services rendered to the Association; and

(l) indemnifying a Director, officer or committee member, or former Director, officer or committee member of the Association, to the extent such indemnity is required by Utah law, the Articles, the Declaration and these By-Laws.

Section 2. Initial Board. The initial Board shall be composed of three (3) Directors. The Directors specified in the Articles of Incorporation shall serve as the initial Board until any successors or replacements are appointed by the Declarant. The three-Director initial Board, with any replacements or successors as appointed by the Declarant, shall serve until termination of the Declarant Control Period. Until the termination of the Declarant Control Period, Declarant may appoint, remove, and replace Directors in its sole and absolute discretion. As used herein, the "**Declarant Control Period**" shall refer to the period of time that the Declarant is entitled to appoint a the members of the Association's Board. The Declarant Control Period begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

(a) when 75% of the total number of "Units" (as defined in the Master Residential Declaration) permitted by applicable zoning for the Daybreak project described in the "Master Plan" (as defined in the Master Residential Declaration) have certificates of occupancy issued thereon and have been conveyed to persons other than "Builders"(as defined in the Master Residential Declaration) holding title for purposes of construction and resale;



(b) December 31, 2034; or

(c) when, in its discretion, the Declarant so determines and declares in a recorded instrument

Notwithstanding anything in these Bylaws or the Declaration that may be construed to the contrary with respect to Declarant's ability to voluntarily terminate the Declarant Control Period as set forth above, Declarant may (in the exercise of its sole and absolute discretion) voluntarily terminate the Declarant Control Period in whole or in part, with respect to all or any portion of any Lot, any Common Area, any Limited Common Area, any portion of Additional Land, or with respect to any issue, matter or subject whatsoever. Declarant's decision to voluntarily terminate the Declarant Control Period with respect to all or any portion of any Lot, Common Area, Limited Common Area, portion of Additional Land, or with respect to any issue, matter or subject shall in no event affect, modify, or act to waive its authority under the Declarant Control Period except with respect to such Lot, Common Area, Limited Common Area, portion of Additional Land, or such issue, matter or subject.

Section 3. Permanent Board.

(a) Following the termination of the Declarant Control Period, the Board shall be composed of three (3) Directors, elected by the Owners, but can be increased up to as many as seven (7) members upon the majority vote of the existing Board or the majority vote of the Owners at a duly called meeting of the Owners. Directors elected by the Owners are referred to hereinafter as "Owner Directors."

(b) So long as Declarant is a member of the Association pursuant to Article III hereof, the Declarant shall be entitled to appoint, remove, and replace one Director on the Board. Thereafter, the Director elected by the Declarant shall resign and the remaining

Directors shall be entitled to appoint a Director to serve until the next annual meeting, at which time the Owners shall be entitled to elect a Director to fill such position.

Section 4. Organizational Meetings. The Board shall hold an organizational meeting within ten (10) days following each annual Association meeting at such time and place as the Board shall fix.

Section 5. Regular Meetings. The Board shall hold regular meetings at such time and place as a majority of the Directors shall determine, but the Board shall meet at least four (4) times during each fiscal year with at least one meeting per quarter.

Section 6. Special Meetings. The Board shall hold special meetings when called by written notice of the president, or when any two Directors sign such written notice.

Section 7. Notice; Waiver of Notice. Notices of Board' meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall notify each Director of meetings by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the Director's telephone number, fax number, electronic mail address, or sent to the Director's address as shown on the Association's records. The Board shall deposit notices sent by first class mail into a United States mailbox at least ten business days before the day of the meeting. The Board shall give notices by personal delivery, telephone, or other device at least seventy-two (72) hours before the time set for the meeting.

Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each Director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 8. Quorum and Manner of Acting. A majority of the then authorized number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. Except as otherwise required in these By-Laws, the Articles of Incorporation, the Declaration, or by Utah law, the act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board. The Directors shall act only as a Board, and individual Directors shall have no powers as such. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of Directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the Directors present may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any business it might have transacted at the original meeting.

Section 9. Compensation. No Director shall receive compensation for any services that he may render to the Association as a Director; provided, however, that a Director may be reimbursed for expenses incurred in performance of his duties as a Director to the extent such

expenses are approved by the Board and (except as otherwise provided in these By-Laws) may be compensated for services rendered to the Association other than in his capacity as a Director.

Section 10. Resignation and Removal. A Director may resign at any time by delivering a written resignation to either the president or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Owner Director may be removed at any time, for or without cause, by the affirmative vote of the Owners holding more than fifty percent (50%) of the Total Votes of the Association, at a special meeting of the members duly called for such purpose. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose.

Section 11. Vacancies. If vacancies shall occur in the Board by reason of the death, resignation, or disqualification of an Owner Director, the Directors then in office shall continue to act, and such vacancies shall be filled by a vote of the Directors then in office, until the next annual meeting, at which time the Owners shall elect a successor for the remainder of the term. Any vacancy in the Board occurring by reason of removal of a Director by the members shall be filled upon such removal by the election of a successor for the remainder of the term of such Director. If vacancies shall occur in the Board by reason of death, resignation, or removal of a Director appointed by the Declarant, such vacancies shall be filled by appointments to be made by the Declarant.

Section 12. Informal Action by Directors. Any action that is required or permitted to be taken at a meeting of the Board, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors.

## **ARTICLE V OFFICERS**

Section 1. Officers. The officers of the Association shall be a president, a secretary, a treasurer and such other officers as may from time to time be appointed by the Board.

Section 2. Election, Tenure, and Qualifications. The officers of the Association shall be chosen by the Board annually at the regular annual meeting of the Board. In the event of failure to choose officers at such regular annual meeting of the Board, officers may be chosen at any regular or special meeting of the Board. Each such officer (whether chosen at a regular annual meeting of the Board or otherwise) shall hold his office until the next ensuing regular annual meeting of the Board and until his successor shall have been chosen and qualified, or until his death, or until his resignation, disqualification, or removal in the manner provided in these By-Laws, whichever first occurs. Any one person may hold any two (2) or more of such offices; provided, however, that the president may not also be the secretary. No person holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one office.

Section 3. Subordinate Officers. The Board may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine. The Board may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities, and duties. Subordinate offices need not be Directors or members of the Association.

Section 4. Removal. Any officer may resign at any time by delivering a written resignation to the president or to the Board. Any officer or agent may be removed by the Board whenever in its judgment the best interests of the Association will be served thereby, but such

removal shall be without prejudice to the contract rights, if any, of the person so removed.

Election or appointment of an officer or agent shall not of itself create contract rights.

Section 5. Vacancies. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board at any regular or special meeting.

Section 6. President. The president shall be the principal executive officer of the Association and, subject to the control of the Board, shall in general supervise and control all of the business and affairs of the Association. He shall, when present, preside at all meetings of the members and of the Board. He may sign, with the secretary or any other proper officer of the Association thereunto authorized by the Board, any, contracts or other instruments the Association has authority to execute and which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by these By-Laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the Board from time to time.

Section 7. Secretary. The secretary shall (a) keep the minutes of the Association and of the Board in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the corporate records of the Association; and (d) in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the president or by the Board.

Section 8. Treasurer. The treasurer, if appointed, shall: (a) have charge and custody of and be responsible for all funds of the Association and have primary responsibility to prepare the

Association's budget; (b) receive and give receipt for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, trust companies or other depositories as shall be determined by the Board; and (c) in general perform all of the duties incident to the office of the treasurer and such other duties as from time to time may be assigned to him by the president or by the Board.

Section 9. Assistant Secretaries and Assistant Treasurers. The assistant secretaries and assistant treasurers, if any and in general, shall perform such duties as shall be assigned to them by the secretary or the treasurer, respectively, or by the president or the Board.

Section 10. Compensation. No officer shall receive compensation for any services that he may render to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of his duties as an officer to the extent such expenses are approved by the Board and (except as otherwise provided in these By-Laws) may be compensated for services rendered to the Association other than in his capacity as an officer.

## **ARTICLE VI COMMITTEES**

Section 1. Designation of Committees. The Board may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers, which committees perform such tasks and serve for such periods as the Board may designate by resolution. No committee member shall receive compensation for services that he may render to the Association as a committee member; provided, however, that a committee member may be reimbursed for expenses incurred in performance of his duties as a committee member to the extent that such expenses are approved by the Board and (except as otherwise provided in these By-Laws) may be compensated for services rendered to the Association other than in his capacity as a committee member.

Section 2. Proceedings of Committees. Each committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.

Section 3. Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event less than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board hereunder shall act only as a committee, and the individual members thereof shall have no powers as such.

Section 4. Resignation and Removal. Any member of any committee designated hereunder by the Board may resign at any time by delivering a written resignation to the president, the Board, or the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, for or without cause, remove any member of any committee.

Section 5. Vacancies. If any vacancy shall occur in any committee designated by the Board hereunder, due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.



Section 6. Project DRC. Notwithstanding anything in this Article to the contrary, the formation, organization, purpose, conduct, powers, duties, and procedure of the Project DRC shall be as set forth in the Declaration.

## **ARTICLE VII INDEMNIFICATION**

Section 1. Indemnification. To the fullest extent permitted by law, the Association shall indemnify the following persons and entities against all expenses and liabilities including, but not limited to, attorneys' fees, costs and expenses reasonably incurred by or imposed upon such person in connection with any proceeding to which such person may be a party, or in which such person may become involved, by reason of such person being or having served in any capacity on behalf of the Association (or by reason of having appointed, removed or controlled or failed to control members of the Board or the Project DRC):

- (a) every director and officer of the Association and every member of the Project DRC and any other committee of the Association;
- (b) every director, officer and employee of the Declarant and the Master Residential Association and the Daybreak Community Council, Inc.; and
- (c) every person serving as an employee of the Association.

Any such person shall be entitled to indemnification whether or not such a person is a Director, officer or member of the Association or of the Project DRC or any other committee of the Association or is serving in any other such specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that the person to be indemnified hereunder did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of its duties. The foregoing rights of indemnification shall be in

addition to, and not in place of, all other rights to which such persons may be entitled at law or otherwise.

Section 2. Insurance. The Association may purchase and maintain insurance on behalf of any person who was or is a Director, officer, employee, or agent of the Association, or who was or is serving at the request of the Association as a trustee, Director, officer, employee, or agent of another corporation, entity, or enterprise (whether for profit or not for profit), against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the laws of the State of Utah, as the same may hereafter be amended or modified.

Section 3. Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this article shall constitute expenses of the Association and shall be paid with funds from the Common Expense Fund referred to in the Declaration.

## **ARTICLE VIII FISCAL YEAR**

This fiscal year of the Association shall begin on the 1st day of January of each year and shall end on the 31st day of December next following; provided, however, that the first fiscal year shall begin on the date of incorporation.

**ARTICLE IX  
RULES AND REGULATIONS**

The Board may from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the Project; provided, however, that such rules and regulations shall not be inconsistent with the rights and duties set forth in the Articles of Incorporation, the Declaration, the Master Residential Declaration, the rules and regulations of the Master Residential Association, or these By-Laws. The members shall be provided with copies of all rules and regulations adopted by the Board, and with copies of all amendments and revisions thereof.

**ARTICLE X  
AMENDMENTS**

Prior to termination of the Declarant Control Period, the Declarant may unilaterally amend these By-Laws. Thereafter, the Declarant may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots. So long as there is a Declarant Member, the Declarant Member may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon the rights of more than two percent (2%) of the Owners.

Except as otherwise provided above or by law, the Articles of Incorporation, the Declaration, or these By-Laws, these By-Laws may be amended, modified, or repealed and new

bylaws may be made and adopted by the members upon the affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association and the consent of the Declarant member, if any; provided, however, that such action shall not be effective unless and until a written instrument setting forth (a) the amended, modified, repealed, or new bylaw, (b) the number of votes cast in favor of such action, and (c) the total votes of the Association, shall have been executed and verified by the current president of the Association and mailed to each member of the Association.

Adopted by action of the Board of Directors this 21<sup>st</sup> day of ~~August~~ <sup>September</sup>, 2005.

By: M. Bruce Snyder

Print Name: M. Bruce Snyder  
Title: Director

By: John Potts

Print Name: John Potts  
Title: Director

By: Keith Morey

Print Name: Keith Morey  
Title: Director