

**When Recorded, Return to:**

Kennecott Land Company  
 Attn: Senior Associate, Contracts  
 and Risk Management  
 4700 West Daybreak Parkway  
 South Jordan, UT 84095

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 10/16/2009 03:39 PM \$159.00  
 Book - 9771 Pg - 6207-6261  
 GARY W. OTT  
 RECORDER, SALT LAKE COUNTY, UTAH  
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 BY: ZJM, DEPUTY - WI 55 P.

**DECLARATION OF  
 COVENANTS, CONDITIONS AND RESTRICTIONS  
 FOR  
 GARDEN PARK VILLAGE**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GARDEN PARK VILLAGE** (this "Declaration") is made and executed as of October 1, 2009, by **KENNECOTT LAND COMPANY**, a Delaware corporation (the "Declarant"), and is consented to by **KENNECOTT LAND RESIDENTIAL DEVELOPMENT COMPANY**, a Delaware corporation ("KLRDC"), and **IVORY HOMES, LTD**, a Utah limited partnership ("Ivory Homes").

**RECITALS**

**A.** On February 27, 2004, Declarant and KLRDC 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, as amended by that certain Amendment No. 1 to Community Charter for Daybreak, recorded on August 26, 2004, as Entry No. 9156782, in Book 9030, beginning at Page 3767, in the Official Records of Salt Lake County, Utah, and as amended by that certain Amendment No. 2 to Community Charter for Daybreak, recorded on October 19, 2005, as Entry No. 9528104, in Book 9205, beginning at Page 4743, in the Official Records of Salt Lake County, Utah, and as amended by that certain Amendment No. 3 to Community Charter for Daybreak, recorded on March 13, 2007, as Entry No. 10031889, in Book 9434, beginning at Page 6476, in the Official Records of Salt Lake County, Utah, and as amended by that certain Amendment No. 4 to Community Charter for Daybreak of even date herewith (as may be amended or supplemented from time to time, 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 KLRDC 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 (as may be amended or supplemented from time to time, the "**Covenant**"), to govern the phased development of Daybreak, and further to govern the Daybreak Community Council, Inc. (the "**Daybreak Community Council**").

**COURTESY RECORDING**

This document is being recorded solely as a courtesy and an accommodation to the parties named herein. First American Title Insurance Company hereby expressly disclaims any responsibility or liability for the accuracy or the content thereof.

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. KLRDC has previously recorded those certain subdivision maps entitled Kennecott Daybreak Village 4A Plat 1 Subdivision Amending Lot V2 of the Kennecott Master Subdivision #1” and “Amended Kennecott Daybreak Village 4A Plat 2 Subdivision Amending Lot V2 of the Kennecott Master Subdivision #1” (collectively, the “Plat”). The parcels or lots depicted on the Plat and more particularly described on Exhibit A attached hereto and incorporated herein, together with any portion of the Additional Land (defined in Article 1) submitted to this Declaration according to the terms hereof, are collectively referred to herein as the “Project”.

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

F. KLRDC and Ivory Homes are the initial owner(s) of the Project. Ivory Homes and/or other purchasers of lots within the Project plan to construct and sell Residential Units on the lots comprising the Project.

G. Because of, among other things, the unique nature of the Project as a “maintenance-free,” “age-restricted” community (including, without limitation, the Project’s features, amenities, services and design), the Project requires special services and the implementation of certain covenants, restrictions, regulations and easements not ordinarily provided to or imposed upon all property within Daybreak. Accordingly, Declarant, KLRDC and Ivory desire to subject the Project to this Declaration. Furthermore, Declarant may, pursuant to Article 15 of this Declaration, subject certain portions of the Project (e.g., a Condominium), to a sub-declaration in order to provide for the specific needs/requirements of such portions of the Project.

H. Garden Park Village Association, Inc. (the “Association”), has heretofore been created, or shortly will be created, by filing Articles of Incorporation therefor (the “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 B (the “Bylaws”), the Master Residential Declaration, the Covenant and this Declaration. In addition, Declarant may subject a Condominium established within the Project to a sub-association. The Association (and any sub-association) created hereunder shall be a “Neighborhood Association” under the terms of the Master Residential Declaration, and the Project shall be a “Neighborhood” 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.
- 1.2 **“Additional Land”** shall mean certain real property located in Salt Lake County, Utah described in future supplements to this Declaration which supplements shall be recorded by Declarant in accordance with Article 14 hereof as such Additional Land is subjected to this Declaration from time to time by Declarant as permitted hereby.
- 1.3 **“Age Qualified Occupant”** shall mean and refer to any person 55 years of age or older who occupies a Residential Unit.
- 1.4 **“Age Restricted Community”** shall mean and refer to a development in compliance with 42 U.S.C., Section 3602(k) and all applicable state and federal housing laws.
- 1.5 **“Age Restriction”** shall mean and refer to the requirement that the Project provide housing primarily for persons 55 years of age or older and shall be operated as an Age Restricted Community such that at least 80% of the occupied Residential Units shall be occupied by at least one person 55 years of age or older.
- 1.6 **“Articles”** shall have the meaning set forth in the Recitals.
- 1.7 **“Association”** shall have the meaning set forth in the Recitals.
- 1.8 **“Board”** shall mean the Board of Directors of the Association.
- 1.9 **“Bylaws”** shall have the meaning set forth in the Recitals.
- 1.10 **“Common Area”** shall mean any property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit.
- 1.11 **“Common Expenses”** shall have the meaning set forth in Section 10.2.
- 1.12 **“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.
- 1.13 **“Community-Wide Standard”** shall have the meaning assigned in the Master Residential Declaration.
- 1.14 **“Condominium”** shall mean Units submitted to a condominium form of ownership under Utah law by Declarant and KLRDC.
- 1.15 **“Covenant”** shall have the meaning set forth in the Recitals.
- 1.16 **“Daybreak”** shall have the meaning set forth in the Recitals.

- 1.17 **“Daybreak Community Council”** shall have the meaning set forth in the Recitals.
- 1.18 **“Declarant”** shall mean Kennecott Land Company, a Delaware corporation.
- 1.19 **“Design Guidelines”** shall have the meaning assigned in the Master Residential Declaration.
- 1.20 **“Delegation Agreement”** shall have the meaning assigned in the Master Residential Declaration.
- 1.21 **“Eligible Holder”** shall have the meaning set forth in Section 13.5.
- 1.22 **“Founder”** shall have the meaning set forth in the Recitals.
- 1.23 **“Ivory Homes”** shall have the meaning set forth in the Recitals.
- 1.24 **“KLRDC”** shall have the meaning set forth in the Recitals.
- 1.25 **“Limited Common Area(s)”** as used herein shall mean and refer to those Common Areas designated on the Plat (or in a supplement to this Declaration or in another recorded instrument) as reserved for the use of less than all Units.
- 1.26 **“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.
- 1.27 **“Master Residential Association”** shall have the meaning set forth in the Recitals.
- 1.28 **“Master Residential Declaration”** shall have the meaning set forth in the Recitals.
- 1.29 **“Master Storm Drainage System”** shall have the meaning set forth in Section 6.4.
- 1.30 **“Member”** shall mean a member of the Association.
- 1.31 **“Mortgage”** shall mean any mortgage, deed of trust, or other security instrument by which a Units or any part thereof is encumbered.
- 1.32 **“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.
- 1.33 **“Owner”** shall mean any person or entity or combination thereof at any time owning Units within the Project, as shown in the Official Records of Salt Lake County, 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 Units under contract until such contract is fully performed and legal title conveyed; provided, however, if a Unit 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.

- 1.34 **“Plat”** shall have the meaning set forth in the Recitals.
- 1.35 **“Project”** shall have the meaning set forth in the Recitals.
- 1.36 **“Project Governing Documents”** shall mean the Declaration, the Articles and Bylaws, rules and regulations of the Association, and the decisions and resolutions of the Board adopted pursuant thereto, as the same may be lawfully amended from time to time.
- 1.37 **“Qualified Occupant”** shall mean a person that is eighteen (18) years of age or older.
- 1.38 **“Total Votes of the Association”** shall mean the total number of votes appertaining to the Units in the Project.
- 1.39 **“Townhome”** shall mean any building containing or consisting of attached, townhome-style Residential Units constructed in the Project.
- 1.40 **“Unit”** shall mean a subdivided lot or Condominium unit within the Project depicted as a separately identifiable parcel on a recorded subdivision plat, survey or condominium instrument, which may be independently owned and conveyed and is zoned or otherwise intended for development, use and occupancy as an attached or detached residence for a single family and is sometimes referred to as a **“Residential Unit.”** The term **“Unit”** refers to the land, if any, which is part of the Unit, as well as to the structure or other improvements on the Unit. In the case of a Townhome or Condominium, each dwelling shall be deemed to create a separate Unit. A parcel of land is considered a single Unit until a subdivision plat, survey or Condominium instrument is recorded subdividing it into more than one Unit. The term does not include Common Areas, common property of any sub-association, or property dedicated to the public.

## **ARTICLE 2 SUBMISSION TO DECLARATION**

- 2.1 **Covenants Running with the Land.** 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 the Project. Furthermore, 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, KLRDC and Ivory Homes, as their interests may appear, their successors and assigns, and any person acquiring, leasing, or owning an interest in any Units, their lessees, heirs, executors, administrators, devisees, successors and assigns.
- 2.2 **Age Restriction.** Declarant, KLRDC and Ivory desire and intend that the Project be operated to provide housing opportunities for persons age 55 and older in accordance with 42 U.S.C., Section 3602(k). Once a Residential Unit is occupied by an Age Qualified Occupant, other Qualified Occupants of that Residential Unit may continue to occupy that Residential Unit, regardless of the termination of the Age Qualified Occupant’s occupancy, if at least 80% of the Residential Units within the Project are occupied by at least one person 55 years or older.

- 2.3 **Intent to Comply.** The Declarant or the Association will publish and adhere to policies and procedures that demonstrate its intent to provide housing for Age Qualified Occupants, such as written rules, regulations, lease provisions, deed restrictions, advertising, actual practices and so forth. Declarant and the Association will comply with all of the rules issued by the Secretary of Housing and Urban Development for verifications of occupancy through reliable surveys and affidavits. Owners and occupants shall be required to cooperate in providing age verification. Declarant or the Association will re-survey its list of residents at least once every two (2) years to ensure that the 80% requirement is met.
- 2.4 **Exclusions.** The following may be excluded from the calculation of the 80% requirement: (a) unoccupied Residential Units; (b) Residential Units occupied by employees of Garden Park Village who are under age 55 and who provide substantial management and maintenance services to the Project; and (c) Residential Units occupied solely by persons who are necessary or essential to provide medical and/or health and nursing care services as a reasonable accommodation to residents of the Project. In order to not risk losing the exemption provided in the Housing For Older Persons Act of 1995, if Age Qualified Occupants die with survivors or heirs who are under age 55, re-sales and leases of such Residential Units previously occupied by an Age Qualified Occupant may be restricted by the Association to occupancy by at least one Age Qualified Occupant.
- 2.5 **Advertisements.** Declarant or its designee may advertise or market the 20% portion of the Residential Units within the Project which are not required to be occupied by at least one Age Qualified Occupant to prospective buyers under age 55 [who are Qualified Occupants/and to families with children], but the marketing must be done in a way that identifies Garden Park Village as housing intended for older persons. Advertising and marketing must be consistent with the intent.
- 2.6 **Temporary Absence.** If an Age Qualified Occupant is on vacation, hospitalized, on sabbatical, providing ecclesiastical, philanthropic, humanitarian or related service or otherwise absent for a season, such Age Qualified Occupant may allow a younger relative or house sitter who is a Qualified Occupant to live in such Age Qualified Occupant's Residential Unit during such absence, in which case, such Residential Unit shall be deemed in compliance with the 80% occupancy requirement as long as the Residential Unit is not leased to such relative or house sitter, and provided that the Age Qualified Occupant returns on a periodic basis and maintains legal and financial responsibility for the Residential Unit.
- 2.7 **Enforcement.** The Association shall have the power and authority to specifically enforce the provisions of this Article 2 and the Age Restriction by any legal or equitable means available, as the Association deems reasonably appropriate.

### **ARTICLE 3 IMPROVEMENTS**

- 3.1 **Description of Project.** The Project initially consists of the Units described on Exhibit A attached hereto and shown on the Plat. Each of the Units shall, when improved, constitute a Residential Unit. Each Owner acknowledges that the design and construction

of the Residential Units and all other initial improvements on Units within the Project, as it may be expanded from time to time, and the marketing and sales of Residential Units within the Project, as it may be expanded from time to time, have been and/or will be performed by individuals and/or companies other than Declarant or its affiliates, and not by Declarant or its affiliates, and Owner has relied and will rely solely on such individuals and/or companies with respect to any issues related thereto, and each Owner further acknowledges that it shall have no rights or remedies with respect to any such issues against Declarant or its affiliates.

- 3.2 **Description and Legal Status of Units.** The Plat shows the number of Units currently comprising the Project and a subsequently recorded plat shall show the number of Units added to the Project according to the terms of this Declaration. All Units 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 Units 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 Units 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.** Any real property depicted on the Plat (or otherwise described in a supplemental declaration or other recorded instrument), as Common Area is to be owned, managed and controlled by the Association for the common use and enjoyment of the Owners of Units within the Project. Owners, equally, shall have the right to use and enjoy the Common Area. Any costs incurred in connection with the operation and maintenance of the Common Areas shall be included in assessments levied by the Association. The Common Area includes any clubhouse within the Project, and its associated amenities, and shall be only for the use and enjoyment of the Owners of the Units within the Project.

#### **ARTICLE 4 NATURE AND INCIDENTS OF OWNERSHIP**

- 4.1 **Title.** Title to Units 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 on Sale in Violation of Age Restriction.** Each Owner shall have and enjoy the privileges of fee simple ownership of his or her Units; however, the Project is intended to be an Age Restricted Community and, as such, is intended and operated for occupancy by persons age 55 and older. Declarant and/or the Association are granted and hereby expressly reserve the unilateral right to void any re-sale or lease of a Unit in violation of the Age Restrictions by recording a written "Notice of Election to Void Sale or Lease for Violation of Age Restrictions" or its equivalent in the Official Records of Salt Lake County, Utah.

- 4.3 **Prohibition against Subdivision of Units.** No Owner, by deed, plat or otherwise, shall subdivide or in any manner cause his Units to be subdivided, partitioned or separated into physical tracts or parcels smaller than the whole Units as shown on the Plat or a subsequently recorded plat for Units added to the Project according to the terms of this Declaration.
- 4.4 **Inseparability.** Title to any part of a Unit may not be separated from any other part thereof. Every devise, encumbrance, conveyance, or other disposition of a Unit, or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Unit, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth.
- 4.5 **Separate Mortgages by Owners.** Each Owner shall have the right separately to mortgage or otherwise encumber his or her Unit. Unless otherwise specifically provided herein, any Mortgage or other encumbrance of any Unit 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.
- 4.6 **Separate Taxation.** Each Unit 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 Unit shall be separately levied against the Owner thereof. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit.
- 4.7 **Mechanics' Liens.** No labor performed or material furnished for use in connection with any Unit (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 Unit of any other Owner not expressly consenting to or requesting the same even if existing by easement over the subject Unit.
- 4.8 **Description of Units.** Every contract for the sale of a Unit and every other instrument affecting title to a Unit within the Project may describe a Unit 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 Unit and to incorporate all the rights incident to ownership of a Unit within the Project and all of the limitations on such ownership.
- 4.9 **Party Walls.** Townhome Residential Units may have common or party walls with adjacent Residential Units. The boundary between two such adjacent Residential Units shall be the vertical (or, as applicable, horizontal) 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 Residential Unit adjoining another Residential Unit is hereby granted an easement of support and shelter over the portion of



any party, adjacent, or retaining wall on the adjoining Residential Unit. 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 such party wall. Each Owner shall have an easement for pipes, ducts, and utility ways and chases passing through the other Residential Units that serve his or her Residential Unit. Physical structures including party walls serving two separate Residential Units shall be shared through a mutual non-exclusive easement of enjoyment for all purposes for which the improvements and their replacements were intended.

- 4.10 **View Impairment.** Declarant and the Association do not guarantee or represent that any view over and across the Units will be preserved without impairment. Declarant and the Association shall have no obligation to relocate, prune or thin trees or other landscaping except to maintain the Community-Wide Standard. The Association, with respect to Common Area, shall have the right to add trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

#### **ARTICLE 5 MAINTENANCE**

- 5.1 **Maintenance Responsibility.** The Units and the Common Area shall be maintained by the Owners and the Association as follows:

- (a) **Areas of Common Responsibility.** The Association, shall maintain, repair and replace, as needed, from time to time, the following items which shall be referred to herein as the “**Areas of Common Responsibility**”, and 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:
- (i) All Common Areas;
  - (ii) All front yard and backyard landscaping (including the mowing and edging of all grass but excluding backyard flower beds and/or garden areas), sprinkler systems (including the timing and water management of such sprinkler systems), all front yard flower beds (excluding any stand-alone planters, window boxes, fences, retaining walls, walls and enclosed areas within fences or walls) for any Residential Unit;
  - (iii) All seasonal/holiday exterior lighting on the Buildings and detached Residential Units;
  - (iv) All other common elements not expressly included in the areas of personal responsibility of the Owners set forth below;
  - (v) With respect to the Townhomes, all footings and foundations, structural components, roofs, exterior portions of such Townhomes and common sanitary sewer laterals (if any) and other common

utilities (if any). The cost of said maintenance, replacement and repair shall be assessed proportionately to all of the Owners owning Residential Units within such Townhomes by the Association.

- (b) **Areas of Personal Responsibility.** An Owner shall maintain, repair and replace, in a good and clean manner, as needed, from time to time the following items:
- (i) With respect to any detached Residential Unit, an Owner of such Residential Unit shall maintain his or her entire dwelling (e.g., roof, exterior surfaces, foundation, footings, beams supports and main walls), and all other improvements (e.g., all fixtures, furnishings, windows, window screens, doors, patios, balconies, decks, garage doors, driveways, steps, cement work and walls, utilities, etc.) thereon unless such responsibility is otherwise assumed by or assigned to the Association pursuant to any supplemental declaration or additional covenants or Association rules applicable to such Residential Units.
  - (ii) With respect to any Townhome Residential Unit, each Owner shall maintain and keep in repair the interior of his or her dwelling, including the fixtures and equipment installed therein. Each Owner of a Townhome Residential Unit shall do no act and shall perform no work that will or may impair the structural soundness or integrity of the Townhome in which such Owner's Residential Unit 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 such Residential Unit.
  - (iii) With respect to any Townhome Residential Unit, an Owner of such Residential Unit shall also maintain the following portions of his or her dwelling: all fixtures, furnishings, windows, doors, patios, balconies, decks, garage doors, driveways, steps, cement work and walls, utilities, etc.) thereon unless such responsibility is otherwise assumed by or assigned to the Association pursuant to any supplemental declaration or additional covenants or Association rules applicable to such Residential Units.
  - (iv) With respect to any Townhome Residential Unit, each Owner thereof 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

Residential Unit, including any non-exterior doors and non-exterior windows.

- (v) 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 Residential Unit from the point of connection. The Owner shall not alter any utility lines, pipes, wires, conduits, or systems which serve one or more other Residential Units. 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.

5.2 **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. Any expense to the Association for investigation under this Article shall be borne by Owner if such investigation establishes a violation of this Article.

5.3 **Right of Entry.** The Association shall have a right of entry and access to, over, upon, and through all of the Project, including each Residential Unit, 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 Residential Unit may be exercised without notice; otherwise, the Association shall give the Owners or occupants of a Residential Unit no less than twenty-four hours advance notice prior to entering a Residential Unit.

#### **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 Article 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. Furthermore, 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 KLRDC and Ivory Homes hereby consent to, a non-exclusive easement over, under, through and across the Units for the location of utility lines, including power, natural gas, telecommunications, cable and any future utilities installed to serve the Units, 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 Unit burdened by the easement. Upon completion of the work, the person utilizing the

easement shall make reasonable efforts to restore the Unit, to the extent reasonably possible, to the condition existing prior to the commencement of the work.

- 6.4 **Drainage.** Declarant hereby declares, and KLRDC and Ivory Homes hereby consents to, a non-exclusive easement over, under, through and across the Units and Common Area, for the drainage of surface waters. Declarant shall establish or cause to be established a storm drainage system designed to serve the Project (the “**Master Storm Drainage System**”). No Owner shall interfere with the Master Storm Drainage System and each Unit shall be developed in a manner consistent with the Master Storm Drainage System so as not to detract therefrom or interfere therewith.
- 6.5 **Encroachments.** In the event that any portion of the Common Area or a Unit encroaches or comes to encroach upon other Common Area or a Unit as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.
- 6.6 **Easements Deemed Created.** All conveyances of Units 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 **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 Unit 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 Unit 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 Unit 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.

#### **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 Unit 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 Unit owned by said Owner. Each Unit shall have one vote in the Association appurtenant thereto, regardless of the number of Owners thereof. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance, or other disposition of a Unit 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 Unit. Notwithstanding the foregoing, an Age Qualified Occupant of a Residential Unit who occupies the same pursuant to a lease for greater than one year may be deemed a Member if the legal Owner of such Residential Unit designates such Age Qualified Occupant as the person entitled to exercise the voting rights of such Owner or otherwise designates such Age Qualified Occupant as such Owner's proxy in a writing delivered to the secretary of the Board.

- 8.2 **Board.** 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 **Delegation Agreements.** The Association may enter into one or more written Delegation Agreements with the Master Residential Association, as set forth in the Master Residential Declaration.
- 9.2 **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.
- 9.3 **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 Units.
- 9.4 **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.

9.5 **Rules and Regulations.** The Association, by action of the Board, may make reasonable rules and regulations governing the use of the Units and the use of Common Area, which rules and regulations shall be consistent with the rights and duties established in this Declaration, the Master Residential Declaration and the Covenant. 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.

9.6 **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.

9.7 **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 any project design review committee ["Project DRC"] established by the Board):

- (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 Declarant, 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.

9.8 **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, Units 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 Units 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.

- 9.9 **Sales Program.** Notwithstanding anything to the contrary, until KLRDC has sold all of the Units owned by it in the Project or the expiration of a reasonable sales period following seven (7) years after the date on which this Declaration is filed for record in the Official Records of Salt Lake County, Utah, whichever occurs first, neither the Owners nor the Association shall interfere with the completion of improvements and sale of all remaining Units, and Declarant, or its nominee, shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Units owned by KLRDC or its successors: (a) Declarant, or its nominee, shall have the right to maintain one (1) or more sales offices and one (1) or more model Units, and/or Residential Units (whether a detached Residential Unit, Townhome, or Condominium Residential Unit), at any one time. Such offices and/or models may be on one (1) or more of the Units owned by it, or one (1) or more of any separate structures or facilities placed on the Project for the purpose of aiding Declarant's, or its nominee's, sales effort, or any combination of the foregoing; (b) Declarant, or its nominee, shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places within the Project; and (c) Declarant, or its nominee, shall have the right to use the Common Area, from time to time, to facilitate the sale of Units.
- 9.10 **Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. The Association, however, shall not in any way be considered an insurer or guarantor of security within the Project. Likewise, the Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and occupants, their guests and invitees, as applicable, acknowledge that the Association does not represent or warrant that any security measures undertaken will insure their safety. All Owners and occupants, their guests and invitees, acknowledge and understand that the Association is not an insurer of their safety and they hereby assume all risks for loss or damage to their person or property and further acknowledge that the Association has made no representations or warranties, nor have they relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any security measures undertaken within the Project.

#### **ARTICLE 10 ASSESSMENTS**

- 10.1 **Agreement to Pay Assessments.** Each Owner of a Unit 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 Unit on the first day of the month following the date on which a certificate of occupancy is issued for a Residential Unit, or a Residential Unit is actually occupied, whichever first occurs.

10.2 **Regular Assessments.** Regular assessments shall be computed and assessed against all Units 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 fifteen percent (15%), 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 Area of Common Responsibility. 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 described in Section 5.1 hereof; wages for Association employees, including fees for a Manager, if any; utility charges (including charges for watering yards, Common Area and Limited Common Area); 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, provided however that if the Common Expenses associated with certain Units are greater than for the remainder of the Units, then such Units associated with higher Common Expenses may be assessed a proportionately higher assessment (including any assessment under Section 10.3 hereof). 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, provided however that if the Common Expenses associated with certain Units are greater than for the remainder of the Units, then such Units associated with higher Common Expenses may be assessed a proportionately higher assessment. 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 Unit 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 Area of Common Responsibility, Townhomes 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 that special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of Townhomes shall be apportioned equally among Townhome Owners, or 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 Unit pursuant to the provisions of this Article, together with interest thereon as provided herein, shall be secured by a lien on such Unit 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 Unit, and a description of the Unit. 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 deeds of trust on real property may be non-judicially foreclosed in the State of Utah or in any other manner permitted by Utah law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including reasonable attorneys' fees, trustee's 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 Units 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 Unit.
- 10.5 **Suspension of Utilities and Right to Use Amenities for Non-Payment of Assessments.** If an Owner fails or refuses to pay any assessment when due, the Board may: (a) temporarily terminate the Owner's right to receive utility services provided and paid for as Common Expenses; and (b) temporarily terminate the Owner's right of access and use of recreational facilities within the Project after giving notice and an opportunity to be heard.
- 10.6 **Appeals Process; Hearings.** Before terminating utility services or rights of access and use of recreational facilities within the Project, the Board shall give written notice to the applicable Owner which notice shall state: (1) utility services or rights of access and use of recreational facilities within the Project may be terminated if payment of the assessment is not received within the time provided in this Declaration, the Bylaws, or the Association's rules, which time shall be stated and be at least ten (10) days from the date of such notice; (2) the amount of the assessment due, including any interest or late payment fee; and (3) the right to request a hearing. An Owner who is given such notice may request an informal hearing to dispute the assessment by submitting a written request to the Board within such ten (10) day period from the date the notice is received. A notice under this Section shall be considered received on the date: (a) it is hand delivered, (b) it is delivered by certified mail, return receipt requested, or (c) five (5) days after it is deposited in the U.S. Mail postage prepaid, addressed to the Owner's last known address on the books and records of the Association. The hearing shall be conducted in accordance with standards provided in the Association's Bylaws, or the Association's rules. If a hearing is requested by an Owner, utility services or rights of access and use of recreational facilities within the Project may not be terminated until after the hearing has been conducted and a final decision has been entered by the Board.
- 10.7 **Personal Obligation of Owner.** The amount of any regular or special Assessment against any Unit (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 Unit 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 or her Unit, 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.

- 10.8 **Attorney in Fact.** Each Owner, by accepting a deed to a Unit, hereby irrevocable appoints the Association as his or her attorney in fact to collect rent from any person renting his or her Unit if the Unit is rented and the Owner is delinquent in the payment of the assessments applicable to his or her Unit. Rent due shall be paid directly to the Association, upon its written demand, until such time as the applicable assessments on such Unit are brought current; and the Owner of such Unit shall credit the renter, against rent due, for the amount of money paid to the Association.
- 10.9 **Statement of Account.** Upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit 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 Unit; and (b) the amount of the current regular assessment with respect to such Unit 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.
- 10.10 **Personal Liability of a Purchaser.** A purchaser of a Unit shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Unit 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.
- 10.11 **Assessments Part of Common Expense Fund.** All funds received from assessments under this Article shall be a part of the Common Expense Fund.
- 10.12 **Assessment Reserve.** Upon the transfer of title to a Unit, the purchaser of such Unit shall pay to the Association a reserve in the amount of three (3) months worth of regular assessments to be charged against such Unit 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 Common Area or a Townhome, 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 Residential Unit.
- (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 improvements to substantially the same condition in which it existed prior to the fire or other disaster, with each Townhome 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 Townhomes, 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 Project, 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). The insurance described in this Section shall also:
  - (1) 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 Units and its appurtenant interests superior to a interest of the first mortgage lender;
  - (2) 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;

- (3) 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;
  - (4) 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;
  - (5) be paid for by the Association through annual assessments of the Owners;
  - (6) contain a waiver of subrogation of rights by the carrier as to the Association, to its officers and directors, and to all Owners;
  - (7) contain an inflation guard endorsement, to the extent available at a reasonable cost and terms;
  - (8) 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
  - (9) be primary, even if an Owner has other insurance that covers the same loss.
- (b) Insurance of Townhomes. Notwithstanding the foregoing, the Board shall procure a separate policy or policies of property insurance that it deems necessary or appropriate to insure Townhomes. Such policy shall provide coverage for built-in or installed improvements, fixtures, and equipment that are part of the Residential Units within such Townhome, 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 Residential Units, and/or maintained by the Owner of the same. The cost of such insurance applicable to Townhomes shall be proportionately borne by and assessed to the Owners of the Residential Units within such Townhomes.
- (c) Liability Insurance. The Association shall obtain and maintain a commercial policy of general liability insurance covering all of the Area of Common Responsibility and any other areas under the Association's supervision, and Residential Units, 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 Areas of Common Responsibility, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party.

- (d) 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 Units; 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 insured.
- (e) 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.
- (f) 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.

- (g) 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 Unit, 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.
- (h) 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 Residential Unit, 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 Residential Unit 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.
- (i) 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.

- (j) 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.
- (k) 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.
- (l) 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 GOVERNING DOCUMENTS**

- 12.1 **Compliance.** Each Owner, occupant and visitor to a Unit shall comply with the Project Governing Documents and shall be subject to sanctions for violations as described in this Article.
- 12.2 **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.
- 12.3 **Enforcement and Remedies.** The Association, the Declarant and every affected Owner shall have the right to file suit at law or in equity to enforce the Project Governing Documents. In addition, the Board may impose sanctions for violation of the Project Governing Documents in substantially the same manner, and subject to substantially the same limitations, set forth in Section 8.2 of the Master Declaration with respect to enforcement by the Master Residential Association, or as described elsewhere in the Project Governing Documents. ,
- 12.4 **Exemption.** 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 its affiliate in connection with the construction, management, administration, completion, maintenance, operation, sale, leasing, promotion or general development of the Project. In addition, Declarant may extend all or any part of its exemption in writing to third



parties, their employees, agents and contractors, or parties designated by them in connection with the same matters.

### **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 Unit 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 Unit 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 Units.** All taxes, assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to the individual Units 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 Unit by the foreclosure of the Mortgage on the Unit or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments and charges against the Unit which accrued prior to the date of the acquisition of title to such Unit by such acquirer. Any unpaid assessments shall be deemed to be Common Expenses collectible from all of the Units in the Project, including the Units that has been acquired in accordance with the provisions of this section.
- 13.5 **Notices of Action.** An institutional holder, insurer or guarantor of a first mortgage or trust deed that provides a written request to the Association (such request to state the name and address of each such holder, insurer or guarantor and the street address of the Unit to which its mortgage or deed of trust relates, thereby becoming an "**Eligible Holder**"), will be entitle to timely written notice of (i) any delinquency in the payment of assessments or charges owed by a Unit subject to the mortgage or deed of trust of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Project Governing Documents relating to such Unit or the Owner or occupant that is not cured within 60 days; and (ii) any lapse, cancellation or material modification of any insurance policy maintained by the Association.

### **ARTICLE 14 EXPANSION OF PROJECT**

- 14.1 **Right to Expand and State of Title to New Units.** 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 Unit thereby created within the portion of the Additional Land concerned shall be vested in and held by Declarant or its affiliate, and none of the other Owners or the Association shall have any claim or title to or interest in such Units.

- 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 Residential Units 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 Residential Unit 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.

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 Official Records of Salt Lake County 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, an 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 **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 Units within any particularly time or in any particular manner; or (iii) 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.

14.5 **Owners' Obligation Concerning Expansion of Project or Development of the Additional Land.** Each Owner, by acquiring his or her 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

## ARTICLE 15 CONDOMINIUM AND SUB-ASSOCIATIONS

- 15.1 Declarant may determine, in its sole discretion, that it is necessary or appropriate to have a portion of the Project, such as a Condominium, administered by a sub-association which is separate and apart from the Association hereunder. In such event, the Declarant will record a supplemental declaration with respect to such portion(s) of the Project which supplemental declaration shall provide for the creation of the sub-association to administer and maintain such portion (e.g., Condominium) of the Project. It is intended that such sub-association shall operate independent of the Association hereunder (but subject to this Declaration, the Master Residential Declaration, and the Covenant). To the extent that the sub-association is granted the power and authority to maintain the Condominium or other portions of the Project which exclusively serve the Condominium, the Association hereunder shall not be obligated to maintain such areas or furnish such services. Nothing contained herein, however, shall be deemed to restrict or limit the right of Declarant or the Association under Article 7 relating to the Design Guidelines.

## ARTICLE 16 GENERAL PROVISIONS

- 16.1 **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.
- 16.2 **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.
- 16.3 **Registration of Mailing Address.** Each Owner shall register from time to time with the Association his or her 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 or her registered mailing address, or, if no address has been registered, to the Unit 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.

- 16.4 **Audit.** Any Owner may at any reasonable time, upon appointment and at his or her 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.
- 16.5 **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 Official Records of Salt Lake County, Utah.
- 16.6 **Effective Date.** This Declaration shall take effect upon recording in the Official Records of Salt Lake County, Utah.
- 16.7 **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.
- 16.8 **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.
- 16.9 **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.
- 16.10 **Owner's Obligations.** All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he or she may be

leasing, renting, or selling on contract his or her Unit. The Owner of a Unit shall have no obligation for expenses or other obligations accruing after he conveys title to such Unit.

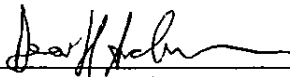
- 16.11 **Declarant's Rights Assignable.** The rights of Declarant hereunder or in any way relating to the Project may be assigned. Upon assignment, references to the "Declarant" shall refer to such assignee.
- 16.12 **Master Residential Declaration's Full Force and Effect.** The Master Residential Declaration 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 Units. Declarant hereby delegates such power and authority as is necessary to the Association to carry out the obligations of the Association (acting in its capacity as a sub-association) under the Master Residential Association.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration and KLRDC, and Ivory Homes have consented to the same, to be effective as of the day and year first above written.

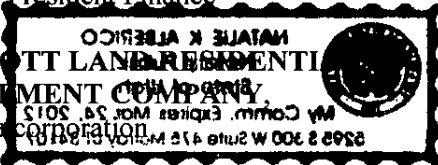
**Declarant:**

**KENNECOTT LAND COMPANY,**  
a Delaware corporation

By:   
Name: Dean H. Anderson  
Title: Vice President Finance

**KLRDC:**

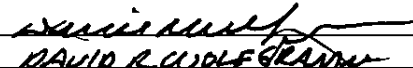
**KENNECOTT LAND RESIDENTIAL  
DEVELOPMENT COMPANY,**  
a Delaware corporation

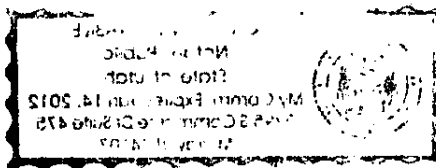


By:   
Name: Ty McCutcheon  
Title: Vice President Daybreak

**Ivory Homes:**

**IVORY HOMES, LTD ,**  
a Utah limited partnership

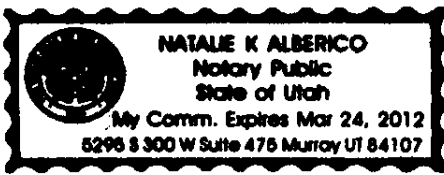
By:   
Name: DAVID R. WOLFE  
Title: Secretary



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

On October 1, 2009 personally appeared before me, a Notary Public, Dean H. Anderson, the Vice President Finance 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.



Natalie K Alberico  
Notary Public in and for said State

My commission expires: \_\_\_\_\_

[SEAL]

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

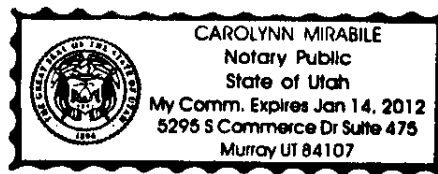
On October 1, 2009 personally appeared before me, a Notary Public, Ty McCutcheon, the v.p. Daybreak of **KENNECOTT LAND RESIDENTIAL DEVELOPMENT COMPANY** personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of **KENNECOTT LAND RESIDENTIAL DEVELOPMENT COMPANY**.

WITNESS my hand and official Seal.

Carolynn Mirabile  
Notary Public in and for said State

My commission expires: 1-14-12

[SEAL]

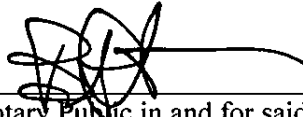




STATE OF UTAH )  
 ) SS.  
COUNTY OF SALT LAKE )

On October 7, 2009 personally appeared before me, a  
Notary Public, David Wolfgramm the Secretary of  
Ivory Homes 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 \_\_\_\_\_.

WITNESS my hand and official Seal.



\_\_\_\_\_  
Notary Public in and for said State

My commission expires: 1-30-2012



**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE "GARDEN VILLAGE PARK PROJECT"**

Lots 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, and 122 of Kennecott Daybreak Village 4A Plat 1 Subdivision Amending Lot V2 of the Kennecott Master Subdivision #1 Amended" recorded on February 25, 2009, as Entry No. 10631230, Book 2009P, at Page 27 of the Official Records of Salt Lake County, Utah.

Lots 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, and 141 of "Amended Kennecott Daybreak Village 4A Plat 2 Subdivision" recorded on June 22, 2009, as Entry No. 10735633, Book 2009P, at Page 82 of the Official Records of Salt Lake County, Utah.

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE "GARDEN VILLAGE PARK PROJECT"**

Lots 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, and 122 of Kennecott Daybreak Village 4A Plat 1 Subdivision Amending Lot V2 of the Kennecott Master Subdivision #1 Amended" recorded on February 25, 2009, as Entry No. 10631230, Book 2009P, at Page 27 of the Official Records of Salt Lake County, Utah.

Lots 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, and 141 of "Amended Kennecott Daybreak Village 4A Plat 2 Subdivision" recorded on June 22, 2009, as Entry No. 10735633, Book 2009P, at Page 82 of the Official Records of Salt Lake County, Utah.

**Kennecott Daybreak Village 4A Plat 1 tax parcel nos.**

101	26-24-226-002-0000	115	26-24-227-011-0000
102	26-24-226-003-0000	116	26-24-227-012-0000
103	26-24-226-004-0000	117	26-24-227-013-0000
104	26-24-226-005-0000	118	26-24-227-014-0000
105	26-24-227-020-0000	119	26-24-227-015-0000
106	26-24-227-019-0000	120	26-24-227-016-0000
107	26-24-227-002-0000	121	26-24-227-017-0000
108	26-24-227-003-0000	122	26-24-227-018-0000
109	26-24-227-004-0000		
110	26-24-227-005-0000		
111	26-24-227-006-0000		
112	26-24-227-007-0000		
113	26-24-227-008-0000		
114	26-24-227-010-0000		

**Kennecott Daybreak Village 4A Plat 2 tax parcel nos.**

123	26-24-229-032-0000	133	26-24-229-021-0000
124	26-24-229-031-0000	134	26-24-229-019-0000
125	26-24-229-030-0000	135	26-24-229-018-0000
126	26-24-229-029-0000	136	26-24-229-017-0000
127	26-24-229-028-0000	137	26-24-228-007-0000
128	26-24-229-022-0000	138	26-24-228-008-0000
129	26-24-229-023-0000	139	26-24-228-009-0000
130	26-24-229-024-0000	140	26-24-228-011-0000
131	26-24-229-025-0000	141	26-24-228-012-0000
132	26-24-229-026-0000		

**EXHIBIT B**

**INTENTIONALLY OMITTED.**

**BYLAWS OF THE ASSOCIATION**

**BY-LAWS  
OF  
GARDEN PARK VILLAGE ASSOCIATION, INC.**

**ARTICLE I  
OFFICES**

The Garden Park Village 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 Declaration of Covenants, Conditions and Restrictions for Garden Park Village (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 Unit 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 Unit in the Project, each Owner shall promptly furnish to the Association a certified copy of the recorded instrument by which ownership of such Unit 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 Units 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 Unit 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 Units 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's duties shall also include, but shall not be limited to, the following:

(a) maintaining the landscaping and related improvements on the Units and maintaining, replacing and repairing the Units 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) cooperating with the Master Residential Association in upholding the Community Wide Standard;

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

(h) 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;

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

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

(k) 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 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 Unit, 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 Unit, 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 Unit, 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.

## **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):

- (a) every director and officer of the Association and any 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 any 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.

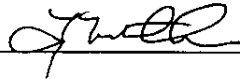
#### **ARTICLE X AMENDMENTS**

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 Units; 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 Units. 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.

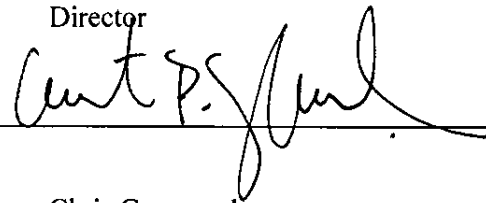
Except as otherwise provided above or by law, the Articles of Incorporation, the Declaration, or these By-Laws, these By-Laws may be amended, modified, or repealed and new bylaws may be made and adopted by the members upon the affirmative vote of at least fifty-one percent (51%) of the Total Votes of 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.

[SIGNATURES ON FOLLOWING PAGE]

Adopted by action of the Board of Directors this \_\_\_\_ day of \_\_\_\_\_, 2009.

By:  \_\_\_\_\_

Print Name: Ty McCutcheon  
Title: Director

By:  \_\_\_\_\_

Print Name: Chris Gamvroulas  
Title: Director

By:  \_\_\_\_\_

Print Name: Jeff Stephenson  
Title: Director