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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR DAYBREAK VILLAGE**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR DAYBREAK VILLAGE ("Declaration") is made as of December 28, 2005, by Kennecott Land Company, a Delaware corporation (the "Declarant"), and each of the undersigned "Initial Owners" identified on the signature pages of this Declaration, with respect to various properties within the master planned community known as Daybreak ("Daybreak") which is located in the City of South Jordan, Utah.

Declarant previously recorded that certain Declaration of Covenants, Conditions and Restrictions for Daybreak Village as Entry No9595794, in Book9236, beginning at Page 3899 of the official records of Salt Lake County, Utah. This Declaration amends, restates and replaces said instrument in its entirety.

**DECLARATION**

Declarant and the undersigned Initial Owners, by executing and recording this Declaration, declare that the property described in Exhibit "A" and any additional property hereafter made subject to this Declaration by supplement or amendment, shall constitute the "Daybreak Village" referred to in this Declaration. Such property shall be held, sold and conveyed subject to the covenants, conditions, restrictions, reservations, easements, assessments, charges, liens and other provisions of this Declaration. This Declaration shall encumber title to such property, shall govern the development and use of such property, and shall be binding upon the Declarant, the Initial Owners, and the future owners of any portion of such property, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter holds any legal, equitable, or beneficial interest in any portion of such property. This Declaration shall also be binding upon Daybreak Village Association, Inc., its successors and assigns (the "Association").

**Chapter 1 Governing Documents**

**1.1 Scope and Applicability**

Daybreak Village has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of commercial, non-residential, retail, civic, religious, educational or industrial property or other property with related or similar uses within Daybreak, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising Daybreak Village. Such documents include (as they may be amended from time to time) this Declaration (and any Supplements and Amendments hereto), the Articles of Incorporation and By-Laws of Daybreak Village Association, Inc., the Architectural Guidelines adopted pursuant to Chapter 5, the Rules of the Association adopted pursuant to Chapter 7, and the resolutions which the Board adopts to establish rules, policies, and procedures for internal governance and Association activities and to

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regulate the operation and use of the property which the Association owns or controls (collectively, the "**Governing Documents**"). All owners and lessees, as well as their employees, guests, and invitees, are required to comply with the Governing Documents.

Notwithstanding anything in this Declaration or the Governing Documents that may be construed to the contrary, during the Development and Sale Period Declarant (or, if after the Development and Sale Period, the Association) may (in the exercise of its sole and absolute discretion and for such period as it may determine and specify) voluntarily release or excuse, in whole or in part, any Parcel, and/or Owner thereof, eligible to be exempted from certain assessments pursuant to Section 12.8(b) hereof from compliance with any term, provision, obligation or subject matter under this Declaration and/or the Governing Documents. Declarant's (or, if after the Development and Sale Period, the Association's) decision to voluntarily release any such Owner and/or corresponding Parcel from any term, provision, obligation or subject matter shall in no event affect, modify, or act to waive its authority under this Declaration or the Governing Documents except with respect to such Parcel and such term, provision, obligation or subject matter and only for such period as determined and specified. Any release or excuse made pursuant to this Section 1.1 shall be on a case-by-case basis, and shall in no way obligate, nor be deemed to obligate, Declarant (or, after the Development and Sale Period, the Association) to subsequently release or excuse that same Owner (or other Parcels owned by that same Owner), or any other Owner or Parcel. Any Owners and/or Parcels released or excused pursuant to this Section shall continue to be subject to the provisions of Section 7.1 hereof.

## **1.2 Conflicts and Ambiguities**

If there are conflicts between any of the Governing Documents and Utah law, Utah law shall control. If there are conflicts between or among any of the Governing Documents, then the Declaration, the Articles, and the By-Laws (in that order) shall control. If there is a conflict between the Governing Documents and any additional covenants recorded on any property within Daybreak Village (or the rules or policies adopted pursuant to any such additional covenants), the Governing Documents shall control.

If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

The Board may, by resolution, resolve any ambiguities in the Governing Documents, and any reasonable interpretation of an ambiguous provision shall be determinative.

## **1.3 Interpretation of Certain References**

**Community-Wide Standard.** Where the Governing Documents require compliance with the "**Community-Wide Standard**", the standard to be applied is the highest of: (a) the standard of use, conduct, architecture, landscaping, aesthetic matters, maintenance, repair, replacement and upkeep generally prevailing in Daybreak Village, or (b) the minimum standards described in this Declaration, the Architectural Guidelines, the Rules, and Board resolutions. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Board or the Reviewer (as defined in Chapter 5). The Community-Wide Standard may or may not be set out in writing. The Declarant initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as Daybreak Village matures.

**Notice.** All references in this Declaration to "**notice**" or "**notify**" or any derivative of such terms shall be deemed to refer to written notice by personal delivery, United States mail, private carrier, or if the

intended recipient has given its prior written authorization to use such method of delivery, facsimile or electronic mail with written confirmation of transmission.

Notices shall be deemed to have been duly given and effective:

(a) if sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(b) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(c) if sent by facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

**Person.** References in the Governing Documents to a “**Person**” or “**Persons**” shall refer to an individual, a corporation, a partnership, a limited liability company, or any other legal entity.

## **Chapter 2      Administration of Daybreak Village**

### **2.1      The Declarant**

The Declarant’s proposed plan for Daybreak, including Daybreak Village, is described in the land use plan(s) for Daybreak, as the same may be supplemented and amended (the “**Master Plan**”), and approved by the City of South Jordan, Utah, (the “**City**”) which Master Plan encompasses the property described in Exhibit “B.” Such Master Plan is further described in the Master Development Agreement for the Kennecott Master Subdivision #1 Project, recorded March 26, 2003 as Entry No. 8581557 in Book 8762 at Page 7103 of the Official Records of Salt Lake County, as amended from time to time (the “**Master Development Agreement**”). The Declarant is not obligated to submit any portion of the property shown on the Master Plan or any other property to this Declaration. In addition, as set forth in Exhibit “B”, the Declarant may submit property to this Declaration that is not shown on the Master Plan.

As used in the Governing Documents, the “**Development and Sale Period**” shall refer to the period of time (unless Declarant gives written notice to the Association that it is terminating the Development and Sale Period at an earlier time) during which the Declarant or any “**Affiliate**” (or any Person who is a transferee or assignee of Declarant’s or any Affiliate of Declarant’s right to expand Daybreak Village pursuant to Chapter 15) owns any real property in Daybreak Village or has an unexpired option to expand Daybreak Village pursuant to Chapter 15. An “**Affiliate**” is any Person that is owned or controlled by, or under common control with, the Declarant.

As used in the Governing Documents, the “**Declarant Control Period**” shall refer to the period of time that the Declarant is entitled to appoint a majority of the members of the Association’s board of directors (“**Board**”). It begins on the date of the Association’s incorporation and terminates upon the first of the following to occur:

(a) the date 6 months after the date upon which Declarant and its Affiliates ceased for an uninterrupted period of ten years to collectively hold at least 1% of the total votes of the Association; or

(b) 30 years after the date this Declaration is recorded; or

(c) when, in its discretion, the Declarant voluntarily and expressly surrenders such right in a recorded instrument.

Notwithstanding anything in this Declaration or the Governing Documents that may be construed to the contrary with respect to Declarant's ability to voluntarily terminate the Development and Sale Period and/or Declarant Control Period, Declarant may (in the exercise of its sole and absolute discretion) voluntarily terminate the Development and Sale Period and/or Declarant Control Period in whole or in part, with respect to all or any portion of any Parcel, any Common Area, any Area of Common Responsibility, any Service Area, or with respect to any issue, matter or subject whatsoever. Declarant's decision to voluntarily terminate the Development and Sale Period and/or Declarant Control Period with respect to all or any portion of any Parcel, Common Area, Area of Common Responsibility, Service Area, or with respect to any issue, matter or subject shall in no event affect, modify, or act to waive its authority under the Development and Sale Period and/or Declarant Control Period except with respect to such Parcel, Common Area, Area of Common Responsibility, Service Area, or such issue, matter or subject.

The Declarant may assign its status and rights as the Declarant under the Governing Documents to an Affiliate or any person who takes title to any portion of the property described in Exhibit "A" or "B" for the purpose of development and/or sale. Such assignment shall be made only in a recorded instrument signed by both parties.

## **2.2 The Association**

The Declarant has established or will establish the Association as the primary entity responsible for administering Daybreak Village in accordance with the Governing Documents. The Association may exercise all rights and powers that the Governing Documents and Utah law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents or Utah law. It may also take any action reasonably necessary to effectuate any such right or privilege.

## **2.3 The Board**

On most matters, the Association acts through the Board. Unless the Governing Documents or Utah law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Governing Documents or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances) and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards set forth in the By-Laws.

## **2.4 The Owners**

Each Person that holds record title to a Parcel, as defined in Chapter 3, is referred to in the Governing Documents as an "Owner". As used herein, Owner shall not include a Person who holds title merely as security for the performance of an obligation. If a Parcel has more than one Owner, all Co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the

Governing Documents. Every Owner has a responsibility to comply with the Governing Documents and uphold the community standards described in this Declaration.

## 2.5 Community Council

The Declarant has created Daybreak Community Council, Inc. (the “**Community Council**”) to empower, encourage, and provide a means for the owners and residents of Daybreak to participate in and benefit from community-oriented affairs, services, programs, and activities that may benefit all of Daybreak, including Daybreak Village. It is the Declarant’s intent that the Association and the Community Council work together and cooperate in performing their complimentary roles within Daybreak.

The Community Council’s affairs are administered by a board of trustees (“**Council Board**”) selected as provided in its by-laws. The Community Council has the rights and responsibilities described in its by-laws and articles of incorporation and in the Covenant for Community for Daybreak (“**Community Covenant**”). The Association and all Owners are subject to the Community Covenant and to the Community Council’s jurisdiction, including, without limitation, the authority of the Community Council to levy assessments. In the event of a conflict between the Governing Documents and the Community Council’s governing documents with respect to the Community Council’s rights and responsibilities, the Community Council’s governing documents shall control.

## Chapter 3 Daybreak Village Structure and Organization

### 3.1 Designations of Properties Comprising Daybreak Village

*Parcels.* As used in the Governing Documents, a “**Parcel**” is a portion of Daybreak specifically made subject to this Declaration, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as commercial, office, retail, educational, industrial, civic, or religious purposes or other related or similar purposes consistent with this Declaration and any other applicable covenants. The term refers to the land, if any, which is part of the Parcel as well as any improvements thereon. The term shall not include any Common Area, the Area of Common Responsibility, or property dedicated to the public. If any Parcel is subdivided or resubdivided, whether by plat or deed, each such subdivision shall be considered a Parcel.

*Common Area.* 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 Parcel is referred to as “**Common Area**”. The Common Area also includes any property that the Association holds under a lease and any easements in favor of the Association.

*Area of Common Responsibility.* All of the properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility (including maintenance obligations), are collectively referred to in the Governing Documents as the “**Area of Common Responsibility**”, regardless of who owns them. The Area of Common Responsibility includes all of the Common Area and may also include Parcels or portions of Parcels and property dedicated to the public, such as public rights-of-way, trails, parks, and open spaces. The initial Area of Common Responsibility is described in Chapter 9.

### 3.2 Service Areas

Parcels may be part of one or more “**Service Areas**” in which the Parcels receive special benefits or services from the Association that it does not provide to all Parcels within Daybreak Village. A Parcel

may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may include Parcels that are not contiguous.

The Declarant may initially designate Service Areas (by name or other identifying designation) and assign Parcels to a particular Service Area either in Exhibit "A" or in a Supplement. During the Development and Sale Period, the Declarant may unilaterally amend this Declaration or any Supplement to change Service Area boundaries.

In addition, the Board may, by resolution, designate Service Areas and assign Parcels to them upon petition of Owners of at least 67% of the Parcels affected by the proposed designation pursuant to Section 10.2.

The Owners of Parcels within each Service Area may elect a "Service Area Committee" in accordance with the By-Laws to represent and act on behalf of the Owners with respect to the services and benefits that the Association provides to the Service Area. References to Service Areas in the Governing Documents shall also refer to such Service Area Committees, if appropriate from the context.

#### **Chapter 4      Association Membership and Voting Rights**

##### **4.1      Membership**

The Association initially has two classes of membership: the Owner membership, which is comprised of all Owners (including the Declarant), and the Declarant membership, which consists solely of the Declarant.

(a)      Owner Membership. Every Owner is automatically a member of the Association. However, there shall be only one membership per Parcel. Thus, if a Parcel has more than one Owner, all co-Owners of the Parcel share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in writing to the Association's Secretary.

(b)      Declarant Membership. The Declarant holds the sole Declarant membership. The Declarant membership shall terminate upon the first of the following to occur:

- (i)      2 years after termination of the Declarant Control Period; or
- (ii)     when, in its discretion, the Declarant voluntarily and expressly surrenders such right in a recorded instrument.

During the Development and Sale Period, the Declarant may, by Supplement, create additional classes of membership comprised of the owners of Parcels within any portion of the additional property submitted to this Declaration. The Declarant shall specify in any such Supplement the rights, privileges, and obligations of the members of any class of membership created by that Supplement. Notwithstanding anything herein that may be construed to the contrary, if Declarant or any Affiliate of Declarant owns a fully developed Parcel within Daybreak Village then Declarant (or its Affiliate, as applicable) shall be considered an "Owner" with respect to such Parcel and shall be entitled to exercise all the rights of an Owner pursuant to this Declaration, including, without limitation, the same rights to vote as any other Owner, in accordance with the voting rights set forth in this Declaration.

## 4.2 Voting

Each Owner shall be entitled to the number of votes assigned to its Parcel(s) in accordance with the formula set forth in Exhibit "D". No vote shall be exercised for any property exempt from assessment under Section 12.8.

If there is more than one Owner of a Parcel, the votes for the Parcel shall be exercised as the co-Owners determine among themselves and advise the Association's Secretary in writing prior to the vote being taken. Absent such advice, the Parcel's votes shall be suspended if more than one Person seeks to exercise them.

## Chapter 5 Architecture, Landscaping, and Aesthetic Standards

### 5.1 General

All site work, landscaping, structures, improvements, and other items placed on a Parcel, Common Area or Area of Common Responsibility in a manner or location visible from outside of existing structures ("**Improvements**") are subject to standards for design, landscaping and aesthetics adopted pursuant to this chapter ("**Architectural Guidelines**") and the approval procedures set forth in this chapter, except as this chapter or the Architectural Guidelines may otherwise specify.

No prior approval is necessary to rebuild or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior portions of a structure visible from outside of the structure do require prior approval.

Any building constructed on a Parcel shall be designed by and built in accordance with the plans and specifications of a licensed architect unless the Declarant or its designee in its sole discretion otherwise approves.

Approval under this chapter is not a substitute for any approvals, inspections, or reviews required by a governmental agency or entity having jurisdiction over architectural or construction matters.

This chapter shall not apply to the Declarant's or an Affiliate's design and construction activities, or to the Association's design and construction activities during the Development and Sale Period.

### 5.2 Architectural Review Authority

(a) Declarant. The Declarant shall have exclusive authority to review and act upon all applications for review of proposed Improvements during the Development and Sale Period and thereafter until all Parcels have been improved with structures for which a certificate of occupancy has been issued. The Declarant may designate one or more persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, the Declarant and its designee act solely in the Declarant's interest and owe no duty to any other Person.

From time to time, the Declarant may delegate any or all of its rights under this chapter to other Persons or committees, including the committee appointed pursuant to Section 5.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) the Declarant's right to revoke such delegation at any time and reassume its prior control, and (ii) the Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or

inadvisable. So long as the Declarant has any rights under this chapter, the jurisdiction of others shall be limited to such matters as the Declarant specifically delegates.

(b) Architectural Review Committee. Upon the Declarant's delegation of authority pursuant to Section 5.2(a), or upon expiration or termination of the Declarant's rights under this chapter, the Board shall appoint an Architectural Review Committee ("**Architectural Review Committee**" or "**ARC**") to assume jurisdiction over matters within the scope of the delegated authority or this chapter, respectively. The ARC shall consist of at least three, but not more than seven, persons, who shall serve and may be removed and replaced in the Board's discretion. ARC members need not be Owners or representatives of Owners. The ARC may, but need not, include architects, engineers, or similar professionals. The Association may compensate ARC members in such manner and amount, if any, as the Board may determine appropriate.

Until expiration of the Declarant's rights under this chapter, the ARC shall notify the Declarant in writing within three business days of any action (i.e., approval, partial approval, or disapproval) it takes under this chapter. A copy of the application and any additional information the Declarant may require shall accompany the notice. The Declarant shall have 10 business days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC.

Unless and until such time as the Declarant delegates all or a portion of its reserved rights to the ARC or the Declarant's rights under this chapter terminate, the Association shall have no jurisdiction over architectural matters.

(c) Reviewer. For purposes of this chapter, the entity having jurisdiction in a particular case shall be referred to as the "**Reviewer**".

(d) Fees; Assistance. The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application. The Board may include the compensation of such persons in the Association's annual operating budget.

### **5.3 Guidelines and Procedures**

(a) Architectural Guidelines. The Declarant may prepare the initial Architectural Guidelines, which may contain general provisions applicable to all of Daybreak Village as well as specific provisions that vary among uses or locations within Daybreak Village. The Architectural Guidelines are intended to provide guidance to Owners and contractors regarding matters of particular concern to the Reviewer. The Architectural Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Architectural Guidelines does not guarantee approval.

The Declarant shall have sole and full authority to amend the Architectural Guidelines for so long as it has review authority under Section 5.2(a). The Declarant's right to amend the Architectural Guidelines shall continue even if it delegates reviewing authority to the ARC, unless the Declarant also delegates the power to amend to the ARC. Upon termination or delegation of the Declarant's right to amend, the ARC may amend the Architectural Guidelines with the Board's consent.

Amendments to the Architectural Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Architectural Guidelines as amended. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may eliminate requirements previously imposed



(including with respect to previously constructed Improvements) or otherwise make the Architectural Guidelines less restrictive.

The Reviewer shall make the Architectural Guidelines available to Owners and their architects, engineers, and contractors upon request. In the Declarant's discretion, such Architectural Guidelines may be recorded, but the most recent version, whether or not recorded, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

(b) Procedures. Unless the Architectural Guidelines provide otherwise, no activities within the scope of this chapter (as described in Section 5.1) may begin on any portion of Daybreak Village until a written application is submitted to and approved by the Reviewer. The application must be accompanied by plans and specifications and such other information as the Reviewer or the Architectural Guidelines require.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to review so long as they are made in good faith and in accordance with required procedures.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

The Reviewer shall use reasonable efforts to notify the applicant in writing of the final determination on any application no later than 30 business days after its receipt of a completed application and all required submissions; however, with respect to any ARC determination subject to the Declarant's veto right under Section 5.2(b), the Reviewer shall use reasonable efforts to notify the applicant of the final determination within 40 business days after its receipt of the final determination and all required submissions. No approval, whether expressly granted or deemed granted, shall be inconsistent with the Architectural Guidelines unless a written variance has been granted pursuant to Section 5.5.

As part of any approval, the Reviewer may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within 12 months of commencement unless otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing.

The Reviewer may exempt certain activities from the application and approval requirements of this chapter, if such activities are undertaken in compliance with the Architectural Guidelines and the Community-Wide Standard.

#### **5.4 No Waiver of Future Approvals**

Approval of applications or plans under this chapter shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### **5.5 Variances**

The Reviewer may authorize variances from compliance with any of the Architectural Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires the Declarant's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent.

#### **5.6 Limitation of Liability**

The standards and procedures provided for in this chapter do not create any duty to any Person. Review and approval of any application pursuant to this chapter may be based purely on aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all buildings are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners.

The Declarant, an Affiliate, the Association, its officers, the Board, any committee, and any member of any of the foregoing, shall not be liable for (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor, architect, or engineer or any of their subcontractors, employees, or agents, whether or not the Declarant has approved such contractor, architect or engineer; (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction or modifications to any Parcel; or (e) any injury, damage, or loss arising out of an earthquake, Acts of God, or other natural disaster or calamity. In all matters, the Association shall defend and indemnify its Board and officers, the ARC, and the members of each, as provided in the By-Laws.

#### **5.7 Certificate of Compliance**

Any Owner, with respect to its Parcel, an Improvement thereon, or any part thereof, may request in writing that the Reviewer issue a certificate of compliance certifying that there are no known violations of this chapter or the Architectural Guidelines. The Association shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Association from taking enforcement action against an Owner for any condition known to the Association on the date of such certificate.

### **Chapter 6 Maintenance, Repair, and Replacement**

#### **6.1 Maintenance of Parcels**

Each Owner shall maintain its Parcel, including all structures, landscaping, and other improvements comprising the Parcel in a manner consistent with the Governing Documents and the

Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplement, or by law.

Unless otherwise maintained by the Association in its discretion, each Owner shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area lying between the Parcel boundary and any curb adjoining any public or private right-of-way or street; provided, however, that trees within such area may be irrigated by an irrigation system owned or operated by the Council, the Association, or a private water company, if such a system is provided. However, Owners may not remove or replace trees, shrubs, or similar vegetation from this area without prior approval pursuant to Chapter 5.

An Owner may allocate its maintenance obligations under this Declaration for its Parcel among the lessees and occupants of its Parcel; provided, however, that any such maintenance allocation must be approved in writing by the Board and, during the Development and Sale Period, the Declarant. In addition, any amendments to or alterations of such maintenance allocation must be approved in writing by the Board and, during the Development and Sale Period, the Declarant. Notwithstanding any such maintenance allocation, each Owner remains responsible for maintaining its Parcel in the manner required by this Declaration. The failure of any lessee or other occupant of an Owner's Parcel to so maintain such Owner's Parcel, or any portion thereof, shall not excuse such Owner from satisfying its obligation to maintain its Parcel in the manner required by this Declaration.

## **6.2 Responsibility for Repair and Replacement**

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on its Parcel, less a reasonable deductible.

Within 90 days after damage to or destruction of a structure on a Parcel, the Owner shall promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Chapter 5 unless the Board, in its discretion, agrees to extend such period. Alternatively, the Owner shall clear the Parcel of debris and maintain it in a neat and attractive landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs that insurance proceeds do not cover.

Additional recorded covenants applicable to any Service Area may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Parcels and for clearing and maintaining the Parcels in the event the structures are not rebuilt or reconstructed.

## **Chapter 7 Use and Conduct**

### **7.1 Nonresidential Use.**

All Parcels shall be restricted exclusively to commercial, retail, office, industrial, civic, educational, or religious nonresidential uses or other related or similar uses consistent with this Declaration. Any Parcel may not be further subdivided without the prior written consent of Declarant (or, if after the Development and Sale Period, the Board), which may be given, conditioned or withheld in Declarant's or the Board's sole discretion. Notwithstanding anything in this Declaration to the contrary:

(i) Certain Parcels, as designated by Declarant in its sole and absolute discretion, may contain legally-created, residential condominium or apartment-type dwellings, which dwellings may be located on the upper floors of or otherwise associated with or connected to certain Improvements designed to accommodate commercial uses (otherwise permitted by this Declaration) on the Parcel. Such residential dwellings will be subject to (a) the covenants, conditions and restrictions contained in that certain Community Charter for Daybreak (the "**Master Residential Declaration**"), (b) Daybreak Community Association, Inc. (the "**Master Residential Association**") and (c) any Neighborhood Associations (as defined in the Master Residential Declaration) formed pursuant to the terms of the Master Residential Declaration. In the event the Owner of any such Parcel desires to alter or eliminate the residential character of any such Improvements in a manner that would no longer require, as determined by Declarant, any portion of any such Improvement to be subject to the Master Residential Declaration or any additional Neighborhood Association (as defined in the Master Residential Declaration), such Owner may, in accordance with the express written consent of the Board and, during the Development and Sale Period, the Declarant, so alter the character of such Parcel. During any period that such dwellings are subject to the Master Residential Declaration, the Declarant (or, after termination of the Development and Sale Period, the Board) may partially or totally exempt such dwellings from assessment under this Declaration, declare that such dwellings are not deemed to be a portion of the Parcel on which they are constructed for other specified purposes under this Declaration, and/or exclude the square footage of such dwellings from the voting and assessment calculations described in Exhibit "D" hereto, and/or otherwise appropriately deal with the residential character of such dwellings and their association and interaction with other uses on the Parcel.

(ii) An Owner of a Parcel may alter the use or character of such Parcel, including, without limitation, altering the use of such Parcel to a use not permitted by this Declaration (e.g. residential), if and only if, the Declarant (or, if after the Development and Sale Period, the Board) consents to such an alteration of the use of such Parcel, which consent may be granted, conditioned or withheld in the Declarant's (or, if applicable, Board's) sole discretion.

In the event an Owner desires to alter the use or character of a Parcel to a residential use (not permitted by this Declaration) and has obtained the consent referred to in this Subparagraph, such change of use shall become effective upon, and only upon, satisfaction of all of the following conditions within a six (6) month period following the granting of such consent:

1. A release of such Parcel from the terms of this Declaration and the Governing Documents;
2. Such Parcel is subjected to and shall thereafter be governed by and subject to the Master Residential Declaration, the Master Residential Association, and any Neighborhood Associations formed pursuant to the terms of the Master Residential Declaration;
3. A change supplement executed by Declarant or the Board, as the case may be, by the Owner, and by the holder of each and every mortgage, deed of trust, or any other security interest in or financial encumbrance upon, the Parcel;
4. The permitted residential use, density, and intensity of use of such Parcel must conform to, be consistent with, and does not exceed, the use, density, and intensity of use of the least dense and lowest intensity of use of any residential neighborhood located in close proximity to such Parcel; and
5. Such Owner seeks and obtains any approvals, permits, or other requirements of the City to permit residential use, including without limitation, any approvals required under the City's Planned Community Zone ordinance. Such approvals from the City may only be sought after obtaining consent from Declarant (or, if after the Development and Sale Period, the Board).

In addition to the uses that are restricted by zoning or the Master Plan, the following uses are prohibited within Daybreak Village:

(a) trailer courts, mobile home parks, recreational vehicle campgrounds, and facilities for the sales or service of mobile homes or trailers;

(b) junkyards, scrap metal yards, automobile uses parts sales facilities, motor vehicles sales operations or dealerships, motor vehicle dismantling operations, and sanitary landfills;

(c) dumping, storage, disposal, incineration, treatment, processing, or reduction of garbage or refuse of any nature, other than handling or reducing waste produced on the premises from authorized uses in a clean and sanitary manner;

(d) consignment shops, pawn shops, thrift stores, flea markets, salvage businesses, or discount stores whose merchandise consists primarily of used goods or merchandise, excess inventory, discontinued items, and/or goods acquired through liquidation of other businesses or fire or bankruptcy sales; provided, periodic Association sponsored or sanctioned events or activities on the Common Area (such as, without limitation, craft fairs, arts festivals, or farmers markers) shall be permitted:

(e) truck terminals and truck stop-type facilities, including truck parking lots (except as may be incidental to a use which is not prohibited):

(f) tanning parlors, massage parlors, or any establishment which offers entertainment or services by nude or partially dressed male or female persons, except that the provision shall not preclude tanning and massage services offered by fully clothed, trained personnel as part of a hotel, a legitimate fitness or health facility, or a day spa operation that also offers beauty, body care, skin care, or similar services.

(g) "adult entertainment uses," which term shall mean, for the purpose of this Declaration, any theater or other establishment which shows, previews, or prominently displays, advertises or conspicuously promotes for sale or rental: (A) movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) that are rated "X" by the movie production industry (or any successor rating established by the movie production industry) or are otherwise of a pornographic or obscene nature or inconsistent with the prevailing community standard within the City of South Jordan, Utah; or (B) sexually explicit games, toys, devices, or similar merchandise:

(h) tattoo parlors, body piercing shops, and so-called "head shops" (i.e., shops offering or promoting illegal drug paraphernalia or items intended for or commonly associated with the use of illegal drugs):

(i) mini-warehouses, warehouse or distribution centers, and motor and freight terminals;

(j) any facility for the dyeing and finishing of textiles, the production of fabricated metal products, or the storage and refining of petroleum;

(k) dry cleaning plants; provided, facilities for the drop-off or pick-up of items dry cleaned outside of the community are permitted;

(l) engine and motor repair facilities (except in connection with any permitted automobile service station);

- (m) heavy machinery sales or storage facilities; and
- (n) any use which would cause or threaten the cancellation of any insurance maintained by the Association, or which would measurably increase insurance rates for any insurance maintained by the Association or Owners above the rates that would apply in the absence of such use, except such uses as are specifically authorized under the Master Plan.

## 7.2 Transfer of Interests in Parcels

(a) Leasing. For purposes of this Declaration, the terms “Lease” and “Leasing” shall refer to the regular, exclusive occupancy of a Parcel or any portion of a Parcel by any Person other than the Owner, for which the Owner receives any consideration or benefit.

All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Parcel are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

The Owner is responsible for providing the tenant copies of the Governing Documents. In addition, the Association or the Board may adopt Rules governing leasing and subleasing.

(b) Transfer of Title. Any Owner desiring to sell or otherwise transfer title to its Parcel shall give the Board at least seven days’ prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

(c) Subdivision and Combination of Lots or Parcels. No Person other than the Declarant shall subdivide or change the boundary lines of any Parcel without the Board’s prior written approval. Any such action that the Board approves shall be effective only upon recording of a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Parcel(s). In addition, the Declarant’s consent is required for any such action during the Development and Sale Period.

## 7.3 Rulemaking Authority and Procedures

The initial Rules of the Association regulating the use of property, activities, and conduct within Daybreak Village are attached hereto as Exhibit “C”. The Board and the Owners are authorized to change the Rules in accordance with the following procedures. A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

(a) Board Authority. Subject to the notice requirements in subsection (c) and the Board’s duty to exercise judgment and reasonableness on behalf of the Association and its members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting.

(b) Membership Authority. Subject to the notice requirements in subsection (c), the Owners representing a majority of the votes in the Association may also adopt new Rules and modify or rescind existing Rules at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule was adopted. However, as long as the Declarant membership exists, any such action shall also be subject to the Declarant’s approval.

(c) Notice. The Board shall send notice to all Owners concerning any proposed Rule change at least five business days prior to the meeting of the Board or the Owners at which such action is to be considered. At any such meeting, Owners shall have a reasonable opportunity to be heard before the proposed action is put to a vote. This notice requirement does not apply to administrative and operating policies that the Board may adopt relating to the Common Areas, such as traffic and parking regulations, notwithstanding that such policies may be published as part of the Rules.

(d) Effective Date. A Rules change adopted under this Section shall take effect 30 days after the date on which written notice of the Rules change is given to the Owners.

(e) Conflicts. No action taken under this Section shall have the effect of modifying or repealing the Architectural Guidelines or any provision of this Declaration other than the Rules. In the event of a conflict between the Architectural Guidelines and the Rules, the Architectural Guidelines shall control. In the event of a conflict between the Rules and any provision of this Declaration (exclusive of the Rules), the Declaration shall control.

## **Chapter 8      Enforcement**

### **8.1 Remedies for Non-Compliance**

The Association, the Declarant, an Affiliate, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board in its discretion, may impose sanctions for violation of the Governing Documents as such sanctions are described in the Governing Documents, such sanctions to include:

(a) the Board may impose reasonable monetary fines, which shall constitute a lien upon the violator's Parcel;

(b) the Board may suspend an Owner's right to vote and/or suspend services the Association provides;

(c) the Board may take action to abate any violation of the Governing Documents at the Owner's sole cost and expense, and the Board shall have the right to enter onto an Owner's parcel to bring such parcel into compliance with the Community-Wide Standard should an Owner fail to comply with subsection (d) below after reasonable notification;

(d) the Board may require an Owner, at its own expense, to comply with the Community Wide Standard;

(e) the Board may levy specific assessments to cover any costs and expenses of the Association incurred pursuant to subsections (c) and (d) above; and

(f) the Board may record a notice of violation with respect to any Parcel on which a violation exists.

All rights and remedies of the Association shall be cumulative and the exercise of one remedy shall not preclude the exercise of any other right or remedy.

## **8.2 Attorneys Fees and Costs**

In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

## **Chapter 9 Property Management**

### **9.1 Acceptance and Control of Association Property**

(a) Transfers and Conveyances by Declarant. The Declarant, its designees, or any Affiliate may transfer or convey to the Association interests in real or personal property within or for the benefit of Daybreak Village, and the Association shall accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

Upon the Declarant's written request, the Association shall reconvey to the Declarant, or an Affiliate, any unimproved real property that the Declarant originally conveyed to the Association for no payment, to the extent conveyed in error or needed to make adjustments in property lines or accommodate changes in the development plan.

(b) Management and Control. The Association is responsible for management, operation, and control of the Common Area, subject to any covenants set forth in the deed or other instrument transferring the property to the Association. The Association may enter into leases, licenses, or operating agreements with respect to portions of the Common Area, for payment or no payment, as the Board deems appropriate. The Association may permit use of Common Area facilities by persons other than Owners and occupants of Parcels and may charge use fees, in such amount as the Board may establish, for such use.

### **9.2 Maintenance of Area of Common Responsibility**

The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility includes, but is not limited to: (i) the Common Area, common utilities and community landscaping (regardless of whether located within the Common Area, and such portions of any additional property as may be dictated by the Declarant, this Declaration, any Supplement, or any covenant or agreement for maintenance entered into by, or otherwise binding on the Association; and (ii) any property and facilities that the Declarant or an Affiliate owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its members. The Declarant shall identify any such property and facilities by written notice to the Association, and they shall remain part of the Area of Common Responsibility until the Declarant or an Affiliate revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property it does not own, including, without limitation, Parcels or property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. In addition, the Association may contract with the owner of any neighboring property, the Community Council or with the Daybreak Community Association, Inc. to provide for sharing of costs associated with (a) maintenance and operation of mutually beneficial properties or facilities, or (b) provision of mutually beneficial services. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of,



property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

### **9.3 Restoring Damaged Improvements within the Area of Common Responsibility**

The Association shall repair or reconstruct damaged Common Area improvements unless the Declarant, during the Development and Sale Period, and Owners representing at least 75% of the total votes in the Association, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available.

No mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive landscaped condition consistent with the Community-Wide Standard.

The Association shall retain for the benefit of all Owners, or the Owners within the affected Service Area, as the Board deems appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Owners, levy Special Assessments to cover the shortfall.

### **9.4 Cooperation with Special Service Districts**

The Association shall be authorized to contract with, and shall cooperate with any Special Service or Improvement District or other governmental entity created by the City ("SSD") that may be created as a special purpose unit of local government in accordance with Utah law to provide community services to any Parcel within Daybreak to ensure that their respective responsibilities are discharged.

### **9.5 Cooperation with the Council**

The Association shall cooperate with the Council on all matters involving the Council's obligations and responsibilities under the Covenant. For example, to the extent feasible, the Association shall permit reasonable use of Common Area facilities by the Council, clubs, and other volunteer groups operated by or through the Council for the offices, programs, activities, and services. As the Board deems reasonably appropriate and financially feasible in its discretion, it shall incorporate the Council's suggestions for community operations, which may come from Council surveys and focus groups.

## **Chapter 10 Provision of Services**

### **10.1 Provision of Services to Parcels**

The Association may arrange for or provide services to Owners and their Parcels, directly or through contracts with the Declarant or other third parties, including the City, the County, a private water company and any other private or governmental entities.

Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Parcel, may result in termination of services provided to such Parcel. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Parcel as a Common Expense or Service Area Expense pursuant to Chapter 12.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

## **10.2 Provision of Services to Service Areas**

(a) Service Areas Designated by Declarant. The Association shall provide services to Parcels within any Service Area designated by the Declarant pursuant to Section 3.2 as required by the terms of any Supplement applicable to the Service Area.

(b) Service Areas Designated by Board. In addition to Service Areas which the Declarant may designate pursuant to Section 3.4, any group of Owners may petition the Board to designate their Parcels as a Service Area for the purpose of receiving from the Association (i) special benefits or services which are not provided to all Parcels, or (ii) a higher level of service than the Association otherwise provides. Any such petition shall be signed by Owners holding a majority of votes in the Association related to the Parcels within the proposed Service Area. Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the initial fees for providing the requested service, which may include a reasonable administrative charge. If Owners of at least 67% of the votes in the Association related to Parcels within the proposed Service Area approve the proposal in writing, the Board shall designate the Parcels as a Service Area and include the fees for such service as a line item in the Service Area budget pursuant to Section 12.2(c).

## **10.3 Recycling Programs**

The Association and/or the Council may establish a recycling program and recycling center, and in such event, all Owners and occupants of Parcels shall support such program by recycling, to the extent reasonably practical.

## **10.4 Water Conservation**

Daybreak is being developed to recapture some portion of the stormwater and other water runoff. Each Owner shall abide by any and all water conservation requirements affecting its Parcel. The Declarant reserves the right to install, operate, and maintain water reclamation devices throughout Daybreak and an easement for access, installation and maintenance of such devices.

## **Chapter 11 Association Insurance**

### **11.1 Required Coverages**

The Association, acting through the Board or its authorized agent, shall obtain and maintain in effect the types and amounts of insurance coverages as the Board deems prudent in the exercise of its business judgment.

## 11.2 Premiums and Deductibles

Premiums for all Association insurance shall be a Common Expense. The Association's policies may contain a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Parcels as a Specific Assessment.

## Chapter 12 Association Finances

### 12.1 Association Expenses

(a) Common Expenses. Except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Area of Common Responsibility, and otherwise for the general benefit of the Owners, are considered "**Common Expenses**". Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate.

The characterization of a particular expense as a "**Common Expense**" shall not preclude the Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to this Declaration, any Supplement, or any other recorded covenants or agreements.

(b) Service Area Expenses. All expenses that the Association incurs or expects to incur in connection with providing other benefits and services to a Service Area, including any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Service Area, are considered "**Service Area Expenses**". Service Area Expenses may include a reasonable administrative charge in such amount, as the Board deems appropriate.

### 12.2 Budgeting for and Allocating Association Expenses

(a) Preparation of Budget. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. In addition, the Board shall prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses that the Association expects to incur for the benefit of such Service Area in the coming year.

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 as a Common Expense or as a Service Area Expense of the Service Area for whom the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Parcels, and the amount to be generated through the levy of Base Assessments and Service Area Assessments pursuant to subsections (b) and (c).

(b) Calculation of Base Assessments. The total budgeted Common Expenses, less any surplus in the Common Expense budget from prior years and any income anticipated from sources other than assessments against the Parcels, shall be allocated among all Parcels subject to assessment under Section 12.4 and levied as a “**Base Assessment**”. Base Assessments shall be levied in accordance with the formula set forth in Exhibit “D.” The formula set forth in Exhibit “D” may only be altered by amending this Declaration.

(c) Calculation of Service Area Assessments. The total Service Area Expenses budgeted for each Service Area, less any surplus in such Service Area budget from prior years, shall be allocated among all Parcels in the Service Area that are subject to assessment under Section 12.4 and levied as a “**Service Area Assessment**”. Unless otherwise specified in any Supplement applicable to a Service Area, Service Area Assessments shall be allocated among all Parcels in the Service Area in accordance with the formula set forth in Exhibit “D.”

(d) Notice of Budget and Assessment; Right to Disapprove. The Board shall send a copy of each applicable budget, together with notice of the amount of the Base Assessment or any Service Area Assessment to be levied pursuant to such budget, to the Owner of each Parcel at least 30 days prior to the beginning of each fiscal year. The Common Expense budget shall automatically be ratified at a meeting of the Owners, whether or not a quorum is present, unless disapproved at the meeting by Owners representing at least 75% of the total votes in the Association and by the Declarant, during the Development and Sale Period. Each Service Area budget shall automatically be ratified at the meeting, whether or not a quorum is present, unless disapproved by Owners representing at least 75% of the votes allocated to the Parcels within the Service Area, except that the right to disapprove a Service Area budget shall apply only to those line items which are attributable to services or benefits requested by the Owners within the Service Area and shall not apply to any item which the Governing Documents require to be assessed as a Service Area Expense. If any 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, shall continue in effect until a new budget is ratified.

(e) Budget Revisions. The Board may revise the budget and adjust the Base Assessment or Service Area Assessments any time during the year, subject to the same notice requirements and rights to disapprove set forth in subsection (d) above.

### **12.3 Special Assessments**

The Association may levy “**Special Assessments**” to cover Common Expenses or Service Area Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget. Except as otherwise specifically provided in this Declaration, any Special Assessment for Common Expenses shall automatically be ratified at a meeting of the Owners, whether or not a quorum is present, unless disapproved at the meeting by Owners representing at least 75% of the total votes in the Association and by the Declarant during the Development and Sale Period. Any Special Assessment for Service Area Expenses shall automatically be ratified at the meeting, whether or not a quorum is present, unless disapproved by Owners representing at least 75% of the votes in the Association allocated to Parcels within the Service Area and by the Declarant during the Development and Sale Period. In addition, during the Development and Sale Period, any Special Assessment shall be subject to the Declarant’s written consent.

### **12.4 Specific Assessments**

The Association may levy “**Specific Assessments**” against a particular Parcel as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Parcel upon request of the Owner pursuant to any menu of optional services which the Association may offer (which might include the items identified in Section 10.1); and

(b) to cover costs incurred in bringing the Parcel into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Parcel, their agents, contractors, employees, licensees, invitees, or guests, or for monetary fines levied pursuant to Section 8.1; however, the Board shall give the Parcel Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws before levying any Specific Assessment under this subsection (b).

## **12.5 Authority to Assess Owners; Time of Payment**

The Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this chapter and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Parcel on the first day of the month following (a) the month in which such Parcel is made subject to this Declaration, or (b) the month in which the Board first determines and levies assessments pursuant to this chapter, whichever is later. The first annual Base Assessment and Service Area Assessment, if any, levied on each Parcel shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Parcel.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Parcel and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Service Area Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Parcel, the Board may require the outstanding balance on all assessments to be paid in full immediately.

## **12.6 Obligation for Assessments**

(a) Personal Obligation. By accepting a deed or entering into a recorded contract to purchase any Parcel, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Utah law), late charges as determined by Board resolution, costs, and reasonable attorneys fees, shall be the personal obligation of each Owner and a lien upon each Parcel until paid in full. Upon a transfer of title to a Parcel, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Service Area Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

No Owner may exempt himself or herself from liability for assessments by non-use of the Common Area, abandonment of his or her Parcel, or non-use of services provided to all Parcels or to all Parcels within the Service Area to which the Parcel is assigned. The obligation to pay assessments is a

separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) Declarant's Financial Obligations to Association. The Declarant shall be liable for assessments on any Parcels it owns that are subject to assessment under this section, except that during the Development and Sale Period, the Declarant may satisfy its obligation to pay Base Assessments, Service Area Assessments, and Special Assessments for Common Expenses or Service Area Expenses, as applicable, on Parcels it owns either by paying such assessments in the same manner as any other Owner, or by paying (i) any shortfall under the Common Expense budget resulting from events other than failure of other Owners to pay their assessments, and (ii) any budgeted contributions to reserves in accordance with the Common Expense or Service Area budget. Unless the Declarant otherwise notifies the Board in writing at least 30 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. After termination of the Development and Sale Period, the Declarant shall pay Base or Service Area Assessments on any Parcels it owns that are subject to assessment in the same manner as any other Owner liable for such assessments.

Regardless of the Declarant's election under this section, any of the Declarant's financial obligations to the Association may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

## 12.7 Lien for Assessments

(a) Association's Lien. The Association shall have a lien against each Parcel to secure payment of assessments, as well as interest, late charges (subject to the limitations of Utah law), and costs of collection (including attorneys fees and expenses). Such lien shall be superior to all other liens, except (i) liens and encumbrances recorded prior to this Declaration and which the Association has assumed or taken subject to; (ii) the liens of all real estate taxes and other governmental assessments or charges, and (iii) the lien or charge of any mortgage made in good faith and for value having first priority over any other mortgages on the Parcel and recorded prior to the assessment becoming delinquent, except that the Association's lien shall have priority over any such mortgage to the extent of assessments that would have become due in the absence of acceleration during the six months immediately preceding any judicial or nonjudicial foreclosure of the mortgage.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Parcel the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

(b) Enforcement of Lien. The Association may bid for the Parcel at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Parcel. While a Parcel is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Parcel shall be charged, in addition to its usual assessment, its pro rata

share of the assessment that would have been charged such Parcel had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

(c) Effect of Sale or Transfer. Sale or transfer of any Parcel shall not affect the assessment lien or relieve such Parcel from the lien for any subsequent assessments. However, the sale or transfer of any Parcel pursuant to foreclosure of a first mortgage having priority over the Association's lien pursuant to Section 12.6(a) shall extinguish the lien as to any installments of such assessments due more than six months prior to the mortgagee's foreclosure. The subsequent Owner of the foreclosed Parcel shall not be personally liable for assessments on such Parcel due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Parcels subject to assessment under Section 12.4, including such acquirer, its successors and assigns.

## **12.8 Exempt Property**

(a) The following property shall be exempt from payment of Base Assessments, Service Area Assessments, and Special Assessments:

(i) All Common Area and such portions of the property owned by the Declarant or a Declarant Affiliate as are included in the Area of Common Responsibility;

(ii) Any property dedicated to and accepted by a public utility.

(b) During the Development and Sale Period the Declarant (and after the Development and Sale Period, the Board) may, partially or totally, permanently or for a limited period of time, exempt the following property from the payment of Base Assessments, Service Area Assessments, Special Assessments, and/or any other fee, charge, or burden pursuant to this Declaration:

(i) Residential condominium or apartment-type dwellings (as the same are described in Section 7.1) and their associated common areas exempted pursuant to Section 7.1 of this Declaration;

(ii) Any property owned by any religious organization or house of worship;

(iii) Any property owned by any governmental or public entity;

In addition, the Association may, by resolution, grant exemptions to certain Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c) of the Internal Revenue Code.

## **Chapter 13 Easements**

### **13.1 Easements in Common Area**

The Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) The Governing Documents and any other applicable covenants;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association (such conveyance may occur at any time and from time to time at the sole discretion of the Declarant);

(c) The use of all or portions of the Common Area by the general public, which may be subject to admission charges or other fees if the Board deems appropriate;

(d) The holding of public or private events within Daybreak, including Daybreak Village; and

(e) The Board's right to:

(i) adopt rules regulating Common Area use and enjoyment;

(ii) suspend an Owner's right to use Common Area facilities;

(iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;

(iv) rent any portion of any Common Area facilities on an exclusive or non-exclusive short-term basis to any Person; and

(v) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend his or her right of use and enjoyment to its lessees, employees, and invitees, as applicable, subject to reasonable Board regulation.

### 13.2 Pedestrian Easements Over Lots and Parcels

(a) Easements Over Sidewalks and Pathways. The Declarant hereby grants to the Association, each Owner, and visitors to Daybreak Village, a non-exclusive right and easement over each Parcel for the use and enjoyment of exterior sidewalks and pedestrian pathways located along public or private streets or which provide access to public use areas. Access to and use of sidewalks and pedestrian pathways that do not provide access to public use areas within or between Parcels may be prohibited. The Association shall, by resolution (and with the consent of the Declarant if during the Development and Sale Period) establish rules, policies and procedures governing the use of the easement described in this section. Notwithstanding anything herein to the contrary, at any time during the Development and Sale Period Declarant hereby reserves the right, to be exercised in Declarant's sole and absolute discretion, to terminate, with respect to any given Parcel, in a recorded document any right associated with the easement described in this section. Furthermore, the Association reserves the right, both on its own behalf and on behalf of (and as attorney-in-fact for), each Owner and the visitors to Daybreak Village, to waive in a recorded document any right associated with the easement granted by Declarant pursuant to this section with respect to any given Parcel. In the event of any such termination or waiver, the easement rights granted pursuant to this section shall be of no further force or effect with respect to the applicable Parcel for which such rights have been terminated or waived.

(b) Location of Easements. Those areas within the Parcels subject to the easement rights described in this section shall be shown on a recorded plat or map or otherwise specifically described in a recorded instrument. During the Development and Sale Period, any easement of access across a Parcel may be relocated on the Parcel with the consent of the Declarant and the Owner. Thereafter, the



Association's consent is required to relocate such easement areas, which consent shall not unnecessarily be withheld, conditioned, or delayed.

### **13.3 Easements for Utilities, Etc.**

(a) Installation and Maintenance. During the Development and Sale Period, the Declarant reserves for itself and its successors, assigns, and designees, and grants to the Association, the City, and all public and private utility providers, including wind energy providers, perpetual easements throughout Daybreak Village (but not through a structure) for the purpose of:

(i) installing Common Area improvements, utilities and infrastructure, security and similar systems, and stormwater and drainage systems to serve Daybreak;

(ii) installing walkways, pathways and trails, streetlights, and signage on property the Declarant or the Association owns or within public rights-of-way or easements reserved for such purpose on a recorded plat or map;

(iii) inspecting, maintaining, repairing, and replace the utilities, infrastructure, and other improvements described above; and

(iv) access to read, maintain, and repair utility meters.

Notwithstanding the above, the Declarant reserves the right to deny access to the City, an SSD or any utility or service provider, to the extent permitted by law, and to condition such access on negotiated terms.

(b) Specific Easements. The Declarant also reserves the right and power to grant and record such specific easements, consistent with Section 13.3(a), as it deems necessary or appropriate to develop the property described in Exhibits "A" and "B." The location of the specific easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this section shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Parcel, nor shall it unreasonably interfere with the use of any Parcel and, except in an emergency, entry onto any Parcel shall be made only after reasonable notice to the Owner or occupant.

### **13.4 Easements to Facilitate Development of Additional Property**

The Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of, and utility services for, the property described in Exhibit "B," whether or not such property is made subject to this Declaration.

### **13.5 Easements for Emergency and Enforcement**

By this Declaration, the Declarant grants to the Association easements over the Parcels as necessary to enable the Association to fulfill its maintenance responsibilities under this Declaration and any Supplement and to enable it to exercise its enforcement rights under Section 8.1. The Association shall also have the right, but not the obligation, to enter upon any Parcel for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

### **13.6 Easements for Cross-Drainage**

All portions of Daybreak Village shall be burdened with easements for natural drainage of stormwater runoff from other portions of Daybreak; provided, no Person shall alter the natural drainage on any Parcel to increase materially the drainage of stormwater onto adjacent portions of Daybreak without the consent of the Owner(s) of the affected property, the Board, and Declarant, as long as it owns any property described in Exhibit "A" or "B."

### **13.7 Easements for Secondary Water System**

The Declarant reserves for itself and its successors, assigns, and designees (including, without limitation any private water company which may be established to provide secondary water to any portion of Daybreak) perpetual easements throughout Daybreak Village (but not through a structure) for the purpose of installing, maintaining, repairing, and otherwise operating and accomplishing all things associated with, a secondary water system providing secondary water to any portion of Daybreak.

### **13.8 Easements of Encroachment**

The Founder grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Parcel and any adjacent Common Area and between adjacent Parcels. A permitted encroachment is a structure or fixture that extends unintentionally from one Parcel onto another a distance of not more than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

## **Chapter 14 Disclosures and Waivers**

### **14.1 Facilities and Services Open to the Public**

Certain facilities and areas within Daybreak, including portions of Daybreak Village, shall be open for use and enjoyment of the public. Such facilities and areas may include, by way of example: roads, sidewalks, parks, and other gathering areas. The Declarant may dedicate such areas to the public or may designate such facilities and areas as open to the public prior to their being conveyed to the Association or an Owner, as applicable. Thereafter, the Board may designate portions of the Common Area as being available for public use at any time, subject to such regulations and restrictions on use as the Board may impose.

## **14.2 Changes in Master Plan**

Each Owner acknowledges that the Daybreak Village is part of the master planned community of Daybreak, the development of which is likely to extend over many years, and agrees that the Association shall not engage in, or use Association funds to support, any protest, challenge, or other form of objection to (a) changes in uses, design, layout, or density of property within Daybreak; or (b) changes in the Master Plan or Master Development Agreement, without the Declarant's prior written consent. In addition, each Owner acknowledges that the Declarant is not obligated to submit property shown on the Master Plan to this Declaration. It is the Declarant's sole discretion to submit additional property to this Declaration. Each Owner acknowledges that the Declarant, along with the City, has the absolute right to amend or modify the Master Plan and/or the Master Development Agreement without the consent of any party, including, without limitation, any Owner or the Association. Furthermore, no one, including any Owner, the Association, or the Council, is a third party beneficiary of the Master Development Agreement or the Master Plan.

## **14.3 Right To Designate Sites for Governmental and Public Interests**

For so long as Declarant owns any property described in Exhibit "A" or "B," Declarant may, but is not obligated to, designate sites within Daybreak Village for government, education, or religious activities and interests, including without limitation, fire, police, and utility facilities, schools and educational facilities, houses of worship, parks, and other public facilities. For property designated in accordance with this Section, development shall be in accordance with the Architectural Guidelines as set forth in Section 5.1. Subject to the approval requirements set forth in Section 17.2, the sites may include Common Area, in which case the Association shall take whatever action is required to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

## **14.4 Public Activities**

Each Owner, by acceptance of a deed to a Parcel, acknowledges that Daybreak Village shall include various public attractions and activities, and those events such as fireworks, concerts, festivals, and similar events may be held within Daybreak. Each Owner acknowledges that such events and activities may result in nuisances or hazards to persons and property on or in the vicinity of such events and activities. Each Owner covenants, on behalf of itself, its heirs, successors, and successors-in-title, that it shall assume all risks associated with its use and ownership of its Parcel in Daybreak Village, including but not limited to, the risk of property damage or personal injury arising from or incidental to such activities.

Each Owner shall indemnify and hold harmless the Declarant, any Affiliate, and the Association, and their respective officers and directors, in their capacities as such, from any liability to persons using its Parcel for claims, damages, or expenses, including attorneys fees, arising from or incidental to such activities.

## **Chapter 15 Expansion of Daybreak Village**

### **15.1 Expansion by Declarant**

The Declarant reserves the unilateral right to expand Daybreak Village by subjecting all or a portion of the property described on Exhibit "B" to the provisions of this Declaration by recording a Supplement describing the additional property to be submitted. The Declarant may record such a Supplement without the consent of any Person except the owner of such property, if not the Declarant.

The Declarant's right to expand Daybreak Village under this section expires when all property described in Exhibit "B" has been submitted to this Declaration or 30 years after this Declaration is recorded, whichever is earlier. Until then, the Declarant may transfer or assign this right to any Affiliate or any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be described in a recorded instrument executed by the Declarant.

Nothing in this Declaration shall require the Declarant or any successor to submit additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever. The Declarant may submit different portions of property to this Declaration at different times.

### **15.2 Expansion by the Association**

The Association also may submit additional property to this Declaration by recording a Supplement describing the additional property. Any Supplement which the Association records must be approved by Owners representing more than 50% of the total votes in the Association at a meeting duly called for such purpose and by the owner of the property to be submitted. In addition, during the Development and Sale Period, the Declarant's consent is required. The Association's President and Secretary, the owner of the property, and the Declarant, if the Declarant's consent is required, shall sign the Supplement.

### **15.3 Additional Covenants and Easements**

Any Supplement that the Declarant records may impose additional covenants and easements on the property described in such Supplement, such as covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Service Area Assessments. Such provisions may be included in a Supplement submitting new property to this Declaration or may be set forth in a separate Supplement applicable to property previously submitted to this Declaration. If someone other than the Declarant owns the property, then the Supplement must be signed by such owner evidencing such owner's consent. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the property described in the Supplement, in order to reflect the different character and intended use of such property.

## **Chapter 16 Additional Rights Reserved to the Declarant**

### **16.1 Special Development Rights**

In addition the rights specifically reserved to the Declarant under Chapter 15 with respect to expanding Daybreak Village, the Declarant reserves the right, during the Development and Sale Period, to:

- (a) create Parcels and Common Areas and to designate roadways, within any portion of Daybreak Village which it owns;
- (b) subdivide or combine any Parcel or Parcels which it owns in order to create larger or additional Parcels or Common Areas;
- (c) convert any Parcel that it owns into Common Area or roadways;
- (d) adjust the boundaries of any Common Area; and

(e) amend this Declaration or any Supplement for the purpose of removing any portion of the property from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall scheme of development for Daybreak Village. Such amendment shall not require any Person's consent other than the owner of the property to be withdrawn, if other than the Declarant.

#### **16.2 Withdrawal of Property**

During the Development and Sale Period, the Declarant may amend this Declaration to remove any unimproved portion of the Daybreak Village from the coverage of this Declaration, provided such withdrawal does not reduce the total acreage of real property subject to this Declaration by more than 50%. "Unimproved" means that no permanent structure has yet been completed on the property. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

#### **16.3 Marketing and Sales Activities**

Notwithstanding anything in the Governing Documents to the contrary, during the Development and Sale Period the Declarant and its designees or assigns may use for any activities, and construct and maintain facilities upon, portions of the Common Area and any property they own, as, in the Declarant's (or in such designee's or assignee's) opinion, may reasonably be required, convenient, or incidental to the development or sale of property anywhere within Daybreak. Such permitted facilities and activities shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to development or sales activities, the Declarant and its employees, agents, and designees may park vehicles in any areas within Daybreak Village.

#### **16.4 Access for Development Purposes**

During the Development and Sale Period, the Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area within Daybreak Village for the purpose of:

- (a) exercising any rights reserved to the Declarant pursuant to this Declaration, including the rights set forth in Section 16.1; and
- (b) making, constructing, and installing any improvements indicated on any subdivision map, any condominium record of survey map, any plat, or any site plan of any portion of Daybreak Village and such other improvements to the Common Area and to the Exhibit "B" property as it deems appropriate.

#### **16.5 Right to Approve Changes in Standards**

During the Development and Sale Period, no amendment to or modification of any Rules or Architectural Guidelines shall be effective without prior notice to and the written approval of the Declarant.

#### **16.6 Additional Covenants and Restrictions**

During the Development and Sale Period, no one other than the Declarant or an Affiliate may record any additional covenants or restrictions affecting any portion of Daybreak Village without the

Declarant's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

#### **16.7 Exclusive Rights to Use Name of Development**

No Person or an Affiliate of a Person, other than the Declarant or an Affiliate of Declarant, shall use the name "Daybreak," any derivative of such name, or any phrase containing such name in any logo or depiction associated with Daybreak Village or in any printed or promotional material, without the Declarant's prior written consent. However, Owners may use the name "Daybreak" in printed or promotional matter where such term is used solely to specify that particular property is located within Daybreak, and the Association shall be entitled to use the word "Daybreak" in its name.

#### **16.8 Water Rights**

The Declarant reserves for itself, its successors, assigns, and designees, all rights to ground water, surface water, waste water and storm water runoff originating within or running under or through Daybreak Village (including through any drains, pipes, sewer systems or other similar improvements) and each Owner agrees, by acceptance of a deed to a Parcel, that the Declarant shall retain all such rights. Such rights shall include the reservation of an easement over Daybreak Village for access and for installation and maintenance of facilities and equipment to capture, test, treat and transport such water, and runoff. No Person other than the Declarant, its successors, assigns, or designees shall claim, capture, pump, or collect rainwater, ground water, surface water or storm water runoff from any portion of Daybreak Village without prior written permission of the Declarant. The Declarant or its designee may establish programs for reclamation of storm water runoff and wastewater for appropriate uses within or outside Daybreak and may require Owners and occupants of Parcels to participate in such programs to the extent reasonably practical. No Owner or occupant of a Parcel shall have any right to be compensated for water claimed or reclaimed from Parcels. The Declarant further reserves for itself, the Association, and their respective successors, assigns, and designees a perpetual nonexclusive right and easement, but not the obligation, to enter upon the Area of Common Responsibility and such other areas within Daybreak as hereafter may be dedicated to the City, an SSD, or any other governmental entity, to install, construct, operate, maintain, repair or replace pumps, pipelines, structures or related equipment for the treatment, testing, cleansing and/or transportation of groundwater, waste water, irrigation and/or culinary water.

#### **16.9 Right to Transfer or Assign the Declarant's Rights**

Any or all of the Declarant's rights and obligations set forth in this Declaration or the Governing Documents may be transferred in whole or in part to other Persons. However, such a transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the Governing Documents. No such transfer or assignment shall be effective unless it is in a recorded instrument signed by the Declarant. The foregoing sentence shall not preclude the Declarant from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to the Declarant in this Declaration where the Declarant does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless necessary to evidence the Declarant's consent to such exercise.

#### **16.10 Termination of Rights**

The Declarant may exercise any and all of the rights reserved to the Declarant under this Declaration with respect to different portions of Daybreak Village at different times. If a right is exercised with respect to any portion of Daybreak Village, it need not be exercised with respect to all or any other portion of Daybreak Village. No assurances are made as to the boundaries of any property as to

which the Declarant may exercise such rights, or as to the order in which different portions of Daybreak Village may be subjected to the exercise of such rights.

## **Chapter 17    Changes in the Common Area**

### **17.1    Partition**

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written consent of all Owners and mortgagees. This section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Declaration, with such approval as may be required under Section 17.2.

### **17.2    Transfer or Dedication of Common Area**

(a)    The Association may dedicate portions of the Common Area to the County, the City, or to any other local, state, or federal governmental or quasi-governmental entity, any religious organization, or any land trust or organization dedicated to the preservation and protection of natural resources. The Association may subject Common Area to a security interest, or may transfer or convey Common Area upon (i) the written direction of Owners representing at least 50% of the total votes in the Association and, during the Development and Sale Period, the written consent of the Declarant, or (ii) upon the affirmative vote, at a meeting duly called to consider such issue, of Owners representing at least 50% of the total votes in the Association and, during the Development and Sale Period, the written consent of the Declarant. The proceeds from the sale or mortgaging of Common Area shall be an asset of the Association to be used as the Board determines. No conveyance or encumbrance of Common Area may deprive any Parcel of rights of access or support.

## **Chapter 18    Termination and Amendment of Declaration**

### **18.1    Term and Termination**

This Declaration shall be effective for a minimum of 30 years from the date it is recorded. After 30 years, this Declaration shall be extended automatically for successive 10-year periods unless Owners representing at least 75% of the total votes in the Association sign a document stating that the 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.

If any provision of this Declaration would be unlawful, void, or voidable by reason of any rule restricting the period of time that covenants can affect title to property, that provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

This section shall not permit termination of any easement created in this Declaration without the consent of the holder of such easement.

### **18.2    Amendment**

(a)    By the Declarant. Until termination of the Development and Sale Period, Declarant may unilaterally amend this Declaration for any purpose; provided, no amendment that would adversely affect legal title to any Parcel (excluding, without limitation, any easement rights or burdens and any appurtenant rights relating to any Common Area or other property not contained within the Parcel's boundaries) shall be binding upon such Parcel unless the Owner shall consent in writing. Thereafter,

Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which is in conflict therewith; (ii) to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of Daybreak Village; or (iii) to satisfy the requirements of any governmental agency. However, any such amendment shall not materially adversely affect legal title to any Parcel unless the Owner shall consent thereto in writing.

(b) By the Owners. Except as otherwise specifically provided above, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing 75% of the total votes in the Association. In addition, during the Development and Sale Period, any such amendment shall also require the Declarant's written consent.

(c) Validity and Effective Date. No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or any Governing Document, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. No action to challenge the validity of an amendment may be brought more than six months after its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

(d) Exhibits. Exhibits "A," "B," and "D" are incorporated by this reference, and this Chapter shall govern amendment of those exhibits. Exhibit "C" is incorporated by this reference and may be amended under Chapter 7 or pursuant to this Section 18.2. All other exhibits are attached for informational purposes and may be amended as provided in those exhibits or in the provisions of this Declaration that refer to such exhibits.

[Signature on Next Page]



THIS DECLARATION is made by Kennecott Land Company, a Delaware corporation as Declarant, and in witness thereof, it has executed this Declaration this 28 day of December, 2005.

**DECLARANT:**

**KENNECOTT LAND COMPANY,**  
a Delaware corporation

By: M. Bruce Snyder

Name: M. Bruce Snyder

Title: Vice President, Commercial and Residential Development

STATE OF UTAH                    )  
  )    ss  
COUNTY OF SALT LAKE        )

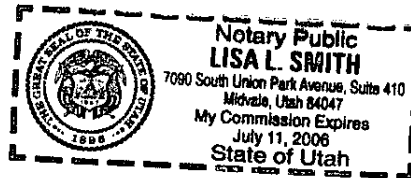
The foregoing instrument was acknowledged before me this 28 day of December, 2005, by M. Bruce Snyder known to me, who being duly sworn, said that he is the Vice President, Commercial and Residential Development of Kennecott Land Company, the Delaware corporation described herein, who executed the foregoing instrument.

GIVEN under my hand and seal of office this 28 day of December, 2005.

Lisa L. Smith  
Notary Public

[Notarial Seal]

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



OWNER CONSENT  
TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS  
FOR DAYBREAK VILLAGE

IN WITNESS WHEREOF, the undersigned, as the Initial Owner of the property as described on Exhibit "A" to the Declaration, hereby consents to the within and foregoing Declaration and the recording of such this 28 day of December   , 2005.

INITIAL OWNER:

KENNECOTT LAND RESIDENTIAL  
DEVELOPMENT COMPANY, a Delaware  
corporation

By M. Bruce Snyder

Name: M. Bruce Snyder

Title: Vice President, Commercial and Residential  
Development

STATE OF UTAH                    )  
  )    ss  
COUNTY OF SALT LAKE        )

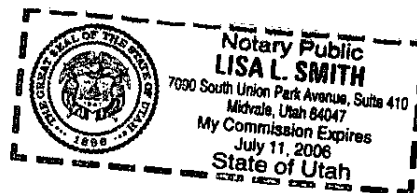
The foregoing instrument was acknowledged before me this 28 day of December, 2005, by M. Bruce Snyder known to me, who being duly sworn, said that he is the Vice President, Commercial and Residential Development of Kennecott Land Residential Development Company, the Delaware corporation described herein, who executed the foregoing instrument.

GIVEN under my hand and seal of office this 28 day of December, 2005.

Lisa L. Smith  
Notary Public

[Notarial Seal]

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



**EXHIBIT "A"**

**LAND INITIALLY SUBMITTED**

Lot C-101 of that certain map entitled "Amended Kennecott Daybreak Phase 1 Subdivision" Vacating Lots M-101, M-102, M1-3, and M-105 and Amending Lots 321, C-102, O-101, O-102, O-104, O-108, O-109, O-110 recorded on June 18, 2004 as Entry No. 9095385, in Book 2004P, at Page 164 of the Official Records of Salt Lake County.

**Tax Parcel # 27-19-381-001**

## EXHIBIT "B"

### LAND SUBJECT TO THE MASTER PLAN AND ANNEXATION

[Note to recorder, clerk and title examiners:

**This Declaration is not intended to create an encumbrance on title to the property described in this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplement in accordance with Chapter 15.]**

Specific Expansion Area:

A tract of land situated in Sections 18 and 19, Township 3 South, Range 1 West and Sections 13, 14, 15, 22, 23 and 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian, said tract being more particularly described as follows:

BEGINNING at a Salt Lake County monument marking the Northwest corner of said Section 13; thence North 89°57'24" East along the north line of said Section for 2699.959 feet to a Salt Lake County monument marking the North quarter corner of said Section 13; thence continuing along said north line North 89°57'36" East for 2666.551 feet to a point marking the northwest corner of a parcel described in that certain Quit Claim deed recorded in Book 6833 at Page 52, from which a Salt Lake County monument marking the Northeast corner of said Section 13 bears North 89°57'36" East – 33.000 feet; thence along the west and south lines of said parcel the following two (2) calls: (1) South 00°15'56" West for 33.000 feet; (2) thence North 89°57'36" East intersecting the east line of said Section 13 at 33.000 feet and continuing on along the south line of said parcel for a total of 33.178 feet; thence North 89°57'12" East parallel to and 33.00 feet perpendicular south of the north line of Section 18, Township 3 South, Range 1 West and along the south right of way of 10200 South for 2574.761 feet to an angle point; thence continuing parallel with said north line and along the said south right of way North 89°58'34" East for 278.761 feet to a point of intersection with the south right of way of 10200 South and an extension of the west line of the property conveyed to Oquirrh Shadows, L.C. as recorded in Book 8221 at Page 869; thence South 23°56'44" East passing the northwest corner of said property at 0.591 feet and continuing along the west line of said property for a total of 634.361 feet to an angle point; thence continuing along said west line South 29°39'04" East for 1012.874 feet to the northeast corner of a parcel conveyed to South Jordan City, recorded in Book 8401 at Page 5930; thence along the perimeter of said South Jordan City property the following four (4) calls: (1) South 60°20'55" West for 360.045 feet; (2) thence South 29°39'05" East for 496.250 feet; (3) thence North 33°11'06" East for 98.140; (4) thence with a curve to the right, having a radius of 1653.000 feet, a central angle of 10°12'46" (chord bearing and distance of North 38°17'57" East –294.249 feet) and for an arc distance of 294.639 feet, said point being the southwest corner of South Jordan City and lying on the north right of way of 10400 South Street, said point also lying on the west line of said Oquirrh Shadows property, thence South 29°39'04" East along said west line for 2916.402 feet to the southeast corner of said Oquirrh Shadows property, said point also lying on the east line of said Section 18; thence South 00°07'15" East along said east line for 967.184 feet to a Salt Lake County monument marking the northeast corner of Section 19; thence South 00°07'47" East along the west line of said Section 19 for 1326.083 feet to the northeast corner of the William B. Wray, Jr. parcel, also known as Parcel 3 in Commitment for Title Insurance, Amendment No. 3, Order No. 00113350; thence along the north and west lines of said Parcel 3 the following two (2) calls: (1) South 89°58'28" West for 1316.070 feet; (2) thence South 00°04'54" East for 1324.371 feet to a point on the North line of Country Crossing Subdivision No. 5, recorded as Entry No. 7422489 in Plat Book 99-7P at Page 204; thence along the north and west lines of said subdivision, phase No.'s 5,4 and 3 the

following two (2) calls: (1) North 89°56'46" West for 1320.153 feet; (2) thence South 00°01'42" West for 2609.121 feet to the southwest corner of said Country Crossing Subdivision No. 3, said point also lying on the north right of way of 11800 South Street; thence along said north right of way line the following three (3) calls: (1) North 89°52'04" West for 2642.116 feet; (2) thence North 89°58'42" West for 2677.945 feet; (3) thence North 89°58'44" West for 2677.394 feet to a point of intersection of the north right of way line of said 11800 South Street and the east line of Sunstone Village No. 1 Subdivision, recorded as Entry No. 7973084 in Plat Book 2001P at Page 224, said point also lying North 00°00'42" East – 40.000 feet from a Salt Lake County monument marking the southwest corner of Section 24, Township 3 South, Range 2 West; thence along the east, north and west lines of phases No. 1 and 2 the following three (3) calls: (1) North 00°00'42" East for 2360.900 feet to the northeast corner of said Sunstone Village No. 1; (2) thence South 89°56'12" West for 1815.000 feet to the northwest corner of said Sunstone Village No. 2; (3) thence South 00°00'42" West for 783.900 feet to a point of intersection of the west line of said Sunstone Village No. 2 and the northeast corner of a 20 acre land swap; thence along the north and west lines of said 20 acre land swap the following two (2) calls: (1) South 89°56'12" West for 550.000 feet; (2) thence South 00°00'42" West for 1577.000 feet to a point on the north right of way line of said 11800 South Street; thence along said north right of way line the following four (4) calls: (1) South 89°56'12" West for 282.340 feet; (2) thence South 89°56'14" West for 2647.809 feet; (3) thence North 89°49'08" West for 2644.258 feet; (4) thence North 89°49'44" West for 1322.052 feet; thence North 00°02'03" East along the west line of the east half of the southwest quarter of Section 22 for 2605.415 feet to the northwest corner of the east half of the southwest quarter of said Section 22; thence North 89°47'52" West along the north line of said southwest quarter for 1320.211 feet to a Salt Lake County monument marking the west quarter corner of said Section 22; thence North 00°03'55" East along the west line of said Section 22 for 2645.133 feet to a Salt Lake County monument marking the southwest corner of Section 15; thence North 00°14'20" West along the west line of said Section 15 for 12.748 feet to a point on the east right of way of Highway 111; thence along said east right of way line the following two (2) calls: (1) North 20°34'34" East for 618.785'; (2) thence with a curve to the left; having a radius of 2934.930 feet, a central angle of 18°11'53" (chord bearing and distance of North 03°16'41" East – 928.261 feet) and for an arc distance of 932.174 feet to a point of intersection with said east right of way and the south line of the Trans Jordan Landfill property, recorded as Entry No. 5683985 in Book 6826 at Page 293; from which the southwest corner of said property bears South 89°55'33" West – 2.095 feet; thence North 89°55'33" East along the south line of said landfill property for 4347.905 feet to the southeast corner; thence along the east and northerly boundary of said landfill property the following fourteen (14) calls: (1) North 00°04'27" West for 1075.580 feet; (2) thence North 70°32'11" West for 679.750 feet; (3) thence North 32°28'51" West for 429.340 feet; (4) thence North 25°09'37" West for 219.480 feet; (5) thence North 54°23'20" West for 67.210 feet; (6) thence North 71°54'33" West for 83.160 feet; (7) thence South 87°43'11" West for 366.060 feet; (8) thence South 71°57'46" West for 162.800 feet; (9) thence South 84°04'01" West for 113.990 feet; (10) thence North 87°25'43" West for 89.260 feet; (11) thence North 79°38'44" West for 107.140 feet; (12) thence North 72°57'41" West for 348.270 feet; (13) thence North 78°14'53" West for 465.783 feet; (14) thence South 89°55'33" West for 1887.661 feet to a point on said east right of way of Highway 111; thence along said east right of way the following four (4) calls: (1) North 06°31'26" West for 48.941 feet; (2) thence North 00°48'48" West for 251.250 feet; (3) thence North 06°31'26" West for 687.100 feet to a found Utah Department of Transportation right of way marker; (4) thence with a curve to the right, having a radius of 5654.580 feet, a central angle of 05°38'46" (chord bearing and distance of North 03°42'03" West – 556.992 feet) and for an arc distance of 557.218 feet to a point of intersection of the said east right of way and the south right of way of the Denver and Rio Grande Railroad, recorded in Book 5381 at Page 373; thence leaving Highway 111 and along said Denver and Rio Grande south right of way the following four (4) calls: (1) North 87°56'32" East for 525.105 feet; (2) thence with a curve to the right, having a radius of 5679.650 feet, a central angle of 02°07'45" (chord bearing and distance of North 89°00'25" East – 211.050 feet) and for an arc distance of 211.062 feet; (3) thence South 89°55'43" East for 6588.936 feet; (4) thence North 56°54'49" East for 242.927 feet to a point of intersection with said south right of way and the north line

of Section 14, Township 3 South, Range 2 West; thence South 89°55'21" East along the north line of said section for 512.274 feet to a Salt Lake County monument marking the north quarter corner of said Section 14; thence South 89°55'04" East continuing along said north line for 761.295 feet to the northwest corner of the Utah Power and Light parcel recorded in Book 4362 at Page 429; thence along the west and south lines of said U.P. & L. parcel the following two (2) calls: (1) South 00°02'50" West for 940.000 feet; (2) thence South 89°55'04" East for 1890.000 feet to the southeast corner of the Utah Power and Light parcel recorded in Book 4358 at Page 302, said point also lying on the east line of said Section 14; thence North 00°02'50" East along said east line for 940.000 feet to the POINT OF BEGINNING.

Containing 189,265,768.079 Square Feet or 4344.9442 Acres.

**General Expansion Area:**

In addition to the above, as the owner or with the written consent of the owner, the Declarant may also submit to the terms of the Declaration any real property situated within 15 miles of the perimeter boundaries of that certain development known as Daybreak, the boundary of which is generally described as part of the foregoing paragraphs of this Exhibit "B."

## EXHIBIT "C"

### INITIAL RULES

The purpose of Rules is not to anticipate all acceptable or unacceptable behavior in advance. It is expressly intended that the Reviewer under Chapter 5, and the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Parcel under one set of circumstances, the same thing may be disapproved for another Parcel under a different set of circumstances. Exercising discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it preclude the Board from taking enforcement action in any circumstances it deems appropriate.

The following shall apply to all of Daybreak Village until such time as they are modified pursuant to the Declaration.

1. **General.** Daybreak Village shall be used only for purposes consistent with the Master Plan, this Declaration, and any Supplement and no Parcel within Daybreak Village shall be used for any of the prohibited uses described in Section 7.1 of this Declaration.

2. **Restricted Activities.** Unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board, the following activities are prohibited within Daybreak Village:

(a) any activity which tends to cause an unclean, unhealthy, or untidy condition to exist on the Parcel;

(b) any activity which emits foul or obnoxious odors, fumes, dust, smoke, or pollution outside the Parcel or which creates noise, unreasonable risk of fire or explosion, or other conditions which tend to disturb the peace or threaten the safety of the occupants and invitees of other Parcels; provided, nothing herein shall preclude normal and customary operation of any restaurant or hospital facility;

(c) any activity which violates local, state, or Federal laws or regulations;

(d) outside burning of trash, leaves, debris, or other materials;

(e) obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right;

(f) outdoor storage of goods, materials, or equipment, except that (i) outdoor storage of building materials shall be permitted during construction on the Parcel on which such materials are being stored; and (ii) outdoor retail displays shall be permitted; and (iii) and outdoor dining facilities shall be permitted; and (iv) the storage of inventory requiring outdoor storage incidental to a business or enterprise;

(g) parking any vehicles in designated "no parking" areas, or parking of mobile homes, recreational vehicles, boats and other watercraft, and trailers in areas other than those designated

for such purposes; provided, construction, service, and delivery vehicles shall be exempt from this provision during normal business hours for such period of time as is reasonably necessary to provide service or to make a delivery to any Parcel or the Common Area and temporary marketing and construction trailers are permitted in areas the Declarant or the Board designates. Keeping stored or inoperable vehicles anywhere within Daybreak Village is prohibited, except that vehicles may be stored in assigned parking spaces in areas containing residential condominium or apartment-type dwellings as described in Section 7.1 of this Declaration;

(h) use and discharge of firecrackers and other fireworks, except that the Association may sponsor or otherwise permit structured and supervised fireworks displays from time to time;

(i) on-site storage of fuel, except that a reasonable amount of fuel may be stored for emergency purposes and for maintenance vehicles, generators, and similar equipment;

(j) any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within Daybreak Village or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution; and

(k) Any modification of any thing, permanently or temporarily, on any Parcel, whether such portion is improved or unimproved, except in strict compliance with the provisions of Chapter 5. This shall include, without limitation, signs, fences of any kind, and satellite dishes and antennas, except that:

(i) a satellite dish designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter; or

(ii) a satellite dish designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "Permitted Antennas") shall be permitted on Parcels, subject to such reasonable requirements as to location and screening as may be set forth in the Architectural Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. The Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Daybreak Village, should any master system or systems be utilized by the Association and require such exterior apparatus. The construction, erection, or placement of any cellular, microwave or other wireless communication tower is prohibited without the expressed written consent of Declarant during the Development and Sale Period and the Association thereafter.

2. Prohibited Conditions. The following shall be prohibited within Daybreak Village:

(a) plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Daybreak Village;

(b) any fence, wall, hedge, or shrub which does or tends to create a traffic or sight problem;



(c) any structure of a temporary nature, such as a tent, shack, or utility shed, except for construction trailers during ongoing construction on the Parcel and temporary party tents for special events the Board approves in advance; and

(d) any structure, equipment, or other item on the exterior portions of any Parcel which has become rusty, dilapidated, or otherwise fallen into disrepair.

## EXHIBIT "D"

### FORMULA FOR ASSESSMENTS AND VOTING RIGHTS

(A) Determination of Equivalent Units. Assessment obligations and voting rights under the Declaration shall be based upon the number of "Equivalent Units" assigned to a particular Parcel relative to all other Parcels subject to a particular assessment or entitled to vote on a particular matter. The number of Equivalent Units assigned to each Parcel shall be determined as follows:

Each Parcel is assigned one Equivalent Unit for each tenth of an acre of usable land for development ("Usable Land") (rounded to the nearest tenth of an acre) comprising the Parcel.

In addition to the foregoing, each Parcel shall be assigned one Equivalent Unit for each 1,000 square feet of gross floor area within any structures, as defined herein, on the Parcel (rounded to the nearest 1,000 square feet). "Structures" are enclosed structures for which an initial certificate of occupancy has been issued or which are substantially complete, as determined by a licensed engineer or architect, but shall not include parking garages, roadways, or driveways.

(B) Calculation of Assessment. The percentage of a particular assessment to be levied on each Parcel shall be computed by multiplying the total amount to be assessed by a fraction, the numerators of which is the Equivalent Units assigned to such Parcel as provided above and the denominator of which is the total Equivalent Units assigned to all Parcels subject to the particular assessment.

(C) Calculation of Voting Rights. The percentage of the total voting power allocated to each Parcel shall be computed by dividing the Equivalent Units assigned to such Parcel by the total Equivalent Units assigned to all Parcels eligible to vote.

(D) Computation by Board. The Board shall compute annually the number of Equivalent Units and resulting percentages for allocation of assessments and voting rights as of a date, which is not less than 60 days prior to the beginning of each fiscal year. The Board shall send notice of the percentages for each Parcel to each Owner together with the annual notice of assessments.

Upon annexation of additional property to this Declaration between annual cutoff dates for computation of assessments and voting rights, the Board shall recompute assessment and voting percentages for each Parcel; however, no adjustments shall be made in any assessments previously levied to reflect such recomputation.

**EXHIBIT "E"**

**BY-LAWS OF DAYBREAK COMMERCIAL PROPERTY ASSOCIATION, INC.**

[Attached]

**BY-LAWS  
OF  
DAYBREAK VILLAGE ASSOCIATION, INC.**

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**BY-LAWS  
OF  
DAYBREAK VILLAGE ASSOCIATION, INC.**

**Chapter 1. Name, Principal Office, and Definitions.**

**1.1 Name.**

The name of the corporation is Daybreak Village Association, Inc. (the “**Association**”).

**1.2 Principal Office.**

The Association’s principal office shall be located in Salt Lake County, Utah. The Association may have such other offices as the Board may determine or as the Association’s affairs require.

**1.3 Definitions.**

The words used in these By-Laws, unless otherwise defined herein, shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain recorded Declaration of Covenants, Conditions, and Restrictions for Daybreak Village, as it may be amended from time to time (the “**Master Commercial Declaration**”). The term “**majority**,” as used in these By-Laws, means those votes, Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

**Chapter 2. Membership: Meetings, Quorum, Voting, Proxies.**

**2.1 Membership.**

The Association initially has two classes of membership, Owner Membership and Declarant Membership, as more fully set forth in the Master Community Declaration. Provisions of the Master Community Declaration pertaining to membership are incorporated by this reference.

**2.2 Place of Meetings.**

The Association shall hold meetings at the Association’s principal office or at such other suitable place the Board may designate.

**2.3 Association Meetings.**

(a) *General.* The first Association meeting of the members, whether a regular or special meeting, shall be held within one year after the Association’s incorporation.

(b) *Annual Meetings.* The Board shall schedule regular annual meetings to occur within 90 days before or after the close of the Association’s fiscal year, on such date and at such time and place as the Board shall determine.



(c) *Special Meetings.* The President may call special meetings. In addition, the President or the Secretary shall call a special meeting if so directed by a resolution of the Board or upon written request of members holding not less than 25% of the total votes in the Association.

#### **2.4 Notice of Meetings.**

The President, the Secretary, or the officers or other persons calling a meeting of the members shall deliver or cause to be delivered to each member entitled to vote at such meeting, a written notice stating the place, day, and hour of the meeting. In the case of a special meeting or when otherwise required by statute, the Master Commercial Declaration, or these By-Laws, the purpose or purposes for which the meeting is called shall also be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

Such notice shall be delivered by such means as permitted under Section 8.5, at least 10 but not more than 50 days before the date of such meeting.

#### **2.5 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, 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.

#### **2.6 Adjournment of Meetings.**

If any Association meeting cannot be held because a quorum is not present, the members representing a majority of the votes present at such meeting may adjourn the meeting to a time at least five but not more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Board shall provide notice to the members of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough members to leave less than a quorum, provided at least a majority of the votes required to constitute a quorum must approve any action taken.

#### **2.7 Voting.**

(a) *Voting Rights.* Members shall have such voting rights and number of votes as set forth in the Master Commercial Declaration, which provisions this reference specifically incorporates.

## **2.8 Proxies.**

Any Owner-member may vote in person or by proxy, subject to the limitations of Utah law and subject to any specific provision to the contrary in the Master Commercial Declaration or these By-Laws.

Every proxy shall be in writing, shall identify the Parcel for which it is given, and shall be signed by the Owner or his duly authorized attorney-in-fact, dated, and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless the proxy specifically provides otherwise, a proxy shall be presumed to cover the entire vote which the Owner giving such proxy is entitled to cast. In the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon (a) conveyance of any Parcel for which it was given, (b) the Secretary's receipt of written notice of renunciation of the proxy or of the death or judicially declared incompetence of an Owner who is a natural person, or (c) 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

## **2.9 Quorum.**

Except as these By-Laws or the Master Commercial Declaration otherwise provide, the presence of the Owner-members representing at least 20% of the total votes in the Association shall constitute a quorum at all Association meetings.

## **2.10 Conduct of Meetings.**

The President or a Board-approved designee shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are kept with the Association's books.

## **2.11 Action Without a Meeting.**

Any action required or permitted by law to be taken at a meeting of the members may be taken without a meeting, without prior notice, and without a vote if a majority of members entitled to vote on such matter sign a written consent specifically authorizing the proposed action. All such consents shall be signed within 60 days after receipt of the earliest dated consent, dated, and delivered to the Association. Such consents shall be filed with the Association's minutes and shall have the same force and effect as a vote of the members at a meeting.

### **Chapter 3. Board of Directors: Selection, Meetings, Powers.**

#### **A. Composition and Selection.**

##### **3.1 Governing Body; Qualifications.**

The Board shall govern the Association's affairs. Each director shall have one vote. Except with respect to directors appointed by the Declarant, directors shall be Owners.

If an Owner is not an individual, any officer, director, partner, member, or any trust officer of such Owner shall be eligible to serve as a director unless a written notice to the Association signed by the Owner specifies otherwise. However, no Owner may have more than one such representative on the Board at a time except in the case of directors the Declarant appoints.

##### **3.2 Number of Directors.**

The Board shall consist of 3 to 7 directors, as provided in Section 3.3.

##### **3.3 Selection of Directors; Term of Office.**

(a) *Directors During Declarant Control Period.* The initial Board shall consist of the three directors identified in the Articles of Incorporation, who shall serve until their 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.

(b) *Directors After Declarant Control Period.* During the period of time following the termination of the Declarant Control Period but prior to the termination of the Development and Sale Period (or whenever the Declarant earlier determines), the Owner-members shall be entitled to elect one of the three directors, who shall be elected at large. The remaining two directors shall be appointees of the Declarant (directors elected by the Owner-members are referred to as "**Owner Directors**"). The Owner Director elected by the Owners shall not be subject to removal by the Declarant and shall be elected for a term which expires on the date of the second annual meeting following his or her election. Upon expiration of such director's term, and thereafter upon the expiration of each successors' term, a successor shall be elected for a two-year term.

(c) *Directors After Development and Sale Period.*

(i) Within 90 days after termination of the Development and Sale Period, the Board shall be increased to seven directors. The President shall call for an election by which the Owner-members shall be entitled to elect six directors. Three directors shall be elected to serve until the second annual meeting following their election, and three directors shall be elected to serve until the third annual meeting following their election, as such directors determine among themselves.

(ii) So long as the Declarant owns any property in Daybreak Village, the Declarant shall be entitled to appoint, remove, and replace the seventh director. Thereafter, the director appointed 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 Owner-members shall be entitled to elect a director to fill such position. Such director shall be elected for a term of two years.

(iii) Upon expiration of the term of office of each Owner Director, the Owner-members shall be entitled to elect a successor to serve a term of two years. Owner Directors shall hold office until their respective successors have been elected. Directors may serve any number of consecutive terms.

### **3.4 Election Procedures.**

At each election, voting may be by written ballot or may be accomplished via computer. Each Owner-member may cast all votes assigned to its Parcel(s) for each position to be filled from any candidates on which such Owner-member is entitled to vote; however, under no circumstances shall cumulative voting be permitted in any election of Directors.

In the event of a tie vote, the Owner-members shall be informed of the tie vote and given the opportunity to discuss the candidates among themselves in an effort to resolve the tie before another vote is taken. If the second vote results in a tie, the President shall choose one of the candidates as the winner of the election.

### **3.5 Removal of Directors and Vacancies.**

Owner-members holding a majority of the votes of the Association may remove any Owner Director with or without cause. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director the Owner-members shall elect a successor for the remainder of the term of such director.

At any meeting at which a quorum is present, a majority of the directors may remove any Owner Director who has three consecutive unexecuted absences from Board meetings, or who is more than 30 days delinquent in the payment of any assessment or other charge due the Association. The Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of an Owner Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Owner-members shall elect a successor for the remainder of the term.

This Section shall not apply to directors the Declarant-member appoints. The Declarant-member shall appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by the Declarant-member.

**B. Meetings.**

**3.6 Organizational Meetings.**

The Board shall hold an organizational meeting within 30 days following each annual Association meeting at such time and place as the Board shall fix.

**3.7 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 times during each fiscal year with at least one meeting per quarter.

**3.8 Special Meetings.**

The Board shall hold special meetings when called by written notice the President, Vice President, or any two directors sign(s).

**3.9 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 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.

**3.10 Telephonic Participation in Meetings.**

Members of the Board or any committee the Board designates may participate in a Board or committee meeting by conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence at such meeting.

### **3.11 Quorum of Board.**

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless Utah law, these By-Laws, or the Master Commercial Declaration specifically provide otherwise. 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 nor more than 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.

### **3.12 Conduct at Meetings.**

The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions and all transactions occurring at such meetings are included in the Association's records.

### **3.13 Open Meetings; Executive Session.**

(a) Subject to the provisions of subsection 3.13(b) and Section 3.14, all Board meetings shall be open to all members, but only directors may participate in any discussion or deliberation unless otherwise expressly authorized to do so by a vote of a majority of a quorum of the Board. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than directors, for consideration of one or more of the following topics:

- (i) employment or personnel matters for employees of the Board or Association;
- (ii) legal advice from an attorney for the Board or the Association;
- (iii) pending or contemplated litigation; and/or
- (iv) pending or contemplated matters relating to enforcement of the Association's documents or rules.

### **3.14 Action Without a Formal Meeting.**

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if all of the directors sign a written consent, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote. The Board shall post or otherwise provide notice of the Board's action in a prominent place within Daybreak Village

within three business days after obtaining all written consents to an action. Failure to give notice shall not render the action taken invalid.

**C. Powers and Duties.**

**3.15 Powers.**

The Board shall have the power to administer the Association's affairs, perform the Association's responsibilities, and exercise the Association's rights as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done on the Association's behalf all acts and things except those which the Governing Documents or Utah law require to be done and exercised exclusively by the membership generally.

**3.16 Duties.**

The Board's duties shall include, without limitation:

(a) preparing and adopting, in accordance with the Master Commercial Declaration, an annual budget establishing each Owner's share of the Common Expenses and any Service Area Expenses;

(b) cooperating with the Daybreak Community Council ("Council") in levying and collecting assessments from the Owners;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard and in accordance with the Covenant for Community for Daybreak;

(d) 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;

(e) 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's business judgment any reserve funds may be deposited in depositories other than banks;

(f) making and amending Rules in accordance with the Master Commercial Declaration;

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

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;

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

the Association; however, the Association's obligations in this regard shall be conditioned in the manner provided in the Master Commercial Declaration;

- (j) obtaining and carrying property and liability insurance, as provided in the Master Commercial Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (k) paying the cost of all services rendered to the Association;
- (l) keeping a detailed accounting of the Association's receipts and expenditures;
- (m) making available to any prospective purchaser of a Parcel, any Owner, and the holders, insurers, and guarantors of any Mortgage on any parcel, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 8.4;
- (n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of Daybreak Village;
- (o) 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, and these By-Laws;
- (p) cooperating with the Council in carrying out its purposes and responsibilities under the Covenant for Community for Daybreak and the by-laws of the Council; and
- (q) cooperating with the Council in upholding the Community-Wide Standard.

### **3.17 Committees.**

(a) *General.* The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

(b) *Service Area Committees.* The Owners within any Service Area that has no formal organizational structure of an association may, with the consent and approval of the Board, elect a Service Area Committee to determine the nature and extent of services, if any, which it desires to have the Association provide to the Service Area, over and above those services that the Association provides to all Parcels in Daybreak Village. A Service Area Committee, if elected, shall consist of three Owners of Parcels in the Service Area; however, if approved by the vote of at least 51% of the Owners of Parcels within the Service Area, the number may be increased to five.

Service Area Committee members shall be elected for a term of one year or until their successors are elected. Any director elected to the Board from a Service Area shall be an *ex officio* member of the Service Area Committee. The members of the committee shall elect a chairperson from among themselves, who shall preside at its meetings and shall be responsible for transmitting any and all communications to the Board.



In the conduct of its duties and responsibilities, each Service Area Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.9, 3.10, and 3.11. Meetings of a Service Area Committee shall be open to all Owners of Parcels in the Service Area and their representatives. Members of a Service Area Committee may act by unanimous written consent in lieu of a meeting.

#### **Chapter 4. Officers.**

##### **4.1 Officers.**

The Association's Officers shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not, be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

##### **4.2 Election and Term of Office.**

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Owner-members, to serve until their successors are elected.

##### **4.3 Removal and Vacancies.**

The Board may remove any officer whenever, in its judgment, the Association's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

##### **4.4 Powers and Duties.**

The Association's officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for preparing the budget as provided for in the Master Commercial Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

##### **4.5 Resignation.**

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

## **Chapter 5. Standards of Conduct; Liability and Indemnification.**

### **5.1 Standard for Directors and Officers.**

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under Utah law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinary prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, others prepare or present to the extent authorized under Utah law.

### **5.2 Liability.**

(a) A director shall not be personally liable to the Association, any Member, or any other Person for any action taken or not taken as a director if the director has acted in accordance with Section 5.1.

(b) A director also shall not be personally liable for any action taken or not taken as a director if the director:

(i) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(ii) affirmatively undertakes to make decisions which the director reasonably believes are necessary for the Association's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he has a conflict of interest (beyond that which all directors have by virtue of their ownership of a Parcel); provided, however, that the Directors the Declarant appoints shall not be deemed to have any real or potential conflicts of interest, shall not be required to avoid participating in decisions and actions on certain matters by virtue of being an officer, director, or employee of Declarant or any of Declarant's affiliated or controlled entities.

(iv) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

### **5.3 Indemnification.**

Subject to the limitations of and to the fullest extent permitted by Utah law, the Association shall indemnify, hold harmless, and defend every officer, director, and committee member for, from, and against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under Utah law; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any funds of the Association;

(ii) willful and knowing violation of the law; or

(iii) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

### **5.4 Conflicts of Interest; Code of Ethics.**

Unless otherwise approved by a majority of the other directors, no Owner Director may transact business with the Association or any Association contractor during his or her term as director or within two years after the term expires. A director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members.

Notwithstanding the above, directors the Declarant appoints may be employed by or otherwise transact business with the Declarant or its affiliate, and the Declarant may transact business with the Association or its contractors. Furthermore, directors appointed by the Declarant shall not be deemed to have an actual or potential conflict of interest or required to disclose a conflict of interest by virtue of being an officer, director, or employee of Declarant or any of its affiliated or controlled entities.

## **5.5 Advancement of Expenses.**

In accordance with the procedures and subject to the conditions and limitations set forth in Utah law, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director, or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

## **Chapter 6. Management and Accounting.**

### **6.1 Compensation of Directors and Officers.**

The Association shall not compensate directors and officers for acting as such unless Owner-members representing a majority of the total votes in the Association approve such compensation at an Association meeting. The Association may reimburse any director or officer for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association. However, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

### **6.2 Right of Declarant-Member to Disapprove Actions.**

So long as there is a Declarant-member, the Declarant-member shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the Declarant-member's sole judgment, would tend to impair rights of the Declarant under the Master Commercial Declaration or these By-Laws, interfere with development or construction of any portion of Daybreak or Daybreak Village, or diminish the level of services the Association provides.

(a) *Notice.* The Association shall give the Declarant-member written notice of all meetings and proposed actions approved at Association, Board, or committee meetings (or by written consent in lieu of a meeting). The Association shall give such notice by certified mail, return receipt requested, or by personal delivery at the address the Declarant-member has registered with the Association, which notice complies as to Board meetings with Section 3.9, and which notice shall, except in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) *Opportunity to be Heard.* At any such meeting, the Association shall give the Declarant-member the opportunity to join in, or to have its representatives or agents join in, discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this Section have been met.

The Declarant-member, its representatives, or its agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Declarant-member, acting through any officer or director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 business days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action.

### **6.3 Accounts and Reports.**

(a) The Board shall follow the following accounting standards unless the Board by resolution specifically determines otherwise:

(i) accounting and controls should conform to generally accepted accounting principles; and

(ii) the Association's cash accounts shall not be commingled with any other accounts.

(b) Commencing at the end of the quarter in which the first Parcel is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15<sup>th</sup> day following the due date unless the Board specifies otherwise by resolution).

(c) An annual report consisting of at least the following shall be made available for members' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

### **6.4 Borrowing.**

The Association shall have the power to borrow money for any legal purpose, provided it is in accordance with the provisions of the Master Commercial Declaration. However, if the

proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year, then the Board shall obtain Owner-members approval in the same manner as provided in the Master Commercial Declaration for Special Assessments. During the Development and Sale Period, no Mortgage or lien shall be placed on any portion of the Common Area unless in accordance with the Master Commercial Declaration.

#### **6.5 Right to Contract.**

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements. The Board shall consent to any common management agreement.

#### **6.6 Agreements, Contracts, Deeds, Leases, Checks, Etc.**

All Association agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least two officers or by such other person or persons as the Board may delegate by resolution.

### **Chapter 7. Enforcement Procedures.**

The Association shall have the power, as provided in the Master Commercial Declaration, to impose sanctions for any violation of the Governing Documents.

### **Chapter 8. Miscellaneous.**

#### **8.1 Fiscal Year.**

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

#### **8.2 Parliamentary Rules.**

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Utah law or the Governing Documents.

#### **8.3 Conflicts.**

If there are conflicts among the provisions of Utah law, the Articles of Incorporation, the Charter, and these By-Laws, the provisions of Utah law, the Charter, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

#### **8.4 Books and Records.**

(a) *Inspection by Members and Mortgagees.* The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Parcel, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Parcel: the Governing Documents, the membership register, books of account, and the minutes of meetings of the members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within Daybreak as the Board shall designate.

(b) *Rules for Inspection.* The Board shall establish rules with respect to:

- (i) notice to be given to the custodian of records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing the documents requested.

(c) *Inspection by Directors.* Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by the Association. A director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

#### **8.5 Notices.**

(a) *Form of Notice and Method of Delivery.* Except as otherwise provided or authorized in the Master Commercial Declaration or these By-Laws or by law, all notices, demands, bills, statements, or other communications under the Master Commercial Declaration or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail with written confirmation of transmission.

(b) *Delivery Address.* Notices shall be delivered or sent to the intended recipient as follows:

- (i) if to a Member, at the address, telephone facsimile number, or e-mail address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Parcel of such Member;
- (ii) if to the Association, the Board, or a committee of either, at the address, facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the members pursuant to this Section; or
- (iii) if to the Declarant, at the Declarant's principal address as it appears on the Utah Corporation Commissioner's records, or at such other address as the Declarant shall designate by notice in writing to the Association pursuant to this Section.

(c) *Effective Date.* Notices sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective at the earliest of the following:

- (i) when received;
- (ii) if sent by United States mail, five days after its deposit with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;
- (iii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or
- (iv) if sent by telephone facsimile or electronic mail; upon transmission, as evidenced by a printed confirmation of transmission.

#### **8.6 Amendment.**

(a) *By Declarant.* Prior to termination of the Development and Sale 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; or (iii) to enable any reputable title insurance company to issue title insurance coverage on the Parcels. 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 2% of the Owners.

(b) *By Members Generally.* Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Owner-members representing 67% of the total votes in the Association, and the consent of the Declarant-member, if such exists.

(c) *Validity and Effective Date of Amendments.* Amendments to these By-Laws shall become effective upon their approval in the manner set forth above, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of approval, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any of the Declarant's rights or privileges without the written consent of the Declarant or the assignee of such right or privilege.



**ADOPTED** by action of the Board of Directors this \_\_\_\_ day of December, 2005.

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

Print Name: M. Bruce Snyder  
Title: Director

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

Print Name: John Potts  
Title: Director

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

Print Name: Keith Morey  
Title: Director