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RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
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BY: eCASH, DEPUTY - EF 46 P.

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
DAYBREAK CREEKSIDE TOWNHOME PROJECT**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR DAYBREAK CREEKSIDE TOWNHOME PROJECT (this "**Declaration**") is made and executed as of Dec 4, 2020 by VP DAYBREAK OPERATIONS, LLC, a Delaware limited liability company, as successor in interest to Kennecott Land Company, a Delaware corporation and Daybreak Development Company, a Delaware corporation.

**RECITALS**

- A. On February 27, 2004, that certain Community Charter for Daybreak was recorded as Entry No. 8989518, in Book 8950, beginning at Page 7784, in the Official Records of Salt Lake County, as amended by that certain Amendment No. 1 to Community Charter for Daybreak, recorded on August 26, 2004, as Entry No. 9156782, in Book 9030, beginning at Page 3767, in the Official Records of Salt Lake County, and as amended by that certain Amendment No. 2 to Community Charter for Daybreak, recorded on October 19, 2005, as Entry No. 9528104, in Book 9205, beginning at Page 4743, in the Official Records of Salt Lake County, and as amended by that certain Amendment No. 3 to Community Charter for Daybreak, recorded on March 13, 2007, as Entry No. 10031889, in Book 9434, beginning at Page 6476, in the Official Records of Salt Lake County, and as amended by that certain Amendment No. 4 to Community Charter for Daybreak recorded on March 2, 2010, as Entry No. 10907211, in Book 9807, beginning at Page 7337, and as (collectively, the "**Master Residential Declaration**"), to govern the phased development of the community commonly known as "**Daybreak**" located in the City of South Jordan, Utah, and further to govern the Daybreak Community Association, Inc. (the "**Master Residential Association**").
- B. On February 27, 2004, that certain Covenant for Community for Daybreak, as Entry No. 8989517, in Book 8950, beginning at page 7722, in the Official Records of Salt Lake County, Utah, as may be amended and/or supplemented from time to time, (the "**Covenant**"), to govern the phased development of Daybreak, and further to govern the Daybreak Community Council, Inc. (the "**Daybreak Community Council**").

- C. Section 2.6 of the Master Residential Declaration, as amended and supplemented, authorizes the establishment of separate owners' associations as sub-associations to administer additional covenants applicable to a particular area within Daybreak.
- D. On May 15, 2015, that certain subdivision map entitled "KENNECOTT DAYBREAK VILLAGE 5 MULTI FAMILY #1 SUBDIVISION AMENDING LOT V3 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED" was recorded as Entry No. 12070607 in the Official Record of Salt Lake County, Utah.
- E. On May 15, 2015, that certain Declaration of Covenants, Conditions and Restrictions for Daybreak Creekside Townhome Project was recorded as Entry No. 12070608, in Book 10333, beginning at Page 8632 in the Official Records of Salt Lake County, Utah (the "Initial Declaration"). The Initial Declaration, together with the Plat, established Daybreak Creekside Townhome Project as a distinct Neighborhood within Daybreak, as defined in the Master Residential Declaration (the "**Project**").
- F. On June 15, 2015, that certain subdivision map entitled "KENNECOTT DAYBREAK VILLAGE 5 MULTI FAMILY #1 SUBDIVISION AMENDING LOT V3 AND T3 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED" was recorded as Entry No. 12070607 in the Official Records of Salt Lake County, Utah.
- G. On June 15, 2015, that certain Supplement to Community Charter for Daybreak and Supplement to Covenant for Community for Daybreak Submitting Additional Property and Notice of Reinvestment Fee Covenant and Expansion of Telecommunications Service Area No. 1 was recorded as Entry No. 12070609, in Book 10333, beginning at Page 8677 in the Official Records of Salt Lake County, Utah.
- H. On July 1, 2016, that certain Amendment No. 1 to Declaration of Covenants, Conditions and Restrictions for Daybreak Creekside Townhome Project was recorded as Entry No 12312670, in Book 10448, beginning at Page 4401 in the Official Records of Salt Lake County, Utah.
- I. On August 4, 2016 that certain subdivision map entitled "KENNECOTT DAYBREAK VILLAGE 5 PLAT 6 SUBDIVISION AMENDING LOT V3 OF THE KENNECOTT MASTER SUBDIVISION #1, AMENDED" was recorded as Entry No. 123357465 in the Official Records of Salt Lake County, Utah.
- J. On August 4, 2016 that certain Supplement to Community Charter for Daybreak and Supplement to Covenant for Community for Daybreak Submitting Additional Property was recorded as Entry No. 12335748, in Book 10460, beginning at Page 4150.
- K. On August 4, 2016 that certain Supplement to Declaration of Covenants, Conditions and Restrictions for Daybreak Creekside Townhome Project (Adding Additional Land –

Kennecott Daybreak Village 5 Plat 6) was recorded as Entry No. 12335747, in Book 10460, beginning at Page 4146 in the Official Records of Salt Lake County, Utah.

- L. On August 16, 2017, that certain subdivision map entitled 'DAYBREAK VILLAGE 5 MULTI FAMILY #2 SUBDIVISION AMENDING LOTS 148-163, P-LOTS P-102 -P-104, PARCEL 1 & A PUBLIC LANE OF THE KENNECOTT DAYBREAK VILLAGE 5 PLAT 2 SUDIVISION AMEDING LOT V3 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED", as Entry No. 12597263 in the Official Records of Salt Lake County, Utah.
- M. On August 16, 2017, that certain Supplement to Declaration of Covenants Conditions and Restrictions for Daybreak Creekside Townhome Project (Adding Additional Land -Village 5 Multi Family #2) was recorded as Entry No. 12597265, in Book 10588, beginning at page 7610, in the Official Records of Salt Lake County, Utah.
- N. On January 29, 2019, that certain subdivision map entitled "DAYBREAK VILLAGE 5 MULTI FAMILY #3 AMENDING LOTS T3 & V3 OF THE KENNECOT MASTER SUBDIVISION #1 AMENDED" was recoded as Entry No. 12925747 in the Official Records of Salt Lake County, Utah.
- O. On April 2, 2020, that certain Supplement to Declaration of Covenants, Conditions and Restrictions for Daybreak Creekside Townhome Project (Adding Additional Land – Private Lane #1, Lots P-143, 876, 879, 881 And 882 of Village 5 Multi Family #3) was recorded as Entry No. 13233685, in Book 10920, beginning at page 9343 in the Official Records of Salt Lake County, Utah.
- P. The Project is subject to the terms and conditions, covenants and restrictions set forth in the Master Residential Declaration and the Covenant and will also be governed by the Master Residential Association and the Daybreak Community Council.
- Q. The Project is designed and developed as a townhome community with attached residences known as "townhomes" on the Lots comprising the Project which includes certain amenities and services more particularly described herein which are not provided to other areas in Daybreak and imposes certain additional covenants, conditions and restrictions not imposed on all property within Daybreak.
- R. Accordingly, to facilitate the operation of the Project and to enforce these covenants, conditions and restrictions for the Project, Daybreak Creekside Townhome Association, Inc. (the "**Association**") has been established as a Utah non-profit corporation and Articles of Incorporation ("**Articles**") filed with the Utah Division of Corporations and Commercial Code.
- S. The Association, as the governing body of the Project, shall operate in accordance with the Amended Bylaws attached hereto as Exhibit B (the "**Bylaws**"), the Master Residential

Declaration; the Covenant and this Declaration.

- T. The Association is a "Neighborhood Association" under the terms of the Master Residential Declaration and is subject to the Master Residential Association and the Daybreak Community Council.
- U. Declarant, pursuant to the rights and authority provided by in the Initial Declaration, as amended, have established and adopted this Declaration to improve and streamline governance of the Association, clarify the rights and obligations of the Association and Owners, and conform to changes to Utah law.
- V. This Declaration contains Dispute Resolution Provisions and a Covenant not to sue.

#### ARTICLE 1 DEFINITIONS

- 1.1 **Defined Terms.** Unless the context clearly indicates otherwise, capitalized terms in this Declaration shall have the meanings set forth in this Article 1, the Recitals, and in other sections of this Declaration.
- 1.2 "**Act**" shall mean the Utah Community Association Act, Utah Code § 57-8a-101 *et seq.*
- 1.3 "**Assessment**" shall mean any monetary charge imposed or levied on a Lot or an Owner by the Association as provided for in this Declaration and shall include, without limitation, regular and special assessments.
- 1.4 "**Board**" shall mean the Board of Directors of the Association.
- 1.5 "**Builder**" shall mean DB Towns, LLC and Holmes Homes, Inc. and their affiliates, successors, and assigns and other builders constructing some or all the original Buildings or Dwellings.
- 1.6 "**Building**" shall mean any townhome building containing Dwellings constructed in the Project.
- 1.7 "**Common Expense Fund**" shall mean the fund created or to be created pursuant to the provisions of this Declaration and into which all funds of the Association shall be deposited.
- 1.8 "**Community-Wide Standard**" shall have the meaning assigned in the Master Residential Declaration.
- 1.9 "**Declarant**" shall mean VP Daybreak Operations, LLC, a Delaware limited liability company and its successors and assigns.
- 1.10 "**Declarant Control Period**" shall refer to the period of time that the Declarant is entitled to appoint the members of the Association's Board. The Declarant Control Period begins

on the date of the Association's incorporation and terminates upon the first of the following to occur: (a) when 75% of the total number of "Units" (as defined in the Master Residential Declaration) permitted by applicable zoning for the Daybreak project described in the "Master Plan" (as defined in the Master Residential Declaration) have certificates of occupancy issued thereon and have been conveyed to persons other than "Builders" (as defined in the Master Residential Declaration) holding title for purposes of construction and resale; (b) December 31, 2034; or (c) when, in its discretion, Declarant so determines and declares in a recorded instrument

- 1.11 "**Design Guidelines**" shall have the meaning assigned in the Master Residential Declaration.
- 1.12 "**Dwelling**" shall mean the portion of a Building situated upon a Lot designated and intended for use and occupancy as a single-family residence. Each Dwelling shall be owned by the Owner of the Lot on which the Dwelling is situated subject to all of the terms, covenants, conditions, restrictions and easements of this Declaration, the Master Residential Declaration, and the Covenant.
- 1.13 "**Lot**" shall mean those certain individual parcels of real property described on Exhibit A attached hereto and incorporated herein by this reference and shown on the Plat as a Lot, together with all improvements located thereon and all appurtenances thereunto appertaining. Each Lot shall be owned by the Owner or Owners of such Lot, subject to all of the terms, covenants, conditions, restrictions and easements of this Declaration, the Master Residential Declaration, and the Covenant. A Lot, as well as the Dwelling constructed thereon, is included in the definition of a "**Unit**" under Section 3.1 of the Master Residential Declaration and Section 1.6 of the Covenant.
- 1.14 "**Manager**" shall mean the Person, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and the Project.
- 1.15 "**Master Residential Association DRC**" shall mean the Design Review Committee as defined in the Section 5.2 of the Master Residential Declaration.
- 1.16 "**Member**" shall mean a member of the Association.
- 1.17 "**Mortgage**" shall mean any mortgage, deed of trust, or other security instrument by which a Lot or any part thereof is encumbered.
- 1.18 "**Mortgagee**" shall mean any Person named as the mortgagee or beneficiary under any Mortgage, or any successor to the interest of such Person under such Mortgage.
- 1.19 "**Owner**" shall mean any Person or Persons owning a Lot within the Project, as shown in the Official Records of Salt Lake County, Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or

to any Person purchasing a Lot under contract until such contract is fully performed and legal title conveyed. An Owner under this Declaration is also, by definition, an "Owner" under Section 2.4 of Master Residential Declaration and under Section 1.6 of the Covenant. The term "Owners" shall mean more than one Owner or all Owners.

- 1.20 "Person" shall mean a natural individual, corporation, estate, limited liability company, partnership, trust, governmental subdivision or agency, or any other legal entity. The term "Persons" shall mean more than one Person.
- 1.21 "Plat" shall mean, collectively and individually, the official plats of record and on file in the Official Record of Salt Lake County, Utah identified in the above Recitals.
- 1.22 "Project Governing Documents" shall mean this Declaration, the Plats, the Bylaws and the Articles, as the same may be lawfully amended from time to time, and any rules and regulations of the Association and resolutions of the Board as may be adopted.
- 1.23 "Project DRC" shall mean the design review committee for the Project, which is subject to the Master Residential DRC as more fully defined in the Master Residential Declaration.
- 1.24 "Total Votes of the Association" shall mean the total number of votes appertaining to the Lots in the Project as provided below.

## ARTICLE 2 SUBMISSION TO DECLARATION

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

## ARTICLE 3 DESCRIPTION OF THE PROJECT

- 3.1 **Improvements.** The Project consists of the 197 Lots described on Exhibit A attached hereto and shown on the Plat. Each of the Lots shall, when improved, contain one single-family Dwelling. The Project includes additional improvements, including Common Area as shown on the Plat.
- 3.2 **Description and Legal Status of Lots.** The Plat shows the number of each Lot. All Lots shall be capable of being independently owned, encumbered, and conveyed.
- 3.3 **Common Area.** Any real property depicted on the Plat as a "P-Lot" or as open or common or otherwise not part of a Lot or dedicated to the public or the city is to be owned, managed

and controlled by either the Association established hereunder or the Master Residential Association, for the common use and enjoyment of the owners of Units in Daybreak, as more fully described in the Master Residential Declaration. Owners of Lots in the Project shall have no rights to use and enjoy such common area except as provided herein or in the Master Residential Declaration, as applicable. Any costs incurred in connection with such common areas shall be included in assessments levied by either the Master Residential Association, as set forth in the Master Residential Declaration, or by the Association, as permitted hereby.

#### ARTICLE 4 NATURE AND INCIDENTS OF OWNERSHIP

- 4.1 **Title.** Title to a Lot may be held or owned by any Person or Persons in any manner in which title to any other real property may be held or owned in the State of Utah, including without limitation, joint tenancy or tenancy in common.
- 4.2 **Prohibition against Subdivision of Lot.** No Owner, by deed, plat or otherwise, shall subdivide or in any manner cause their Lot to be subdivided, partitioned, or separated into physical tracts or parcels smaller than the whole Lot as shown on the Plat.
- 4.3 **Inseparability.** Title to any part of a Lot may not be separated from any other part thereof. Every devise, encumbrance, conveyance, or other disposition of a Lot, or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Lot, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth.
- 4.4 **Separate Mortgages by Owners.** Each Owner shall have the right separately to mortgage or otherwise encumber their Lot. Unless otherwise specifically provided herein, any Mortgage or other encumbrance of any Lot shall be subordinate to all of the provisions of this Declaration, the Master Residential Declaration, and the Covenant, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.
- 4.5 **Separate Taxation.** Each Lot and all improvements located thereon shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. All such taxes, assessments, and other charges on each respective Lot shall be separately levied against the Owner thereof. No forfeiture or sale of any Lot for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Lot.
- 4.6 **Mechanics' Liens.** No labor performed or material furnished for use in connection with any Lot with the consent or at the request of an Owner or Owner's agent or contractor shall create any right to file a statement, claim, or notice of mechanic's lien against the Lot of

any other Owner not expressly consenting to or requesting the same even if existing by easement over the subject Lot.

- 4.7 **Description of Lot.** Every contract for the sale of a Lot and every other instrument affecting title to a Lot within the Project may describe a Lot by its identifying number as indicated in this Declaration and/or as shown on the Plat. Such description will be construed to describe the Lot and to incorporate all the rights incident to ownership of a Lot within the Project and all of the limitations on such ownership.
- 4.8 **Party Walls.** Dwellings may have common or party walls with adjacent Dwellings. The boundary between two adjacent Dwellings shall be the vertical boundary running through the center of the party wall, equidistant from the outermost surfaces of studs and structural beams making up the party wall. There is hereby granted and reserved to each Owner of a Dwelling adjoining another Dwelling an easement of support and shelter over the portion of any party, adjacent or retaining wall on the adjoining Dwelling. Each such Owner covenants to continue to provide the support and shelter that presently exists and as may be necessary to maintain the integrity of each Building. Each Owner has a reasonable easement for pipes, ducts, and utility lines passing through the other Dwellings that serve the Owner's Dwelling. Physical structures including party walls serving two separate Dwellings will be shared through a mutual nonexclusive easement of enjoyment for all purposes for which the improvements and their replacements were intended.
- 4.9 **Building Area.** No Dwelling, garage or other improvement, other than landscaping, sidewalks, driveways, street lights and curb and gutter improvements, may be located on any Lot outside of the original Building area without the prior written approval of the Board and the Master Residential Association DRC. The Association and/or the Master Residential Association DRC shall have the right to restrain the Owner of any Lot from violating the restrictions set forth in this section.
- 4.10 **View Impairment.** Declarant and the Association do not guarantee or represent that any view from any Lot or any view over and across the Lots will be preserved without impairment. Declarant and the Association shall have no obligation to relocate, prune or thin trees or other landscaping except to maintain the Community-Wide Standard. The Association, with respect to Common Area, shall have the right to add trees and other landscaping from time to time, subject to applicable law. There are no express or implied easements for view purposes or for the passage of light and air.

#### ARTICLE 5 MAINTENANCE OF BUILDINGS AND LOTS

- 5.1 **Owner Responsibility Regarding Buildings and Dwellings.** With respect to the maintenance, repair, alteration, and remodeling of Buildings, each Owner shall maintain and be permitted to alter or remodel the interior non-supporting walls, the materials (such as, but not limited to, plaster, gypsum drywall, paneling, wall paper, paint, wall and floor



tile and flooring) making up the finished surfaces of the perimeter walls, ceilings, and floors within such Owner's Dwelling, including any non-exterior doors and non-exterior windows. Each Owner shall furnish and be responsible for, at such Owner's own expense, all of the maintenance, repairs and replacements within the Owner's Dwelling. Such obligation shall include, without limitation:

- (a) maintenance, repair and replacement of all interior and exterior windows, doors, including thresholds, casings and door jams, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, fireboxes of fireplaces and any other materials constituting the finished surfaces of floors, ceilings, or interior walls, except that the Association shall retain the obligation to paint exterior doors, including the exterior thresholds, casings and door jams;
- (b) maintenance, repair and replacement of all windows, window frames, and door glass or equivalent materials, and the interior and exterior cleaning of all windows and door glass, except that the Association shall retain the right and obligation to paint the exterior portion of window frames and window shutters;
- (c) maintenance, repair and replacement of all utility lines (such as power, natural gas, water, sewer, telecommunications, cable and any other future utility lines) that serve the Owner's Dwelling from the point of connection, as well as maintaining, running, insulating, and/or sufficiently heating utility lines to prevent frozen pipes regardless of whether or not the Owner's Dwelling is occupied at the time;
- (d) maintenance of decking, patios (inclusive of posts, balusters, railings, skirting, and steps), backyards, fencing and balconies, exterior screens, shutters and chimney flues, that are within an Owner's exclusive control, in a clean and sanitary condition, free of pests and rodents, and in good order and repair (provided, however, that the Association shall retain the right to paint or repaint any decking or patios, inclusive of posts, balusters, railings, skirting, and steps, to maintain a harmonious aesthetic appearance in the Project);
- (e) maintenance, repair, and replacement of the Owner's garage door, including the mechanical systems and all parts of the door, except that the Association shall maintain the exterior painting of the exterior of the garage door. The Association may seek reimbursement or contribution for any damages arising from the negligent or intentional damage to garage doors by an Owner or the Owner's tenants, family members, guests, visitors, or invitees;
- (f) maintenance, repair and replacement of the garage interior concrete slab and driveways, except the Association shall repair or replace the garage interior concrete slab if it is determined that damage was caused by adjoining foundation

or footing movement; and

(g) maintenance, repair and replacement of all of the following which serve the Owner's Dwelling exclusively: lighting fixtures (except exterior building mounted lights and walkway lights which are not located within patios and balconies which are not exclusively controlled by the Owner), fans, plumbing fixtures, stoves, refrigerators, hot water heaters, air conditioning units (including compressors, condensers and forced air units), solar panels (subject to the provisions below), intercoms, security systems and other such appliances, fixtures and decorations as an Owner may install.

(1) Subject to approval by the Master Residential Association DRC, the Association may, in its discretion, allow the installation of a solar panel onto the exterior portion of an Owner's Dwelling, at the Owner's own expense, if: (a) the Owner obtains the prior written consent and approval of the Association for the installation of the solar panel; (b) the Owner obtains prior written approval of the Master Residential Association DRC; (c) the solar panel is installed by the Association or by a third-party selected or approved by the Association; and (d) the Owner agrees in writing to assume responsibility for, and cover all of the costs associated with, the installation, maintenance, repair and replacement of the solar panel, and any damage caused by the installation, maintenance, repair or replacement of the solar panel, and the Owner agrees in writing to pay for the removal of the solar panel in the event that it inhibits the maintenance, repair, or replacement of any portion of the roof, wall or exterior portion of the Dwelling to which it is attached by the Association or another Owner. The obligations imposed on the Owner by this subsection shall also apply to any and all subsequent Owners of the Dwelling to which the solar panel is to be attached.

(2) The Association may remove, or cause to be removed, any solar panel attached to any exterior portion of any Dwelling within a Building if the Association determines that the solar panel has not been installed, maintained, repaired, replaced, or removed by the Owner of the solar panel in accordance with the provisions of this Article.

5.2 **Additional Owner Covenants.** The Owner shall not alter any utility lines, pipes, wires, conduits, or systems that serve one or more other Dwellings. Such utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Board. Such right to repair, alter and remodel is coupled with the obligation to replace any materials removed with similar types or kinds of materials. The Owner shall also maintain the surface of the interior supporting walls, and the Association shall maintain the structural integrity of interior supporting walls. The Owners shall promptly notify the Association in writing of any structural integrity issues concerning the interior of such Owner's respective

Dwelling promptly upon becoming aware of the same. An Owner shall maintain and keep in good repair the interior of the Owner's Dwelling, including the fixtures thereof. All fixtures and equipment installed within the Dwelling shall be maintained and kept in good repair by the Owner thereof. An Owner shall do no act and shall perform no work that will or may impair the structural soundness or integrity of the Building in which such Owner's Dwelling is located, impair any easement or hereditament, or violate any laws, ordinances, regulations and codes of the United States of America, the State of Utah, the County of Salt Lake, the City of South Jordan, or any other agency or entity which may then have jurisdiction over said Lot/Dwelling. Any expense to the Association for investigation or enforcement under this Article shall be borne by the Owner if such investigation establishes a violation of this paragraph, including any attorneys' fees incurred by the Association irrespective of whether any legal action was commenced. Subject to the provisions of the Act regarding property insurance, each Owner shall be liable to the Association or other Owners for damages to person or property in the project caused by such Owner's negligence or the negligence of the Owner's tenants, family members, guests, visitors, or invitees.

- 5.3 **Association Responsibility Regarding Buildings and Dwellings.** Except for the Owner's responsibilities set forth in this Article, the Association shall have the duty of maintaining, replacing and repairing the Buildings including, without limitation, footings and foundations, structural components (inclusive of structural posts of any kind), roofs and common sanitary sewer laterals (if any) and other common utilities (if any). Except as otherwise provided in this Declaration, the cost of said maintenance, replacement and repair shall be assessed to all of the Owners. The Board shall not need the prior approval of the Members to cause such maintenance, replacement, or repairs to be accomplished, notwithstanding the cost thereof; subject, however, to Article 10 hereof.
- 5.4 **Maintenance of Lots.** The Association shall maintain the landscaping and related improvements on the Lots, as set forth herein. The areas maintained by the Association, including the exterior of the Buildings, shall be referred to herein as the "**Maintained Areas**". The Maintained Areas shall include fences (whether or not installed as part of Dwelling), the front lawn and front yard garden areas, excluding any stand-alone planters, window boxes, walls and enclosed areas within fences or walls (*i.e.*, fenced areas with a gate, whether opened, closed, locked, or unlocked, shall be deemed enclosed hereunder). Owners may reasonably enhance the landscaping on their Lot (if any) by planting flower bulbs or flowers; provided, however, that an Owner shall not modify any irrigation components, lines, or systems.
- 5.5 **Maintenance Standard.** All maintenance, repair and replacement obligations shall be performed in a manner consistent with the Master Residential Declaration and the Community-Wide Standard.

- 5.6 **Right of Entry.** The Association shall have a right of entry and access to, over, upon, and through the entire Project, including each Lot and each Dwelling, to enable the Association to perform its obligations, rights, and duties pursuant hereto with regard to maintenance, repair, restoration, and/or servicing of any items, things or areas of or in the Project. In the event of an emergency, the Association's right of entry to a Dwelling may be exercised without notice; otherwise, the Association shall give the Owners or occupants of a Dwelling no less than twenty-four (24) hours advance notice prior to entering a Dwelling.

#### ARTICLE 6 EASEMENTS

- 6.1 **Easements for Maintenance.** There is reserved to the Association as easement over, under, across, and through the Project, the Lots, the Buildings and the Dwellings as may be necessary or convenient for performance of the Association's maintenance obligations as provided herein.
- 6.2 **Easements Reserved by Declarant and Association.** The Association shall have power to grant and convey to any third party and Declarant hereby reserves unto itself easements and rights of way as set forth in Chapter 13 of the Master Residential Declaration. Furthermore, the Project shall continue to be subject to all of the other applicable easements set forth in the Master Residential Declaration.
- 6.3 **Easements for Utilities.** There is reserved to utility providers a non-exclusive easement over, under, through and across the Project, the Building and each Lot and Dwelling for utility lines, including power, natural gas, telecommunications, cable and any future utilities installed to serve the Dwelling, and for the maintenance, repair, and replacement of the same. All work associated with the exercise of this easement shall be performed so as to minimize interference with the use and enjoyment of the Lot and Dwelling burdened by the easement. Upon completion of the work, the Person exercising the easement shall make reasonable efforts to restore the Lot and Dwelling, to the extent reasonably possible, to the condition existing prior to the commencement of the work.
- 6.4 **Easements Deemed Created.** All conveyances of Lots hereafter made shall be construed to grant and reserve such easements as are provided herein, even if no specific reference to such easements appears in such conveyance.

#### ARTICLE 7 RESTRICTIONS ON USE

- 7.1 **Design Guidelines.** Pursuant to the Master Residential Declaration, the Project is subject to certain "Design Guidelines" more particularly described therein and the Master Residential Association's design review process. Unless otherwise directed by the Master Residential Association DRC, an Owner's application for design review must first be reviewed and approved by the Board. Board responsibilities for review of improvements, modifications, or other work within the Project may be delegated to the Project DRC as a committee of the Board.

- 7.2 **Appointment of Project DRC Members.** Unless otherwise provided in the Master Residential Declaration or an amendment thereto or directed by the Master Residential DRC, the Project DRC shall consist of no fewer than three (3) nor more than five (5) individuals, who shall serve and be removed and replaced in the Board's discretion. Project DRC members need not be Owners or representatives of Owners. The Board, in its discretion, may appoint some or all of the Board Members to the Project DRC and in the absence of formal appointments, the Board shall serve as the Project DRC.
- 7.3 **Residential Uses Only.** Each Lot is intended to be used for single-family residential housing and is restricted to such use. No Lot shall be used for business or commercial activity except as approved, in writing, by the Board and as may be consistent with the Master Residential Declaration; provided, however, that nothing herein shall be deemed to prevent any Owner from freely renting or leasing the Owner's Lot from time to time subject to the provisions of Section 7.3 of the Master Residential Declaration, as amended.
- 7.4 **No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on, in, or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or may cause embarrassment, disturbance, or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property. No trash, garbage, or other waste or unsightly materials shall be left outside of any enclosed structure. Any violation of this Declaration may be deemed a nuisance and a violation of this Section.
- 7.5 **Restriction on Recreational Vehicles.** No boats, trailers, recreational vehicles, trucks, commercial vehicles, or inoperable vehicles shall be parked or stored within the Project as set forth in the Master Residential Declaration.
- 7.6 **Restriction on Signs.** Except as permitted by the Master Residential Declaration, no signs or advertising devices of any nature, including without limitation commercial, political, informational, or directional signs or devices, shall be erected or maintained on any portion of the Project.
- 7.7 **No Structural Alterations.** No Owner shall, without the prior written consent of the Board and the Master Residential Association DRC, make or permit to be made any structural alteration, improvement, or addition, including without limitation any fences, walls or patios, to the exterior of the Owner's Dwelling or to the Maintained Areas on the Owner's Lot.
- 7.8 **Prohibition of Damage and Certain Activities.** Nothing shall be done or kept in or on any Lot or in any other part of the Project which may result in cancellation of any insurance on the Project or any part thereof, nor shall anything be done or kept in or on any Lot which may increase the rate of insurance on the Project or any part hereof over that which the

Association, but for such activity, would have to pay. Nothing shall be done or kept in or on any Lot or in the Project or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority.

- 7.9 **Pets and Animals.** No animals of any kind shall be raised, bred, or kept in or on any Lot, except to the extent permitted by the Master Residential Declaration and any additional rules or regulations adopted by the Board.

#### ARTICLE 8 THE ASSOCIATION; BYLAWS

- 8.1 **Membership and Bylaws.** Each Owner shall be entitled and required to be a member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Lot is held by more than one Owner, all co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under this Declaration. An Owner shall be entitled to one membership in the Association for each Lot owned by that Owner. Each Lot shall have one vote in the Association appurtenant thereto, regardless of the number of Owners thereof. Membership in the Association shall be appurtenant to the Lot and shall be transferred automatically by conveyance of that Lot. Ownership of a Lot within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance, or other disposition of a Lot shall be construed to be a devise, encumbrance, conveyance or other disposition, respectively, of the Owner's membership in the Association, and the rights appurtenant thereto.
- 8.2 **Board.** The Board of Directors shall initially consist of three (3) members and may be increased to five (5) members ("**Board Members**") in accordance with and upon the terms of the Bylaws. During the Declarant Control Period, Declarant reserves the right to appoint the Board.

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

- 9.1 **Manager.** The Association may, by written contract, delegate in whole or in part to a professional Manager such of the Association's duties, responsibilities, functions, and powers hereunder as are properly delegable. The services of any Manager retained by the Association shall be paid for with funds from the Common Expense Fund.
- 9.2 **Miscellaneous Goods and Services.** The Association may obtain and pay for goods and services as the Board, in its discretion, shall determine to be necessary or desirable for the proper operation of the Project. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project, the enforcement of this Declaration, or any other matter.

- 9.3 **Real and Personal Property.** The Association may acquire, hold, and own real, personal, and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise. The maintenance, repair, and replacement of all such property shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall become part of such Fund.
- 9.4 **Rules and Regulations.** The Association, by action of the Board, subject to the rule-making process in the Act, may make reasonable rules and regulations governing the use of the Lots and Common Area, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Association may take any enforcement action, including judicial against any Owner to compel compliance with such rules and regulations or other obligations of Owners arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In connection with any enforcement action, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, from the offending Owner irrespective of whether litigation was commenced; provided, however, that in any judicial action, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in such action.
- 9.5 **Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.
- 9.6 **Indemnification.** To the fullest extent permitted by law, the Association shall indemnify the following Persons against all expenses and liabilities, including attorneys' fees reasonably incurred by or imposed upon such Person in connection with any proceeding to which such Person may be a party, or in which such Person may become involved, by reason of such person being or having served in any capacity on behalf of the Association (or by reason of having appointed, removed or controlled or failed to control members of the Board or the Project DRC):
- (a) every director and officer of the Association and every member of the Project DRC and/or any other committee of the Association; and
  - (b) every director, officer and agent of Declarant and the Master Residential Association and the Daybreak Community Council, Inc.

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

rights of indemnification shall be in addition to, and not in place of, all other rights to which such Persons may be entitled under law.

9.7 **Security.** Declarant and/or the Association may, but shall not be obligated to, maintain, or support certain activities within the Project designed to make the Project safer than it otherwise might be. Notwithstanding, neither Declarant nor the Association shall in any way be considered an insurer or guarantor or provider of security within the Project. Likewise, the Association shall not be liable for any loss or damage by reason of any criminal conduct or activities within the Project or for any failure to provide security or for ineffectiveness of any security measures undertaken. By taking title to a Lot and/or residing in or visiting the Project, Owners and occupants, their guests and invitees, as applicable, acknowledge that neither Declarant nor the Association has any duty to any Owner or occupant or guest or invitee related to security. Neither Declarant nor the Association represents or warrants that any security measures undertaken will ensure their safety. By taking title to a Lot and/or residing in or visiting the Project, Owners and occupants, their guests and invitee assume all responsibility for their own safety and security and assume all risks for loss or damage to their person or property and further acknowledge that the Association has made no representations or warranties, nor have they relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any security measures undertaken within the Project.

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

#### ARTICLE 10 ASSESSMENTS

10.1 **Agreement to Pay Assessments.** Each Owner of a Lot by the acceptance of an instrument of conveyance and transfer, whether or not it be so expressed in said instrument, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association all assessments, both regular and special, made by the Association for the purposes provided in this Declaration. Such assessments shall be established, levied, and



collected from time to time as provided in this Article. The obligation to pay assessments shall commence as to each Lot on the first day of the month following the date on which a certificate of occupancy is issued for a Dwelling, or a Dwelling is actually occupied, whichever first occurs.

10.2 **Regular Assessments.** Regular assessments shall be computed and assessed against all Lots in the Project as follows:

(a) Common Expenses.

- (1) Annual Budget. At least thirty (30) days before the beginning of each fiscal year, the Association shall prepare or cause to be prepared an operating budget setting forth an itemized statement of the anticipated expenses for the coming year and taking into account the general condition of the Project. The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained. The Board shall make a copy of such budget, together with the amount of the annual assessment to be levied pursuant to such budget, available to each Member at least thirty (30) days prior to the due date of the assessment to be levied pursuant to such budget. The budget shall automatically become effective unless disapproved or amended by a vote of at least fifty-one percent (51%) of the Total Votes of the Association within forty-five (45) days at a special meeting set in accordance with the Bylaws. If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect, increased by fifteen percent (15%), shall be in effect until a new budget is determined.
- (2) Basis of Annual Budget. The annual budget shall be based upon the amounts or the Association's estimates of the amounts required to provide for payment of expenses arising out of or connected with maintenance and operation of the Maintained Areas and operation and administration of the Association for the upcoming fiscal year. Additionally, such actual expenses and estimated expenses may include, among other things, the following: management fees; governmental taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain; repairs and maintenance; common utility charges, if any; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve; sinking or reserve funds required or allowed herein; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the Owners or by reason of this Declaration.

(3) Annual Assessments. The Association shall establish the annual assessment to be paid by each Owner into the Common Expense Fund based on the annual budget (the "Regular Assessment"); provided, however, that if the Common Expenses associated with certain Lots are greater than those of other Lots, then such Lots associated with higher Common Expenses may be assessed a proportionately higher assessment (including any assessment under Section 10.3 hereof) in the reasonable business judgment of the Association. The Association, in its discretion, may permit payment of the annual assessment in monthly or quarterly installments. The due dates and manner of payment shall be determined by the Board. Unless otherwise determined by the Board by rule, Assessments (Regular or Special) which remain unpaid after fifteen (15) days or more from the date due may be subject to late charges and may bear interest at the rate of ten percent (10%) per annum until paid. Failure of the Association to give timely notice of any Assessment as provided herein shall not affect the liability of the Owner of any Lot for such Assessment.

(b) Adjustment to the Budget and Regular Assessment. In the event that the Board determines that amounts in Common Expense Fund are or are likely to be inadequate at any time, for whatever reason, including nonpayment of any Owner's assessment, the Board may revise the budget and the Regular Assessment for each Lot, provided, however, that any increase in the Regular Assessment pursuant to this Section does not exceed five thousand dollars (\$5,000.00) per Lot. Upon notice of the adjustment each Owner shall pay to the Association the Owner's adjusted Regular Assessment.

10.3 **Special Assessments.** In addition to the Regular Assessments authorized herein, the Association may levy, at any time and from time to time, upon affirmative vote of at least fifty one percent (51%) of the Total Votes of the Association, special assessments, payable over such periods of time as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Area and Buildings or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (a "Special Assessment"); provided, however, nothing in this Section shall be construed to impair or restrict the Board's authority and discretion under Section 10.2(b) above to adjust the budget and increase the Regular Assessment without a vote of the Owners in the event of a shortfall or anticipated shortfall in the Common Expense Fund, provided such adjustment does not exceed five thousand dollars (\$5,000.00) per Lot. Any amounts assessed pursuant to this Section shall be apportioned equally among and assessed equally to all Owners, except as otherwise provided herein. Notice in writing of the amount of any such Special Assessment and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days' notice.

- 10.4 **Special Assessments to a Particular Lot or Owner.** The Association may specially assess a Lot and its Owner for (a) costs incurred in enforcing the Project Governing Documents and/or bringing an Owner or Lot into compliance; (b) fines, late fees, interest and other collection charges; and (c) attorneys' fees related to subsections (a) or (b) above, regardless of whether or not legal action is commenced.
- 10.5 **Lien for Assessments.** All sums assessed to the Owner of any Lot pursuant to the provisions of this Article, together with interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Association. To evidence a lien for sums assessed pursuant to this Article, the Association may record a notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, and a description of the Lot. No notice of lien shall be recorded until there is a delinquency in payment. Such lien may be enforced by judicial or non-judicial foreclosure by the Association as permitted by law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including reasonable attorneys' fees, and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association hereby conveys and warrants pursuant to Sections 57-8a-302 of the Act and Utah Code 57-1-20 to Melyssa D. Davidson as the qualified trustee, with the power of sale, the Lots and all improvements to the Lots for the purpose of securing payment of Assessments under the terms of this Declaration. The Association shall have the right and power to bid in at any foreclosure sale, and to own, lease, mortgage or convey the subject Lot.
- 10.6 **Personal Obligation of Owner.** The amount of any Assessment against any Lot (along with any interest charged of such assessments, late charges as determined by Board resolution, costs and reasonable collection and/or attorneys' fees incurred in connection with collection of the same) shall be the personal obligation of the Owner of such Lot to the Association. Suit to recover a money judgment for such personal obligation may be maintained by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by abandonment of his Lot, or by waiving any services or amenities. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.
- 10.7 **Requiring Tenant to Pay Assessments.** In the event an Owner fails to pay an Assessment within sixty (60) days of the date due, the Association may require a tenant occupying an Owner's Lot to pay to the Association's any lease payments or rent due to the Owner as provided under the Act.
- 10.8 **Written Statement of Unpaid Assessment.** Upon written request of an Owner and

payment of a fee, the Board or Manager shall issue a written statement setting forth the amount of unpaid assessments, if any, with respect to such Lot. Such written statement shall be binding in favor of a Person who relies thereon in good faith upon the remaining Owners, the Manager, and the Board. Unless otherwise determined by the Board and allowed by law, the fee for a statement of unpaid Assessments shall be twenty-five dollars (\$25.00).

- 10.9 **Payoff Information.** The Association may charge a fee for providing Association payoff information needed in connection with the financing, refinancing, or closing of a sale of an Owner's Lot. Unless otherwise determined by the Board and allowed by law, the fee for payoff information shall be fifty dollars (\$50.00). Any request for payoff shall be in writing and shall meet the other requirements detailed in the Act. Failure of the Association to provide payoff information in response to a valid request within five (5) business days after the closing agent requests the information may not enforce a lien against the Lot for money due to the Association at closing.
- 10.10 **Personal Liability of a Purchaser.** A purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Lot up to the time of the grant of conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recovery from the seller of the amount of such assessments paid by the purchaser for such assessments.
- 10.11 **Assessments Part of Common Expense Fund.** All funds received from Assessments under this Article shall be a part of the Common Expense Fund.

#### ARTICLE 11 CASUALTY AND INSURANCE

- 11.1 **Project Subject to Insurance Provisions of the Act.** It is the intent of this Article 11 to subject the Project to the insurance provisions in Part 4 of the Act in effect at the time of recording of this Declaration.
- 11.2 **Property Insurance.** Consistent with the Act, the Association shall maintain, to the extent reasonably available, by blanket property insurance or guaranteed replacement cost insurance on the physical structures of all of the attached Dwellings and the Buildings in the Project, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. Such property insurance shall include coverage for any fixture, improvement, or betterment installed at any time to an attached Dwelling, whether installed in the original construction or in any remodel or later alteration, including floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows, and any other item permanently part of or affixed to an attached Dwelling. The Association shall set aside an amount equal to the amount of the Association's property insurance deductible or, if the policy deductible exceeds ten thousand dollars (\$10,000.00), an amount not less than ten thousand dollars (\$10,000.00). The Association shall provide notice to each owner of the Owner's obligation

for the Association's property insurance deductible, and any changes thereto.

- 11.3 **Liability Insurance.** The Association shall maintain general liability insurance covering all of the Maintained Areas and any other areas under the Association's supervision insuring the Association, the Board, and the Owners and occupants, with such limits as the Board may determine, but no less than the greater of (i) the amounts generally required by institutional first mortgagees holders, insurers, and guarantors for projects similar in construction, location and use, or (ii) one million dollars (\$1,000,000.00), for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence.
- 11.4 **Directors' and Officers' Liability Insurance.** The Association shall maintain directors' and officers' liability insurance protecting the Board, the officers of the Association, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Project Governing Documents, and breach of contract (if available). Such insurance policy shall: include coverage for: (a) volunteers and employees; (b) monetary and non-monetary claims; (c) claims made under any federal or state fair housing law and claims based on any form of discrimination or civil rights claims; and (d) defamation.
- 11.5 **Fidelity Coverage.** The Association shall maintain fidelity insurance providing coverage for the Association against dishonest acts on the part of directors, managers, trustees, employees, agents, and volunteers responsible for or handling funds belonging to or administered by the Association. The fidelity insurance policy must name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is in no event less than the greater of an amount equal to the Association's reserve funds plus three months' Assessments on all Lots, or the maximum amount that will be in the custody of the Association or the Manager at any time while the policy is in force. The policy shall provide that it shall not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association and any insurance trustee. Any Manager who handles funds of the Association shall maintain a policy of fidelity insurance providing coverage no less than that required of the Association, which bond or insurance policy names the Association as an additional insured.
- 11.6 **Other Association Insurance.** The Association may maintain such additional and other insurance as the Board may determine.
- 11.7 **Insurance Representative; Power of Attorney.** There may be named, under any policy obtained by the Association, as an insured on behalf of the Association, its authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy. Each Owner, by acceptance of a deed

to a Lot, irrevocably appoints the Association or such designated representative, or such successor, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or such designated representative, or such successor, shall receive, hold, or otherwise properly dispose of any proceeds of insurance, in trust, for the Owners, as their interests may appear. This power is for the benefit of each and every Owner, the Association, and the Project, and runs with the land and is coupled with an interest.

- 11.8 **Owners' Property Insurance.** Each Owner shall maintain property insurance (in addition to that provided by the Association pursuant this Article 11) in an amount determined by the Owner but in no event in an amount less than the deductible for the Association's property insurance. Nothing in this Section is intended or shall be interpreted to prohibit an Owner from maintaining such other property, liability, or other insurance as the Owner may deem appropriate.
- 11.9 **Worker's Compensation and Employer's Liability Insurance.** To the extent required by law, the Association shall maintain Worker's compensation and employer's liability insurance.
- 11.10 **Review of Insurance.** The Association shall review annually the coverage and policy limits of all insurance on the Project and shall adjust the same, in its discretion, consistent with the Act. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or such other qualified appraisers as the Association may select.

#### ARTICLE 12 COMPLIANCE WITH DECLARATION AND BYLAWS

- 12.1 **Compliance.** Each Owner shall comply with the provisions of this Declaration, the Bylaws, the Articles and the rules and regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association or by an aggrieved Owner.
- 12.2 **Declarant Exemption.** Notwithstanding anything in this Declaration to the contrary, during the Declarant Control Period, none of the covenants, conditions, restrictions, easements or other provisions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant or its affiliate in connection with the construction, management, administration, completion, maintenance, operation, sale, leasing, promotion or general development of the Project. In addition, Declarant may extend all or any part of

its exemption in writing to any Builder or third parties and their respective employees, agents, and contractors in connection with the same matters.

#### ARTICLE 13 MORTGAGEE PROTECTION

- 13.1 **Mortgage Protection.** No breach of any of the covenants, conditions, restrictions, and limitations contained herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions and limitations contained herein shall be binding upon an Owner whose title is derived through foreclosure or trustee's sale.
- 13.2 **Priority of Liens.** No enforcement of any lien provision herein contained shall defeat or render invalid the lien of any first or second Mortgage that is recorded before a recorded notice of lien by or on behalf of the association or lien for property taxes or other governmental assessments or charges against the Lot or any other lien or encumbrance recorded prior to the Initial Declaration.
- 13.3 **Mortgage Holder Rights in Event of Foreclosure.** Any Mortgagee of a first or second Mortgage which obtains title to a Lot by the foreclosure of the Mortgage on the Lot or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid Assessments and charges against the Lot which accrued prior to the date of the acquisition of title to such Lot by such Mortgagee.

#### ARTICLE 14 EXPANSION OF PROJECT

- 14.1 **Right to Expand.** There is reserved to Declarant the right to expand the Project at any time (within the limits herein prescribed) and from time to time by adding additional lots ("Additional Land") to the Project. Notwithstanding any provision of this Declaration which might be construed to the contrary, such right and option may be exercised by Declarant without obtaining the vote or consent of the Association, the Owners, or any Mortgagee. The Additional Land shall be deemed added to the Project and, subject to the terms of this Article 14, to the jurisdiction of the Association at such time as a duly approved subdivision plat and a supplement to this Declaration containing the information required by Section 14.3 have been recorded in the Official Records of Salt Lake County, Utah.
- 14.2 **Rights and Statements Respecting Additional Land.** Declarant hereby furnishes the following information and statements respecting the Additional Land which may be added to the Project and Declarant's right and option concerning expansion of the Project by the addition thereto of Additional Land:
- (a) The Additional Land, or any portion thereof, may be added to the Project at any time (within the limits herein prescribed) and from time to time.

- (b) There are no limitations or requirements relative to the size, location, or configuration of any Additional Land which can be added to the Project or relative to the order in which particular Additional Land can be added to the Project.
- (c) There are no limitations or requirements (other than zoning and subdivision restrictions as they may exist or be modified from time to time) relative to the layout, design, size, location, density, permitted uses, legal structure, or other characteristics of the Lots, Buildings, and Dwellings constructed on the Additional Land added to the Project. In any supplement to this Declaration which is recorded in conjunction with the addition to the Project of Additional Land, Declarant shall have the right in its sole discretion to specify building restrictions and standards applicable to such Additional Land. In Declarant's sole discretion, the restrictions and standards so specified may be different than or in addition to the restrictions and standards set forth in this Declaration.
- (d) Any Building or Dwelling erected on Additional Land added to the Project will be constructed in a good and workmanlike manner.
- (e) In conjunction with the addition to the Project of Additional Land, Declarant shall have the right to reserve, in the instruments through which the addition is accomplished, rights-of-way and/or easements for purposes of enabling access to, furnishing utilities to, and facilitating or enabling development of, Additional Land as has then not been added to the Project.

14.3 **Procedure for Expansion.** The supplements to this Declaration, by which addition to the Project of the Additional Land is accomplished, shall be executed by Declarant and the owner(s) of the Additional Land; shall be in recordable form; shall be filed for record in the office of the County Recorder of Salt Lake County, Utah, on or before ten (10) years from the date that this Declaration is recorded; and shall contain the following information concerning the Additional Land which is being added to the Project:

- (a) Data sufficient to identify this Declaration and the plat respecting the Additional Land being added to the Project.
- (b) The legal description of the Additional Land being added to the Project.
- (c) Any amendments, supplements, or replacements to or for the standards and restrictions set forth in Article 7 or elsewhere in this Declaration applicable to the Additional Land.
- (d) A statement that such Additional Land shall thereafter be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements set forth in this Declaration, as said Declaration may be amended or supplemented in



accordance with the immediately foregoing Paragraphs (c) and (d).

(e) Such other matters as Declarant may deem to be necessary, desirable, or appropriate.

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

#### ARTICLE 15 GENERAL PROVISIONS

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

15.2 **Construction.** The provisions of this Declaration shall be in addition and supplemental to all applicable provisions of applicable Utah law. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

15.3 **Registration of Mailing and Email Address.** Each Owner upon taking title to a Lot, shall provide the Association the Owner's mailing address and an email address, subject, however, to an Owner's right to make written request that notices be provided by mail as provided under the Act. An Owner may change their registered mailing or email address at any time by written notice to the Association in accordance with the Notice provisions in this Declaration.

15.4 **Audit.** Any Owner may at any reasonable time, upon appointment and at the Owner's sole expense, cause an audit or inspection to be made of the books and records maintained by the Association; provided, however, that such Owner shall not be entitled to request an audit or inspection more than once every twenty-four (24) months.

15.5 **Amendment.** Declarant reserves the right to unilaterally amend this Declaration for any

- purpose during the "Declarant Control Period". Thereafter, this Declaration may be amended with the approval of Owners holding at least sixty-seven percent (67%) of the Total Votes of the Association. Properly approved amendments shall be evidenced by an instrument, executed by the Association's president, or Declarant, as the case may be, and effective upon recorded in the Official Records of Salt Lake County, State of Utah.
- 15.6 **Effective Date.** This Declaration shall take effect upon recording in the Official Records of the Salt Lake County Recorder, State of Utah.
- 15.7 **Agent for Service.** The person to receive service of process for the Association shall be the then current registered agent of the Association as shown on the records maintained in the of Office of the Division of Corporations and Commercial Code of the State of Utah.
- 15.8 **Limitation on Association's Liability.** The Association shall not be liable for any failure of water service or other utility service which may be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or Person in the Project, or resulting from electricity, water, rain, snow or ice. No diminution or abatement of any Assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs, maintenance or improvements to the Project or any part thereof, or from any action taken to comply with any law, ordinance or order of a governmental authority.
- 15.9 **Owner's Obligations.** All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that the Owner may be leasing, renting, or selling the Owner's Lot on contract. The Owner of a Lot shall have no obligation for expenses or other obligations accruing after conveying title to such Lot.
- 15.10 **Declarant's Rights Assignable.** The rights of Declarant hereunder or in any way relating to the Project may be assigned. Upon assignment, references to the "Declarant" shall refer to such assignee.
- 15.11 **Master Residential Declaration's Full Force and Effect.** The Master Residential Declaration shall remain in full force and effect. In the event of a specific and clear conflict between the Master Residential Declaration and this Declaration, the terms of this Declaration shall control, but only in connection with the Project and the Lots.

ARTICLE 16 DISPUTE RESOLUTION AND LIMITATION ON LITIGATION;  
COVENANT NOT TO SUE

- 16.1 **Statement of Intent.** Every Owner is capable of obtaining an inspection and is permitted to perform any inspection on any Lot that Owner is purchasing or may otherwise be acquiring and on any aspect of the Project. Having had the ability to inspect prior to purchasing, it therefore is acknowledged that it is unfair and improper thereafter to seek to

have Declarant or Builder or any other contractor or subcontractor or material supplier performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, each Owner, by taking title to a Lot, and Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the value, sale, and ability to obtain financing for the purchase of a Lot for years, unfairly prejudicing those Owners who must sell or who want to sell their respective Lots during any period when litigation is pending. For this reason, each Owner, by taking title to a Lot, and Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that other disputes shall be pursued only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners. It is also intent of this Article to eliminate, to the extent possible, claims against or involving Declarant and/or the Builder and claims related to the construction of Project improvements, the Common Area, and the Lots and Dwellings in the Project, and, when and if any such claim is permitted as a matter of law or pursuant to this Declaration, to ensure that every opportunity is made to resolve the claim outside of litigation. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration.

- 16.2 **Waiver of Subrogation and Release.** The Association and each Owner, by and upon taking title to a Lot, waives any right to subrogation against Declarant and/or the Builder. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against Declarant or the Builder (including their respective principles, officers, managers, shareholders, members, employees, agents, and representatives). To the full extent permitted by law, the Association and Owners hereby release Declarant and the Builder (including their respective principles, officers, managers, shareholders, members, employees, agents and representatives) from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or the Builder or their respective principles, officers, managers, shareholders, members, employees, agents and representatives.

16.3 **Litigation.**

- (a) An Owner may only make a claim against Declarant and/or the Builder, to the extent allowed herein and by law after the following efforts at dispute resolution have been completed:
- (1) Right to Cure: the Owner shall provide to Declarant and/or to the Builder,

as may be applicable, a Notice of Claim (defined below) and permit Declarant and/or the Builder, as the case may be, one hundred eighty (180) days to cure or resolve the claim or defect or to try to get its contractor or the appropriate subcontractor or material supplier to cure or resolve the claim or defect, prior to initiating any lawsuit, claim, or dispute resolution process;

- (2) Mediation: if the dispute is not resolved within the 180-day Right to Cure period, the parties agree to mediate the dispute prior to taking further action. If additional, different, or modified claims, causes of action or legal theories for recovery (including damages, damage calculations) are added or asserted that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this Section shall be triggered and any pending action, including any mediation or arbitration, shall be stayed for the 180-day period to facilitate Declarant's and/or the Builder's right to cure such additional, different, or modified claims.
- (b) For any claim allowed by law or by this Declaration, the parties agree to binding arbitration of all claims asserted against Declarant, the Builder and/or any other contractor or subcontractor or material supplier by either the Association or any Owner, with the initiating party advancing all arbitration costs, subject to assignment of those costs by the arbitrator in a final decision on the merits. In the event the parties are unable to agree regarding an arbitration service, the American Arbitration Association shall administer the proceedings and the rules applicable to construction disputes shall apply. The arbitration rules shall be subject to the requirements of this Declaration and shall be modified accordingly in case of any conflict between the Rules and this Declaration.
  - (c) Notice of Claim shall mean and include the following information: (i) the nature of the claim; (ii) a specific breakdown and calculation of any alleged damages; (iii) a detailed description of the claim along with any supporting opinions, information, or other factual evidence upon which the claim is based; (iv) photographs of any alleged defect or condition, if applicable; (v) samples of any alleged defective material; (vi) a recitation of all efforts taken to avoid, mitigate, or minimize the claim and alleged damages arising therefrom; and (vii) the names and contact information of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.
  - (d) Notwithstanding any other provision in this Declaration, except as to an Owner warranty, if any, and to the fullest extent permitted by the law, an Owner shall not and agrees not to commence or maintain any litigation, arbitration, or other action against Declarant and/or the Builder (including their respective principles, officers,

managers, shareholders, members, employees, agents and representatives), for any reason, including, but not limited to, alleged construction defects or any damages arising therefrom.

- (e) Notwithstanding any other provision in this Declaration, and to the fullest extent permitted by the law, the Association shall not and cannot commence or maintain any litigation, arbitration, or other action against Declarant or the Builder or their respective principles, officers, managers, shareholders, members, employees, agents and representatives, for any reason, including but not limited to for alleged construction defects, any related claims, or any damages arising therefrom.
- (f) Except only as may be limited by law, by and upon taking title to a Lot, each Owner specifically disclaims and releases Declarant from any claim, known or unknown, related to any defect in the Project.
- (g) The Association and Owners accept all Common Area and Lots "AS IS," with all faults and with no warranties of any kind except as otherwise required by law. DECLARANT SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR OF HABITABILITY, TO THE FULL EXTENT ALLOWED BY LAW.
- (h) If otherwise allowed by law notwithstanding the terms of this Article, prior to the Association making any demand or commencing any mediation, arbitration, or litigation (any "action") against Declarant or the Builder or any other contractor or subcontractor or material supplier involved in the original construction of the Project, the Association must have a properly noticed meeting of the Owners, with all attorneys, experts, and other Persons expected to be involved in the claim present at the meeting. Those Persons present, including the Board, must permit discussion among the Owners and questions from the Owners and must respond to all reasonable questions of the Owners related to the proposed claims. The notice for the aforesaid meeting must include the following information:
  - (1) a statement must be made on the first page of such notice in bold, stating that **"The Association is contemplating serious and potentially time-consuming and expensive litigation against Declarant and/or Builder of this Project. This litigation could cost you money in the form of increased assessments and will likely impact the resale value of your Lot and your ability to sell your Lot while this litigation is pending. This litigation could take years to resolve. You should think seriously about this issue and attend the meeting on this issue;"**
  - (2) a budget and reasonably detailed breakdown of all costs and legal fees

reasonably estimated to be caused by the expected litigation including a breakdown of any costs and fees to be advanced by anyone including any attorney or other representative of the Association under any contingency arrangement, and all those costs and fees to be paid directly by the Association, all of which shall assume the litigation will last five years (unless it is reasonably expected to last longer in which case the longer period shall be used for this estimate) and require a trial on the merits (the “**Claim Budget**”);

- (3) a detailed explanation of where any money to be paid by the Association will be obtained including a per Lot breakdown of all costs and fees per year, assuming the litigation will last five (5) years;
- (4) a written statement of each Board Member indicating that member’s position on the litigation;
- (5) a legal opinion on the likelihood of success of any such litigation or arbitration from an attorney or law firm with at least ten (10) years’ experience with such litigation who is anticipated to bring any such action, analyzing the applicable law, Governing Documents, and all relevant and known factual information;
- (6) all terms of the agreement between the Association and the attorney or law firm prosecuting the action including a copy of any engagement letter, contract, or agreement related to that representation; and
- (7) a detailed description of the alleged claims against Declarant and/or Builder and of all efforts by the Association to resolve those claims prior to commencing any action.

16.4 **Vote of Owners Required.** In addition to the requirements above and before commencing any action, the Association must obtain the approval of the Owners holding at least seventy-five percent (75%) of the Total Votes of the Association (not 75% of those Owners present), by vote, at a lawfully called and properly noticed special meeting for that purpose only. Any such a special meeting must occur no sooner than thirty (30) days and not later than sixty (60) days after the meeting required above.

16.5 **Collection of Funds.** The Association shall collect funds from the Owners by special assessment or otherwise equal to at least one half (1/2) of the Claim Budget. The Association shall not use any reserve funds to fund any such action or to pay for any costs associated with any such action.

16.6 **Effect on Time-Barred or Otherwise Limited Claims.** The existence of procedures

and/or requirements in this Article 16 applicable to claims against Declarant or the Builder and/or any other contractors or subcontractors or material supplier, that are barred (whether barred by law, contract, or otherwise) or limited in other provisions of this Declaration shall not be construed as permitting any such claims or as contradictory to a prohibition or limit on such claims by law, contract, or otherwise or in other provisions in this Declaration. The procedures and requirements to assert a claim (including, but not limited to, the right to cure requirements, the meeting and Owner approval requirements, the mediation requirement, and the arbitration requirements) that are prohibited by this Declaration are provided solely in case any such claim is permitted by law notwithstanding the terms of this Declaration.

- 16.7 **These Provisions in Addition to Requirements of the Act.** The provisions of this Article 16 are in addition to the provisions governing liability of Declarant and Board during the Declarant Control Period in the Act.

[Signatures page follows]

IN WITNESS WHEREOF, the undersigned, having the unilateral right and authority to amend the Initial Declaration, as amended, have executed this Declaration.

STATE OF UTAH )  
 )ss  
COUNTY OF Salt Lake

**VP DAYBREAK OPERATIONS LLC,**

a Delaware limited liability company

By: **Daybreak Communities LLC**, a Delaware limited liability company

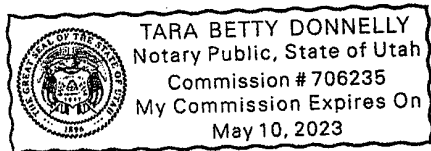
Its: Project Manager

By: 

Name: Ty McCutcheon

Its: President & CEO)

On December 4, 2020 personally appeared before me, a Notary Public, Ty McCutcheon, President and CEO of DAYBREAK COMMUNITIES LLC, the duly authorized Project Manager of VP DAYBREAK OPERATIONS LLC, personally known or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the above instrument who acknowledged to me that he/she/they executed the above instrument on behalf of VP DAYBREAK OPERATIONS LLC.



  
Notary Public



**EXHIBIT A**  
**LEGAL DESCRIPTION**

The real property and Lots subject to the foregoing **AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR DAYBREAK CREEKSIDE TOWNHOMES PROJECT** are located in Salt Lake County, Utah and more fully described as follows:

KENNECOTT DAYBREAK VILLAGE 5 MULTI FAMILY #1 SUBDIVISION  
AMENDING LOT V3 OF THE KENNECOTT MASTER SUBDIVISION #1  
AMENDED, all Lots, inclusive, as shown on the official subdivision plat on file and of record in the Official Records of Salt Lake County, Utah.

Parcel Nos.:

26131960010000	26131970140000	26133270080000	26133270290000
26131960020000	26131970150000	26133270090000	26133270300000
26131960030000	26131970160000	26133270100000	26133270310000
26131960040000	26131970170000	26133270110000	26133270320000
26131960050000	26131970180000	26133270120000	26133280010000
26131960060000	26131970190000	26133270130000	26133280020000
26131960070000	26133260030000	26133270140000	26133280030000
26131960080000	26133260040000	26133270150000	26133280040000
26131970010000	26133260050000	26133270160000	26133280050000
26131970020000	26133260060000	26133270170000	26133280060000
26131970030000	26133260070000	26133270180000	26133280070000
26131970040000	26133260080000	26133270190000	26133280080000
26131970050000	26133260090000	26133270200000	26133280090000
26131970060000	26133260100000	26133270210000	26133280100000
26131970070000	26133270010000	26133270220000	26133280110000
26131970080000	26133270020000	26133270230000	26133280120000
26131970090000	26133270030000	26133270240000	26133280130000
26131970100000	26133270040000	26133270250000	26133280140000
26131970110000	26133270050000	26133270260000	26133280150000
26131970120000	26133270060000	26133270270000	26133280160000
26131970130000	26133270070000	26133270280000	26133000080000
			26133260010000

KENNECOTT DAYBREAK VILLAGE 5 PLAT 6 SUBDIVISION AMENDING LOT V3 OF THE KENNECOTT MASTER SUBDIVISION #1, AMENDED, all Lots, inclusive, as shown on the official subdivision plat on file and of record in the Official Records of Salt Lake County, Utah.

Parcel Nos.:

26131980010000	26132630040000	26133320040000	26133320160000
26131980020000	26132630050000	26133320050000	26133320170000
26131980030000	26132630060000	26133320060000	26133330010000
26131980040000	26132630070000	26133320070000	26133330020000
26131980050000	26132630080000	26133320080000	26133330030000
26131980060000	26132630090000	26133320090000	26133330040000
26131980070000	26134010080000	26133320100000	26133330050000
26131980080000	26132640010000	26133320110000	26133330060000
26131980090000	26132640020000	26133320120000	26133330070000
26132630010000	26133320010000	26133320130000	26133330080000
26132630020000	26133320020000	26133320140000	26133330090000
26132630030000	26133320030000	26133320150000	26133330100000
		26133330120000	26133330110000

DAYBREAK VILLAGE 5 MULTI FAMILY #2 SUBDIVISION AMENDING LOTS 148-163, P-LOTS P-102 -P-104, PARCEL 1 & A PUBLIC LANE OF THE KENNECOTT DAYBREAK VILLAGE 5 PLAT 2 SUBDIVISION AMENDING LOT V3 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED, all Lots, inclusive, as shown on the official subdivision plat on file and of record in the Official Records of Salt Lake County, Utah.

Parcel Nos.:

26131000270000	26131870020000	26131870200000	26131990040000
26131000280000	26131870030000	26131870210000	26131990050000
26131000290000	26131870040000	26131870220000	26131990060000
26131000300000	26131870050000	26131870230000	26131990070000
26131000310000	26131870060000	26131870240000	26131990080000
26131000320000	26131870070000	26131870250000	26131990090000
26131000330000	26131870080000	26131870260000	26131990100000
26131000340000	26131870090000	26131870270000	26131990110000
26131000350000	26131870100000	26131870280000	26131990120000
26131860200000	26131870110000	26131870290000	26131990130000
26131860210000	26131870120000	26131870300000	26131990140000
26131860220000	26131870130000	26131870310000	26131990150000
26131860230000	26131870140000	26131870320000	26131990160000
26131860240000	26131870150000	26131870330000	26131990170000
26131860250000	26131870160000	26131870340000	26131990180000
26131860260000	26131870170000	26131990010000	26131990190000
26131860270000	26131870180000	26131990020000	26131990200000
	26131870190000	26131990030000	26131990210000

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26131860010000	26131860020000	26131860030000	26131990220000
26131860040000	26131860050000	26131860060000	26131860070000
26131860080000	26131860090000	26131860100000	26131860110000
26131860120000	26131860130000	26131860140000	26131860150000
26131860160000	26131860170000	26131860180000	26131860190000
26131870010000			

Private Lane #1 and Private Lane #2 and Lots P-143, 876, 879, 881 and 882 of DAYBREAK VILLAGE 5 MULTI FAMILY #3 AMENDING LOTS T3 & V3 OF THE KENNECOT MASTER SUBDIVISION #1 AMENDED, as shown on the official subdivision plat on file and of record in the Official Records of Salt Lake County, Utah.

Parcel Nos.:

26133360020000  
26133360050000  
26133360060000  
26133360080000  
26133360110000  
26133360120000

**EXHIBIT B**  
AMENDED BYLAWS OF  
DAYBREAK CREEKSIDE TOWNHOME ASSOCIATION, INC.

RECITALS

Initial bylaws of the Association were established and adopted by the initial developer for the Association and recorded in the Official Records of Salt Lake County, Utah on May 15, 2015 as Entry No. 12080608, as Exhibit B to the Initial Declaration (the "Initial Bylaws"). The Initial Bylaws and the Initial Declaration reserved to Declarant the right to unilaterally amend the Initial Bylaws. Declarant desires to amend and update the Initial Bylaws to improve and streamline governance of the Association and conform provisions of the Initial Bylaws to changes in the law. Pursuant to the rights and authority reserved to Declarant, Declarant hereby adopts these Amended Bylaws of Daybreak Creekside Townhome Association, Inc. (these "Bylaws"). Upon recording of these Bylaws in the Official Records of Salt Lake County, Utah, these Bylaws, and any valid amendments thereto, shall be binding on Declarant, the Association and Owners.

ARTICLE I OFFICES

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

ARTICLE II DEFINITIONS

Except as otherwise provided herein or as otherwise required by the context, defined terms in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Daybreak Creekside Townhome Project, as amended and/or supplemented from time to time (the "Declaration"), shall have such defined meanings when used in these Bylaws.

ARTICLE III MEMBERS

Section 1. Membership. Membership in the Association shall be comprised of the Owners in the Project.

Section 2. Annual Meetings. A meeting of the members shall be held at least once each calendar year for the following purposes: (a) electing Board Members (after the end of the Declarant Control Period); (b) reviewing the annual budget promulgated and adopted by the Board for the following year; (c) reviewing changes, if any, to the Association's insurance and property insurance deductible; and (d) transacting such other business as may come before the Members.

Section 3. Special Meetings. Special meetings of the Members for any purpose or purposes, unless otherwise prescribed by statute, may be called from time to time by the president. In addition, the president or the secretary shall immediately call a special meeting if so directed by a resolution of the Board or upon the written request of Members holding not less than twenty-five percent (25%) of the Total Votes of the Association. A request for special meeting by Members must be in writing and signed by each Member supporting such request and shall state the purpose or purposes of the meeting, such request to be delivered to the Board or the president. The Board shall call and provide notice of the special meeting to the members within sixty (60) days of receipt of a proper request and the president shall conduct the special meeting (unless such responsibility is delegated to the Manager or another Board Member). No business shall be transacted at a special meeting except as stated in the notice.

Section 4. Place of Meetings. The Board may designate any place in Salt Lake County, State of Utah, as the place of meeting for any annual meeting or for any special meeting called by the Board.

Section 5. Notice of Meetings. The Board, president, or secretary shall cause written notice of the time, place, and purpose of all meetings of the members, whether annual or special, to be delivered, not more than fifty (50) nor less than ten (10) days prior to the meeting, to each member of record entitled to vote at such meeting. Except as otherwise required by law, notice of meeting and notice to Members for other purposes shall be in writing and shall be deemed valid if provided by any of the below methods:

- (a) personal delivery, which shall be deemed effective upon delivery with written receipt;
- (b) regular U.S. mail, first-class postage prepaid, addressed to the Member at the most recent address furnished by the member, or if no address shall have been furnished, to the street address of such Owner's Lot. Notice by regular mail shall be deemed effective seventy-two (72) hours after mailing;
- (c) electronic mail to an electronic mail address provided by the Member or from which the Member has communicated with the Association, the Board, or Manager (so long as no indication is received that the electronic mail may not have been received). Notice by electronic mail shall be deemed effective upon sending;
- (d) facsimile to a number provided by a Member or from which the Member has communicated with the Association, Board, or Manager (so long as no indication is received that the facsimile may not have been received). Notice by facsimile shall be deemed effective upon sending.
- (e) posting on the Association website or webpage, which shall be deemed effective upon posting; or
- (f) any other method that is fair and reasonable given the circumstances and the subject matter of the notice and not prohibited by law.

Notwithstanding anything to the contrary in this Section, any Member may make written

request to receive notice from the Association by regular U.S. mail. Each member shall register with the Association such member's current mailing address and email address (unless written request for notice by mail is made) for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, the Member's Lot address shall be deemed to be the registered address for purposes of notice hereunder. If ownership of a Lot is jointly held, notice to any one of the joint Owners shall be effective as to all joint Owners and in no event shall the Association be required to give more than one (1) notice per Lot. In the event any joint owners send conflicting notice demands, notice shall be proper if mailed by regular U.S. mail to the Lot address.

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

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

Section 8. Quorum. At any meeting of the Members, the Members and proxy holders present (in person or by video or telephone conferencing) shall constitute a quorum for the transaction of business.

Section 9. Proxies. At each meeting of the Members, each Member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Member or by the Member's attorney duly authorized in writing. If a membership is jointly held, an instrument authorizing a proxy to act executed by any joint membership holder may be presumed to be authorized by all such joint membership holders unless a written objection is received by the Association within ten (10) days of the exercise of the instrument. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the secretary of the

Association or Manager.

Section 10. Votes. Each Lot shall have one vote, to be cast in person by the Owner or by proxy, with respect to each matter submitted to a vote of the Members, provided, the owner of the Lot is current on all Assessments. During the Declarant Control Period, no vote need be exercised for Lots that Declarant or an affiliate of Declarant own, rather, Declarant's consent shall be required for various actions of the Association or the Board as provided for in these Bylaws, the Declaration and the Master Residential Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Members present or represented by proxy at a meeting, unless a greater proportion is required by these Bylaws, the Declaration, the Master Residential Declaration, or Utah law.

Section 11. Meetings by Telecommunications. Any regular or special meeting of the Members may be conducted through the use of any means of telephonic or video communication reasonably available to the Association and the Members, as determined by the Board, in its discretion, provided, however, that all Persons participating in the meeting can communicate with each other in real time. Notice of any such meeting under this Section shall include call in or login information. Any Member or proxy holder participating in meeting permitted under this Section shall be deemed present, in person, at the meeting.

Section 12. Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, form of proxies, and method of ascertaining Members present shall be deemed waived if no objection thereto is made at the meeting.

Section 13. Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the Members may be taken without a meeting, if consent in writing, setting forth the action so taken, shall be signed by more than fifty percent (50%) of the Members entitled to vote with respect to the subject matter thereof, unless the subject matter requires a greater approval threshold under the Declaration or the Act. A Member's signature for consent under this Section may be electronic and any consent under this Section may be transmitted to the Association by email or other electronic means authorized by the Board.

Section 14. Use of Electronic Ballots and Electronic Voting. The Association may utilize electronic ballots with or without a regular or special meeting of the Members for any matter which requires or permits a vote of the Members to the fullest extent permitted by law. Ballots may be may transmitted to or by Members by email or any other electronic means authorized by the Board.

#### ARTICLE IV BOARD OF DIRECTORS

Section 1. General Powers. The property, affairs, and business of the Association shall be managed by the Board. The Board may exercise all of the powers of the Association, whether derived from law, the Articles, these Bylaws, or the Declaration, except those powers which are by law or by the foregoing documents vested solely in the Members. The Board shall, among

other things, prepare or cause to be prepared, plan and adopt an annual budget in accordance with and as set forth in the Declaration and Master Residential Declaration and the Covenant, and cooperate with the Daybreak Community Council and Master Residential Association in levying, assessing and collecting Assessments, and keep or cause to be kept sufficient books and records with a detailed account of the receipts and expenditures affecting the Project and its administration. The books and records shall be available for examination by all Members in accordance with the Act. The Association may require Member requests to inspect or copy books and records of the Association to strictly comply with the provisions of the Act. All books and records shall be kept in accordance with good accounting procedures and shall be audited as required by the Master Residential Declaration or the Declaration, if applicable. The Board may, by written contract, delegate, in whole or in part, to a professional management provider such of its duties, responsibilities, functions, and powers as are properly delegable. The powers and duties of the Board shall be as set forth in the Declaration and the Articles.

Section 2. Board Members, Elections, Terms and Qualifications. Following the termination of the Declarant Control Period, the Board shall be composed of three (3) Board Members, elected by the Members, but can be increased to five (5) Board Members upon the majority vote of the existing Board or the majority vote of the Members at a duly called meeting of the Members. An odd number of Board Members is required. During the Declarant Control period, Board Members shall be appointed by Declarant. During the Declarant Control Period, Declarant, in its discretion, may appoint one or more Members to serve as Board committee members ("Owner Committee Members"). Owner Committee Members may provide input and assist Board Members and the Manager with the administration and operation of the Association and the Project, however, Owner Board Committee Members shall not be Directors as defined under the Act or the Utah Revised Nonprofit Corporation Act and shall not vote on Board matters.

Upon termination of the Declarant Control Period, Board Members shall be elected by the members for a three (3) year term, provided, however, that one Board Member of the first Board elected by the Members shall serve a term of one (1) year and one Board member shall serve a term of two (2) years, as may be determined by the Board Members among themselves, so as to create staggered Board terms going forward for purposes of continuity and to preserve institutional knowledge. To be qualified to serve on the Board, Board Members elected by the Members must be: (a) an Owner or the spouse of an Owner, or, for a Lot owned by a trust or other entity, a trustee or beneficiary of the trust or the duly authorized representative of the entity as reflected in a record on file with the Utah Division of Corporations and Commercial Code, as the case may be; (b) at least eighteen (18) years of age; and (c) current on all Assessments.

Section 3. Regular Board Meetings. The Board shall hold regular meetings at such time and place as a majority of the Board shall determine, in no event less than annually. The Board may hold a regular meeting directly after the annual meeting of the members without call or separate notice. Except as otherwise provided in this Article and by the Act, regular and special Board meetings shall be open to Members and the Board shall provide reasonable time at such



meeting for Member comment, as determined by the Board, in its discretion, provided, however, that Members shall not be permitted to vote on any Board matter or to interfere with the conducting of Board business at the meeting.

Section 4. Closed Executive Sessions. Consistent with the Act, the Board may close any regular or special Board meeting and meet in executive session or may schedule a closed executive session independently from an open regular or special Board meeting for any and all purposes permitted under the Act. Meeting minutes shall not be required for any closed executive session of the Board.

Section 5. Special Meetings. The Board shall hold special meetings when called by written notice of the president or when called by written notice of a majority of the Board.

Section 6. 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. Except in case of emergency, the Board shall notify each Board Member of meetings at least ten (10) days in advance by any method for giving notice provided for in these Bylaws or otherwise permitted by law. Notice of any Board meeting may be waived by a Board Member in writing. Notice of a meeting also shall be deemed given to any Board Member who attends the meeting without making objection before or at its commencement of the meeting about the lack of adequate notice.

Section 7. Quorum and Manner of Acting. A majority of the then-authorized number of Board Members shall constitute a quorum for the transaction of business at any meeting of the Board. Except as otherwise required in these Bylaws, the Declaration, or by Utah law, the act of a majority of the Board Members present at any meeting at which a quorum is present shall be the act of the Board. The Board Members shall act only as a Board, and individual Board Members shall have no powers as such. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of Board Members, 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, the president may adjourn the meeting announce a date and time not less than five (5) nor more than thirty (30) days from the date of the original meeting. At the reconvened meeting, if a quorum is present, the Board may transact, without further notice, any business it might have transacted at the original meeting.

Section 8. Compensation. No Board Member shall receive compensation for any services that such Board Member may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in performance of the Board Member's duties as a Board Member to the extent such expenses are approved by the Board and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in such capacity.

Section 9. Resignation and Removal. A Board Member may resign at any time by

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

Section 10. Vacancies. If vacancies shall occur in the Board by reason of the death, resignation, or disqualification of a Board Member, the Board Members then in office shall continue to act, and such vacancies shall be filled by a vote of the Board Members then in office, for the remainder of such term. Any vacancy in the Board occurring by reason of removal of a Board Member by the Members shall be filled upon such removal by the election of a successor by the Members for the remainder of the term of such Board Member. If vacancies shall occur in the Board by reason of death, resignation, or removal of a Board Member appointed by Declarant, such vacancies shall be filled by appointments to be made by Declarant.

Section 11. Informal Action by Board Members. Any action that is required or permitted to be taken at a meeting of the Board, may be taken without a meeting via email or other electronic means if:

- (a) a vote on such action is called by electronic means by a Board Member and reasonably identifies the action to be voted upon;
- (b) a majority of the Board Members vote in favor of the action by signed electronic means;
- (c) no Board Member exercises the right to demand such action be taken at a properly noticed meeting; and
- (d) no Board Member revokes their vote prior to receipt of the number of votes required for the action.

For purposes of this Section, "electronic means" shall mean and include electronic mail, email, letter, facsimile, text message, or other electronic document that is signed by the Board Member. Additionally, for purposes of this Section, "signed" shall mean and include any indication contained in the electronic means utilized for voting that the vote is from and consented to by the Board Member who is purported to have sent it. For example, a typed name at the bottom of an email or an email from an address used by the Board Member for Board business satisfies the requirement for a signature.

## ARTICLE V OFFICERS

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

Section 2. Election, Tenure, and Qualifications. The officers of the Association shall be chosen by the Board annually at the regular Board meeting following annual meeting of the Member or as soon thereafter as may be practicable. Any one Board Member may hold any two (2) or more of such offices; provided, however, that the president may not also be the secretary. No Board Member holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one office.

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

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

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

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

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

Section 8. Treasurer. The treasurer, if appointed, shall: (a) have charge and custody of and be responsible for all funds of the Association and have primary responsibility to prepare the Association's budget; (b) receive and give receipt for moneys due and payable to the Association

from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, trust companies or other depositories as shall be determined by the Board; and (c) in general perform all of the duties incident to the office of the treasurer and such other duties as from time to time may be assigned to the treasurer by the president or by the Board.

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

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

## ARTICLE VI COMMITTEES

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

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

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

Section 4. Resignation and Removal. Any member of any committee designated hereunder by the Board may resign at any time by delivering a written resignation to the president, the Board,

or the presiding officer of the committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, for or without cause, remove any member of any committee.

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

#### ARTICLE VII FISCAL YEAR

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

#### ARTICLE VIII RULES AND REGULATIONS

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

#### ARTICLE IX AMENDMENTS

Section 1 By Declarant. Prior to termination of the Declarant Control Period, Declarant may unilaterally amend these Bylaws. Thereafter, Declarant may unilaterally amend these Bylaws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots.

Section 2. By Members. These Bylaws may be amended, modified, or repealed and new bylaws may be made and adopted by the Members upon the affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association and, during the Declarant Period of Control, the consent of Declarant.

Section 3. Recorded Instrument Required. Any amendment of these Bylaws under this Article shall not be effective unless and until a written instrument setting forth the amendment and, in the case of amendment by the members, the percentage of the Total Votes of the Association

approving the amendment and verified by the Association's secretary, is duly executed by the president of the Association or Declarant, as the case may be, and recorded in the Official Records of Salt Lake County, Utah. After recording, a copy of the amended bylaws shall be provided to each Member.