

PART OF  
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When Recorded Return To:  
Holmes DB Condos, LLC  
126 W. Sego Lily Dr., Suite 250  
Sandy, UT 84070

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RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
MERIDIAN TITLE  
BY: eCASH, DEPUTY - EF 68 P.

**DECLARATION OF CONDOMINIUM  
FOR  
DB CONDOMINIUMS**

THIS DECLARATION OF CONDOMINIUM FOR DB CONDOMINIUMS (“**Declaration**”) is effective when recorded with the Salt Lake County Recorder’s Office by Holmes DB Condos, LLC, a Utah limited liability company (“**Declarant**”), pursuant to the Utah Condominium Ownership Act. The recording of this Declaration is consented to by: VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company (as successor-in-interest to Kennecott Land Company, a Delaware corporation, as successor-in-interest to Daybreak Development Company, a Delaware corporation formerly known as Kennecott Land Residential Development Company, a Delaware corporation) (“**Founder**”).

**RECITALS**

A. On February 27, 2004, Founder’s predecessor-in-interest caused to be recorded that certain Community Charter for Daybreak, as Entry No. 8989518, in Book 8950, beginning at Page 7784, in the Official Records of Salt Lake County, Utah, as amended by that certain Amendment No. 1 to Community Charter for Daybreak, recorded on August 26, 2004, as Entry No. 9156782, in Book 9030, beginning at Page 3767, in the Official Records of Salt Lake County, as further 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, as further 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, as further amended by that certain Amendment No. 4 to Community Charter for Daybreak, recorded March 2, 2010, as Entry No. 10907211, beginning at Page 7337, in the Official Records of Salt Lake County, as further amended by that certain Amendment No. 5 to Community Charter for Daybreak, recorded November 24, 2010, as Entry No. 11082445, beginning at Page 9882, in the Official Records of Salt Lake County, as further amended by that certain Amendment No. 6 to Community Charter for Daybreak, recorded July 1, 2016, as Entry No. 12312667, beginning at Page 4380, in the Official Records of Salt Lake County, and as further amended by that certain Amendment No. 7 to Community Charter for Daybreak, recorded July 3, 2018, as Entry No. 12804618, beginning at Page 7505, in the Official Records of Salt Lake County (as may be amended and/or supplemented from time to time, the “**Master Residential Declaration**”), to govern the phased development of a community commonly known as “**Daybreak**” located in the City of South Jordan, Utah, and

further to govern the Daybreak Community Association, Inc. (the “**Master Residential Association**”).

B. In addition, on February 27, 2004, Founder’s predecessor-in-interest caused to be recorded that certain Covenant for Community for Daybreak, as Entry No. 8989517, in Book 8950, beginning at page 7722, in the Official Records of Salt Lake County, Utah (as may be amended 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. Pursuant to Section 2.6 of the Master Residential Declaration, the Founder may establish separate owners’ associations to administer additional covenants applicable to particular areas within Daybreak.

D. The real property situated in Salt Lake County, described in **Exhibit A**, attached to and incorporated in this Declaration by reference is hereby submitted, together with all buildings and improvements previously, now, or hereafter constructed in the Project, and all easements and rights appurtenant thereto, to a condominium project consisting of residential Units and related Common Area pursuant to Utah Code § 57-8-1 *et seq.* (the “**Project**”).

E. The Project is and will continue to be subject to the terms and conditions, covenants and restrictions set forth in the Master Residential Declaration and the Covenant, and will also be governed by the Master Residential Association and the Daybreak Community Council.

F. Because of the attached nature and undivided interests appurtenant to condominiums, the Project requires special services not provided to all property owners within Daybreak. Therefore, Declarant desires to make the Project subject to this Declaration.

G. Declarant is the owner of the real property subject to this Declaration. By signing this Declaration, Declarant consents to subjecting the Project to the terms, covenants and restrictions contained herein.

H. Declarant hereby desires to establish for the mutual benefit of all future Owners and Occupants of the Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth herein, which shall run with and be a burden upon each Unit within the Project.

I. Declarant desires to create an association of condominium owners, which entity shall possess the power to maintain and administer the Common Areas, collect and disburse assessments and charges hereinafter provided for, and administer and enforce the provisions of this Declaration. It is intended that this Declaration shall serve as a binding contract between the Association and each Owner; however, nothing herein is intended to create a contractual relationship between Declarant and the Association or Declarant and any Owner, or to inure to the benefit of any third-party. Additionally, it is not intended that this Declaration be read in conjunction with any deed or real estate purchase contract to create privity of contract between Declarant and the Association.

J. Declarant intends that the Owners, Occupants, Lenders, and all other persons hereafter acquiring any interest in the Project shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is recorded in furtherance of establishing a general

plan of condominium ownership for the Project, and for establishing rules for the use, occupancy, management, and enjoyment thereof.

K. Declarant explicitly reserves for itself the option in the future to expand the Project to include additional real property and improvements thereto.

### DECLARATION

**NOW, THEREFORE**, Declarant hereby declares that the Project is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied, and enjoyed subject to the following Restrictions. These Restrictions are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use, and occupancy of the Project; they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth in the recitals above.

### ARTICLE I DEFINITIONS

As used herein, unless the context otherwise requires, the following terms and phrases shall have the meanings set forth in this Article. All terms defined in the Recitals shall have the meanings set forth in the Recitals and in this Article.

1.1 **“Act”** shall mean the Utah Condominium Ownership Act, at Utah Code § 57-8-1 *et seq.*, as the same may be amended from time to time.

1.2 **“Additional Land”** shall mean without limitation, any parcel of land that is annexed into the Project in accordance with the provisions outlined in this Declaration. The Additional Land is identified on **Exhibit E**.

1.3 **“Articles”** shall mean the Articles of Incorporation for the Association, as may be amended and restated from time to time.

1.4 **“Assessments”** shall mean any charge imposed or levied by the Association against Units including but not limited to Annual Assessments, Special Assessments, Individual Assessments, and all corresponding late fees, fines, and interest, as provided in this Declaration.

1.5 **“Association”** shall refer to DB Condominium Owners Association, the membership of which shall include each Owner of a Unit in the Project, as required by the Act. The Association shall be incorporated as a Utah nonprofit corporation, which if invalidated for any reason, may be reincorporated at the discretion of the Board of Directors and may utilize such name that the Board of Directors shall select in any such reincorporation or reorganization. In case of the formation of any such entity, “Association” as used in this Declaration shall refer to that entity.

1.6 **“Board Member”** shall mean a duly qualified and elected or appointed member of the Board of Directors of the Association.

1.7 **“Board of Directors”** or **“Board”** shall mean the Board of Directors of the Association elected pursuant to the Bylaws and serving as the management body of the Association. The term Board of Directors shall have the same meaning as “Management Committee” under the Act.

1.8 **“Bylaws”** shall mean the Bylaws adopted by the Association pursuant to § 57-8-15 of the Act for the purpose of regulating the affairs of the Association, as the same may be amended from time to time. The initial Bylaws of the Association are attached hereto as **Exhibit C**.

1.9 **“Common Area”** shall mean, refer to, and include:

- (a) the land included within the Project;
- (b) all foundations, roofs, columns, girders, beams, supports, exterior walls and surfaces, exterior windows, exterior doors, gutters, downspouts, soffit, and fascia of the buildings in the Project;
- (c) all halls, corridors, stairs, and stairways, entrances and exits which are designed for the use of more than one Unit;
- (d) outdoor grounds and landscape, outdoor lighting, fences, sidewalks, parking spaces, streets, and other installations or facilities existing for common use as set forth on the Plat;
- (e) all private roadway improvements and parking areas;
- (f) all installations of utility services within the Project such as power, light, gas, water, and sewer, including all pipes, wires, conduits or other utility lines that serve more than one Unit, including such facilities that may be located within buildings or Units;
- (g) any mechanical, plumbing, or other equipment, apparatus, and installations serving more than one Unit and existing for common use; and
- (h) everything included within the Project, excluding the individual Units, as identified on the Plat; all other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.

1.10 **“Common Expenses”** shall mean: (a) all sums lawfully assessed against Units; (b) expenses of administration, maintenance, management, operation, repair, and replacement of the Common Areas maintained by the Association; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as Common Expenses by the Association or its Owners; (e) expenses declared Common Expenses by the Declaration; (f) expenses levied against the Association by the Master Residential Association for its allocated portion of the Master Association’s common expenses, if any; and (g) other miscellaneous charges incurred by the Association or the Board of Directors pursuant to the Act, this Declaration, the Bylaws, or the Rules.

1.11 **“Community-Wide Standard”** shall have the meaning assigned in the Master Residential Declaration.

1.12 **“Covenant”** shall mean the Covenant for Community for Daybreak, recorded as Entry No. 8989517, in Book 8950, beginning at page 7722 in the Official Records of Salt Lake County, Utah, as it may be amended and/or supplemented from time to time.

1.13 **“Daybreak”** shall mean the community commonly known as *Daybreak* located in South Jordan, Utah, subject to the Master Residential Declaration and/or the Covenant, as each may be expanded from time to time.

1.14 **“Daybreak Community Council”** shall mean the Daybreak Community Council, Inc., a Utah nonprofit corporation.

1.15 **“Declarant”** shall mean and refer to Holmes DB Condos, LLC, a Utah limited liability company, and any successor in interest.

1.16 **“Declaration”** as mean and refer to this Declaration and shall include any and all amendments and supplements thereto.

1.17 **“Design Guidelines”** shall have the meaning assigned in the Master Residential Declaration.

1.18 **“Founder”** shall mean VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company, as successor-in-interest to Kennecott Land Company, a Delaware corporation, which is the successor-in-interest to Daybreak Development LLC, a Delaware limited liability company (formerly known as Kennecott Land Residential Development Company, a Delaware corporation).

1.19 **“Governing Documents”** shall mean collectively, the Declaration, Articles, Bylaws, Plat, and Rules adopted by the Board.

1.20 **“Lender”** shall mean a holder of a mortgage or deed of trust on a Unit.

1.21 **“Limited Common Area”** shall mean a portion of the Common Area specifically designated as a Limited Common Area in this Declaration or the Plat and allocated by this Declaration or the Plat for the exclusive use of one or more Units to the exclusion of other Units. Conveyance of a Unit includes the use and enjoyment of the Limited Common Area appurtenant to the Unit. The Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit. Limited Common Area includes the driveways. The use and occupancy of the Limited Common Areas shall be reserved to their associated Unit; and each Unit Owner is hereby granted an irrevocable license to use and occupy said Limited Common Area. If an Owner’s Limited Common Area is not depicted on the Plat, or there is a dispute over its boundaries, the Board shall have the authority and discretion to determine Limited Common Area boundaries and the Board’s decision shall be binding.

1.22 **“Manager”** shall mean a person, persons, or entity, if any, selected by the Board of Directors to manage the affairs of the Project.

1.23 **“Master Residential Association”** shall mean the Daybreak Community Association, Inc., a Utah nonprofit corporation.

1.24 **“Master Residential Declaration”** shall mean the Community Charter for Daybreak, recorded as Entry No. 8989518, in Book 8950, beginning at Page 7784 in the Official Records of Salt Lake County, Utah, 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, as further 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, as further 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, as further amended by that certain Amendment No. 4 to Community Charter for Daybreak, recorded March 2, 2010, as Entry No. 10907211, beginning at Page 7337, in the Official Records of Salt Lake County, as further amended by that certain Amendment No. 5 to Community Charter for Daybreak, recorded November 24, 2010, as Entry No. 11082445, beginning at

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1.25 **“Occupant”** shall mean any Person, including an Owner, living, dwelling, visiting, or staying in a Unit. This includes, but is not limited to an Owner’s lessees, tenants, family members, guests, agents, invitees, and representatives.

1.26 **“Owner”** or **“Unit Owner”** shall mean the Person or Persons who are vested with record title of a Unit, and whose interest in the Unit is held in fee simple, according to the records of the Salt Lake County Recorder; however, Owner shall not include a Person who holds an interest in a Unit merely as security for the performance of an obligation. If a Unit is subject to an executory purchase contract, the contract purchaser shall be considered the Owner unless the seller and buyer agree otherwise and inform the Board in writing of such alternative arrangement. An Owner under this Declaration is also by definition an “Owner” under Section 2.4 of Master Residential Declaration and under Section 1.6 of the Covenant.

1.27 **“Period of Declarant Control”** shall mean the period of time during which the Declarant may appoint and remove Board Members as set forth in § 57-8-16.5 of the Act. The Period of Declarant Control shall commence on the recording date of the first deed transferring title of a Unit from Declarant to a third party purchaser, and shall terminate on the occurrence of the earliest of the following events: (i) six (6) years from the date the first deed to a Unit is recorded, (ii) six (6) months after the date on which at least three-fourths of all of the Units have been conveyed, including any Units to be constructed on the Additional Land, or (iii) the Declarant executes and records a written waiver of its right to control the Association. The expiration of the Period of Declarant Control has no effect on the termination of all other Special Declarant Rights set forth in this Declaration.

1.28 **“Person”** shall mean a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency or other legal entity capable of holding title to real property.

1.29 **“Plat”** shall mean all of DB Condominium plats that are part of the Project recorded with the Salt Lake County Recorder. The term Plat shall specifically include any additional, amended, or supplemental plat(s) that may be recorded in the future. The Plat is hereby incorporated into and made an integral part of this Declaration, and all requirements and specifications set forth on the Plat and required by the Act are deemed included in this Declaration. If any conflict exists between the Plat and this Declaration, the Declaration shall control.

1.30 **“Project”** shall include the real property described in **Exhibit A** and all Additional Land, together with the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto and shall at any point in time mean and refer to the DB Condominium development.

1.31 **“Restrictions”** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.

1.32 **“Rules”** shall mean and refer to the rules, resolutions, and/or regulations adopted by the Board of Directors.

1.33 **“Supplemental Declaration”** shall mean a written instrument recorded in the records of the Salt Lake County Recorder, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

1.34 **“Undivided Interest”** shall mean and refer to the undivided ownership interest of each Unit (which may be expressed as a percentage or fraction in this Declaration) in the Common Areas, the Common Expense liability, and votes in the Association allocated to each Unit as set forth on **Exhibit B** attached hereto.

1.35 **“Unit”** shall mean and refer to a separate physical part of the Project intended for independent use, consisting of rooms or spaces located in a building. Units are shown on the Plat. Units are bounded by the interior surfaces of the structural members of the walls, floors, and ceilings along the perimeter boundaries of the Units. A Unit includes all wallboard, surfaces of interior structural walls, floors, ceilings, interior doors, and trim, consisting of *inter alia*, and as appropriate, drywall, wallpaper, paint, flooring, carpeting, and tile. Mechanical equipment, ducts, pipes, and appurtenances located within or outside Unit boundaries, but designated and designed to serve only the Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Unit. All pipes, wires, conduits, or other public utility lines or installations serving only the Unit, or any other property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit. All pipes, wires, conduits and utility lines serving more than one Unit are Common Area, regardless of whether such facilities are located within the boundaries of a Unit. The interior areas of the garage appurtenant to each Unit as defined above, shall also be part of the Unit. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Undivided Interest in the Common Area appurtenant to such Unit.

## ARTICLE II THE CONDOMINIUM PROJECT

2.1 **Submission.** The Declarant hereby submits the real property described with particularity on **Exhibit A** to the Act. The Declarant hereby declares that the Project and all of the Units shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions in this Declaration, the Master Residential Declaration and the Covenant, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors, and assigns.

2.2 **Name and Location.** The Project is known as DB Condominiums. The Project is located in Salt Lake County. The legal description of the real property included in the Project is set forth in **Exhibit A**.

2.3 **Interpretation of Declaration and Applicability of the Act.** The Declarant intends that the Project shall be governed by the Act, except where the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act.

2.4 **Registered Agent.** The Registered Agent, as listed with the Utah State Department of Commerce, Division of Corporations and Commercial Code, shall be the person to receive

service of process for the Association pursuant to § 57-8-10(2)(d)(iii) of the Act, unless such time as the Board of Directors duly appoints a new agent. The Board of Directors may change the Registered Agent at any time and without Owner vote or consent.

2.5 **Expansion of Project.** The Project may be expanded by the Declarant by the recording of a Supplemental Declaration in accordance with the provisions of Article XVI.

### **ARTICLE III DESCRIPTION OF IMPROVEMENTS, UNDIVIDED INTEREST**

3.1 **Description of Improvements.** The Project will include multi-story buildings with condominium Units and a number of attached garage parking. Additional Units and improvements may be added in subsequent phases upon the Additional Land as reserved by the Declarant. Other major improvements include asphalt roadways, open parking spaces, fences, concrete patios, and outdoor lighting and landscaping. The buildings have concrete foundations, and are wood framed with exterior siding and asphalt shingle roofs. The Plat shall supplement the information and descriptions in this section. It is contemplated that the Project will consist of an initial 10 total residential Units; and the Project may be expanded by the Declarant by the recording of a Supplemental Declaration in accordance with the provisions of Article XVI, including the possible expansion of the Project by adding an additional 110 residential Units. However, the total number of Units in the Project may vary based on government approvals, building conditions, or other factors outside the control of the Declarant.

3.2 **Description and Legal Status of Units.** The Plat(s) show each Unit's building designation, location, and dimensions from which its area may be determined, those Limited Common Areas which are reserved for the Unit's use, and the Common Areas to which it has immediate access. All Units are residential Units. All Units shall be capable of being independently owned, encumbered, and conveyed and consist of a Unit and an appurtenant undivided interest in and to the Common Area.

3.3 **Undivided Interests in the Common Area.** Each Unit shall have an equal Undivided Interest. Any difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change the Undivided Interests

(a) The Undivided Interest of each Unit shall be calculated by dividing the number 1 by the total number of Units in the Project. The Undivided Interest appurtenant to each Unit is set forth in **Exhibit B** attached hereto and incorporated herein by this reference, and may be displayed as a fraction or a percentage.

(b) If any Units are legally added to or withdrawn from the Project, the Undivided Interest shall be recalculated in accordance with the formula set forth above and recorded via supplemental declaration by the Declarant, or following the Period of Declarant Control, by the Association, through the Board. Otherwise, the Undivided Interest shall have a permanent character and shall not be altered without the express consent of the Owners expressed in an amendment to this Declaration.

3.4 **Master Residential Declaration's Full Force and Effect.** The Master Residential Declaration shall remain in full force and effect, provided, however, that in the event of a specific and clear conflict between the Master Residential Declaration and this Declaration, the terms of this Declaration shall control, but only in connection with the Project and the Lots. The members of the Association shall also be members of the Master Residential Association and shall be



entitled to all benefits of such membership, and shall also be subject to the restrictions and covenants of the Master Residential Declaration. The governance of the Master Residential Association shall be separate and distinct from the governance and operation of the Association. The Association shall be subordinate to the Master Residential Association. The Association may enter into agreements or arrangements with the Master Residential Association to provide for the management and operation of any Common Areas and facilities or amenities for the benefit and use of the Members.

3.5 **Common Area.** Any real property depicted on the Plat (including any amendments or additions thereto) as "open space", "parks", or "common area", or any of such areas depicted on any future plat which Declarant adds as Additional Land to the Project, is to be owned, managed and controlled by either (at Declarant's discretion): (a) the Association established hereunder; or (b) 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 Units 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 IV MAINTENANCE AND UTILITIES**

4.1 **Owner Maintenance.** Each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of all fixtures, items, structures, and other items stated in this Declaration or identified on the Plat to be part of a Unit and such other items designated herein. Such obligation shall include, without limitation, the obligation to maintain, repair, replace, and keep in proper operating condition, and for any items and areas generally visible from outside of the Unit, to maintain them in a clean, well-maintained, uniform, undamaged, and tidy condition, all of the following:

(a) all interior doors, exterior doors, and garage doors, including door trim, hardware and glass, and the cleaning and maintenance of the interior and exterior sides of the exterior doors;

(b) all paneling, tiles, wallpaper, paint, carpet, finished flooring, and any other materials constituting the finished surfaces of floors, ceilings, or interior walls;

(c) all sewer and drainage pipes, water, power, and other utility lines in an Owner's Unit between the points at which the same enter the Owner's Unit and the points where the same join the utility lines serving other Units; and

(d) any of the following whether inside or outside of the Unit, which serve an Owner's Unit exclusively: fans, plumbing fixtures, stoves, dishwashers, refrigerators, hot water heaters, air conditioning units (including compressors, condensers, and forced air units), light bulbs in exterior lighting fixtures, intercoms, security systems, and such other appliances, fixtures, and decorations as an Owner may install. If any of the aforementioned fixtures or appliances serve more than one Unit, then the Owners of the Units benefitted by such equipment shall be responsible to jointly maintain the equipment or the Association may elect to maintain the equipment in the Board's sole discretion.

4.2 **Modifications to Units.** Owners may make nonstructural alterations within the Owner's Unit that do not impact the uniform appearance of the Units, but an Owner shall not make any structural alterations or alterations to any part of the exterior of a building (such as windows, light fixtures, and exterior doors), the Common Area, or the Limited Common Area without the prior written approval of the Board. The Board may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular Person, or that they comply with particular color schemes, material requirements, or other standards.

(a) Any Owner or Owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by the International Building Code, or to cause any such work to be performed, shall first make application to the building official of Salt Lake City, and obtain the required permit.

(b) Owners shall be liable for any and all damage and/or liability associated with any remodeling or maintenance work including damage to the Unit, another Unit, or any Common Area, or Limited Common Area. The following activities are prohibited without prior written permission of the Board: (1) any use of the Common Area for staging, storage, assembly, or construction; (2) the creation or implementation of any visual, audible, or aromatic nuisance or any other nuisance that impacts on the use and enjoyment of any one or more of the other Units; (3) any blocking of the Common Area by vehicles, materials, or persons; or (4) any use of the Association's garbage and disposal facilities for the disposal of debris, materials, or other items related to remodeling.

(c) All modifications and improvements shall be completed in conformance with the Community-Wide Standard.

#### 4.3 **Association Maintenance of Common Area and Limited Common Area**

(a) Maintenance of Common Area. Except as otherwise provided specifically herein, the Association, through its Board or its fully delegated representative, shall repair, maintain, replace, pay all expenses associated with, and otherwise manage the Common Area as that area is defined in this Declaration and the Plat. This shall include the right to modify, remove fixtures upon, add to, place signs upon, and otherwise modify the Common Area. The Association shall do all such other and further acts that the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

(b) Maintenance of Limited Common Area. The Association shall repair, maintain, and replace the Limited Common Areas. Owners shall be responsible to ensure that the Limited Common Area within their exclusive control is kept in a clean, sanitary, and uncluttered condition.

(c) Standard of Maintenance. All maintenance, repair and replacement obligations shall be performed in a manner consistent with the Master Residential Declaration and the Community-Wide Standard.

(d) Assessment for Maintenance Expenses to Specific Owner. If the need for maintenance or repair is caused through the willful or negligent act of an Owner or an Occupant, the Board may cause the needed maintenance or repair to be made. In such a case, the Association shall assess the Owner the reasonable cost of such maintenance or

repair. Failure to timely report the need for maintenance or repair shall be deemed a negligent act for purposes of this Article.

(e) Maintenance Allocation Chart. A maintenance allocation chart has been attached hereto as Exhibit D, which further defines and clarifies Association and Owner maintenance, repair, and replacement responsibilities. If there is a conflict between Exhibit D and this Article, the allocations in Exhibit D shall control.

4.4 **Default in Maintenance.** If an Owner or Occupant fails to maintain a Unit or Limited Common Area for which the Owner is responsible, as provided by this Article, or make repairs thereto in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the attractive appearance and value of the Project, following written notice from the Association, the Association shall have the right, but not the obligation, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to take the corrective action that the Board deems necessary. Expenses incurred by the Association in taking the corrective action shall be levied against the Unit and treated as an Individual Assessment. The Individual Assessment shall be due and payable immediately and shall be secured by the Assessment lien created in this Declaration.

4.5 **Utilities.** The charges from utilities that are metered separately to each Unit shall be the responsibility of the respective Owners. Utility costs and charges that are metered collectively to the Association shall be a Common Expense.

## ARTICLE V ASSOCIATION MEMBERSHIP, VOTING, MANAGEMENT

5.1 **Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board.

5.2 **Legal Organization.** The Association is a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.

5.3 **General Powers and Obligations.** The Association shall have, exercise, and perform all of the following powers, duties, and obligations:

- (a) The powers, duties, and obligations granted to the Association by this Declaration, the Bylaws, and the Articles;
- (b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
- (c) The powers, duties, and obligations of a condominium association pursuant

to the Act;

(d) The powers, duties, and obligations not reserved specifically to the Owners;  
and

(e) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to the Governing Documents.

5.4 **Membership.** Every Owner shall be a member of the Association so long as such Owner owns a Unit. Association membership shall automatically terminate when an Owner ceases to own a Unit. If title to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.

5.5 **Voting.** Except as otherwise disallowed in this Declaration or the Bylaws, Owners shall be entitled to vote their Undivided Interest pertaining to the Unit owned by that Owner at any meeting of the Owners, but only one (1) vote shall be cast per Unit. In the event there is more than one (1) Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than establishing a quorum.

5.6 **Board of Directors.** The governing body of the Association shall be the Board of Directors. Except where a matter or vote is specifically reserved to the Owners, the Board shall act in all instances on behalf of the Association. Board Members shall be elected pursuant to the provisions set forth in the Bylaws. The Bylaws may set forth qualifications and requirements for serving on the Board.

Notwithstanding the foregoing, during the Period of Declarant Control, the Declarant shall have the sole authority to act as the Board of Directors, or to appoint Board Members. Declarant appointed Board Members shall not be bound by the qualification requirements in the Declaration and Bylaws.

5.7 **Right to Enter Units.** The Association acting through the Board, or its duly authorized agent, shall have the right at all times upon reasonable notice of at least 48 hours, except for in an emergency, to enter upon or into any Unit, without trespass, to inspect, evaluate, assess, and appraise, to abate any infractions, to make repairs or correct any violation of any of the Governing Documents, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such assessment to be secured by a lien provided in Article VII. Notice shall not be necessary in case of an emergency originating in or threatening such Unit or any other part of the Project, including the sound or sight of running water in a Unit, the smell or sight of smoke or gas in a Unit, abnormal or excessive noises; and foul smell. Owners shall maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have. Owners shall be responsible for any costs incurred by the Association as a result of entering a Unit under this Section and shall indemnify and hold harmless the Association for all damages related to such entry.

5.8 **Rules.** The Board may adopt, amend, repeal, enforce, and administer reasonable Rules for the regulation and operation of the Project. The Rules may address any issues including

those addressed in this Declaration and the Bylaws. The Rules may supplement, clarify, and add detail to issues otherwise addressed in this Declaration and the Bylaws so long as they do not contradict the same. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive. Pursuant to Utah Code § 57-8-8.1(7), the requirements of Utah Code §§ 57-8-8.1(1) through (5), except subsection (1)(b)(ii), are hereby modified to not apply to the Association.

**5.9 Community-Wide Standard.** The Board shall cooperate with the Master Residential Association in upholding and enforcing the Community-Wide Standard.

**5.10 Remedies Available to the Board.** In addition to any other remedies allowed or provided in this Declaration for any violation of the Declaration, Bylaws, or Rules, the Board may adopt any one or more of the following: (1) impose and levy fines for violation of the Governing Documents; (2) terminate an Owner's right to receive utility services paid as a Common Expense; (3) terminate an Owner's right to access and use Common Area facilities; (4) terminate an Owner's voting rights as further provided herein; (5) instigate litigation to enforce the provisions of this Declaration or any other common law or statutory right which the Association is granted; and (6) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

**5.11 Hearings.** The Board shall have the authority (but shall not be required) to create a reasonable hearing process applicable in case the Board or Association takes adverse action related to any particular Owner or group of Owners. The Board shall not be under any obligation to offer a hearing process, except as required by law or by this Declaration, and in any such process, shall have the absolute authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process.

**5.12 Reserve Fund.** The Association shall maintain an adequate reserve fund for the maintenance, repair and replacement of the Common Area, as determined by the Board. Reserve funds may be collected as part of the Annual Assessments. To the extent the Board deems necessary, surplus monies of the Association may be retained as additional reserves rather than refunded to the Owners or credited to future Assessments.

**5.13 Availability of Governing Documents.** The Association shall maintain current copies of the Governing Documents and the Association's books, records, meeting minutes, and financial statements (as required by law) available for inspection, upon written request by any Owner or Lender. The term "available" as used in this Section shall mean available for inspection within a reasonable time after delivery of a written request to a Board Member and at a location convenient to the Board within the Project or at such other location as may be agreed by the Board and the party requesting. The Association may make the Governing Documents and other Association records available via a website, and if so provided, then the Association shall have met its obligations set forth in this Section for providing any such documents posted thereon.

**5.14 Contracts and Agreements.** The Association may employ the services of any person or corporation as managers, hire employees to manage, conduct, and perform the business, obligations, and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, community association managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient for the management, maintenance, and operation of the Project. The Association shall have the right to enter agreements, as the Board deems appropriate, for the provision of utilities or other services that benefit the Association, including any applicable joint use and cross easement agreement with neighboring associations or landowners

5.15 **Managing Agent.** The Board may contract with a professional Manager to assist the Board in the management and operation of the Project and may delegate such of its powers and duties to the Manager as it deems appropriate; reserving the right, however, to control and oversee the administration thereof. Any powers and duties delegated to any Manager may be revoked by the Board at any time, with or without cause.

5.16 **Board Indemnification.** Each past and present Board Member (including the Declarant and its appointees) shall be entitled to defense and indemnification to the fullest extent permitted by the Utah Revised Nonprofit Corporation Act. The right of any Person to be indemnified shall be subject always to the right of the Association by the Board, in lieu of such indemnity, to settle any claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

5.17 **Board Liability.** To the fullest extent permitted by law, the Declarant and each past and present Board Member shall not be liable for any damage, loss, or prejudice suffered or claimed on account of any decision, approval, or disapproval, course of action, act, omission, payment, error, or negligence.

5.18 **Other Indemnification.** The Association and Declarant, during the Period of Declarant Control, hereby release Founder's and Founder's affiliates, and their respective officers, directors, shareholders, beneficiaries, members, partners, agents, employees and attorneys, and their respective successors and assigns (the "**Founder Parties**") from, and waive on their behalf, and on behalf of their successors and assigns, and agree to indemnify, defend and hold harmless Founder and the other Founder Parties from all Claims arising from or caused by any act or failure to act of the Association or its board members, directors or officers or any committee thereof, except for Claims arising because of the acts or omissions of the Master Residential Association and/or Daybreak Community Council, or their governance, or are based on requirements in the Community Charter for Daybreak and/or the Covenant for Community for Daybreak, or in the Master Residential Association's and/or Daybreak Community Council's governing documents. The foregoing shall not be deemed to be a requirement that the Association or the Declarant indemnify, defend or hold harmless any of the Association's own board members, directors, officers, committee members or employees for gross negligence, recklessness, or willful malfeasance of such persons in contravention of applicable law. The right of any person or entity to be defended, indemnified and/or held harmless shall be subject always to the right of the Association through the Board, in lieu of such defense, indemnity and/or holding harmless, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

5.19 **Cooperation with Founder.** Founder or its affiliates are the owners of real property adjacent to or nearby the Project. The plans for such real property currently include development as mixed-use parcels. Different uses may be constructed at different times. Therefore, Units within the Project may be located near other uses when such adjacent or nearby real property is developed, including retail, civic and office property and apartments, townhouses and condominiums. Certain traits of each Unit and the Project may change over time depending on adjacent or nearby uses, such as the view, shade, perceived privacy and amount of traffic. The Association and each Owner hereby acknowledge the plans for adjacent mixed-use development and agree not to challenge or oppose such development with any of the Association, the Master

Residential Association, the Daybreak Community Council, the City of South Jordan or the County of Salt Lake, State of Utah, or any other relevant governing body.

## **ARTICLE VI BUDGET AND ASSESSMENTS**

6.1 **Annual Budget.** The Board shall prepare and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management, and operation of the Association. The Board may revise the budget from time to time as the Board deems appropriate. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until the new annual budget is adopted. The budget shall be made available to Owners within thirty (30) days after adoption. Owners may disapprove a budget according to the provisions of the Act, but not during the Period of Declarant Control.

6.2 **Covenant to Pay Assessments.** Each Owner, (other than Declarant, its related entities, affiliates or successors, or Builders or their affiliates) by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree with each other Owner and with the Association to pay to the Association such Assessments to be fixed, established, and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late fees, collection charges, attorneys' fees, court costs, and other costs of collection as hereinafter provided shall be secured by a continuing lien upon the Unit against which each such Assessment is made in favor of the Association. Each such Assessment, together with such interest, late fees, collection charges, costs and attorney fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due secured by the interest of the Owner in the Unit.

(a) In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments, together with interest, costs, and reasonable attorney fees against the latter for any Assessments authorized by this Declaration up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

(b) A lien to secure unpaid Assessments shall not be affected, canceled, or otherwise eliminated by the sale or transfer of the Unit unless foreclosure by a higher priority encumbrance is involved, in which case the foreclosure will extinguish the lien as required by law for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent or successor Owner from paying further Assessments or from the lien of any future Assessments.

6.3 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purposes of the following: promoting the safety and welfare of the Owners; effecting the management, maintenance, care, preservation and protection of the Project; enhancing the quality of life in the Project; and maintaining and enhancing the value of the Project including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area; or in furtherance of any other duty or power of the Association.

6.4 **Annual Assessments.** Annual Assessments shall be made on a calendar year basis based on each owner's allocated portion of the budget. The Board shall give written notice of each

Annual Assessment not less than fifteen (15) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly installments, on dates established by the Board. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give Owners written notice of the new amount.

**6.5 Special Assessments.** The Board may levy a Special Assessment up to one-thousand five hundred dollars (\$1,500) per Unit per calendar year, payable over such a period as the Board may determine, for the following purposes: (i) defraying, in whole or in part any expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; (ii) the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or (iii) for any other expense incurred or to be incurred as provided in this Declaration. Additional Special Assessments over one-thousand five hundred dollars (\$1,500) in a calendar year may be levied if approved by a majority of Owners who are present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner provided in the notice.

**6.6 Individual Assessments.** In addition to the Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Unit and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or his/her Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Unit and its Owner into compliance with the Governing Documents; and (d) attorney fees (regardless of whether or not a lawsuit is filed), court or collection costs, fines, and other charges relating thereto as provided in this Declaration or other Governing Document.

**6.7 Declarant Assessment Exemption.** Anything to the contrary notwithstanding, the Declarant, or its affiliates or successor, shall not be obligated to pay Assessments on any Units owned by them or their affiliated entities until such time as the Declarant elects in writing to pay Assessments, and only for so long as the Declarant elects to pay Assessments. The Declarant shall have the sole discretion to determine whether a Unit is owned by one of its affiliates or a successor and whether such Unit is subject to assessment.

**6.8 Allocation of Assessments.** Annual and Special Assessments shall be imposed upon all Units according to their Undivided Interest. Individual Assessments shall be allocated separately to each Unit based on the costs incurred by the Association.

**6.9 Rules Regarding Billing and Collection Procedures.** The Board shall have the right and responsibility to adopt Rules setting forth procedures for the purpose of making the Assessments provided for in this Declaration and for the billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such notice may also be provided to the Occupant(s) of the Owner if the Owner is not a resident of the Unit.



**6.10 Certificate of Payment.** The Association shall, within ten (10) business days after written demand for payment to the Association, furnish to any Owner liable for Assessments or to the Lender or a potential Lender for such Unit, a recordable written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. A reasonable charge of twenty-five dollars (\$25) (unless the Act allows for a greater amount, in which event the greater amount may be charged) may be collected by the Association for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

**6.11 Acceptance of Materials or Services.** In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project, which benefit individual Units, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be an Individual Assessment at the discretion of the Board.

**6.12 Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners of each Unit, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

**6.13 No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

## **ARTICLE VII EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES**

**7.1 Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established by the Board. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever an Assessment is delinquent, the Board may at its option invoke any one or more or all of the sanctions granted in this Article.

**7.2 Collection Charge.** If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply. Delinquent accounts shall be charged a twenty-five dollar (\$25) late fee each month until the Owner's account (including all collection charges, costs, and attorney fees) is paid in full. Interest may accrue on all unpaid balances at the rate of eighteen percent (18%) per annum. Collection charges, interest, and/or late fees shall constitute part of the Assessment lien provided above until paid, including all accompanying charges, costs, and attorney fees. Payments shall be credited first to collection costs (including attorney fees), then to interest and late fees, then to the oldest Assessments, then the most recent Assessments.

**7.3 Action at Law.** The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien on the Unit of the Owner. In addition, the Association's choice of one remedy

shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorney fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorney fees and court costs will thereafter be added to the amount in delinquency (plus interest, late fees, and collection charges). Each Owner vests in the Association and its successors and assigns the right and power to bring actions at law against such Owner and Owners, or to advance lien foreclosures against the Unit of such Owner or Owners, for the collection of delinquent Assessments.

**7.4 Foreclosure Sale.** Any foreclosure provided for in this Declaration may be conducted pursuant to a judicial or non-judicial foreclosure or in compliance with applicable provisions relating to the foreclosure of deeds of trust or realty mortgages in the State of Utah. In any foreclosure and subsequent sale, the Owner of the affected Unit shall pay the costs and expenses of all related proceedings including reasonable attorney fees incurred by the Association. The Association may, through its duly authorized agents including the Board, have and exercise the power of the trustee and the power to bid on a Unit at the foreclosure or other sale thereof, and to acquire, hold, lease, rent, mortgage and convey such Unit.

**7.5 Association Responsibility after Foreclosure.** If the Association takes title to a Unit pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the Unit that are otherwise applicable to any other Owner, including but not limited to obligations to pay assessments, taxes, or insurance, or to maintain the Unit and its Limited Common Areas. By taking a security interest in any Unit governed by this Declaration, Lenders cannot make any claim against the Association for nonpayment of taxes, Assessments, or other costs and fees associated with any Unit if the Association takes title to a Unit related to a failure to pay Assessments.

**7.6 Trust Deed Provisions.** Each Owner by accepting a deed to a Unit hereby conveys and warrants the Unit in trust with power of sale to the Association's attorney as trustee to secure performance of the Owner's obligations, to the Association, under the Governing Documents. All notices of default and other communications material to an exercise of the power of sale be sent to the street address of the Owner's Unit or the last known mailing address of the Owner as shown on the books and records of the Association, if different from the street address of the Unit.

**7.7 Suspension of Votes.** The Board may suspend the obligated Owner's right to vote on any matter at regular and special meetings of the Association and the Owner's right to use all or any portion of the Common Area (exclusive of the Limited Common Area appurtenant to the Owner's Unit) for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent.

**7.8 Termination of Services.** If an Owner fails or refuses to pay any Assessment when due, the Board may terminate the Owner's right to receive utility services paid as a Common Expense and access to and use of the Common Areas. Before limiting, restricting, or terminating any utility or other service provided by the Association or restricting access to or use of the Common Areas, the Association shall notify the Owner and give such Owner at least three (3) business days to pay the past due balance.

**7.9 Recovery of Rent From Tenant.** If a delinquent Owner is leasing his Unit or any portion thereof, then pursuant to Utah Code § 57-8-53, the Board may, at its option, so long as an Assessment is more than sixty (60) days late, demand and receive from any tenant the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.

7.10 **Account Payoff Information.** The Association may charge a fee for providing account payoff information in connection with the closing of an Owner's financing, refinancing, or sale of a Unit as provided for in Utah Code § 57-8-6.3. The Board may set forth the amount of the fee in the Rules, but such fee shall not exceed the maximum amount allowed pursuant to Utah law. If not otherwise set forth in the Rules, the Account Payoff Fee shall be fifty dollars (\$50).

## **ARTICLE VIII PROPERTY RIGHTS IN COMMON AREA**

### **8.1 General Easements to Common Area and Units.**

(a) Subject to this Declaration and the Rules, each Owner shall have an undivided interest, right, and easement of use and enjoyment in and to the Common Area. Each Owner shall have an unrestricted right of ingress or egress to and from the Owner's Unit over and across such Common Area (exclusive of the Limited Common Area unless stated otherwise), subject to Association Rules. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Area that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall such appurtenant rights be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any Occupant.

(b) The Declarant reserves in favor of the Declarant such easements and rights of ingress and egress over, across, through, and under the real property and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant: (i) to construct and complete each Unit and all of the other improvements described in this Declaration or in the Plat; and (ii) to improve portions of the real property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all Owners as Declarant may reasonably determine to be appropriate. This reservation shall not expire, unless terminated sooner by law, until after the date on which all of Declarant's Units have been transferred to Owners.

(c) The Declarant reserves in favor of the Declarant and the Association, acting through the Board or its authorized agent, nonexclusive easements with the right of access to each Unit, without trespass, to make inspections and to maintain, repair, replace or effectuate the restoration of the Common Area accessible from such Unit. The Declarant and the Association shall also have a nonexclusive right to grant permits, licenses and easements upon, across, over, under and through the Common Area for purposes necessary for the proper operation of the Project. Such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access.

8.2 **Easements Reserved by Master Residential Declaration.** The Declarant and 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 established by and/or set forth in the Master Residential Declaration.

8.3 **Public Utility Easements.** The Project is subject to blanket easements and rights-of-way in favor of the Association over, across, above, and under the Common Areas and any other necessary portion of the Project for the installation and maintenance of electricity lines,

telephone lines, cable television, water lines, gas lines, sewer lines, drainage facilities, and such other public utilities needed to serve the Project. The Association shall have the power to grant and convey to any municipality, special service district, or Person, in the name of all of the Owners as their attorney-in-fact, easements and rights-of-way in, on, over or under the Common Area or any other necessary area of the Project for the purpose of constructing, erecting, operating or maintaining pipelines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any similar public or quasi-public improvements or facilities, and each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association.

**8.4 Easements for Encroachments.** If a portion of the Common Area encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area, as a result of the manner in which the buildings are constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist so long as the buildings stand.

**8.5 Limitation on Easement - Suspension of Owner Rights.** Each Owner's right and easement of use and enjoyment concerning the Common Area is subject to the following:

(a) The right of the Association to suspend the Owner's voting right in the Association and the Owner's right to the use of any facilities included in the Common Area: (i) for any period during which an Assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the Governing Documents; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;

(b) The right of the Association to impose reasonable limitations on the number of guests per Owner or Occupant who at any given time are permitted to use the Common Area; and

(c) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.

**8.6 Views.** Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or rights appurtenant to the Unit or the Project relative to any other Unit or structure only within the Project.

**8.7 Easements Deemed Created.** All conveyances of Units within the Project hereafter made shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

## ARTICLE IX USE RESTRICTIONS

9.1 **Rules and Regulations.** Owners shall comply with all of the rules and regulations set forth in the Master Residential Declaration and adopted by Master Residential Association. In addition, the Association has the authority to promulgate and enforce such Rules and procedures as may aid the Association in carrying out any of its functions or to ensure that the Project is maintained and used in a manner consistent with this Declaration and the Bylaws.

9.2 **Use.** Units shall be occupied and used only as a private single-family residence in compliance with the business and commercial activity limits set forth in the Master Residential Declaration. Common Areas are to be used in a manner consistent with their community nature and use restriction.

9.3 **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. The Association may adopt Rules to further regulate and restrict signs in the Project to the extent permitted by law in the Rules. Unless otherwise set forth by the Board in the Rules, the following restrictions shall apply. "For Sale" or "For Rent" signs may only be placed in areas identified and approved by the Board. All other signs may only be erected or maintained in the Project, whether in a window or otherwise, with the prior written approval of the Board. Signs may not exceed sizes approved by the Board. Owner signs on the exterior walls of the Project's buildings are prohibited.

9.4 **Nuisance.** No noxious, illegal, or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to other Owners or Occupants be permitted to interfere with their rights of quiet enjoyment, increase the rate of any insurance, or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule, or regulation of any local, county, state, or federal body. A nuisance includes but is not limited to the following: excessive noise between 10:00 p.m. and 7:00 a.m.; the use of outdoor speakers or amplifiers; excessive foot or vehicular traffic in, on, or about the Project beyond that expected for a typical personal residence, especially after 10:00 p.m. and before 7:00 a.m.; and any violation of the Governing Documents. The Board may adopt Rules that further describe the activities that are deemed to be nuisances within the Project. The Board shall have the sole discretion and authority to determine if an activity or condition constitutes a nuisance.

9.5 **Temporary Structures.** No structure or building of a temporary character, including a tent or shack, shall be placed upon the Project or used therein unless the same and its proposed use are approved by the Board.

9.6 **Parking.** Owners, Occupants, and tenants must first use their garages before other vehicles may be parked outside of the garage. Parking is prohibited on the streets within the Project unless designated otherwise via street signage or markings. At no time shall any vehicle be parked at an entrance to or in front of a garage, a walkway, or at any other location within the Project, which would impair vehicular access or snow removal. The Association may charge a fee for the use of Common Area parking stalls (if any). The Board may adopt additional Rules relating to the parking of vehicles within the Project that alter or expand upon the restrictions set forth in this Section, including, without limitation: the size and dimensions of the vehicles parked within the Project; the admission and temporary parking of vehicles within the Project; the right to remove

or cause to be removed any vehicles that are improperly parked; and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such Rules.

9.7 **Recreational Vehicles.** The parking of recreational vehicles shall comply with the limitations set forth in the Master Residential Declaration. In addition, the parking in the Project is limited. Therefore, no boats, trailers, motorhomes, large trucks, commercial vehicles, RVs, or the like belonging to Owners or Occupants of the Project shall be parked within the Project other than for temporary loading and unloading (less than 24 hours). Recreational vehicles shall not be parked in an Owner's enclosed garage, as such parking is intended for parking of the Occupant's automobile. The Board may adopt additional Rules relating to the parking of recreational vehicles within the Project that may expand or limit the restrictions set forth in this section.

9.8 **External Fixtures.** No external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, exterior doors, screen doors, porch or patio or balcony enclosures, sunshades, lighting fixtures, walls, windows, skylights, landscaping and planting, other than those provided in connection with the original construction of the Project, and any replacements thereof, and other than those approved by the Board, and any replacements thereof, shall be constructed, erected or maintained on the Project without the prior written approval of the Board. The Board may adopt Rules or design guidelines regulating the location, type, color, and design of these external fixtures. Any damage caused by the installation of any external fixture to the Common Areas (including roofs and exterior surfaces) shall be repaired by the Association, but the Association may assess such repair costs as an Individual Assessment against the Owner who is responsible for installing the external fixture, regardless of whether such fixture was approved in advance by the Board.

9.9 **Window Covers.** No window shall be covered by paint, grease, blankets, rugs, foil, sheets, towels, newspaper, or similar items. The Board may adopt Rules regulating the type, color, and design of the external surface of window covers. All window coverings shall be installed within one week of occupancy of a Unit.

9.10 **No Patio / Deck Storage.** No observable outdoor storage of any kind shall be permitted on patios, decks, front yard areas, porches, etc., except for patio furniture and portable barbecue grills in good condition which may be maintained on backyard patios and decks. Said patio furniture and outdoor storage items shall conform with standards set by the Board, which may include the regulation of colors, materials, and product types. The Association may vary or expand upon the provisions of this Section by Rule.

9.11 **Repairs.** No repairs of any detached machinery, equipment, or fixtures, including without limitation, motor vehicles, shall be made upon the Project, unless such work is done within the Owner's enclosed garage.

9.12 **Unsightly Items.** All rubbish, debris, or unsightly materials or objects of any kind shall be regularly removed from Units and Limited Common Areas and shall not be allowed to accumulate therein or thereon. No outdoor storage of any kind shall be permitted on exterior patios, balconies, etc., except for patio furniture in good condition. Outdoor furniture and storage items (including authorized colors and materials) may be further regulated by the Board in the Rules. Owners may not store bicycles or similar items on porches or balconies. Trash and garbage shall be properly disposed in accordance with the Rules applicable thereto adopted by the Board.

9.13 **Pets.** Domestic pets may be kept in Units in conformance with the restrictions set forth in the Master Residential Declaration and local government requirements. The Board may adopt Rules adding further restrictions related to pets not inconsistent with the Master Residential Declaration including, but not limited to, restrictions on the number and types of pets, requirements for registration with the Association, and noise limitations. All pets must be properly licensed and registered with the appropriate governmental agency and must abide by all pet Rules adopted by the Board. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Common Area or Limited Common Area of another Owner and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion; or (f) it molests or harasses a passersby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Common Area and shall be leashed or restrained whenever outside a Unit. The Association may levy Individual Assessments to Owners for any damages to the Common Areas and landscaping caused by a pet.

9.14 **Leasing and Non-Owner Occupancy.** The leasing and Non-Owner Occupancy of all Units shall be governed by this Section and any Rules and procedures adopted as allowed in this Section.

(a) Definitions. For the purpose of this Section:

(i) "Non-Owner Occupied" means: (1) for a Unit owned in whole or in part by a natural individual or individuals, the Unit is occupied by someone, but no individual Owner occupies the Unit as the individual Owner's primary residence; or (2) for a Unit owned entirely by one or more entities or trusts, the Unit is occupied by anyone.

(ii) "Family Member" means: (1) the spouse, parent, sibling, or child of an Owner; or (2) in the case of a Unit owned by a trust or other entity created for estate planning purposes, a Person occupying the Unit if the trust or other estate planning entity that owns the Unit was created for the estate of (i) the current Occupant of the Unit, or (ii) the spouse, parent, child, or sibling of the current Occupant of the Unit.

(b) Maximum Number of Non-Owner Occupied Units. The number of Units permitted to be Non-Owner Occupied shall not exceed fifty percent (50%) of the total Units within the Project. The fifty percent (50%) Unit maximum shall be calculated by including any exempted Units under subsection (d) below. The Board may adopt reasonable rules and reporting procedures to track the number of Non-Owner Occupied Units to ensure consistent administration and enforcement of the leasing restrictions.

(c) Requirements for Leasing and Non-Owner Occupancy. The Owners of all Non-Owner Occupied Units must comply with the following provisions:

(i) Any lease or agreement for allowable Non-Owner Occupancy must be in writing, must be for an initial term of at least thirty (30) days, and shall provide as a term of the agreement that the Occupant shall comply with the Governing Documents, and that any failure to comply shall be a default under the lease agreement. If a lease agreement for Non-Owner Occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease agreement and binding on the Owner and the Occupant.

- (ii) A Non-Owner Occupant may not occupy any Unit for transient, hotel, vacation, Airbnb, or seasonal use (whether for pay or not). Except as a guest of an Owner, daily and weekly occupancy by Non-Owner Occupants is prohibited (whether for pay or not).
  - (iii) No Owner may lease individual rooms or less than the entire Unit.
  - (iv) The Board is authorized to adopt further rules related to Non-Owner Occupied Units and the Occupants of those Units. Such rules may include, but are not limited to: requiring copies of lease or other agreements for Non-Owner Occupancy to be delivered to the Association, requiring informational forms to be filled out by Owners and/or Occupants' identifying Non-Owner Occupants, vehicles, phone numbers, etc., or any other reasonable administrative provisions the Board deems appropriate to enforce the requirements of this Section and the Governing Documents.
- (d) Exemptions. The following Units may be Non-Owner Occupied and are not subject to the cap on Non-Owner Occupied Units set forth in subsection (b) above:
- (i) A Unit owned by a Person in the military for the period of the Owner's deployment.
  - (ii) A Unit occupied by a Unit Owner's Family Member.
  - (iii) A Unit whose Owner is relocated by the Owner's employer for a period of less than two (2) years.
  - (iv) A Unit owned by an entity that is occupied by an individual who: (1) has voting rights under the entity's organizing documents; and (2) has a 25% or greater share of ownership, control, and right to profits and losses of the entity.
  - (v) A Unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for: (1) the estate of the current Occupant; or (2) a Family Member of the current Occupant.
  - (vi) A Unit owned by a Lender who obtained title through foreclosure of its mortgage; but specifically excluding transfers to any third parties who obtained title through the purchase of a Unit at the Lender's trustee sale.
- (e) Joint and Several Liability of Owner and Non-Owner Occupants. Owners shall be responsible for their Non-Owner Occupants and guests' compliance with the Governing Documents and shall be jointly and severally liable for any violations thereof.
- (f) Violations.
- (i) If a Unit is leased in violation of this Section, the Board may assess fines against the Owner pursuant to a schedule of fines adopted by the Board.
  - (ii) If a Unit is leased in violation of any provision of this Section, (regardless of whether any fines have been imposed) the Board may proceed with any available legal remedies, including, without limitation, an action to require the Owner to terminate the lease agreement and remove the tenant.
  - (iii) If the Board determines that a Non-Owner Occupant has violated a provision of the Governing Documents, the Board may require an Owner to terminate a lease agreement with such Occupant.
  - (iv) In addition to any other remedy for non-compliance, after reasonable notice,



the Association shall have the right to initiate an action and obtain a forcible entry and unlawful detainer order from the court, or similar action, with the purpose of removing the offending Non-Owner Occupant. The Association, the Board, and the Manager shall not have any liability for any action taken pursuant to this subsection and the Owner shall indemnify and pay the defense costs of the Association, the Board, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subsection.

(v) Fines, charges, and expenses incurred in enforcing the Association's Governing Documents with respect to a Non-Owner Occupant, and for any costs incurred by the Association in connection with any action under this Section, including reasonable attorney fees (regardless of whether any lawsuit or other action is commenced), shall be an individual assessment against the Owner and Unit which may be collected and foreclosed on by the Association.

**9.15 Landscape Maintenance.** The Association shall have the right and duty to maintain and the right to alter and change any and all landscaping in the Common Area. The Association shall have the right of access to all Common Area and Limited Common Area of the Project as necessary for such landscape maintenance. If the Association is unable to enter into a Limited Common Area for landscape maintenance, then the Owner shall be responsible for such maintenance.

**9.16 Floor Load.** There shall be no floor load in excess of the weight for which the Unit or balcony was designed, unless special arrangements are made, and an engineering determination of floor load capacity in the areas of the heavy use is approved in writing by the Board. This includes, but is not limited to, the use of waterbeds, or Jacuzzi hot tubs.

**9.17 Smoking.** Smoking is prohibited within all Units and on all Common Areas of the Association, whether indoors or outdoors. Without limiting the generality of the foregoing, this prohibition applies to private Units, the Association's Common Areas as defined in the Declaration, the walking paths, the general common landscaped area, etc. Smoking is defined as including carrying, burning or otherwise handling or controlling any lighted or smoldering product containing tobacco or other like substance, including, but not limited to, cigarettes, cigars, pipes, hookahs and electronic vaping devices. Each Owner is responsible to ensure that said Owner and its Occupants, guests, and invitees comply with this restriction. Violations of this smoking restriction may result in a fine pursuant to the Rules and fine schedule adopted by the Board.

**9.18 Residential Occupancy and Commercial Activity Limits.** No business use and trade may be conducted in or from any Unit unless:

- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit;
- (b) the business activity conforms to all zoning requirements for the Project;
- (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project;
- (d) such business is legal within the meaning of all applicable statutes of the State of Utah and all ordinances of municipal authorities; and
- (e) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the

security or safety of other residents, as may be determined in the sole discretion of the Board.

(f) Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this Section.

**9.19 No Subdivision of Units or Further Restrictions.** No Unit shall be split, subdivided, or separated into two (2) or more Units, and no Owner of a Unit shall sell part of a Unit. No subdivision plat or covenants, conditions or restrictions shall be recorded by any Owner or other Person with respect to any Unit unless the Board has first approved the plat or the proposed covenants, conditions, or restrictions, such approval to be evidenced by the Association's signature on the final recorded plat or instrument imposing the covenants, conditions, or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section shall be absolutely null and void. The Board's review shall be for the purpose of assuring, in the sole and absolute discretion of the Board, that the plat or covenants, conditions and restrictions are consistent and compatible with the overall plan of development of the Project. However, in no event shall the approval of the Board of any plat or covenant, condition or restriction be an abandonment or waiver of any provision of this Declaration. The provisions of this Declaration shall be and remain superior to any such plat or covenants, conditions, or restrictions except to the extent they defer to the Plat.

**9.20 Design Guidelines.** Pursuant to the Master Residential Declaration, the Project is subject to certain "Design Guidelines" more particularly described therein. The Association may delegate a DRC or other "Reviewer" (as defined in the Master Residential Declaration), that has the authority to implement and enforce the Design Guidelines for the Project, in the manner described in Article 5 of the Master Residential Declaration.

**9.21 Design Review Committee.** The Association may have a design review committee for the Project (the "DRC") consisting of three (3) individuals, who shall serve and be removed and replaced in the Board's discretion. The Declarant shall initially designate the members of the DRC. Following the Period of Declarant Control, the Board shall appoint the DRC. DRC members need not be Owners or representatives of Owners. The Association may compensate DRC members in such manner and amount, if any, as the Board may determine necessary (which amount shall be included as a Common Expense). Except as otherwise set forth herein, the DRC shall function in the same manner with the rights and obligations as, but subject to, the "Design Review Committee" described in Section 5.2 of the Master Residential Declaration.

**9.22 Architectural Control.** No exterior changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the DRC. By way of illustration, but not of limitation, the following are considered exterior changes: painting, landscaping, repairs, excavation, patio covers, screens, windows, doors, fences, window air conditioners, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations, or other work that in any way alters the exterior appearance of the Project. The Board may designate the design, color, style, model, and manufacturer of any exterior improvement or alteration that is acceptable. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior structural changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the Board or DRC, as applicable. Any structural change may be denied by the Board, or the Board may require the Owner to provide an engineering report demonstrating, in the discretion of the Board, that the structural changes will be constructed in a way to prevent any impact on the building or

other Units. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, and the like. All alterations must be consistent with the terms of the Master Residential Declaration, Design Guidelines and Community-Wide Standard.

9.23 **Lighting.** Exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Board.

9.24 **Unit Heating.** Owners shall heat Units to no less than fifty-degrees (50° F) at all times to prevent pipes from freezing.

9.25 **Dryer Venting Requirements.** All clothes dryers installed and used in the Project shall be capable of venting a minimum of seventy-five feet (75'). Unit Owners are responsible for cleaning and maintaining the clothes dryer vent pipe appurtenant to their Unit.

9.26 **Hazardous Substances.**

(a) The Owners shall comply with applicable environmental laws (as defined below), and shall not cause or permit the presence, use, disposal, storage or release of any hazardous substances (as defined below), on or within the Project that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, nor allow anyone else to do, anything affecting the Project that is in violation of any environmental law. The preceding two sentences shall not apply to the presence, use or storage on the Project of small quantities of hazardous substances that are generally recognized to be appropriate to maintenance of a Unit or the Project.

(b) Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment; or any other injury or damage resulting from or relating to any hazardous substances located under or upon or migrating into, under, from or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) whether or not the release of the hazardous substances was caused by an indemnifying Owner, a tenant, invitee or otherwise of an indemnifying Owner; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of hazardous substances on the Project. The obligations of each Owner under this Section shall survive any subsequent sale by an indemnifying Owner.

(c) As used in this Section, "hazardous substances" are those substances defined as toxic or hazardous substances by environmental law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section "environmental law" means federal laws and laws of the jurisdiction where the Project is located that relate to health, safety, or environmental protection.

9.27 **Smoke and Carbon Monoxide Detectors.** Each Unit shall have an operable smoke and carbon monoxide detector as required by applicable building codes. The Board may, but is not required to, upon advanced notice of at least seventy-two (72) hours, enter a Unit to ensure that the Unit is in compliance with this Section.

9.28 **Sound Transmission.** Without the prior written consent of the Board, no Unit shall be altered in any manner that would increase sound transmissions, resonances or reverberations to any adjoining Unit, including, but not limited to, the replacement, modification or penetration of any flooring or floor covering, ceiling or wall or the penetration of any wall, floor or ceiling that increases sound transmissions, resonances or reverberations to any other Unit. Owners shall not replace any carpeted area with hard surface floor coverings without the written consent of the Board. The provisions of this Section shall not apply to a Residential Unit on the first floor of the building in which such Unit is located.

9.29 **Solar Energy Systems.** Solar energy systems and equipment are prohibited from being constructed or installed on any part of the Common Area in the Project. Notwithstanding the forgoing, if the Board elects to allow solar energy systems in the Project, then the Board may adopt Rules and regulations for the installation and ongoing maintenance of solar panels or other energy conservation equipment. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the buildings. Owners shall be responsible for the costs of the installation, operation, and maintenance of each solar energy system. The Board shall assess the costs incurred by the Association related to the installation, operation, and maintenance of an energy conservation system to the requesting Owner(s) or benefitted Owner(s) in the Board's sole discretion. The costs to the Association arising under this Section shall be assessed and collected as an Individual Assessment.

9.30 **Variances.** The Board may, in its sole discretion, upon a showing of extenuating circumstances, grant variances from the Restrictions set forth in this Article if the Board determines in its discretion: (a) that a Restriction would create an unreasonable hardship or burden on an Owner or Occupant, (b) that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete; or (c) that the activity permitted under the variance will not have any substantial adverse effect on the Association, the Owners, or the Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Board. The Board Members and the Board of Directors shall not have any right or authority to deviate from this Declaration except as specifically provided for in this provision. No Owner or any other person may rely upon any permission to deviate from this Declaration by anyone including any Board Member or the entire Board, unless it is reduced to writing and signed as required in this provision.

9.31 **Declarant Exception.** So long as the Declarant owns a Unit in the Project, the Declarant shall be exempt from the restrictions contained in this Article.

## **ARTICLE X INSURANCE**

**NOTICE: The Association's Insurance Policy does not cover the personal property or personal liability of the Owners or their Occupants.**

10.1 **Insurance.** The Board shall obtain insurance as required in this Declaration, the Act, or other applicable laws, with coverages comparable to similarly situated condominium owners associations in the Salt Lake valley area. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be

purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. Insurance premiums purchased by the Association shall be a Common Expense.

## 10.2 Property Insurance.

1) The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including the Units, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.

(a) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

(b) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.

(c) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

(d) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

(e) Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available, (ii) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and (iii) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.

2) **Owner Responsibility for Payment of Deductible.** If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

- (a) The Association's policy provides primary insurance coverage, and:
  - i) the Owner is responsible for the Association's policy deductible; and

ii) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

(b) An Owner that has suffered damage to any combination of a Unit or a Limited Common Area appurtenant to a Unit ("**Unit Damage**") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("**a Covered Loss**") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage for that Unit to the amount of the deductible under the Association's property insurance policy; and

(c) If an Owner does not pay the amount required under this Subsection within 30 days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an assessment against the Owner for that amount.

3) **Claims Under the Deductible.** If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association's policy deductible, then: (a) the Owner's policy is considered the policy for primary coverage up to the amount of the Association's policy deductible; (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.

4) **Deductible Notice.** The Association shall provide notice to each Owner of the Owner's obligation under Subsection (2) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

5) The Association shall have no obligation to obtain or maintain any insurance covering Owners' personal and real property, and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

10.3. **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

10.4. **Director's and Officer's Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Declarant, the Board, the officers, and the Association against claims of wrongful acts and mismanagement. To the extent reasonably available, this policy shall include coverage for: (1) failure to maintain adequate reserves, (2) failure to maintain books and records, (3) failure to enforce the Governing Documents, (4) breach of contract, (5) volunteers and employees, (6) monetary and non-monetary claims, (7) claims made under fair

housing act or similar statutes or that are based on discrimination or civil rights claims, and (8) defamation. In the discretion of the Board, the policy may also include coverage for the Manager and its employees and may provide that such coverage is secondary to any other policy that covers the Manager or its employees.

10.5. **Theft and Embezzlement Insurance.** The Association may obtain insurance covering the theft or embezzlement of funds by Board Members, officers, employees, Manager, and contractors of the Association in the discretion of the Board.

10.6. **Worker's Compensation Insurance.** The Association shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board deems appropriate.

10.7. **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association, and upon written request, to any Owner or Mortgagee.

10.8. **Named Insured.** The named insured under any policy of insurance shall be the Association and the Declarant. Founder, the Master Residential Association, Daybreak Community Council, and such affiliated Founder Parties as Founder shall direct shall be listed by name as additional insureds under all applicable policies of insurance. Each Owner shall also be an insured under the Association's insurance policies as required by law.

10.9. **Right to Negotiate Claims & Losses & Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to the Association, and shall not be payable to Owners or any holder of a security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Association as attorney-in-fact for negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

10.10. **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

10.11. **Waiver of Subrogation against Owners and Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Declarant and its affiliates, the Association and the Owners and their respective agents and employees.

10.12. **Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements and provisions in § 57-8-43 of the Act, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance

law applicable to condominium associations shall apply to this Association.

## **ARTICLE XI DESTRUCTION OF IMPROVEMENTS**

11.1 **Reconstruction.** In the event of partial or total destruction of a building or buildings or any portion of the Common Area within the Project, the Board of Directors shall promptly take the following actions:

(a) The Board shall ascertain the cost of reconstruction by obtaining fixed price bids from reputable contractors, including the obligation to obtain performance and lien payment bonds.

(b) The Board shall determine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer carrying the policy covering the Project.

(c) Pursuant to § 57-8-30 of the Act, if the insurance proceeds are sufficient to reconstruct the building, such proceeds shall be applied to such reconstruction.

(d) If the Board determines: (i) that insurance proceeds will cover eighty-five percent (85%) or more, but not all, of the estimated cost of reconstruction, or (ii) that available insurance proceeds together with available reserves and a special Assessment equal to twenty-five percent (25%) or less of the then aggregate Annual Assessments for all Units will completely cover the estimated cost of reconstruction, then the Board shall cause notice to be sent to all Owners and to all Lenders' encumbering Units within the Project setting forth such findings and informing the Owners that the Board of Directors intends to commence reconstruction pursuant to this Declaration. In the event that Owners representing at least twenty percent (20%) of the Undivided Interests object in writing to such reconstruction as indicated in such notice, the Board shall call a Special Meeting of the Owners pursuant to Section 11.2. In the event that the foregoing requirements are satisfied and the requisite number of Owners do not object in writing to such reconstruction, the Board of Directors shall cause reconstruction to take place as promptly as practicable thereafter. In connection with such reconstruction, the Board shall levy a Special Assessment against each Owner at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

(e) If the Board determines that any Unit is uninhabitable by reason of its total or partial destruction, the Board may abate Assessments against the Owner thereof until the Board determines that habitability has been restored.

11.2 **Reconstruction by Vote.** If reconstruction is not to take place pursuant to Section 11.1, as soon as practicable after the same has been determined, the Board shall call a Special Meeting of the Owners. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written consent of not less than seventy-five percent (75%) of the Undivided Interests determine not to proceed with such reconstruction, reconstruction must take place and the Board of Directors shall levy a uniform Special Assessment against each Owner at such time and in such amount as the Board of Directors shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.



11.3 **Procedure for Reconstruction.** If the Association elects to reconstruct, then the Board shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Project in conformance with the original plans and specifications, or if the Board determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements. The Board may employ a licensed architect to supervise the repair and rebuilding to insure that all work, services and supplies are in conformity with the requirements of the construction contract.

11.4 **Determination not to Reconstruct without Termination.** If Owners of seventy-five percent (75%) or more of the Undivided Interests vote not to rebuild, and the entire Project is not repaired or replaced, and the Project is not terminated in accordance with the Act, the insurance proceeds shall be distributed as provided by the Act and the Undivided Interests are automatically reallocated as provided by the Act. In such event, the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

11.5 **Negotiations with Insurer.** The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Area, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Area. Any settlement made by the Association in good faith shall be binding upon all Owners and Lenders.

11.6 **Repair of Units.** Unless covered by the Association's insurance policy, the installation of improvements to, and repair of any damage to, the interior of a Unit shall be made by and at the individual expense of the Owner of that Unit and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practicable and in a lawful and workmanlike manner.

11.7 **Priority.** Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of insurance proceeds allocated to such Unit.

## ARTICLE XII EMINENT DOMAIN

12.1 **Taking of a Unit.** If a Unit or its Limited Common Area is taken by eminent domain, or sold under threat thereof, then that Unit's Undivided Interest in the Common Area shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration in compliance with the Act. Any remnant of a Unit remaining after part of a Unit is taken shall become part of the Common Area. If only part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used as a Unit under this Declaration, that Unit's Undivided Interest in the Common Area shall remain unchanged.

12.2 **Taking of Common Area.** If the portion of the Project taken by eminent domain, or sold under threat thereof, is Common Area, the Board shall cause the award to be utilized for the purpose of repairing or restoring the portion of the Project so taken, and the portion of the award not used for restoration shall be deposited into the Associations general fund.

12.3 **Taking of Entire Project.** In the event the entire Project is taken by eminent domain, or sold under threat thereof, the Project shall be terminated and the provisions of the Act apply.

12.4 **Power of Attorney.** Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. In the event the taking involves all or part of any Common Area, the award or proceeds shall be payable to the Association for the use and benefit of the Owners as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

### **ARTICLE XIII RIGHTS OF LENDERS**

13.1. **Lender Notice.** Prior to being entitled to receive any notice that this Declaration requires the Association to provide Lenders, each Lender must deliver to the Association a written notice stating that such Lender is the holder of a loan encumbering a Unit within the Project along with all necessary contact information for notice delivery. Notwithstanding the foregoing, if any right of a Lender under this Declaration is conditioned on a specific written request to the Association, in addition to the above, a Lender must also make such request in writing delivered to the Association. Except as provided in this Section, a Lender's rights pursuant to this Declaration, including, without limitation, the priority of any mortgage lien over the lien of Assessments levied by the Association shall not be affected by the failure to deliver a notice or request to the Association.

13.2. **Title in Mortgagee.** Any first mortgagee who obtains title to a Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Unit's Assessments or charges which accrue prior to the acquisition of title of such Unit by the mortgagee. However, such first mortgagee shall be responsible for Assessments levied while it holds title to the Unit.

13.3. **Priority.** The lien provided for in Article VI for the payment of Assessments shall be subordinate to the lien of any Lender that was recorded prior to the date any such Assessment becomes due. No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat, or render invalid the lien or charge of any Lender made in good faith and for value encumbering any Unit, but all of such Restrictions shall be binding upon and effective against any Owner whose title to a Unit is derived through foreclosure or trustee's sale, or otherwise. No provision herein is intended, nor shall it be construed, to give any Unit Owner, or any other party, priority over any rights of the first mortgagee of a Unit pursuant to its mortgage in the case of payment to the Unit Owner of proceeds from termination, or insurance proceeds, or condemnation awards for losses to or a taking of condo Units and/or Common Areas.

13.4. **Required Lender Approval.** Except upon the prior written approval of sixty-seven percent (67%) of all Lenders that have provided notice to the Association as described in Section 13.1, based on one (1) vote for each Unit encumbered by a loan, the Association shall not take action or inaction to do any of the following:

- (a) Abandon or terminate by an act or omission the legal status of the Condominium Project;

(b) Use insurance proceeds for any purpose other than to rebuild; or  
(c) Except as specifically provided by this Declaration, or as otherwise reserved by the Declarant during the Period of Declarant Control, amend any provisions of the Declaration governing the following:

- (i) voting rights;
- (ii) the priority of Assessment liens;
- (iii) the allocation of interests in the Common Area;
- (iv) Unit boundary definitions;
- (v) expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project; or
- (vi) restoration or repair of the Project (after damage or particular condemnation) in a manner other than that specified in this Declaration, the Articles, or the Bylaws.

(d) In addition to the amendment limitations set forth in subsection (b) above, any other amendment to the Declaration that is of a material adverse nature to Lenders shall require approval of at least fifty-one percent (51%) of Lenders who have provided notice to the Association.

(e) The Association may presume the consent of a Lender for approval of amendments or actions if: (i) written notice of the proposed amendment or action is sent by certified or registered mail with a return receipt requested to the Lender's address listed for receiving notice in the recorded trust deed or other recorded document evidencing the security interest, (ii) at least 60 days have passed after the day on which the notice was mailed, and (iii) the person designated for receipt of the response in the notice has not received a written response from the Lender.

**13.5. Notices and Other Rights.** Any Lender (and such Lender's insurer or guarantor) shall, upon written request to the Association, be entitled to:

- (a) Inspect current copies of the books and records of the Association during normal business hours;
- (b) Receive the most recent annual financial statement of the Association;
- (c) Notice of any failure of an Owner for a period of sixty (60) days or more to cure any default on his part in performance of his obligations under this Declaration or other Governing Documents;
- (d) Notice of any condemnation or casualty loss that affects a material portion of the Project or any Unit on which there is a first mortgage held by such Lender;
- (e) Notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (f) Notice of any action that requires a specified percentage of Lenders to approve.
- (g) Notice of any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which a Lender holds a mortgage; and
- (h) Notice of any proposed action by the Owners or the Association that would amount to a change in the Declaration necessitating Lender approval as identified in

Section 13.4.

13.6. **Department of Veterans Affairs Loans.** To the extent that any provision in the Governing Documents is inconsistent with the requirement(s) of guaranteed or direct loan programs of the United States Department of Veterans Affairs ("**DVA Financing**"), such provision shall not apply to any Unit that is (i) encumbered by DVA Financing, or (ii) owned by the Department of Veterans Affairs.

13.7. **Single-Entity Ownership Limitations.** The number of Units permitted to be owned by a Single-Entity shall not exceed twenty percent (20%) of the total Units within the Association. Units owned by the Declarant are not subject to the Single-Entity ownership cap. The Board may adopt Rules and reporting procedures to track the number of Units owned by a Single-Entity to ensure consistent administration and enforcement of this ownership restriction. For the purpose of this Section, the term "Single-Entity" means the same natural individual, investor group, partnership, entity, or corporation. If an individual or entity has a 25% or greater share of ownership, control, and right to profits and losses of another entity, then such entity and its owner(s) shall be considered a Single-Entity. If title to a Unit is obtained in violation of this Section, then: (i) the Board may assess fines against the Owner pursuant to a schedule of fines adopted by the Board; and (ii) the Board may proceed with any available legal remedies, including, without limitation, an action to obtain a court order requiring the Owner to immediately sell or transfer ownership of the Unit.

13.8. **Investor Ownership Limitation.** The Number of Units permitted to be owned by an Investor shall not exceed fifty percent (50%) of the total Units in the Project. For the purpose of this Section, the term "Investor" means: (1) a Person who owns a Unit, but does not occupy the Unit as the Investor's primary residence, or (2) in the case of a Unit owned by a trust or registered business entity, the natural individual(s) who own the entity or are beneficiaries of the trust do not occupy the Unit as their primary residence.

**ARTICLE XIV  
TERMINATION**

14.1 **Required Vote.** Except as otherwise provided in Articles XI and XII, the Project may only be terminated by unanimous agreement of all Owners.

14.2 **Termination Agreement.** An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by consent of all Lenders with a loan secured by a Unit. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the Salt Lake County Recorder and is effective only on recordation.

14.3 **Sale of Condominium Project.** A termination agreement may provide that the entire Project shall be sold following termination. If any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

14.4 **Association Duties.** The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 14.1 and 14.2 of this Declaration. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale.

Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners as their interests may appear, based on the relative value of each Unit and Project. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.

**14.5 Allocation upon Termination.** Unless provided otherwise herein, upon any liquidation or termination of all or part of the Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, which will hold such proceeds for the benefit of the Owners. Owners shall share in the proceeds of such termination or liquidation in the same proportion as their Undivided Interest in the Common Area (or as otherwise provided by the Act), but in such event, the liens and provisions of all Lenders or Assessment liens encumbering Units within the Project shall extend to each applicable Owner's interest in such proceeds. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds.

## **ARTICLE XV AMENDMENTS**

**15.1 Amendment by Declarant.** So long as the Declarant owns one or more Units in the Project or any part of the Additional Land, the Declaration and the Plat may be amended solely by the Declarant without any additional approval required. In addition, no other amendment shall be valid or enforceable without the Declarant's prior written consent so long as Declarant owns one or more Units in the Project or any part of the Additional Land. Declarant's right to amend shall be construed liberally and shall include, without limitation, the right to amend and/or restate this Declaration in part or in its entirety.

**15.2 Amendment by Association.** After all Additional Land has been annexed into the Project, all of Declarant's Units have been sold to third parties, and the Period of Declarant Control has expired (whichever is later), this Declaration may be amended upon the affirmative vote of at least sixty-seven percent (67%) of the Undivided Interests of the Association. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. The amendment(s) shall be effective upon recordation in the office of the Salt Lake County Recorder. In such instrument the Board shall certify that the vote required by this Section for amendment has occurred. If a Unit is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Unit under this Section. If a Unit is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this Section. No acknowledgment of any signature used for voting shall be required. Notwithstanding, the foregoing, the Owners' authority to amend the provisions of Articles XVI and XVII of this Declaration is subject to the amendment restrictions set forth therein, and any amendment purporting to modify the provisions of Articles XVI and

XVII shall be null and void unless such amendment is in compliance with the amendment provisions and restrictions therein.

15.3 **Necessary Amendments.** Declarant or the Association may unilaterally amend this Declaration without Owner vote if such amendment is necessary: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to satisfy the requirements of any local, State, or Federal governmental agency; or (c) to correct any scrivener's error. However, any such amendment occurring after the Period of Declarant Control shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

15.4 **Mortgagee Consent.** The right of the Declarant to amend pursuant to Section 15.1 and the right of the Association to amend pursuant to Section 15.2 shall be subject to the Lender consent requirements set forth in Section 13.4 for amendments that are of a material adverse nature to first lien mortgagees as further described therein. The consent of Lenders may be implied if Lenders fail to submit a response to a written proposal for amendment within 60 days of notice as further set forth in Section 13.4(e).

## ARTICLE XVI SPECIAL DECLARANT RIGHTS

16.1 **Improvements.** Declarant hereby reserves the right, without obligation, to construct:

- (a) Any improvements shown on the Plat or included in the Project;
- (b) Any Units upon all or any portion of the Additional Land and the addition of the same to the Project; and
- (c) Any other buildings, structures, or improvements that Declarant desires to construct in the Project, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Project.

16.2 **Expandable Condominium.** In accordance with the provisions of §§ 57-8-10(4) and 57-8-13.6 of the Act, the Declarant herewith expressly reserves the right and option to expand the Project by the annexation of Additional Land, or portions thereof, and Units to be constructed thereon, all in accordance with the provisions of this Section.

(a) Expansion or contraction of the Project by the Declarant is without limitation, except as set forth in this Section, and shall be effective without prior approval of the Association or any Owner.

(b) Declarant's right to expand or contract the Project as provided in this Section shall expire seven (7) years from the date this Declaration is recorded with the Salt Lake County Recorder.

(c) The Additional Land designated on **Exhibit E** attached hereto and incorporated herein by reference, may be added in total or in part, and in any order as Declarant may determine. Such Additional Land (or any portion thereof) may be added at any time within the period allowed for expansion of the Project.

(d) All improvements upon Additional Land shall be made in such a manner as to conform to all governmental regulations appertaining thereto, but such improvements may be located upon the Additional Land, or any portion thereof, in such manner as the Declarant deems appropriate in its sole discretion. The number of Units to be constructed

upon the Additional Land shall be such that the total number of Units to be included within the Project is expected to be one hundred twenty (120) Units. All of the additional Units to be constructed upon the Additional Land will be constructed for or are to be designated exclusively for residential use.

(e) A supplemental Plat pertaining to Additional Land shall be recorded with Salt Lake County as part of the submission of Additional Land to the Project. The Plat shall show the location and dimensions of each Unit located upon such Additional Land, and the Unit designation of each Unit so created.

(f) Simultaneously with the recording of said supplemental Plat, the Declarant shall record a Supplemental Declaration setting forth that an expansion or contraction of the Project has occurred. Such Supplemental Declaration shall include: (i) a reference to this Declaration or any amendment or restatement thereof, (ii) a legal description of the Additional Land added to the Project; and (iii) the Undivided Interest assigned to all Units within the Project. The Undivided Interests shall be recomputed in accordance with Section 3.3. Such reallocation shall be effective as of the date of recordation of the Supplemental Declaration.

(g) The Declarant shall have the ability to require the Association to re-convey Common Areas or Limited Common Areas to the Declarant pursuant to the terms of the Master Residential Declaration.

(h) Each Owner, by acquiring an interest in the Project, agrees not to inhibit or oppose Founder's or Declarant's future development of the Additional Land (whether or not added to the Project) and the obtaining of necessary approvals therefore. Without limiting the scope of the immediately foregoing sentence, no Owner shall oppose such development in public meetings, by petition, or by legal actions.

**16.3 Declarant Control Rights.** During the Period of Declarant Control, the Declarant shall have the following rights:

(a) The right to appoint or remove members of the Board, or act as the Board.

(b) The right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration.

(c) The right to make and adopt Association Rules.

(d) The right to set all assessments for the Association including annual, special, and individual assessments.

(e) The right to set all fines and fees for the Association including but not limited to collection fees, architectural review fees, and fines for violations of Association Rules.

(f) Pursuant to Utah Code § 57-8-7.5(10), Utah Code § 57-8-7.5(2) through (9), shall not apply or have any effect during the Period of Declarant Control, and the Declarant shall have no duty whatsoever to obtain a reserve analysis, or to fund any reserve fund during the Period of Declarant Control.

(g) The right to deny any matter or action voted upon by the Owners. Any Owner action during the Period of Declarant Control shall not become effective unless the matter or action is approved in writing by the Declarant.

**16.4 Special Declarant Rights.** Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and shall include, among others, and regardless of anything in the Declaration to the contrary, the following rights which shall remain in effect for the maximum period allowed by law, which may exceed the Period of Declarant Control:

(a) The right to maintain sales offices, model Units, and signs advertising the Project or any Unit at any location in the Project until all of Declarant's Units in the Project are sold to third parties.

(b) The right to use easements throughout the Common Areas and the Project as set forth in this Declaration, until all of Declarant's Units in the Project are sold to third parties.

(c) The right to create or designate additional Common Area or Limited Common Area within the Project.

(d) Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Unit prior to the contracting for the conveyance of the Unit to a purchaser.

(e) Until such time as the earlier of the following events occur: (a) ten (10) years after the Declaration is recorded, or (b) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally constructed or created by Declarant.

(f) So long as Declarant owns one or more Units in the Project, or any portion of the Additional Land, any amendments to the Declaration and Bylaws shall require the consent of the Declarant.

(g) Unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents.

(h) The right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration during the Period of Declarant Control.

**16.5 Exercising Special Declarant Rights.** Declarant may exercise its Special Declarant Rights until the expiration of the earlier of the maximum period allowed by law, or the maximum period set forth in this Declaration. The Declarant may execute and record a written waiver of its Special Declarant Rights, which rights may be waived in whole or in part. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.

**16.6 Interference with Special Declarant Rights.** Neither the Association nor any Owner may take any action or adopt any Rule that interferes with or diminishes any Special



Declarant right contained in this Declaration without Declarant's prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.

**16.7 Transfer of Declarant Rights.** The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to any Person in whole or in part. The Declarant's successor shall enjoy any and all Declarant rights set forth in the Declaration regardless of whether such rights are stated to be transferable. All references in the Governing Documents to Declarant shall equally apply to its successor. A contract transferring a Declarant's rights may, but shall not be required to, be recorded in the office of the Salt Lake County Recorder.

**16.8 Easements Reserved to Declarant.**

(a) The Declarant reserves unto itself and its successors and assigns, non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Public Utility Easement," or otherwise designated as an easement area over any road or Common Area on the Project, and over those strips of land running along the front, rear, side and other lot lines of each building or Unit shown on the Plat.

(b) The Declarant reserves unto itself and its successors and assigns, an easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project and the Units therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Unit, or in the area or on the area in which the same is located.

(c) The Declarant reserves unto itself and its successors and assigns, a non-exclusive easement and right-of-way in, through, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities.

(d) The Declarant reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way, or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any building or Unit in the Project except as set forth in this Declaration, or as shown on the Plat, without the prior written approval of the Declarant.

**16.9 No Modification of Declarant Rights.** The Declarant Rights and Easements in this Declaration or other Governing Documents, and specifically in this Article, shall not be substantively or procedurally altered, amended, or removed without the written consent of the Declarant until at least six (6) years have passed after the Period of Declarant Control has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of this Article without the consent of the Declarant.

**ARTICLE XVII  
DISPUTE RESOLUTION**

**17.1. Alternative Dispute Resolution Without Litigation.**

(a) Bound Parties. The Declarant; the Association; the Owners; the officers, directors, managers, members, employees, representatives, agents, successors and assigns of any of the foregoing; any other person subject to this Declaration; and any other person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, “**Bound Parties**”), agree that it is in the best interest of all Bound Parties to encourage the amicable resolution of Claims without the emotional and financial costs of litigation or the toll or market taint such litigation can have on the value of the Project and/or the Units that may be involved or impacted. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim defined in subsections (b) and (c), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 17.2 in a good faith effort to resolve such Claim.

(b) Claims. As used in this Article, the term “Claim” means any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements on the Project, other than matters of aesthetic judgment to be determined by the Declarant or Association under Section 9.18 hereof, which shall not be subject to review and shall not be subject to this Article.

(c) Exclusion from Definition of Claims. The following shall not be considered “Claims” unless all Parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 17.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the provisions of this Declaration (relating to Architectural Control);

(iii) any suit that does not include the Declarant, any affiliate of the Declarant, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 17.2;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 17.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim’s statute of limitations to comply with this Article;

(vi) any suit or dispute between the Declarant or an affiliate of Declarant and a builder, developer, contractor(s), subcontractor(s), or any other party contracted by the Declarant or an affiliate of the Declarant in connection with the development of the Project; and

(vii) any suit or dispute involving a governmental entity as a party.

**17.2. Dispute Resolution Procedures.**

(a) Notice. The Bound Party asserting a Claim (“**Claimant**”) against another Bound Party (“**Respondent**”) shall give written notice (“**Notice**”) by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent’s role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant’s proposed resolution or remedy;

(iv) that the person alleged to be responsible for the acts giving rise to the Claim shall have six (6) months to cure or resolve the Claim; and

(v) the Claimant’s desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) Right to Cure. For any Claim arising from a dispute over the construction of improvements within the Project, the Claimant shall provide Respondent six (6) months to rectify, alter, or fix the claimed defect(s) in the improvements. The expiration of this six-month cure period shall be a prerequisite to Claimant’s ability to initiate litigation as permitted under Section 17.3 below. For all Claims involving alleged defects in construction, the negotiation, mediation, and settlement requirements shall remain in effect during the cure period, however, the mediation deadline set forth in subsection (d) below shall be extended to expire on the same date the cure period expires.

(c) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(d) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an individual or entity designated by the Association (if the Association is not a party to the Claim) or to an independent mediator providing dispute resolution services predominately in Utah. Each Bound Party shall present the mediator with a written summary of the Claim or will otherwise comply with the mediator’s proscribed procedures and requirements for mediating claims.

(i) Waiver of Claim for Failure to Appear or Participate. If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

(ii) Termination of Mediation Proceedings. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse

and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

(iii) Costs of Mediation. Each Bound Party shall bear its own costs of the mediation, including attorney fees, and each Party shall pay an equal share of the mediator's fees.

(e) Settlement. Any Claim settlement through negotiation or mediation shall be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate such proceedings as are necessary to enforce such agreement without the need to comply again with the procedures set forth in this Article. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorney fees and court costs.

**17.3. Initiation of Litigation by Association.** The requirements of this Section are intended to be in addition to those requirements set forth in § 57-8-58 of the Act. After expiration of the Period of Declarant Control the Association may not bring a legal action against a Declarant, a Board of Directors, an employee, an independent contractor, an agent of the Declarant, or the previous Board of Directors unless:

- (a) The Right to Cure period set forth in Section 17.2(b) above has expired;
- (b) the legal action is approved in advance at a meeting by Owners holding at least 51% of the total Undivided Interests in the Association:
  - (i) Owners may be represented by a proxy specifically assigned for the purpose of voting to approve or deny the proposed legal action at the meeting. Any such proxy shall not be valid unless the proxy is notarized with each Owner certifying that they have received and reviewed the information required by Section 17.4(a) and (b) below.
- (c) the Association provides each Owner with the items described in Section 17.4(a) and (b), below;
- (d) the association establishes a trust account, described in Section 17.4(c) below; and
- (e) the Association first goes through the procedures described in Section 17.2 above, giving notice and an opportunity to resolve the dispute that is the basis of the Claim and proposed legal action.
- (f) The procedures and approval required in the preceding subsections (a) through (e) shall not be required for actions or proceedings:
  - (i) initiated by Declarant during the Period of Declarant Control on behalf of the Association;
  - (ii) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
  - (iii) initiated to challenge ad valorem taxation or condemnation proceedings (including bringing an action for inverse condemnation);
  - (iv) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

- (v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended without the written consent of the Declarant for a period of 10 years following the expiration of the Period of Declarant Control. Any such amendment shall also be approved by a vote of 67% of the total votes of the Association.

17.4. **Informed Vote.** Before the Owners, as members of the Association may vote to approve any claim of legal action as contemplated in this Article, the Association shall first provide each Owner with:

- (a) A written notice stating:
  - (i) that the Association is contemplating legal action;
  - (ii) the percentage vote required for approval of the litigation;
  - (iii) the date, time, and location of any Owner meeting that has been scheduled to discuss the litigation or to vote on the approval of the litigation;
  - (iv) a description of the claims that the Association desires to pursue in sufficient detail to permit each Owner to reach an informed decision on the litigation matter; and
- (b) A written report from an attorney licensed to practice in Utah, which provides an assessment of:
  - (i) The likelihood that the legal action will succeed;
  - (ii) The likely amount in controversy in the legal action;
  - (iii) The likely cost of resolving the legal action to the Association's satisfaction; and
  - (iv) The likely effect the stigma of a legal action will have on value or on an Owner's ability to market for sale, or a prospective Unit buyer's ability to obtain financing for a Unit due to a pending legal action.
- (v) In providing this report, the attorney shall obtain and rely on reports and assessments from experts in their field such as construction, real property, sales, or any other relevant factor in the contemplated litigation.
- (c) Before the Association commences any legal action as authorized above, the Association shall:
  - (i) allocate an amount equal to 10% of the cost estimated to resolve the legal action not including attorney fees; and
  - (ii) place the 10% allocated funds in a trust account that the Association may only use to pay the costs to resolve the legal action.

Sections 17.3 and 17.4 do not apply to an Association that brings a legal action that has an amount in controversy of less than \$25,000.00.

17.5. **Strict Compliance Required.** Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions in this Article. The Bound Parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant Party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party

shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Article, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. If any claims or actions falling within the scope of this Article are filed without satisfying all of the requirements set forth above, such claims or actions shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied.

17.6. **Owner Warranties.** The Declarant may provide certain warranties to the Owners related to a Unit purchased. The first Owner of a Unit to whom any warranty is issued, or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the Declarant of any terms of the warranty, and only consistent with the warranty itself. The Association shall have no right to seek the performance of or take assignment of any rights in any warranties against the Declarant, and the Owner shall have no right to assign any rights of any kind to the Association related to pursuing litigation against the Declarant.

17.7. Unless specifically set forth in this Declaration, no action may be brought by the Association, its Board of Directors, or its Officers on behalf of an Owner, as its respective interest may appear, with respect to any cause of action relating to the Common Areas and facilities.

17.8. ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS ARTICLE AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE.

17.9. The dispute resolution restrictions contained in this Article shall not be amended, altered, or eliminated from the Declaration without the written consent of the Declarant for a period of 10 years after the expiration of the Period of Declarant Control.

## ARTICLE XVIII GENERAL PROVISIONS

18.1 **Enforcement.** The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this Declaration, or any amendments thereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages and other sums for such violation. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and the Rules and any respective amendments thereto.

18.2 **No Waiver.** Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

18.3 **Cumulative Remedies.** All rights, options and remedies of the Association, the Owners or the Lenders under this Declaration are cumulative, and no one of them shall be exclusive of any other, and the Association, the Owners and the Lenders shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law, whether or not stated in this Declaration.

18.4 **Severability.** Invalidation of any one or a portion of the Restrictions or provisions set forth in this Declaration by judgment or court order shall in no way affect any other Restrictions or provisions contained herein, which shall remain in full force and effect.

18.5 **Covenants to Run with the Land.** The Restrictions and other provisions of this Declaration shall run with and bind the Project as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, and successors. By acquiring any interest in a Unit, or in a Limited Common Area, or in the Common Area, such Owner consents to, and agrees to be bound by, each and every provision of this Declaration.

18.6 **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential condominium community and for the maintenance of the Project. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to Articles and Section numbers, unless otherwise expressly provided, are to the Articles and Sections of this Declaration.

18.7 **Gender and Number.** Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

18.8 **Nuisance.** The result of every act or omission whereby any provision or Restriction contained in this Declaration or any provision contained in the Bylaws or the Rules is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.

18.9 **Attorney Fees.** If the Association obtains legal counsel to enforce any of the provisions contained in this Declaration or other Governing Documents, the Association may assess all reasonable attorney fees, fines, and costs associated with such legal counsel to the party against whom enforcement is sought as an Individual Assessment, regardless of whether a lawsuit is initiated. The term "costs" as used in this Section shall include all costs including but not limited to copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Section to be broader and to include costs that are not included in costs as the term is used in the Utah Rules of Civil Procedure.

18.10 **Notices.** Any notice required or permitted to be given to any Owner according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, texted, or mailed via USPS to the Person who appears as an Owner in the records of the Association at the time notice is sent. Email shall be the primary means for delivering notice, and it is the responsibility of each Owner to provide an accurate email address to the Association for notice purposes. If no email, phone number, or mailing address has been provided, the physical address of the Unit owned by said Owner shall be used for notice purposes. The use of the terms "notice" or "written notice" in this Declaration or other Governing Document shall include notices sent via email, text, facsimile, or other electronic communication; or notices printed on paper and sent by hand-delivery, regular mail, or otherwise physically received by an Owner.

Unless a Unit Owner notifies the Association in writing that they desire to receive notices via USPS mail, each Owner shall provide to the Board, or the Association's Manager, an email address that the Association may use to effect notice as described herein, along with a telephone number that can receive texts. Any notice sent via email or text shall be deemed to be delivered once the notice has been sent to the email address or phone number on file with the Association. Any notice sent by mail shall be deemed delivered when deposited in the United States mail. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners. The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been sent to any Owner or Owners, in any manner that this Section allows, shall be deemed conclusive proof of such delivery.

Notice to the Association shall be delivered by registered or certified United States mail postage prepaid, addressed to the office of the Manager of the Association (if any); or if there is no Manager, the Registered Agent with the Utah Department of Commerce (if any); or if there is none, to the President of the Association. The Association shall have the right to designate an email or USPS mailing address for receipt of notices hereunder by Rule.

**18.11 Effect of Declaration.** This Declaration is made for the purposes set forth in the recitals in this Declaration and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any of the provisions of this Declaration, the Bylaws, or the Rules are determined to be unenforceable in whole or in part or under certain circumstances.

**18.12 Changes to Plat or Boundaries of the Association.** The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Association, including any boundary to any Unit or Units upon the approval of the number of Owners required to amend this Declaration. During the Period of Declarant Control, the Declarant may unilaterally make any amendments or changes to any Plat. All changes to the Plat during the Period of Declarant Control shall be approved in advance and in writing by the Declarant. Failure to do so shall make any amended Plat invalid and void.

**18.13 Use of Funds Collected by the Association.** All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for, and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

**18.14 Consent in Lieu of Vote.** In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast the required percentage of membership votes. The Association may use any method allowed under Utah law and the Utah Revised Nonprofit Corporation Act for voting or consent purposes.



**18.15 Owner Liability and Indemnification.** Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligence of that Owner or such Owner's family members, tenants, guests, or invitees. Each Owner, by acceptance of a deed for a Unit, agrees personally and for family members, tenants, guests and invitees to indemnify each and every other Owner, and to hold such other Owners harmless from, and to defend such Owners against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner, including Limited Common Area, if any, except to the extent that: (a) such injury or damage is covered by liability insurance in favor of the Association or any other Owner, or (b) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other Person temporarily visiting such Unit.

**18.16 Conflicting Provisions.** In the case of any conflict between this Declaration and the Bylaws, or the Rules, this Declaration shall control. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly. Notwithstanding the above, this Declaration shall be deemed modified only to the extent necessary to come into compliance with the Act.

**18.17 Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease or other conveyance of an interest in Unit, each Owner or Occupant of such Owner's Unit consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

**18.18 Fair Housing Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under State or Federal Fair Housing Acts to accommodate a Person with a disability (as defined by State or Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area facilities and buildings, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this Section shall not act as a waiver of the provisions of the Governing Documents with regard to any other Person or Owner.

**18.19 Security.** The Association shall in no way be considered an insurer or guarantor of security within or relating to the Project, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Unit in this Association that Association and the Declarant, are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage

to persons, the Units, the Common Area, and to the contents of improvements located thereon to the extent not insured by the Association as required by this Declaration. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION AND THE DECLARANT HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE PROJECT.

18.20 **Effective Date.** This Declaration, and any amendment or supplement hereto, shall take effect upon its being filed for record in the office of the Salt Lake County Recorder.

\* \* \* \*

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by a duly authorized representative.

DATED as of this 11 day of March, 2020.

**DECLARANT:**

**HOLMES DB CONDOS, LLC,**  
a Utah limited liability company

*By its Manager Holmes Holdings, Inc*

By: [Signature]

Name: DARON SMITH

Its: SECRETARY

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF Salt Lake

On the 11 day of March, 2020, personally appeared before me Daron Smith who by me being duly sworn, did say that she/he is an authorized representative of Holmes DB Condos, LLC, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.



Notary Public: [Signature]

IN WITNESS WHEREOF, Founder has consented to this Declaration this 19<sup>th</sup> day of March, 2020.

**FOUNDER:**

**VP DAYBREAK OPERATIONS LLC,**  
a Delaware limited liability company

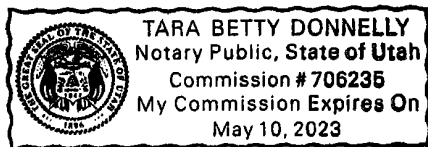
By: **DAYBREAK COMMUNITIES LLC,**  
a Delaware limited liability company

Its: Project Manager

By: *Ty McCutcheon*  
Ty McCutcheon, its President & CEO

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

On the 19<sup>th</sup> day of March, 2020, personally appeared before me Ty McCutcheon, who by me being duly sworn, did say that he is the President and CEO of Daybreak Communities LLC, a Delaware limited liability company, the Project Manager of VP Daybreak Operations LLC, a Delaware limited liability company, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.



Notary Public: *Tara Betty Donnelly*

**EXHIBIT A  
LEGAL DESCRIPTION**

All of **SOUTH STATION PLAT 3 CONDOMINIUMS PHASE 1 AMENDING A PORTION OF LOT C-101 OF THE SOUTH STATION PLAT 3 SUBDIVISION**, according to the official plat on file in the office of the Salt Lake County Recorder.

Including Units 1 through 10

**More particularly described as:**

Beginning at the Southernmost Corner of Lot C-101 of the South Station Plat 3 Subdivision, said point lies South 89°55'30" East 2519.687 feet along the Daybreak Baseline Southeast (Basis of bearings is South 89°55'30" East 10641.888' between Southwest Corner of Section 24, T3S, R2W and the Southeast Corner of Section 19, T3S, R1W) and North 3642.555 feet from the Southwest Corner of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence along said Lot C-101 North 36°32'54" West 132.047 feet; thence North 53°27'06" East 81.755 feet; thence North 36°32'54" West 137.979 feet to a point on the Northwesterly Line of said Lot C-101; thence along said Lot C-101 thence North 53°27'06" East 24.000 feet; thence South 36°32'54" East 56.813 feet to a point on a 10.000 foot radius tangent curve to the left, (radius bears North 53°27'06" East, Chord: South 81°32'54" East 14.142 feet); thence along the arc of said curve 15.708 feet through a central angle of 90°00'00"; thence North 53°27'06" East 5.323 feet; thence North 52°00'02" East 44.014 feet; thence North 53°27'06" East 11.677 feet; thence South 36°32'54" East 165.886 feet; thence South 53°27'06" West 11.677 feet; thence South 54°54'09" West 44.014 feet; thence South 53°27'06" West 10.323 feet; thence South 36°32'54" East 47.916 feet; thence South 53°27'06" West 9.789 feet; thence South 36°32'54" East 14.868 feet to a point on the Southeasterly Line of said Lot C-101; thence along said Lot C-101 the following (2) courses: 1) thence South 67°31'47" West 57.014 feet to a point on a 532.500 foot radius tangent curve to the left, (radius bears South 22°28'13" East, Chord, South 65°01'17" West 46.612 feet); 2) along the arc of said curve 46.627 feet through a central angle of 05°01'01" to the point of beginning.

Property contains 0.697 acres, 30,370 square feet.

**EXHIBIT B**

**UNDIVIDED INTEREST IN COMMON AREAS**

Upon recording of this Declaration, the Project will consist of 10 Units.

**Each Unit shall have an equal Undivided Interest equivalent to a 1/10<sup>th</sup> fractional amount.**

## EXHIBIT C

### BYLAWS OF DB CONDOMINIUM OWNERS ASSOCIATION

These BYLAWS OF DB CONDOMINIUM OWNERS ASSOCIATION are effective upon recording in the Salt Lake County Recorder's Office pursuant to the Utah Condominium Ownership Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

#### RECITALS

A. The Association is organized for all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration and Articles of Incorporation.

B. These Bylaws are adopted to complement the Declaration, to further define the rights of the Association and the Owners, to provide for the ability to effectively govern and operate the Association and the Project known as DB Condominiums and, to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

#### ARTICLE I DEFINITIONS

1.1 Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein shall have the same meaning and effect as used and defined in the Declaration of Condominium for DB Condominiums.

#### ARTICLE II APPLICATION

2.1 All present and future Owners, Mortgagees, Occupants, and their invitees and guests, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and Rules. The mere acquisition or rental of any of the Units or the mere act of occupancy or use of any said Units or the Common Areas will signify that these Bylaws, the Declaration, and the Rules are accepted, ratified, and will be complied with by said persons.

#### ARTICLE III OWNERS

3.1 **Annual Meetings.** The Annual Meeting of the Owners shall be held each year on a day and time established by the Board of Directors. The purposes of the Annual Meeting may include the election of Board Members, the distribution of financial reports and budget, a review of any revisions to the Rules, distributing the most recent reserve study, and to transact such other business as may come before the meeting. If the election of Board Members cannot be held during the Annual Meeting, or at any adjournment thereof, the Board shall cause the election to be held either at a Special Meeting of the Owners to be convened as soon thereafter as may be convenient or at the next Annual Meeting. The Board may from time to time by resolution change the month, date, and time for the Annual Meeting. Annual Meetings shall not be required during the Period of Declarant Control, but

the Declarant may hold Annual Meetings at its discretion.

3.2 **Special Meetings.** Special Meetings of the Owners may be called by a majority of the Board, the President, or upon the written request of Owners holding not less than forty percent (40%) of the voting interests of the Association. Any written request for a Special Meeting presented by the Owners shall be delivered to the President and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a Special Meeting within 45 days of receipt of the Owner request. During the Period of Declarant Control, Special Meetings may only be called by the Declarant.

3.3 **Place of Meetings.** The Board may designate any place in Salt Lake County that is reasonably convenient for the Owners as the place of any Owner meeting. In addition, the Association may hold and conduct Owner meetings through any type of electronic means that allows Owners to communicate orally in real time including telephone and video conferencing.

3.4 **Notice of Meetings.** The Board shall cause written or printed notice of the date, time, and place (and in the case of a Special Meeting, the purpose or purposes) for all Owner meetings. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than sixty (60) nor less than ten (10) days prior to the meeting. Such notice may be sent via email, text, hand-delivery, or regular mail. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to the Owner's email address or telephone number registered with the Association. If mailed, such notice shall be deemed to be delivered and effective on the date deposited in the U.S. mail if addressed to the Owner's address registered with the Association. Each Owner shall register with the Association such Owner's current email address, phone number, and mailing address for purposes of notice hereunder. Such registered email, phone number, and mailing address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Residence shall be deemed to be the Owner's registered address and notice to the Residence address may be made by first-class mail or by posting the meeting notice on the front door. An Owner may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that the Owner will not accept notices by way of email or text.

3.5 **Qualified Voters.** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she has fully paid his or her share of any Assessment (together with any interest and/or late fees) at least 48 hours prior to the commencement of the meeting and is not in violation of any provision of the Governing Documents.

3.6 **Record Date for Notice Purposes.** The Board may designate a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the meeting, for the purpose of determining Owners entitled to notice of any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The Persons appearing in the records of the Association on such record date as the Owners of record of Units in the Project shall be deemed to be the Owners of record entitled to notice of the Owner meeting.

3.7 **Quorum.** Any number of Owners present in person or by proxy at a meeting duly called and held in compliance with the requirements of these Bylaws, shall constitute a quorum for the transaction of business and adoption of decisions.

3.8 **Proxies.** At each Owner meeting, each Owner 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 signed by the Owner or by the Owner's attorney. A proxy may be written on paper or received via email, facsimile, text, or any other electronic or physical means. A signature as required herein shall mean any indication that the document is from and consented to by the person who is purported to have sent it. If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or the Owner's attorney when duly authorized in writing. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated, and signed by such Owner. Such instrument may allow the proxy to vote on any issue arising at any particular meeting or meetings, or may set forth the specific matters or issues upon which the proxy is authorized to act. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as Secretary of the meeting) before the meeting is called to order. The Secretary shall record all proxies in the meeting minutes.

3.9 **Votes.** Owners shall be entitled to vote on each matter submitted to an Owner vote in person, by proxy, or by any type of written or electronic ballot. Owners shall have the number of votes appertaining to the Lot of such Owner, as set forth in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by Owners, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, or the Declaration. When a Lot is jointly owned, any Owner may exercise the vote for such Lot on behalf of all Co-Owners of the Lot. In the event of two (2) conflicting votes by Co-Owners of a Lot, no vote shall be counted for that Lot. In no event shall fractional or cumulative votes be exercised with respect to any Lot. Only those Owners whose accounts with the Association are not more than thirty (30) days delinquent shall be entitled to vote.

3.10 **Waiver of Irregularities.** All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board or of the Owners shall be deemed waived by those Members in attendance if no objection is made at the meeting. For those Members who are not in attendance at the meeting, the right to challenge inaccuracies and irregularities in calls, notices, voting, and decisions shall be waived if no objection is made within thirty (30) days of the date of the meeting.

3.11 **Action Taken Without a Meeting.** Owners have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owners through ballot, written consent, or otherwise. The Association may also use any method permitted for actions without a meeting in accordance with the requirements of Utah Code § 16-6a-707 or § 16-6a-709 and any other applicable section of the Acts. Any action so approved shall have the same effect as though taken at an Owner meeting. Ballots or written consents may be obtained via any electronic or physical means including but not limited to email, facsimile, text, or paper document.

3.12 **Minutes of Meetings.** The Secretary, or their designee, shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present in person and by proxy, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this Section does not invalidate any action taken at a meeting. Draft meeting minutes for each annual meeting of the Owners shall be available to requesting Owners within sixty (60) days of the annual meeting.

**ARTICLE IV  
BOARD OF DIRECTORS**

4.1 **Powers.** The Project and the business and affairs of the Association shall be governed and managed by the Board of Directors. The Board may exercise business judgment and all of the powers of the Association, whether derived from the Declaration, these Bylaws, the Articles, or the Acts, except such powers that the Declaration, these Bylaws, the Articles, and the Acts vest solely in the Owners.

4.2 **Number and Qualifications.** The Board of Directors shall be composed of three (3) persons. Board Members must be at least 18 years old and must be an Owner or the spouse of an Owner of a Unit in the Project. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manager, agent, trustee, or beneficiary of such Owner may be a Board Member. No more than one owner/spouse from any one unit may serve concurrently as a Board Member, regardless of the number of Units owned. If a Board Member ceases to meet any required qualifications during the Board Member's term, such Person's membership on the Board shall automatically terminate. During the Period of Declarant Control, the Qualification requirements of these Bylaws shall not apply and the Declarant may exercise all powers of the Board as permitted by law.

4.3 **Election.** During the Period of Declarant Control, Board Members shall be appointed by Declarant. Following the Period of Declarant Control, the election of Board Members shall be made by the Owners. At such election, the Owners or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The Association may accept written ballots for Board Member election voting purposes from those Members unable to attend a meeting in which an election is held. The persons receiving the largest number of votes shall be elected. The election of Board Members may be conducted through open voting or by secret ballot. Cumulative voting is not permitted. Ties in Owner voting shall be resolved by a vote of the current Board Members.

4.4 **Term of Office.** During the Period of Declarant Control, Board Member terms shall be determined exclusively by Declarant. Following the Period of Declarant Control, the Owners shall elect Board Members for two (2) year terms. The terms shall be staggered and overlap so that elections for Board Member positions are held each year at the Annual Meeting. Board Members may serve consecutive terms if elected.

4.5 **Regular Meetings.** The Board shall hold meetings at least annually or more often at the discretion of the Board. During the Period of Declarant Control, Board Meetings shall be held at the discretion of the Declarant so long as at least one Board Meeting is held each year and a Board Meeting is held each time the Association increases a fee or raises an Assessment.

4.6 **Special Meetings.** Special meetings of the Board may be called by the President or a majority of Board Members on at least two (2) business days' prior notice to each Board Member.

4.7 **Meeting Notice.** The Person or Persons authorized to call Board meetings may fix any place, within Salt Lake County, as the place for holding the meeting and shall provide a conference call-in number for Board Members not able to attend in person. Notice shall be given personally, by email, or by telephone, including text message, at least two (2) business days' in advance of the meeting. By unanimous consent of the Board, Board meetings may be held without call or notice to the Board Members, but notice shall always be provided to those Owners who have requested notice of Board meetings.

4.8 **Quorum and Manner of Action.** 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. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which proper notice was provided shall be the act of the Board. The Board Members shall act only as the Board of Directors, and individual Board Members shall have no powers as such. Board Members may not vote or attend Board meetings via proxy.

4.9 **Owner Attendance.** Any Owner may request notice of Board meetings by requesting such notice from a Board Member and providing a valid email address at which the Owner will receive notice. Owners who have requested notice of Board meetings shall be given notice along with the Board Members and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Board Members. If Owners attend a Board meeting, the Board may select a specific period of time during the meeting and limit Owner comments to such time period. The Board in its sole discretion may set a reasonable length of time that each Owner may speak

4.10 **Open Meetings.** Except as provided below in (a) through (f), following the Period of Declarant Control, Board meetings shall be open to Owners. The Board may hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:

- (a) Consult with legal counsel, or to obtain legal advice and discuss legal matters;
- (b) Discuss existing or potential litigation, mediation, arbitration, or an administrative proceeding;
- (c) Discuss a labor or personnel matter;
- (d) Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal;
- (e) Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or
- (f) Discuss a delinquent assessment.

During the Period of Declarant Control, Board meetings may be closed to Owners, unless the Board, in its sole discretion and without obligation, determines to open the meeting (or a portion thereof) to the Owners.

4.11 **Board Meetings Generally.** The Board may designate any place in Salt Lake County as the place of meeting for any regular or special Board meeting. The Board may allow attendance and participation at any Board meeting by telephone or any other electronic means that allows for Board Members to communicate orally in real time. Following the Period of Declarant Control, if a Board meeting is held by telephone, the Association shall provide the call-in information such that Owners may call-in to access the meeting.

4.12 **Board Action.** Notwithstanding noncompliance with any provision within this Article, Board action is binding and valid unless set aside by a court of law. A person challenging the validity of a Board action for failure to comply with this Article may not bring the challenge more than sixty (60) days after the Board has taken the action in dispute.

4.13 **Compensation.** No Board Member shall receive compensation for any services that such 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 such duties as a Board Member to the extent such expenses are approved by a majority of the other Board Members. Nothing herein shall be construed to preclude any Board Member from serving the Project in any other capacity and

receiving compensation therefore, so long as approved in advance by a majority of disinterested Board Members.

4.14 **Resignation and Removal.** A Board Member may resign at any time by delivering a written resignation to either the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Board Member who is appointed by the Declarant may only be removed by the Declarant. The Declarant may remove a Board Member it appoints at any time. A Board Member elected by the Owners after the Period of Declarant Control may be removed at any time, with or without cause, at a Special Meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire voting interests of the Association. At such a meeting, the Owners shall vote for a new Board Member to fill the remaining term of the removed Board Member. Board Members may also be removed by a vote of a majority of the other active Board Members upon the occurrence of any of the following: failure to attend three (3) consecutive Board meetings, failure to remain current on Assessments, or a violation of the Governing Documents. If removal occurs based on the preceding sentence, then the remaining Board Members may appoint a replacement to serve the remaining term of the removed Board Member.

4.15 **Vacancies.** If vacancies occur during the Period of Declarant Control, the Declarant shall appoint a Board Member to fill the vacancy. Following the Period of Declarant Control, if vacancies occur for any reason (including death, resignation, or disqualification) except removal by the Owners, the Board Members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Board Members then in office, though less than a quorum. Any vacancy in the Board occurring by reason of removal of a Board Member by the Owners may be filled by election of the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor. Except by reason of death, resignation, disqualification, or removal, Board Members shall continue to serve until their successors are elected.

4.16 **Action Without a Meeting.** Board Members have the right to take any action in the absence of a meeting which they could take at a meeting if a majority of the Board Members consent to the action in writing. The term "in writing" shall specifically include email and text messaging. Additionally, the Board Members may also take action without a meeting if the Board complies with any applicable sections of the Nonprofit or Community Association Acts. Any action so approved shall have the same effect as though taken at a meeting of the Board.

4.17 **Waiver of Notice.** Before or at any meeting of the Board, any Board Member or Owner may waive notice of such meeting and such waiver shall be deemed the equivalent of proper notice. Attendance by a Board Member or Owner at any meeting thereof shall be a waiver of notice by that Board Member or Owner of the time, place, and purpose thereof.

4.18 **Adjournment.** The Board may adjourn any meeting from day to day for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

4.19 **Meeting.** A Board meeting does not include a gathering of Board Members at which the Board does not conduct and vote on Association business.

## ARTICLE V OFFICERS

5.1 **Officers.** The officers of the Association shall be a President, Secretary, Treasurer, and such other officers as may be appointed by the Board. Officers shall not be required during the Period of Declarant Control.

5.2 **Election, Tenure, and Qualifications.** The officers of the Association must be Board Members and shall be elected by the Board of Directors at the first Board meeting following each Annual Meeting of the Owners. Each officer shall hold such office until a successor has been elected and qualified, or until such officer's death, or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one (1) office.

5.3 **Subordinate Officers.** The Board may 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.

5.4 **Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to any member of the Board or to any managing agent of the Association. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Board Members at any time, with or without cause.

5.5 **Vacancies.** If a vacancy occurs in an 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 majority vote of the Board at any regular or special Board meeting.

5.6 **President.** The President shall be the chief executive of the Association. The President shall preside at meetings of the Board of Directors and at meetings of the Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Owner or person, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order." The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board.

5.7 **Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, Rules, or any resolution the Board may require. The Secretary shall also act in the event of the President's absence or inability or refusal to act. The duties of the Secretary may be delegated to the Manager.

5.8 **Treasurer.** The Treasurer shall have the custody and control of the funds and financial accounts of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall perform such other duties as required by the Board. The duties of the Treasurer may be delegated to the Manager.

5.9 **Compensation.** No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board.

## ARTICLE VI COMMITTEES

6.1 **Designation of Committees.** The Board may designate committees as it deems appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A committee shall not have powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate a committee at any time.

6.2 **Proceeding of Committees.** Each committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.

6.3 **Quorum and Manner of Acting.** At each committee meeting, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event fewer 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 committee members shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may only exercise the authority granted to it by the Board.

6.4 **Resignation and Removal.** A committee member may resign at any time by delivering a written resignation to a Board Member or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove any committee member.

6.5 **Vacancies.** If a vacancy occurs in a committee for any reason, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

## ARTICLE VII INDEMNIFICATION

7.1 **Indemnification.** No Board Member, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Board Member, officer, or committee member performed for or on behalf of the Association. The Association shall and does hereby agree to defend, indemnify, and hold harmless each person who shall serve at any time as a Board Member, officer, or committee member of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer, or committee member of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Board Member, officer, or committee member and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be defended and indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's willful or intentional misconduct. The rights accruing to any person under the

foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to defend, indemnify, or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

7.2 **Other Indemnification.** The defense and indemnification herein provided shall not be deemed exclusive of any other right to defense and indemnification to which any person seeking defense and indemnification may be entitled under the Acts or under any agreement, vote of disinterested Board Members or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. It is the intent that all Board Members, officers, and committee members be and hereby are defended and indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The defense and indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, committee member, or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.

7.3 **Insurance.** The Board, in its discretion, may direct that the Association purchase and maintain Directors and Officers insurance on behalf of any person who is or was a Board Member, officer, committee member, Manager or employee of the Association or is or was serving at the request of the Association as a Board Member, officer, committee member, Manager, employee, or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to defend and indemnify such person against liability under the provisions of this Article.

7.4 **Settlement by Association.** The right of any person to be defended and/or indemnified shall be subject always to the right of the Association through the Board, in lieu of such defense and/or indemnity, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

## ARTICLE VIII RULES AND REGULATIONS

8.1 **Rules.** The Board shall have the authority to adopt and establish Association Rules as it deems necessary for the maintenance, operation, management, and control of the Project. The Board may from time to time, by resolution, alter, amend, and repeal such Rules and use their best efforts to see that they are strictly observed by all Owners and residents. Owners are responsible to ensure that their lessees, invitees, and guests strictly observe the Rules then in effect as well as the covenants and restrictions of the Declaration and shall be jointly and severally liable for their violations and resulting fines. Copies of all Rules adopted by the Board shall be sent to all Owners at least ten (10) days prior to the effective date thereof.

## ARTICLE IX AMENDMENTS

9.1 **Amendments by Declarant.** So long as the Declarant owns one or more Units in the Project, the Declarant acting alone may amend the Bylaws for any reason, without Owner approval. Declarant's unilateral amendment right as designated herein may continue past the expiration of the Period of Declarant Control. No other amendment shall be valid or enforceable during the period

Declarant owns at least one Unit unless the Declarant has given written consent to such amendment. Any amendment during the period Declarant owns at least one Unit shall be executed by Declarant on behalf of the Association and shall become effective upon recordation in the office of the Salt Lake County Recorder.

9.2 **Amendments by Association**. After Declarant has sold all of the Units to third parties and the Period of Declarant Control has expired, the Bylaws may be amended by the Owners upon the affirmative vote of at least sixty-seven percent (67%) of the Undivided Interests of the Association. Any amendment(s) shall be effective upon recordation in the office of the Salt Lake County Recorder. In such instrument the President shall execute the amendment and certify that the vote required by this Section has occurred. If a Unit is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Unit under this Section. If a Unit is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this Section. No acknowledgment of any Owner signature shall be required. No amendment shall restrict, limit, or impair any Declarant rights without the express written consent of the Declarant.

9.3 **Mortgagee Consent**. The right of the Declarant to amend pursuant to Section 9.1 and the right of the Association to amend pursuant to Section 9.2 shall be subject to the Lender consent requirements set forth in Section 13.4 of the Declaration for amendments that are of a material adverse nature to first lien mortgagees as further described therein. The consent of Lenders may be implied if Lenders fail to submit a response to a written proposal for amendment within 60 days of notice as further set forth in Section 13.4(e) of the Declaration.

## ARTICLE X MISCELLANEOUS PROVISIONS

10.1 **Waiver**. No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

10.2 **Invalidity; Number; Captions**. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used in these Bylaws, the singular shall include the plural, and the plural shall include the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

10.3 **Conflicts**. These Bylaws are intended to comply with the Declaration. In case of any irreconcilable conflict, the Declaration shall control over these Bylaws.

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**EXHIBIT D**

**MAINTENANCE ALLOCATION CHART**

ITEM	HOA	OWNER	NOTES
GENERAL NOTE			Shared items are to be resolved between the Owners involved in use of the item.
A/C Unit (for Units)		X	
Address Numbers	X		
Cable/Satellite TV		X	
Ceiling		X	
Circuit Breakers for Unit		X	
Common Area amenities	X		
Door and Door Frames - exterior	X		
Door and Door frames - interior		X	
Door Hardware/doorbell		X	
Drains – Unit & Limited Common patio/porch	X		
Dryer Vent Cleaning		X	
Electrical Wiring/Panel (for Unit)		X	
Exterior Wall Finishes (Rock/Stucco/Siding, etc.)	X		
Fences	X		
Fireplace, Flue, & Vent Pipes – Cleaning & Repair		X	
Floor Coverings		X	
Foundation – Structural	X		
Furnace (for Units)		X	
Gas Pipes (from meter to inside Unit)		X	
Hose Bib/Faucet/Spigot – exterior	X		
Hot Water Heater		X	
Insurance Coverage – Property (attached buildings)	X		
Insurance Coverage - HO6 Policy		X	
Insurance Coverage - loss assessment		X	
Insurance Deductible	X	X	Assessed to Owners pro-rata according to losses. HO6 deductible is Owner's responsibility.
Irrigation Lines / Heads – Common Area yard areas	X		
Landscape – Common Area	X		
Lights – exterior eaves & porches (fixtures & bulbs)	X		
Limited Common Area – balconies, patios, porches, & decks - repair and replacement	X		
Limited Common Area – balconies, patios, porches, & decks - clean and snow removal		X	
Mailbox & Stand/Structure	X		Or USPS as applicable
Mailbox Lock & Key		X	
Paint - exterior wall surfaces and trim finishes	X		
Paint – exterior doors, garage doors, windows	X		
Paint - Interior		X	

Parking – interior of garages		X	
Patio Slab	X		
Phone Lines		X	
Playgrounds & Open Space (if any)	X		
Plumbing Valves, Pressure Regulator		X	Point of connection/Meter to the Unit – Owner Before point of connection/Meter – HOA
Plumbing Main Line		X	Point of connection/Meter to the Unit – Owner Before point of connection/Meter – HOA
Plumbing Leak		X	Point of connection/Meter to the Unit – Owner Before point of connection/Meter – HOA
Plumbing – clogging/stoppage		X	Point of connection/Meter to the Unit – Owner Before point of connection/Meter – HOA
Plumbing Pipes Inside Unit		X	
Rain Gutters – clean-out, repair, replacement	X		
Rain Gutters - drains away from building	X		
Roof – repair & replacement	X		
Sewer pipes & utilities – serving a single Unit		X	
Sewer pipes & utilities – to more than one Unit	X		Unless handled by Municipality or others
Sidewalks and paths on Common Areas	X		
Snow Removal – private roads & Common sidewalks	X		
Storm Drains	X		
Street Lights	X		Unless handled by Municipality or others
Streets – private	X		
Termites, pests, rodents, insects, etc.		X	
Trash (central dumpster and disposal)	X		
Utility Doors (exterior of units)	X		
Vent Covers - exterior	X		
Wall – exterior walls and bearing interior walls	X		
Wall - interior non-bearing walls		X	
Water – culinary		X	
Water – Common Area landscape	X		Unless metered to the individual Unit owner
Weather Stripping		X	
Windows – glass, screens, frames, boxes	X		

**EXHIBIT E**

**ADDITIONAL LAND LEGAL DESCRIPTION**

**SOUTH STATION PLAT 3 CONDOMINIUMS PHASES 2 through 8, including 110 additional Units.**

**More particularly described as:**

Lot C-101 and Lot C-102, of that plat map entitled "DAYBREAK SOUTH STATION PLAT 3 AMENDING LOT T4 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED" recorded on June 3, 2020, as Entry No. 13288782, Book 2020, at Page 132, of the Official Records of Salt Lake County, Utah.