

When Recorded Return To:
Daybreak Community Association
11248 South Kestrel Rise Road, Suite 201
South Jordan, UT 84009

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Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.
1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84121

Tax Parcel ID Nos.: See Exhibit A

**SUPPLEMENT TO COMMUNITY CHARTER FOR DAYBREAK
ESTABLISHING A SERVICE AREA
FOR
DESTINATION PAIRED HOMES**

THIS SUPPLEMENT TO COMMUNITY CHARTER FOR DAYBREAK ESTABLISHING A SERVICE AREA FOR DESTINATION PAIRED HOMES (this “**Supplement**”) is made by **VP DAYBREAK OPERATIONS LLC**, a Delaware limited liability company (“**Founder**”), and is consented to by **DESTINATION CONSTRUCTION, LLC**, a Utah limited liability company, DBA Destination Homes (“**Builder**”) as of the date set forth on the signature page below.

RECITALS

A. Builder owns or is under contract to purchase from Founder’s affiliate, VP DAYBREAK DEVCO LLC, a Delaware limited liability company, certain real property located in South Jordan City (the “**City**”), Salt Lake County (the “**County**”), State of Utah, as more particularly described on Exhibit A attached hereto (the “**Builder Property**”). Builder intends to construct a community of Residences on the Lots within the Builder Property to be known as the Destination Paired Homes Benefited Service Area (the “**Project**”). The Builder Property currently consists of ten (10) Lots, but Builder reserves the right to add additional Lots to the Project.

B. The Builder Property is located within a master planned residential development consisting of multiple phases known, collectively, as Daybreak (“**Community**”).

C. The Community and the Builder Property are subject to that certain *Covenant for Community for Daybreak*, recorded on February 27, 2004, as Entry No. 8989517, Book 8950, Page 7722 (as amended and supplemented from time to time, the “**Covenant for Community**”). The Community and the Builder Property are also subject to that certain *Community Charter for Daybreak*, recorded on February 27, 2004, as Entry No. 8989518, Book 8950, Page 7784 (as amended and supplemented from time to time, the “**Charter**”).

D. Daybreak Community Association, Inc., a Utah non-profit corporation (the “**Association**”) has been established to administer the Governing Documents (as defined below) and maintain the Common Areas in the Community. The Association is entitled to exercise certain rights under the Governing Documents.

E. Pursuant to Section 3.4 of the Charter, Founder may designate Service Areas within the Community where Lots or Residences receive benefits or services from the Association that the Association does not provide to all Lots or Residences in the Community.

F. Founder, with Builder's consent, desires to create a Service Area for the Lots within the Builder Property.

G. In addition, and pursuant to the Charter, Founder and Builder wish to establish the covenants, conditions, restrictions, easements, servitudes, and limitations for the Project set forth in this Supplement (collectively, the "Covenants") for the purpose of:

- i. Helping to ensure uniformity in the development of the Lots within the Project;
 - ii. Protecting long-term property values and a desired quality of life in the Project;
- and
- iii. Providing for mandatory dispute resolution procedures and requirements to avoid litigation, as set forth in Article 9 of this Supplement.

NOW, THEREFORE, Founder, with Builder's consent, hereby declares that the Builder Property, and all Lots within the Project, shall be held, sold, conveyed, leased, and rented subject to, and shall be encumbered by, this Supplement and the Covenants which shall run with the Land and be binding on all persons or entities now or hereafter having or claiming any right, title, or interest in the Builder Property, or any of the Lots within the Project.

ARTICLE 1

DEFINITIONS

Any capitalized term used but not otherwise defined herein shall have the meaning provided for in the Charter. The plural of any word defined in this Supplement shall have the same meaning as the singular and vice versa. The following words, when used in this Supplement, shall have the following meanings (other terms may be defined elsewhere in this Supplement):

1.1 "Act" means the Utah Community Association Act, Utah Code § 57-8a-101 *et seq.*, as amended from time to time.

1.2 "Association" means the Daybreak Community Association, Inc., a Utah non-profit corporation.

1.3 "Builder" means Destination Construction, LLC, a Utah limited liability company, doing business as Destination Homes, and any assign or successor that acquires Builder's interest in the Builder Property and takes a written assignment of Builder's rights. The term Builder shall **NOT**

mean any person or entity who acquires one or more, but less than all, of the Lots from Builder for the purposes of constructing Residences thereon, unless such person or entity also receives a written assignment of Builder's rights. Any assignment of Builder's rights may, but shall not be required to, be recorded with the County.

1.4 “**Builder Property**” means the real property situated in the City and County, as more particularly described in Exhibit A, against which this Supplement is recorded and any other real property which may be hereafter become subject to the Covenants set forth herein by virtue of the recording of an amendment to this Supplement that adds such property to the Project and subjects such property to the Covenants.

1.5 “**Board**” means the Association's board of directors, as discussed in Section 2.3 of the Charter.

1.6 “**Charter**” means the *Community Charter for Daybreak* identified in Recital C, above.

1.7 “**City**” means the City of South Jordan, a political subdivision of the State of Utah.

1.8 “**Common Areas**” means the portions of the Project, if any, including community improvements, which are held or maintained by the Association for the benefit of the Owners. Common Areas do not include areas within the Lots or areas dedicated or reserved for public use.

1.9 “**Community**” means the Daybreak master planned community located in the City.

1.10 “**County**” means Salt Lake County, Utah.

1.11 “**County Recorder's Office**” means the office of the government of the County which maintains an official record of deeds and real property records and accepts such documents for recordation pursuant to Utah Code §17-21-1.

1.12 “**Covenant for Community**” means the *Covenant for Community for Daybreak* identified in Recital C, above.

1.13 “**Covenants**” means every covenant, condition, restriction, easement, and limitation set forth in this Supplement.

1.14 “**Design Review Committee**” means the committee established pursuant to Section 5.2 of the Charter.

1.15 “**First Mortgage**” means a recorded Mortgage or consensual lien granted by the Owner of a Lot within the Project which is not subject to any senior lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.16 “**First Mortgagee**” means any person or entity named as a Mortgagee under a First Mortgage and any successor-in-interest to such Mortgagee.

1.17 “**Governing Documents**” means those documents identified in Section 1.1 of the Charter.

1.18 “**Improvement**” means every structure, feature or improvement of any kind placed or constructed in the Project, including but not limited to any Residence, building, garage, lighting, deck, porch, patio, sidewalk, foundation, awning, fence, retaining wall, driveway, irrigation or drainage feature, storage structure or other product of construction and also includes landscaping.

1.19 “**Lot**” means a subdivided and individually numbered residential parcel within the Project as designated on the Plat Map recorded with the County Recorder’s Office. The term Lot includes any Residence or other Improvement constructed thereon.

1.20 “**Mortgage**” means any mortgage, deed of trust, or other document pledging any portion of a Lot within the Project or interest therein as security for the payment of a debt or obligation.

1.21 “**Mortgagee**” means the mortgage or beneficiary identified in a Mortgage.

1.22 “**Owner**” means the owner of a Lot within the Project, as identified in the records of the County Recorder.

1.23 “**Plat Map**” means collectively Daybreak Village 12A Plat 4 Amending Lot V5 of the Kennecott Master Subdivision #1 Amended and Lot P-115 of the Daybreak Village 12A Plat 3 Subdivision recorded in the County Recorder’s Office, together with any revisions or amendments thereto and any plat incorporating additional real property into the Project. Builder reserves the right to modify the terms of or amend the Plat Map for the Project. Any such revisions or amendments recorded in the County Recorder’s Office shall be deemed the Plat Map for purposes of this Supplement. Also, Builder may expand the Project to include additional phases for the Project. In the event the Project is expanded and one or more additional plats are recorded with the County Recorder’s Office, then the term Plat Map shall refer to all recorded plats for the Project.

1.24 “**Project**” means the Destination Paired Homes Benefited Service Area, consisting of all of the Lots described in **Exhibit A**, which are located in the City and within the Community, together with any additional Lots incorporated into the Project as provided herein. The Project may be developed in multiple phases.

1.25 “**Residence**” means the single-family dwelling structure on a Lot within the Project. It is anticipated that the Residences will be single-family dwellings which are attached or connected to another single-family dwelling by a common wall, common roof, or other shared building component

(each, an “**Attached Residence**”).

1.26 “**Service Area**” means the Destination Paired Homes Benefitted Service Area, established by this Supplement and subject to the terms and conditions set forth herein.

1.27 “**Supplement**” means this *Supplement to Community Charter for Daybreak Establishing a Service Area for Destination Paired Homes*, as it may be amended from time.

ARTICLE 2

ESTABLISHMENT OF THE SERVICE AREA AND GOVERNING DOCUMENTS

2.1 The Service Area. By this Supplement, and consistent with Section 3.4 of the Charter, is hereby established as the Destination Paired Homes Benefitted Service Area (the “**Service Area**”). The Service Area will consist of the Builder Property, identified in **Exhibit A**, together with any additional phases of the Project which may be identified in an amendment to this Supplement.

2.2 Service Area and Covenants to Run with the Land. This Supplement, the Service Area, and the Covenants herein, shall run with the land and shall be binding on all persons or entities holding or taking title to any interest in the Builder Property or any Lot in the Project, and all Owners of Lots within the Project shall hold or take title subject to this Supplement.

2.3 Service Area Benefits. The Association will provide particular benefits for the Owners of Lots within the Service Area which are not provided to all Owners within the Community (“**Service Area Benefits**”). However, the Association will have no obligation to provide any services which are not expressly set forth herein unless the Association specifically assumes such obligations in a written instrument. The Association will provide the following Service Area Benefits for the Service Area:

2.3.1 Landscaping. The Association will maintain, repair, and replace the landscaping elements on each Lot including, but not limited to, mowing the lawns; provided however, the Association shall not be responsible for maintaining, repairing nor replacing landscaping within the fenced areas of the Lots. Owner improvements will be Owner’s responsibility to repair. All improvements must be approved by the Board and Design Review Committee prior to installation.

2.3.2 Snow Pushing. The Association will perform reasonable snow pushing for the Project for all Common Areas, common sidewalks and private streets within the Project and shall have a right-of-way and easement to push and store snow that has fallen in reasonable locations upon the Lots. However, each Owner will be responsible for pushing of snow in all private areas of such Owner’s Lot including but not limited to, fenced in areas, patios, balconies, steps, and pathways, etc. No deployment of crews will occur until over 2 inches of snow has accumulated. The deployment may change from time to time by the Board. Owners are responsible for all snow pushing for amounts under 2 inches and in between storm events.

2.4 Contingency. The Board may include the collection of contingency funds for the Service Area to be used if the annual budgeted amount is exceeded.

2.5 Service Area Expenses. Subject to the terms of the Charter and the Act, Owners of Lots within the Service Area will be responsible for the expenses which the Association incurs or expects to incur in connection with the provision of the Service Area Benefits (“**Service Area Expenses**”). The Association will prepare an annual budget for the Service Area identifying the Service Area Expenses in accordance with Section 12.2 of the Charter.

2.6 Service Area Assessments. Each Owner within the Project will be responsible to pay an assessment comprising such Owner’s share of the Service Area Expenses (“**Service Area Assessment**”) divided equally amongst the Lots within the Service Area. The initial estimate of Service Area Assessments are set forth on Exhibit B attached hereto. The Service Area Assessment will be assessed by the Association in accordance with the terms of Chapter 12 of the Charter. The obligation to pay Service Area Assessments **will be in addition to** the obligation to pay any other assessments imposed by the Association pursuant to the Charter, the Covenant for Community, or other Governing Documents. The obligation to pay the Service Area Assessment will be a personal obligation of each Owner and shall also be a lien on such Owner’s Lot. The Association may enforce such obligation and/or foreclose such lien in accordance with the terms of the Act and the Governing Documents.

2.7 Service Area Committee. Builder may form and designate the Service Area Committee for the Service Area. Until Builder has transferred one hundred percent (100%) of the Lots within the Project to third-party residential purchasers, Builder shall have the right to designate Builder representatives as members of the Service Area Committee. During such time, members of the Service Area Committee need not be Owners. After Builder has transferred one-hundred percent (100%) of its Lots within the Project, or at such earlier time as Builder may determine in its sole discretion, the Owners of Lots within the Service Area may elect the members of the Service Area Committee pursuant to the terms and conditions of the Association’s By-Laws.

2.8 Damage to Areas Maintained by Association. If an Owner, or such Owner’s family, tenants, guests, or invitees, causes damage to any component of the Project for which the Association has assumed maintenance obligations, as set forth above, such Owner will be responsible to repair or replace such damage at the Owner’s sole expense.

2.9 Governing Documents. In addition to this Supplement, the Service Area will be subject to, and governed by the Charter, the Covenant for Community, and any other covenants, restrictions, and easements now of record. Further, the Association’s Governing Documents will be binding on all Owners. Except as specifically provided herein, in the event of any direct conflict between the terms of this Supplement and the terms of any of the Governing Documents, the terms of the Governing Documents will control.

2.10 Association Membership. Each Owner is a member of the Association. Such membership automatically becomes effective by an Owner's acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed. By accepting a deed to a Lot, an Owner is deemed to have agreed to be bound by the Covenants set forth herein and to the terms and conditions of the Governing Documents. Membership is mandatory for all Owners.

2.11 Applicability of the Act. Founder and Builder hereby confirm and acknowledge that the Project is subject to the provisions of the Act with respect to items not addressed in the Governing Documents or this Supplement but covered by the Act.

2.12 Local Laws and Ordinances Applicable. In addition to the Covenants set forth in this Supplement, the Builder Property is subject to the local laws and ordinances of the City and County, including applicable building codes and zoning ordinances, now or hereafter in effect.

ARTICLE 3

COMMON AREAS

3.1 Common Areas. The Project may have Common Areas consisting of any portions of the Project intended for the common use of all Owners, if designated on the Plat Map.

3.2 Use and Enjoyment. Except as provided herein, each Owner shall have a non-exclusive right to use and enjoy the Common Areas. The right of use and enjoyment shall include an access easement to and over all Common Areas.

3.3 Ownership. The Common Areas shall be owned by the Association.

3.4 Maintenance. At the direction of the Board, the Association shall manage, operate, examine, insure, inspect, care for, repair, replace and maintain the Common Areas. The Association shall maintain all landscaping of the Common Areas specific to the Service Area through Service Area Assessments. The Association shall pay all utility charges attributable to the Common Areas. Owners shall pay all utilities that only serve their unit. No Owner, directly or indirectly, shall make any alterations to any Common Areas without prior written consent of the Board.

3.5 No Obstruction. No person shall obstruct or permanently occupy any portion of a Common Area without prior written permission of the Board or the Service Area Committee.

3.6 Limitations on Use. Each Owner's use of the Common Areas is subject to the terms and conditions of the Governing Documents.

ARTICLE 4

RESTRICTIONS ON USE OF LOTS AND RESIDENCES

4.1 Applicability of Governing Documents. Each Owner's use of such Owner's Lot and Residence is subject to the terms, conditions, and restrictions set forth in the Governing Documents, in addition to the terms set forth herein.

4.2 Compliance with Supplement. Each Owner shall fully comply with, and shall cause such Owner's guests and invitees to fully comply with, the Covenants set forth in this Supplement and the terms of the Governing Documents.

4.3 No Further Subdivision. No Lot or Common Area shall be further subdivided or separated into smaller parcels. No conveyance of less than all of any Lot shall be permitted.

4.4 Residential Use. Each Residence shall be used only for residential purposes consistent with the City's zoning ordinances and the Governing Documents.

4.5 Leasing. The leasing or rental of any Residence, or any portion thereof, shall only be permitted if allowed under the terms, conditions, and restrictions of the Governing Documents.

4.6 Illegal Activity. No Owner shall engage in, or permit others to engage in, conduct which is in violation of any statute, rule, ordinance, regulation, court order, or other validly imposed legal requirement.

4.7 Nuisances and Offensive, Unsightly, and Unsafe Conditions. No Owner shall permit any noxious, offensive, unsightly, or unsafe activity, object, animal, or condition to exist on such Owner's Lot. Without limiting the generality of the foregoing, no unreasonable noise or disturbance shall be permitted on any Lot. Recreational vehicles, trailers, mobile homes, trucks other than pickup trucks, boats, tractors, vehicles other than automobiles, campers not on a truck, snowmobiles shall not be parked within the Project except in those areas, if any, within the Project which are specifically designated for the parking of such vehicles and as allowed per the Governing Documents. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view as allowed per the Governing Documents and Design Guidelines. Service areas, storage piles, compost piles and clothes drying/hanging facilities must be approved by the Design Review Committee. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Lot, except within an enclosed structure or when appropriately screened from view. No Owner shall dispose, or permit to be disposed, any oil, gas, toxic or hazardous material, or other unsafe substance within the Project.

4.8 Ingress and Egress. Each Owner shall have a right of ingress to and egress from such Owner's Lot, with such right of ingress and egress being perpetual and appurtenant to ownership of the Lot.

4.9 Encroachment. Subject to Section 6.2.1 of this Supplement, no Improvement on any Lot shall encroach on an adjoining Lot or Common Area and any such encroaching Improvements must immediately be removed at the expense of the Owner of the Lot from which the Improvement encroaches. If, however, encroachment occurs due to natural settling or shifting or for other reasons beyond the control of the Owner, the Owner shall be deemed to have an easement for the maintenance of such encroaching Improvement which shall exist, and shall run with the land, for so long as the encroaching Improvement exists.

4.10 View Impairment. Builder makes no representation or guarantee that the view from, across, or over any Owner's Lot will remain the same as when purchased by such Owner. Construction of Residences or other Improvements within the Project may affect such Owner's view. In addition, landscaping and trees may also impact an Owner's view and the Builder and Association will have no obligation to remove, prune or trim any landscaping or trees.

ARTICLE 5

MAINTENANCE

5.1 Maintenance of Residences. The Association and Service Area do not have any maintenance responsibilities of any improvements except as outlined in Sections 2.3.1 Landscaping and 2.3.2 Snow Pushing.

5.2 Maintenance of On-Site Facilities. The City may require the Association to maintain all or portions of the sewer system, storm drain system or other utility systems or facilities within the Project. The cost of any such maintenance will be borne by the Association and assessed to the Owners as a Special Assessment or as part of the Service Area Assessment.

5.3 Roads and Streets. If shown on the Plat Map, certain roads within the Project may be privately owned by the Association in which case the Association will have the obligation to maintain the same. Other roads and streets within the Project may be dedicated to the City for public use, as shown on the Plat Map, and such roads will be maintained by the City.

5.4 Utilities. The Owner of each Lot shall pay for all utility services provided to such Lot, except utility services, if any, which are not separately billed or metered, in which case the Association may, at its election, pay such utility charges and assess the affected Owners. Any utilities serving Common Areas shall be paid by the Association and an appropriate share shall be charged to each Lot as part of the annual assessment.

5.5 Remedies. Among other available remedies, the Association shall have the right to enter each Owner's Lot and perform maintenance otherwise required to be performed by an Owner and to recover the cost of such maintenance from such Owner as a special assessment against such Owner and such Owner's Lot if the Association determines that such Owner is unwilling or unable to timely perform such maintenance. Unless otherwise provided in the Governing Documents, and except in the case of an emergency, the Association may not exercise this remedy unless: (a) the Owner has

been given written notice of the need to perform such maintenance and fifteen (15) days have elapsed since such notice was given without the required maintenance being performed by such Owner, and (b) the Owner is given the opportunity for a hearing before the Board.

ARTICLE 6

EASEMENTS

6.1 Easements Shown on Plat Map. The Builder Property and Lots are subject to the easements, rights of way, encroachments, and other encumbrances as shown on the Plat Map. Within such easements, no Improvement of any type shall be placed or permitted to remain which may damage or interfere with the intended purpose of such easement.

6.2 Easements Reserved. In addition to easements shown on the Plat Map or otherwise provided for in this Supplement, the following easements, and right to grant easements, are reserved for the benefit of the Builder, the Owners, and the Association:

6.2.1 Easement for Encroachment. If, because of an error in original construction, an error on the Plat Map, natural settling or shifting of the earth, or good faith mistakes during repair or reconstruction, any part of the Common Areas encroaches on an adjoining Lot, an easement for the encroachment and for maintenance of the Common Areas shall exist in favor of the Association.

6.2.2 Public Dedication. The Builder reserves, for itself and its successors and assigns, the right to dedicate all roads, streets, alleys, open space, rights of way or easements shown on the Plat Map to public use. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Project except as set forth in this Supplement, or as shown on the Plat Map.

6.2.3 Current Utility Easements. The Association and public utility or public service providers shall have an easement for the installation, maintenance, and repair of such utilities and services as shown on the Plat Map.

6.2.4 Future Utility Easements. Builder reserves, for itself and its successors and assigns, an easement, and the right to grant easements to any person, individual, corporate body, or municipality, across, over, under, upon, and through any Lot, Common Area, road, street, open space, or other portion of the Project, for the installation, construction, maintenance, reconstruction and repair of public, quasi-public, or private utilities and related facilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, pipelines, laterals, underground or above-ground lines and cables, transmission facilities, meters and other facilities and appurtenances necessary or useful for the provision or management of water, stormwater, storm sewer, sanitary sewer, gas, electricity, telephone, cable television, internet and data and other public, quasi-public or private services or utilities

deemed by Builder necessary or advisable to provide any service to the Project or any Lot, Common Area, or other portion thereof.

6.2.5 Grading and Drainage. Builder reserves, for itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any Residence built on such Lot, but Builder shall not be under any obligation or duty to do such grading or to maintain any slope. In addition, if Builder establishes a drainage system within the Project, Owners must not do anything to modify or interfere with the same.

6.2.6 Right of Entry onto Lots. The Builder and the Association shall have the right, through authorized agents, to enter onto any Lot after reasonable notice to the Owner thereof for the purpose of performing maintenance or determining whether the Lot, or any Improvements thereon, complies with this Supplement and the Governing Documents. Except in the event of an emergency, entry made pursuant to this Section shall be during normal business hours, at a time convenient for the Owner, after reasonable notice.

6.2.7 Easement to Store Snow. Owners shall allow the Association to place snow removed from the Service Area onto the Owners' property, and the Association shall not be responsible for damages that may be incurred.

ARTICLE 7

INSURANCE

7.1 Insurance Held by Owner. Each Owner shall obtain and maintain insurance covering all improvements of the property, such as the building, fencing, personal contents, etc. of the Residence. The Association and the Service Area **DO NOT** carry any insurance coverage for this Service Area as it does not maintain any buildings, structural components or fixtures and is only responsible for snow pushing and common areas landscape maintenance as outlined in Sections 2.3.1 Landscaping and 2.3.2 Snow Pushing. Furthermore, the Association's Charter was recorded prior to January 1, 2012.

ARTICLE 8

DURATION AND AMENDMENT

8.1 Duration. This Supplement shall be effective, and the Covenants set forth herein shall encumber the Builder Property, from the date the Supplement is recorded in the County Recorder's Office and, as amended from time to time, this Supplement shall continue in full force and effect against the Builder Property and the Covenants shall run with the land in perpetuity, for as long as the law allows unless amended or terminated as provided herein.

8.2 Amendment. Subject to the terms of the Act and the Governing Documents, this Supplement may be amended: (a) by the Builder, with the Founder's consent but without the need of approval of any other Owner, so long as Builder owns any Lot within the Service Area; or (b) by the affirmative vote of not less than sixty-seven percent (67%) of the Owners of Lots within the Project (and consent of the Founder during the Founder Control Period). Any such amendment must contain a statement from the Board certifying that the required vote has taken place. No amendment to this Supplement shall be effective until it is recorded in the County Recorder's Office.

8.3 Termination. An agreement to terminate this Supplement, and the Covenants set forth herein, shall require the affirmative vote of sixty-seven percent (67%) of the Owners of Lots within the Project (and consent of the Founder during the Founder Control Period). In addition, any agreement to terminate must be approved, or deemed approved, by at least sixty-seven percent (67%) of the Eligible Mortgagees.

ARTICLE 9

MANDATORY DISPUTE RESOLUTION REQUIREMENTS

9.1 Statement of Intent. Prior to purchasing a Lot, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, an inspection on any Lot that Owner is purchasing or any other aspect of the Project, including, without limitation, the Common Areas. Moreover, if any written warranty has been provided by the Builder, it identifies the only items that are warranted by the Builder. Having had the ability to inspect prior to purchasing a Lot, having received a written warranty if any warranty is provided, and having paid market price for a Lot in the condition it and the Lots and Common Areas are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Builder and/or any subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners of Lots within the Project (by purchasing a Lot) and the Builder acknowledge and agree that claims and disputes shall first be asserted and resolved through Pre-Litigation Non-Adversarial Procedures, as set forth in the provisions of this Article 9. In addition, the Association and the Owners agree that they take ownership and possession of the Lots and Common Areas **AS IS**, with no warranties of any kind except as maybe provided in writing or as otherwise required as a matter of law. Unless otherwise provided in writing (and then only except to the extent of such writing), the Builder specifically disclaims any and all warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law. Each Owner and the Association agree to provide Builder with written notice of any matters relating to a claim for defect of faulty workmanship or deficiencies as soon as reasonably possible after such Owner or the Association becomes aware of such matters and dispute within one year from the date of close of escrow. The providing of notice and opportunity to cure shall not extend the period of which a Dispute (defined below) must be commenced under any Warranty and/or applicable statutes of limitations or repose as provided under Utah law.

9.2 Pre-Litigation Non-Adversarial Procedures for All Disputes. To the fullest extent permitted by law, all claims and disputes of any kind that any Owner, group of Owners, or the Association may have involving the Builder, or any agent, employee, executing officer, manager, affiliate or owner of the Builder, or any engineer or contractor involved in the design or construction of the Project, which arise from or are in any way related to the design, use, construction, or maintenance of any Residence or other Improvement on a Lot, the Common Areas, or any other Improvement on, or component of, the Project (each, a “Dispute”), shall first be resolved through the Pre-Litigation Non-Adversarial Procedures provided in this Article 9. Without in any way limiting the foregoing, Disputes subject to Article 9, to the extent permitted by law, shall include but not be limited to the following:

9.2.1 Any allegation that a condition in any of the Residences on the Lots, the Common Areas, or other Improvements in the Project is or involves a construction defect;

9.2.2 Any disagreement as to whether an alleged construction defect has been corrected;

9.2.3 Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any Dispute;

9.2.4 Any disagreement as to the enforceability of any warranties alleged to be applicable to the subject matter of any Dispute;

9.2.5 Any disagreement about whether any warranty alleged to be applicable to the subject matter of any Dispute has been breached;

9.2.6 Any alleged violations of consumer protection, unfair trade practice, or other statutes or laws;

9.2.7 Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;

9.2.8 Any allegation that any condition existing in the Project or created by the Builder (or any of its contractors), including construction-related noise, dust, and traffic, is a nuisance, a defect, or a breach of any implied warranties of habitability or other implied warranties;

9.2.9 Any disagreement concerning the timeliness of performance of any act to be performed by Builder or any of its contractors;

9.2.10 Any disagreement or dispute regarding management of the Association, or regarding reserve studies or funding of Association expenses; and

9.2.11 Any other claim or disagreement arising out of or relating to the sale, design, or construction of any of Improvement on the Lots, Common Areas, off-site improvements, the formation, operation, governance, and/or management of the Association, or other claims regarding the Project.

9.3 Pre-Litigation Non-Adversarial Procedure Requirements.

9.3.1 Generally. An Owner or the Association may only file an action against the Builder after ALL Pre-Litigation Non-Adversarial Procedures have been completed. An Owner or the Association shall provide to the Builder a written Notice of Claim as defined below. Written notification can be transmitted by U.S. Mail or email, and shall be delivered as follows: if by U.S. Mail, to Destination Construction, LLC, 9350 S. 150 E. Suite 100, Sandy, UT 84070.

Each Owner and the Association agree to provide Builder and its representatives, contractors, and others, as Builder may request, with prompt, reasonable cooperation, which may, for example include access to all portions of the Property, in order to facilitate any investigation regarding the Dispute, including, without limitation, for purpose of inspecting, testing, repairing, replacing, correcting, or otherwise addressing the matters related to the Dispute. If the Dispute arises out of or related to the planning, surveying, design, engineering, grading, specifications, construction, or other development of the Property, Builder is hereby granted the irrevocable rights to inspect, repair, and/or replace any and all affected parts at its sole discretion but is under no obligation to do so.

In the event an Owner or the Association provides notice of an alleged defect within one (1) year from the date of close of escrow, Builder will inspect the Property within fourteen (14) business days of receipt of the Owner or the Association's written notifications and within fourteen (14) business days of the inspection, Builder will advise the Owner or the Association in writing whether any repairs or replacements are warranted.

If these contractual pre-litigation right to repair procedures are unsuccessful, each Owner agrees to comply with the mediation procedure set forth below prior to commencement of any legal action.

MEDIATION. The parties shall make a demonstrable, good faith effort to resolve any Disputes without formal, legal proceedings prior to initiating litigation. Mediation is an express condition precedent to the allowance for litigation. Any commencement of litigation shall be stayed until the conclusion of the mediation process as set forth below in this section. The following shall apply: a) such mediation shall be conducted by a mediator mutually agreed to by the parties and shall be a retired Judge with experience in deciding disputes concerning such matters which is the subject of the dispute between the parties; b) the rules and procedures of the designated alternative dispute resolution organization that are in effect at the time of the commencement of the mediation

shall be followed by the parties; c) a request for mediation shall be made in writing and delivered to the other party; d) the request may be made concurrently with the filing of a complaint or commencement of arbitration but, in such event, mediation shall proceed and be completed in advance of such litigation. In the event litigation is commenced, such litigation shall be stayed pending mediation for a period of one hundred and twenty (120) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order; and e) the parties will jointly select an acceptable mediator and share equally in the cost of such mediation.

The parties shall attempt to resolve the dispute through mediation through good faith negotiations until one of the following occurs: (i) the parties reach a written settlement; (ii) the mediator notifies the parties in writing that they have reached an impasse; (iii) the parties agree in writing that they have reached an impasse; or (iv) the parties have not reached a settlement within one hundred and twenty (120) days after the written request for mediation.

Nothing in this section prohibits any party from seeking emergency legal or equitable relief, pending mediation.

9.3.2 Notice of Claim. For purposes of this Article 9, “**Notice of Claim**” shall mean and include **ALL** of the following information: (a) an explanation of the nature of the claim; (b) a specific breakdown and calculation of any alleged damages; (c) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based; (d) photographs of any alleged defective condition, if applicable; (e) samples of any alleged defective conditions or materials, if reasonably available; (f) an explanation of the efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom; and (g) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

9.4 Waiver of Subrogation. The Association and each Owner waives any and all rights to subrogation against the Builder and any builder, contractor, and engineer in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Builder, the Project engineer, contractors or sub-contractors of Builder, and their officers, employees, owners, and representatives. To the full extent permitted by law, the Association and Owners hereby release Builder, the Project engineer, contractors or sub-contractors of Builder and their respective officers, employees, owners, contractors, insurers, and representatives from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Builder, contractors or sub-contractors of Builder, and their officers, employees, owners, and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner

to recover thereunder. The Association and all Owners shall indemnify and defend the Builder, contractors or sub-contractors of Builder, and any of their officers, employees, owners, contractors, or representatives from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

9.5 Enforcement of Covenants. Notwithstanding the foregoing, any legal action taken by Builder or the Association to enforce the Covenants shall not be subject to the terms of this Article 9.

ARTICLE 10

MISCELLANEOUS PROVISIONS

10.1 Damage or Destruction.

10.1.1 Attorney in Fact. Each Owner irrevocably appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place and stead for the purpose of dealing with the Project in the event of damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Builder or from any Owner shall constitute an appointment by said grantee of the Association as his or her attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association, except as otherwise provided in this Supplement.

10.1.2 Definition of Repair and Reconstruction. Repair and reconstruction of the Improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Lot and the Common Areas having substantially the same vertical and horizontal boundaries as before.

10.1.3 Procedure. In the event all or any part of the Project is damaged or destroyed, the Association shall proceed as follows. The Association shall give timely written notice to any First Mortgagee on a Lot or who requests such notice in writing in the event of substantial damage to or destruction of any part of the Common Areas or a Lot subject to the Mortgage held by such First Mortgagee. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed. In no event shall an Owner of a Lot or any other party have priority over the First Mortgagee on such Lot with respect to the distribution to such Lot of any insurance proceeds.

10.1.4 Repair or Reconstruction. If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and

reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein.

10.1.5 Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association, and any amounts received from assessments made shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners equally.

10.2 Condemnation.

10.2.1 In General. If at any time, or from time to time, all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Section shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Lot or portion thereof, or the Common Areas or any portion thereof, are made the subject matter of any condemnation or eminent domain proceeding, or are otherwise sought to be acquired by a condemning authority, the Board shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee who has requested in writing notice thereof. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

10.2.2 Proceeds. All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter "**Condemnation Award**") shall be made payable to the Association and shall be distributed by the Board, on behalf of the Association as herein provided.

10.2.3 Complete Taking. In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate and the Condemnation Award shall be allocated among and distributed to the Owners and the Owners shall divide the Condemnation Award based upon the relative values of the Lots immediately prior to the condemnation. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

10.2.4 Partial Taking. In the event that less than the entire Project is taken by power of eminent domain, the following shall occur:

10.2.4.1 Allocation of Condemnation Award. As soon as practicable, the Board shall, on behalf of the Association, reasonably and in good faith, apportion the Condemnation Award between compensation, severance damages or other proceeds and shall allocate such apportioned amount and pay the same to the Owners as follows: (a) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Lots have been taken); (b) The total amount apportioned to severance damages shall be allocated among and distributed equally to the Owners of those Lots that have not been taken; (c) The respective amounts apportioned to the taking of or injury to a particular Lot shall be allocated and distributed to the Owner of such Lot; (d) The total amount apportioned to consequential damages and any other taking or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances; (e) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable; (f) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and (g) No provision of this Section, or any other provision of this Supplement or the Governing Documents shall entitle the Owner of a Lot, or other party, to priority over any First Mortgagee of such Lot with respect to the distribution to such Lot of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceedings.

10.2.4.2 Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, ownership pursuant hereto shall not terminate but shall continue. In such event the Project shall be reorganized as follows: (a) If any partial taking results in the taking of an entire Lot, then the Owner thereof shall cease to be a Member of the Association and all voting rights shall terminate; (b) If any partial taking results in the taking of a portion of a Lot, the voting rights appertaining to such Lot shall continue; (c) If any partial taking results in the taking of a portion of a Lot and if there is a determination made by the Board, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Lot, then all voting rights shall terminate and the remaining portion of such Lot shall thenceforth be part of the Common Areas; (d) The Board, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section (including a possible reallocation of voting rights); provided, however, that if any such determination shall

have been or such action is taken by judicial decree, the Board shall defer thereto and proceed in accordance therewith.

10.2.5 Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Section 10.1 of this Supplement, and its subparts, for cases of Damage or Destruction, as applicable.

10.3 Mortgagee Provisions.

10.3.1 Owner's Right to Separate Mortgages. Each Owner shall have the right to separately mortgage or otherwise encumber such Owner's Lot. No mortgage by any Owner shall encumber any other Owner's Lot or any portion thereof.

10.3.2 Notice of Action. Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage (any one of which is an "**Eligible Mortgagee**"), which written request shall identify the name and mailing address of such First Mortgagee, insurer, or governmental guarantor and the Lot number or physical address of the Residence, any such First Mortgagee, insurer or governmental guarantor shall be entitled to timely written notice of: (a) any condemnation, loss or any casualty loss which affects a material portion of the Project, or any Lot on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor; (b) any delinquency in the payment of assessments or charges owed by an Owner, whose Lot is subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days; (c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (d) any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in this Section or elsewhere herein.

10.3.3 Matters Requiring Mortgagee Approval. Except as otherwise provided in this Supplement or the Governing Documents, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the votes of the Lots in the Association, and Eligible Mortgagees holding First Mortgages on Lots having at least fifty-one percent (51%) of the votes of the Lots subject to First Mortgages held by Eligible Mortgagees shall be required to: (a) abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs; (b) add or amend any material provision of the Supplement or the Plat Map, which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only): the conversion of Lots into Common Areas or vice versa, a material change to hazard or fidelity insurance requirements, the imposition of any restrictions on Owner's right to sell or transfer his Lot, the establishment of self-management by the Association if professional management had been required previously by

the Supplement or by an Eligible Mortgagee, or a change to or deletion of any provision that expressly benefits Mortgagees, insurers, or guarantors.

10.3.4 Response. Any Eligible Mortgagee who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within sixty (60) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

10.3.5 Availability of Project Documents and Financial Statements. The Association shall maintain and have current copies of the Supplement and the Governing Documents as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Lots in the Project. Generally, these documents shall be available during normal business hours. The Association shall make any audited financial statement which the Association obtains available to the holder, insurer, or guarantor of any First Mortgage on submission of a written request, and at such requestor's expense.

10.3.6 Subordination of Lien. The lien or claim against a Lot for unpaid assessments or charges levied by the Association pursuant to this Supplement shall be subordinate to the First Mortgage affecting such Lot if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Lot shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage, or as not to burden a First Mortgagee which comes into possession or which obtain title, shall be collected or enforced by the Association from or against a First Mortgagee or the Lot affected or previously affected by the First Mortgage concerned.

10.3.7 Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance described in this Supplement lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefore from the Association.

10.3.8 Priority. No provision of this Supplement gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the

case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots or the Common Areas.

10.4 Notices. The Association shall keep a list of contact information for Owners of all Lots within the Project and all Eligible Mortgagees. Each Owner, upon becoming an Owner, shall provide the Association with appropriate contact information including mailing address, telephone number, and email address. Each Owner or Eligible Mortgagee shall update the Association with any changes to contact information. Where written notice to an Owner is required under this Supplement, or the Governing Documents, such notice will be deemed sufficient if it is sent to the mailing address or email address on file with the Association.

10.5 Interpretation. The captions and section headings set forth in this Supplement are for convenience and the meaning of the provisions set forth in the sections hereof shall be governed by the body of the text. The use of any plural shall, where the context requires, include the singular thereof, and vice-versa. The Board in its sole opinion shall determine the meaning of any section should clarification be needed.

10.6 Governing Law. This Supplement shall be governed by, and interpreted in accordance with, the laws of the State of Utah.

10.7 Severability. If any section, term, or provision of this Supplement is determined to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remaining sections, terms, and provisions of this Supplement, which shall all remain in full force and effect.

10.8 Waiver. The failure by the Builder, the Association, or any Owner to enforce any term or provision of this Supplement shall not be deemed as a waiver of the right to thereafter enforce such term or provision.

[End of Supplement. Signature Page Follows.]

EXHIBIT A

(Initial Builder Property Description and Parcel Numbers)

Building Lots 409-418 (inclusive) as shown on that certain Plat Map entitled "DAYBREAK VILLAGE 12A PLAT 4 AMENDING LOT V5 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED AND LOT P-115 OF THE DAYBREAK VILLAGE 12A PLAT 3 SUBDIVISION" recorded March 30, 2023 in the County Recorder's Office book 2023P page 69.

Lot 409	11217 S Fordman Way	26-22-154-015
Lot 410	11213 S Fordman Way	26-22-154-014
Lot 411	11207 S Fordman Way	26-22-154-013
Lot 412	11203 S Fordman Way	26-22-154-012
Lot 413	11199 S Fordman Way	26-22-154-011
Lot 414	11193 S Fordman Way	26-22-154-010
Lot 415	11189 S Fordman Way	26-22-154-009
Lot 416	11183 S Fordman Way	26-22-154-008
Lot 417	11181 S Fordman Way	26-22-154-007
Lot 418	11177 S Fordman Way	26-22-154-006

EXHIBIT B

(Initial Benefitted Service Area Budget and Service Area Assessment)

1. Landscape Maintenance Service: \$360 per year per Unit
2. Snow Pushing Service: Based on \$30 per push per Unit @ 15 estimated pushes per year for a total of \$450.00 per year per Unit
3. Contingency: \$240.00 per year per Unit
4. Initial Annual Assessment: \$1,050

Service Area Assessments will be billed quarterly, with the initial quarterly assessment of \$262.50. The quarterly assessment will be updated by the Board from time to time.

Service Area Assessments will be due January 1, April 1, July 1 and October 1 each year at the then approved Service Area Assessment amount. This schedule of Service Area Assessment due dates may be revised by the Board.