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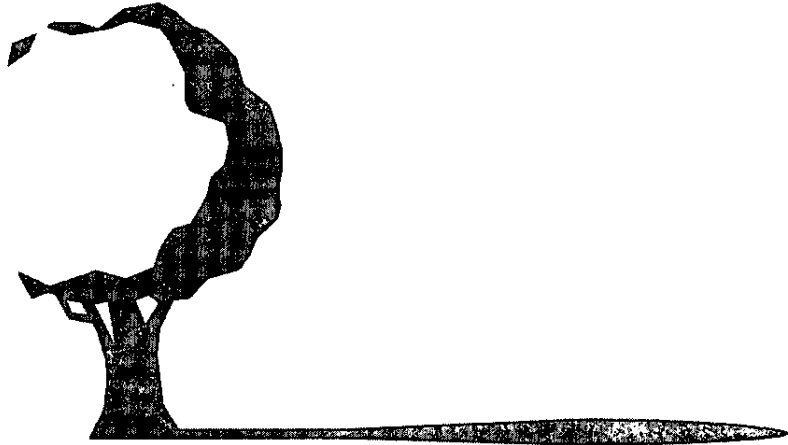
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# COMMUNITY CHARTER

FOR

# DAYBREAK



D A Y B R E A K

*Planned for people*

KENNECOTT LAND COMPANY

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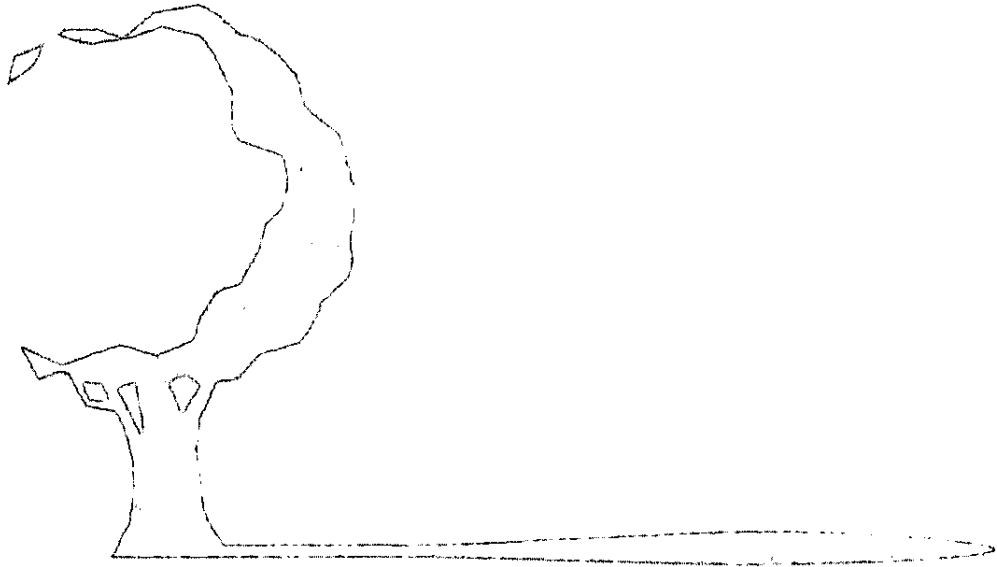
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B	Master Plan Property	7
C	Expansion Property	7
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# COMMUNITY CHARTER FOR DAYBREAK

## PREAMBLE

Kennecott Land Company, a Delaware Corporation, as the Founder of Daybreak, has established and recorded this Community Charter ("**Charter**") to establish a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of Daybreak as a master planned community. Daybreak is proposed to be a mixed use master planned community consisting of multiple housing types, recreational, civic, and commercial uses surrounded by open space and parks. An integral part of the development plan is the formation of the Daybreak Community Association, Inc. ("**Association**"), a nonprofit corporation, to own, operate and/or maintain various common areas and community improvements and to administer and enforce this Charter and the other Governing Documents referenced in this Charter.

The guiding principles of Kennecott Land Company, in developing the Daybreak community, are to:

- create community
- celebrate the uniqueness of place
- add long term value
- create an open space relationship with an integral user-friendly park system
- create connectivity through the development of distinct neighborhoods and active town and village centers
- support a balanced approach to transportation, which provides for multiple and safe modes of travel, including pedestrian, bicycle, automobile, and public transport, through an interconnected grid street design

## DECLARATION OF COVENANT

Kennecott Land Company, a Delaware corporation, its successors and assigns (the "**Founder**") and the owners of the property described in Exhibit "A" if other than the Founder, by executing and recording this Charter, declares that the property described in Exhibit "A" and any additional property made subject to this Charter in the future by amendment or supplement, shall constitute the "**Community**" of Daybreak referred to in this Charter. This Charter shall run with the title to such property, shall govern the development and use of such property, and shall be binding upon the Founder and the future owners of any portion of the property, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of such property. This Charter shall also be binding upon Daybreak Community Association, its successors and assigns.

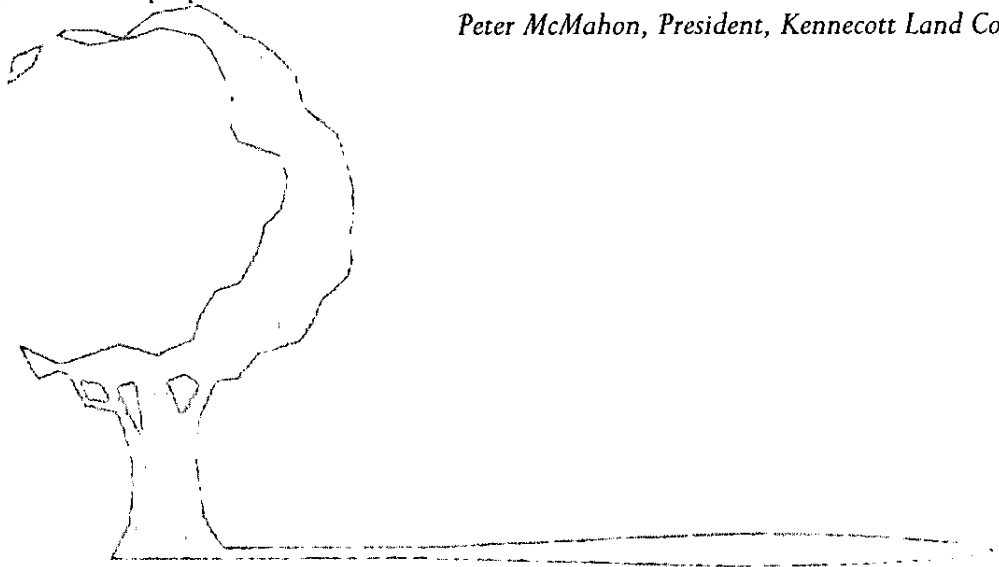
By taking title to property in Daybreak, all owners join in and accept the intent, purposes, and objectives of this Charter and agree to be bound by it. Each party bound by the terms of this Charter acknowledges the benefits received from its existence and the Founder's actions and accepts these benefits and the burdens that accompany them.



## PART ONE: INTRODUCTION TO THE COMMUNITY

*Our planning begins with the people who will live in the communities we build.*

*Peter McMahon, President, Kennecott Land Co.*



# Chapter 1

## Governing Documents

*Daybreak is guided and governed by certain principles that each owner and resident, by choosing to own property or reside in the community, agree to uphold. Those principles are set forth in the community's governing documents, which serve as a tie that binds the community together, give it structure, and provide guidance to all who participate in its growth and evolution.*

### 1.1. Scope and Applicability

Daybreak has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of property in the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community. Such documents,

<b>GOVERNING DOCUMENTS</b>	
<b>Community Charter:</b> (recorded)	this Community Charter for Daybreak, which creates obligations that are binding upon the Association and all present and future owners of property in Daybreak
<b>Supplement:</b> (recorded)	a recorded Supplement to this Charter, which may submit additional property to this Charter, create easements over the property described in the Supplement, impose additional obligations or restrictions on such property, designate special areas as described in Chapter 3, or any of the foregoing
<b>Articles of Incorporation:</b> (filed with Utah Department of Commerce, Division of Corporations and Commercial Code)	the Articles of Incorporation of Daybreak Community Association, Inc., as they may be amended, which establish the Association as a nonprofit corporation under Utah law
<b>By-Laws:</b> (attached as Exhibit "E")	the By-Laws of Daybreak Community Association adopted by its Board of Directors, as they may be amended, which govern the Association's internal affairs, such as voting, elections, meetings, etc. A copy of the By-Laws is attached as Exhibit "E."
<b>Design Guidelines:</b> (Founder adopts)	the design standards and architectural and aesthetics guidelines adopted pursuant to Chapter 5, as they may be amended, which govern new construction and modifications to Units, including structures, landscaping, and other items on Units
<b>Rules:</b> (initial set attached as Exhibit "D")	the rules of the Association adopted pursuant to Chapter 7, which regulate use of property, activities, and conduct within Daybreak
<b>Board Resolutions:</b> (Board adopts)	the resolutions the Board adopts to establish rules, policies, and procedures for internal governance and Association activities and to regulate the operation and use of property which the Association owns or controls

Table 1.1 - Governing Documents

## Governing Documents

referred to in this Charter as the "**Governing Documents**," include this Charter and the other documents described in Table 1.1, as they may be amended. All owners and occupants, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents.

### 1.2. Additional Covenants

The owner of any property within the Community may impose additional covenants on its property with such approval as may be required pursuant to Chapter 17. If the provisions of any such additional covenants are more restrictive than the provisions of this Charter, the more restrictive provisions control. The Association shall have standing and the power, but not the obligation, to enforce any such additional covenants.

### 1.3. Conflicts

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

The Governing Documents use diagrams, tables, and keynotes (text set apart in boxes with "key" icons) to illustrate concepts and assist the reader. If there is a conflict between any diagram, tables, or keynotes and the text of the Governing Documents, the text shall control.

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

### 1.4. Definitions

Capitalized terms used in the Governing Documents have the meaning described in the paragraph where they first appear in bold print. An index to defined terms may be found at the end of this Charter. All other terms used in the Governing Documents have their natural, commonly accepted definitions.

### 1.5. Interpretation of Certain References

*Consent or Approval.* All references in the Governing Documents to "**consent**" or "**approval**" shall refer to permission or approval, which unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

*Discretion and Determination.* All references in the Governing Documents to "**discretion**" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, any one authorized in the Governing Documents to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

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

*Recording.* All references in the Governing Documents to a "**recorded**" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed or the filing of a legal instrument in the official records of Salt Lake County "**County**," or such other place designated as the official location for filing documents affecting title to real estate in Salt Lake County in order to make them a matter of public record.

## Governing Documents

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

*Maintenance.* All references in this Charter to "**maintenance**" shall refer to maintenance, repair, and replacement.

### 1.6. Notes and Introductory Statements

Space has been set aside throughout this Charter to allow the reader to make notes. Those spaces and the heading that denotes the spaces, and the introductory statements in italics at the beginning of each Chapter are not part of this Charter and have no legal or binding effect.

*All government—indeed every human benefit and enjoyment, every virtue and every prudent act—is founded on compromise and barter.*  
*Edmund Burke*

NOTES

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## Chapter 2

### Community Administration

*Vibrant communities depend upon all of their stakeholders working together to uphold community standards and achieve the vision and goals for the community. The Founder, the Association, the owners, the builders, and others have a role in the functioning of the community and in helping to fulfill that vision. This chapter identifies these stakeholders and describes their roles in administering the Community.*

#### 2.1. The Founder

The Founder has established the vision for the Community and, through the Governing Documents, has set forth the founding principles that will guide the Community during the initial period of development and sale and thereafter. The initial phase of the development for Daybreak is described in Exhibit "A." In addition, the Founder's proposed plan for development, including the Community, is described in the land use plan(s) for Daybreak approved by the City of South Jordan, Utah, (the "City") as it may be supplemented and amended, which encompasses all of the property described in Exhibit "B" (the "**Master Plan**"), as such Master Plan is further described in the Master Development Agreement for the Kennecott Master Subdivision #1 Project, recorded March 26, 2003 as Entry No. 8581557 in Book 8762 beginning at Page 7103 of the Official Records of Salt Lake County (the "**Master Development Agreement** "). However, the Founder is not obligated to submit any portion of the property shown on the Master Plan or any other property to this Charter. In addition, the Founder may submit property to this Charter that is not shown on the Master Plan, including any portion of the property described in Exhibit "C."

The Founder has reserved various rights in the Governing Documents with respect to development and administration of the Community. The Founder may exercise certain of these rights throughout the "**Development and Sale Period**," which is the period of time during which the Founder or any "Founder Affiliate" owns real property in the Community or has an unexpired option to expand the Community pursuant to Chapter 16. A "**Founder Affiliate**" is any Person that is owned or controlled by the Founder.

The Founder has reserved other rights that may be exercised only during the "**Founder Control Period**," which is the period of time that the Founder is entitled to appoint a majority of the members of the Association's board of directors ("**Board**"). The Founder Control Period begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

- (a) when 75% of the total number of Units permitted by applicable zoning for the property described in the Master Plan have certificates of occupancy issued thereon and have been conveyed to persons other than Builders holding title for purposes of construction and resale;
- (b) December 31, 2034; or
- (c) when, in its discretion, the Founder so determines and declares in a recorded instrument.

The Founder has certain approval rights for a limited period as provided in the By-Laws after the termination of the Founder Control Period.

The Founder may assign its status and rights as the Founder under the Governing Documents to any Founder Affiliate or any person who takes title to any portion of the property described in

## Community Administration

Exhibit "A" or "B" for the purpose of development and/or sale. Such assignment shall be made only in a recorded instrument signed by both parties, and shall not prevent Founder from assigning its status and rights for any other property subject to this Charter.

### 2.2. The Association

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

### 2.3. The Board

On most matters, the Association acts through the Board. However, in some instances the Governing Documents or applicable law limit the Board's ability to act without the approval of the Association's members. Unless the Governing Documents or Utah law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, as defined in Section 3.1, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether

to file a lawsuit or take other legal action under any circumstances) and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards set forth in the By-Laws.

### 2.4. The Owners

Each Person that holds record title to a Unit, as defined in Section 3.1, is referred to in the Governing Documents as an "**Owner**." However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument), a church or religious organization that holds title to property used for religious or worship services, and any governmental or public entity who holds title shall not be considered an "Owner." If a Unit is sold under a recorded contract of sale, and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. If a Unit has more than one Owner, all Co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

Every Owner has a responsibility to comply with the Governing Documents and uphold the community standards described in Part Two of this Charter. Each Owner also has an opportunity to participate in the administration of the Community through membership in the Association and through service to the Community in various committee and leadership roles, as described in Chapters 3 and 4 and in the By-Laws.

### 2.5. Builders

Much of the responsibility and credit for helping to create Daybreak rests with the "**Builders**" -- those Persons who purchase one or more unimproved or improved lots or parcels of land within Daybreak for further subdivision or development and resale in the ordinary course of their business. The Builders have the same privileges

## Community Administration

and responsibilities as Owners during the time that they own Units for construction and resale, including the privileges of membership in the Association. In addition, the Founder may extend any of the rights it has reserved under the Governing Documents with respect to development, marketing, and sale of property in the Community to such Builders as it may designate.

### 2.6. Neighborhood Associations

Portions of the Community may be developed under a condominium form of ownership, may have special requirements, or in the Founder's discretion may lead the Founder to establish a separate condominium or owners association to administer additional covenants applicable to that particular area ("**Neighborhood Association**"). However, nothing in this Charter requires the creation of a Neighborhood Association, and the jurisdiction of any Neighborhood Association shall be subordinate to that of the Association.

Any Neighborhood Association shall be responsible for administering the additional covenants applicable to the property within its jurisdiction and for maintaining, in accordance with the Community-Wide Standard, any property which it owns or which its covenants designate as being for the common benefit of its members.

### 2.7. Mortgagees

If a Unit, as defined in Section 3.1, is made subject to a mortgage or other form of security instrument affecting title to a Unit ("**Mortgage**"), then the holder or beneficiary of that Mortgage ("**Mortgagee**") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 16.

### 2.8. Covenant for Community for Daybreak

The Founder has created Daybreak Community Council, Inc. (the "**Council**") as a vehicle for generating, enhancing, and preserving a genuine sense of community within Daybreak. While the Association is created primarily to manage the real property and enforce restrictions and standards established for Daybreak, the Council exists to empower, encourage, and provide a means for each Owner and resident of Daybreak to participate in and benefit from community-oriented affairs, services, programs, and activities. It is the Founder's intent that the Association and the Council work together and cooperate in performing these complimentary roles within Daybreak.

The Council's affairs are administered by a board of directors selected as provided in its by-laws ("**Directors**"). The Council has the rights and responsibilities described in its by-laws and articles of incorporation and in the Community Covenant for Daybreak ("**Covenant**"). The Association and all Owners are subject to the Covenant and to the Council's jurisdiction. In the event of a conflict between the Governing Documents and the Council's governing documents with respect to the Council's rights and responsibilities, the Council's governing documents shall control.

*A community is like a ship; everyone ought to be prepared to take the helm. Henrik Ibsen*

## Chapter 3

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# Community Structure and Organization

*The Community consists of parcels of property, referred to as Units, which are intended for the exclusive use of the Owner and other occupants of such parcel, as well as property that is intended for common use. Units are grouped into Neighborhoods and Election Districts to facilitate voting on Association matters. Units are assigned to Service Areas to permit the Association to provide special services and benefits to particular areas of the Community.*

### 3.1. Designations of Properties Comprising the Community

**Units.** A "Unit" is a subdivided lot or condominium unit within Daybreak depicted as a separately identified parcel on a recorded subdivision plat, survey, or condominium instrument, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as a an attached or detached residence for a single family and is sometimes referred to as a "**Residential Unit**"

The term "Unit" refers to the land, if any, which is part of the Unit, as well as to any structures or other improvements on the Unit. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit. A parcel of land is considered a single Unit until a subdivision plat, survey, or condominium instrument is recorded subdividing it into more than one Unit. The term does not include Common Areas, as defined below, common property of any Neighborhood Association, or property dedicated to the public.

**Common Area.** Any property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit is re-

ferred to as "**Common Area.**" The Common Area also includes any property that the Association holds under a lease and any easements in favor of the Association.

**Limited Common Area.** Certain portions of the Common Area may be designated as "**Limited Common Area**" and assigned for the exclusive use or primary benefit of less than all Units. Limited Common Areas might include such things as entry features, recreational facilities, lakes, green space, green courts, and landscaped medians and cul-de-sacs, among other things.

The Founder may designate property as Limited Common Area and assign it to particular Units on the recorded plat depicting such property, in the deed conveying such property to the Association, or in the Supplement by which the property is submitted to the terms of this Charter. At any time during the Development and Sale Period, the Founder may assign use of the same Limited Common Area to additional Units.

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



## Community Structure and Organization

### 3.2. Neighborhoods

Units are grouped into "**Neighborhoods**" to facilitate a system of representative voting on matters as to which the Governing Documents require approval of the Association's membership. A Neighborhood may be comprised of any number of Units and may include Units of more than one housing type, as well as Units that are not contiguous to one another. Each Neighborhood will elect one "Voting Delegate" to cast the votes allocated to Units in that Neighborhood on matters requiring a vote of the Owners, as described in Chapter 4.

The Founder initially will assign Units to a specific Neighborhood (by name or other identifying designation) either in Exhibit "A" or in a Supplement. During the Development and Sale Period, the Founder may unilaterally record a Supplement, or an amendment to this Charter or any previously recorded Supplement, to designate or change Neighborhood boundaries. Thereafter, the Board may amend this Charter or any Supplement to re-designate Neighborhood boundaries; however, the Board may not combine two or more existing Neighborhoods without the consent of Owners of a majority of the Units in the affected Neighborhoods.

### 3.3. Election Districts

The Founder or the Board may designate "**Election Districts**," consisting of the Units

within one or more Neighborhoods, for the purpose of electing directors to the Board. The By-Laws set forth the method of establishing Election Districts. The number of Election Districts shall not exceed the total number of directors on the Board. The purpose of Election Districts is to provide for representation on the Board by groups with potentially dissimilar interests and to avoid a situation in which particular groups are able to elect the entire Board due to the number of votes they represent.

Diagram 3.1 illustrates the Association's organizational structure and the manner in which each Election District will elect representatives to the Board after the Founder Control Period.

### 3.4. Service Areas

Units may also be part of one or more "**Service Areas**" in which the Units share Limited Common Areas or receive special benefits or services from the Association that it does not provide to all Units within the Community. A Unit may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may be comprised of Units of more than one housing type and may include Units that are not contiguous.

The Founder may initially designate Service Areas (by name or other identifying designation) and assign Units to a particular Service Area ei-

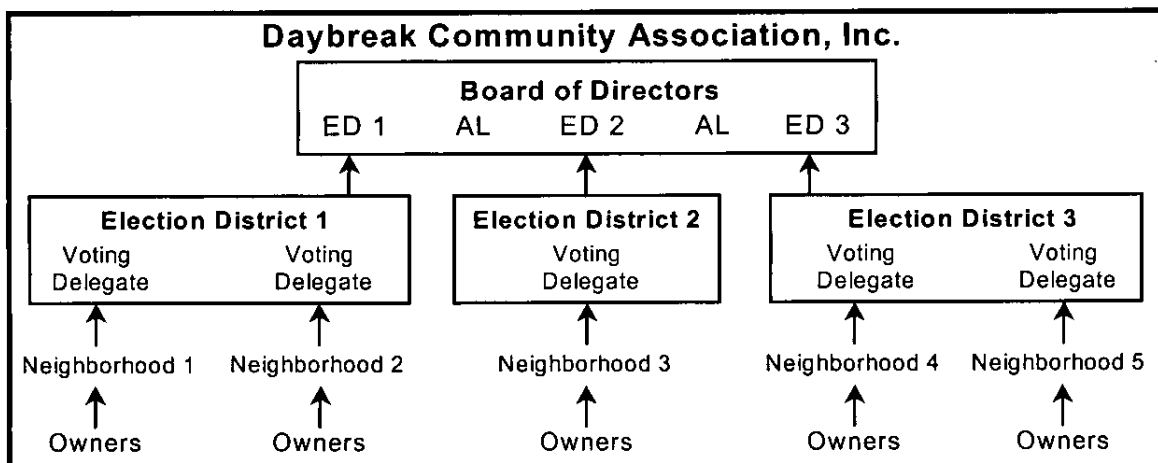


Diagram 3.1

## Community Structure and Organization

ther in Exhibit "A" or in a Supplement. During the Development and Sale Period, the Founder may unilaterally amend this Charter or any Supplement to change Service Area boundaries.

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

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

*Chaos is the law of nature; order is the dream of men. Henry Adams*

## NOTES

## Chapter 4

### Association Membership and Voting Rights

*The Association is an entity through which each Owner can participate in the governance and administration of Daybreak. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, the membership and voting rights vested in the Owners allow the Owners to participate in administration of the Community and influence the outcome of major decisions.*

#### 4.1. Membership

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

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

**(b) Founder Membership.** The Founder holds the sole Founder membership. The Founder membership shall terminate two years after expiration of the Founder Control Period, or on such earlier date as the Founder determines and declares in a recorded instrument.

The Founder may, by Supplement, create additional classes of membership comprised of the owners of Units within any portion of the additional property submitted to this Charter. The Founder shall specify in any such Supplement the rights, privileges, and obligations of the members of any class of membership created by that Supplement.

#### 4.2. Voting

Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Charter and the other Governing Documents. No vote shall be exercised for any property exempt from assessment under Section 12.8. Further, during such time as there is a Founder membership, no vote shall be exercised for Units that the Founder or a Founder Affiliate owns; rather, the Founder's consent shall be required for various actions of the Board, the membership, and committees, as specifically provided elsewhere in the Governing Documents.

Due to the number of Units that may be developed in Daybreak, the Governing Documents provide for a representative system of voting. The Owners of Units in each Neighborhood elect a "**Voting Delegate**" and an alternative Voting Delegate, in the manner provided in the By-Laws, to cast the votes of all Units in the Neighborhood on matters requiring a vote of the membership, except where the governing documents specifically require a vote of the Owners. However, until such time as the Board first calls for election of a Voting Delegate for a particular Neighborhood, each Owner of a Unit in such Neighborhood shall be considered a "Voting Delegate" and may personally cast the vote allocated to such Owner's Unit on any issue requiring a vote of the Voting Delegates under the Governing Documents.

## Association Membership and Voting Rights

The Voting Delegate or, in his or her absence, the alternative Voting Delegate, attends Association meetings and casts all votes allocated to Units in the Neighborhood that he or she represents on any matters as to which such Voting Delegate is entitled to vote under the Governing Documents. A Voting Delegate may vote all votes it is entitled to cast in its discretion and may, but need not, poll the Owners of Units in the Neighborhood which he or she represents prior to voting. On any matter, other than election of directors, for which a Voting Delegate is entitled to cast more than one vote, the Voting Delegate may cast all such votes as a block or split them but shall not be entitled to fractionalize any single vote.

Voting Delegates are subordinate to the Board, and their responsibility and authority does not extend to policymaking, supervising, or otherwise being involved in Association governance beyond voting on matters put to a vote of the membership.

In any situation in which an Owner is entitled personally to exercise the vote for his or her Unit, if there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners holding a majority of the ownership interest in the Unit determine among themselves. Any co-Owner may cast the vote for the Unit and majority agreement shall be conclusively presumed unless another co-Owner of the Unit protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of majority agreement, the Unit's vote shall be suspended if two or more co-Owners seek to exercise it independently.

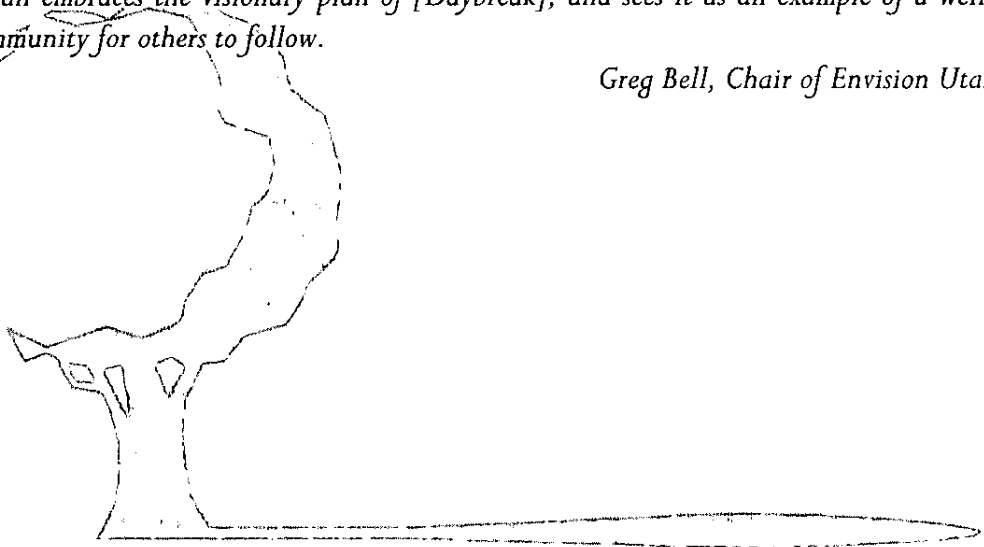
*Good order is the foundation of all things.*  
*Edmund Burke*

NOTES

## PART TWO: COMMUNITY STANDARDS

*Envision Utah embraces the visionary plan of [Daybreak], and sees it as an example of a well-planned community for others to follow.*

*Greg Bell, Chair of Envision Utah*



## Chapter 5

# Architecture, Landscaping, and Aesthetic Standards

*The Community derives its unique character from a mix of architectural styles and from the cooperation of all Builders and Owners in upholding minimum design, landscaping, and aesthetic standards. This chapter explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on Units.*

### 5.1. General

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

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


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

Approval under this chapter is not a substitute for any approvals, inspections, or reviews required by the County, the City, or any govern-

mental agency or entity having jurisdiction over architectural or construction matters.

This chapter shall not apply to the Founder's or any Founder Affiliate's design and construction activities or to the Association's activities during the Founder Control Period.

### 5.2. Design Review Authority

 Initially, the Founder reviews applications for proposed Improvements and determines whether they should be approved. Thereafter, the Board of Directors will appoint a Design Review Committee to review applications for proposed improvements. The Founder or the Design Review Committee is referred to as the "Reviewer." The Reviewer sets fees for reviewing applications.

(a) **Founder.** The Founder shall have exclusive authority to review and act upon all applications for review of proposed Improvements until the later of (i) the expiration of the Development and Sale Period, or (ii) such time as all Units planned for the property described in Exhibits "A" and "B" have been improved with dwellings for which a certificate of occupancy has been issued. The Founder may designate one or more persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, the Founder and its designee act solely in the Founder's interest and owe no duty to any other Person.

From time to time, the Founder may delegate any or all of its rights under this chapter to other Persons or committee, including the committee appointed pursuant to Section 5.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) the Founder's right to revoke such

## Architecture, Landscaping, and Aesthetic Standards

delegation at any time and reassume its prior control, and (ii) the Founder's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable. So long as the Founder has any rights under this chapter, the jurisdiction of others shall be limited to such matters as the Founder specifically delegates.

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

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

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

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

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

### 5.3. Guidelines and Procedures



The purpose of the Design Guidelines is to maintain a consistent character and quality of appearance for the Improvements within the community and to ensure that Improvements are constructed in an orderly manner. The Design Guidelines may describe what types of building materials and design elements are preferred and others that are discouraged. The Design Guidelines may also provide a specific procedure for submitting applications for proposed Improvements and describe how to carry out the construction of the Improvements once approval has been received.

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

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

## Architecture, Landscaping, and Aesthetic Standards

right to amend, the DRC may amend the Design Guidelines with the Board's consent.

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

The Reviewer shall make the Design Guidelines available to Builders, Owners, and their contractors upon request. In the Founder's discretion, such Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

**(b) Procedures.** Unless the Design Guidelines provide otherwise, no activities within the scope of this chapter (as described in Section 5.1) may begin on any property within Daybreak until a written application is submitted to and approved by the Reviewer. The application must be accompanied by plans and specifications, which shall show, as applicable, site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and such other information as the Reviewer or the Design Guidelines require.

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

the desirability and/or attractiveness of particular improvements.

The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to the procedures in Chapter 19 or judicial review so long as they are made in good faith and in accordance with required procedures.

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

The Reviewer shall notify the applicant in writing of the final determination on any application no later than 30 business days after its receipt of a completed application and all required submissions; however, with respect to any DRC determination subject to the Founder's veto right under Section 5.2(b), the Reviewer shall notify the applicant of the final determination within 40 business days after its receipt of the final determination and all required submissions. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

If the Reviewer fails to respond in a timely manner, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 5.5.



## Architecture, Landscaping, and Aesthetic Standards

As part of any approval, the Reviewer may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing. The Reviewer may exempt certain activities from the application and approval requirements of this chapter if such activities are undertaken in compliance with the Design Guidelines and the Community-Wide Standard.


**(c) Appeals Process.** After the Board's appointment of the DRC, an applicant may appeal any disapproval of its application to the Board. To request an appeal, the applicant must submit to the Association's Secretary, no later than 15 days after the delivery of the notification of disapproval, a copy of the original application, the notification of disapproval, and a letter requesting review of the decision. The appeal request shall also contain a response to any specific concerns or reasons for disapproval listed in the notification of disapproval. The Board may (i) affirm the DRC's decision, (ii) affirm a portion and overturn a portion of the DRC's decision, or (iii) overturn the DRC's entire decision. The Board shall notify the applicant and the DRC in writing of its decision no later than 30 days after its receipt of the request for appeal with all required information. The Board's decision shall include a description of its reasons for overturning the DRC's decision. During the appeal process the Owner shall not commence any work requiring approval hereunder.

### 5.4. No Waiver of Future Approvals

The people reviewing applications under this chapter will change from time to time, and opinions on aesthetic matters, as well as interpreta-

tion and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. In such cases, the Reviewer may elect not to require changes to objectionable features. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

### 5.5. Variances

 When unusual circumstances exist that make it difficult or impossible to comply with a particular requirement of the Design Guidelines, the Owner may file a request with the Reviewer to be excused from complying with such requirement. The Reviewer has the discretion to determine when a variance is appropriate.

The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when it determines that circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations justify such a variance, however, the Reviewer shall under no circumstances be obligated to grant variances. No variance shall (a) be effective unless in writing; (b) be contrary to this Charter; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires the Founder's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent.

### 5.6. Limitation of Liability

This chapter establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of Daybreak; they do not create any duty to any Person. Review and approval of any application pursuant to this chapter may be based purely on aesthetic consid-

## Architecture, Landscaping, and Aesthetic Standards

erations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications; for compliance with building codes and other governmental requirements; or for ensuring that all dwellings are of comparable quality, value, size, or design or are aesthetically pleasing or otherwise acceptable to other Owners.

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

### 5.7. Certificate of Compliance

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

*We shape our buildings and our  
buildings shape us. Winston Churchill*

NOTES

## **Chapter 6**

### **Maintenance, Repair, and Replacement**

*One of the benefits of owning property in a planned community is the commitment among neighbors to maintain their property in a neat, attractive, and well-landscaped condition to enhance the overall beauty and aesthetic appeal of the community. This chapter describes the Owners' responsibilities for maintenance and repair of their Units and for insuring their Units against property damage so that funds will be available for repair and restoration if needed.*

#### **6.1. Maintenance by Owners**

Each Owner shall maintain his or her Unit, including all structures, landscaping, and other improvements comprising the Unit, and the City, any Special Service District created by the City ("SSD"), or the Council shall maintain any property within Daybreak that it owns or controls in a manner consistent with the Governing Documents and the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association pursuant to this Charter, any Supplement, or by law.

Each Owner shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public or private right-of-way lying between the Unit boundary and any wall, fence, or curb located on the Common Area or public or private right-of-way within 12 feet of the Unit boundary; provided, trees within the area may be maintained with the City, the SSD, the Council, or the Association's irrigation system, if one is provided. However, Owners may not remove or replace trees, shrubs, or similar vegetation from this area without prior approval pursuant to Chapter 5.

#### **6.2. Maintenance of Neighborhood Association Property**

A Neighborhood Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

Any Neighborhood Association shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the boundary of its common property and any wall, fence, or curb located on the Common Area or public right-of-way within 12 feet of its boundary. A Neighborhood Association shall not remove or replace trees, shrubs, or similar vegetation from this area without prior approval pursuant to Chapter 5.

#### **6.3. Maintenance by the Association**

The Association shall maintain the Area of Common Responsibility in a manner consistent with the Governing Documents and the Community-Wide Standard, as further described in Section 9.2.

The Association may also assume maintenance responsibility for property in any Neighborhood Association, either upon designation of the Neighborhood Association as a Service Area pursuant to Section 3.4 or upon the Board's determination, pursuant to Chapter 8, that the level and quality of maintenance then being provided is not consistent with the Community-Wide Standard. The Association need not treat all similarly situated Neighborhood Associations the same.

## Maintenance, Repair, and Replacement

### 6.4. Responsibility for Repair and Replacement

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

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either a Neighborhood Association (if any) or the Association carries such insurance (which they may but are not obligated to do). If the Association assumes responsibility for insuring a Unit, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner.

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

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

This section shall apply to a Neighborhood Association with respect to common property of the Neighborhood Association in the same man-

ner as if the Neighborhood Association was an Owner and the common property was a Unit.

### 6.5. Maintenance and Repair of Party Walls and Similar Structures

Except as may otherwise be provided by law, a written agreement between Owners of adjacent Units, or other recorded documents applicable to adjacent Units:

(a) Each wall, fence, driveway, or similar structure built as part of the original construction on the Units that serves and/or separates any two adjoining Units shall be considered a party structure. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who use the party structure.

(b) If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(c) The right to and the obligation of contribution for party walls and similar structures between Owners, as provided in this section, shall be appurtenant to the land and shall pass to such Owner's successor-in-title.

(d) To the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to any party structure. Any dispute concerning a party structure shall be subject to the provisions of Chapter 19.

## Maintenance, Repair, and Replacement

### 6.6. Maintenance of Alleys

Access to certain Units within the Community shall be provided by shared alleys located adjacent to the boundaries of the Units so served. The alleys may be dedicated to the City as public streets under the jurisdiction and control of the City. In the case the City fails to maintain the alleys in a manner consistent with the Governing documents, the Association may maintain the alleys in a manner consistent with the Governing documents and the Community-Wide Standard, as further described in Section 9.2.

All costs associated with the routine maintenance, repair, and replacement of alleys shall be allocated among the Units served by such alley and assessed against such Units as a Specific Assessment in accordance with Section 12.4. An alley serves a Unit if the alley provides access to the Unit.

Notwithstanding the above, the Association may be responsible for maintaining portions or components of an alley (*e.g.*, those portions serving a part of Daybreak's Stormwater Management System). In such case, the Association shall perform such maintenance and may assess all or any Owners for costs incurred.

### 6.7. Maintenance of Irrigation Lines

The lake and any stormwater runoff shall be available for irrigation purposes within Daybreak. The Association, the Council, the City, the SSD, and/or any governmental entities shall be responsible for the maintenance, repair, and replacement of any irrigation lines or equipment within Daybreak to the boundary of any Unit or any Association common property, and any other lines serving the Council Property.

Any irrigation lines installed by an Owner and lines lying solely within or serving only a single Unit or Common Area shall be the responsibility of the Owner or the Association, as applicable. In addition, each Owner shall comply with all

federal, state, and local laws regarding stormwater runoff.

*Nothing can be done at once hastily and prudently. Publius Syrus Maxim 557*

## NOTES

## Chapter 7

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### Use and Conduct

*In order to maintain a residential environment that encourages respect for and courtesy among neighbors and minimizes the potential for disputes, this chapter sets forth basic standards regarding use, occupancy, and transfer of interests in Units. In addition, it provides a procedure by which the Board and the membership can adopt and change rules regulating use, conduct, and activities within the Community to address particular needs and desires of the Community over time.*

#### 7.1. Use, Occupancy, and Transfer of Interests in Units

(a) **Residential and Related Uses.** Units may be used only for residential and related purposes, except as the Founder may otherwise authorize with respect to construction, marketing, and sale activities of the Founder and Builders it designates. A business activity shall be considered "related" to a residential use and thus permitted under this section only if conducted by a person or persons residing in the Unit and only if the business activity:

(i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;

(ii) complies with applicable zoning requirements;

(iii) does not involve regular visitation of the Unit by employees who do not reside in the Unit, or by clients, customers, suppliers, or other business invitees, or involve door-to-door solicitation within the Community; and

(iv) is consistent with Daybreak's residential character and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis that involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

So long as the business activity does not violate any City ordinance or regulation, the following business activities may be operated within the Unit if such operation is in accordance with the requirements set forth in subsection (a)(i) through (iv): the practice of law, accounting services, insurance services, real estate brokerage offices, architecture, or engineering offices, direct sales, computer based telecommunications and research, literary, artistic or craft activities, and providing education. Other professional business activities may be operated within the Unit if approved by the Board, and the consent of the Founder during the Founder Control Period. The Board, with the consent of the Founder during the Founder Control Period, may prohibit previously approved business activities if any such activity interferes with the residential nature of Daybreak or becomes a nuisance.

In addition to any prohibitions set forth in an ordinance of the City, the following activities are specifically not permitted in a Unit: cafes or restaurants; retail discount, or thrift shops; tanning parlors, massage parlors, and any establishment which offers entertainment or service by nude or partially dressed male or female persons; "adult entertainment uses," which terms shall mean, for the purposes of this Charter, any establishment which shows, previews, or prominently displays,

## Use and Conduct

advertises, or conspicuously promotes for sale or rental: (i) movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) which is rated "X" by the movie production industry (or any successor rating established by the movie production industry) or is otherwise of a pornographic or obscene nature; or (ii) sexually explicit games, toys, devices, or similar merchandise; or commercial overnight lodging. The Board reserves the right, from time to time, to designate other activities, which shall not be permitted.

Leasing a Unit for residential purposes shall not be considered a "business" within the meaning of this subsection, provided that the Owner and any other Owners with whom such Owner is affiliated do not collectively lease or offer for lease more than one Unit at any time. This provision shall not preclude an institutional lender from leasing a Unit upon taking title following foreclosure of its security interest in the Unit or upon acceptance of a deed in lieu of foreclosure.

**(b) Leasing.** For purposes of this Charter, the terms "Lease" and "Leasing" shall refer to the regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit. Any dwelling that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased; however, any detached "in-law suite" or "guest house" approved pursuant to Chapter 5 may be leased separate from the main dwelling.

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

Within 10 days of a lease being signed, the Owner of the leased Unit shall notify the Board

or the Association's managing agent of the lease and provide any additional information the Board may reasonably require. The Owner must give the tenant copies of the Governing Documents. In addition to, but consistent with this subsection, the Association or the Board may adopt Rules governing leasing and subleasing.

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

**(d) Subdivision and Combination of Units.** No Person other than the Founder and Builders whom the Founder may authorize shall subdivide or change the boundary lines of any Unit or combine Units without the Board's prior written approval. Any such action that the Board approves shall be effective only upon recording a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Unit(s). In the absence of such recorded instrument, adjacent Units owned by the same Owner shall continue to be treated as separate Units for purposes of voting and assessment, even though such Units may be improved with a single dwelling.

**(e) Timesharing.** No Unit shall be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, unless such program is established by the Founder or with the Founder's prior written approval.

## Use and Conduct

### 7.2. Rulemaking Authority and Procedures

The Governing Documents establish a framework of covenants and conditions that govern the Community. The initial Rules attached as Exhibit "D" are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Board and the Voting Delegates are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 7.3.

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

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

**(c) Notice.** The Board shall send notice to all Owners concerning any proposed Rule change at least five business days prior to the meeting of the Board or the Voting Delegates at which such action is to be considered. At any such meeting, Voting Delegates shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

This notice requirement does not apply to administrative and operating policies that the Board may adopt relating to the Common Areas, such as hours of operation of a recreational facil-

ity, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules.

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



Since it is impossible to foresee all potential situations and problems that may arise within the Community, the Board and the Voting Delegates have the authority to adopt and modify rules as needed to address new or changing circumstances.

**(e) Conflicts.** No action taken under this section shall have the effect of modifying or repealing the Design Guidelines or any provision of this Charter other than the Rules. In the event of a conflict between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Charter (exclusive of the Rules), the Charter shall control. Notwithstanding, neither this Charter nor the Rules or Design Guidelines shall have limit or lessen the application or effect of any ordinance or regulation of the City.

### 7.3. Protection of Owners and Others

Except as may be set forth in this Charter (either initially or by amendment) or in the initial Rules set forth in Exhibit "D," all Rules shall comply with the following provisions:

**(a) Similar Treatment.** Similarly situated Units shall be treated similarly; however, the Rules may vary by location, use, or other distinct characteristics of areas within Daybreak.

**(b) Displays.** No Rule shall prohibit an Owner or occupant from displaying political, religious, or holiday symbols and decorations on his or her Unit of the kinds normally displayed in



## Use and Conduct

single-family residential neighborhoods, nor shall any Rule regulate the content of political signs. However, the Association may adopt time, place, and manner restrictions with respect to signs, symbols, and displays visible from outside structures on the Unit, including reasonable limitations on size and number.

Notwithstanding the above regulation, an Owner or occupant may display one portable and removable United States flag on his or her Unit by a bracket or other device mounted to the dwelling, so long as the flag is displayed in a respectful manner, provided, the Association may adopt reasonable time, place, and manner restrictions with respect to the display of the United States Flag, including a reasonable limitation on size.

**(c) Household Composition.** No Rule shall interfere with an Owner's freedom to determine household composition, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair share use of the Common Area.

**(d) Activities Within Dwellings.** No Rule shall interfere with the activities carried on within a dwelling, except that the Association may prohibit activities not normally associated with residential property. It may also restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance. The Association's authority to impose such Rules shall in no way lessen the effect of any ordinances or regulations of the City.

**(e) Allocation of Burdens and Benefits.** No Rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing

to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Chapter 12.

**(f) Leasing and Transfer of Units.** No Rule shall prohibit leasing or transfer of any Unit or require approval prior to leasing or transferring a Unit; however, the Rules may require a minimum lease term of up to 12 months. Minimum lease terms may vary by location, use, or housing type. The Rules may also require that Owners use Board-approved lease forms (or include specific lease terms), and may impose a reasonable review or administrative fee in connection with the Board's review of a lease.

**(g) Abridging Existing Rights.** No Rule shall require that an Owner dispose of personal property kept in or on a Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rule.



This provision protects the existing personal property of Owners. It is intended to prevent a situation in which an Owner is forced to get rid of an item that was allowed prior to a change in the Rules.

**(h) Reasonable Rights to Develop.** No Rule may unreasonably interfere with the ability of the Founder or any Founder Affiliate to develop, market, and sell property in Daybreak.

## Use and Conduct

(i) *Interference with Easements.* No Rule may unreasonably interfere with the exercise of any easement.

### 7.4. Owners' Acknowledgment and Notice to Purchasers

By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Rules, which may change from time to time. All Unit purchasers are hereby notified that the Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

*There is no way to have an orderly world without somebody making the rules by which order is preserved. Alan Ehrenhalt*

## NOTES

## Chapter 8

### Compliance and Enforcement

*The covenants, standards, and rules set forth in the Governing Documents are for the benefit of all Owners and occupants of the Community. However, if they are to have any real meaning, there must be a commitment by the stakeholders in the Community to comply with them and there must be a mechanism in place to enforce that compliance in the event that someone fails or refuses to do so. This chapter sets forth the obligation to comply and the remedies available to the Association for noncompliance.*

#### 8.1. Compliance



All Owners and occupants of Units, as well as their tenants, guests, and other visitors, must abide by the Governing Documents. If any of them fail or refuse to comply with the Governing Documents, they may be subject to various penalties, including fines and the loss of the right to use the Common Areas.

Every Owner, occupant, and visitor to a Unit must comply with the Governing Documents and shall be subject to sanctions for violations as described in this chapter. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants, tenants, guests, or invitees to their Units and for any damage to the Area of Common Responsibility that such Persons may cause.

#### 8.2. Remedies for Non-Compliance

The Association, the Founder, any Founder Affiliate, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violation of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents.

(a) **Sanctions Requiring Prior Notice and Hearing.** After written notice and an opportunity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Unit. In the event that any occupant, tenant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; provided, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) suspend an Owner's right to vote (except that no hearing is required if the Owner is more than 90 days delinquent in paying any Base or Special Assessment);

(iii) suspend any Person's right to use any Common Area facilities (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation (except that no hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed the Association); provided, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iv) suspend services the Association provides (except that no hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association);

(v) exercise self-help or take action to abate any violation of the Governing Documents

## Compliance and Enforcement

in a non-emergency situation (including removing personal property that violates the Governing Documents);

(vi) require an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of Chapter 5 and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, with all charges and fees associated with such action being charged to the Owner pursuant to Section 12.4, and any such action shall not be deemed a trespass;

(vii) without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Chapter 5, including the Design Guidelines, from continuing or performing any further activities in Daybreak;

(viii) levy Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the Community-Wide Standard or other requirements under the Governing Documents; and

(ix) record a notice of violation with respect to any Unit on which a violation exists.

**(b) Other Sanctions.** The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercise self-help or take action to abate a violation on a Unit in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Common Area under any circumstances;

(iii) require an Owner or a Neighborhood Association, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit or on the Neighborhood Association's property, respectively, that is in violation of the Community-Wide Standard or other requirements under the Governing Documents and to restore the property to its previous condition;

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner or Neighborhood Association fails to take action as required pursuant to subsection (iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(v) bringing suit at law for monetary damages or in equity to stop or prevent any violation, or both.

**(c) Additional Powers Relating to Neighborhood Associations.** In addition to the foregoing sanctions, the Association shall have the power to veto any action that a Neighborhood Association proposes to take if the Board reasonably determines the proposed action to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefore.

A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the

## Compliance and Enforcement

Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

### 8.3. Board Decision to Pursue Enforcement Action

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

- (a) the Association's position is not strong enough to justify taking any or further action;
- (b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (d) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

### 8.4. Attorneys Fees and Costs

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

### 8.5. Enforcement of Ordinances

The Association, by contract or other agreement, may enforce applicable city and county ordinances. In addition, the County or the City may enforce ordinances within Daybreak.

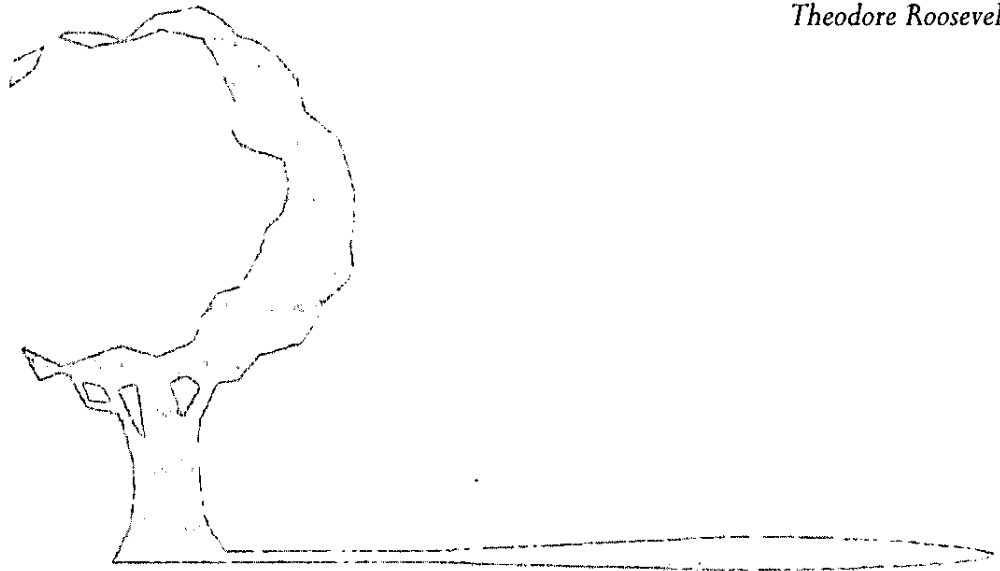
*People need to be reminded more often than they need to be instructed. Samuel Johnson*

## NOTES

### **PART THREE: ASSOCIATION OPERATIONS**

*Do what you can, with what you have, where you are.*

*Theodore Roosevelt*



## Chapter 9

### Property Management

*One of the Association's primary functions is maintaining and operating property and facilities for the common benefit of the Owners and residents of Daybreak. This chapter establishes the Association's obligation to accept property that the Founder designates as Common Area or Limited Common Area and to maintain, operate, and insure it, along with certain other properties, for the benefit of Daybreak.*

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

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

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

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

such amount as the Board may establish, for such use.

#### 9.2. Maintenance of Area of Common Responsibility

The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility includes, but is not limited to:

(a) the Common Area;

(b) landscaping within public rights-of-way within or abutting Daybreak to the extent that responsible governmental authorities do not maintain it to the Community-Wide Standard; and

(c) such portions of any additional property as may be dictated by the Founder, this Charter, any Supplement, or any covenant or agreement for maintenance entered into by, or otherwise binding on the Association;

(d) any property and facilities that the Founder or any Founder Affiliate owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. The Founder shall identify any such property and facilities by written notice to the Association, and they shall remain part of the Area of Common Responsibility until the Founder revokes such privilege of use and enjoyment by written notice to the Association;

(e) any facilities designed and operated for the storage of recreational vehicles within the Community, which may be designated as Limited Common Area; and

## Property Management

(f) any irrigation facility designated by the Founder and utilized for irrigation purposes within Daybreak.

The City, the SSD, the Council, and/or the Association shall be responsible for proper functioning of the **stormwater drainage system** serving the Community, including maintenance, repair, and replacement, as needed, of pipes, culverts, and other structures and equipment comprising the system. They shall have no responsibility for landscaping or other maintenance of Units burdened by stormwater drainage easements unless otherwise specifically set forth in a Supplement or in a recorded agreement or plat.

The Association may maintain other property it does not own, including, without limitation, Units, property dedicated to or owned by the public, or property owned or maintained by a Neighborhood Association, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

### 9.3. Discontinuation of Operation

The Association shall maintain the Common Area facilities in continuous operation unless the Founder, during the Development and Sale Period, and Voting Delegates representing 75% of the total votes in the Association, consent in writing to discontinue such operation. If the property is Limited Common Area, any discontinuation shall also require the approval in writing of at least 75% (or such higher percentage as a Supplement may require) of the Owners to whom such Limited Common Area is assigned. This section shall not apply to restrict the Board's ability to establish reasonable operating hours, which may vary by season, nor to preclude temporary closures or interruptions in operation as

the Board may determine appropriate to perform maintenance or repairs.

### 9.4. Restoring Damaged Improvements

In the event of damage to or destruction of portions of the Area of Common Responsibility for which the Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall repair or reconstruct damaged Common Area improvements unless the Founder, during the Development and Sale Period, and Voting Delegates representing at least 75% of the total votes in the Association, decide within 60 days after the loss not to repair or reconstruct. If the damage is to Limited Common Area or Units within a Service Area, any decision not to restore the damaged improvements shall also require the approval of at least 75% of the Owners of Units in the affected Service Area. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. No Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed.



This provision ensures that desirable Common Area improvements will be replaced if destroyed, but it also makes it possible *not* to repair or rebuild if the Owners who benefit from the Common Area prefer not to rebuild.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter



## Property Management

shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall retain and place in a capital improvements account for the benefit of all Owners, or the Owners of Units within the affected Service Area, as appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Voting Delegates, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 11.4.

### 9.5. Relationships with Other Properties

The Association may contract with the owner of any neighboring property or with any other owners associations to provide for sharing of costs associated with (a) maintenance and operation of mutually beneficial properties or facilities; or (b) provision of mutually beneficial services.

### 9.6. Cooperation with the Council

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

*We cannot escape the responsibility of tomorrow  
by evading it today. Abraham Lincoln*

## NOTES

## Chapter 10

### Provision of Services

*In addition to its property management role, the Association is a vehicle for providing a variety of services for the benefit of the Community at large and individual Units. This chapter describes some of the services the Association may provide and the mechanism by which it may provide varying levels and types of services to different areas of the Community.*

#### 10.1. Provision of Services to Units

The Association may arrange for or provide services to Owners and their Units, directly or through contracts with the Founder or any other third party, including the City, the SSD, and any other governmental entity. The Association may enter into bulk service agreements by which a particular service is provided to all Units, or it may offer various services at the option of each Owner, or both. By way of example and not limitation, such services might include such things as cable television, utilities, fire protection, security, trash collection, landscape maintenance, pest control, caretaker services and technology services.

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

In its discretion, the Board may discontinue offering particular services and may modify or

cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

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

##### (a) *Service Areas Designated by Founder.*

The Association shall provide services to Units within any Service Area designated by the Founder pursuant to Section 3.4 as required by the terms of any Supplement applicable to the Service Area.

##### (b) *Service Areas Designated by Board.*

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

## Provision of Services

### 10.3. Community Technology

(a) *Community Systems.* Without limiting the generality of Sections 10.1 and 10.2, the Association is specifically authorized to provide, or to enter into, or take assignment from the Founder or the Council and/or assume, contracts with other Persons to provide, in addition to services the Council provides, central telecommunication receiving and distribution systems (e.g., cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community ("Community Systems"). Any such contracts may provide for installation, operation, management, maintenance and upgrades, or modifications to the Community Systems as the Board determines appropriate.

The Association shall have no obligation to utilize any particular provider(s). However, except for cause (as defined by written agreement with the provider), the Association may not, without the Founder's consent, terminate or refuse to renew any contract entered into during the Founder Control Period.

The Association may charge use fees for any of the Community Systems or the Board may include the cost of Community Systems in the Association's Common Expense budget and assess it as part of the Base Assessment, if provided to all Units. If services are provided to less than all of the Units, the Association may assess such costs as a Service Area Assessment or a Specific Assessment, as appropriate, against only those Units being provided such service.

(b) *Opportunities for Community Interaction.* The Association may make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Association may sponsor a community cable television channel, create and maintain a community intranet or Internet home page,

maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and residents to interact and participate in Association-sponsored activities. To the extent Utah law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.

### 10.4. Recycling Programs

The Association and/or the Council may establish a recycling program and recycling center, and, in such event, all Owners and occupants of Units shall support such program by recycling, to the extent reasonably practical, all materials the recycling program or center is set up to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received as a result of such recycling efforts shall be used to defray the costs of this and other programs.

### 10.5. Alternative Fuel and Electric Vehicles

The Association, in the furtherance of its duties under this Charter, may support the use of alternative fuel and electric vehicles through the purchasing or leasing of such vehicles for use for Association related affairs and functions. In choosing to purchase or lease these vehicles, the monetary cost of the vehicle shall only be a factor and not the primary basis for the decision to purchase or lease the vehicle.

### 10.6. Water Conservation

All Owners acknowledge and understand that Daybreak has been developed to recapture some portions of the stormwater and other water runoff and that such recapture may affect the use and

## Provision of Services

enjoyment of their Unit. By accepting title to a Unit, each Owner agrees to abide by any and all water conservation requirements affecting his or her Unit, including, but not limited to, any and all plumbing and system requirements set forth in the Design Guidelines. Every Owner agrees to cooperate with the Association, the Council, the City, and the SSD in their compliance with any and all water conservation requirements and agrees to grant access to the Association to inspect the Unit and to provide any and all documentation requested by the Association to make such determination.

### 10.7. Right to Install Water Reclamation Devices

Subject to any County or City regulations or ordinances, the Founder reserves for itself the right to install, operate, and maintain water reclamation devices throughout Daybreak. Such rights include the reservation of an easement over Daybreak for access, and for installation and maintenance such devices. This Section may not be amended without Founder's consent, and the rights created in this Section shall survive termination of this Charter.

Each Owner, subject to the Design Guidelines and approval by the DRC, may install a water reclamation device on his or her Unit for the collection of rain, snow, and other precipitation for use by the Owner. Each Owner shall be responsible for the installation and maintenance of such device.

### 10.8. Environmental Preservation

The Association, subject to approval by the Founder, so long as Founder or a Founder Affiliate owns land subject to the Charter, is authorized to establish and implement an environmental preservation program for Daybreak which may include, without limitation, designation of certain areas within Daybreak as natural landscape zones, slope maintenance zones, underground storage and recovery zones, fire buffer zones, and

similar special purpose zones in order to enhance and protect the environment and vegetation within Daybreak.

The Association, subject to approval by Founder, so long as Founder or a Founder Affiliate owns any land subject to this Charter, shall be authorized to promulgate specific use restrictions within such zones (including, but not limited to, prohibitions on cutting trees, lighting fires, and irrigation) and to require Owners within such zones to comply with specific guidelines to minimize or avoid the risk of fire, erosion, and other environmentally destructive occurrences. The expense of developing, implementing, and monitoring such environmental preservation programs shall be included in the Association's annual budget.

*I think there is a world market for maybe five computers.*

*Thomas Watson, Chairman of IBM, 1943*

## NOTES

## Chapter 11

### Association Insurance

*The Association is responsible for insuring against various types of risks, including property damage, personal injury, and liability. This chapter describes the minimum types and amounts of coverage that the Association must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.*

#### 11.1. Required Coverages

The Association shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on

(i) the Common Area;

(ii) other portions of the Area of Common Responsibility, to the extent that the Association has responsibility for repair or replacement in the event of a casualty; and

(iii) any Service Area, to the extent specified or authorized by any applicable Supplement.

If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The limits of Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes.

In addition, if a Supplement so specifies, the Association shall obtain and maintain property insurance on the insurable improvements within

a Service Area, which insurance shall comply with the above requirements.

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage; and

(e) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-fourth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replace-

## Association Insurance

ment costs in the metropolitan South Jordan area. In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this section requires.

### 11.2. Deductibles



The Board may hold any Persons who cause damage to insured improvements responsible for the insurance deductible payable on any insurance claim related to such damage.

The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 11.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

### 11.3. Policy Requirements

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Owner.

To the extent available at reasonable cost and terms, all Association insurance shall:

(a) be written with a company authorized to do business in Utah that satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the name of the Association as trustee for the benefited parties, and, if reasonably and financially practicable, name the Founder, the Founder Affiliates and their respective officers, directors, and employees as additional insured parties. All policies shall be for the benefit of the Association and its members, except that policies on Limited Common Area shall be for the benefit of the Owners of Units within the Service Area to which the Limited Common Area is assigned and their Mortgagees, as their interests may appear;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) contain an inflation guard endorsement;

(e) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(f) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Association;

(g) provide a waiver of subrogation against any Owner, any household member of an Owner and the Founder and any Founder Affiliate, and any of their respective officers, directors, and employees; and

(h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Association and allowance of a reasonable time to cure the defect or violation.

## Association Insurance



Subrogation is a legal concept by which one person is substituted in the place of another with respect to a lawful claim or right. For example, once they have paid a claim by an insured party, insurance companies generally have the right to step into the shoes of the insured party and sue any one that the insured party could have sued.

*Take calculated risks. That is quite different from being rash. George S. Patton*

### NOTES

In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners as additional insured's and provide:

(a) a waiver of subrogation as to any claims against the Association's directors, officers, employees, and manager;

(b) a waiver of the insurer's right to repair and reconstruct instead of paying cash;

(c) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(d) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(e) a cross liability provision; and

(f) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss.

#### 11.4. Insurance Premiums

Premiums for all Association insurance shall be a Common Expense, except that premiums for property insurance on Units within, or Limited Common Areas assigned to, a particular Service Area shall be a Service Area Expense, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

## Chapter 12

### Association Finances

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*This chapter provides for various types of funding to cover expenses that the Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments, which this chapter authorizes the Association to levy against the Units and collect from the Owner of each Unit. Assessments are secured by a lien on each Unit as described in this chapter.*

#### 12.1. Association Expenses

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

Common Expenses shall not include any expenses incurred during the Founder Control Period for initial development or original construction costs unless Voting Delegates (other than Founder appointees) representing a majority of the total vote in the Association approve such expenditure. Payments due under leases of capital improvements such as streetlights shall not be considered an initial development or original construction cost.

The characterization of a particular expense as a "Common Expense" shall not preclude the Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to

this Charter, any Supplement, or any other recorded covenants or agreements.

**(b) Service Area Expenses.** All expenses that the Association incurs or expects to incur in connection with the ownership, maintenance, and operation of Limited Common Areas, or in providing other benefits and services to a Service Area, including any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Service Area, are considered "**Service Area Expenses**." Service Area Expenses may include a reasonable administrative charge in such amount, as the Board deems appropriate, provided that any such administrative charge is applied at a uniform rate per Unit among all Service Areas receiving the same service.

#### 12.2. Budgeting for and Allocating Association Expenses

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

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Service Area Expense of the Service Area for whom the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful



## Association Finances

life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

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

**(b) Calculation of Base Assessments.** The total budgeted Common Expenses, less any surplus in the Common Expense budget from prior years and any income anticipated from sources other than assessments against the Units, shall be allocated equally among all Units subject to assessment under Section 12.5 and levied as a "**Base Assessment.**"

**(c) Calculation of Service Area Assessments.** The total Service Area Expenses budgeted for each Service Area, less any surplus in such Service Area budget from prior years, shall be allocated among all Units in the Service Area that are subject to assessment under Section 12.4 and levied as a "**Service Area Assessment.**" Unless otherwise specified in any Supplement applicable to a Service Area, Service Area Assessments shall be set at a uniform rate per Unit in the Service Area, except that any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures may be levied on each of the benefited Units in proportion to the benefit received, as the Board may reasonably determine.

All amounts the Association collects as Service Area Assessments shall be held in trust for and expended solely for the benefit of the Service

Area for which they were collected and shall be accounted for separately from the Association's general funds.

**(d) Founder's Subsidy Option.** The Founder or any Founder Affiliate may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by the Founder under Section 12.6(b)). Any such subsidy may be treated as a contribution, an advance against future assessments due from the Founder, or a loan, in the Founder's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate the Founder to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Founder.

**(e) Notice of Budget and Assessment; Right to Disapprove.** The Board shall send a copy of each applicable budget, together with notice of the amount of the Base Assessment and any Service Area Assessment to be levied pursuant to such budgets, to each Owner at least 30 days prior to the due date of the assessments to be levied pursuant to such budget. The Common Expense budget shall automatically become effective unless disapproved at a meeting by Voting Delegates representing at least 75% of the total votes in the Association and by the Founder Member, if such exists. Each Service Area budget shall automatically become effective unless disapproved at a meeting by Owners of at least 67% of the Units within the Service Area, except that the right to disapprove a Service Area budget shall apply only to those line items which are attributable to services or benefits requested by the Service Area and shall not apply to any item which the Governing Documents require to be assessed as a Service Area Expense.

There shall be no obligation to call a meeting for the purpose of considering any budget except, in the case of the Common Expense budget, on

## Association Finances

budget, on petition of the Voting Delegates as provided for special meetings in the By-Laws, and in the case of a Service Area budget, on petition of Owners of at least 2/3 of the Units within the Service Area. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect, increased by 10% shall continue in effect until a new budget is determined.

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

### 12.3. Special Assessments

The Association may levy "**Special Assessments**" to cover Common Expenses or Service Area Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget. Except as otherwise specifically provided in this Charter, any Special Assessment for Common Expenses shall require the affirmative vote or written consent of Voting Delegates representing more than 50% of the votes attributable to Units subject to assessment under Section 12.5 and shall be allocated equally among all such Units. Any Special Assessment for Service Area Expenses shall require the affirmative vote or written consent of Owners representing more than 50% of the total votes allocated to Units in the benefited Service Area and shall be allocated in the same manner as Service Area Assessments under Section 12.2(c). In addition, as long as the Founder membership exists, any Special Assessment shall also be subject to the Founder's written consent. Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in

installments extending beyond the fiscal year in which the Special Assessment is approved.

### 12.4. Specific Assessments

The Association may levy "**Specific Assessments**" against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Unit upon request of the Owner pursuant to any menu of optional services which the Association may offer (which might include the items identified in Section 10.1). Specific Assessments for optional services may be levied in advance of the provision of the requested service;

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

(c) to cover the Unit's pro rata share of any costs that the Association incurs in bringing the Service Area of which the Unit is a part into compliance with the provisions of the Governing Documents; however, the Board must give prior written notice to the Owners of Units in the Service Area and an opportunity for such Owners to be heard before levying any such assessment.

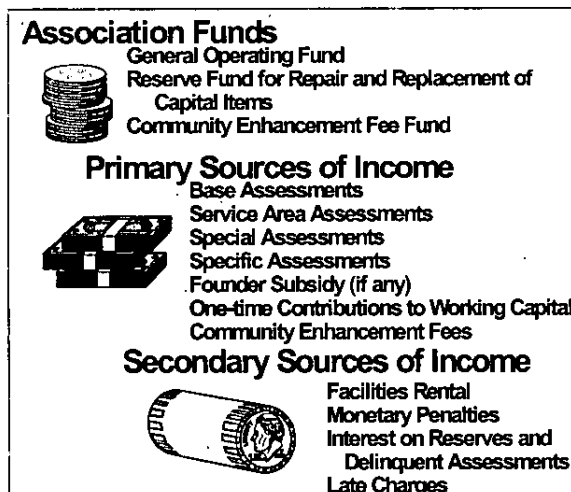
### 12.5. Authority to Assess Owners; Time of Payment

The Founder hereby establishes and the Association is hereby authorized to levy assessments as provided for in this chapter and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the first anniversary of the date on which title was trans-

## Association Finances


ferred to the Unit, except for transfers to a Founder or a Founder Affiliate; or (b) the date on which a certificate of occupancy is issued for a dwelling on the Unit or the Unit is actually occupied, whichever first occurs. The first annual Base Assessment and Service Area Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

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



ments to be paid in full immediately.

## 12.6. Obligation for Assessments

 By buying a Unit in Daybreak each Owner agrees to pay all assessments levied against his or her Unit. If the Owner does not pay on time, that Owner will be charged late fees on all past due amounts. Owners may not claim a reduction in their assessments due to action or inaction by the Association.

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

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

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

## Association Finances

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

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

**(b) Founder's Financial Obligations to Association.** The Founder shall be liable for assessments on any Units it owns that are subject to assessment under this section, except that during the Founder Control Period, the Founder may satisfy its obligation to pay Base Assessments and Special Assessments for Common Expenses on Units it owns either by paying such assessments in the same manner as any other Owner, or by paying (i) any shortfall under the Common Expense budget resulting from events other than failure of other Owners to pay their assessments, and (ii) any budgeted contributions to reserves in accordance with the Common Expense budget. Unless the Founder otherwise notifies the Board in writing at least 30 days before the beginning of each fiscal year, the Founder shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. After termination of the Founder Control Period, the Founder shall pay Base Assessments on any Units it owns that are subject to assessment under Section 12.6 in the same manner as any other Owner liable for such assessments.

Regardless of the Founder's election under this section, any of the Founder's financial obligations to the Association may be satisfied in the

form of cash or by "in kind" contributions of services or materials, or by a combination of these.

### 12.7. Lien for Assessments


**(a) Existence of Lien.** The Association shall have a lien against each Unit to secure payment of assessments, as well as interest, late charges (subject to the limitations of Utah law), and costs of collection (including attorneys fees and expenses). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; and (b) the lien or charge of any recorded Mortgage made in good faith and for value having first priority over any other Mortgages on the Unit.

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

**(b) Enforcement of Lien.** The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

## Association Finances

(c) *Effect of Sale or Transfer.* Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 12.6, including such acquirer, its successors and assigns.

 If an Owner does not pay his or her assessments on time, the Association may foreclose its lien on the Owner's Unit, causing it to be sold to pay the past due assessments. The Association may also sue an Owner in court to recover past due assessments.

### 12.8. Exempt Property

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

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

(b) Any property dedicated to and accepted by any governmental authority, public school, or public utility;

(c) Property owned by any Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common; and

(d) Any property owned by any religious organization or house of worship.

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

### 12.9. Capitalization of Association

The first Owner of each Unit other than the Founder or a Builder designated by the Founder shall make a contribution to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and any Service Area Assessment levied on the Unit and shall not be considered an advance payment of such assessments. This amount shall be due and payable to the Association immediately upon transfer of title, for its use in covering initial start-up expenses, operating expenses and other expenses which it incurs pursuant to this Charter and the By-Laws.

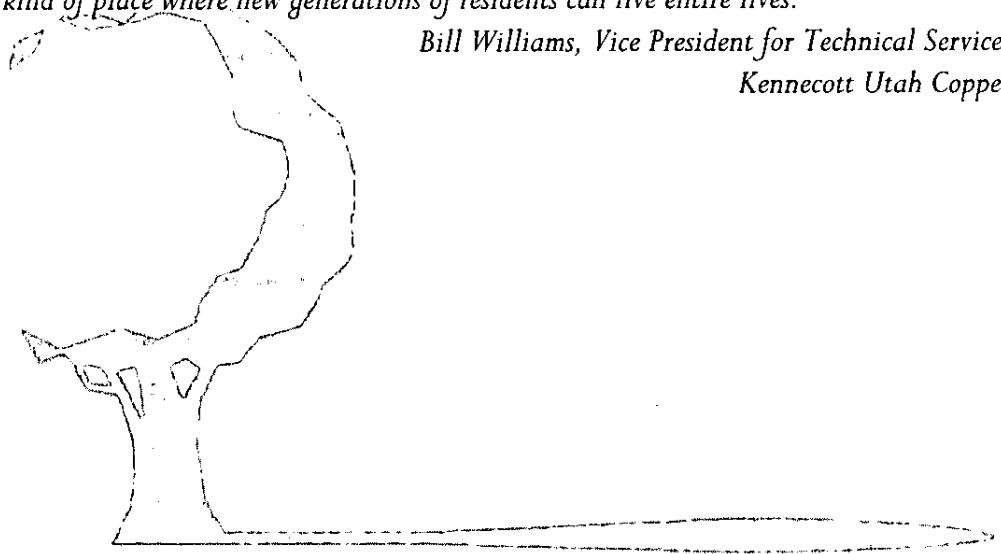
### 12.10. Use and Consumption Fees

The Association may offer services or facilities for which it does not recover its costs through assessments under this Chapter. The Board may charge use, consumption, and activity fees to any Person using Association services or facilities or participating in Association-sponsored activities. The Board may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (*e.g.*, Owners and non-Owners).

## **PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

*This is the kind of place where new generations of residents can live entire lives.*

*Bill Williams, Vice President for Technical Services  
Kennecott Utah Copper*



## Chapter 13

### Easements

*The easements created in this chapter establish the rights of Owners to use the Common Area and create various rights for the benefit of Owners, the Founder, the Association, and others over property within the Community. Some of these rights are related to development and construction within the Community and on adjacent property, while others relate to the rights of Association to come upon property of others to fulfill its responsibilities and the interrelationships between the Community and the owners of adjacent property.*

#### 13.1. Easements in Common Area



An easement is one person's right to go onto the property of another.

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

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association (such conveyance may occur at any time and from time to time at the sole discretion of the Founder);
- (c) Certain Owners' rights to the exclusive use of those portions of the Common Area designated as "Limited Common Area;" and
- (d) The Board's right to:
  - (i) adopt rules regulating Common Area use and enjoyment, including rules limiting the number of guests who may use the Common Area, and to charge use fees for such use;
  - (ii) suspend an Owner's right to use Common Area facilities;

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

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(v) rent any portion of any clubhouse or other Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;

(vi) permit use of any recreational facilities situated on the Common Area by the general public, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion;


(vii) permit use of any Common Area facilities, at such charge or no charge as the Board may determine appropriate, for the purpose of offering and conducting classes or other activities for interested Owners and occupants, whether offered on a for profit or nonprofit basis; and

(viii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 15.9.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

## Easements

### 13.2. Easements of Encroachment

 An encroachment occurs when a person's home, fence, or other structure extends onto his or her neighbor's property. This section permits minor, inadvertent encroachments to remain.

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

### 13.3. Easements for Utilities, Etc.

**(a) Installation and Maintenance.** During the Development and Sale Period, the Founder reserves for itself and grants to the Association, the City, the SSD, and all utility providers, including wind energy providers, perpetual non-exclusive easements throughout Daybreak (but not through a structure) to the extent reasonably necessary to:

(i) install utilities and infrastructure to serve Daybreak, other Community Systems, security and similar systems, and stormwater and drainage systems;

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

(iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; and

(iv) access and read utility meters.

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

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

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

### 13.4. Easements to Serve Additional Property

The Founder hereby reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and




## Easements

development of the property described in Exhibits "B" and "C," whether or not such property is made subject to this Charter. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. The Person exercising such easement rights shall be responsible for any damage caused to the Common Area as a result of their actions in connection with development of such property.

If the above easement grants permanent access to any property that is not submitted to this Charter, the Founder, or its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance that the Association provides for the benefit of the easement holder. The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property.


### 13.5. Easements for Maintenance, Emergency, and Enforcement

 The Association may come onto the exterior portions of a Unit to do maintenance or to address violations of the covenants but will give prior notice unless there is an urgent need to enter the property before notice can be given.

By this Charter, the Founder grants to the Association easements over Daybreak as necessary to enable the Association to fulfill its maintenance responsibilities under Section 6.2 and its enforcement rights under Section 8.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons; to perform maintenance; to inspect for compliance with the Governing Documents; and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an

emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

### 13.6. Easements for Lake and Pond Maintenance and Flood Water

 The Founder, the City, the SSD, the Association, and any homeowners or condominium associations created by Founder in the future, have the right to access property adjacent to lakes, streams, and other water bodies to perform maintenance and for irrigation purposes. They also have the right to cause water levels in lakes or ponds in Daybreak to rise above normal. They will be responsible for repairing any damage they cause in so doing.

The Founder reserves for itself, the Association, and their respective successors, assigns, and designees, the City, and the SSD, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within Daybreak and/or the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. The Founder, the Association, and their respective successors, assigns, and designees shall have an access easement over and across any portion of Daybreak which abuts or contains bodies of water or wetlands, to the extent reasonably necessary to exercise their rights under this section.

The Founder further reserves for itself, the Association, and their respective successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within 50 feet of bodies of water and wetlands within Daybreak, in order to (a) temporarily flood and back water upon and maintain water over such prop-

## Easements

erty; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (c) maintain and landscape the slopes and banks pertaining to such areas. All Persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make the Founder or any other Person liable for damage resulting from flooding due to weather events or other natural occurrences.

The Founder further reserves for itself, the Association, and their respective successors, assigns, and designees, a perpetual nonexclusive right and easement, but not the obligation, to enter upon the Area of Common Responsibility and such other areas within Daybreak as hereafter may be dedicated to the City, the SSD, or any other governmental entity, to install, construct, operate, maintain, repair, or replace pumps, pipelines, structures or related equipment for the treatment or cleansing and transportation of groundwater, irrigation and/or culinary water.

### 13.7. Easements for Cross-Drainage

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

### 13.8. Easement for Installation, Maintenance, and Repair of Solar Power or Wind Energy Equipment

Founder reserves unto itself, so long as it or a Founder Affiliate owns any property described in Exhibit "A" or "B", and grants to the Association a perpetual easement for the purpose of access

and maintenance upon, across, over, and under all portions of Daybreak to the extent reasonably necessary to install, replace, repair, and maintain photovoltaics, solar collector panels, equipment, conduits, lines, wind mills, and anything else necessary for the production and generation of electricity from solar or wind energy. Founder and/or the Association may assign these rights to any company to provide, install, or otherwise maintain such solar and/or wind power equipment.

Any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

### 13.9. Easements for Golf Course



If the golf course is close to your Unit, you can expect that golf balls and people will come near your Unit. This section puts Owners on notice that activities relating to the golf course will affect Units next to the golf course.

The Community is burdened with an easement permitting golf balls unintentionally to come upon areas adjacent to or in the vicinity of a golf course, and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, common property of a Neighborhood Association, or the exterior portions of a Unit to retrieve errant golf balls. However, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls.

Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the ex-

## Easements

exercise of this easement: the Founder; the Association or its members (in their capacities as such), its successors, successors-in-title to the golf course, or assigns; any builder or contractor (in their capacities as such); any officer, director, or partner of any of the foregoing, or any officer or director of any partner.

The owner of any golf course within or adjacent to any portion of Daybreak, its agents, successors and assigns shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Areas reasonably necessary to the operation, maintenance, repair, and replacement of its golf course.

Any portion of Daybreak immediately adjacent to any golf course is hereby burdened with a non-exclusive easement in favor of the adjacent golf course for overspray of water from the irrigation system serving such golf course. **Under no circumstances shall the Association or the owner of such golf course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.**

The owner of any golf course within or adjacent to any portion of Daybreak, its successors and assigns, shall have a perpetual, exclusive easement of access over Daybreak for the purpose of retrieving golf balls from bodies of water within the Common Areas lying reasonably within range of golf balls hit from its golf course.

### 13.10. Easements for Trails, Paths, and Walkways

Certain Units may be subject to an easement permitting public access trails, paths, or walkways within the boundaries of such Units ("**Path Easement**"). Any Path Easement shall be shown and described on a Plat, and no Path Easement shall be newly created on a Unit without the written consent of the Owner. Founder grants to the Association a perpetual, non-exclusive easement on, over, under, through, and across

any such Path Easement for maintenance purposes and the Owners and occupants of all Units shall have an easement permitting the use of the Path Easements for the intended purposes. In addition, the public may be granted similar use rights over any Path Easement. The use of any Path Easement shall be subject to Board rules and regulations. The Association shall maintain the Path Easements as a Common Expense in accordance with the Community-Wide Standard.

All work associated with the maintenance of the Path Easement shall be performed in such manner as to minimize interference with the use and enjoyment of those portions of a Unit lying outside of the Path Easement. The Association shall use reasonable efforts to confine all work associated with such easement rights to the Path Easement area; provided, to the extent reasonably necessary to perform such work, access over other portions of a Unit shall be permitted. Upon completion of any work, the Association shall restore any disturbed portion of the Unit to the extent reasonably possible to its condition prior to the commencement of the work.

No Person shall place or construct any improvement or thing within a Path Easement area without the Association's prior written consent, which consent may be withheld in the Association's discretion, and no Person shall take any action that otherwise interferes with the exercise of the easement rights provided under this Section.

### 13.11. Easements Over Adjoining Units and Owner Maintenance Responsibilities

Founder hereby grants to each Owner and occupants of a Unit within the "**Green Court Homes**" of Daybreak an appurtenant easement of access, enjoyment, maintenance, and primary use of the side yard easement area immediately adjacent to the Benefited Unit. The Unit benefited by the easement is referred to as the "Benefited Unit." The Unit burdened by the easement

**Easements**

is referred to as the "Burdened Unit." The "side yard easement area" is the area between the shared boundary line between the two Units and the building surface of the dwelling on the Burdened Unit. The Owner of the Benefited Unit shall have a nonexclusive easement of use, access, enjoyment, and maintenance of, over, and to the side yard easement area adjacent to his or her Unit. The side yard easement area may be more specifically designated by Founder in a recorded Unit survey or any other recorded instrument or covenant applicable to a Unit.

Notwithstanding the easement granted to the Benefited Unit, the Burdened Unit shall have a

interference, or annoyance to the Burdened Unit Owner or other Persons is prohibited. Each Owner of a Unit within the Green Court Homes property shall maintain a portion of the side yard of an immediately adjacent Unit.

No structure or landscaping shall be placed, erected, or installed upon the exterior portion of any Unit within the Green Court Homes property, including within any fenced or otherwise enclosed area, except as permitted under the Charter and the Design Guidelines and as approved in accordance with Chapter 5 of the Charter.

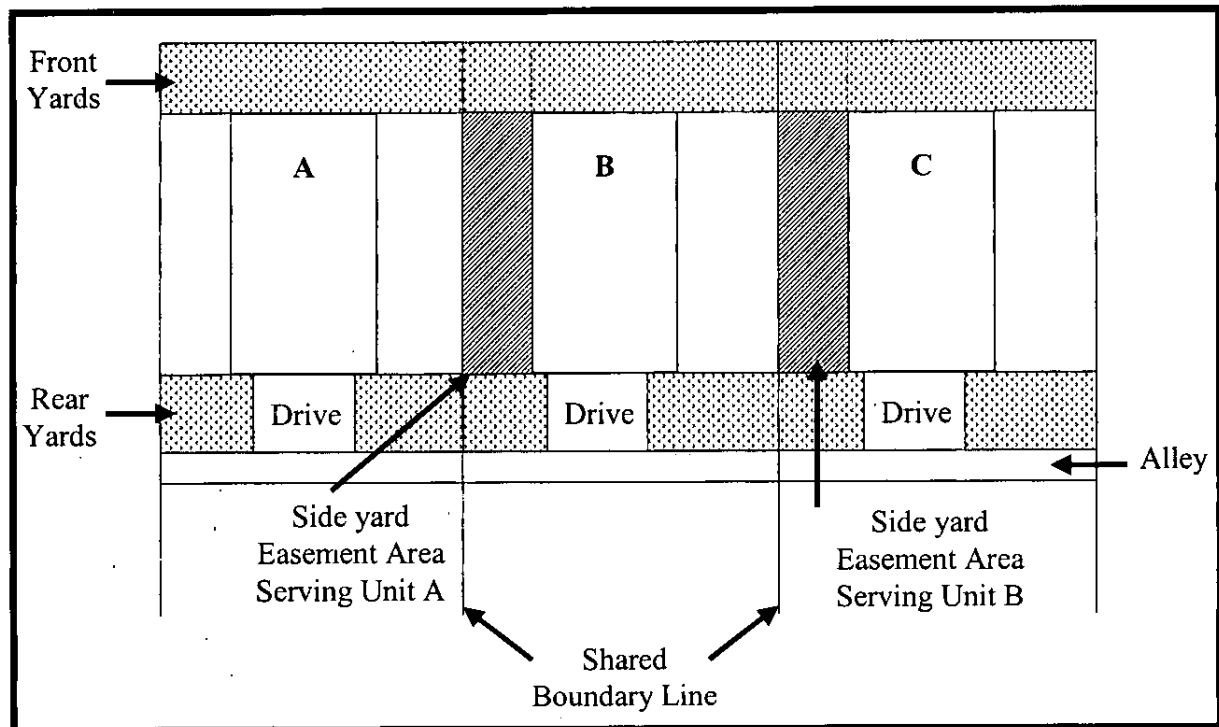


Diagram 13.1

right of access over the side yard easement area to maintain and repair the dwelling and other improvements on the Burdened Unit, provided that the Owner of the Burdened Unit shall not deny the Owner and occupants of the Benefited Unit from exercising their easement rights over the side yard easement area. In any event, any activity within the side yard easement area that may damage the Burdened Unit or residential structure or which causes unreasonable risk, in-

Each Owner within the Green Court Homes property shall be obligated to obtain and maintain at all times insurance covering consequential damages to any other Unit or the side yard easement area due to occurrences caused by the negligence of the Owner or any casualty occurring within the Unit or the side yard easement area which causes damage to other Units or the Common Area.

## Easements

Pursuant to this Chapter 16 of this Charter, the Founder or the Association may submit all or any of the property contained in Exhibits "B" or "C" to the terms of this Charter. If additional property is submitted to this Charter, the provisions of this section shall not apply unless the Founder records a Unit survey or any other instrument or covenant applicable to a Unit subjecting such Unit to a side yard easement.

### 13.12. Easements for Future Developments

The Founder hereby reserves for itself and its duly authorized agents, successors, and assigns the non-exclusive right and power to grant any homeowners or condominium association it may designate and their respective members an easement over the Common Areas and the Area of Common Responsibility for the purpose of enjoyment, use, and access. Any homeowners or condominium association granted such rights shall be obligated to share in the costs of the maintenance of such areas as reasonably determined by the Founder.

*It is not only what we do, but also what we do not do, for which we are accountable. Moliere*

## NOTES

## **Chapter 14**

### **Disclosures and Waivers**

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*This chapter discloses some important information about the Community for the benefit of prospective purchasers of property in the Community. Each Owner, by accepting a deed to property in the Community, also accepts and agrees to the matters set forth in this chapter.*

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

Certain facilities and areas within Daybreak may be open for use and enjoyment of the public. Such facilities and areas may include, by way of example: greenbelts, trails and paths, parks, boat launches, lakes, other neighborhood spots conducive to gathering and interaction, roads, sidewalks, alleys, and medians. The Founder may designate such facilities and areas as open to the public at the time the Founder makes them a part of the Area of Common Responsibility, or the Board may so designate at any time thereafter.

#### **14.2. Safety and Security**

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Daybreak. The Association may, but shall not be obligated to, maintain or support certain activities within Daybreak designed to promote or enhance the level of safety or security, which each person provides for himself or herself and his or her property. However, the Association, the Founder, or any Founder Affiliate shall not in any way be considered insurers or guarantors of safety or security within Daybreak, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to Daybreak, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of such Owner's Unit, that the Association, its Board and committees, the Founder, and a Founder Affiliate are not insurers or guarantors of security or safety and that each Person within Daybreak assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

#### **14.3. Changes in Master Plan**

Each Owner acknowledges that Daybreak is a master planned community, the development of which is likely to extend over many years, and agrees that neither the Association nor any Neighborhood Association shall engage in, or use Association funds to support, any protest, challenge, or other form of objection to (a) changes in uses, design, layout, or density of property within Daybreak, or (b) changes in the Master Plan or Master Development Agreement, without the Founder's prior written consent; or (c) changes in the price or price ranges for Units. In addition, each Owner acknowledges that the Founder is not obligated to submit property shown on the Master Plan to this Charter. It is the Founder's sole discretion to submit additional property to this Charter. Each Owner acknowledges that the Founder, along with the City, has the absolute right to amend or modify the Master Plan and/or the Master Development Agreement without the consent of any party, including,

## **Disclosures and Waivers**

without limitation, any Owner, the Association, any Neighborhood Association, or the Council. Furthermore, no one, including any Owner, the Association or any Neighborhood Association, or the Council, is a third party beneficiary to the Master Development Agreement.

### **14.4. View Impairment**

The Founder, any Founder Affiliate, and the Association do not guarantee or represent that any view over and across the Units, any open space within the Community, or any lake or wetland will be preserved without impairment. The Founder, the Association, and the Council shall have no obligation to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association (with respect to the Common Area) and the Council (with respect to any property within Daybreak owned by the Council) have the right to add trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

### **14.5. Notices and Disclaimers as to Community Systems**

Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. The Founder, Founder Affiliates, or any of their respective successors or assigns shall not be liable for, and no Community System or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

### **14.6. Relationship with Governmental and Tax-Exempt Organizations**

The Association may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to, state or local governments, public utility providers, and non-profit, tax-exempt organizations for the benefit of the Community, the Association, and the Owners. The Association may contribute money, real property (including Common Area), personal property, or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

### **14.7. Right To Designate Sites for Governmental and Public Interests**

For so long as Founder or a Founder Affiliate owns any property described in Exhibit "A" or "B," Founder may, but is not obligated to, designate sites within the Community for government, education, or religious activities and interests, including without limitation, fire, police, and utility facilities, schools and educational facilities, houses of worship, parks, and other public facilities. For property dedicated in accordance with this Section, the use of portable or temporary buildings shall be prohibited on such property, and development of the property shall be in accordance with the Design Guidelines as set forth in Section 5.1. Subject to the approval requirements set forth in Section 19.4, the sites may include Common Area, in which case the Association shall take whatever action is required to permit such use, including dedication or conveyance of the site, if so directed by Founder.

## Disclosures and Waivers

### 14.8. Use of Reclaimed Water for Irrigation Purposes

Each Owner acknowledges that the development and operation of Daybreak include the implementation of water conservation techniques. As part of these techniques, the Association, the Council, the City, and/or the SSD has the right to use recycled or reclaimed water and stormwater runoff to irrigate the Area of Common Responsibility and any property located within Daybreak.

### 14.9. Radio and Telecommunication Towers

Every Owner and occupant of a Unit is hereby advised that radio and telecommunication towers and related equipment may now or hereafter be located within or in the vicinity of Daybreak. The Founder, any Founder Affiliate, Builders, the Association, or the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing, shall not be liable for any damage or injury to any Person or any property arising out of or related to the construction, installation, maintenance, or operation of or proximity to, radio or telecommunication towers, or any such towers that may now or hereafter be located in or in the vicinity of Daybreak.

*Opportunities multiply as they are seized.*  
*Sun Tzu*

## NOTES



## Chapter 15

### Rights of Lenders

*In order to enhance each Owner's ability to obtain financing for the purchase of his or her Unit, this chapter sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies that guarantee and insure mortgage loans made by institutional lenders.*

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in Daybreak. The provisions of this chapter apply to both this Charter and the By-Laws, notwithstanding any other provisions contained therein.

#### 15.1. Notices of Action

An institutional holder, insurer, or guarantor of a first Mortgage that provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss that affects a material portion of Daybreak or that affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder; and

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant that is not cured within 60 days.

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action, which would require the consent of a specified percentage of Eligible Holders.

#### 15.2. Special FHLMC Provision

If a condominium has been established in the Community, then so long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least 67% of the first Mortgagees or Voting Delegates representing at least 67% of the total votes in the Association consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of Daybreak regarding assessments for Service Areas or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Charter);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance, or maintenance of Units and the Common Area (the issuance and amendment of architectural standards, procedures, rules and

## Rights of Lenders

regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Charter; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

### 15.3. Other Provisions for First Lien Holders

To the extent not inconsistent with Utah law, if a condominium has been established in the Community, then:

(a) Any restoration or repair of Daybreak after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Charter and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

## 15.4. Amendments to Documents

The following provisions do not apply to amendments to the Governing Documents or termination of the Association as a result of destruction, damage, or condemnation pursuant to Section 15.3(a) and (b), or to the addition of land in accordance with Chapter 16. If a condominium has been established in the Community, then:

(a) The consent of Voting Delegates representing at least 67% of the total votes in the Association and of the Founder, so long as it or a Founder Affiliate owns any land subject to this Charter, and the approval of the Eligible Holders of first Mortgages on Units to which at least 67% of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association.

(b) The consent of Voting Delegates representing at least 67% of the total votes in the Association and of the Founder, so long as it or a Founder Affiliate owns any land subject to this Charter, and the approval of Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to a Mortgage appertain, shall be required materially to amend any provisions of the Charter, By-Laws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

(i) voting;

(ii) assessments, assessment liens, or subordination of such liens;

(iii) reserves for maintenance, repair, and replacement of the Common Area;

(iv) insurance or fidelity bonds;

(v) rights to use the Common Area;

(vi) responsibility for maintenance and repair of property in Daybreak;

## Rights of Lenders

(vii) expansion or contraction of Day-break or the addition, annexation, or withdrawal of property to or from the Association's jurisdiction;

(viii) boundaries of any Unit;

(ix) leasing of Units;

(x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;

(xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or

(xii) any provisions included in the Governing Documents, which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

### 15.5. No Priority

No provision of this Charter or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

### 15.6. Notice to Association

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

### 15.7. Failure of Mortgagee to Respond

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided

such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

### 15.8. Construction of Chapter 15

Nothing contained in this chapter shall be construed to reduce the percentage vote that must otherwise be obtained under this Charter, the By-Laws, or Utah law for any of the acts set out in this chapter.

### 15.9. HUD/VA Approval

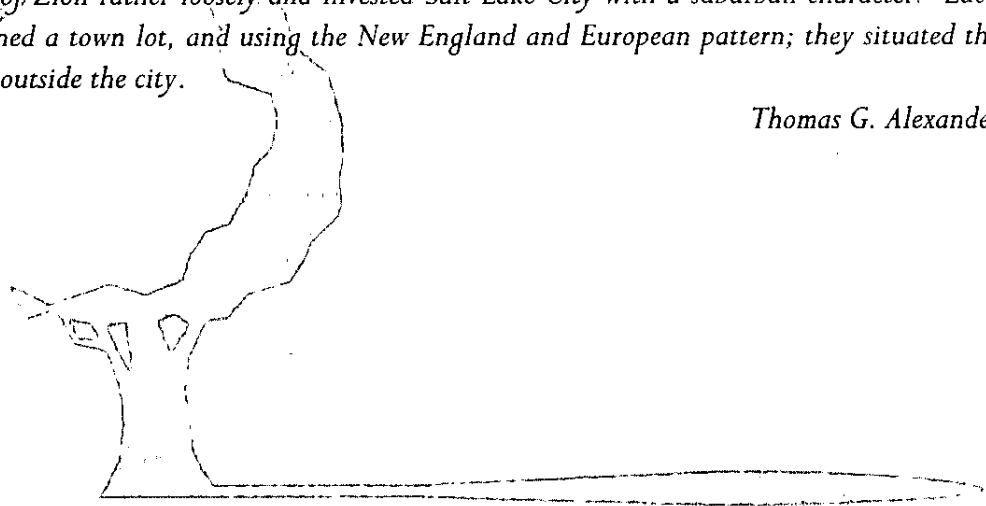
As long as there is a Founder Member, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development ("HUD") or the U.S. Department of Veterans Affairs ("VA"), if either such agency is insuring or guaranteeing the Mortgage on any Unit: merger, consolidation, or dissolution of the Association; annexation of additional property other than that described in Exhibit "B"; dedication, conveyance (other than to correct errors on property descriptions or other inconsequential or immaterial conveyances), or mortgaging of Common Area; or material amendment of this Charter or the By-Laws.

Notwithstanding anything to the contrary in this chapter, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership, or HUD or VA.

## PART FIVE: COMMUNITY DEVELOPMENT

*Since they planned a community for Saints rather than a subdivision for speculators, they subdivided the blocks into one-and-a-quarter-acre town lots. The leaders followed Joseph Smith's plat of the City of Zion rather loosely and invested Salt Lake City with a suburban character. Each resident owned a town lot, and using the New England and European pattern; they situated the large farms outside the city.*

*Thomas G. Alexander*



## **Chapter 16**

### **Expansion of the Community**

*Due to the need to pace development to the needs of the Community and the market demand for Units or Common Areas, the Community may be developed in phases. The Founder or the Association may expand the initial property submitted to the Charter as set forth in this chapter.*

#### **16.1. Expansion by Founder**

From time to time, the Founder may submit to the terms of this Charter all or any portion of the property described in Exhibits "B" and "C" by recording a Supplement describing the additional property to be submitted. The Founder may record such a Supplement without the consent of any Person except the owner of such property, if not the Founder.

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

Nothing in this Charter shall require the Founder or any successor to submit additional property to this Charter or to develop any of the property described in Exhibit "B" or "C" in any manner whatsoever.

#### **16.2. Expansion by the Association**

The Association also may submit additional property to this Charter by recording a Supplement describing the additional property. Any Supplement which the Association records must be approved by Voting Delegates representing

more than 50% of the total votes in the Association at a meeting duly called for such purpose and by the owner of the property to be submitted. In addition, during the Development and Sale Period, the Founder's consent is required. The Association's President and Secretary, the owner of the property, and the Founder, if the Founder's consent is required, shall sign the Supplement.

#### **16.3. Additional Covenants and Easements**

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

#### **16.4. Effect of Filing a Supplement**

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Charter shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Charter.

## Expansion of the Community

### 16.5. Unit Conversions

NOTES



Because Daybreak intends to include the development of retail, office, and commercial uses that are commercial concerns that were not submitted to this Charter, if a commercial use, building or buildings, are converted to residential use, the interests of those owners will be more like the interests of the owners already subject to this Charter. For that reason, for the good of the Community the converted property should be submitted to the terms of this Charter, even if it was not initially designated as property that could be submitted in Exhibit "B" or "C."

In the event that any development or building now or hereafter constructed within Daybreak is used or operated for non-residential purposes, such as retail, office, or other commercial uses, and such development is later converted or operated for residential purposes, the owner of such property may submit such property to the provisions of this Charter by recording a Supplement describing the property and specifically submitting it to the terms of this Charter. Such Supplement Charter shall not require the consent of the Association, but shall require the signature of an officer of the Association acknowledging it. In addition, the Founder's prior written consent shall be necessary so long as the Founder or a Founder Affiliate owns any property described in Exhibit "A" or "B."

*Planning should be focused on not having missing pieces in a neighborhood: a school you can bike to, businesses, churches, ball fields, parks, a mix of housing types. Charles Frazer*

## **Chapter 17**

### **Additional Rights Reserved to the Founder**

---

*This chapter reserves various rights to the Founder, in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the Founder's development and sale of property in the Community, to enable the Founder to respond to Owners' concerns, and to protect various property rights and other interests of the Founder.*

#### **17.1. Withdrawal of Property**

During the Development and Sale Period, the Founder may amend this Charter to remove any unimproved portion of Daybreak from the coverage of this Charter, provided such withdrawal does not reduce the total number of Units then subject to the Charter by more than 10%. "Unimproved" means that no permanent structure has yet been completed on the property. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Founder. If the property is Common Area, the Association shall consent to such withdrawal.

#### **17.2. Marketing and Sales Activities**

Notwithstanding anything in the Governance Documents to the contrary, during the Development and Sale Period the Founder and its designees or assigns may construct, use, and maintain upon portions of the Common Area and other property they own, such facilities and activities as, in the Founder's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Units. Such permitted facilities and activities shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental

to construction or sales activities, the Founder and its employees, agents, and designees may park vehicles in designated parking areas.

#### **17.3. Right to Make Improvements, Replat**

During the Development and Sale Period, the Founder and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing improvements, including cellular towers, on the Common Area and to the Exhibit "B" property as it deems appropriate.

In addition, during the Development and Sale Period, the Founder may replat property that it or a Founder Affiliate owns and convert Units it or a Founder Affiliate owns into Common Area.

#### **17.4. Right to Approve Changes in Daybreak Standards**

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

#### **17.5. Additional Covenants and Restrictions**

During the Development and Sale Period, no one other than the Founder or a Founder Affiliate may record any additional covenants or restrictions affecting any portion of the Community without the Founder's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

## **Additional Rights Reserved to the Founder**

### **17.6. Exclusive Rights to Use Name of Development**


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

### **17.7. Community Systems**

The Founder reserves for itself, Founder Affiliates, and its respective successors and assigns, a perpetual right and easement over all property in Daybreak to install and operate such Community Systems as the Founder, in its discretion, deems appropriate to serve any portion of the Community. Such right shall include, without limitation, the Founder's right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the region. The Founder also has the right to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable.

Notwithstanding the above, there is no guarantee or representation that any particular Community System will be made available.

### **17.8. Easement to Inspect and Right to Correct**

 The Founder, or someone it designates, may enter onto any Unit to inspect and correct problems with the Unit. The Founder must give the Owner of the Unit prior notice, and if entering an enclosed structure on the Unit, obtain the Owner's prior consent unless it is an emergency.

The Founder reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition that may exist on any portion of the property within Daybreak, including Units, and a perpetual non-exclusive easement of access throughout Daybreak to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of his or her Unit.

### **17.9. Right to Notice of Design or Construction Claims**

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Daybreak in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless the Founder and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection.



## **Additional Rights Reserved to the Founder**

### **17.10. Development of Open Space**

Plans for Daybreak identify or may identify certain areas as "Open Space." Founder shall have the right, in its discretion, to determine appropriate uses for, or improvements that may be constructed on, such Open Space areas. In addition, for any Open Space owned by the City, the County, or the SSD, such entity shall have the right, with the approval of Founder, to determine appropriate uses for, or improvements that may be constructed on such Open Space. Appropriate uses or improvements may include, without limitation, signage, walls, landscaping, conservation, drainage, parks, green areas, pathways, or cellular towers. Open Space areas may be owned and maintained by the Association, the City, the County, the SSD, or the Council.

### **17.11. Right to Use Common Area for Special Events**

As long as Founder or a Founder Affiliate owns any property described in Exhibit "A," "B," or "C," Founder may use the Common Area to sponsor special events for charitable, philanthropic, political, or marketing purposes, subject to the following conditions:

(a) the availability of the facilities at the time requested;

(b) Founder shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event; and

(c) Founder shall return the facilities and personal property used in conjunction with the special event to the Association in the same condition as existed prior to the special events.

Founder shall have the right to assign its rights to charitable organizations or foundations selected by Founder. Founder's right to use the Common Area for special events shall be en-

forceable by injunction, by any other remedy in law or equity, and by the terms of this Charter.

### **17.12. Right to Stormwater Runoff**

Founder reserves for itself and its designees and its assigns all rights to ground water, surface water, and stormwater runoff located within Daybreak, and each Owner agrees, by acceptance of a deed to a Unit, that Founder shall retain all such rights. Such rights shall include the reservation of an easement over Daybreak for access, and for installation and maintenance of facilities and equipment to capture and transport such water, and runoff. All such water shall be available for use by Founder, the Association, the Council, the City, and/or the SSD for irrigation, fire protection, and similar purposes, as such right of use may be designated by the Founder from time to time. Founder may establish programs for reclamation of stormwater runoff and wastewater for appropriate uses within or outside Daybreak and may require Owners and occupants of Units to participate in such programs to the extent reasonably practical. No Owner or occupant of a Unit shall have any right to be compensated for water claimed or reclaimed from his or her Unit.

This Section may not be amended without Founder's consent, and the rights created in this Section shall survive termination of this Charter.

### **17.13. Right to Transfer or Assign the Founder's Rights**

Any or all of the Founder's special rights and obligations set forth in this Charter or the By-Laws may be transferred in whole or in part to other Persons. However, such a transfer shall not reduce an obligation or enlarge a right beyond that which Founder has under this Charter or the By-Laws. No such transfer or assignment shall be effective unless it is in a recorded instrument the Founder signs. The foregoing sentence shall not preclude the Founder from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to the Founder in

## **Additional Rights Reserved to the Founder**

this Charter where the Founder does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless necessary to evidence the Founder's consent to such exercise.

### **17.14. Termination of Rights**

The rights contained in this chapter shall not terminate until the earlier of (a) termination of the Development and Sale Period; or (b) the Founder's recording of a written statement that all sales activity has ceased.

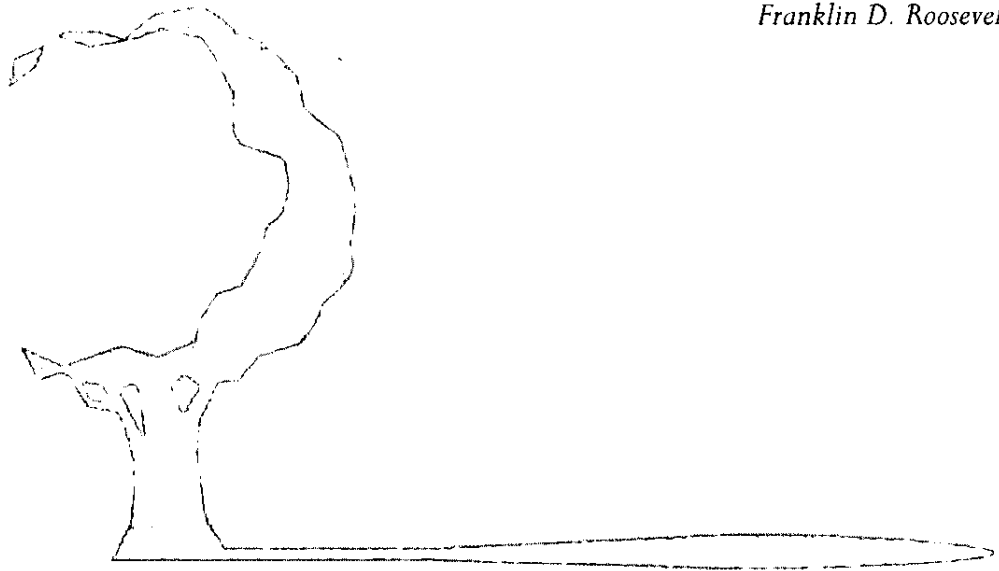
*The very essence of leadership is that you have to have a vision. Theodore Hesburgh*

## **NOTES**

**PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS**

*There are many ways of going forward, but only one way of standing still.*

*Franklin D. Roosevelt*



## Chapter 18

### Dispute Resolution and Limitation on Litigation

*From time to time, disputes may arise between Owners or between an Owner and the Association, the Founder, or others involved in the Community. This chapter commits the parties to any such dispute to work together in an attempt to resolve the dispute without litigation, in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Association's membership before the Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.*

#### 18.1. Agreement to Encourage Resolution of Disputes Without Litigation

**(a) Bound Parties.** The Founder; the Association and its officers, directors, and committee members; all Persons subject to this Charter; and any Person not otherwise subject to this Charter who agrees to submit to this chapter (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 in a good faith effort to resolve such Claim.

**(b) Claims.** As used in this chapter, the term "**Claim**" shall refer to 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 within the Community, other than matters of aesthetic judgment under Chapter 5, which shall not be subject to review and shall not be subject to this chapter.

(c) 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 18.2:

(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 Part Two of this Charter (relating to creation and maintenance of community standards);

(iii) any suit that does not include the Founder, a Founder Affiliate, 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 8.2;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 18.2(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 chapter;

## Dispute Resolution and Limitation on Litigation

(vi) any suit or dispute between the Founder or a Founder Affiliate and a Builder, contractor(s), subcontractor(s), or any other party contracted by the Founder or a Founder Affiliate in connection with the development of Daybreak; and

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

### 18.2. 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; and

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

(b) **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.

(c) **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 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Salt Lake County area. Each Bound Party shall present the mediator with a written summary of the Claim.

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

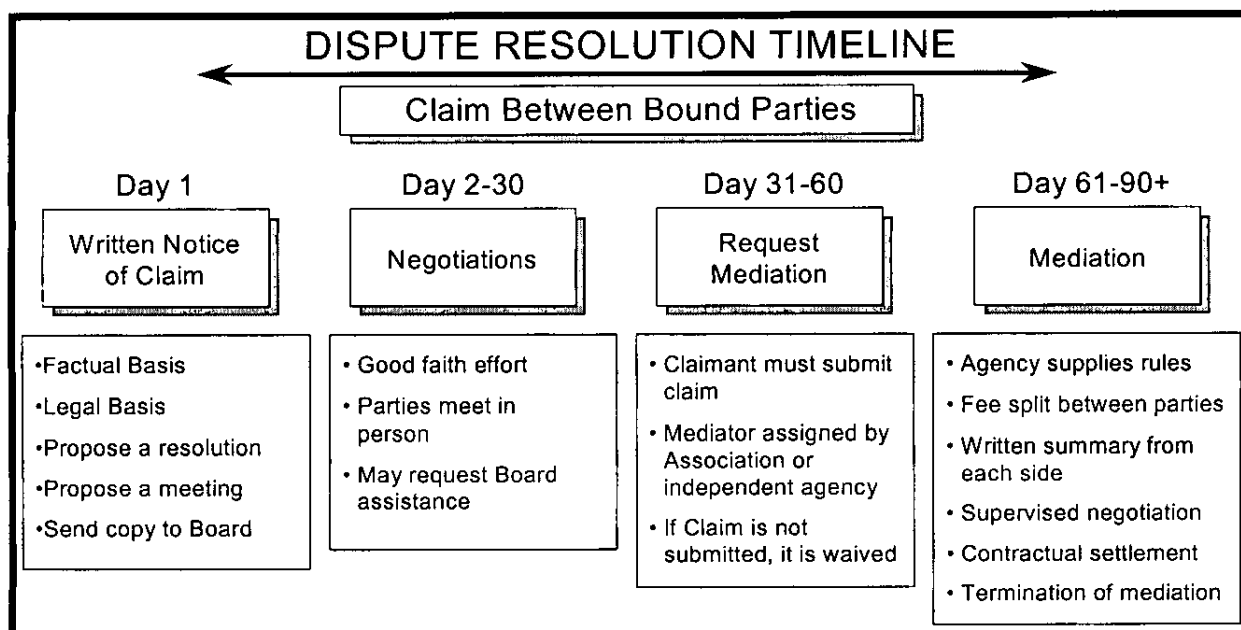


Diagram 18.1

## Dispute Resolution and Limitation on Litigation

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.

If the parties do not settle the Claim within 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.

Each Bound Party shall bear its own costs of the mediation, including attorneys fees, and each Party shall pay an equal share of the mediator's fees.

**(d) Settlement.** Any settlement of the Claim 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 administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this section. 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, attorneys fees and court costs.

### 18.3. Initiation of Litigation by Association

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Voting Delegates entitled to cast 75% of the total votes in the Association,

except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Founder Control Period;
- (b) initiated to enforce the provisions of this Charter, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

*Problems cannot be solved at the same level of awareness that created them. Albert Einstein*

## Chapter 19

### Changes in the Common Area

*Various influences and circumstances within and outside the Community may give rise to a need or desire to make changes in the ownership of or rights to use Common Area. This chapter explains the procedures for dealing with matters such as changing use rights in Common Area or Limited Common Area, partition of the Common Area, and condemnation.*

#### 19.1. Assignment and Reassignment of Limited Common Area

The Board may designate a portion of the Common Area as Limited Common Area, and may reassign Limited Common Area, upon approval of the Board and the vote of Voting Delegates representing a majority of the total votes in the Association, including a majority of the votes attributable to Units to which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment shall also require the Founder's written consent.

Upon approval of a majority of Owners of Units to which any Limited Common Area is assigned, the Association may permit Owners of other Units to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Common Area.

#### 19.2. Condemnation



A governmental entity such as a town, county, or state has the power to condemn property for its own uses but generally has to pay the value of the property to do so.

If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Associa-

tion in lieu of and under threat of condemnation with such approval as may be required under Section 19.4, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Founder, during the Development and Sale Period, and Voting Delegates representing at least 75% of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 9.4 regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 19.4.

#### 19.3. Partition



Partition is a legal action in which a party requests to have a portion of one interest in property split off so that the party can possess that portion or interest separately from other parties who have rights in the property.

## Changes in the Common Area

Except as permitted in this Charter, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written consent of all Owners and Mortgagees. This section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Charter, with such approval as may be required under Sections 15.9 and 19.4.

### 19.4. Transfer or Dedication of Common Area

The Association may dedicate portions of the Common Area to the County, the City, or to any other local, state, or federal governmental or quasi-governmental entity, any religious organization, or any land trust or organization dedicated to the preservation and protection of natural resources; may subject Common Area to a security interest; or may transfer or convey Common Area as follows:

(a) if Common Area other than Limited Common Area, upon the written direction of Voting Delegates representing at least 75% of the total votes in the Association, and the Founder during the Development and Sale Period; or

(b) if Limited Common Area, upon written approval of Owners of at least 75% of the Units to which such Limited Common Area is assigned.

In addition, the Association shall obtain such approval as may be required under Section 15.9.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines. The proceeds from the sale or mortgaging of Limited Common Area shall be disbursed in the manner approved by the Owners of Units to which the Limited Common Area is assigned at the time such sale or mortgage is authorized.

No conveyance or encumbrance of Common Area may deprive any Unit of rights of access or support.

*Anyone who has never made a mistake has never tried anything new. Albert Einstein*

## NOTES




## Chapter 20

### Termination and Amendment of Community Charter

*As the Community matures and grows, the rules by which it is governed must be flexible enough to adapt to changes in the development plan, as well as changes in the needs and desires of the Community that inevitably will occur. This chapter sets out procedures by which either the Founder or the Owners as a group may amend this Charter to address such changes.*

#### 20.1. Term and Termination

 There is an old concept of law known as the "Rule Against Perpetuities" that restricts how long covenants can affect the title to land. Many jurisdictions no longer observe such rule; however, where the rule applies, the term of the covenants cannot exceed 21 years after the death of a named person who is living at the time the covenants are recorded.

This Charter shall be effective for a minimum of 30 years from the date it is recorded. After 30 years, this Charter shall be extended automatically for successive 10-year periods unless at least 75% of the then Owners sign a document stating that the Community Charter is terminated and that document is recorded within the year before any extension. In such case, this Charter shall terminate on the date specified in the termination document.

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

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

#### 20.2. Amendment

**(a) By Founder.** In addition to specific amendment rights granted elsewhere in this Charter, until termination of the Founder Control Period, the Founder may unilaterally amend this Charter for any purpose.

Thereafter, the Founder may unilaterally amend this Charter if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any amendment under this paragraph shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

In addition, during the Development and Sale Period, the Founder may unilaterally amend this Charter for any other purpose, provided the amendment has no material adverse effect upon the rights of more than 2% of the Owners.

**(b) By Owners.** Except as otherwise specifically provided above and elsewhere in this Charter, this Charter may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Delegates representing 75% of the total votes in the Association, including 75% of the total votes held by Owners other than the Founder. In addition, during the Development and Sale Period, any such amend-

## Termination and Amendment of Community Charter

ment shall also require the Founder's written consent.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

**(c) *Validity and Effective Date.*** No amendment may remove, revoke, or modify any right or privilege of the Founder or the Founder Member without the written consent of the Founder or the Founder Member, respectively (or the assignee of such right or privilege). In addition, the approval requirements set forth in Chapter 15 shall be met, if applicable.

If an Owner consents to any amendment to this Charter or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Charter.

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

*Don't ever take a fence down until you know  
why it was put up. Robert Frost*

### NOTES

THIS COMMUNITY CHARTER is made by Kennecott Land Company, a Delaware corporation as Founder, and in witness thereof, it has executed this Charter this 25 day of FEBRUARY 2004.

FOUNDER: Kennecott Land Company, a Delaware corporation

By: [Signature]  
Its: CHIEF OF OPERATIONS & VICE PRESIDENT

STATE OF UTAH )  
 ) ss  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 25 day of FEBRUARY, 2004, by JOHN POTTS known to me, who being duly sworn, said that he resides in SALT LAKE County, Utah, that he is the CHIEF OF OPERATIONS & VICE PRESIDENT of Kennecott Land Company, the Delaware corporation described herein, who executed the foregoing instrument.

GIVEN under my hand and seal of office this 25 day of FEBRUARY, 2004.



[Notarial Seal]

[Signature]  
Notary Public

My commission expires: 3-17-07

**OWNER CONSENT  
TO COMMUNITY CHARTER FOR DAYBREAK**

IN WITNESS WHEREOF, the undersigned, as owner of the property as described on Exhibit "A" to the Charter, hereby consents to the within and foregoing Charter and the recording of such this 25 day of FEBRUARY, 2004.

**OWNER:** Kennecott Land Residential Development Company, a Delaware Corporation

By: PJM Mahon

Its: President

STATE OF UTAH                    )  
  )            ss  
COUNTY OF SALT LAKE        )

The foregoing instrument was acknowledged before me this 25 day of FEBRUARY, 2004, by PETER MCMAHON known to me, who being duly sworn, said that he resides in SALT LAKE County, Utah, that he is the PRESIDENT of Kennecott Land Residential Development Company, the Delaware corporation described herein, who executed the foregoing instrument.

GIVEN under my hand and seal of office this 25 day of FEBRUARY, 2004.

[Notarial Seal]



Stephanie Sant  
Notary Public

My commission expires: 3-17-07

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## EXHIBIT "A"

### Land Initially Submitted

Lots 101 through 367 (inclusive), Lots O-101 through O-111 (inclusive), Lots M-101 through M-105 (inclusive), Lots P-101 through P-113 (inclusive), and Lots C-101 through C-102 (inclusive), KENNECOTT DAYBREAK PHASE 1 SUBDIVISION, according to the Official Plat thereof, recorded October 9, 2003 as Entry No. 8847908 in Book 2003P, beginning at Page 325 of the Official Records of Salt Lake County Utah.

The above-listed Lots encumber a portion of:

1. Tax Parcel # 27-18-400-003-0000
2. Tax Parcel # 26-13-100-002-4001
3. Tax Parcel # 27-19-300-003-0000
4. Tax Parcel # 27-19-100-003-4001
5. Tax Parcel # 27-19-100-002-0000

## EXHIBIT "B"

### Land Subject to the Master Plan for Daybreak

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

BEGINNING at a Salt Lake County monument marking the Northwest corner of said Section 13; thence North 89°57'24" East along the north line of said Section for 2699.959 feet to a Salt Lake County monument marking the North quarter corner of said Section 13; thence continuing along said north line North 89°57'36" East for 2666.551 feet to a point marking the northwest corner of a parcel described in that certain Quit Claim deed recorded in Book 6833 at Page 52, from which a Salt Lake County monument marking the Northeast corner of said Section 13 bears North 89°57'36" East – 33.000 feet; thence along the west and south lines of said parcel the following two (2) calls: (1) South 00°15'56" West for 33.000 feet; (2) thence North 89°57'36" East intersecting the east line of said Section 13 at 33.000 feet and continuing on along the south line of said parcel for a total of 33.178 feet; thence North 89°57'12" East parallel to and 33.00 feet perpendicular south of the north line of Section 18, Township 3 South, Range 1 West and along the south right of way of 10200 South for 2574.761 feet to an angle point; thence continuing parallel with said north line and along the said south right of way North 89°58'34" East for 278.761 feet to a point of intersection with the south right of way of 10200 South and an extension of the west line of the property conveyed to Oquirrh Shadows, L.C. as recorded in Book 8221 at Page 869; thence South 23°56'44" East passing the northwest corner of said property at 0.591 feet and continuing along the west line of said property for a total of 634.361 feet to an angle point; thence continuing along said west line South 29°39'04" East for 1012.874 feet to the northeast corner of a parcel conveyed to South Jordan City, recorded in Book 8401 at Page 5930; thence along the perimeter of said South Jordan City property the following four (4) calls: (1) South 60°20'55" West for 360.045 feet; (2) thence South 29°39'05" East for 496.250 feet; (3) thence North 33°11'06" East for 98.140; (4) thence with a curve to the right, having a radius of 1653.000 feet, a central angle of 10°12'46" (chord bearing and distance of North 38°17'57" East –294.249 feet) and for an arc distance of 294.639 feet, said point being the southwest corner of South Jordan City and lying on the north right of way of 10400 South Street, said point also lying on the west line of said Oquirrh Shadows property, thence South 29°39'04" East along said west line for 2916.402 feet to the southeast corner of said Oquirrh Shadows property, said point also lying on the east line of said Section 18; thence South 00°07'15" East along said east line for 967.184 feet to a Salt Lake County monument marking the northeast corner of Section 19; thence South 00°07'47" East along the west line of said Section 19 for 1326.083 feet; thence South 89°58'28" West for 1316.070 feet; thence South 00°04'54" East for 1324.371 feet to a point on the North line of Country Crossing Subdivision No. 5, recorded as Entry No. 7422489 in Plat Book 99-7P at Page 204; thence along the north and west lines of said subdivision, phase No.'s 5,4 and 3 the following two (2) calls: (1) North 89°56'46" West for 1320.153 feet; (2) thence South 00°01'42" West for 2609.121 feet to the southwest corner of said Country Crossing Subdivision No. 3, said point also lying on the north right of way of 11800 South Street; thence along said north right of way line the following three (3) calls: (1) North 89°52'04" West for 2642.116 feet; (2) thence North 89°58'42" West for 2677.945 feet; (3) thence North 89°58'44" West for 2677.394 feet to a point of intersection of the north right of way line of said 11800 South Street and the east line of Sunstone Village No. 1 Subdivision, recorded as Entry No. 7973084 in Plat Book 2001P at Page 224, said point also lying North 00°00'42" East – 40.000 feet from a

Salt Lake County monument marking the southwest corner of Section 24, Township 3 South, Range 2 West; thence along the east, north and west lines of phases No. 1 and 2 the following three (3) calls: (1) North 00°00'42" East for 2360.900 feet to the northeast corner of said Sunstone Village No. 1; (2) thence South 89°56'12" West for 1815.000 feet to the northwest corner of said Sunstone Village No. 2; (3) thence South 00°00'42" West for 783.900 feet to a point of intersection of the west line of said Sunstone Village No. 2 and the northeast corner of a 20 acre land swap; thence along the north and west lines of said 20 acre land swap the following two (2) calls: (1) South 89°56'12" West for 550.000 feet; (2) thence South 00°00'42" West for 1577.000 feet to a point on the north right of way line of said 11800 South Street; thence along said north right of way line the following four (4) calls: (1) South 89°56'12" West for 282.340 feet; (2) thence South 89°56'14" West for 2647.809 feet; (3) thence North 89°49'08" West for 2644.258 feet; (4) thence North 89°49'44" West for 1322.052 feet; thence North 00°02'03" East along the west line of the east half of the southwest quarter of Section 22 for 2605.415 feet to the northwest corner of the east half of the southwest quarter of said Section 22; thence North 89°47'52" West along the north line of said southwest quarter for 1320.211 feet to a Salt Lake County monument marking the west quarter corner of said Section 22; thence North 00°03'55" East along the west line of said Section 22 for 2645.133 feet to a Salt Lake County monument marking the southwest corner of Section 15; thence North 00°14'20" West along the west line of said Section 15 for 12.748 feet to a point on the east right of way of Highway 111; thence along said east right of way line the following two (2) calls: (1) North 20°34'34" East for 618.785'; (2) thence with a curve to the left; having a radius of 2934.930 feet, a central angle of 18°11'53" (chord bearing and distance of North 03°16'41" East – 928.261 feet) and for an arc distance of 932.174 feet to a point of intersection with said east right of way and the south line of the Trans Jordan Landfill property, recorded as Entry No. 5683985 in Book 6826 at Page 293; from which the southwest corner of said property bears South 89°55'33" West – 2.095 feet; thence North 89°55'33" East along the south line of said landfill property for 4347.905 feet to the southeast corner; thence along the east and northerly boundary of said landfill property the following fourteen (14) calls: (1) North 00°04'27" West for 1075.580 feet; (2) thence North 70°32'11" West for 679.750 feet; (3) thence North 32°28'51" West for 429.340 feet; (4) thence North 25°09'37" West for 219.480 feet; (5) thence North 54°23'20" West for 67.210 feet; (6) thence North 71°54'33" West for 83.160 feet; (7) thence South 87°43'11" West for 366.060 feet; (8) thence South 71°57'46" West for 162.800 feet; (9) thence South 84°04'01" West for 113.990 feet; (10) thence North 87°25'43" West for 89.260 feet; (11) thence North 79°38'44" West for 107.140 feet; (12) thence North 72°57'41" West for 348.270 feet; (13) thence North 78°14'53" West for 465.783 feet; (14) thence South 89°55'33" West for 1887.661 feet to a point on said east right of way of Highway 111; thence along said east right of way the following four (4) calls: (1) North 06°31'26" West for 48.941 feet; (2) thence North 00°48'48" West for 251.250 feet; (3) thence North 06°31'26" West for 687.100 feet to a found Utah Department of Transportation right of way marker; (4) thence with a curve to the right, having a radius of 5654.580 feet, a central angle of 05°38'46" (chord bearing and distance of North 03°42'03" West – 556.992 feet) and for an arc distance of 557.218 feet to a point of intersection of the said east right of way and the south right of way of the Denver and Rio Grande Railroad, recorded in Book 5381 at Page 373; thence leaving Highway 111 and along said Denver and Rio Grande south right of way the following four (4) calls: (1) North 87°56'32" East for 525.105 feet; (2) thence with a curve to the right, having a radius of 5679.650 feet, a central angle of 02°07'45" (chord bearing and distance of North 89°00'25" East – 211.050 feet) and for an arc distance of 211.062 feet; (3) thence South 89°55'43" East for 6588.936 feet; (4) thence North 56°54'49" East for 242.927 feet to a point of intersection with said south right of way and the north line of Section 14, Township 3 South, Range 2 West; thence South 89°55'21" East along the north line of said section for 512.274 feet to a Salt Lake County monument marking the north quarter corner of said Section 14; thence South 89°55'04" East continuing along said north line for 761.295 feet to the



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

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

Less and Except

A tract of land located in the west half of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian, said tract being more particularly described as follows:

Commencing at the south quarter corner of said Section 24; thence North 00°08'33" East along the east line of said west half for 362.40 feet to the POINT OF BEGINNING, said point marking the southeast corner of a tract of land recorded in Book 5015 at Page 420; thence North 37°29'42" West for 4399.260 feet to a point on the west line of said Section 24; thence North 00°00'12" East along said west line for 410.687 feet to a point, from which the northwest corner of said Section 24 bears North 00°00'12" East – 1020.943 feet; thence South 37°29'42" East for 4400.894 feet to a point on the east line of said west half; thence South 00°08'33" West for 409.393 to the POINT OF BEGINNING.

Containing 25.2530 Acres.

Less and Except

A tract of land located in the northeast quarter of Section 23, Township 3 South, Range 2 West, Salt Lake Base and Meridian, said tract being more particularly described as follows:

Commencing at the northeast corner of said Section 23; thence South 89°58'54" West along the north line of said section for 791.000 feet to the POINT OF BEGINNING; thence South 37°29'42" East for 1299.415 feet to a point on the east line of said Section 23, from which the northeast corner of said section bears North 00°00'12" East – 1031.220 feet; thence South 00°00'12" West along said east section line for 180.702 feet; thence North 37°29'42" West for 1527.114 feet to a point on the north line of said Section 23; thence North 89°58'54" East along the north line of said section for 138.608 feet to the POINT OF BEGINNING.

Containing 3.5689 Acres.

Less and Except

A tract of land traditionally described as the South 80 rods of Section 14, Township 3 South, Range 2 West, Salt Lake Base and Meridian, said tract being more particularly described as follows:

BEGINNING at a Salt Lake County monument marking the southeast corner of said Section 14; thence South 89°58'54" West along the south line of the section for 2647.919 feet to a Salt Lake County monument marking the south quarter corner of said Section 14; thence South 89°58'44" West continuing along

the south line of said section for 2648.752 feet to a Salt Lake County monument marking the southwest corner of said Section 14; thence North 00°02'40" West along the west line of said section for 1325.317 feet; thence South 89°51'12" East for 5298.808 feet to a point on the east line of said section; thence South 00°02'52" West along the east line of said section for 1309.930 feet to the POINT OF BEGINNING.

Containing 160.2445 Acres.

Less and Except

A parcel of land located in the north half of Sections 14 and 15, Township 3 South, Range 2 West, Salt Lake Base and Meridian, said parcel owned by the Denver and Rio Grande Railroad, said parcel being more particularly described as follows:

Commencing at the north quarter corner of said Section 14; thence North 89°55'21" West along the north line of said Section 14 for 146.669 feet to the POINT OF BEGINNING; thence the following three calls along the south right of way of said railroad: (1) South 56°54'49" West for 1884.169 feet; (2) thence with a curve to the right having a radius of 4397.183 feet, a central angle of 32°12'16" (chord bearing and distance of South 73°00'57" West – 2439.140 feet) and for an arc distance of 2471.547 feet; (3) thence South 89°07'05" West for 1572.971 feet to a point of intersection with the north line of the landfill property; thence along the north line of said landfill property the following two (2) calls: (1) thence North 78°14'54" West for 407.402 feet; (2) thence South 89°55'33" West for 1661.830 feet to a point of intersection with the north right of way of the railroad; thence with said north right of way line the following five (5) calls: (1) North 89°07'34" East for 1067.497 feet; (2) North 00°12'08" West for 87.624 feet; (3) thence North 89°07'05" East for 2563.638 feet; (4) thence with a curve to the left having a radius of 4197.183 feet, a central angle of 32°12'16" (chord bearing and distance of North 73°00'57" East – 2328.199 feet) and for an arc distance of 2359.132 feet; (5) thence North 56°54'49" East for 1578.118 feet to a point on the north line of said Section 14; thence South 89°55'21" East along the north line of said Section 14 for 365.605 feet to the POINT OF BEGINNING.

Containing 29.3158 Acres.

**Note to clerk and title examiners:**

**This Charter is not intended to create an encumbrance on title to the property described in this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplement in accordance with Chapter 16.**

## **EXHIBIT "C"**

### **Land Subject to Annexation**

Any real property lying and being within, or within 15 miles extending from the boundaries of that certain development known as Daybreak, the first phase of which is described in Exhibit "A," and which may include all of the property described in Exhibit "B."

#### **Note to clerk and title examiners:**

**This Charter is not intended to create an encumbrance on title to the property described in this Exhibit "C." Such title may be encumbered only with the consent of the owner by filing a Supplement in accordance with Chapter 16.**

## EXHIBIT "D"

### Initial Rules

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

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

1. **General.** Daybreak shall be used only for purposes consistent with the Master Plan, this Charter, and any Supplement.

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

(a) Parking any vehicles on public or private streets or thoroughfares or parking of commercial vehicles or equipment, mobile homes, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages, and the parking of recreational vehicles on any Unit; provided, construction, service, and delivery vehicles shall be exempt from this provision during normal business hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area, and recreational vehicles may be parked in driveways for no longer than four hours in any four-day period for the loading and unloading of the recreational vehicle;

(b) Raising, breeding, or keeping animals except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit. However, those pets which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed, and inoculated as required by law;

(c) Any activity that emits foul or obnoxious odors outside the Unit or creates noise or other conditions that tend to disturb the peace or threaten the safety of the occupants of other Units;

(d) Any activity that violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

(f) Any noxious or offensive activity that in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(i) Use and discharge of firecrackers and other fireworks;

(j) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(k) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(l) On-site storage of fuel, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. ;

(m) Any activities that materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within Daybreak or that use excessive amounts of water or that result in unreasonable levels of sound or light pollution;

(n) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Chapter 5;

(o) Any modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Chapter 5. This shall include, without limitation, signs, and swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers, and similar structures; hedges, walls, dog runs, animal pens, or fences of any kind; and satellite dishes and antennas, except that:

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

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

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

(collectively, "**Permitted Antennas**") shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable

law, in order to minimize obtrusiveness as viewed from streets and adjacent property. The Founder and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Daybreak, should any master system or systems be utilized by the Association and require such exterior apparatus; and

(p) Holding or conducting of any garage or yard sale on any Unit shall be prohibited; however, the Association shall be permitted to conduct an annual community-wide garage or yard sale for the Owners within Daybreak at a time and place it designates.

3. **Prohibited Conditions.** The following shall be prohibited at Daybreak:

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

(b) Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair;

(c) Permanent basketball goals, portable basketball goals, basketball standards, or backboards which are or would be visible from any street or Common Area; provided, permanent basketball goals may be placed on a Unit without prior approval, but may only be placed or installed on the garage of a Unit so that it is not visible from the street. Freestanding pole-mounted or portable backboards, whether permanent or sleeve-set, shall be prohibited on the Unit; provided, freestanding pole-mounted or portable backboards may be placed on a Unit, if placed more than 30 feet from the curb adjacent to the front yard of the Unit and to the side yard of a Units located at the intersection of two streets or alleys;

(d) No solar heating equipment or device is permitted outside any enclosed structure on the Unit except such devices whose installation and use is approved by the Reviewer. Notwithstanding such protection, an application for such equipment or device must be submitted for approval under Chapter 5 prior to installation and approval will be granted only if:

(i) First, such equipment or device is designed for minimal visual intrusion when installed (*i.e.*, is located in a manner which minimizes visibility from the street or an adjacent Unit and is consistent with the Community-Wide Standard); and

(ii) Second, the equipment or device complies to the maximum extent feasible with the Design Guidelines within the confines of the applicable governmental regulations

In any event, and notwithstanding the above list of prohibited conditions, any structure, improvement, or thing proposed for construction, erection, installation, or placement on an Unit requires prior Reviewer approval in accordance with Chapter 5, unless specifically made exempt under the Design Guidelines; and

(e) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within Daybreak; provided, this subsection shall not apply to the activities of Founder or its designees.

**4. Wetlands, Lakes, and Other Water Bodies.** Wetlands, lakes, ponds, and streams within Daybreak, if any, are part of the Daybreak's stormwater management system, and no active use of lakes, ponds, streams, or other bodies of water within the Community is permitted, except fishing, the use of non-motorized watercraft, and the Council's operation of marinas on the lake within Daybreak. In addition, water within the lakes may be used for irrigation purposes under a separate agreement with the Association. Neither the Founder, the Association, nor the Council shall be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams, or other bodies of water within or adjacent to Daybreak.

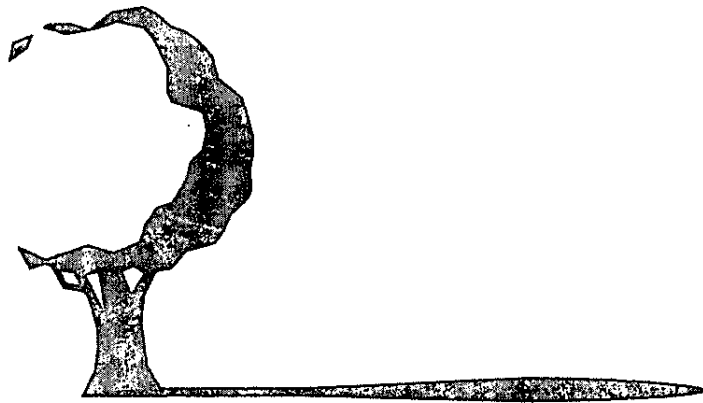
**EXHIBIT "E"**

**By-Laws of Daybreak Community Association, Inc.**



EXHIBIT "E"

BY-LAWS  
OF  
DAYBREAK COMMUNITY ASSOCIATION, INC.



D A Y B R E A K

*Planned for people*

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

**Chapter 1**

**Name, Principal Office, and Definitions**

*Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people. Henry Clay*

**1.1. Name**

The name of the corporation is Daybreak Community Association, Inc. (the "**Association**").

**1.2. Principal Office**

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

**1.3. Definitions**

The words used in these By-Laws shall be given their normal, commonly understood defini-

tions. Capitalized terms shall have the same meaning as set forth in that certain recorded Community Charter for Daybreak, as it may be amended (the "**Charter**"). The term "**majority**," as used in these By-Laws, means those votes, Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

Space has been set aside throughout these By-Laws to allow the reader to make notes. Those spaces and the heading that denotes the spaces are not part of these By-Laws.

NOTES AND THOUGHTS

## Chapter 2

# Membership: Meetings, Quorum, Voting, Proxies

*We do not seek to have our way, but to find a common way. Lyndon B. Johnson*

### 2.1. Membership

The Association shall have two classes of membership, Owner Membership and Founder Membership, as more fully set forth in the Charter. Provisions of the Charter pertaining to membership are incorporated by this reference.

### 2.2. Place of Meetings

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

### 2.3. Association Meetings

(a) *General.* Association meetings shall be of the Voting Delegates unless the Board otherwise specifies or Utah law otherwise requires; provided, until Voting Delegates are selected, meetings shall be of the members and references in these By-Laws to Voting Delegates shall be deemed to be references to the members. The first Association meeting, whether a regular or special meeting, shall be held within one year after the Association's incorporation.

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

(c) *Special Meetings.* The President may call special meetings. In addition, the President or the Secretary shall call a special meeting if so directed by Board resolution or upon a petition which Voting Delegates representing at least 25% of the total votes in the Association sign.



Once Voting Delegates are elected to represent Neighborhoods, the Voting Delegates represent the Owners' interests at Association meetings. Due to the size of Daybreak, this will assist in making Association meetings efficient.

### 2.4. Notice of Meetings

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

Such notice shall be delivered by such means as permitted under Section 9.5, at least 10 but not more than 50 days before the date of such meeting.

### 2.5. Waiver of Notice

Waiver of notice of an Association meeting shall be deemed the equivalent of proper notice. Any Voting Delegate may waive, in writing, notice of any Association meeting, either before or after such meeting. A Voting Delegate's attendance at a meeting shall be deemed a waiver by such Voting Delegate of notice of the time, date, and place thereof, unless the Voting Delegate specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meet-

ing unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

## 2.6. Adjournment of Meetings

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

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

## 2.7. Voting

(a) *Voting Rights.* Members shall have such voting rights as are set forth in the Charter, which provisions this reference specifically incorporates. Until such time as the Board first calls for election of a Voting Delegate for any Neighborhood, the Owners within such Neighborhood shall be entitled personally to cast the votes attributable to their respective Units on any issue requiring a membership vote under the Governing Documents.

(b) *Election of and Removal of Voting Delegates.* The Owners within each Neighborhood shall

elect a Voting Delegate to cast all votes attributable to their Units on all Association matters requiring a membership vote, except as otherwise specified in the Charter or these By-Laws. In addition, each Neighborhood shall elect an alternate Voting Delegate who shall be responsible for casting such votes in the absence of the Voting Delegate.

The Founder may appoint an initial Voting Delegate from a Neighborhood at any time after 50% of the Units anticipated for that particular Neighborhood have been conveyed to Owners other than Builders. Thereafter, the Board shall call for an election of Voting Delegates and alternates on an annual basis. If the Founder has not appointed Voting Delegates by the termination of the Founder Control Period, the Owners may, at any time thereafter, elect a Voting Delegate and alternate Voting Delegate to represent their Neighborhood.

Voting Delegate elections shall be by ballots cast by mail, computer, or at a meeting of the Owners within such Neighborhood, as the Board determines. Upon written petition signed by Owners holding at least 20% of the votes within any Neighborhood, the election for such Neighborhood shall be held at a meeting. Candidates for election as Voting Delegates may be nominated by the Board, a nominating committee the Board may appoint, or from the floor at any meeting at which such election is to be held. In addition or in the alternative, any Person may submit his or her name for consideration.

The presence, in person or by proxy, or the filing of ballots by Owners representing at least 20% of the total votes attributable to Units in the Neighborhood shall constitute a quorum for any Neighborhood meeting or election. In the event of a failure to obtain a quorum or vacancy in such positions for any Neighborhood, the Board may appoint a Voting Delegate or alternate Voting Delegate to represent such Neighborhood until a successor is elected.

Subject to the above quorum requirement, in any election of Voting Delegates the candidate who receives the greatest number of votes shall be elected as Voting Delegate and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Delegate. In the event of a tie vote among the leading candidates, the Voting Delegate shall be determined by drawing names from a hat, with the first person drawn being the Voting Delegate and the second being the alternate Voting Delegate. The Voting Delegate and the alternate Voting Delegate shall serve a term of one year or until their successors are elected, whichever is longer.

Any Voting Delegate may be removed, with or without cause, upon the vote or written petition of Owners representing a majority of the total number of Units in the Neighborhood such Voting Delegate represents.

**VOTING DELEGATES**


- Until Voting Delegates exist, Owners vote on issues requiring membership vote
- The Founder appoints initial Voting Delegate after Owners own 50% units in Neighborhood
- Thereafter, Board sets annual election where Owners in each Neighborhood elect Voting Delegates and alternates
  - Voting Delegates are elected
    - > at meeting of Owners within Neighborhoods
    - > by mail ballots or
    - > by computer
- Voting Delegates and alternates serve one-year terms

(c) *Establishment of Election Districts.* Founder shall establish Election Districts, if at all, not later than the date of expiration of the Founder Control Period by filing with the Association and recording a Supplement identifying the Units comprising each Election District by Neighborhood designation, legal description, or other means such that the Units within each Election District can easily be determined. The Founder, acting alone, may amend to change such designation at any time prior to the expiration of the Founder Control Period. After the Founder Control Period, the Founder may amend to des-

ignate additional Units as part of any Election District.

After termination of the Founder Control Period, the Board shall have the right to record or amend any such Supplement upon the vote of a majority of the total number of directors and approval of Voting Delegates representing a majority of the total number of Neighborhoods and a majority of the total votes in the Association. Neither recordation of nor the Founder's amendment of such Supplement shall constitute an amendment to this Charter. No consent or approval of any Person shall be required except as stated in this Subsection. Until such time as Election Districts are established, all of Daybreak shall constitute a single Election District. After a Supplement establishing Election Districts has been recorded, any and all portions of Daybreak at South Jordan that are not assigned to a specific Election District shall constitute a single Election District.

## 2.8. Proxies



A proxy is a legal term for the idea of one person giving a second person written authorization to act for them in an official capacity, such as voting.


Voting Delegates in their capacity as such may not vote by proxy but only in person or through their designated alternates. Any Owner Member entitled personally to cast the vote for his/her Unit on any matter, may vote in person or by proxy, subject to the limitations of Utah law and subject to any specific provision to the contrary in the Charter or these By-Laws.

Every proxy shall be in writing, shall identify the Unit for which it is given, and shall be signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless the proxy specifically pro-

vides otherwise, a proxy shall be presumed to cover the entire vote which the Member giving such proxy is entitled to cast. In the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

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

#### 2.9. Quorum

 A "quorum" is a legal term for the minimum number of persons necessary to accomplish a valid vote.

Except as these By-Laws or the Charter otherwise provide, the presence of Voting Delegates representing a majority of the total votes in the Association shall constitute a quorum at all Association meetings; provided, until such time as Voting Delegates are selected in accordance with

Section 2.7, the presence of Owner Members representing at least 30% of the total votes in the Association shall constitute a quorum at all Association meetings.

#### 2.10. Conduct of Meetings

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

#### 2.11. Action Without a Meeting

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

### NOTES AND THOUGHTS



## Chapter 3

### Board of Directors: Selection, Meetings, Powers

#### A. Composition and Selection

##### 3.1. Governing Body; Qualifications

The Board shall govern the Association's affairs. Each director shall have one vote. Except with respect to directors appointed by the Founder Member, directors shall be Owners or residents. However, no Owner and resident representing the same Unit may serve on the Board at the same time. A "resident" shall be any natural person 18 years of age or older whose principal residence is a Unit within Daybreak.

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

##### 3.2. Number of Directors

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

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

(a) *Initial Board.* The initial Board shall consist of the three directors identified in the Articles of Incorporation, who shall serve until their successors are appointed or elected as provided in this Section.

(b) *Directors During Founder Control Period.* Except as otherwise provided in this subsection, the Founder Member may appoint, remove, and replace Board members until termination of the Founder Control Period. During the Founder Control period, the Voting Delegates shall be entitled to elect a minority of the total number of

directors according to the following schedule (directors elected by the Voting Delegates are referred to as "Owner Directors"):

(i) Within 30 days after the time that Owners other than Builders own 25% of the Units permitted by the Master Plan or whenever the Founder Member earlier determines, the President shall call for an election by which the Voting Delegates shall be entitled to elect one of the three directors, who shall be elected at large. The remaining two directors shall be appointees of the Founder Member. The Owner Director elected by the Owners shall not be subject to removal by the Founder Member and shall be elected for a term which expires on the date of the second annual meeting following his or her election. Upon expiration of such director's term, and thereafter upon the expiration of each successor's term, a successor shall be elected for a two-year term.

(ii) Within 30 days after the time that Owners other than Builders own 50% of the Units permitted by the Master Plan or whenever the Founder Member earlier determines, the Board shall be increased to five directors. The Owner Director elected by the Owners under paragraph (i) above shall continue to serve, and the President shall call for an election by which the Voting Delegates, as a group, shall be entitled to elect two of the five Owner Directors, who shall be elected at large. The Founder shall appoint the remaining three directors. The Owner Director elected by the Owners pursuant to this paragraph shall not be subject to removal by the Founder Member and shall be elected for a term that expires on the date of the second annual meeting following his or her election. Upon expirations of such director's term, and thereafter upon the expirations of each successor's term, a successor shall be elected for a two-year term.

(c) *Directors After the Founder Control Period.*

(i) Within 90 days after termination of the Founder Control Period, the Board shall be increased to seven directors. The President shall call for an election by which the Voting Delegates shall be entitled to elect six directors, with an equal number of directors elected by the Voting Delegates representing each Election District and any remaining directorships filled at large by the votes of all Voting Delegates. Three directors shall be elected to serve until the second annual meeting following their election and three directors shall be elected to serve until the third annual meeting following their election, as such directors determine among themselves.

(ii) So long as there is a Founder Member, the Founder Member shall be entitled to appoint, remove, and replace the seventh director. Thereafter, the director elected by the Founder Member shall resign and the remaining directors shall be entitled to appoint a director to serve until the next annual meeting, at which time the Voting Delegates shall be entitled to elect a director to fill such position. Such director shall be elected for a term of two years.

(iii) Upon expiration of the term of office of each Owner Director, the Voting Dele-

gates entitled to elect such director shall be entitled to elect a successor to serve a term of two years. Owner Directors shall hold office until their respective successors have been elected. Directors may serve any number of consecutive terms.

Diagram 3.1 illustrates the concept of transition of control of the Board during and after the Founder Control Period.

(d) *Election Districts.*

Election Districts may be created, as provided in this Section, for the purpose of balancing varying interests within Daybreak through grouping members with similar interests based upon Unit ownership for the election of Board members.

The Voting Delegates representing the Neighborhoods within each Election District shall vote on a separate slate of candidates for election to the Board. Each Election District is entitled to elect the number of directors specified in this Chapter.

Acting alone, the Founder shall establish Election Districts, if at all, not later than the date the Founder Control Period expires by filing with the Association and recording a Supplement identify-

TRANSITION OF CONTROL OF BOARD OF DIRECTORS				
Initial Board	25% of Anticipated Units Conveyed	50% of Anticipated Units Conveyed	90 Days After Termination of Founder Control Period	Termination of Founder membership
Founder	Owner	Owner	Owner	Owner
Founder	Founder	Owner	Owner	Owner
Founder	Founder	Founder	Owner	Owner
		Founder	Owner	Owner
		Founder	Owner	Owner
			Owner	Owner
			Founder	Owner

Diagram 3.1

ing each Election District by legal description or other means such that the Units within each Election District can be determined easily.

After the Founder's right to create Election Districts expires, the Board, with the approval of Voting Delegates representing a majority of the Neighborhoods and a majority of the total votes in the Association, may create one or more Election Districts, or change existing Election Districts, by recording a Supplemental Charter or amending a previous Supplemental Charter.

Recording or amending a Supplemental Charter to create or change Election Districts shall not be an amendment to the Charter or the By-Laws, and no consent or approval of any Person shall be required except as stated in this Section. Until Election Districts are established, Daybreak shall be a single Election District. After Election Districts are established, all portions of Daybreak not assigned to a specific Election District shall constitute a single Election District.

### **3.4. Nomination and Election Procedures**

(a) *Nomination of Candidates.* At least 30 days prior to any election of directors by the Voting Delegates, the Board shall appoint a Nominating Committee consisting of a chairman, who shall be a Board member, and three or more Owners or representatives of Owners. The Nominating Committee shall serve a term of one year or until its successors are appointed. The names of the Nominating Committee members shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Voting Delegates at such election. The Nominating Committee shall nominate separate slates for the directors, if any, to be elected at large by all Voting Delegates, and for the director(s) to be

elected by the Voting Delegates within each Election District. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. In pursuing diversity in nominations, the Nominating Committee shall focus on finding and nominating candidates with varied backgrounds, interests in Daybreak, and experiences. Nominations shall also be permitted from the floor at the meeting at which any election is held. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

(b) *Election Procedures.* At each election, voting may be by written ballot or may be accomplished via computer. Each Voting Delegate may cast all votes assigned to the Units it represents for each position to be filled from any slate of candidates on which such Voting Delegate is entitled to vote; however, under no circumstances shall cumulative voting be permitted in any election of Directors.


In the event of a tie vote on any slate, the Voting Delegates entitled to vote on such slate shall be informed of the tie vote and given the opportunity to discuss the candidates among themselves in an effort to resolve the tie before another vote is taken. If the second vote again results in a tie, then the Board shall call for election of the director(s) from such slate by the Owners represented by such Voting Delegates. Such election shall be held by mail, with ballots to be sent by first class mail to each Owner Member entitled to vote on such slate within 10 days after the meeting at which the original election was held.

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

Voting Delegates holding a majority of the votes entitled to be cast for the election of such director may remove any Owner Director with or without cause. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a direc-

tor the Voting Delegates entitled to elect the removed director shall elect a successor for the remainder of the term of such director.

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

 Owner Directors who have three consecutive unexcused absences from Board meetings or owe money to the Association for more than 30 days can be removed from the Board. This provision helps to ensure that the Directors fulfill their duties to the Association.

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

Any director whom the Board appoints shall be selected from among eligible Owners or residents of Units within the Election District represented by the director who vacated the position.

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

## **B. Meetings**

### **3.6. Organizational Meetings**

The Board shall hold an organizational meeting within 10 days following each annual Association meeting at such time and place as the Board shall fix.

### **3.7. Regular Meetings**

The Board shall hold regular meetings at such time and place as a majority of the directors shall determine, but the Board shall meet at least four times during each fiscal year with at least one meeting per quarter.

### **3.8. Special Meetings**

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

### **3.9. Notice; Waiver of Notice**

Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall notify each director of meetings by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. The Board shall deposit notices sent by first class mail into a United States mailbox at least ten business days before the day of the meeting. The Board shall give notices by personal delivery, telephone, or other device at least 72 hours before the time set for the meeting.

Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

### 3.10. Telephonic Participation in Meetings

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

### 3.11. Quorum of Board


At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless Utah law, these By-Laws, or the Charter specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any

business it might have transacted at the original meeting.

### 3.12. Conduct of Meetings

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

### 3.13. Open Meetings; Executive Session

 Board meetings must be open to all Association members except when sensitive topics that could affect the Association's rights are being discussed.

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

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

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

### 3.14. Action Without a Formal Meeting

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if all of the directors sign a written consent, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote. The Board shall post or otherwise provide notice of the Board's action in a prominent place within Daybreak within three business days after obtaining all written consents to an action. Failure to give notice shall not render the action taken invalid.

## C. Powers and Duties

### 3.15. Powers

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

### 3.16. Duties

The Board's duties shall include, without limitation:

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

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

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-

Wide Standard and in accordance with the Covenant for Community for Daybreak;

(d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on the Association's behalf in a bank depository which it shall approve and using such funds to operate the Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;

(f) making and amending Rules in accordance with the Charter;

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

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

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in the Charter;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Charter, paying the cost thereof, and filing and adjusting claims, as appropriate;

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

(l) keeping a detailed accounting of the Association's receipts and expenditures;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 9.4;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of Daybreak; and

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Utah law, the Articles, and these By-Laws.

(p) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Charter;

(q) cooperating with the Council in carrying out its purposes and responsibilities under the Covenant for Community for Daybreak and the by-laws of the Council; and

(r) cooperating with the Council in upholding the Community-Wide Standard.

### 3.17. Committees

(a) *General.* In addition to the Transition Committee appointed pursuant to Chapter 4, the Board may appoint such other committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

(b) *Covenants Committee.* In addition to any other committees that the Board may establish pursuant to Section 3.17(a), the Board may ap-

point a Covenants Committee consisting of at least three and no more than seven Owners who shall not be officers, directors, or employees of the Association, or the spouse, parent, sibling, or child of any officer, director, or employee. Acting in accordance with the provisions of the Charter, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Chapter 8. The Covenants Committee shall have no responsibility for seeking out violations of the Governing Documents.

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

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

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

## Chapter 4

# Transition from Founder Member Control to Owner Member Control of Daybreak

### 4.1. Purpose

The time during which Owners assume control and responsibility of the Association is known as the "Transition Period." The Transition Period is a process whereby control of the Board gradually shifts from the Founder Member to Owners and the Owners carry out the responsibilities and functions of the Association as set forth in the Charter and these By-Laws. During this process, the Owners, drawing from their experience, education, and training in governance, begin to perform the duties of the Board which are outlined in these By-Laws without the assistance of the Founder Member or the Founder Member-appointed directors.

This Chapter is intended to guide the Founder, Owners, and the Board through the transition process; prepare Owners to take control of the Board; encourage direct dialogue among all parties to anticipate and resolve maintenance and operation issues; and promote community-wide participation and understanding of the transition process.

### 4.2. Transition Committee

The Board shall appoint a three to five member "Transition Committee" at least six months prior to the termination of the Founder Control Period. The Transition Committee shall be comprised of a majority of Owner representatives, who shall be selected from the existing Voting Delegates at the time the Transition Committee is appointed, and, at a minimum, one Founder representative. Within three months from the date of its formation, the Transition Committee shall recommend a transition agreement to the Board.

(a) *Transition Agreement.* The Transition Committee shall include in the transition agreement (i) a five-year financial plan, or alternatively, a one-year financial plan with five-year rollover projections, an evaluation of the physical portions of Daybreak, and a recommendation of which areas are in need of service, repair, or replacement; (ii) an agreement as to which parties are responsible for rendering such service, repair, or replacement and a time line for completing such activities; (iii) a list of all existing contracts and an agreement as to which contracts will be continued; (iv) an agreement as to future Founder rights and obligations, if any; and (v) any other issue affecting the operation of the Association or the maintenance of Daybreak.

The Transition Committee shall work in good faith to develop a transition agreement for execution by the Founder and the Association. Once agreed upon by a majority of Transition Committee members, the transition agreement shall be recommended to the Board for its approval and execution. In the event that a transition agreement is not reached, the Transition Committee shall inform the Board in writing the reasons why it was unable to finalize a transition agreement.

The following suggestions are listed to guide the Transition Committee in developing a transition agreement:

(i) Inspect all physical structures, recreational areas, and improvements in the Area of Common Responsibility to evaluate their condition and prepare or update the capital improvement plan;



(ii) Place all Common Area utility services (electric, water, gas, telephone, cable, internet/intranet) in the Association's name;

(iii) Update the Association's corporate book, record books, and accounts. A record of all receipts, payments, and expenditures made on the Association's behalf must be maintained;

(iv) Evaluate the Association's Governing Documents to ensure that the Association has the necessary power, authority, and infrastructure to operate Daybreak;

(v) Conclude any pending legal, document, or Association matters, such as deeding any remaining Common Area to the Association, addressing all covenant enforcement issues, and taking any assessment collection action;

(vi) Review insurance policies to ensure adequate coverage is being maintained;

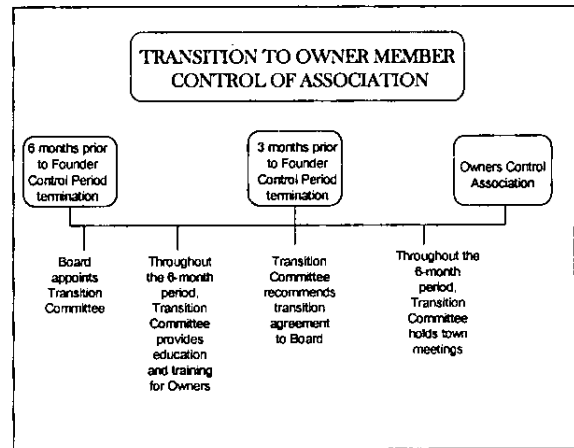
(vii) Review property management agreements to develop recommendations on post-developer management of the Common Area and facilities;

(viii) Conduct a financial review of the Association's current budget, assessment rate, reserve accounts, and tax filings and records; and

(ix) Review the Association's real and personal property interests, deeds, and warranties.

(b). *Transition Period Education and Training Opportunities.* During the Transition Period, the Transition Committee's vision of transition and strategy for developing a transition agreement should be explained to Owners and the Owners should be prepared to assume control of the Association. Both objectives may be accomplished by teaching Owners about what transition of control means, what to expect during and after the Transition Period, and how to participate in the process.

During the Transition Period, the Transition Committee shall provide or provide for education and training opportunities for Owners, focused on the subject of transition. Education or training opportunities shall be held within six months prior to the election during which the Owners elect the entire Board. Additionally, the Board shall conduct training for the Transition Committee within the first two months of its appointment to assist the Transition Committee in accomplishing its tasks. The Board may retain, as a Common Expense, industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose.



(c) *Transition Period Notices.* Once formed, the Transition Committee shall keep the Founder Member and the Owners informed of the transition process, including the Transition Committee's agenda, a timeline for creating a transition agreement, and a schedule of transition education, training opportunities, and town hall meetings.

### 4.3. Town Hall Meetings

The Transition Committee and the Board shall organize and conduct "town hall" meetings during the Transition Period. Such meetings shall be held for the purpose of promoting open communication among the Transition Committee, the

Board, and the Owners. In addition, town hall meetings provide a forum where transition-related issues can be discussed and Owners have an opportunity to ask questions in order to understand better the transition process. For the

purposes of preparing the town hall meeting agenda, the Transition Committee may solicit transition related questions from Owners prior to such meetings.

## NOTES AND THOUGHTS

## **Chapter 5**

### **Officers**

*You cannot be a leader, and ask other people to follow you, unless you know how to follow, too. Sam Rayburn*

#### **5.1. Officers**

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

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

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

#### **5.3. Removal and Vacancies**

The Board may remove any officer whenever, in its judgment, the Association's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, re-

moval, or otherwise, for the unexpired portion of the term.

#### **5.4. Powers and Duties**

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

#### **5.5. Resignation**

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

### **NOTES AND THOUGHTS**

## Chapter 6

# Standards of Conduct; Liability and Indemnification

*Hold yourself responsible for a higher standard than anybody expects of you. Never excuse yourself.*  
*Henry Ward Beecher*

### 6.1. Standards for Directors and Officers

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

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

### 6.2. Liability

(a) A director shall not be personally liable to the Association, any Member, or any other Person for any action taken or not taken as a director if the director has acted in accordance with Section 6.1.

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

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

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

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he has a conflict of interest (beyond that which all directors have by virtue of their ownership or occupancy of a Unit); and

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

(c) The Association's officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be members).

### 6.3. Indemnification



Indemnification is the practice in which corporations pay the expenses of officers or directors who are named as defendants in litigation where the litigation is related to the corporation's affairs.

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

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

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

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

(ii) intentional misconduct or knowing violation of the law;

(iii) an unlawful distribution to members, directors, or officers; or

(iv) receipt of an improper personal benefit.

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

### 6.4. Conflicts of Interest; Code of Ethics

*We are what we repeatedly do. Excellence, therefore, is not an act but a habit. Aristotle*

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

Notwithstanding the above, directors the Founder appoints may be employed by or otherwise transact business with the Founder or its affiliate, and the Founder may transact business with the Association or its contractors.

The initial Board shall create and adopt a written "Code of Ethics" applicable to all directors, officers, and committee members. The Code of Ethics shall incorporate the above standards and other conduct rules it deems appropriate. At a minimum, the Code of Ethics shall require each officer and director to conduct himself or herself in a manner consistent with the Board Standards described in Section 6.1. Each officer and director, as a pre-condition to service, shall acknowledge and agree, in writing, to abide by the Code of Ethics.



Generally, a conflict of interest refers to a clash between the Association's interest and a director's or officer's personal interest which could cause the Association's interest to be disregarded in favor of the director's interest.

#### **6.5. Advancement of Expenses**

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

#### **6.6. Board and Officer Training**

The Board shall conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruc-

tion on applicable Utah corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. Each newly elected officer and director shall complete a training seminar within the first six months of assuming such position. The seminar may be live, video or audiotape, or in other format.

In a similar manner, the Board may provide or provide for Owner and resident education and training opportunities designed to foster awareness of Daybreak's governance, operations, and concerns. The Board shall conduct or provide for training and information classes designed to educate Voting Delegates and Owners of the nomination, election, and voting processes and the duties and responsibilities of directors and officers, as provided in Section 3.4.

## NOTES AND THOUGHTS

## **Chapter 7**

### **Management and Accounting**

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

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

#### **7.2. Right of Founder Member to Disapprove Actions**

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

(a) *Notice.* The Association shall give the Founder Member written notice of all meetings and proposed actions approved at Association, Board, or committee meetings (or by written consent in lieu of a meeting). The Association shall give such notice by certified mail, return

receipt requested, or by personal delivery at the address the Founder Member has registered with the Association, which notice complies as to Board meetings with Section 3.9, and which notice shall, except in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

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

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

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

The Founder Member may use this right to disapprove to block proposed actions but shall not use it to require any action or counteraction of any committee, the Board, or the Association. The Founder Member shall not use its right to disapprove to reduce the level of services the Association is obligated to provide or to prevent

capital repairs or any expenditure required to comply with applicable laws and regulations.

### 7.3. Managing Agent

The Board shall employ the Community Operations Manager as the Association's professional management agent at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. The Board may employ the Founder or a Founder affiliate as managing agent or manager.

The Board may delegate to one of its members the authority to act on its behalf on all matters relating to the duties of the managing agent or manager which might arise between Board meetings.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Founder Control Period unless such contract contains a right of termination which may be exercised by the Association, with or without cause and without penalty, at any time after termination of the Founder Control Period upon not more than 90 days' written notice.

The managing agent shall not accept remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise, other than any compensation received for serving as the Community Operations Manager. Any thing of value received by the managing agent shall benefit the Association. The managing agent shall promptly disclose to the Board any financial or other interest which it may have in any firm providing goods or services to the Association.

### 7.4. Accounts and Reports

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

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

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

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

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

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

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

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

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

(c) An annual report consisting of at least the following shall be made available for members' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such an-



nual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

#### **7.5. Borrowing**

The Association shall have the power to borrow money for any legal purpose. However, the Board shall obtain Voting Delegate approval in the same manner provided in the Charter for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year. During the Founder Control Period, no Mortgage or lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Voting Delegates representing at least 51% of the total votes in the Association, in addition to such ap-

proval as may be required under Chapter 16 of the Charter.

#### **7.6. Right to Contract**

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or residents associations, within and outside Daybreak. The Board shall consent to any common management agreement.

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

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

## NOTES AND THOUGHTS

## **Chapter 8**

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### **Enforcement Procedures**

The Association shall have the power, as provided in the Charter, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Charter, the Board shall comply with the following procedures prior to imposition of sanctions:

#### **8.1. Notice and Response**

The Board or its delegate shall serve the alleged violator with written notice describing (a) the nature of the alleged violation; (b) the proposed sanction to be imposed; (c) the alleged violator shall have 10 days to present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Chapter 3; and (d) a statement that the proposed sanction may be imposed as contained in the notice unless a hearing is requested within 10 days of the notice.

The alleged violator shall respond to the notice of the alleged violation in writing within such 10-day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board in writing within such 10-day period the Board may, but shall not be obligated to, waive the sanction.

Prior to the effectiveness of sanctions imposed pursuant to this Chapter, proof of proper notice shall be placed in the minutes of the Board or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged

violator or its representative requests and appears at the hearing.

#### **8.2. Hearing**

If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Covenants Committee, or if one has not been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meetings of the Board or Covenants Committee, as applicable, shall contain a written statement of the results of the hearing (*i.e.*, the facts as presented at the hearing and the Board's or Committee's decision) and the sanction, if any, to be imposed.

If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; however, the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

#### **8.3. Appeal**

Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board, pursuant to such procedures as the Board shall adopt. To exercise this right, the violator must deliver a written notice of appeal to the Association's manager, President, or Secretary within 10 days after the hearing before the Covenants Committee.

## Chapter 9

### Miscellaneous

#### 9.1. Fiscal Year

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

#### 9.2. Parliamentary Rules

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

#### 9.3. Conflicts

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

#### 9.4. Books and Records

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

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

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing the documents requested.

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

#### 9.5. Notices

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

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

(i) if to a Member or Voting Delegate, at the address, telephone facsimile number, or e-mail address which the Member or Voting Delegate has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Voting Delegate;

(ii) if to the Association, the Board, or a committee of either, at the address, facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the members pursuant to this Section; or

(iii) if to the Founder, at the Founder's principal address as it appears on the Utah Corporation Commission's records, or at such other address as the Founder shall designate by notice in writing to the Association pursuant to this Section.

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

(i) when received;

(ii) if sent by United States mail, five days after its deposit with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

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

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

## 9.6. Amendment

(a) *By Founder.* Prior to termination of the Founder Control Period, the Founder may unilaterally amend these By-Laws. Thereafter, the Founder may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determina-

tion; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units. So long as there is a Founder Member, the Founder Member may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon the rights of more than 2% of the Owners.

(b) *By Members Generally.* Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Delegates representing 67% of the total votes in the Association, and the consent of the Founder Member, if such exists. In addition, the approval requirements set forth in Chapter 16 of the Charter shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

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

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

**CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Daybreak Community Association, Inc., a Utah corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the \_\_\_\_ day of \_\_\_\_\_, 2004.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_[SEAL]  
Secretary