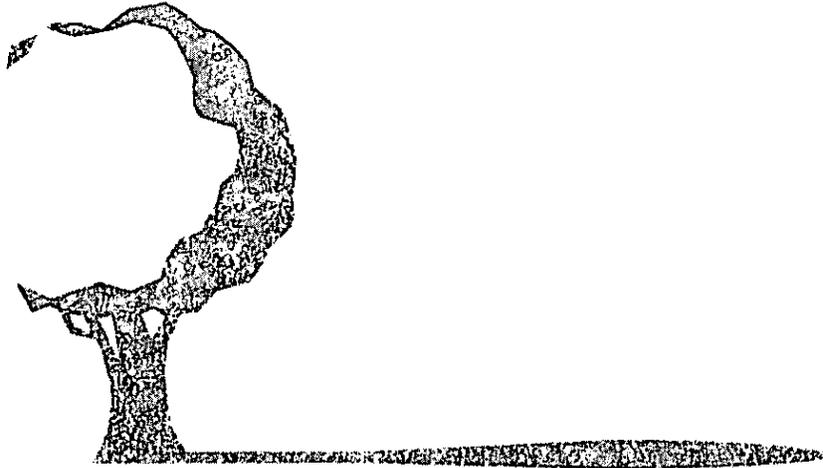


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COVENANT FOR COMMUNITY  
FOR  
DAYBREAK



D A Y B R E A K

*Planned for people*

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# TABLE OF CONTENTS

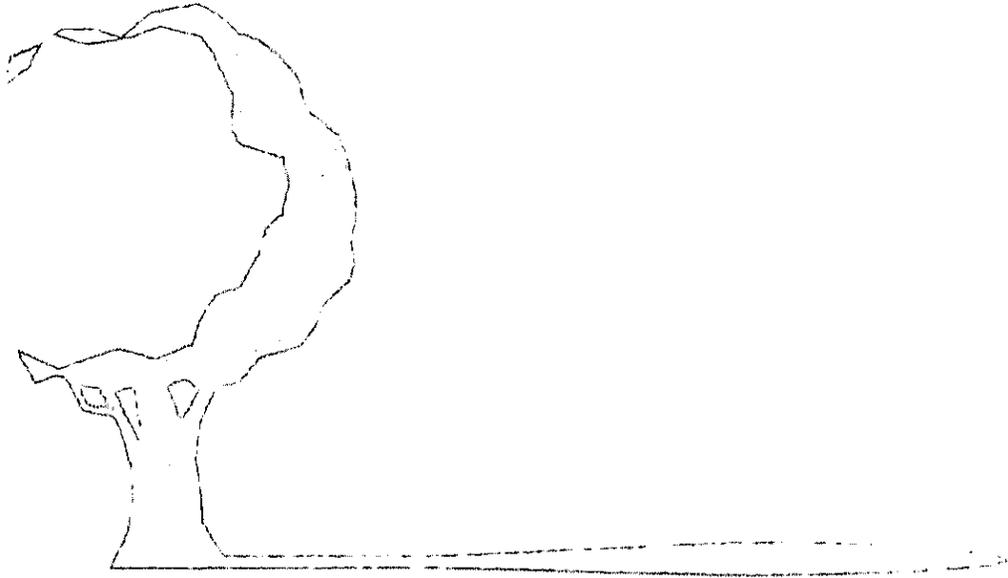
	<u>Page</u>
Chapter 1 Understanding the Community at Daybreak .....	2
1.1. Mission Statement .....	2
1.2. Voice .....	2
1.3. Assurances .....	2
1.4. Expectations .....	3
1.5. Conflicts .....	3
1.6. Definitions .....	3
1.7. Notes and Thoughts .....	4
1.8. Introductory Statements .....	4
You Are the Community .....	4
Chapter 2 Governance Scaled for Daybreak .....	5
2.1. Council Powers .....	5
2.2. Council Activities .....	5
2.3. Council Funding .....	6
2.4. Stakeholder Participation .....	9
Chapter 3 Tools for Community Achievement .....	11
3.1. Community Extension Agent .....	11
3.2. Youth Board .....	12
3.3. Community Education and Training .....	13
3.4. Volunteerism and Charter Clubs .....	13
3.5. Dispute Resolution .....	14
3.6. Education as an Amenity .....	15
Chapter 4 Connections and Community .....	16
4.1. Stakeholder Participation .....	16
4.2. Relationship With Other Entities .....	16
4.3. The Community Beyond Daybreak .....	17
Chapter 5 Daybreak as a Special Place .....	18
5.1. Daybreak .....	18
5.2. Expansion of Daybreak .....	18
5.3. Additional Covenants and Easements .....	18
5.4. Ownership and Maintenance of Property .....	19
5.5. Conveyance of Property by the Founder .....	19

## TABLE OF CONTENTS

	<u>Page</u>
5.6. Conveyance of Property from Other Persons.....	19
5.7. Dedication of Council Property .....	19
5.8. Easements Reserved to the Founder .....	19
5.9. Ownership of Lake, Wetlands, and Large Community Parks.....	20
5.10. Easements for Water Body Maintenance and Flood Water .....	20
5.11. Facilities and Services Open to the Public .....	20
5.12. Transportation Systems Management.....	21
5.13. Environmental Preservation .....	21
5.14. Recycling Programs .....	21
5.15. Alternative Fuel and Electric Vehicles .....	21
5.16. Amendments to this Covenant.....	22
5.17. The Covenant's Duration .....	22
<b>Chapter 6 Telecommunity.....</b>	<b>24</b>
6.1. Establishment and Management of the Telecommunity System .....	24
6.2. Founder's Right to Install Telecommunity System .....	24
6.3. Council's Authority to Provide the Telecommunity System.....	24
<b>INDEX OF DEFINED TERMS.....</b>	<b>28</b>

## TABLE OF EXHIBITS

Exhibit	Subject Matter	First Page Referenced
"A"	Land Initially Submitted	1
"B"	Additional Property	17
"C"	Assessment Allocation Formula	8
"D"	Council By-Laws	17



# COVENANT FOR COMMUNITY

FOR

DAYBREAK

## PREAMBLE

THIS COVENANT FOR COMMUNITY ("Covenant") is made as of the 25 day of ~~FEBRUARY~~, 2004, by Kennecott Land Company, a corporation founded under the laws of Delaware ("Founder").

Daybreak is a master planned community in South Jordan, Utah. The Founder intends to create a sense of collective identity, belonging, solidarity, connectedness, inclusivity, and pride that most master planned communities lack. In addition, the Founder intends for development at Daybreak to be consistent with the unique aspects of its setting, surrounding community, and development scheme. In essence, the Founder desires to create and foster a true community, akin to that found in the communities and towns of bygone days, which will grow and evolve over time.

In pursuit of that goal, this Covenant establishes a comprehensive plan that is designed to create unified, overall administration of Daybreak. Through this Covenant, the Founder and the owners of the property described in Exhibit "A," if other than the Founder, intends to create and foster programs, activities, and services to facilitate interaction among owners, residents, and visitors; involvement in the City of South Jordan, Utah ("City"); community pride; protection for the unique natural resources of the region surrounding Daybreak; and a sense of responsibility for the quality of life within Daybreak. Daybreak is designed to protect the good and valuable consideration of the owners and residents of the community. The Founder intends to preserve and enhance the quality of life and the community's overall character, image, and aesthetics.

## Chapter 1

# Understanding the Community at Daybreak

*It is not often a city has the opportunity to build a vision and master plan of a city from scratch.*

*We wanted to create a lifestyle concept where people could live, work, and play.*

*W. Kent Money, Mayor of South Jordan, Utah*

While Daybreak is a master planned community, Kennecott Land Company as Founder intends for it to be much more than even the best "planned community." Kennecott Land Company believes that when you purchased property in Daybreak, you signaled that you shared this goal to create a sustainable community, a special place to live and to work, not just a real estate development.

Truly great communities have a physical identity and a pride in that place; the community's stakeholders have a positive feeling of belonging and accomplishment in what goes on there. Words alone can never make community, and a community is only as good as the people who live and work there. It is the community's stakeholders that make community. Therefore, this Covenant for Community creates a vehicle, a process, through which you and other stakeholders can build community at Daybreak.

Through the procedures the Founder established in this Covenant, there is an administrative structure with the power and responsibility to initiate programs, activities, and services and to respond to stakeholders' individual and collective creativity and interests.

This administrative structure is the Daybreak Community Council, a Utah nonprofit corporation. It has the necessary powers to administer this Covenant and to engage in a broad range of community activities. It has various funding mechanisms and all the other powers of a Utah nonprofit corporation.

The Daybreak Community Council Inc. ("Council") facilitates the building of community and administers this Covenant. The Council shall be the catalyst for the creation of opportunities and community both within Daybreak and in the surrounding area.

### 1.1. Mission Statement

The mission of the Founder is to build enduring communities on Salt Lake Valley's West Side. Daybreak will do this in a way that protects and strengthens what matters most to our community: strong and safe neighborhoods, quality education, a healthy and renewable environment, and a vibrant local economy. By doing this well, we honor our commitment to our corporate and community shareholders.

*Where there is no vision, the people perish.  
Old Testament*

### 1.2. Voice

An essential component of building a sense of community involves listening to the voice of community stakeholders. The Founder appreciates the need for stakeholder input. This covenant creates opportunities for stakeholders to build and sustain a sense of community for years to come.

### 1.3. Assurances

The Council and the Founder make the following assurances:

- to insure an inclusive environment for governance
- to provide an orderly, regular, and informative communication system within Daybreak
- to provide all stakeholders a voice in community matters, an opportunity to communicate with the Council
- to respect the value of each individual as well as the value and the importance of the community
- to appreciate diversity of thought and of peoples
- to establish community traditions that will engender pride in Daybreak
- to foster a sense of belonging
- to motivate stakeholder participation by offering a variety of life-enriching opportunities
- to provide meaningful opportunities to connect with the greater community
- to make a significant contribution to the quality of life at Daybreak
- to maintain and operate property for the benefit of the community to tie Daybreak into the greater Salt Lake Valley area

#### 1.4. Expectations

There are three expectations that are vital if there is to be community. They are that in all dealings among and between stakeholders, everyone

- should be informed
- should act with civility
- should be constructive

#### 1.5. Conflicts

If there are conflicts between any provision of this Covenant and Utah or federal law, Utah or federal law shall control, as applicable. If there are conflicts between or among this Covenant, the Council's Articles, and the Council's By-

Laws, then the Covenant, the Articles, and the By-Laws (in that order) shall control.

Diagrams, tables, and quotations are used in this Covenant to illustrate concepts and assist the reader. If there is a conflict between any diagram and the text of this Covenant, the text shall control.

If any court determines that any provision of this Covenant 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.

#### 1.6. Definitions

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

A parcel of land subject to the Covenant, whether used for residential or non-residential purposes, which is depicted as a separate lot or unit on a recorded subdivision plat, survey, or condominium instrument, and which may be independently owned and conveyed is referred to as a "**Unit**." The term Unit shall not include the common property or common elements of any owners association or condominium association or property dedicated to the public.

A "**Residential Unit**" is a Unit intended for development, use, and occupancy as an attached or detached single-family residence. A "**Non-Residential Unit**" is any Unit, other than a Residential Unit, subject to the Declaration of Covenants, Conditions, and Restrictions for Daybreak Village recorded by Founder.

Each Person that holds record title to a Unit is referred to in this Covenant as an "**Owner**."

A "**Builder**" is a person who purchases one or more unimproved or improved Units within Daybreak for further subdivision or development and resale in the ordinary course of their business. The Builder has the same privileges and responsibilities as Owners during the time that they own Units for construction and resale.

### 1.7. Notes and Thoughts

Space has been set aside throughout this Covenant to allow the reader to make notes.

## You Are the Community

*Kennecott Land Company and the Council cannot create community at Daybreak; only you and your neighbors can do that. This document and the processes and powers it creates are intended to enhance your ability to fashion the community you desire and to do so with minimal interference from outside sources. You can be as active or as inactive in that process as you desire, but ultimately you will have the community that you and your neighbors determine to be right for Daybreak. Kennecott Land Company wants it to be a special place and hopes that you do so as well.*

*Throughout this document, you will find that there is a genuine effort to avoid two well-recognized impediments to community: individualism without regard for the group and formal authority without regard to flexibility. There must be a balance between an individual's desire for choice and the group's need for an appropriate degree of certainty. You are a most important part of creating this balance and in making it work at Daybreak.*

*There is an amazing strength in the expression of the will of a whole people.*

*Tocqueville*

Those spaces and the heading that denotes the spaces are not part of this Covenant.

### 1.8. Introductory Statements

Introductory statements in italics at the beginning of each Chapter are not part of this Covenant and have no legal or binding effect.

## Chapter 2

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### Governance Scaled for Daybreak

*In the past, planned communities frequently focused more on the "planned" and less on the "community." The emphasis, the true purpose of "governance" was on managing property—and quite often—on managing people, too. The results were lots of rules, hyper-restrictiveness, and, in many cases, unhappiness and disputes. What was lost in that model was the quality of life that means community.*

*One needs all three, property, people, and community, in proportion and in a harmonious operational relationship. The property, your property, your neighbors' property, does need to be maintained, and the Community Charter for Daybreak ("**Charter**") and the Declaration of Covenants, Conditions, and Restrictions for Daybreak Village ("**Declaration**") will provide property protections that require observance in this regard. The Residential Units within Daybreak will be subject to and governed by the Daybreak Community Association, Inc ("**Residential Association**") and the Non-residential Units will be subject to and governed by the Daybreak Village Association, Inc. ("**Village Association**").*

*With this Covenant and the Council, governance is different. It is not concerned with enforcement but with empowerment. Governance here has a different purpose, focus, and structure. It has one primary responsibility. That responsibility is to effectuate the vision for community at Daybreak.*

*Council governance is simplified and is more ad hoc than formal. It responds to needs and desires, and it helps stakeholders accomplish things they select. It seeks to enable, not regulate, and ultimately, it adds real value to owning property at Daybreak because it makes it a better place . . . a community.*

***To worship choice and community together is to misunderstand what community is all about.***

***Alan Ehrenhalt***

#### 2.1. Council Powers

The Council shall have such express or implied powers reasonably necessary to create and provide activities, services, and programs, and to maintain and manage property for the common good and general welfare of Daybreak and the surrounding South Jordan area. The Council may create and delegate authority to for-profit and nonprofit entities that may or may not be tax-exempt organizations and may employ any of the tools for community achievement discussed in Chapter 3.

The Council will act consistently with this Covenant, the Council's By-Laws, the Council's Articles, and Utah law to achieve the mission and

goals of Chapter 1 and realize the vision of community.

#### 2.2. Council Activities

The Council shall organize, fund, and administer activities, services, and programs necessary, desirable, and appropriate to fulfill the Council's mission. Activities, services, and programs that the Council may provide, include, but are not limited to, the following:

(a) primary education and adult special interest programs;

(b) services to benefit all stakeholders and the South Jordan area (e.g., caretaker services, childcare, personal shopping services, etc.);

(c) charter clubs and other volunteer organizations and activities;

(d) educational trust or endowment;

(e) data bank of community residents who are interested in volunteering time at the local school, library, or within the community;

(f) social programs (*e.g.*, parties, festivals, sports leagues, and similar events);

(g) environmental programs (*e.g.*, community-wide recycling, tree planting, garden plots, alternative energy sources, water reclamation);

(h) activities designed to promote compliance with community standards through education, communication, and grass roots support;

(i) public relations activities to publicize the Council's programs and activities;

(j) cultural, artistic, and wellness programs;

(k) operation and preservation of lakes, wetlands, open space or greenspace areas, community-wide parks, and recreational areas;

(l) computer Internet or intranet sites;

(m) learning centers and computer centers;

(n) community-wide video and technology;

(o) strategic partnerships among local schools or public entities (*e.g.*, library or local school system);

(p) partnerships with religious organizations, local nonprofit civic and benevolent organizations (*e.g.*, YMCA or YWCO, Jaycees, Kiwanis, or similar organizations), land preservation organizations, and the City;

(q) preservation and maintenance of natural areas, wildlife preserves, or similar conservation areas, and sponsorship of educational programs

and activities that contribute to the overall understanding, appreciation, and preservation of the natural environment at Daybreak;

(r) development and use of water conservation and irrigation techniques (*i.e.* wetlands development and maintenance, recycling, and re-use of ground water);

(s) other services, activities, and programs which advance the Council's mission;

(t) education of architects, Builders, contractors, subcontractors, and other development personnel regarding the use of reclaimed and runoff water and photovoltaic and wind energy technology to reduce Daybreak's reliance on natural resources; and

(u) in cooperation with the Residential Association, services, and activities designed to address transportation issues within Daybreak and the surrounding area.

The Council may contract with other entities, including the Founder, to provide activities, services, programs, and the necessary facilities to accomplish the mission. The Council may also coordinate partnerships with local schools or corporate sponsors for the purpose of organizing or facilitating the above community-building endeavors.

*Well done is better than well said.*

*Benjamin Franklin*

### 2.3. Council Funding

(a) **Budget.** At least 90 days before the beginning of each fiscal year, the Council shall prepare a budget of the estimated expenses necessary to facilitate or provide activities, services, and programs; to operate, maintain, and insure the Area of Council Responsibility (as defined in Section 5.4); and to perform other activities as authorized in this Covenant ("**Council Expenses**") for the coming year.

The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, and any income anticipated to be generated through means authorized by this Covenant (*e.g.*, assessments levied against Non-residential Units, fees levied upon certain real property transfers for the benefit of the Council and other designated Persons, also known as "**Community Enhancement Fees**," use and consumption fees, subsidies, etc.).

The Founder may pay a subsidy to assist in funding the Council's activities. Any subsidy shall be disclosed in the income portion of the budget. Payment of a 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 Council and the Founder.

**(b) Community Enhancement Fees**

**(i) Authority.** A primary source of funding for the Council's activities shall be a Community Enhancement Fee to be collected upon each non-exempt transfer of a Unit.

The fee shall be charged to the seller of the Unit, shall be payable at the closing of the transfer of title, and shall be secured by a lien in favor of the Council as provided in Section 2.3(j).

**(ii) Amount of Fee.** The Council has the sole discretion to determine the amount and method of calculating any Community Enhancement Fee. The fee may be based upon a sliding scale, which varies according to the gross selling price of the property, the permitted use of the property (*i.e.* non-residential *v.* residential use), or such other factors, as the Council deems appropriate.

The fee for transfers from the Founder to a Builder or from a Builder to an Owner, shall not exceed one-quarter (1/4) of 1% of the gross sales price of the real property transferred, or in

the case of a transfer other than a sale at fair market value, 1% of the appraised value of the real property being transferred, as determined by the local authority for real estate *ad valorem* tax purposes. The fee for all other transfers shall not exceed one-half (1/2) of 1% of the gross sales price of the real property transferred, or in the case of a transfer other than a sale at fair market value, 1% of the appraised value of the real property being transferred, as determined by the local authority for real estate *ad valorem* tax purposes. For purposes of this Section, the "gross sales price" means the total amount paid by the purchaser for the real property.

**(iii) Purpose of Fee.** All Community Enhancement Fees shall be used exclusively for purposes consistent with the Council's mission and with the purposes for which the Council was created.

**(iv) Exempt Transfers.** No Community Enhancement Fee shall be levied upon transfer of title to property:

(A) to the Founder or a Founder Affiliate;

(B) by a co-owner to any person who was a co-owner immediately prior to such transfer;

(C) to a family trust or a family limited partnership controlled by the grantor, or to the owner's estate, surviving spouse, or child upon the death of the owner;

(D) to an entity wholly owned by the grantor, provided that upon any subsequent transfer of an ownership interest in such entity, the Community Enhancement Fee shall become due;

(E) to an institutional lender pursuant to a mortgage or upon foreclosure of a mortgage; or

(F) to a religious organization, church, or other house of worship.

In addition, the Founder and/or the Council may grant exemptions for transfers of Non-Residential Units or 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 Covenant for purposes listed in Section 501(c).

(c) *Assessments.* To fund the Council Expenses, the Council may levy an "Annual Assessment," which will be allocated among the Non-Residential Units. The Annual Assessment shall be allocated equally among all Units subjected to the Declaration (as defined in Chapter 2). The method of allocating Annual Assessments among the Non-Residential Units shall be as set forth in Exhibit "C." In setting the budget and determining the sources of funds, no more than 35% of the budget to cover Council Expenses shall be assessed against the Non-Residential Units.

Any property owned by the Residential Association, the Village Association or which is owned by all members of one of such associations as tenants-in-common, and any property dedicated to and accepted by any governmental or quasi-governmental authority or public utility for public purposes shall be exempt from paying Annual Assessments.

In addition, the Founder and/or the Council may 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 Covenant for purposes listed in Sections 501(c).

(d) *Statement of Account.* Upon written request of the Owner or prospective purchaser of, or the holder or prospective holder of a mortgage on, any Unit, delivered personally or sent by certified mail, first-class postage prepaid, return receipt requested to the Council's registered

agent or designee, the Council shall issue a written statement setting forth the amount of any unpaid Community Enhancement Fee, Annual Assessment, or other authorized charge and the amount of any Community Enhancement Fee due upon a transfer of title to the Unit that occurs within 30 days of the date of such statement. Such statement shall be delivered personally or by certified mail, first-class postage prepaid, return receipt requested.

The Council may require the payment of a reasonable processing fee for issuance of such statement. Such statement shall be binding upon the Council as to persons who rely on the statement in good faith. If a written request for a statement of account is not processed within 14 days after the Council's receipt of the request, all amounts that became due before the date of such request shall be subordinate to the lien of any institutional holder of a first mortgage on the Unit that acquired its interest after requesting such statement.

(e) *Reserves.* The budget shall include contributions to a reserve fund and/or a general "emergency fund." The Council's budget may include contributions for capital and operating reserves. Such contributions shall take into account the number and nature of replaceable assets within the Area of Council Responsibility (as defined in Section 5.4), the expected life of each asset, and the expected repair or replacement cost.

(f) *Use and Consumption Fees.* The Council may charge use and consumption fees to any Person who uses its services or facilities. The Council shall have the sole discretion to establish the amount and method of determining use or consumption fees. The Council may charge lower use and consumption fees to Owners than to non-Owners.

(g) *Trust or Endowment.* The Council may establish or cooperate with an educational trust to assist schools established within or serving the

residents of the City or Salt Lake County, Utah (**County**"), or a land trust or preservation organization organized for the protection and preservation of the environment and natural resources surrounding Daybreak. The Council may solicit and collect charitable donations from the public, stakeholders, or corporate sponsors to fund the trusts and their missions.

**(h) Grants.** The Council may also seek to qualify for local, state, or federal grants.

**(i) Obligation for Payment.** No Person subject to the Community Enhancement Fee or any assessment or other charges authorized under this Covenant is exempt from liability for payment because they do not use services, programs, property, facilities, or for any other reason. The obligation to pay is a separate and independent covenant, and payments may not be reduced or set-off due to an alleged failure of the Council to take some action or perform a certain function or from acting in a certain manner.

**(j) Lien Rights.** The Council has a lien against each Unit to secure payment of delinquent Community Enhancement Fees and /or a delinquent Annual Assessment, and charges levied against that Unit as well as interest on the past due amount, late charges, and costs of collection (including attorneys fees). The Council's lien is superior to all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; (ii) the lien or charge of any recorded first mortgage (meaning any recorded mortgage with first priority over other mortgages) made in good faith and for value; and (iii) the Residential Association's or Village Association's lien for common expenses under the Charter and/or Declaration.

The Council's lien may be enforced by suit, judgment, and judicial or nonjudicial foreclosure in the same manner as the Residential and Village Association's lien in the Charter and/or Declaration. The Council may bid at any foreclosure sale and acquire, hold, lease, mortgage, and convey

such property. While the Council owns property following its foreclosure no assessment shall be levied on such property.

The Council may sue for unpaid fees, assessments, and other charges authorized in this Covenant without foreclosing or waiving the lien securing the amount due.

The sale or transfer of property does not affect the lien or relieve such property from the lien for any subsequent assessments. However, sale or transfer pursuant to foreclosure of the first mortgage will extinguish the lien as to any installments of such assessments due prior to the mortgagee's foreclosure. An Owner acquiring property through foreclosure of a first mortgage will not be personally liable for assessments due prior to acquisition of title.

**(k) Additional Properties.** The Founder shall have the sole discretion to subject additional Units to this Covenant by the filing of a recorded Supplement ("**Supplement**"), which is a recorded document that may submit additional property to this Covenant, create easements over the property described in the Supplement, or impose additional obligations on such property.

#### 2.4. Stakeholder Participation

**(a) Stakeholder Opinion.** At Daybreak, stakeholder opinion and input are essential to community success. The Council will stay apprised of resident interests, public opinions, and concerns. Stakeholders, at their discretion, may participate in polls organized by the advisory panel, and the Council may impose polling guidelines on the advisory panel to ensure polling fairness, accuracy, and resident privacy.

**(b) Information Gathering.** The Council is charged with the responsibility of keeping apprised of community and resident related matters. In order to facilitate an open exchange of ideas at Daybreak, the Council shall collect resident and community-related information, such as

resident opinions, interests, grievances, and attitudes by conducting interviews, disseminating questionnaires, mailings and emails, conducting phone interviews, or other forms of information gathering. To the extent possible, the Council will take resident opinion and interest into consideration when performing its duties and respon-

sibilities. Costs associated with opinion polling shall be itemized in the Council budget.

#### **NOTES AND THOUGHTS**

## Chapter 3

### Tools for Community Achievement

*Achieving the goal of making Daybreak a truly special place to live and work requires not only meaningful, productive opportunities for you and your neighbors to share your ideas, suggestions, and desires. It also requires a creative process, specialized staffing, and great communication. In this chapter, you find these essentials. However, you also will see that Kennecott Land Company believes that the best community building ideas will come from the community itself. The community's and its stakeholders' ideas are what ultimately will define the way Daybreak will both look and live.*

*Luck is the residue of design.*

*Branch Rickey*

#### 3.1. Community Extension Agent

The Council shall create and fund the position of "**Community Extension Agent**," or "**CEA**," whose role shall be to provide leadership for the overall planning, development, implementation, and continuing evaluation of programs, activities, and services to carry out the Council's mission. The CEA may be an employee or independent contractor.

The CEA's specific responsibilities are outlined in this Covenant and may include the following:

(a) creating accessible opportunities for stakeholders and invitees to participate in and volunteer their time and skills for community events and activities;

(b) working with volunteers and staff members and cooperating with the Council's Board of Directors ("**Directors**") and the Residential Association's or Village Associations' board of directors to implement the Council's objectives and administer its daily affairs;

(c) coordinating, promoting, and facilitating community-wide cultural, artistic, musical, athletic, environmental, and social events and activities;

(d) conducting governance educational programs and contracting for and coordinating continuing education programs and opportunities;

(e) serving as an ombudsman within Daybreak by teaching and practicing "non-adversarial communication" and, when the need arises, mediating, or otherwise intervening to solve disputes and conflicts at the request of the parties involved;

(f) seeking out new opportunities for building community life and spirit while appreciating stakeholder diversity;

(g) organizing and promoting sports or recreational leagues; and

(h) motivating Owners, residents, and invitees to participate in and volunteer their time and skills for community events and activities.

The CEA's responsibilities may also include those agreed upon by the CEA and the Directors, so long as such responsibilities do not hinder, limit, or otherwise interfere with the fulfillment of the CEA's responsibilities outlined above.

The CEA shall be employed or otherwise contracted for by the Council and shall be entitled to attend and participate in meetings of the Directors; however, in the case of discussions regarding the CEA's employment, the CEA may be ex-

cluded from meetings of the Directors. The Council may enact rules to ensure the successful creation, staffing (including the Council's appointment rights), funding, operation, execution of duties, and continuity of the CEA position.



*When you do the common things in life in an uncommon way, you will command the attention of the world.*  
*George Washington Carver*

### 3.2. Youth Board

The Council shall create and fund a "Youth Board" composed of and selected by community residents between the ages of 13 and 17. The Youth Board shall serve as a liaison between Daybreak's youth and the Council, empowering the youth with a voice, a sense of "belonging," and a mechanism for positively influencing their peers and others in the community.

An important aspect of the Youth Board's ability to be the voice of Daybreak's youth is its composition. The best Youth Board is one that is representative of those it seeks to serve. The members of the Youth Board shall be selected from candidates solicited through Daybreak-wide publications, emails, and any other methods of reaching large portions of the Community employed by the Council or the Residential Association. The Community Extension Agent shall compile all applications for the Youth Board. The Directors, with the assistance of the Community Ex-

ension Agent, will then select the Youth Board members from the applications. In the process of selecting members of the Youth Board, the Directors and the Council shall include representatives from a wide variety of backgrounds, ages, hobbies, charter clubs, sports teams, and residences.

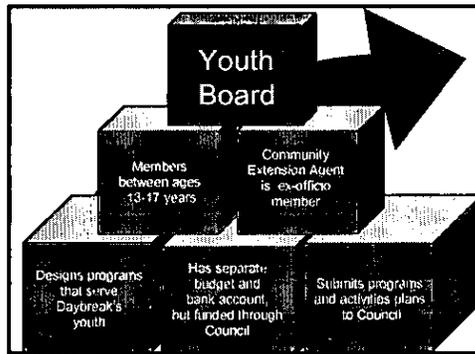
The Youth Board shall hold one meeting at least every three months. In addition, the Youth Board may hold discussion groups or sponsor other events to foster group discussion and collective decision-making. The Youth Board may request funding from the Council for additional services, facilities, or activities; organize and independently operate such services, facilities, or activities; communicate with the Council on issues of importance to the youth; or make suggestions or recommendations for community improvement to the Council. The Youth Board shall create a budget for approval and review by the Council, which shall fund the Youth Board. However, the Council may approve or reject any requested service, facility, or activity or any funding request (or may rescind any previously approved budget, service, or funding request) based upon reasonable, community-related considerations.

The Youth Board members shall select, from its own membership, an ex-officio member of the Directors and an alternate. The Youth Board member serving as the ex-officio member of the Directors shall attend all meetings of the Directors, deliver the minutes of the most recent Youth Board meeting to the Council, deliver any proposed budgets or budget requests, and report on any Youth Board-related matters.

The Community Extension Agent shall serve as an ex-officio member of the Youth Board, and the Youth Board shall cooperate with and assist the Community Extension Agent in the performance of his or her duties.

The Directors may enact additional rules to ensure the successful formation, selection, opera-

tion, and continuity of the Youth Board, including terms of service.



### 3.3. Community Education and Training

In recognition of the fact that owners, tenants, and other stakeholders who are well informed regarding their community's structure, governance, and development goals and their rights and responsibilities in the community, have greater capacity to participate in civic life and in the affairs of the community, the Council may establish education, training, and orientation programs, including "continuing" education programs, for everyone in Daybreak. The Council may utilize any appropriate method to achieve these education goals, including a community intranet; learning centers, computer centers, and business centers; and coordinated activities with the CEA, one or more Council committees, Directors, or the Residential Association.

Community education shall begin as early as the marketing stage or the point of sale of property within Daybreak and may include orientation classes regarding community structure and governance; the nature, extent, and purpose of the covenants, rules, and regulations; and community-building issues such as the mission for Daybreak, opportunities to participate in and affect the community's evolution and growth, and general community orientation. In addition, the Council shall cover such topics as board election procedures, director responsibilities and duties, officers' duties and responsibilities, and committee service guidelines and training. The Council

shall also provide programming explaining the Youth Board's purpose, goals, and selection to those interested in being participants and their parents. The Council also may teach non-adversarial dispute or conflict resolution, negotiation, listening, team building, and other community skills designed to serve individuals in many different contexts.

Community governance education is an essential component of living in Daybreak. The Council shall also coordinate with the Residential Association, and the Village Association to achieve the goal of educating stakeholders how their community operates. Educating owners about ownership rights, voting privileges, property use restrictions, assessment responsibility, community development, developer turn-over or transition period, community activities, etc. should be an ongoing innovative process geared toward including residents of all ages. Governance education may be offered in the form of seminars, simple question and answer pamphlets, audio/video recordings, through the community cable channel, or through an interactive website. The Council may also coordinate with nationally recognized organizations such as the Urban Land Institute or the Community Associations Institute to offer programs regarding Community governance or coordinate with nationally recognized speakers in the field to provide community governance instruction and workshops.

Training for Directors is required and shall be conducted as specified in the Council By-Laws. The Council may delegate all or any of its training, education, and orientation duties to the Residential Association. The Council's expenses of training, education, or orientation, or contracts for such services from third parties, shall be Council Expenses.

### 3.4. Volunteerism and Charter Clubs

In recognition of the fact that volunteerism benefits both Daybreak and the larger community, the Council desires to promote a strong

volunteer ethic among stakeholders and encourage and facilitate the organization of volunteer organizations within Daybreak. To accomplish this end, the Council may grant incentives for volunteering, such as exemptions from specific program fees and public recognition of distinguished volunteers and their achievements. The Council also may cooperate with and support outside organizations, such as recreational leagues or cultural or religious organizations, by making facilities available for the organizations' use or sponsoring the organizations' activities. Additionally, the Council may compile and maintain a data bank of owners, tenants, residents, or invitees interested in volunteering and make such data available to other volunteer organizations.

In its discretion, the Council may establish or support the establishment of "charter clubs" to encourage or facilitate the gathering of people to pursue common interests or hobbies. A charter shall confer privileges and impose responsibilities on the club and its members. For example, the Council may grant privileges including financial support; material support; facility use privileges, either with or without charge; priority for facility use; administrative and technical support; and liability insurance coverage.

The Council, through the CEA, may grant charters to any group of individuals who share a particular field of interest. Any owner, tenant, or resident may submit a written request to the CEA for a charter. In his or her discretion, the CEA may grant or deny such request. If the Community Extension Agent denies such request, the aggrieved owner, tenant, or resident may appeal the Community Extension Agent's decision to the Directors within 30 days of the decision. The Council may fund the charter club as a Council Expense and/or require that club members pay use or consumption fees for materials, facilities use, or other club expenses.

The CEA may use computer bulletin boards, web sites, and publications to assist charter clubs and other community groups, religious groups,

civic groups, youth organizations, and support groups in publicizing meetings, events, and the need for volunteer assistance. However, the Council may not fund the specific advertising or promotion of a charter club's events or another volunteer group's events, unless the Council, in its discretion, determines that such events or organizations benefit the entire community.

## Volunteerism

### Council:

- ↳ Facilitates volunteer organizations
- ↳ Supports recreational leagues and cultural organizations
- ↳ May maintain volunteer data bank
- ↳ May grant charters to charter clubs
- ↳ Publicizes meetings, events, etc.
- ↳ Provides recognition to volunteers

### 3.5. Dispute Resolution

The Founder, the Residential Association, the Village Association, and each owner agree that it is in the best interest of all concerned to resolve disputes among and between the Residential Association, the Village Association or any owner and the Council without the emotional and financial costs of litigation. Accordingly, each of the foregoing agree that the provisions of the Charter relating to resolution of disputes arising out of the Governing Documents shall also apply to resolution of any dispute arising out of the Council Documents, subject to such exceptions as are set forth in the Charter.

Prior to the initiation of any administrative or judicial proceeding by the Residential Association, the Village Association, or any owner against the Council, the party initiating such action shall comply with all procedures and rules the Council has enacted pursuant to this Section. This Section shall serve as an agreement by the Residential Association, the Village Association,

and the owners to submit their claims to such procedures or rules, and the failure to abide by such requirements shall serve as a defense to any such action. The requirements of this Section shall not apply to any action by the Council to collect assessments or other fees or charges authorized by this Covenant, which actions may proceed in the Council's discretion directly without any prior procedure for claims resolution.

*In our own case we accept excuses too easily,  
in other people's lives we do not accept them  
easily enough.*

*C.S. Lewis*

### 3.6. Education as an Amenity

Continuing education and learning opportunities are community amenities to be enjoyed by all stakeholders, particularly adults and retirees. The range of continuing education opportunities being offered at Daybreak should be determined by resident interest, participation, satisfaction, and budget. The Council should make every effort to provide or provide for a variety of continuing education opportunities that reflect the diverse interests of the community and its residents, *i.e.*, finance, art, music, exercise, community wellness, gardening, sports, and recreation. The Council may coordinate or contract with local schools, civic leagues, or professional speakers or instructors to offer these continuing education opportunities. The Council may charge a user fee to all participants and open programs to the community at large.

Daybreak and the Council will work in cooperation with community schools to gather the opinions of parents, teachers, administrators, and students to make education a high priority at Daybreak. The Council will strive to meet the needs of parent/student stakeholders by offering a variety of services and programs, *e.g.*, before and after school programs, tutorial programs, and holiday events. The Council may draw from Daybreak's databank of stakeholder volunteers

(*i.e.*, retirees or stay-at-home parents) to support these programs.

*Human history becomes more and more a race  
between education and catastrophe.*

*H.G. Wells*

## NOTES AND THOUGHTS

## Chapter 4

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# Connections and Community

*No one can build community in isolation; community life requires private time as well as interdependence with others. Some connections are planned; others, often the best, just grow from the seeds of shared interest.*

*Connections within Daybreak are vital to creating community, and connections outside Daybreak are essential to building a community that is not an island alone unto itself. Promoting community spirit throughout Daybreak builds understanding and caring. That makes Daybreak an even better place to live and work.*

### 4.1. Stakeholder Participation

Owners and occupants at Daybreak are essential to community life and community success. As such, the Founder views each resident as an integral part of Daybreak and a stakeholder in Daybreak's community successes. Stakeholders are encouraged to participate, at their discretion and level of interest, in community life, events, governance, continuing education, and volunteer opportunities, and the Council is encouraged to provide or provide for opportunities for owners and occupants to participate.

*Hard work spotlights the character of people: some turn up their sleeves, some turn up their noses, and some don't turn up at all.*  
*Sam Ewig*

### 4.2. Relationship With Other Entities

**(a) General.** The Council may enter into cooperative agreements and expend funds for facilities use, shared services, and development of projects and activities that benefit Daybreak and communities outside of Daybreak.

**(b) Relationships With Other Nonprofit Organizations.** The Founder or the Council may create, and/or enter into agreements or contracts with nonprofit organizations to gain some direct or indirect benefit upon Daybreak, the City, or the County. Such organization(s) may perform a variety of services and functions,

such as educational, environmental, conservation, health, wellness, and cultural programs, benefiting Daybreak and the South Jordan community and/or staffing and maintaining a community-wide recreation center.

If the Founder or the Council establishes a tax-exempt entity for activities servicing the South Jordan, Utah community, including Daybreak, the Council shall fund the minimum annual organizational expenses of maintaining such entity and may contribute additional money, real or personal property, or services to such entity. Such expenses and any such contributions shall be a Council Expense. For the purposes of this Section, a "tax-exempt organization" shall mean an entity exempt from federal income taxes under the Internal Revenue Code ("**Code**"), for example, entities exempt under Section 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

The Council may maintain multiple use facilities within Daybreak for temporary use by tax-exempt organizations. Such use may be on a scheduled or "first-come, first-served" basis. A reasonable maintenance and use fee may be charged for such use.

**(c) Other Third Parties.** In the Directors' sole discretion, the Council may provide services or facilities to the general public or other people or groups who do not reside within Daybreak and charge and collect use and consumption fees for

such use. The Council also may enter into agreements with third parties to provide such services or facilities in exchange for financial or other consideration.

### 4.3. The Community Beyond Daybreak

*As "no man is an island alone unto himself," neither is a successful community. Daybreak is an integral part of the greater Salt Lake Valley area and shall not be closed off to neighboring residents.*

Interacting with the greater Salt Lake Valley community is an important part of the Council's purpose, as the Council is uniquely able to connect stakeholders with the Salt Lake Valley area. To achieve this goal, the Council shall work with the City, any Special Service Districts created by the City (SSD"), the County, local governments, and civic groups to promote or address local concerns and issues and create opportunities for stakeholders to become involved in the Salt Lake Valley area. This interaction will foster contributions of time and energy that will benefit Daybreak, the City, the County, and the SSD and enrich the lives of everyone who lives, works, or plays in Daybreak.

The Council, at its discretion, may invite local civic and professional groups to Daybreak that are of interest to stakeholders (*i.e.*, Girl/Boy Scouts of America, Eagle Scouts, little leagues, Big Brothers and Big Sisters, Rotary Club, AARP, Garden Club, Junior Women's League, NAACP, Veterans Club, and land trust or preservation organizations).

<p><i>Opportunities multiply as they are seized.</i> <i>Sun Tzu</i></p>
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## Chapter 5

### Daybreak as a Special Place

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*Kennecott Land Company and its design team have endeavored to create a physical presence that respects and complements the beauty, unique attributes, and endearing qualities of the natural environment and the cultural and historical resources of the surrounding area. This respect is embodied in each stakeholder's property. The Community Charter and other documents address how that property is developed, used, and maintained. The Council does not enforce these documents, but all stakeholders benefit from them as everyone uses and enjoys Daybreak's physical features.*

*The Council owns or has use rights in property for its specialized purposes. Whether these purposes are artistic or cultural, civic or recreational, or a myriad of other activities, the property is to be used and maintained as in any quality community: with respect.*

#### 5.1. Daybreak

"Daybreak," as used throughout this Covenant, consists of the property described in Exhibit "A" and any additional property made subject to this Covenant in the future by amendment or supplement, as provided in Section 5.2. This Covenant shall run with the title to such property, binding not only the Founder, its successors and assigns, but also 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 Covenant shall also be binding upon the Council.

#### 5.2. Expansion of Daybreak

From time to time, the Founder may submit to the terms of this Charter all or any portion of the property described in Exhibit "B" 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 Exhibit "B" has been submitted to this Charter or 30 years after this Covenant is re-

corded, whichever is earlier. Until then, the Founder may transfer or assign this right to any person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be described in a recorded instrument executed by the Founder.

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

The Council may also submit additional property to this Covenant by recording a supplemental covenant executed by or on behalf of the Council and the owner(s) of the property being submitted and by the Founder, so long as the Founder or a Founder Affiliate owns or has any right in the property described in Exhibit "A" or "B."

#### 5.3. Additional Covenants and Easements

Additional covenants and easements may be recorded by the Founder on the property described in a written instrument, such as covenants creating property restrictions and assessments in favor of a property owners association. Such provisions may be included in a separate instrument applicable to all or a portion of property previously submitted to this Covenant. If some-

one other than the Founder owns the property, then the instrument must be signed by such owner evidencing such owner's consent.

#### **5.4. Ownership and Maintenance of Property**

The Council may own and maintain real property ("**Council Property**") subject to every owner's right and non-exclusive easement of use, access, and enjoyment, the rights and powers of the Council as set forth in the Council Documents, and any terms, conditions, covenants, or restrictions set forth in the instrument conveying such property to the Council.

The Council may enact reasonable rules and regulations governing access, use, and enjoyment of the "**Area of Council Responsibility.**" Every owner, the Residential Association, and the Village Association shall comply with such rules and regulations. In addition, the Founder or the Council may grant exclusive and/or non-exclusive easements over the Area of Council Responsibility to nonprofit organizations, the operation of which confers some benefit on Daybreak and the surrounding community.

#### **5.5. Conveyance of Property by the Founder**

At any time the Founder or a Founder Affiliate owns any property described in Exhibit "A" or "B," the Founder may convey to the Council, or assign the Council maintenance responsibility for, improved or unimproved real estate located within Daybreak, personal property, and leasehold or other property interests. The Council shall accept and maintain, operate, and manage such property as part of the Area of Council Responsibility. The Council also shall perform, as a Council Expense, such obligations and responsibilities with respect to such property as the Founder may assign in writing.

In recognition of the fact that the Founder conveys real property to the Council at no cost to

the Council, if conveyed in error or needed to make minor adjustments in property lines, the Founder, for so long as it or a Founder Affiliate owns property described in Exhibit "A" or "B," may unilaterally amend this Covenant to withdraw property from its coverage and may require the Council to reconvey unimproved real property to the Founder or to other Persons.

#### **5.6. Conveyance of Property from Other Persons**

Under negotiated terms, the Council may acquire and maintain improved or unimproved real estate, personal property, easements, and leasehold or other property interests from other persons. If the Council determines at the time of conveyance that such property benefits less than all of the owners, then the Directors shall determine an equitable allocation of expenses in accordance with the benefits received.

#### **5.7. Dedication of Council Property**

Subject to the approval of and acceptance by such entity, the Council may dedicate, lease, grant easements in, or convey portions of any real property it owns to any local, state, or federal governmental or quasi-governmental entity, provided the Directors have determined, in their reasonable discretion, that such entity has the funding source and commitment properly to maintain the dedicated property.

#### **5.8. Easements Reserved to the Founder**

There is hereby reserved to the Founder and granted to its duly authorized agents, representatives, successors, assigns, licensees, and mortgagees, a perpetual, non-exclusive easement over property the Council owns for the use, access, and development of property depicted on the master land plan for Daybreak. This easement includes, but is not limited to, a right of ingress and egress over such property for construction of roads and for tying in and installation of utilities on such property. The Founder also reserves for

itself the non-exclusive right and power to grant and record specific easements as may be necessary, in the Founder's sole discretion, in connection with the orderly development of the property.

### **5.9. Ownership of Lake, Wetlands, and Large Community Parks**

The Founder or a Founder Affiliate may convey to the Council, the Residential Association, the City, the County, or the SSD the lakes, surrounding green space, and any wetlands created by the Founder, which are designed and constructed to control surface or storm water discharges that are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent environmental degradation, and water pollution or otherwise affect the quantity or quality of water within the Community. In addition, the Founder may grant to the Council, the City, the SSD, and the Residential Association the right to use the lake and any captured stormwater for irrigation purposes within Daybreak. The community parks the Founder creates, which are designed and constructed to serve the residents of Daybreak and the City may be transferred to the Council, the SSD, or the City.

### **5.10. Easements for Water Body Maintenance and Flood Water**

The Founder reserves for itself, the Residential Association, the Council, their successors, assigns, and designees, the City, the SSD, and any other governmental entities the nonexclusive right and easement, but not the obligation, to enter upon Common Area water bodies and wetlands located within Daybreak, if any, to (a) install, operate, maintain, and replace, water treatment facilities and/or pumps for the treatment of water or to supply irrigation water to property within Daybreak; (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 Residential Association, the Council, their successors, assigns, and designees, the City, and the SSD shall have an access easement over and across any portion of Daybreak abutting or containing any water bodies or wetlands to the extent reasonably necessary to exercise their rights under this Section.

The Founder further reserves for itself, the Residential Association, their successors, assigns, and designees, the City, and the SSD 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 any water bodies and wetlands within Daybreak, in order to (a) temporarily flood and back water upon and maintain water over such portions of Daybreak; (b) alter in any manner and generally maintain any water bodies and wetlands within Daybreak; 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 heavy rainfall or other natural occurrences.

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

Certain facilities and areas within Daybreak which the Council owns or for which it has responsibility may be made available for use and enjoyment of the public. Such facilities and areas may include, by way of example: trails and paths; greenbelts; parks and other spots conducive to gathering and interaction; ball fields; lakes; dog parks; skate parks; roads; sidewalks; and medians. The Founder may designate such facilities and areas as open to the public at the time the Founder makes such facilities and areas a part of the Area of Council Responsibility, or the Directors may do so thereafter.

## **5.12. Transportation Systems Management.**

**(a) Responsibility and Authority.** The Council and the Residential Association are authorized to establish and implement programs, services, and activities designed to address transportation issues within Daybreak or to work in conjunction with the City, the SSD or any other governmental or charitable entity to address transportation issues for the region. Such authority may include, but need not be limited to, a public transit system that includes (i) a transit station; (ii) connections with public transportation systems serving points outside Daybreak; (iii) use of alternative fuel and electric vehicles; and (iv) organizing and promoting such activities as van pools, ridesharing, and the use of bicycle and pedestrian trails and paths (hereafter generally referred to as the "Transportation System"). The Founder, the Council, or the Residential Association may establish committees, create subsidiary entities, or contract with third parties for the operation and administration of the Transportation System.

**(b) Funding of Operation and Maintenance.** The costs of operating and maintaining the Transportation System shall be funded by the imposition of user fees for the use of any component, other than bicycle and pedestrian trails or paths, of the Transportation System; by payments from the Residential Association; by grants and contributions; and, in part, by funds the Founder may provide from time to time. The Founder and the Council may seek subsidies or contributions from private or public sources to reduce costs. The Founder, the Council, or their assigns shall be authorized to enter into commercially reasonable agreements with any Person to operate all or any portion of the Transportation System on a commercial basis.

## **5.13. Environmental Preservation**

The Council, in cooperation with the Residential Association or the Village Association, is

authorized to promote Sustainable Development programs which may include, without limitation, education and instruction of environmentally friendly construction techniques to preserve the natural resources, ecosystem, and beauty of the Salt Lake Valley area for the use and enjoyment of current and future owners, residents, and visitors. The Council may promote sustainable building design and construction techniques that respond to energy conservation and environmental quality considerations such as light pollution, air emissions, energy consumption, and runoff water quality.

## **5.14. Recycling Programs**

The Council, in cooperation with the Residential Association, 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 which the recycling program or center is set up to accommodate. The Residential Association or the Council 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 new programs.

## **5.15. Alternative Fuel and Electric Vehicles**

The Council, in the furtherance of its duties under this Covenant, may support the use of alternative fuel and electric vehicles through the purchasing or leasing of such vehicles for use for Council 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.

### 5.16. Amendments to this Covenant

The Founder may amend this Covenant unilaterally for any purpose during the Founder Control Period, as defined in the Charter.

In addition, the Founder may amend this Covenant unilaterally at any time 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 any portion of the property subject to this Covenant; (c) to permit any institutional or governmental lender, purchaser, guarantor, or insurer of mortgage loans to make, purchase, guarantee, or insure mortgage loans; or (d) to satisfy the requirements of any local, state, or federal governmental agency.

In addition, for so long as the Founder has authority under the Council By-Laws to appoint the Directors, the Founder may unilaterally terminate this Covenant and dissolve the Council.

Further, for a period of 30 years after this Covenant is recorded, if the Founder or a Founder Affiliate owns any property described in Exhibit "A" or "B," the Founder may unilaterally amend this Covenant for any other purpose, provided such amendment has no material adverse effect upon any right, privilege, or protection specifically granted to more than 2% of owners hereunder without the consent of the affected owner(s).

In addition, except as otherwise specifically provided herein, this Covenant may be amended upon the affirmative vote or written consent, or any combination thereof, of at least 75% of the Directors, with the Founder's consent so long as the Founder or a Founder Affiliate owns any property described in Exhibit "A" or "B," provided that no amendment may remove, revoke, increase, decrease, or modify any property owners association within Daybreak right, privilege,

or obligation without the property owners association's written consent.

Notwithstanding anything to the contrary herein, Exhibit "C" may be amended only upon the Directors' unanimous approval, the approval of any owner not subject to a Daybreak property owners association's jurisdiction whose allocation of liability for assessments would increase as a result of such amendment, and the approval of the Founder, so long as the Founder or a Founder Affiliate owns any property described in Exhibit "A" or "B."

Amendments to this Covenant are effective upon recordation unless a later effective date is specified. Any procedural challenge to an amendment must be made within six months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provision of this Covenant.

### 5.17. The Covenant's Duration

(a) Unless terminated in the manner as provided in this Section, this Covenant shall have perpetual duration. If Utah law limits the period during which covenants may run with the land, then to the extent consistent with such law, this Covenant shall automatically be extended at the expiration of such period for successive 10-year periods, unless terminated as provided below. Notwithstanding the above, if any provision of this Covenant would be unlawful, void, or voidable by reason of any Utah law restricting the period of time that covenants on the land may be enforced, such provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise required by Utah law, this Covenant may not be terminated except by a recorded instrument approved by the Directors; provided, the Founder's consent also is required for so long as the Founder or a Founder Affiliate owns property described in Exhibit "A" or "B."

Any such instrument shall set forth the intent to terminate this Covenant.

**NOTES AND THOUGHTS**

## **Chapter 6**

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### **Telecommunity**

#### **6.1. Establishment and Management of the Telecommunity System**

Daybreak may be served by one or more central telecommunication receiving and distribution systems, including associated infrastructure, equipment, hardware, and software, which may provide or otherwise make available to Owners and occupants of Units various telecommunication services. Such services may include, without limitation, cable television, high-speed data/Internet/intranet services, community website, and security monitoring (generally, the "Community System(s)" or "System(s)").

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

#### **6.2. Founder's Right to Install Telecommunity System**

The Founder reserves for itself, its affiliates, successors, and assigns a perpetual right and easement to install and operate within Daybreak such Community Systems as the Founder, in its discretion, deems appropriate to service the buildings and the structures within any Unit or other 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 Daybreak area, and 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.

#### **6.3. Council's Authority to Provide the Telecommunity System**

In addition, the Council may enter into contracts, including bulk rate service agreements, with providers of Community Systems components and with other Persons for the maintenance, management, administration, upgrading, modification, and operation of the Systems. The Council's expenses in connection with any contracts for any Community System component or service shall be a Council Expense to be included in the Budget; provided, if particular or additional services or benefits are provided to particular Units, the benefited Owner(s) of the Unit shall pay the service provider directly for such services, or the Council may assess and collect the costs against the Unit as provided in Chapter 2 of this Covenant.

The terms of any Council contract for Community Systems may obligate individual Owners or occupants to execute subscription agreements or other contracts directly with the Persons providing System components or services prior to gaining access to the System, or in the alternative, the Council may execute a subscription agreement or contract for any Community System on behalf of all Owners. Such subscription agreements or other contracts may contain terms and conditions relating to use and access to the Community Systems which, if violated by the Owner or occupant of a Unit, may result in Community System services to such Owner or occupant's Unit being terminated by the System provider or by the Council. The termination of service for such a violation shall not relieve an Owner of the continuing obligation to pay that portion of assessments or other Council charges pertaining to the Community Systems.

The Council shall have no obligation to utilize any particular provider or providers; provided, except for cause (as defined under a written agreement with the provider), the Council may not, without Founder's consent, terminate or refuse to renew any contract entered into during the time the Founder appoints a majority of the Directors as set fourth in the Council's By-Laws.

*Don't let the fear of striking out hold you  
back.*

*Babe Ruth*

#### NOTES AND THOUGHTS

IN WITNESS WHEREOF, the undersigned Founder has executed this Covenant 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]  **STEPHANIE SANT**  
NOTARY PUBLIC • STATE of UTAH  
5295 SOUTH 300 WEST STE 475  
MURRAY UT 84107  
COMMISSION EXPIRES: 03-17-2007

[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 Mahor  
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

## INDEX OF DEFINED TERMS

Annual Assessment, 8	Covenant, 1
Area of Council Responsibility, 19	Declaration, 5
Builder, 4	Directors, 11
Charter, 5	Founder, 1
City, 1	Non-Residential Unit, 3
Code, 16	Owner, 4
Community Enhancement Fees, 7	Residential Association, 5
Community Extension Agent or CEA, 11	Residential Unit, 3
Community System or System, 24	SSD, 17
Council, 2	Supplement, 9
Council Expenses, 6	Unit, 3
Council Property, 19	Village Association, 5
County, 9	Youth Board, 12

**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"

### Additional Property

#### Land Subject to the Master Plan and Annexation

##### Specific Expansion Area:

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

BEGINNING at a Salt Lake County monument marking the Northwest corner of said Section 13; thence North 89°57'24" East along the north line of said Section for 2699.959 feet to a Salt Lake County monument marking the North quarter corner of said Section 13; thence continuing along said north line North 89°57'36" East for 2666.551 feet to a point marking the northwest corner of a parcel described in that certain Quit Claim deed recorded in Book 6833 at Page 52, from which a Salt Lake County monument marking the Northeast corner of said Section 13 bears North 89°57'36" East – 33.000 feet; thence along the west and south lines of said parcel the following two (2) calls: (1) South 00°15'56" West for 33.000 feet; (2) thence North 89°57'36" East intersecting the east line of said Section 13 at 33.000 feet and continuing on along the south line of said parcel for a total of 33.178 feet; thence North 89°57'12" East parallel to and 33.00 feet perpendicular south of the north line of Section 18, Township 3 South, Range 1 West and along the south right of way of 10200 South for 2574.761 feet to an angle point; thence continuing parallel with said north line and along the said south right of way North 89°58'34" East for 278.761 feet to a point of intersection with the south right of way of 10200 South and an extension of the west line of the property conveyed to Oquirrh Shadows, L.C. as recorded in Book 8221 at Page 869; thence South 23°56'44" East passing the northwest corner of said property at 0.591 feet and continuing along the west line of said property for a total of 634.361 feet to an angle point; thence continuing along said west line South 29°39'04" East for 1012.874 feet to the northeast corner of a parcel conveyed to South Jordan City, recorded in Book 8401 at Page 5930; thence along the perimeter of said South Jordan City property the following four (4) calls: (1) South 60°20'55" West for 360.045 feet; (2) thence South 29°39'05" East for 496.250 feet; (3) thence North 33°11'06" East for 98.140; (4) thence with a curve to the right, having a radius of 1653.000 feet, a central angle of 10°12'46" (chord bearing and distance of North 38°17'57" East –294.249 feet) and for an arc distance of 294.639 feet, said point being the southwest corner of South Jordan City and lying on the north right of way of 10400 South Street, said point also lying on the west line of said Oquirrh Shadows property, thence South 29°39'04" East along said west line for 2916.402 feet to the southeast corner of said Oquirrh Shadows property, said point also lying on the east line of said Section 18; thence South 00°07'15" East along said east line for 967.184 feet to a Salt Lake County monument marking the northeast corner of Section 19; thence South 00°07'47" East along the west line of said Section 19 for 1326.083 feet; 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.

**General Expansion Area:**

In addition to the above, as the owner or with the written consent of the owner, the Founder may also submit to the terms of the Covenant any real property situated within 15 miles of the perimeter boundaries of that certain development known as Daybreak, the first phase of which is described on the foregoing Exhibit "A" or this Exhibit "B."

**Note to clerk and title examiners:**

**This Covenant 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 5.**

## EXHIBIT "C"

### Assessment Allocation Formula

**Determination of Equivalent Units.** The allocation of Annual Assessments under the Covenant shall be based upon "Equivalent Units." Each land use classification shall be assigned Equivalent Units. In the event that the land use classification for a particular property is not apparent, the Founder's determination shall be controlling. The total number of Equivalent Units assigned to a land use shall be determined as follows:

Land Use Classification	Equivalent Units
Non-Residential Units prior to completion of construction of primary structure intended for non-residential use on the Non-Residential Unit*	1.0 per Non-Residential Unit
Non-Residential Units upon completion of primary structure intended for non-residential use on Non-Residential Units <ul style="list-style-type: none"><li>• General retail, commercial business, or restaurant (for each square foot of gross floor area**)</li></ul>	.00025
Non-Residential Units upon completion of primary structure intended for non-residential use on Non-Residential Unit <ul style="list-style-type: none"><li>• Multi-family rental apartments (per apartment unit)</li></ul>	0.25
Exempt Property	0

\* "Completion of construction" shall be evidenced by the issuance of a certificate of occupancy or such other certificate or instrument as may be issued to evidence completion of construction on a Non-Residential Unit, or by the commencement of non-residential activities intended for such Non-Residential Unit in the structure or improvement (as the Founder shall determine in its discretion), whichever first occurs.

\*\* "Gross floor area" shall be the area within an enclosed structure of a commercial building intended for occupancy and for which an occupancy permit has been issued, but shall not include parking lots or parking garages.

The Founder shall initially determine the land use classification for a parcel of land prior to commencement of assessments and provide notice thereof to the Board. During the Development and Sale Period, as defined in the Charter, the Founder may unilaterally may change a land use classification for a Unit or amend this Exhibit "C" to create additional land use classifications or to change the Equivalent Units assigned to any particular classification; provided, any such amendment must be based upon a showing of reasonable justification.

**Determination of Annual Assessment.** The Board shall compute the Equivalent Units annually and shall levy the Annual Assessment provided for in the Covenant against each Non-Residential Unit based upon the following formula:

Equivalent Units Assigned to a  
Non-Residential Unit

\_\_\_\_\_

X Budget (\$) = Annual Assessment

Total Equivalent Units Assigned to all  
Non-Residential Units subject to  
Annual Assessment

**EXHIBIT "D"**

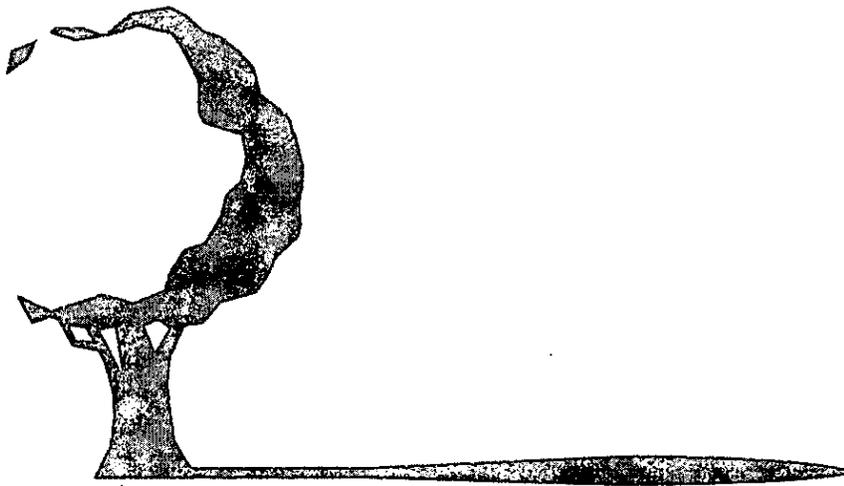
**Council By-Laws**

EXHIBIT "D"

BY-LAWS

OF

DAYBREAK COMMUNITY COUNCIL, INC.



D A Y B R E A K

*Planned for people*

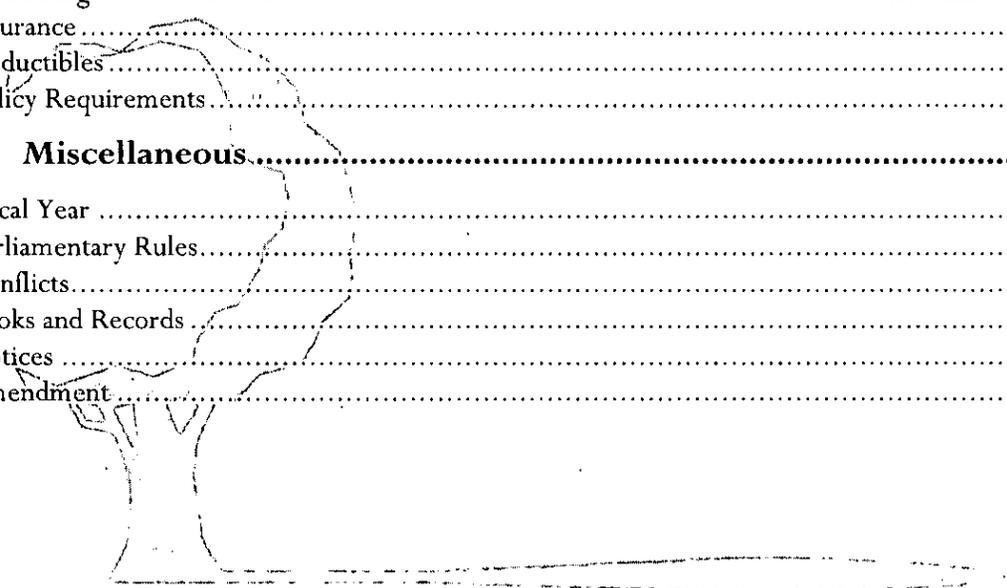
# TABLE OF CONTENTS -

Page

<b>Chapter 1</b>	<b>Name, Principal Office, and Definitions</b>	<b>1</b>
1.1.	Name	1
1.2.	Principal Office	1
1.3.	Definitions	1
<b>Chapter 2</b>	<b>Community Council Mission</b>	<b>2</b>
<b>Chapter 3</b>	<b>Administration of the Community Council</b>	<b>3</b>
3.1.	Management	3
3.2.	Community-Wide Meetings	3
3.3.	Special Meetings	3
<b>Chapter 4</b>	<b>Directors: Number, Meetings, Powers</b>	<b>4</b>
A.	Composition and Selection	4
4.1.	Number of Directors	4
4.2.	Selection of Directors; Term of Office	4
4.3.	Resignation and Removal of Directors; Vacancies	4
B.	Meetings	5
4.4.	Organizational Meetings	5
4.5.	Regular Meetings	5
4.6.	Special Meetings	5
4.7.	Quorum of Directors	5
4.8.	Compensation	5
4.9.	Conduct of Meetings	5
4.10.	Action Without a Formal Meeting	6
4.11.	Electronic Participation	6
C.	Powers and Duties	6
4.12.	Powers	6
4.13.	Duties	6
<b>Chapter 5</b>	<b>Officers</b>	<b>8</b>
5.1.	Officers	8
5.2.	Election and Term of Office	8
5.3.	Removal and Vacancies	8
5.4.	Powers and Duties	8
5.5.	Resignation	8
5.6.	Agreements, Contracts, Deeds, Leases, Checks, Etc.	8
5.7.	Compensation	9

**TABLE OF CONTENTS -  
(CONTINUED)**

	<b>Page</b>
<b>Chapter 6 Management and Administration .....</b>	<b>9</b>
6.1. Liability and Indemnification .....	9
6.2. Standards of Conduct; Business Judgment .....	9
6.3. Training Seminar .....	11
6.4. Conflicts of Interest .....	11
6.5. Management .....	11
6.6. Right to Contract .....	12
6.7. Right to Appoint Committees .....	12
6.8. Limitation on Community Council Authority .....	12
<b>Chapter 7 Accounting and Insurance .....</b>	<b>13</b>
7.1. Accounts and Reports .....	13
7.2. Borrowing .....	13
7.3. Insurance .....	13
7.4. Deductibles .....	14
7.5. Policy Requirements .....	14
<b>Chapter 8 Miscellaneous .....</b>	<b>16</b>
8.1. Fiscal Year .....	16
8.2. Parliamentary Rules .....	16
8.3. Conflicts .....	16
8.4. Books and Records .....	16
8.5. Notices .....	16
8.6. Amendment .....	17



**BY-LAWS**

**OF**

**DAYBREAK COMMUNITY COUNCIL**

**Chapter 1**

**Name, Principal Office, and Definitions**

*Any powerful idea is absolutely fascinating-and absolutely useless unless we choose to use it.  
Richard Bach*

**1.1. Name**

The name of the corporation shall be Daybreak Community Council, Inc. ("**Community Council**").

**1.2. Principal Office**

The Community Council's principal office shall be located in Salt Lake County, Utah. It may have such other offices, either within or outside Salt Lake County, as the Community Council's Board of Directors may determine, or as the Community Council's affairs may require.

**1.3. Definitions**

The words used in these By-Laws shall have their normal, commonly understood definitions unless otherwise specified. Unless the context indicates otherwise, capitalized terms shall have the same meaning as set forth in the Covenant for Community for Daybreak ("**Covenant**") recorded in the official records of Salt Lake County.

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 and have no legal or binding effect.

NOTES AND THOUGHTS

## Chapter 2

### Community Council Mission

---

*Our problem is not to find better values but to be faithful to those we profess.*  
*John W. Gardner*

The Community Council is organized for such purposes as are set forth in its Articles of Incorporation and in the Covenant.

and caring community committed to service, inclusiveness, lifelong learning, and well being.

The mission of the Daybreak Community Council is to foster the development of a vibrant

#### NOTES AND THOUGHTS

## Chapter 3

# Administration of the Community Council

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

*Moliere*

### 3.1. Management

The Community Council shall have no members. The board of directors selected pursuant to Chapter 4 (the "**Board**") shall manage the Community Council's affairs in accordance with these By-Laws and the Covenant.

### 3.2. Community-Wide Meetings

From time to time, the Board may call meetings of the owners, occupants, and other parties interested and involved in Daybreak. The Board shall set the time, place, and agenda for such meetings. They also shall communicate notice of the meetings by (a) posting in a conspicuous location or locations within Daybreak; (b) publishing in a newspaper or community newsletter; (c) posting on a community cable channel or intranet or Internet website generally known to the Daybreak owners and occupants; or (d) similar means to which the owners, occupants, and other parties interested and involved in Daybreak could reasonably be expected to have access.

Such notice shall be given, published, or posted not less than 10 nor more than 50 days

prior to the meeting date. If notice is to be given through publication in a newspaper, the notice shall be published three separate times not less than 10 or more than 60 days prior to the meeting date. Participation in discussions during community-wide meetings shall be subject to reasonable regulation by the Board.

### 3.3. Special Meetings

The Board shall call a special community-wide meeting:

(a) if a majority of a quorum of the Directors so directs by resolution; or

(b) if the board of directors of the Daybreak Community Association, Inc. ("**Association**") requests such a meeting; or

(c) upon petition of the owners of at least 25% of the Units.

The notice of any special meeting shall be given as provided in Section 3.2. No business shall be transacted at a special meeting except as stated in the notice.

NOTES AND THOUGHTS

## Chapter 4

### Directors: Number, Meetings, Powers

*Democracy's the worst form of government except for all the others.*  
*Sir Winston Churchill*

#### A. Composition and Selection

##### 4.1. Number of Directors

The initial Directors shall consist of the three individuals (each a "Director") identified in the Articles of Incorporation. Each Director shall have one equal vote. During the time that the Founder is authorized to appoint Directors as provided in Section 4.2, there shall be at least three and no more than seven Directors, as the Founder may determine. After termination of the Founder's right to appoint Directors, the Directors shall be appointed as described in Section 4.2.

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

The Founder is authorized to appoint the Directors until termination of the Founder Control Period, as that term is defined in the Community Charter for Daybreak (the "Charter"). The terms of the initial Directors shall be staggered, with two of the initial Directors serving three-year terms and one of the initial Directors serving a two-year term, as they among themselves determine. During the Founder Control Period, upon the termination of the term of office of any Director, the Founder shall appoint a successor to serve a two-year term.

Upon termination of the Founder Control Period, the terms of the then existing Directors shall terminate, and the Board of Directors shall be expanded to include seven Directors.

The initial Board of Directors following termination of the Founder Control Period shall

be appointed by the Founder. Four of the seven Directors appointed by the Founder shall serve three-year terms and three of the seven Directors appointed by the Founder shall serve two-year terms, as they among themselves determine.

Following termination of the Founder Control Period, upon the termination of office of any Director, the remaining Directors shall appoint a successor Director. The successor Director shall serve a two-year term. A Director may serve any number of consecutive terms.

##### 4.3. Resignation and Removal of Directors; Vacancies

Any Director may resign at any time by giving written notice to the Directors, the President, or the Secretary. Such resignation shall take effect on the date such notice is received or at a later time specified in the notice. Acceptance of such resignation shall not be necessary to make it effective.

Any Director may be removed, with or without cause, and any vacancy may be filled for the unexpired portion of the term of a Director who has been removed or vacated such position, upon a majority vote of the other Directors or by the Founder, so long as the Founder or a Founder Affiliate continues to own any property described in Exhibit "A" or "B" to the Covenant, or holds a beneficial interest under a trust agreement in any property described in Exhibit "A" or "B" to the Covenant.

## **B. Meetings**

### **4.4. Organizational Meetings**

The first meeting of the Directors shall be held within 90 days following the date the Community Council's Articles of Incorporation are filed with the Division of Corporations and Commercial Code of the State of Utah at such time and place as the Directors shall fix.

### **4.5. Regular Meetings**

Regular Directors meetings may be held at such time and place as a majority of the Directors determine from time to time; however, at least four meetings shall be held during each fiscal year with at least one meeting each fiscal quarter.

### **4.6. Special Meetings**

When called by written notice signed by the President, Vice President, or any two Directors, the Directors shall hold a special meeting. The Secretary shall prepare and distribute written notice of any special meetings specifying the time and place of the meeting and the nature of any special business to be considered.

### **4.7. Quorum of Directors**

At all Directors meetings, a majority of the Directors shall constitute a quorum for transacting business, and votes of a majority of the Directors present shall constitute the Directors' decision. If a quorum is present, the Directors may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

If any Directors meeting cannot be held because a quorum is not present, a majority of the Directors who are present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the scheduled date of the original meeting. At the reconvened

meeting, if a quorum is present, any business that could have been transacted at the originally called meeting may be transacted without further notice.

### **4.8. Compensation**

Directors shall not receive any compensation for acting as such unless a majority of the Directors consents in writing, excluding the Director whose compensation is in question. A Director may receive reimbursement for expenses incurred on the Community Council's behalf upon approval of a majority of the other Directors.

Nothing herein shall prohibit the Community Council from compensating a Director, or any entity with which a Director is affiliated, for services or supplies furnished to the Community Council in a capacity other than as a Director pursuant to a contract or agreement with the Community Council. However, such Director must make his or her interest known to the Directors prior to entering into such contract, and a majority of Directors other than the interested Director must approve such contract.

### **4.9. Conduct of Meetings**

The President shall preside over all Directors meetings, and the Secretary shall keep a minute book of Directors meetings, recording all Directors resolutions and all transactions and proceedings occurring at such meetings.

Directors meetings shall be open to the Founder, all Daybreak residents, and all directors, officers, and authorized representatives of the Association. Non-Directors may not participate in any discussion or deliberation unless a Director requests and is granted permission for the attendee to speak. In such case, the President may limit the time any individual may speak.

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

(a) employment or personnel matters for employees of the Directors or Community Council;

(b) legal advice from an attorney for the Directors or Community Council;

(c) pending or contemplated litigation; and/or

(d) pending or contemplated matters relating to enforcement of the Community Council's documents or rules.

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

Any action taken or which may be taken at a Directors meeting may be taken without a meeting if all Directors sign a consent setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote.

#### **4.11. Electronic Participation**

One or more Directors may participate in and vote during any regular or special Directors meeting by telephone conference call, fiber optics, or similar audio or video communication equipment by means of which all persons participating in the meeting can hear each other at the same time. Those Directors so participating shall be deemed present at such meeting for all purposes including determining a quorum.

### **C. Powers and Duties**

#### **4.12. Powers**

The Directors shall have all the powers that Utah law provides for nonprofit corporations and

those necessary to administer the Community Council's affairs and to perform the Community Council's responsibilities and to exercise its rights as set forth in these By-Laws, the Covenant, and the Community Council's Articles of Incorporation.

For purposes of illustration but not limitation, the Directors shall have the power to:

(a) provide for activities, services, and programs designed to further the Community Council's mission as set forth in these By-Laws;

(b) impose reasonable conditions, limitations, and requirements and/or charge reasonable admission, use, or consumption fees for the use and enjoyment by Daybreak residents of the various services and programs provided by or through the Community Council and for the use and enjoyment of any of the Areas of Community Council Responsibility; and

(c) enforce the provisions of these By-Laws, the Covenant, and the Community Council's Articles of Incorporation and the rules and regulations of the Community Council, and bring any proceedings concerning the Community Council.

#### **4.13. Duties**

The Directors' duties shall include those imposed by law, as set forth in the Covenant for Community for Daybreak, and, without limitation:

(a) overseeing the preparation of and adopting annual budgets for Community Council Expenses;

(b) levying annual assessments against non-residential units, community enhancement fees, and other user fees to pay for Community Council Expenses, and establishing the means and method of collecting such payments as set forth in

these By-Laws, the Covenant, and the Community Council's Articles of Incorporation;

(c) making available to any owner, mortgagee, or prospective purchaser of property in Daybreak, copies of these By-Laws, the Covenant, and the Community Council's Articles of Incorporation, and rules the Directors

promulgate. The Directors may establish and charge fees to cover the Community Council's printing and mailing costs; and

(d) cooperating with the Association and fulfilling its responsibilities under the Covenant.

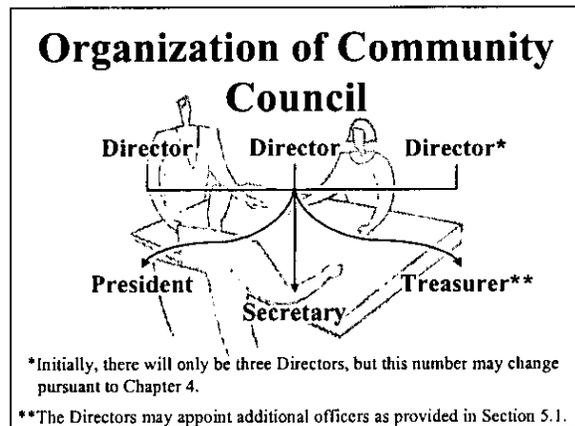
#### NOTES AND THOUGHTS

## Chapter 5 Officers

*Only those who dare to fail greatly will achieve greatly.*  
*Robert F. Kennedy*

### 5.1. Officers

The Community Council officers shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Directors. The Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties the Directors prescribe.



### 5.2. Election and Term of Office

The Directors shall elect the Community Council officers at such times as it deems appropriate or when a position becomes vacant. Officers may serve terms of such length as the Directors may designate, but not to exceed two years.

### 5.3. Removal and Vacancies

Whenever in its judgment the Community Council's best interests will be served, the Directors may remove any officer and may fill any vacancy in any office arising because of death,

resignation, removal, or otherwise for the unexpired portion of the term.

### 5.4. Powers and Duties

Community Council officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time specifically be conferred or imposed by the Directors. The President shall be the Community Council's chief executive officer. The Secretary shall be responsible for ensuring that the minutes of all Directors and committee meetings are kept and shall have charge of such books and papers as the Directors may direct. The Treasurer shall be primarily responsible for preparing the budget of Community Council Expenses but may rely upon accounting or other professionals in the process of doing so.

### 5.5. Resignation

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

### 5.6. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks, and other instruments of the Community Council shall be executed by the President, Secretary, or Treasurer, or by such other person or persons as the Directors may designate by resolution.

## 5.7. Compensation

Compensation of officers shall be subject to the same limitations as compensation of Directors under Section 4.8.

NOTES AND THOUGHTS

## Chapter 6

# Management and Administration

*Good thoughts are no better than good dreams if you don't follow through.*  
*Ralph Waldo Emerson*

### 6.1. Liability and Indemnification

To the fullest extent that Utah law, as amended from time to time, permits, the Community Council shall indemnify, hold harmless, and defend the Founder (and its members, agents, and employees), every Community Council officer, Director (in their capacity as such), and every committee member for, from, and against all damages and expenses, including attorneys fees, reasonably incurred in connection with any action, suit, or other proceeding brought against them (including any settlement thereof, if approved by the Directors). This right to indemnification shall not be exclusive of any other rights to which any present or former officer or Director may be entitled. As a Community Council Expense, the Community Council shall maintain adequate general liability and directors and officers liability insurance to fund this obligation as provided in Section 7.3.

### 6.2. Standards of Conduct; Business Judgment

In performing their duties, Directors and officers are subject to insulation from liability as provided for Directors, directors, and officers of corporations by Utah law and as otherwise provided by these By-Laws, the Covenant, and the Community Council's Articles of Incorporation. Directors shall exercise the ordinary and reasonable care of Directors or directors of a corporation, subject to the business judgment rule.

As defined herein, a Director shall act in accordance with the business judgment rule so long as the Director:

(a) acts within the expressed or implied scope of these By-Laws, the Covenant, and the Community Council's Articles of Incorporation and his or her actions are not *ultra vires*;

(b) affirmatively undertakes to make decisions which are necessary for the continued and successful operation of the Community Council and, when decisions are made, they are made on an informed basis;

(c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in such decisions and actions; and

(d) acts in a non-fraudulent manner and without reckless indifference to the Community Council's affairs.

A Director acting in accordance with the business judgment rule shall be protected from personal liability. Unless these By-Laws, the Covenant, and the Community Council's Articles of Incorporation require that specific action be taken, the failure to take specific action shall not, without further showing of a violation under the business judgment rule, be deemed a violation of a Director's duty.

The Directors' determinations of the meaning, scope, and application of By-Laws, the Covenant, and the Community Council's Articles of Incorporation provisions shall be upheld and enforced so long as such determinations are reasonable. The Directors shall exercise their power in a fair, nondiscriminatory manner and shall adhere to the procedures established in these

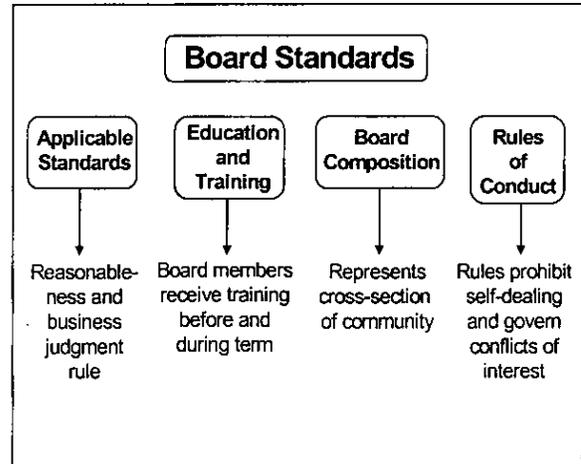
By-Laws, the Covenant, and Community Council's Articles of Incorporation.

### 6.3. Training Seminar

In cooperation with or independent of the Association's board, the Directors shall provide for seminars and continuing educational opportunities designed to educate and inform Directors and officers of their responsibilities as such. Such programs shall include instruction on applicable Utah corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing these By-Laws, the Covenant, and Community Council's Articles of Incorporation. The Directors may retain industry professionals, which may include attorneys and accountants, as appropriate or necessary for such purpose. Each newly elected Director and officer shall complete a training seminar within the first six months of assuming such position.

### 6.4. Conflicts of Interest

Unless otherwise approved by a majority of the other Directors, no Director or officer may transact business with the Community Council or the Association, or any Community Council or Association contractor, during his or her term as Director or officer or within two years after the term expires. A Director or officer shall promptly disclose in writing to the Directors any actual or potential conflict of interest relative to his or her performance as a Director or officer. A Director's or officer's failure to make such disclosure shall be grounds for removal by a majority vote of the other Directors. The Directors may void any contract that creates a prohibited conflict of interest.



Notwithstanding the above, the Directors the Founder appoints may be employed by or otherwise transact business with the Founder or any Founder Affiliate, and the Founder may transact business with the Community Council, the Association, or their contractors.

### 6.5. Management

The Community Council may employ professional management agents, at such compensation as the Directors may establish, to perform such duties and services, as the Directors shall authorize. Subject to the Directors' supervision, the Directors may delegate to the agent or agents such powers as are necessary to perform its assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 4.13. The Board may employ the Founder or a Founder Affiliate as managing agent or manager. Any Person to whom the Board delegates its powers relating to collection, deposit, transfer, or disbursement of Council funds shall maintain fidelity insurance coverage or a bond in an amount not less than \$50,000.00 or such higher as the Board may require.

The Directors may delegate to any single Director the authority to act on their behalf on all matters relating to any agent's duties that arise between Directors meetings.

The Directors may not terminate any agency contract, or retain a new agent, without the Founder's approval for so long as the Founder or a Founder Affiliate owns, or has a beneficial interest in, or the contractual right to acquire, property within Daybreak. Any such contract may, among other things, authorize action as the Community Council's agent with respect to the expenditure of Community Council funds within the scope of the approved Community Council budget; however, the agent shall not be permitted to spend money in excess of the budget or reallocate greater than 10% of any budget line item without the Directors' prior approval.

#### **6.6. Right to Contract**

The Community Council 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, or covenants to share costs with a property owners association or any other entity within or outside Daybreak.

#### **6.7. Right to Appoint Committees**

The Directors may appoint such committees, as they deem appropriate to perform such tasks as the Directors may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. Unless otherwise specified in the resolution creating the committee, service on a committee shall be for a term of two years. The Directors shall have the right to disapprove or veto any committee

decision or action. Committees shall not have the authority contractually to bind the Community Council or to commit the Community Council financially or otherwise.

#### **6.8. Limitation on Community Council Authority**

The Association exists independently from the Community Council and is managed and administered in accordance with the Charter and the Association's other governing documents. Unless the Association otherwise specifically consents in writing, or unless specifically provided in the Charter, the Community Council has no authority to, and shall not (a) enforce the Charter or any Association rights; (b) maintain, improve, operate, or encumber Association-owned or administered property; (c) act as the Association's agent or representative; (d) commit the Association to any contracts, obligations, or costs; (e) hire, terminate, direct, manage, or supervise any of the Association's employees or its managing agent; (f) solicit the Association's employees or agents to become the Community Council's employee or exclusive agent (provided, this shall not prevent the Community Council and the Association from being jointly managed); or (g) directly assess the owners or any neighborhood association directly or indirectly, except as otherwise specifically permitted under the Covenant or the Charter.

This Section is for the benefit of and shall be enforceable by the Association.

### **NOTES AND THOUGHTS**

## Chapter 7

# Accounting and Insurance

*Not everything that can be counted counts, and not everything that counts can be counted.*  
*Albert Einstein*

### 7.1. Accounts and Reports

The following management standards of performance shall be followed unless the Directors, by resolution, specifically determine otherwise:

(a) generally accepted accounting principles shall be employed;

(b) the Community Council's cash accounts shall not be commingled with any other accounts;

(c) no persons, on behalf of the Community Council, shall accept remuneration from vendors, independent contractors, or others providing goods or services to the Community Council, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Community Council;

(e) the Community Extension Agent (as defined in the Covenant for Community for Daybreak) or any other agent of the Community Council shall disclose promptly to the Directors any financial or other interest which he or she may have in any firm providing goods or services to the Community Council; and

(f) an annual report consisting of at least the following shall be made available for inspection by any interested party within 60 days after the close of the fiscal year: (i) a balance sheet showing actual receipts and expenditures; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as

the Directors determines, by an independent public accountant.

### **The Community Council's Annual Report**

**Contains the following:**

- a balance sheet showing actual receipts and expenditures
- an income statement
- a statement of changes in financial position for the fiscal year

The Community Council shall provide any interested party a copy of the annual financial report within 10 business days following receipt of a written request for access.

### 7.2. Borrowing

The Community Council shall have the power to borrow money for any legal purpose.

### 7.3. Insurance

Acting through its Directors or its duly authorized agent, the Community Council shall obtain and maintain in effect the following types of insurance, if reasonably available and affordable and to the extent the Directors deems reasonably necessary:

(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

(excluding land) on Community Council Property, if any. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies that the Community Council obtains shall have policy limits sufficient to cover the full replacement cost of the insured improvements (excluding land);

(b) Commercial general liability insurance for any property that the Community Council owns, controls, or maintains. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; however, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Community Council may obtain such additional coverage or limits;

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

(d) Directors and officers liability coverage;

(e) Fidelity insurance covering all persons responsible for handling Community Council funds in an amount determined in the Directors' business judgment but not less than an amount equal to one-quarter of the annual Community Enhancement Fees plus any additional reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation; and

(f) Such additional insurance as the Directors, in the exercise of their business judgment, determines advisable, which may include, without limitation, flood insurance, boiler and machinery insurance, and building ordinance coverage. The Community Council's insurance policies may contain a reasonable deductible and shall provide a waiver of

subrogation against any Owner or household member of any Owner.

#### 7.4. Deductibles

The Community Council'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 7.3.

#### 7.5. Policy Requirements

All Community Council policies shall provide for a certificate of insurance to be furnished to the Community Council.

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

(a) be written with a company authorized to do business in Utah;

(b) be written in the name of the Community Council 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 Community Council;

(c) contain an inflation guard endorsement;

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

In addition, the Board shall use reasonable efforts to secure insurance policies that provide:

(a) a waiver of subrogation as to any claims against the Community Council'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 requiring at least 30 days' prior written notice to the Community Council of any cancellation, substantial modification, or non-renewal;

(d) a cross liability provision; and

(e) a provision vesting in the Board exclusive authority to adjust losses.

#### NOTES AND THOUGHTS

## Chapter 8

### Miscellaneous

*We find no real satisfaction or happiness in life without obstacles to conquer and goals to achieve.*  
*Dr. Maxwell Maltz*

#### 8.1. Fiscal Year

The Directors shall set the Community Council's fiscal year by resolution at the initial meeting of the Community Council. In the absence of a resolution, the fiscal year shall be the calendar year.

#### 8.2. Parliamentary Rules

Except as may be modified by the Directors, *Robert's Rules of Order* (current edition) shall govern the conduct of Community Council proceedings when not in conflict with Utah law, the Community Council's Articles of Incorporation, or these By-Laws.

#### 8.3. Conflicts

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

#### 8.4. Books and Records

(a) *Inspection by Owners and Mortgagees.* The Directors shall make the following available for inspection and copying by the Founder, any owner, mortgagee of a Unit, or the duly authorized representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in his or her property: the Community Council's Articles of Incorporation, the Covenant, and these By-Laws, including any amendments, Community Council rules, books of account, and the minutes

of Director meetings. The Community Council shall provide for such inspection to take place at the Community Council's office or at such other place as the Directors designate.

(b) *Rules for Inspection.* The Directors shall establish reasonable 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 copies of documents requested.

(c) *Inspection by Directors.* Every Director and the Founder shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Community Council and the physical properties the Community Council owns or controls. The right of inspection by a Director or the Founder includes the right to make a copy of relevant documents at the Community Council's expense.

#### 8.5. Notices

Unless otherwise authorized or provided in the Covenant, these By-Laws, or by law, all notices, demands, bills, statements, or other communications under the Covenant or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to an owner, at his or her address as designated in writing and filed with the Community Council's Secretary or, if no such address has been designated, at the address of the owner's property within Daybreak;

(b) if to the Association, to the address designated by the Association in writing to its Secretary, or if no such address has been designated, at the Association's principal office; and

(c) if to the Community Council, the Founder, Directors, or managing agent, at the Community Council's, the Founder's, Directors', or managing agent's principal office, or at such other address as shall be designated by notice in writing.

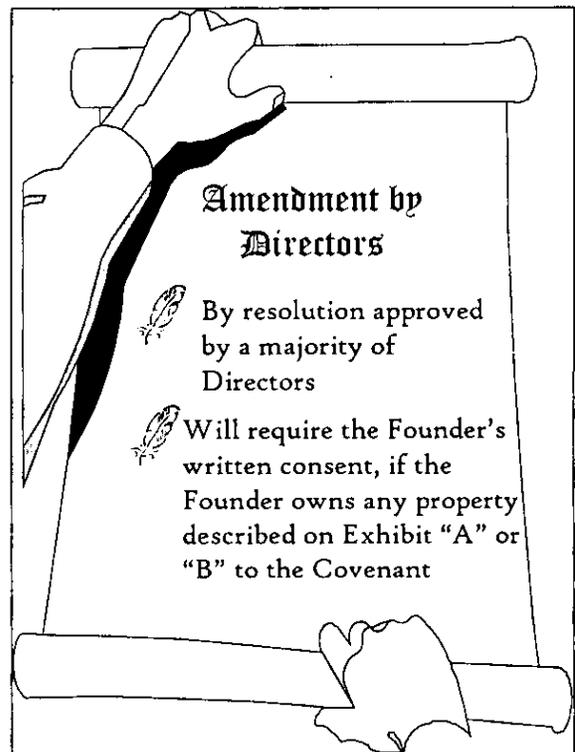
Alternatively, all such notices may be sent by means of facsimile or other electronic communication with confirmation of receipt. Such notice shall be deemed delivered upon transmission and confirmation of receipt.

Except for emergency meetings, notice of each Directors meeting shall be communicated to Daybreak residents by posting in a conspicuous location or locations within Daybreak, publishing in a newspaper or community newsletter, or posting on a community cable channel or intranet or internet website generally known to Daybreak owners and occupants, or by similar means to which the owners and occupants could reasonably be expected to have access. As an alternative to providing separate notice for each meeting, the Directors may post or publish a schedule of upcoming, regular Directors meetings.

Transactions of any Directors meeting, however called and noticed or wherever held, shall be as valid as if taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each absent Director 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 meeting's purpose. Notice of a meeting also shall be deemed given to any Director who attends the meeting without protesting before or at its commencement about lack of adequate notice.

## 8.6. Amendment

So long as the Founder or a Founder Affiliate continues to own any property described in Exhibit "A" or "B" to the Covenant, or holds a beneficial interest under a trust agreement in Exhibit "A" or "B" to the Covenant, the Founder may unilaterally amend these By-Laws at any time if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (b) to enable any title insurance company to issue title insurance coverage; (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; (d) to enable any governmental agency or private insurance company to insure mortgage loans; or (e) to satisfy the requirements of any governmental agency.



Except as otherwise specifically provided herein, these By-Laws may also be amended upon a resolution approved by a majority of the Directors; however, any such amendment shall require the Founder's written consent for so long as the Founder or a Founder Affiliate owns any property described in Exhibit "A" or "B" to the Covenant or holds a beneficiary interest under a trust agreement in any property described in Exhibit "A" or "B" to the Covenant.

Amendments are effective upon recording. No amendment may remove, revoke, or modify any right or privilege of the Founder without the Founder's written consent or the assignee of such right or privilege. No amendment may remove, revoke, increase, or modify any Association right, privilege, or obligation without the Association's written consent.

#### NOTES AND THOUGHTS

**CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of the Daybreak Community Council, Inc., a Utah nonprofit corporation;

That the foregoing By-Laws constitute the original By-Laws of Daybreak Community Council, Inc., as duly adopted at a meeting of the Board of Directors held on the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Daybreak Community Council this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Secretary

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