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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DOWNTOWN DAYBREAK**

Parcel Nos. 26-24-101-008 through 26-24-101-012
26-24-101-015, 26-24-101-016, 26-24-101-017, and
26-24-101-019 through 26-24-101-036

Upon recording, please return to:

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<u>Exhibit</u>	<u>Subject Matter</u>
“A”	Land Initially Submitted
“B”	Land Subject to Annexation
“C”	Formula For Assessment and Voting Rights
“D”	Ballpark Site

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DOWNTOWN DAYBREAK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR DOWNTOWN DAYBREAK (this "Declaration") is made as of the date set forth on the signature page hereof by DTDB OPERATIONS, LLC, a Utah limited liability company (the "Declarant").

The Declarant is the owner of the real property described on Exhibit "A," attached hereto and incorporated herein (or if Declarant is not the owner, such owner has consented to this Declaration). This Declaration imposes upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of the Owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance, operation, and preservation of the Properties, and for the maintenance of sidewalks, streets, street lights, storm water drainage and retention areas and Improvements, Open Spaces, landscaping, and other Common Areas and Improvements located on the Properties. In furtherance of such plan, this Declaration provides for the creation of Downtown Daybreak Owners Association, Inc. to own, operate and maintain Common Areas and to administer and enforce the provisions of the Governing Documents (capitalized terms are defined in Article 1 below).

This Declaration sets forth the basic covenants, conditions and restrictions that will apply to Downtown Daybreak. One of the anticipated objectives of the Master Plan is to create a mixed-use community that remains flexible for future development. This Declaration is designed to help implement the Master Plan in order to, among other purposes, fulfill the following:

1. protect, enhance and preserve the values, amenities, desirability, and attractiveness of the Properties;
2. promote Downtown Daybreak as a well-integrated, high-quality community;
3. carry out the vision statement for and mission of Downtown Daybreak as set forth herein;
4. promote synergies between the Ballpark and the remainder of the development;
4. provide for design standards and architectural guidelines that respect the vernacular of the region;
5. preserve and protect the natural habitat and Open Spaces;
6. encourage, creative and innovative land planning that is sensitive to sustainable community formation and existing environmental conditions; and
7. establish a procedure for the continued maintenance and operation of Common Areas, Exclusive Common Areas, Open Spaces, and Area of Common Responsibility, including any Improvements located therein, in a cost-effective and administratively efficient manner.

It is contemplated that the Properties will be developed as a mixed use commercial development comprised of the Ballpark and various office, retail, hotel, hospitality, multifamily, recreational, entertainment, institutional, service, and other permitted uses allowed under the Zoning Conditions with

public and private streets, sidewalks, street lights, Open Spaces, storm water drainage and retention areas, and other Common Areas and Improvements for the benefit of the Owners of Building Sites and Units made subject to the terms of this Declaration.

Declarant hereby declares that all of the property described in Exhibit "A" and any Additional Property subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner of any portion of the Properties.

This document does not and is not intended to create a condominium within the meaning of the Utah Condominium Ownership Act, Utah Code Section 57-8-1, et seq. nor a community association within the meaning of the Utah Community Association Act, Utah Code Section 57-8a-101, et seq.

ARTICLE 1 **DEFINITIONS**

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. All references to "consent" or "approval" shall refer to permission or approval that, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required. All references to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power, right and discretion to decide or act and, unless otherwise expressly limited in the Governing Documents, a Person entitled to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction. Capitalized terms shall be defined as set forth below.

1.1 "Access and Parking Easement Agreement": Any agreement between Declarant or a Declarant-Related Entity and an Owner or Occupant of a Building Site or Unit with respect to the use, operation and maintenance of a Parking Facility.

1.2 "Additional Property": All of that certain real property that is more particularly depicted on Exhibit "B," attached and incorporated herein by this reference. Additional Property may be subjected to the terms of this Declaration in accordance with Article 7.

1.3 "Affiliate": Any corporation, partnership, limited liability company, sole proprietorship or other Person that directly or indirectly, through one or more intermediaries controls, is controlled by or is under common control with the Person with discretion that is specified. The terms "control," "controlled by," or "under common control" mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person.

1.4 "Applicable Law": Any law, regulation, rule, order, policy or ordinance of any governmental or quasi-governmental entity, now in effect or hereafter promulgated, that is applicable to all or any portion of Downtown Daybreak.

1.5 "Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, the Zoning Conditions or other applicable covenants, contracts, or agreements.

1.6 “Articles of Incorporation” or “Articles”: The Articles of Incorporation of Downtown Daybreak Owners Association, Inc., as filed with the Secretary of State of the State of Utah, as they may be adopted and amended from time to time.

1.7 “Association”: Downtown Daybreak Owners Association, Inc., a Utah nonprofit corporation, its successors or assigns; provided however, until the Association is incorporated, the capitalized term “Association” shall mean and refer to the Declarant consistent with the terms of Section 13.2.

1.8 “Ballpark”: That certain multi-purpose, sports, entertainment and recreation facility constructed or to be constructed on the Ballpark Site.

1.9 “Ballpark Site”: That certain real property parcel upon which the Ballpark will be located, as more particularly described in Exhibit “D.” attached hereto and incorporated herein by this reference.

1.10 “Board of Directors” or “Board”: The body responsible for administration of the Association, selected as provided in the By-Laws and serving as the board of directors under Utah corporate law.

1.11 “Building Site”: Building Site shall mean (i) any parcel of land, including any air rights and/or subsurface rights, or any parcel consisting solely of an air rights estate, that is part of the Properties and which is designated as a “Building Site” by the Declarant pursuant to the terms, conditions, and provisions of a Building Site Declaration and (ii) any unimproved parcel of land, including any air rights and/or subsurface rights, that is a part of the Properties and that is owned by the Declarant and is shown as a Building Site on the Master Plan, but for which no Building Site Declaration has been executed. Subject to Section 10.9, if the entirety of a Building Site is subjected to a condominium form of ownership pursuant to the Utah Condominium Ownership Act, then the condominium property shall continue to be deemed a single Building Site for purposes of this Declaration unless otherwise set forth in the applicable Building Site Declaration. Subject to Section 10.9, if only a portion or part of a Building Site is subjected to a condominium form of ownership pursuant to the Utah Condominium Ownership Act, (x) that portion of the Building Site subjected to the Utah Condominium Ownership Act, and (y) the remaining portion of the Building Site not subjected to the Utah Condominium Ownership Act, shall each be deemed a “Building Site” for purposes of this Declaration, unless otherwise set forth in the applicable Building Site Declaration.

1.12 “Building Site Declaration”: An instrument containing covenants, conditions, and restrictions applicable to one or more Building Sites recorded in the Public Records, executed by the Owner of the Building Site with Declarant’s written joinder and consent, which shall govern and control the development, construction, use, operation, and maintenance of each Building Site, to the extent the same are in full force and effect (or any similar document or instrument executed by, among others, Declarant which shall govern the development, construction, use, operation, and maintenance of a Building Site, notwithstanding the nomenclature used to describe such document or instrument).

1.13 “By-Laws”: The By-Laws of Downtown Daybreak Owners Association, Inc., as they may be adopted and amended from time to time.

1.14 “Common Area”: All real and personal property, including easements and licenses, which the Association owns, leases or holds possessory or use rights in for the common use and enjoyment of the Owners. This term shall also include the Exclusive Common Area, if any, as defined below.

1.15 "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of Owners, including but not limited to any reasonable reserves or expenses from any applicable Cost Sharing Agreement, as the Board may find necessary and appropriate pursuant to the Governing Documents.

1.16 "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties and which shall generally conform to a high quality mixed-use planned community development in accordance with best industry standards. Such standard may be more specifically determined by the Board and the DRB and may vary within the Properties; provided, however, such standard shall at all times conform, at a minimum, to the Design Guidelines as set forth in Article 9. With respect to any particular Building Site or Unit, the Community-Wide Standard shall mean and include any supplemental standards as are promulgated and applicable to such Building Site or Unit.

1.17 "Condominium Association": Any association or other owners association having concurrent jurisdiction with the Association over any Building Site or portion thereof that is submitted to the provisions of the Utah Condominium Ownership Act.

1.18 "Cost Sharing Agreement": Any agreement, contract or covenant between the Association and an owner or an operator of property adjacent to or in the vicinity of or within the Properties for the allocation of expenses for amenities and/or services that benefit both the Association and the owner(s) or operator(s) of such property.

1.19 "County

1.20 "Days

1.21 "DeclarantExhibits "A" or "B" and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant in accordance with Section 13.1.

1.22 "Declarant Control PeriodExhibits "A" and "B" have certificates of occupancy issued thereon by the controlling governmental authority, have been conveyed to Persons other than the Declarant or Declarant-Related Entity, and initial vertical construction on each Building Site is complete. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration or terminate the Declarant Control Period upon an earlier date by recording a written instrument in the Public Records.

1.23 "Declarant-Related Entity

1.24 "Deed

1.25 "Design Guidelines": The design, architectural and construction guidelines and application and review procedures applicable to all or any portion of the Properties promulgated and amended from time to time and administered pursuant to Article 9.

1.26 "Design Review Board" or "DRB

1.27 "Development Agreement

1.28 "Digital Media Towers

1.29 "DMT Easement Areas

1.30 "Downtown Daybreak

1.31 "Downtown Daybreak Marks

1.32 "Entertainment Use

1.33 "Event

1.34 "Event Area

1.35 "Event Holder

1.36 “Exclusive Common Area”: A portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Service Areas or Units, as more particularly described in Article 2.

1.37 “General Assessments”: Assessments levied on all Units subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 8.1 and 8.2.

1.38 “Governing Documents”: This Declaration, the By-Laws, the Articles of Incorporation, all Supplemental Declarations, all Building Site Declarations, the Design Guidelines, any Rules and Regulations of the Association, the Zoning Conditions, the Development Agreement, all Cost Sharing Agreements, all Access and Parking Easement Agreements, any signage and sponsorship agreements entered into between Declarant or any Declarant-Related Entity and any Owner or Occupant, and all additional covenants governing any portion of the Properties, or any of the above, as each may be supplemented and amended from time to time.

1.39 “Hazardous Materials”: Hazardous Materials shall mean and refer to the following: (A) any “hazardous waste” as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (B) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.); the Superfund Amendments and Re-authorization Act of 1986, as amended from time to time, and regulations promulgated thereunder; (C) asbestos; (D) polychlorinated biphenyls; (E) underground storage tanks, whether empty, filled or partially filled with any substance; (F) any substance the presence of which on the Properties is prohibited by any Applicable Law; (G) any other environmental substance which by any Applicable Law requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment, or disposal; and (H) any item so designated by or pursuant to the Water Pollution Control Act (33 U.S.C. Section 1251 et seq.); Safe Drinking Water Act (42 U.S.C. Section 3000(f) et seq.); or Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.)

1.40 “Hotel Use”: Any hotel, motel, or other residential guest facility providing lodging for short-term periods not to exceed one month in conformity with the Governing Documents, all applicable Zoning Conditions and Applicable Law; provided, however, that the following shall not be deemed as a Hotel Use: (a) homes, condominium units, apartments or similar dwellings primarily intended to be occupied for periods of more than one month; or (b) hospitals, independent living communities, assisted living facilities, residential care facilities, continuing care facilities, nursing homes, or in-patient treatment facilities, including accommodations provided for families of patients, on an incidental basis, by such facilities. Hotel Use may include meeting space, recreational amenities, the retail sale of goods or services so long as such sale or goods or services is ancillary to the primary business conducted within such establishment or with Declarant’s prior written approval.

1.41 “Improvement” or “Improvements”: Any structure or improvement, broadly defined to include, but not limited to, buildings of a permanent or temporary nature (with temporary buildings being permitted only during the construction of other Improvements, subject to approval by the DRB), outbuildings, underground installations, slope alterations, surface water drainage facilities, sediment control devices, roads, berms, driveways, alley ways, parking areas or facilities, loading docks and areas, garbage dumpsters and cans, fences, screening walls, retaining walls, enclosures, stairs, decks, windbreaks, planting or removal of trees, shrubs and other landscaping materials, poles, signs, antennas and satellite dishes, Utilities, water lines, sewer, electrical and gas distribution facilities, irrigation systems, heating, cooling and air circulation equipment and facilities, roofed structures, railroad trackage, hedges, exterior illumination, changes in exterior color or shape, staking, clearing, excavation, grading,

exterior alteration of existing improvement, and all other structures or landscaping improvements of every type and kind initially or at any time thereafter placed or constructed on any Building Site or Unit that are visible from the Common Areas, any public right-of-way, or another Building Site or Unit.

1.42 "Leasehold Owner": The lessee under any lease of a Unit with an initial term of not less than twenty (20) years, and which lessee has been assigned, and has assumed, all of the Owner's rights and obligations under this Declaration with respect to the leased premises.

1.43 "Majority": Those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.44 "Master Plan": The land use plan or development plan for Downtown Daybreak prepared by or on behalf of Declarant, as such plan may be amended from time to time during the Declarant Control Period, which plan includes and depicts the property described on Exhibit "A" and all or a portion of the Additional Property that Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan bar its later annexation in accordance with Article 7. The Declarant shall not be bound by any Master Plan, use or restriction of use shown on any Master Plan, and may, in its sole discretion and from time to time during the Declarant Control Period, change or revise the Master Plan, develop or not develop the remaining undeveloped property or Common Area or amenities shown on any Master Plan. Notwithstanding the above, all present and future references to the Master Plan shall refer to the then latest version of the Master Plan prepared for the Declarant. The Declarant shall not change the Master Plan with respect to a Unit after such Unit has been conveyed except with consent of the Owner.

1.45 "Member": A Person subject to membership in the Association pursuant to Section 3.1.

1.46 "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Building Site or Unit.

1.47 "Mortgagee": A beneficiary or holder of a Mortgage.

1.48 "Motorized Vehicles": Roadway approved motorized vehicles, including without limitation, automobiles, trucks, motorcycles, and motor bikes.

1.49 "Multifamily Use": One (1) or more commercial apartment buildings located on a Building Site and intended for occupation or use as multiple separate housing units for residential Occupants in conformity with the Governing Documents, all applicable Zoning Conditions and Applicable Law.

1.50 "Nested Parking Facilities": Segregated parking spaces and all mechanical or other equipment, structures, devices and related items associated with the segregation of certain Parking Facilities relating to any such parking spaces from other portions of the Parking Facilities, as well as any other drive lanes, drive areas, and any other open or improved space located within any segregated parking spaces or portions of the Parking Facilities.

1.51 "Occupant": The Owner, Leasehold Owner, or any other Person entitled to the use and occupancy of any portion of the Building Site or Unit under an ownership right or under any lease, sublease, license, concession or other similar agreement. All actions or omissions of any Occupant shall be deemed the actions or omissions of the Owner or Leasehold Owner of such Building Site or Unit.

1.52 “Office Use”: Any facility used for general office purposes consistent with a first-class office building in the surrounding area and in conformity with the Governing Documents, all applicable Zoning Conditions and Applicable Law. Office Use may include support function areas, such as employee and guest lounge areas, so long as such uses are ancillary to the primary business conducted within such establishment or with Declarant’s prior written approval.

1.53 “Open Space”: That portion of the Properties depicted on the Master Plan that is in its undeveloped natural state or that has been developed only to the extent consistent with, or is restored to be consistent with, one or more following goals: (a) water protection for creeks and streams; (b) flood protection; (c) wetlands production; (d) reduction of erosion through protection of steep slopes and stream banks; (e) protection of riparian buffers and other areas that serve as natural habitat and corridors for native plants and animal species; (f) scenic protection; (g) protection of archaeological and historic resources; (h) provision of recreation in the form of hiking, fishing, running, jogging, biking, walking, and similar outdoor activities; and (i) connection of existing or planned areas contributing to the goals set forth in this Section.

1.54 “Owner”: One or more Persons who hold the record title to any Building Site or Unit, including the Declarant, any Declarant-Related Entity, or any builder, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. An Owner (including the Declarant or any Declarant-Related Entity) who has transferred or otherwise conveyed a leasehold interest in and to any Unit to a Leasehold Owner may, in its discretion, assign in such lease, all of such Owner’s rights and obligations as an Owner herein; provided, however, that any such assignment shall not relieve such Owner from its duties and obligations hereunder except as expressly provided herein, and further provided that the assignee has assumed all the duties and obligations of the assignor hereunder. From and after receipt of notice of such assignment, the Declarant, the Association and the DRB shall recognize the Leasehold Owner as the Owner of such Unit.

1.55 “Parking Facilities”: Any parking garage or parking-related structure or Improvement constructed or to be constructed on any portion of the Properties and all other parking areas on the Properties providing parking accommodations for Motorized Vehicles, together with parking facilities related to any such parking garage or parking-related structure (including, without limitation, air ventilation shafts and equipment, access ways, driveways, parking spaces, pedestrian crossings or paths or ramps, stairways, elevators or escalators, pedestrian walkways, tunnels, landscaping within or adjacent to such parking facility, curbs within or adjacent to areas used for parking, Motorized Vehicles, electric vehicle charging facilities, and parking payment machines and similar ancillary structures relating to parking) for use by Occupants and Permittees as such may exist or may be constructed from time to time, which shall be operated, managed and maintained in accordance with the terms and conditions of this Declaration, subject to any applicable Cost Sharing Agreement, Building Site Declarations, Supplemental Declaration and Parking Management Plan.

1.56 “Parking Management Plan”: Those certain plans, agreements, and/or easements, including any Access and Parking Easement Agreements, that shall govern the operation, management, maintenance, and/or use of the Parking Facilities.

1.57 “Permittees”: All Occupants and the officers, directors, employees, agents, contractors, subcontractors, laborers, vendors, suppliers, guests, family members, clients, customers, visitors, invitees, licensees, or any other Persons who either lawfully or unlawfully occupies or comes upon a Building Site or Unit.

1.58 “Person”: A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.

1.59 "Personal Mobility Devices": Any electric, motorized, non-electric, or non-motorized devices, other than Motorized Vehicles, that facilitate a Person's transportation, which include, but are not limited to, scooters, electronic scooters, e-scooters, bicycles, e-bicycles, go-carts, skateboards, hoverboards, mopeds, but, for purposes of this definition, exclude bicycles, e-bicycles, wheelchairs and other vehicles that are designed and used to assist individuals with physical mobility issues or disabilities.

1.60 "Private Streets": Streets and roads, and the parking spaces within such streets and roads, if any, within the Properties, that are designated as Private Streets by Declarant.

1.61 "Properties": The real property described on Exhibit "A" as such exhibit may be amended or supplemented from time to time to reflect any additions or removal of property in accordance with Article 7.

1.62 "Public Records": The Clerk of the Superior Court of Salt Lake County, Utah.

1.63 "Retail Use": Any establishment typically found in first-class regional shopping centers or "mixed-use including retail" developments. Retail Uses may include establishments engaged in the retailing and selling of merchandise, generally without transformation, and rendering services incidental to the sale of merchandise, to the general public. Retail Uses may also include retail service uses, such as banks and other financial service offices, insurance and medical offices, and the sale of food and/or beverages for on-premises or off-premises consumption. Retail Uses include store retailers operating fixed point-of-sale establishments, located and designed to attract a high volume of walk-in customers ("Retail Stores"). In general, Retail Stores have extensive displays of merchandise and use mass-media advertising to attract customers. Retail Stores typically sell merchandise to the general public for personal or household consumption, but some also serve businesses and institutional clients. Retail Stores may also be engaged in the provision of after-sales services, such as repair and installation. Retail Uses also include retailers selling from portable stalls or kiosks or distributing through vending machines and food vendors selling food or beverage for immediate consumption from portable stalls, kiosks or distributing through vending machines. Retail Uses also include restaurants, fast-food restaurants with or without drive-thru facilities, drive-in restaurants, cafes, and taverns which may provide entertainment consistent with the upscale mixed-use development. Retail Uses also include exercise and health club facilities, spas, wellness centers, studios for dance, music, exercise or photography, and other similar facilities. Retail Uses include service uses, such as establishments providing services to the general public for personal, retail or business use, including but not limited to laundry and dry cleaning establishments, salons, beauty shops and barber shops, tailoring and dressmaking, appliance service, shoe and watch repair, pet care facilities, printing and photographic services, video and media stores, advertising and mailing services, business, copy and shipping centers, including post offices, employment services, security services, management and consulting services, realty offices, and health, educational and social services. Such services may either be arranged for or take place on the Building Site or Unit. All Retail Use shall be conducted in conformity with the Governing Documents, all applicable Zoning Conditions and Applicable Law.

1.64 "Rules and Regulations": The rules and regulations applicable to all or any portion of the Properties promulgated, administered, modified and repealed pursuant to Article 10.

1.65 "Service Area": A designated portion of the Properties in which the Owners of Building Sites or Units may have common interests other than those common to all Members of the Association. For example, and by way of illustration and not limitation, an office complex comprised of several Building Sites surrounding a common plaza, a retail/commercial center comprised of various Building Sites sharing common parking areas, or a condominium each might be designated as separate Service

Areas. A Service Area may be comprised of more than one use and may include noncontiguous tracts of property. Any Service Area boundaries shall be established and modified as provided in Section 3.4.

1.66 **“Service Area Assessments”**: Assessments levied against the Units in a particular Service Area or Service Areas to fund Service Area Expenses, as described in Sections 8.1 and 8.3.

1.67 **“Service Area Association”**: Any Condominium Association or other owners association having concurrent jurisdiction with the Association over any Service Area.

1.68 **“Service Area Expenses”**: The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Units within a particular Service Area or Service Areas, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize from time to time and as may be authorized herein or in Supplemental Declarations applicable to such Service Area(s).

1.69 **“Signage”**: Any sign, structure, device, or other marketing, media, temporary or permanent, portable or stationary, which is erected, placed, held, displayed and/or used, by or upon which any numbers, lettering, printing, painting, symbols (including pictorial symbols), or other communication is placed or created, including, without limitation, flags, banners, streamers, balloons, sculptures, inflated figures and objects, video monitors or screens, and kiosks. For purposes of this Declaration, Signage shall specifically exclude any Digital Media Towers.

1.70 **“Social Media”**: All blogs, common social networks (including, without limitation, Facebook, Instagram, Google+ and Foursquare), professional networks (including, without limitation, LinkedIn), live blogging tools (including, without limitation, X, formerly known as Twitter), virtual worlds, file, audio and video sharing sites and other similar social networking media or tools.

1.71 **“Special Assessment”**: Assessments levied in accordance with Section 8.5.

1.72 **“Special Taxing District” or “STD”**: Any special taxing district authorized by Title 17B, 17C, or 17D of the Utah Code. A Special Taxing District may be established to provide certain governmental services within and in the vicinity of Downtown Daybreak, including without limitation, street and road construction and maintenance, including curbs, sidewalks, streetlights and devices to control the flow of traffic on streets and roads, parks and recreational areas and facilities, storm water and sewage collection and disposal systems, water systems, public transportation systems, parking facilities, and other services and facilities as may be provided for by general law. At any time, and from time to time, the Declarant or the Association may transfer ownership and/or maintenance responsibility for certain Improvements and/or land within the Properties to the STD in accordance with Section 4.27 of this Declaration. As a result of any such transfer, the scope of the Association’s maintenance responsibilities under this Declaration may be reduced.

1.73 **“Specific Assessment”**: Assessments levied in accordance with Section 8.6.

1.74 **“Structural Supports”**: Construction elements located on any of the Properties which are load bearing with respect to the Improvements or which are necessary for the structural integrity of the Improvements, including, without limitation, foundations, footings, slabs, caissons, girders, columns, beams, bed plates, pilings, piling caps, load transfer platforms, braces and trusses, and any replacement, substitution or modification thereof.

1.75 **“Supplemental Declaration”**: An instrument filed in the Public Records which subjects Additional Property to this Declaration, designates Service Areas, or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.76 **“UAVs”**: UAVs shall have the meaning ascribed to such term in Section 10.8.

1.77 **“Unit”**: A portion of the Properties, whether improved or unimproved, that may be independently owned and conveyed and that is intended for development, use, and occupancy as shown on the Master Plan, subject to compliance with the Governing Documents. Each Building Site and each separately platted property shall be deemed a separate Unit, regardless of the number of uses or businesses operated on such Unit, unless otherwise specified by Supplemental Declaration. The term shall include the land, if any, which is part of the Unit as well as any Improvements thereon. Each condominium unit, if applicable, shall constitute a separate Unit. For the avoidance of doubt, all legally created parcels forming part of the Properties as of the date hereof are Units.

In the case of a portion of the Properties intended and suitable for subdivision but as to which no final plat has been recorded, such property shall be deemed to be a single Unit until such time as a final plat is filed of record with respect to all or a portion of the property.

Common Area, common property of any Service Area Association, or property dedicated to the public shall not be deemed to be “Units” for purposes of this Declaration.

1.78 **“Utilities”**: Any utilities serving any portion of the Properties or any Common Areas, including, without limitation, all intake and exhaust systems, storm and sanitary sewer systems, drainage systems, common ducting systems for ventilation and utility services, domestic water systems, natural gas systems, electrical systems, fire protection water systems, telephone systems, cable, digital, satellite, or similar broadcast and reception systems, internet, intranet, 5G, and similar network systems, smart building, telecommunications systems, fiber optic systems, audio, video and data transmission systems, monitoring systems, chilled water and heated water systems, solar or passive energy sources, central utility services and all other utility systems and facilities, including technology that may be developed in the future and that may not be specifically described herein, as reasonably necessary to serve any Improvement located in, on, over or under any portion of the Properties or any Common Areas.

1.79 **“Zoning Conditions”**: Any development order, zoning category, or zoning condition related or applicable to all or any portion of Downtown Daybreak, including but not limited to the Development Agreement, and any other governmental or quasi-governmental order, permit, or approval applicable to the Properties.

ARTICLE 2 **PROPERTY RIGHTS**

2.1 **Common Area**. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to each Building Site and Unit, subject to:

- (a) this Declaration and all other Governing Documents;
- (b) any restrictions or limitations contained in any Deed conveying such property to the Association;

(c) the right of the Board to adopt, amend, and repeal Rules and Regulations regulating the use and enjoyment of the Common Area, including rules limiting the number of Permittees who may use the Common Area; provided however, that any such rules shall not impair the use of the Ballpark or any Event Area for their intended uses in connection with Events and other intended uses;

(d) the right of the Association to rent, lease or reserve all or any portion of the Common Area to any Owner for the exclusive use of such Owner and such Owner's Occupants upon such conditions as may be established by the Board, subject to the terms and conditions of this Declaration; provided however, that any such rental, lease or reservation shall not impair any rights of access to the Ballpark or the Event Area for their intended uses in connection with Events and other intended uses;

(e) the right of the Board to permit use of the Common Areas, including but not limited to the facilities located thereon, by persons other than Owners, Occupants, and their Permittees to use any facilities situated upon the Common Area upon such conditions and fees as may be established by the Board;

(f) the rights of Event Holders to conduct Events in designated Event Areas;

(g) the right of the Declarant to designate certain facilities and areas as open to the public;

(h) the right of the Board to suspend the right of an Owner, Occupant, or Permittee to use facilities within the Common Area pursuant to Section 4.3;

(i) the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area as set forth in this Declaration;

(j) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(k) the rights of certain Owners and Occupants to the exclusive use, access and enjoyment in and to those portions of the Common Area designated "Exclusive Common Areas", as more particularly described in Section 2.5; and

(l) the right of the Declarant and Declarant-Related Entities to conduct Events and activities and to establish facilities within the Properties as provided in Article 13.

Any Owner may extend its right of use and enjoyment to any Occupants of such Owner's Unit, subject to reasonable regulation by the Board and further subject to all such parties' obligation to abide and be bound by the Governing Documents and any such Rules and Regulations promulgated thereunder. Upon request, each Owner shall be obligated to furnish the Association the name, address, and other contact information of any lessee or other party extended rights to use the Common Areas by the Owner.

2.2 Private Streets. Each Owner and Occupant shall have a right and nonexclusive easement of use and access in and to, over and across any Private Streets, whether or not such Private Streets are Common Area, as reasonably necessary for the purpose of ingress and egress to public rights of way. The rights and nonexclusive easements granted herein are appurtenant to the title to each Building Site and Unit, subject to:

(a) this Declaration and all other Governing Documents;

(b) the right of the Declarant, so long as the Declarant or any Declarant-Related Entity owns the Private Streets, or the Association thereafter, to adopt, amend and repeal rules regulating the use and enjoyment of the Private Streets;

(c) the right of the Declarant or the Association to close or limit ingress to or egress from all or any portion of the Private Streets in connection with any Event;

(d) the right of the Declarant or the Association to dedicate all or any part of Private Streets to the City of South Jordan, Salt Lake County, Utah, or to any other local, state, or federal governmental or quasi-governmental entity without obtaining any membership approval; provided that any dedication should be in accordance with the terms of this Declaration, including but not limited to Section 4.7;

(e) the right of the Declarant or the Association to mortgage, pledge, or hypothecate any or all of the Private Streets as security for money borrowed or debts incurred, provided that the Declarant shall not subject the Private Streets to any security instrument without obtaining the agreement of the lender to subordinate its interest in the Private Streets to the easements for the Owners and Occupants contained in this Section; and

(f) the rights of the Declarant and the Association to maintain the Private Streets.

2.3 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Section shall not prohibit the Board from acquiring and disposing of other real property which may or may not be subject to this Declaration.

2.4 Condemnation. The Association shall be the sole representative with respect to condemnation proceedings concerning a Common Area and shall act as attorney-in-fact for all Owners in such matters. If any part of the Common Area shall be taken by or conveyed under threat of condemnation to any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance. The Board may convey a Common Area under threat of condemnation only if approved by Members holding at least seventy-five percent (75%) of the total Class "A" votes in the Association and during the Declarant Control Period, the written consent of the Declarant. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

If the taking or conveyance involves a portion of the Common Area on which Improvements have been constructed, the Association shall restore or replace such Improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) Days after such taking the Members holding at least seventy-five percent (75%) of the total Class "A" vote of the Association and, during the Declarant Control Period, the Declarant shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and the DRB. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking or conveyance does not involve any Improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

2.5 Exclusive Common Area. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and Occupants of specified Units or Service Areas. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, parking areas, and other portions of the Common Area within a particular Service Area or Service Areas. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed against the Owners of Units to which the Exclusive Common Areas are assigned either as a Service Area Assessment or as a Specific Assessment, as applicable.

During the Declarant Control Period, any Exclusive Common Area shall be designated as such, and the exclusive use thereof shall be assigned, in the Deed by which the Declarant conveys the Common Area to the Association or on the subdivision plat relating to such Common Area, or in a Supplemental Declaration; provided, however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units and/or Service Areas during the Declarant Control Period. Following termination of the Declarant Control Period, a portion of the Common Area may be assigned as Exclusive Common Area of particular Units or a particular Service Area or Service Areas and Exclusive Common Area may be reassigned upon approval of the Board and the vote of a Majority of the Class "A" votes within the Service Area(s) to which the Exclusive Common Area is assigned, if previously assigned, and within the Service Area(s) to which the Exclusive Common Area is to be assigned or reassigned. Any such assignment or reassignment shall be set forth in a Supplemental Declaration executed by the Board.

The Association may, upon approval of the Owners holding a Majority of the Class "A" votes allocated to Units to which the Exclusive Common Area is assigned, the Majority of the members of the Service Area Committee or the board of directors of the Service Area Association for the Service Area(s) to which any Exclusive Common Area is assigned, permit Owners of Units in other Service Areas to use all or a portion of such Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses or specific assessments attributable to such Exclusive Common Area.

2.6 Subdivision Plat. Declarant reserves the right to record, modify, amend, revise, and otherwise add to, at any time and from time to time, a subdivision plat and/or an as-built survey setting forth such information as Declarant deems necessary, including, without limitation, the locations and dimensions of all Building Sites, Units, Common Areas, Exclusive Common Areas, Parking Facilities, Utilities, Improvements, public or private roads, drainage easements, access easements, and setback line restrictions. Declarant reserves the right at any time and from time to time (i) to divide and redivide, combine and resubdivide any Building Site or Unit, and (ii) to change any easement description or relocate any roads affected thereby. Such changes to the subdivision plat and/or as-built survey shall not require the consent of any Person other than the Owner of the affected Building Site or Unit, if not the Declarant. If the property is Common Area, the Association shall consent to such changes.

ARTICLE 3

MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation, and the restrictions on voting set forth in Section 3.2 and Section 3.3 and in the By-Laws and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee of such Owner, or by any individual designated from time to time by the Owner in a written

instrument provided to the Secretary of the Association. Any portion of the Properties subject to the jurisdiction of a Service Area Association may be treated as a single Unit for purposes of voting, assessments, and/or lien rights in accordance with Section 3.4.

3.2 Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Declarant, if any. Class "A" Members shall have one (1) weighted vote for each Unit in which they hold the interest required for membership under Section 3.1; provided, there shall be only one weighted vote per Unit. The vote for each Unit shall be weighted in accordance with the formula set forth in Exhibit "C". In any situation where there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it. No vote shall be exercised on behalf of any Unit if any assessment for such Unit is delinquent. In addition, no vote shall be exercised for any property which is exempt from assessment.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint all of the members of the Board of Directors until termination of the Declarant Control Period. Upon termination of the Declarant Control Period, the Class "B" membership shall expire, and the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

(c) Additional Classes of Membership. The Declarant may, by Supplemental Declaration, create additional classes of membership for the Owners of Units within any Additional Property made subject to this Declaration pursuant to Article 7, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration. Such additional classes of membership may be either voting or non-voting classes of membership.

3.3 Voting Mechanics. Voting may be conducted by written ballots or by an electronic voting process. In the event that an electronic voting process is used for specific issues or on all issues, then the Board in its discretion may adopt specific rules and procedures as necessary in furtherance of conducting the electronic voting process by which a Member in good standing representing a Building Site or Unit may cast its vote electronically. In the event that the Board elects to implement an electronic voting process, the president of the Association shall be responsible for recommending, reviewing and implementing the process subject to Board approval. The voting process shall be conducted in a manner consistent with the Governing Documents and Utah law.

3.4 Service Areas. Every Unit may be located within one (1) or more Service Areas. The Declarant in its sole discretion may establish Service Areas within the Properties by designation on Exhibit "A" to this Declaration, a Supplemental Declaration, or a plat. During the Declarant Control Period, the Declarant may unilaterally amend this Declaration, any Supplemental Declaration, any Building Site Declarations or any plat from time to time to assign property to a specific Service Area, to re-designate Service Area boundaries, or to remove property from a specific Service Area. Any property subject to a Condominium Association or a Service Area Association shall automatically be deemed to be a Service Area.

With the consent of Owners of Units within a Service Area, the Units within a particular Service Area may be made subject to additional covenants and the Owner(s) of Units within any Service Area may be mandatory members of a Service Area Association in addition to the Association, however, there shall be no requirement that a Service Area Association be created for any Service Area except in the case of a Service Area which is developed as a condominium or as may be otherwise provided by law. Any Service Area which does not have a Service Area Association may establish an advisory committee (a “Service Area Committee”) to serve as a liaison between that Service Area and the Board, but any such Service Area Committee shall have no binding authority or any voting rights hereunder. The Board may in its discretion establish criteria for appointment to and creation of Service Area Committees to represent the interests of Owners of Units in any Service Area or Service Areas. No Service Area Association or Service Area Committee shall be formed or otherwise established without the prior submission to and written approval of the Declarant of all documents creating or establishing such Service Area Association or Service Area Committee, including without limitation, the submission of any declaration of condominium, articles of incorporation, by-laws and other organizational and governing documents.

Any Service Area may request that the Association provide a higher level of service or special services for the benefit of Units in such Service Area and, upon the affirmative vote, written consent, or a combination thereof, of Owners holding at least a Majority of the Class “A” votes of the Units within the Service Area, the Association may, in its sole discretion, provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided any such administrative charge shall apply at a uniform rate per Unit or other equitable measure (e.g. acreage or the formula set forth on Exhibit “C”) to all Service Areas receiving the same service), shall be assessed against the Units within such Service Area as a Service Area Assessment pursuant to Article 8 hereof.

In the Association’s sole discretion, any portion of the Properties subject to the jurisdiction of a Service Area Association, such as a Condominium Association, may be treated as a single Unit solely for purposes of voting and assessments under this Declaration. In such event, the Service Area Association shall be responsible for casting all votes and for collecting all assessments and other sums from the members of the Service Area Association. All votes shall be cast and all amounts shall be remitted to the Association pursuant to such procedures as may be adopted by the Association.

ARTICLE 4 **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all Improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable Rules and Regulations regulating use of the Properties as the Board may adopt pursuant to Article 10. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Utah. Notwithstanding the foregoing, the functions to be conducted by the Association at any particular time shall be determined by the Board with due consideration given to the reserves and revenues available to the Association, and the relative demands upon such resources.

4.2 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, including but not limited to any Declarant-Related Entity, with the Declarant’s prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibits “A” or “B,” personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the

Deed or other instrument transferring such property to the Association. The Declarant shall not be required to make any Improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section. During the Declarant Control Period, the Association shall reconvey to the Declarant any portions of the Properties originally conveyed by the Declarant to the Association for no consideration upon written request by the Declarant.

The Association agrees that the Common Area, including all Improvements thereon, shall be conveyed in its "where is, as is" condition and without recourse, and the Declarant disclaims and makes no representations, warranties or other agreements, express or implied with respect thereto, including without limitation, representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and representations or warranties regarding the conditions, design, construction, accuracy, completeness, adequacy of the size or capacity in relation to utilization or the future economic performance or operations of the Common Area. No claim shall be made by the Association or any Owner relating to the condition, operation, or completeness of the Common Area or for incidental or consequential damages arising therefrom. The Declarant will transfer and assign to the Association, without recourse, all warranties which it receives from manufacturers and suppliers relating to any of the Common Area which exist and are assignable.

4.3 Enforcement. The Board or any committee established by the Board, with the Board's approval, may impose sanctions for violation of the Governing Documents, after compliance with the notice and hearing procedures set forth in the By-Laws. Such sanctions may include, without limitation:

- (a) imposing monetary fines which shall constitute a lien upon the Building Site or Unit of the violator;
- (b) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;
- (c) suspending an Owner's right to vote;
- (d) suspending any Person's right to use any facilities within the Common Areas; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Building Site or Unit; and
- (e) suspending any services provided by the Association to an Owner or the Owner's Building Site or Unit if the Owner is more than thirty (30) Days delinquent in paying any assessment or other charge owed to the Association.

In the event that any Occupant of a Unit violates the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction the Occupant and/or the Owner of such Building Site or Unit. If a fine is imposed, the fine may first be assessed against the Occupant; provided however, if the fine is not paid by the Occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.

In addition, the Board, or the covenants committee if established, may elect to enforce any provision of the Governing Documents by exercising self-help (specifically including, but not limited to the filing liens in the Public Records for nonpayment of any assessments or fees, the towing of Motorized Vehicles that are in violation of parking Rules and Regulations, the removal of Signage that is in violation of sign restrictions, or the correction of any maintenance, construction or other violation of the Governing Documents) without the necessity of compliance with the procedures set forth in the By-Laws. The Association may levy a Specific Assessment to cover all costs incurred in exercising self-help and

bringing a Building Site or Unit into compliance with the terms of the Governing Documents in accordance with Section 8.6(c).

The Association may also elect to enforce any provisions of the Governing Documents by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in the By-Laws.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover, to the maximum extent permissible, all costs, including, without limitation, reasonable attorneys' fees and court costs, incurred in such action.

The Association's decision to exercise its enforcement rights in any particular case shall be made in the Board's sole discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case: (a) the Association's position is not strong enough to justify taking any or further enforcement action; or (b) the covenant, restriction or rule to be enforced is, or is likely to be construed as, inconsistent with applicable law; or (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (d) it is not in the Association's best interests, considering, among other things, hardship, expense, or other reasonable criteria, to pursue enforcement actions. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction or Rule or Regulation.

The Association may, but is not required to, by contract or other agreement, enforce county, city, state and federal ordinances, rules, regulations and laws, if applicable, and permit local and other governments to enforce ordinances on the Properties for the benefit of the Association and its Members.

4.4 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by applicable law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Governmental Interests. During the Declarant Control Period, the Declarant may designate sites within the Properties for fire, police and Utility facilities, parks, streets and other public or quasi-public facilities. No membership approval shall be required for such designation. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by the Declarant. The sites may include other property not owned by the Declarant provided the owner of such property consents.

4.6 Dedication of Common Area and Roads. The Association, or the Declarant, during the Declarant Control Period, may dedicate portions of the Common Area, Utility Systems, and any roads within Downtown Daybreak to the City of South Jordan or Salt Lake County, Utah, or to any other local, state, or federal governmental or quasi-governmental entity. Any dedication shall not require the consent of the Members, but shall require the consent of the owner of the property to be dedicated, if other than the Declarant or the Association. Any dedication of roadways or other property may be made free and clear of all encumbrances, including but not limited to, this Declaration; provided, however, each Owner, on behalf of itself and its Occupants agree to comply with any and all Rules and Regulations, covenants,

and restrictions established pursuant to this Declaration, including but not limited to provisions regarding Motorized Vehicles, Personal Mobility Devices, parking, street vending, and use of such dedicated property.

4.7 Dedication of or Grant of Easements on Common Area. The Association, or the Declarant during the Declarant Control Period, may dedicate or grant easements across portions of the Common Area to the City of South Jordan or Salt Lake County, Utah, any STD, or to any other local, state, or federal governmental or quasi-governmental entity without obtaining any membership approval.

4.8 Indemnification. The Association shall indemnify every officer, director, DRB member and committee member, against all damages, liabilities, and expenses, including reasonable attorneys' fees, incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, DRB member or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles and Utah law.

The officers, directors, DRB members and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, willful misconduct, or bad faith. The officers and directors, DRB members and committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors, DRB members or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director DRB member and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, DRB member or committee member may be entitled.

The Association shall also indemnify and forever hold harmless the Declarant to the extent that any officer, director or employee of the Declarant serves as an officer, director or committee member of the Association and the Declarant incurs any damages or expenses, including attorneys' fees, in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding) by reason of having its officers, directors or employees serve as officers, directors, or committee members of the Association, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles and Utah law. This right to indemnification shall not be exclusive of any other rights to the Declarant may be entitled.

The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.9 Allocation of Entitlements. Declarant and Declarant-Related Entities shall initially own and control all entitlements authorized by the Zoning Conditions to be developed within the Properties. Declarant reserves the exclusive right, in Declarant's discretion, to allocate to Building Site or Units within the Properties, and to other property subject to the Zoning Conditions that may not be included within the Properties, portions of such permitted uses, square footage, number of units, number of rooms, or other uses authorized by the Zoning Conditions or otherwise authorized. Any allocation of any of the foregoing to a Building Site or Unit may be made by a Building Site Declaration or a Supplemental Declaration and shall authorize construction on such Building Site or Unit of Improvements containing up to the total amount or number of square footage, units, rooms or other uses allocated to such Building Site or Unit as may be set forth in the applicable instrument. Declarant and Declarant-Related Entities shall own and control any of the entitlements authorized under the Zoning Conditions or otherwise that has not

been allocated to specific Building Site or Units. Declarant reserves the right at any time to seek an increase, reduction, or modification of the overall entitlements for the property that is subject to the Zoning Conditions (or any portion of the Properties that is not subject to the Zoning Conditions), provided that with respect to any entitlements previously allocated to a Building Site or Unit, any such change shall not reduce or alter the right to develop, use or occupy any such previously allocated entitlements, without the written consent of the Owner of such Building Site or Unit, in such Owner's discretion.

A Building Site or Unit Owner, subject to the written consent of Declarant in its discretion, may re-convey to Declarant (or its Affiliate) by a Building Site Declaration or a Supplemental Declaration any entitlement (or portion thereof) that has been previously allocated to a Building Site or Unit, and that has not been, and is not intended to be, used within such Building Site or Unit. Any entitlements allocated to a Building Site or Unit shall not be transferred or assigned by the Owner of such Building Site or Unit to any other Building Site or Unit or other property subject to the Zoning Conditions without the written consent of Declarant, in its discretion, during the Declarant Control Period, and thereafter, the Board. Upon full development of a Building Site or Unit, Declarant may require, in its discretion, that the applicable Owner(s) assign to Declarant or its Affiliate, any excess entitlements no longer needed by the Owner(s) for the Building Site or Unit.

4.10 Rezoning. During the Declarant Control Period, no Owner or any other Person may apply or join in an application to amend, vary or modify the Zoning Conditions or rezone or apply for any zoning variance or waiver as to all or any portion of the Properties without the prior written consent of the Declarant where such amendment, variance or modification will materially affect the development or uses of a Building Site or Building Sites or Unit or Units within the Properties. Every Person that acquires any interest in the Properties acknowledges that Downtown Daybreak is a mixed-use community, the development of which is likely to extend over many years, and agrees not to protest, challenge or otherwise disagree with (a) changes in uses or density of property outside of such Owner's Building Site or Unit, or (b) changes in the Master Plan relating to property outside of such Owner's Building Site or Unit. The Declarant or any Declarant-Related Entity may apply for such rezoning as to any portion of the Properties owned by it at any time.

4.11 Security. Each Owner and Occupant of a Unit, and their respective Permittees, shall be responsible for their own personal safety and the security of their property in the Properties. The Association, the Declarant, or any Declarant-Related Entity may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the Declarant, any Declarant-Related Entity, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security system or measure, cannot be compromised or circumvented, nor that any such systems or measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. No representation or warranty is made that the lighting facilities or systems (including the placement thereof) will adequately illuminate or attempt to adequately illuminate all the Common Areas, or that such facilities or systems will be designed with safety measures in mind. Each Owner acknowledges, understands and covenants to inform all Occupants of its Unit that the Association, its Board of Directors and committees, the Declarant, any Declarant-Related Entity, and any successor Declarant are not insurers or guarantors of safety and security within the Properties and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties. Any costs incurred by the Association to provide such services shall be paid by the Association and shall be charged either to all Units, as a General Assessment or a Special Assessment, or only to those certain Service Areas or Units benefited

thereby, as a Specific Assessment or as a Service Area Assessment, as determined by the Board in its discretion.

4.12 Restricted Access and Gates. At the Declarant's or Board of Director's discretion, access to all or any portion of Downtown Daybreak may be temporarily or permanently restricted by a fence and one or more gates. Vehicular access into certain Parking Facilities and other portions of the Properties may be restricted by electronically operated or other controlled access entry gates located at the entrance to such portions of the Properties, and pedestrian access may be restricted by pedestrian gates at other points as well. Any restricted access gates may or may not be staffed, at the discretion of the Declarant or Board of Directors. Any such gate staffing may be modified or eliminated at any time without notice. The use and operation of any restricted access gate may be limited or eliminated from time to time by the Declarant or the Board of Directors.

4.13 Relationship With Tax-Exempt Organizations. The Declarant or the Association may create, enter into agreements or contracts with, or grant exclusive or non-exclusive easements over the Common Area, or convey portions of the Common Area, to non-profit, tax-exempt organizations for the benefit of the Properties. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget. For the purposes of this Section a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, including but not limited to, Sections 501(c)(3) or 501(c)(4) thereof, and shall specifically include any CEF Recipient (as defined below).

4.14 View Impairment. Neither the Declarant, any Declarant-Related Entity, nor the Association, guarantees or represents that any view from Units over and across the Ballpark, any water body, Open Space, Common Area, Event Area, public park, sidewalk, or walkway, or other facility will be preserved without impairment. The owners of such areas shall have no obligation to prune or thin trees or other landscaping to preserve any view, and shall have the right, in their discretion, subject to any applicable DRB requirements, to add trees and other landscaping or to install Improvements or barriers (both natural and artificial) to such areas from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Each Owner, by acceptance of a Deed, acknowledges that any view of the Ballpark, a lake, other water body, Open Space, Common Area, Event Area, public park, sidewalk, or walkway, or other facility which the Unit may enjoy as of the date of the purchase of the Unit may be impaired or obstructed by the construction of Improvements, including but not limited to buildings, natural growth of existing landscaping, the installation of additional trees and other landscaping and other types of Improvement or barriers (both natural and artificial) within such areas.

4.15 Provision of Services. The Association may provide or contract for programs, services, facilities, and activities for the Owners and their Occupants that serve to promote a "sense of community" within Downtown Daybreak and as a part of the larger, surrounding area. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including the Declarant or any Declarant-Related Entities, to provide such programs, services, facilities, and activities. By way of example, some programs, services, facilities, and activities that may be provided include Utilities, fire protection, patrols or security services, street cleaning, snow pushing, waste collection, recycling collection, shuttles, jitneys, scooter or Segway sharing, bike-sharing or car-sharing services, pest control services, landscape maintenance, special and promotional events coordination, recreational leagues, cultural programs, educational programs, Social Media services, festivals and holiday celebrations and activities, and similar programs, services, facilities and activities.

The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense or a Service Area Expense, depending on whether the service or facility is provided to all Units or only the Units within a specified Service Area. In addition, the Board shall be authorized to charge use and consumption fees for services and facilities through Specific Assessments or by requiring payment at the time the service or facility is provided. As an alternative, the Association shall be further permitted to require Owners to utilize services delivered by a provider or group of providers, designated by the Association. By way of example, but not limitation, the Association shall have the right, but not the obligation, to designate one garbage collection company to provide service for all Units within the Properties. The Association may arrange for the costs of the services and facilities to be billed directly to Owners by the provider(s) of such services and facilities. Any Association contract for services or facilities may require Owners or Occupants to execute separate agreements directly with the Persons providing such services or facilities in order to gain access to or obtain specified services or facilities. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or Occupant of a Unit, may result in termination of such benefits to the Owner's Unit. Any such termination and any failure or refusal to participate shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service or facilities that are assessed against the Unit as a Common Expense or Service Area Expense.

The Board, without the consent of the Class "A" Members of the Association, shall be permitted to add, modify or cancel any services or facilities being provided. Nothing contained herein can be relied upon as a representation as to the services and facilities, if any, which will be provided by the Association.

4.16 Opportunities for Community Interaction. The Association may make use of internet or intranet access, email, webpages, instant messages, video conferencing, and other related internet facilities and services to promote Downtown Daybreak, facilitate social interaction, and encourage participation in Association activities. For example, the Association may sponsor, create, and maintain a webpage, internet message boards, social media networks, and offer other internet services and social media opportunities for Owners and Occupants to participate in Association-sponsored activities. To the extent Utah law and federal law permit, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices electronically, hold interactive web conferencing Board or Association meetings permitting attendance and voting by electronic means, and electronically send and collect assessments and other invoices.

4.17 Sidewalks and Walkways. The Declarant reserves for itself, its successors and assigns, and the Association, the right to designate certain areas within the Properties, including the Common Area, to be used as recreational bike and pedestrian pathways, sidewalks, trails, and walkways ("walkway system"). Use of the walkway system shall be subject to the reasonable Rules and Regulations of the Association. Any individual using the walkway system shall do so at his/her own risk. Each Owner acknowledges, understands and covenants to inform the Occupants of such Owner's Unit, that the Properties may contain a walkway system, that such walkway system may connect with a public walkway system, and that there may be certain inconveniences and loss of privacy associated with the ownership of Units adjacent to such walkway system resulting from the use of the walkway system by the Declarant, Declarant-Related Entities, the Association, the Owners, Occupants, their respective Permittees, and the public.

4.18 Access by General Public and Ticket Holders. Certain facilities and areas within the Properties, including but not limited to any Event Area, may be open for use and enjoyment of the public and to Event ticket holders, whether by operation of law or by designation as provided in this Section. Such facilities and areas may include, by way of example, roads, greenbelts, trails, walkways and paths, sidewalks to and from the Ballpark and any Event Area, parks and other neighborhood Open Spaces

conducive to gathering and interaction. The Declarant may designate such facilities and areas as open to the public during the Declarant Control Period, or the Board may so designate at any time thereafter. Use of such facilities and areas shall be subject to the reasonable Rules and Regulations of the Association. Each Owner acknowledges, understands and covenants to inform the Occupants of such Owner's Unit, that the Properties may contain such public areas and that there may be certain inconveniences and loss of privacy associated with the ownership of Unit near or adjacent to such public areas resulting from the use of public areas by the Declarant, the Association, Owners, Occupants, Permittees, ticket holders, and the public.

4.19 Future Development. Each Owner acknowledges, understands and covenants to inform the Occupants of its Unit that the Properties, Building Sites, and areas adjacent to the Properties are subject to further development and expansion, and therefore, there may be certain inconveniences during any period of construction, and each Owner as well as any of its Occupants of its Unit waives all claims with respect thereto. Each Owner agrees that if Owner or Owner's Occupants enter onto any area of construction within the Properties, including Building Sites owned by other parties, they do so at their own risk, and that the Declarant, all Declarant-Related Entities, the Association, and their respective contractors, agents or employees shall not be liable for any damage, loss or injury to such persons.

Notwithstanding anything contained in any written letter, document or materials, or oral statement received by any Owner, each Owner acknowledges and agrees that the present plans and themes for the development of Downtown Daybreak may change and that such Owner has not relied on any representation, warranty, or assurance by any Person (a) that any Unit, or other property or facilities, will be added, modified, or eliminated within the Properties; or (b) as to the financial or other impact of such action on any Owner. Each Owner acknowledges and agrees that it is not entitled to rely upon and has not received or relied upon any representations, warranties, or guarantees whatsoever as to the current or future: (a) design, construction, completion, development, use, benefits, or value of property within Downtown Daybreak; (b) number, types, sizes, prices, or designs of any Improvements built or to be built in any part of Downtown Daybreak; or (c) use or development of any property adjacent to or within the vicinity of Downtown Daybreak.

4.20 Powers of the Association Relating to Service Areas. Since any Service Area Committee established under this Declaration is a committee of the Association, the Board shall have all of the power and control over any Service Area Committee that it has under applicable law over other committees of the Association.

The Association may veto any action taken or contemplated by any Service Area Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also may require specific action to be taken by any Service Area Association to fulfill its obligations and responsibilities under this Declaration or any other applicable covenants. For example, the Association may require specific maintenance or repairs or aesthetic changes to be done by the Service Area Association, and that a proposed budget include the cost of such work. If the Service Area Association fails to comply with such requirements within a reasonable time as specified in writing by the Association, the Association may effect such action on behalf of the Service Area Association and assess the Units in such Service Area for their pro rata share of any expenses incurred by the Association in taking such action. Such assessments may be collected as a Specific Assessment under Article 8.

4.21 Municipal Services. The Association may, but is not obligated to, contribute funds to the City of South Jordan, Salt Lake County, any STD, or other applicable governmental authorities, for the purpose of increasing the city's capacity to provide municipal services, including, without limitation, enhanced infrastructure improvements (i.e., curbing, alternative paving surfaces, street improvements,

traffic control devices, street and directional Signage, etc.), collection of refuse and recycling, and police and fire protection services, within Downtown Daybreak. The Association may also enter into agreements with the City of South Jordan, Salt Lake County, any STD, or other applicable governmental authorities, for the purpose of maintaining or contributing to the costs of maintaining any roads, Utilities, and sidewalks within or in the vicinity of Downtown Daybreak.

4.22 Governmental Permits. To the extent permitted by law, Declarant shall have the right in its discretion to assign, delegate, and/or otherwise transfer to the Association any of its continuing obligations and/or responsibilities under governmental permits and approvals with respect to the Properties, including, without limitation, its continuing obligations under any permit. The Association shall accept and assume such obligations and responsibilities without condition or consideration. Such assignment, delegation, or transfer and assumption shall be effective without the consent of, or any further action by the Association, but upon Declarant's request, the Association shall promptly execute any documents that Declarant requests to evidence the assignment, delegation, or transfer and assumption of such obligations and/or responsibilities. The Association shall comply in all respects with the terms of, and shall not undertake any activity inconsistent with, such permits and approvals. The Association shall indemnify, defend and hold Declarant harmless from and against any claims or losses arising out of the violation or failure to comply with any permit(s), or out of the operation, maintenance or use of any improvement or facility authorized by the permit(s), provided such claim or loss first occurs after the effective date of the assignment, delegation, transfer (or tender of the assignment, delegation, or transfer, if wrongfully refused by an Association).

4.23 Railroad and Noise Disclosure. Each Owner and Occupant acknowledges and understands that the Properties are located in an urban environment that is intended to contain both residential and commercial uses. An active light railroad line upon which trains regularly travel abuts the Properties. Sound and vibrations may be audible and felt from activities associated with such operational railroad and urban environment that may include, but not limited to, the movement of train on railway tracks, sirens, whistles, horns, the playing of music, people speaking loudly, trash being picked up, deliveries being made, equipment being operated, dogs barking, construction activity, building and grounds maintenance being performed, automobiles, buses, trucks, ambulances, airplanes, trains, and other generators of sound and vibrations typically found in an urban area. In addition to sound and vibration, there may be odors (from railway operations, cargo, restaurants, food being prepared and dumpsters) and light (from the railway, signs, streetlights, other buildings, car headlights and other similar items) in urban areas and these things are part of the reality and vibrancy of urban living. While some steps may be taken to mitigate sound in the design and construction of the improvements, the improvements are not constructed to be totally soundproof or free from vibrations. The number of trains each day will vary and may increase with time. Each Owner and Occupant, for itself and its respective lessees and Occupants, family members, successors, and assigns, hereby accepts and assumes any and all risks, burdens, and inconvenience caused by or associated with the railroad line and its operations and agrees not to assert or make, and hereby waives and releases any claim related to or arising out of the foregoing against (i) the City of South Jordan, Salt Lake County, and its respective officials, directors, commissioners, representatives, agents, servants, and employees; (ii) the Declarant and Declarant-Related Entities, the Association, and their respective directors, officers, partners, affiliated entities, agents, employees, managers, trustees, and any successors or assigns of any of the foregoing.

4.24 Airport Disclosure. Each Owner acknowledges that Downtown Daybreak is located approximately five (5) miles from South Valley Regional Airport (the "Airport"). The Airport serves as the reliever airport for the Salt Lake City, Utah area, and the aircraft fleet mix may include corporate and business jets, aircraft charters, training aircraft, helicopters, and personal aircraft used for business and recreational purposes. Each Owner acknowledges and agrees that the enjoyment of a Building Site or Unit and the Common Area may be affected by aircraft taking off from or landing at the Airport and that

aircraft may fly over Downtown Daybreak and adjacent properties at altitudes which will vary with meteorological conditions, aircraft type, aircraft performance, and pilot proficiency, and may generate noise, the volume, pitch, amount and frequency of which will vary depending on a number of factors, including without limitation, the altitudes at which the aircraft fly, wind direction and other meteorological conditions and aircraft number and type, and may be affected by future changes in Airport activity. The number of takeoffs and landings at the Airport each day will vary and may increase with time. Each Owner and Occupant, for itself and its respective lessees and Occupants, family members, successors, and assigns, hereby accepts and assumes any and all risks, burdens, and inconvenience caused by or associated with the Airport and its operations including, without limitation, noise caused by or associated with aircraft flying over Downtown Daybreak and adjacent properties, and agrees not to assert or make, and hereby waives and releases any claim related to or arising out of the foregoing against (i) the City of South Jordan, Salt Lake County, and its respective officials, directors, commissioners, representatives, agents, servants, and employees; (ii) the Declarant and Declarant-Related Entities, the Association, and their respective directors, officers, partners, affiliated entities, agents, employees, managers, trustees, and any successors or assigns of any of the foregoing.

4.25 Presence and Management of Wildlife.

(a) The Properties may contain manmade, natural, and environmentally sensitive areas that may serve as habitats for a variety of native plants and wildlife, including, without limitation, insects, venomous and non-venomous snakes and other reptiles, coyotes, opossums, raccoons, bats, deer, rodents, and other animals, some of which may pose hazards to persons or pets coming in contact with them. Neither the Association, the Board, the original Declarant, nor any successor Declarant shall have any duty to take action to control, remove or eradicate any wildlife in the Properties nor shall they be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence of such wildlife on the Properties. The habitat within the Properties may create a favorable environment for wildlife regardless of the wildlife management practices, if any, of Declarant and the Association. Each Owner, Occupant, and Permittee acknowledges that neither the Declarant nor the Association can eliminate the threat of wild animals. Each Owner and Occupant of a Unit shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of such wildlife and further acknowledges that the Association, the Board, the original Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or Occupant relied upon any representations or warranties, expressed or implied, relative to the presence of such wildlife.

(b) The Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, to engage in wildlife management plans and practices on the Properties to the extent that such practices are permitted by applicable state and federal law. Declarant may, in its sole discretion, commission environmental studies and reports relating to the Properties and the wildlife habitats located thereon, and may elect to follow or disregard any recommendations resulting from such studies. The Declarant may assign these management rights to the Association in which event the expenses of such activities shall be funded by General Assessments.

4.26 Stormwater Management Areas. Portions of the Properties may contain wetlands, vegetated buffers, or other green storm water improvements and related Improvements for the purpose of managing and/or containing the flow of surface water within Downtown Daybreak (the "Stormwater Management Areas"). Unless otherwise approved in writing by Declarant, Salt Lake County and any other governmental authorities having jurisdiction, such Stormwater Management Areas shall be maintained to ensure that such Stormwater Management Areas function as intended in perpetuity and no Owner or Occupant or any other Person acting, or purporting to act, on behalf of any Owner, or for whom any Owner shall be responsible pursuant to this Declaration, shall obstruct or disturb the Stormwater Management Areas in any way. The Association shall have no obligation to maintain, prune, or thin

landscaping within any Stormwater Management Areas that are intended to be kept in their natural state except to maintain the Community-Wide Standard or as otherwise required by Salt Lake County and any other governmental authority having jurisdiction.

Any Stormwater Management Areas retained in their natural state should be considered hazardous for recreational activities. Neither the Association, Declarant, nor any Declarant-Related Entity has any obligation to provide security or supervision for any person using Stormwater Management Areas, and all persons using Stormwater Management Areas do so at their own risk. Insects, snakes, and animals that may be dangerous to humans may inhabit Stormwater Management Areas. Owners should not allow children or pets to enter the Stormwater Management Areas without adult supervision. Neither the Association, Declarant, nor Declarant-Related Entities shall have any liability whatsoever for any condition of a Stormwater Management Areas or any injury or death occurring thereon. The Association shall have the right to impose additional rules and regulations governing the use of the Stormwater Management Areas. If any Stormwater Management Areas, or the trees or vegetation thereon, are damaged or destroyed by fire, windstorm, flood, disease, or other natural or manmade event, neither the Association, nor Declarant, nor any Declarant-Related Entity, shall have any obligation to repair or restore the damage or destruction, or to remove any dead or damaged trees or other vegetation.

4.27 Right to Delegate Certain Obligations. In the event a Special Taxing District (or a similar quasi-public entity) is formed, the Association shall have the right to delegate certain of its obligations hereunder to the STD ("Delegated Obligations"), including but not limited to those set forth in Section 5.1. The Association shall be relieved of its obligation to perform such Delegated Obligations during the term that the STD performs such Delegated Obligations but may, in its sole discretion, supplement the services performed by the STD for certain Delegated Obligations.

ARTICLE 5 **MAINTENANCE**

5.1 Association's Responsibility.

(a) The Association shall maintain and keep in good repair the Area of Common Responsibility, which may include, but need not be limited to:

(i) all Common Areas;

(ii) all buffers, landscaping and other flora, parks, Open Space, structures, and Improvements, including any recreational facilities, fences, private streets, alleys, bike and pedestrian pathways, and sidewalks situated upon the Common Area;

(iii) any buffers, landscaping and other flora, parks, bike and pedestrian pathways, trails, structures and Improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to or within the Properties as deemed necessary in the discretion of the Board;

(iv) any streams, creeks, or wetlands located within the Common Areas which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith;

(v) any property and facilities owned by the Declarant or any Declarant-Related Entity and made available, on a temporary or permanent basis, for the primary use and enjoyment

of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as the Declarant revokes such privilege of use and enjoyment by written notice to the Association;

(vi) all storm water management facilities, retention basins, dams, spillways, and outfalls serving the Properties subject to any applicable agreements (if not maintained by a governmental agency or located on or within a Unit);

(vii) all planter strips and landscaping within any public rights-of-way or medians of the roadways within or adjacent to the Properties to the extent that the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard;

(viii) all entry signs and features serving the Properties constructed by or on behalf of the Declarant;

(ix) all Signage within or adjacent to public rights-of-way within or adjacent to the Properties which the Board, in its discretion, deems appropriate; and

(x) such additional portions of any property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Building Site Declarations, any Cost Sharing Agreement, the Zoning Conditions or any contract or agreement for maintenance thereof entered into by the Association.

The Association may, as a Common Expense, maintain other property and Improvements which it does not own, including, without limitation, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) The Association shall ensure that snow pushing is conducted on any private streets within the Properties so as to provide, in a reasonably practicable manner, year-round access within the Properties to Building Sites and Units. In addition, snow pushing may also be provided to certain Building Sites and Units pursuant to Section 4.15.

(c) Declarant may establish specific minimum standards for the maintenance, operation and use of any Area of Common Responsibility in the Governing Documents and/or in the deed or other instrument transferring the property to the Association. Such standards shall become part of the Community-Wide Standard. These standards may contain general provisions applicable to all of the Area of Common Responsibility, as well as specific provisions which vary from one portion of the Area of Common Responsibility to another depending upon the nature of any Improvements located thereon, intended use, location, and/or unique characteristics.

The level of maintenance that the Association provides to the Area of Common Responsibility may vary from no maintenance to a high level of landscaping and from regular, periodic maintenance to intermittent maintenance, depending on the nature and intended use of the particular Open Space. Open Spaces may serve as habitats for a variety of native plant, animal, and insect species, and other naturally occurring conditions, some of which may pose hazards to persons or pets coming in contact with them. Neither the Association, the Declarant, nor any builder shall have any responsibility for providing maintenance in such areas or taking action to abate such conditions, and any maintenance provided shall be consistent with the terms of any recorded restrictions or easements affecting such property.

(d) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the discretion of the Board, to perform required maintenance or repairs, unless Members representing seventy-five (75%) of the Class "A" votes in the Association and during the Declarant Control Period, the Declarant agree in writing to discontinue such operation.

(e) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner or a Service Area Association in a Supplemental Declaration executed by such Owner or Service Area Association; (ii) such maintenance responsibility is otherwise assumed by owners or operators of portions of adjacent properties pursuant to a Cost Sharing Agreement entered into by the Association; or (iii) such property is dedicated to any local, state, or federal governmental or quasi-governmental entity; provided however, that in connection with any such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means during the Declarant Control Period except with the prior written consent of the Declarant.

(f) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the Owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, any Cost Sharing Agreement, the Governing Documents, any recorded covenants, or any agreements with the Owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Service Area Expense assessed as a Service Area Assessment solely against the Units within the Service Area(s) to which the Exclusive Common Areas are assigned, or a Specific Assessment against the particular Units to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

(g) In the event that the Association fails to properly perform its maintenance responsibilities hereunder and to comply with the Community-Wide Standard, the Declarant may, upon not less than ten (10) Days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

5.2 Owner's Responsibility.

(a) Each Owner shall maintain its Building Site or Unit and those additional areas located in rights-of-way to the back of the curb immediately adjacent to the Owner's Unit and all Improvements located thereon, including without limitation, all structures, parking areas, Parking Facilities, irrigation systems, drainage facilities, detention and retention ponds, landscaping, setback areas, and other Improvements in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a governmental agency pursuant to this Declaration, any Supplemental Declaration, any Building Site Declarations or other covenants applicable to such Building Site or Unit, including, but not limited to, the Design Guidelines and the Zoning Conditions. Such maintenance includes, but is not limited to the following, unless otherwise provided in the Design Guidelines:

(i) Removal of all litter, trash, refuse and waste at least once a week and keeping the lawn areas, trash pick-up, service and loading areas in a neat condition;

(ii) Landscaping maintenance, tree and shrub pruning;

(iii) Keeping exterior lighting, signage, fixtures, and mechanical facilities in working order;

(iv) Keeping plant materials within lawn and garden areas alive, and any adjoining rights-of-way or drainage ditches attractive and free of trash and debris;

(v) Promptly removing and replacing any dead plant material;

(vi) Keeping Parking Facilities, driveways, alley ways and roads in good repair;

(vii) Striping of parking areas and repainting of Improvements, as applicable;

(viii) Maintaining, operating, and repairing drainage swale(s), drainage lines, catch basins and other equipment on such Owner's Building Site or Unit, including the exercise of practices, such as mowing, removal of debris and erosion repair, which allow the drainage swales, drainage lines, catch basins and other equipment to provide drainage, water storage, conveyance, or other storm water management capabilities subject to any applicable requirements; and

(ix) Repair of exterior damage to Improvements and keeping exterior Improvements in good repair.

(b) Every Owner shall also be responsible for the security and safety of its Building Site or Unit notwithstanding any security systems or measures which may be provided by the Association.

(c) Each Parking Owner shall be responsible for all expenses and costs in connection with the maintenance, operation, repair, replacement and restoration of such Parking Facilities, including, without limitation, all costs and expenses associated with insuring such Parking Facilities, except as otherwise set forth in the Governing Documents.

(d) In addition to any other enforcement rights, if an Owner fails to properly perform its maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry by the Association or its designee under this Section shall not constitute a trespass.

5.3 Service Area Responsibility. Upon resolution of the Board, the Owners of Units within each Service Area shall be responsible for paying, through Service Area Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Service Area. This may include, without limitation, the costs of maintaining any Signage, entry features, rights-of-way and green space between the Service Area and adjacent public roads, private streets within the Service Area, regardless of ownership or the Person performing the maintenance; provided however, all Service Areas which are similarly situated shall be treated the same.

Any Service Area Association having responsibility for maintenance within a particular Service Area pursuant to additional covenants applicable to such Service Area shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If it fails to do so, the Association may perform such responsibilities and assess the costs as a Specific Assessment against all Units within such Service Area as provided in Section 8.6.

5.4 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard, the Zoning Conditions and all Governing Documents. Neither the Association or Service Area Association nor any Owner shall be liable for any damage or injury occurring on, or arising out of the condition of, property which such Person does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.5 Party Walls and Similar Structures.

(a) **General Rules of Law to Apply.** Each wall, fence, sidewalk, driveway or similar structure built as a part of the original construction on the Building Site or Unit which serves, connects or separates any two adjoining Building Sites or Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

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

(d) **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

5.6 Cost Sharing Agreements. Within or in the vicinity of the Properties, there may be certain residential, nonresidential or recreational areas, including without limitation, residential developments, retail, commercial, or business areas, which may or may not be subject to this Declaration and which may or may not be Building Sites, Units or Common Area as defined in this Declaration (hereinafter "adjacent properties"). Unless such adjacent properties are subject to this Declaration, or as may be otherwise set forth in a Supplemental Declaration or a Cost Sharing Agreement, the owners and operators of such adjacent properties shall not be Members of the Association, shall not be entitled to vote on Association matters, and shall not be subject to assessment under Article 8 of this Declaration.

The Association may enter into one (1) or more Cost Sharing Agreements with the owners or operators of portions of the adjacent properties:

(a) to obligate the owners or operators of such adjacent properties to perform and/or to share in certain costs associated with, the maintenance, repair, replacement and insuring of portions of

the Area of Common Responsibility, if any, which are used by or benefit jointly the owners or operators of such adjacent properties and the Owners within the Properties;

(b) to permit use of any recreational and other facilities located on the Common Areas by the owners or operators of such adjacent properties;

(c) to permit use of any recreational and other facilities located on such adjacent properties by the Owners of all Units or by the Owners of Units within specified Service Areas;

(d) to obligate the Association to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of such adjacent properties, if any, which are used by or benefit jointly the owners or operators of such adjacent properties and the Owners within the Properties; and/or

(e) to establish rules and regulations regarding the use of areas that benefit jointly the owners or operators of such adjacent properties and the Owners within the Properties.

The owners or operators of such adjacent properties shall be subject to assessment by the Association only in accordance with the provisions of such Cost Sharing Agreement(s). If the Association is obligated to share costs incurred by the owners of such adjacent properties, such payments by the Association shall be deemed to constitute Common Expenses of the Association unless the Cost Sharing Agreement provides otherwise. The owners or operators of the adjacent properties shall not be subject to the restrictions contained in this Declaration except as otherwise specifically provided herein.

ARTICLE 6 **INSURANCE AND CASUALTY LOSSES**

6.1 Association Insurance.

(a) **Required Coverages.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable Improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured Improvement.

(ii) Commercial general liability insurance on all public ways located within the Properties and on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least five million dollars (\$5,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits.

(iii) Workers compensation insurance and employers' liability insurance, if and to the extent required by law.

(iv) Directors' and officers' liability coverage.

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6th) of the annual General Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable which may include, without limitation, flood insurance.

In the event that any portion of the Common Area is or shall become located in an area identified by the Federal Emergency Management Agency ("FEMA") or its successor entity as an area having special flood hazards, a "blanket" policy of flood insurance on the Common Area must be maintained in the amount of one hundred percent (100%) of current replacement cost of all affected Improvements and other insurable property or the maximum limit of coverage available, whichever is less.

In addition, the Association may obtain and maintain property insurance on the insurable Improvements within any Service Area in such amounts and with such coverages as the Owners in such Service Area may agree upon pursuant to Section 3.4. Any such policies shall provide for a certificate of insurance to be furnished to the Service Area Association and to the Owner of each Unit insured upon request.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the General Assessment, except that (i) premiums for property insurance obtained on behalf of a Service Area shall be charged to the Owners of Units within the benefited Service Area as a Service Area Assessment; and (ii) premiums for insurance on Exclusive Common Areas may be included in the Service Area Assessment of the Service Area(s) benefited unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense and assessed in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one (1) or more Owners or Occupants, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 8.6.

(b) Policy Requirements.

(i) The Association shall arrange for periodic reviews of the sufficiency of insurance coverage by one (1) or more qualified Persons, at least one (1) of whom must be familiar with insurable replacement costs in the Salt Lake City, Utah, area.

(ii) All Association policies shall provide for a certificate of insurance to be furnished to the Association and to each Member upon written request. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a).

(iii) In addition, the Board shall use reasonable efforts to secure insurance policies that are written:

(1) with a company authorized to do business in the State of Utah which satisfies the requirements of secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(2) in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Service Area shall be for the benefit of the Owners of Units within the Service Area and their Mortgagees, as their interests may appear;

(3) to not be brought into contribution with insurance purchased by Owners, Occupants, or their Mortgagees;

(4) to contain an inflation guard endorsement;

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

(6) to include an endorsement requiring at least thirty (30) Days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

(iv) In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners as additional insureds and provide:

(1) a waiver of subrogation as to any claims against the Association's Board, its agents, officers, employees, and manager(s), and the Owners and Occupants;

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

(3) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

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

(5) a cross liability provision; and

(6) a provision vesting the Board with the exclusive authority to adjust losses; provided however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction.

(i) In the event of any insured loss covered by insurance held by the Association, only the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in

this subsection, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or Improvements necessitated by changes in applicable building codes.

(ii) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members holding at least seventy-five percent (75%) of the total Class "A" votes in the Association, and during the Declarant Control Period the Declarant, decide within sixty (60) Days after the loss either (i) not to repair or reconstruct; or (ii) to construct alternative Improvements.

(iii) If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) Day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional Days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

(iv) If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative Improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association consistent with the Community-Wide Standard.

(v) Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association or the Service Area, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

(vi) If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2 Owners' Insurance.

(a) Minimum Requirements. By virtue of taking title to a Building Site or Unit, each Owner covenants and agrees with all other Owners and with the Association to carry liability and property insurance for the full replacement cost of all insurable Improvements on its Building Site or Unit, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of the Improvements, structures or landscaping on or comprising its Building Site or Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner the damaged Improvement, structure or landscaping consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall clear the Building Site or Unit of all debris and ruins and maintain the Building Site or Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

(b) If any Unit is utilized for the selling, serving, or furnishing of alcoholic beverages, including, without limitation, the sale for on or off-premises consumption, then, for so long as such use continues, the Owner shall obtain and maintain, or cause to be obtained and maintained (by endorsement to the general liability insurance required to be maintained hereunder or by separate policy), so-called "liquor liability" or "dram shop" insurance ("liquor liability insurance"), with initial limits of

not less than One Million and No/100 Dollars (\$1,000,000.00) each common cause and aggregate. The limits of such coverage will be increased periodically as each applicable Owner deems reasonably necessary and commensurate with coverage carried by prudent owners and occupants with similar uses in similar projects. Such liquor liability insurance shall include coverage for liability imposed on the insured by reason of selling, serving, or furnishing of any alcoholic beverages. The aforementioned liquor liability insurance shall be for the mutual and joint benefit and protection of Declarant, the Association, the applicable Owner and Occupant, and such other entities as Declarant or the Association shall designate from time to time, and a certificate of insurance shall be delivered to the Association upon request.

(c) The requirements of this Section shall also apply to any Service Area Association that owns common property within the Service Area in the same manner as if the Service Area Association were an Owner and the common property were a Building Site or Unit. Additional recorded covenants applicable to any Service Area may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing Improvements and structures on the Building Sites or Units within such Service Area and for clearing and maintaining the Building Sites or Units in the event the Improvements and structures are not rebuilt or reconstructed.

6.3 Limitation of Liability. Notwithstanding the duty of the Association to maintain and repair portions of the Common Area, neither the Association, its Board of Directors, its successors or assigns, nor any officer or director or committee member, employee, agent, contractor (including the management company, if any) of any of them shall be liable to any Owner or Occupant for any injury or damage sustained in the Area of Common Responsibility, the Common Area or other area maintained by the Association, or for any injury or damage caused by the negligence or misconduct of any Owner, or Occupant whether such loss occurs in the Common Area or in individual Building Sites or Units.

Each Owner, by virtue of the acceptance of title to its Building Site or Unit, and each other Person having an interest in or right to use any portion of the Properties, by virtue of accepting such interest or right to use, shall be bound by this Section and shall be deemed to have automatically waived any and all rights, claims, demands, and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed under this Section.

ARTICLE 7 **ANNEXATION AND WITHDRAWAL OF PROPERTY**

7.1 Annexation by the Declarant. Until all property described on Exhibit "B" has been subjected to this Declaration or fifty (50) years after the recording of this Declaration in the Public Records, whichever is earlier, the Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the Additional Property. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of any Members or Owners, but shall require the consent of the owner of the property to be annexed, if other than the Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Declarant intends to develop the Properties in accordance with the Master Plan, but reserves the right to modify the Master Plan and any plat or any portion of the Properties from time to time in its

discretion. Declarant shall not be required to follow any predetermined order of improvement and development within the Master Plan or Properties, and it may annex Additional Property and develop it before completing the development of the Properties. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever.

7.2 Annexation by Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members representing a Majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and during the Declarant Control Period, the written consent of the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the president and the secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein. Any Supplemental Declaration may contain such terms and conditions as may be desirable to reflect the different character, if any of the Additional Property being annexed.

7.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Declarant Control Period for the purpose of removing any portion of the Properties from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Board shall execute a written consent to such withdrawal, with such consent by the Association deemed to be given upon the filing of a Supplemental Declaration in the Public Records. In the event that the property to be withdrawn includes a Parking Facility, then such withdrawal shall require the consent of any Owner of the Building Site or Unit that is entitled to park within such Parking Facility.

7.4 Additional Covenants and Easements. The Declarant may subject any portion of the Properties to additional covenants and easements, including, without limitation, covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Service Area Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration or Building Site Declaration, filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of the property subject to such additional covenants and easements, if other than the Declarant. Any such Supplemental Declaration or Building Site Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property for such purposes as deemed appropriate in the Declarant's discretion, including but not limited to modifications to reflect the different character and intended use of such property as well as modifications to the types, allocations or amounts of the various assessments.

7.5 Amendment. Notwithstanding anything to the contrary contained in this Declaration, this Article 7 shall not be amended during the Declarant Control Period without the prior written consent of the Declarant.

ARTICLE 8 **ASSESSMENTS**

8.1 Creation of Assessments.

(a) There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be initially four (4) types of assessments: (i) General

Assessments to fund Common Expenses for the general benefit of all Units; (ii) Service Area Assessments for Service Area Expenses benefiting only Units within a particular Service Area or Service Areas; (iii) Special Assessments as described in Section 8.5; and (iv) Specific Assessments as described in Section 8.6. Each Owner, by accepting a Deed or entering into a contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

(b) All assessments and other charges, together with interest, late charges in such amount as the Board may establish by resolution, costs of collection, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit against which the assessment or charge is made until paid, as more particularly provided in Section 8.7. Each such assessment or charge, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

(c) The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate or estoppel in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate or estoppel shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate or estoppel, as a Specific Assessment, or any costs or expenses incurred by the Association in responding to the request for the certificate or estoppel.

(d) Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the General Assessment and any Service Area Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on such Owner's Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15th) Day following the due date unless otherwise specified by Board resolution.

(e) No Owner may exempt itself from liability for assessments by non-use of Common Area, including Exclusive Common Area reserved for such Owner's use, abandonment of its Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or Improvements, or from any other action taken by the Association or Board. The Association is specifically authorized to fully or partially exempt certain Units from liability for and payment of assessments based on the Owner of or use of such Units or portions thereof as the Board may from time to time determine in its discretion; provided, however, that such exemption shall be granted only to property that is owned by a charitable corporation, nonprofit corporation, quasi-governmental authority or public agency.

(f) The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant, Declarant-Related Entity, or other entities for payment of Common Expenses; provided, however, that the fair market value of the "in kind" contribution of services, materials, or a combination

of services and materials provided is of equal or greater value than the share of Common Expenses deemed satisfied by such contribution.

(g) The Governing Documents applicable to each Service Area may designate one or more Persons who may be responsible for collecting all assessments levied against Units within such Service Area (such Person or Persons hereinafter defined and referred to as the "Service Area Assessor"). In the Association's discretion, the Service Area Assessor shall be required to pay the full amount of such assessments to the Association on or before the date that such assessments are due. No Service Area Assessor may claim set-off nor abatement based upon such Person's inability or failure to collect such assessments from the Owners of Units within such Service Area. If the Governing Documents applicable to a particular Service Area create a Service Area Association, the Service Area Association shall serve as the Service Area Assessor if permitted or required to do so by the Association pursuant to Section 3.4.

8.2 Computation of General Assessment. At least sixty (60) Days before the beginning of each fiscal year, the Board shall prepare a budget for the estimated Common Expenses of the Association during the coming year. The budget may also include a contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.4. The General Assessments against each Unit shall be calculated in accordance with the formula set forth Exhibit "C." The aggregate amount of the assessments shall be set at a level which is reasonably expected to produce income for the Association equal to the total budgeted Common Expenses, including any reserves.

In determining assessments, the Board may consider other sources of funds available to the Association, including any surplus from prior years, any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year, and any income or expenses expected to be generated from any Cost Sharing Agreement.

During the Declarant Control Period, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy or any contributions of services and materials. Any anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall calculate the total amount of General Assessment to be allocated to each Unit based on the formula set forth in Exhibit "C." The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Owner and Service Area Assessor at least thirty (30) Days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Owners representing at least seventy-five percent (75%) of the total Class "A" votes in the Association and during the Declarant Control Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Owners as provided for special meetings in the By-Laws, which petition must be presented to the Board within ten (10) Days after the date of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. If the proposed budget is disapproved, or if the Board fails to determine a budget for any year, or if the budget proves inadequate for any reason, or if the use of a Unit changes and affects the assessment obligation of the Owner of such Unit, the Board may prepare a revised budget for the remainder of the fiscal year. The Board shall send a copy of the revised budget to

each Owner and Service Area Assessor at least thirty (30) Days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

8.3 Computation of Service Area Assessments. At least sixty (60) Days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Service Area Expenses for each Service Area on whose behalf Service Area Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration, any Building Site Declaration, or the By-Laws specifically authorizes the Board to assess certain costs as a Service Area Assessment. Any Service Area may request that additional services or a higher level of services be provided by the Association and, upon approval of Owners within such Service Area in accordance with Section 3.4, any additional costs shall be added to such budget. Such budget may include a capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Service Area Expense, if any, within the Service Area. Service Area Expenses shall be allocated among all Units within the Service Area(s) benefited thereby in accordance with the formula set forth in Exhibit "C" and levied as a Service Area Assessment. The Board shall cause a copy of such budget and notice of the amount of the Service Area Assessment for the coming year to be delivered to each Owner of a Unit in the Service Area and Service Area Assessor at least thirty (30) Days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by Owners representing at least seventy-five percent (75%) of the votes allocated to the Units in the Service Area to which the Service Area Assessment applies, and during the Declarant Control Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners holding at least ten percent (10%) of the votes attributable to Units in such Service Area. This right to disapprove shall apply only to those line items in the Service Area budget which are attributable to services requested by the Service Area.

If the Owners within any Service Area disapprove any line item of a Service Area budget, the Association shall not be obligated to provide the services anticipated to be funded by such line item of the budget. If the Board fails for any reason to determine a Service Area budget for any year, or if the budget proves inadequate for any reason, or if the use of a Unit changes and affects the assessment obligation of the Owner of such Unit, the Board may prepare a revised Service Area budget for the remainder of the fiscal year. The Board shall send a copy of the revised budget to the Service Area Assessor for, and each Owner within, the affected Service Area at least thirty (30) Days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

All amounts which the Association collects as Service Area Assessments shall be expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Association's general funds.

8.4 Reserve Budget and Capital Contribution. The Board shall on a periodic basis prepare reserve budgets for both general and Service Area purposes which take into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board may, in its discretion, include in the general and Service Area budgets reserve amounts sufficient to meet the projected needs of the Association.

8.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Service Area if such Special Assessment is for Service Area Expenses.

Any Special Assessment shall become effective unless disapproved at a meeting by Owners representing at least seventy-five percent (75%) of the total Class "A" votes allocated to the applicable Units which will be subject to the Special Assessment, and during the Declarant Control Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Owners as provided for special meetings in the By-Laws, which petition must be presented to the Board within ten (10) Days after the date of the notice of such Special Assessments.

Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.6 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit or Units as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit(s) or Occupants thereof upon request of the Owner pursuant to a list of choices of special services which the Board may from time to time authorize to be offered to Owners and Occupants (which might include, without limitation, Utilities, fire protection, patrols or security services, street cleaning, snow pushing or removal, waste collection, recycling collection, shuttles, jitneys, scooter or Segway sharing, bike-sharing or car-sharing services, pest control services, landscape maintenance, special and promotional events coordination, recreational leagues, cultural programs, educational programs, Social Media services, festivals and holiday celebrations and activities, and similar programs, services, facilities and activities), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner;

(b) to cover the costs associated with maintenance, repair, replacement and insurance of any Exclusive Common Area assigned to one (1) or more Units;

(c) to cover all costs incurred in bringing the Unit(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Unit; and

(d) to cover any costs or expenses incurred by the Association in responding to requests for assessment certificates and estoppels pursuant to Section 8.1.

In addition, fines levied by the Association pursuant to Section 4.3, contributions to the working capital of the Association levied pursuant to Section 8.11, and Community Enhancement Fees levied pursuant to Section 8.14, shall each constitute Specific Assessments.

The Association may also levy a Specific Assessment against the Units within any Service Area to reimburse the Association for costs incurred in bringing the Service Area into compliance with the provisions of the Governing Documents; provided however, the Board shall give prior written notice to the Service Area Assessor and the Owners of Units in the Service Area and an opportunity for the Owners within the Service Area to be heard before levying any such assessment.

8.7 Lien for Assessments.

(a) The Association shall have a lien against each Unit to secure payment of assessments and other charges, as well as interest at a rate to be set by the Board (subject to the maximum

interest limitation of Utah law), late charges in such amount as the Board may establish (subject to the limitations of Utah law), costs of collection and attorneys' fees. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien may be enforced by suit, judgment, and judicial or non-judicial foreclosure.

(b) The Declarant, a Declarant-Related Entity or the Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment allocated to the Unit owned by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

(c) The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.8, including such acquirer, its successors and assigns.

(d) All other Persons acquiring liens or encumbrances on any Unit after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

8.8 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the latter of: (a) the date on which the Unit is conveyed to a Person other than the Declarant, or a Declarant-Related Entity; or (b) the date on which the Association first adopts a budget and levies assessments. The first annual General Assessment and Service Area Assessment, if any, levied on each Unit shall be adjusted according to the number of Days remaining in the fiscal year at the time assessments commence on the Unit, and shall be due and payable on the date of conveyance.

8.9 Failure to Assess. Failure of the Board to establish assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments and Service Area Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.10 Exempt Property. The following property shall be exempt from payment of General Assessments, Service Area Assessments, and Special Assessments:

(a) All Common Area and such portions of the property owned by the Declarant or a Declarant-Related Entity as are included in the Area of Common Responsibility pursuant to Section 5.1;

(b) Any property that is owned by a charitable nonprofit corporation or public agency whose primary purposes include the acquisition and preservation of Open Space for public benefit and held by such agency or organization for such recreational and Open Space purposes; and

(c) Any property dedicated or otherwise conveyed to and accepted by any governmental authority or public utility, unless specified by the Declarant in a Supplemental Declaration applicable to such property.

In addition, any property that is owned by a quasi-governmental authority or public agency may be exempted from such assessments in Declarant's discretion in a Supplemental Declaration applicable to such property.

8.11 Capitalization of Association. The Association may, but shall not be obligated to, levy against each Unit, upon acquisition of record title by the first Owner thereof other than the Declarant or any Declarant-Related Entity, a one-time contribution to the working capital of the Association in an amount equal to one-sixth (1/6th) of the annual General Assessment for such Unit for that year. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. This amount shall be collected and disbursed to the Association at closing of the purchase and sale of the Unit for use in covering operating expenses and other expenses incurred by the Association pursuant to the Governing Documents.

8.12 Variation of Level of Assessments. Notwithstanding anything to the contrary contained in this Article 8 or elsewhere in this Declaration, in setting the levels or amounts of the various assessments provided for herein, and using the formula for determining same as provided in Exhibit "C," the Declarant and the Board may, but shall not be obligated to, consider the size and location of a Unit, the level of maintenance provided by the Association and the particular usage of any Unit, such as Entertainment Use, Hotel Use, Office Use, Multifamily Use, Retail Use, service use, or institutional use (such designations being used as examples only). Such factors shall be considered a reasonable basis upon which to differentiate between assessments levied on various Units or Service Areas within the Properties. For purposes of illustration and not limitation, the Association may impose reduced assessments on Units comprised of condominium Units or other multifamily dwellings. In addition, the Declarant shall have the right to enter into separate agreements, which agreements shall be binding upon the Association, that may fully or partially exempt certain Units from liability for and payment of assessments as the Declarant may determine from time to time and in its discretion. Declarant, and at Declarant's sole discretion, any Declarant-Related Entity or any other entities designated by Declarant, may be exempt from any or all assessments in Downtown Daybreak. In no event shall any Owner have the right to challenge any allocation formula, and only the Board and the Declarant shall have any right to make any adjustments to the allocation formula pursuant to the provisions set forth above.

8.13 Payment of Assessments by Leasehold Owners and Improved Properties of the Declarant. Notwithstanding anything provided in this Declaration to the contrary, neither the Declarant nor any Declarant-Related Entity (either as a Member of the Association or as the Owner of any Unit) shall be responsible for the payment of any assessments with respect to any Units owned by the Declarant or such Declarant-Related Entity unless the same have been leased to a Leasehold Owner or improved by the construction of occupiable Improvements thereon in which event the Declarant, the Declarant-Related Entity, or the Leasehold Owner of such Unit shall pay assessments in the manner set forth in this Article 8.

8.14 Community Enhancement Fee.

(a) Authority. With the exception of exempt transfers as noted below, upon each transfer of title to a Building Site or Unit, a fee (the “Community Enhancement Fee” or “CEF”) may be charged, assessed, and utilized from time to time as set forth below, subject to any limitations as may be established by applicable law.

(b) Fee Amount. The Board shall establish the amount of the Community Enhancement Fee from time to time; provided however, the amount of the CEF shall not exceed one-half of one percent (0.5%) of the purchase price of the Building Site or Unit being transferred. The Association may require the purchasing and/or selling Owner to provide reasonable proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of Deeds or other such evidence as may be deemed reasonable by the Association. In the event that any applicable Community Enhancement Fee is not paid at closing, the amount due shall bear interest, shall be collectible as an assessment as set forth in this Article, and shall constitute a lien against the applicable Building Site or Unit.

(c) Purpose. Any Community Enhancement Fees shall be used to provide funding for activities and such other purposes as the Board, in its discretion, deems beneficial to the general good and welfare of Downtown Daybreak. For example, Community Enhancement Fees may be used to fund, or to assist in funding:

(i) programs and activities that enhance the welfare and lifestyles of Owners and Occupants of Units;

(ii) an ongoing resource management plan for Downtown Daybreak and surrounding areas;

(iii) sponsorship of educational programs and activities that contribute to the overall understanding, appreciation, and preservation of the natural environment within and surrounding Downtown Daybreak;

(iv) programs, services, and activities that serve to promote a “sense of community” within Downtown Daybreak and as a part of the larger, surrounding area, such as recreational leagues, cultural programs, educational programs, festivals and holiday celebrations and activities, a community intranet, and recycling programs;

(v) social services, educational programs, community outreach programs, and other charitable causes; and

(vi) any other programs, services, and activities that serve to protect, enhance and preserve the values, amenities, desirability, and attractiveness of Downtown Daybreak.

(d) Exempt Transfers. Notwithstanding the above, no Community Enhancement Fee shall be levied upon transfer of title to a Unit:

(i) to or from the Declarant or any Declarant-Related Entity;

(ii) to the Owner’s estate, surviving spouse, or heirs at law upon the death of the Owner;

(iii) to an entity wholly owned by the grantor or to a family trust created by the grantor for the benefit of grantor, his or her spouse, and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the Community Enhancement Fee shall become due;

(iv) to an institutional lender pursuant to a Mortgage or any transferee upon foreclosure of a Mortgage;

(v) Any transfer which the Declarant, in its discretion, waives in writing the Community Enhancement Fee; or

(vi) Any transfer which the Association, in its discretion, waives in writing the Community Enhancement Fee.

Except for the exempt transfers described in subparagraph (d)(i) above (for which no notice shall be required), the transferring Owner shall give the Association at least thirty (30) Days' prior written notice of any transfer which is an exempt transfer with sufficient documentation to establish that the transfer is an exempt transfer.

It is hereby acknowledged that, in the event a transfer of a Building Site or Unit, or portion thereof, is deemed in that particular instance to be an "exempt transfer," the subsequent transfer of that Building Site or Unit, or portion thereof, shall again be subject to the Community Enhancement Fee unless such subsequent transfer independently qualifies as a separate exempt transfer in accordance with this Section.

(e) Collection. If a Community Enhancement Fee is charged, the purchaser or transferee of a Building Site or Unit shall be responsible for the payment of the Community Enhancement Fee at closing and the closing attorney for the purchaser or transferee shall be responsible for delivery of the Community Enhancement Fee to a qualified entity as may be designated by Declarant from time to time (the "CEF Recipient"). The CEF Recipient may be the Association or any other entity permitted to receive Community Enhancement Fees pursuant to applicable law. The CEF Recipient entity may require the purchasing and/or selling Owner to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of Deeds, the affidavit of consideration, or other such evidence as may be deemed reasonable by CEF Recipient. In the event that any applicable Community Enhancement Fee is not paid at closing, the amount due shall bear interest, shall be collectible as a Specific Assessment as set forth in this Article, and shall constitute a lien against the Building Site or Unit. Declarant and the Association hereby grant the CEF Recipient (if any) a power of attorney, coupled with an interest, so as to provide CEF Recipient with the right, at no expense to Declarant or the Association, to collect the Community Enhancement Fee and enforce the provisions of this Section against the Owner of the Building Site or Unit, including, but not limited to, the right to seek collection of the Community Enhancement Fee and other sums payable pursuant to this Section as well as the right to assess a Specific Assessment (as provided in this Article) against the Owner's Building Site or Unit or portion thereof. In addition, the CEF Recipient may collect its reasonable attorneys' fees and court costs in enforcing the provisions of this Section.

(f) Broader Community Benefit. Nothing in this Section shall be construed to limit use of the Community Enhancement Fees to programs, services, or activities within the Properties or that only benefit Owners and Occupants of Units. The Association or any entity to whom it provides funds for such programs may invite Persons other than Owners and Occupants of Units to participate in such programs and activities for such fee, if any, as the Association or other entity may establish.

8.15 Contributions by the Declarant. In accordance with Section 8.2, the Declarant may support the Association by funding operating deficits during the Declarant Control Period. At the election of the Declarant, the Declarant may recoup from the Association all such payments, which amounts may be paid from the operating account of the Association, or from the working capital contributions collected at the sale of Units, but not from capital reserves. Regardless of whether the Declarant recoups any other deficit amounts, it is not the intention of the Declarant to forfeit refundable reserves or deposits paid by the Declarant, nor to pay for deficits created by the nonpayment of assessments by other Owners. It is also not the intention of the Declarant to pay for expenses which are otherwise covered in the annual budget of the Association, but which, due to the requirement of an advance payment, create temporary or seasonal deficits. Accordingly, the Declarant shall be reimbursed for all amounts paid by the Declarant in the funding of deficits caused by the nonpayment of assessments by Owners which, if not sooner paid, shall be paid to the Declarant at the time the unpaid assessment is collected. In addition, if not sooner paid, the Declarant shall be reimbursed for any refundable deposit upon the Association's receipt of the same.

All deficits shall be collectible by the Declarant at any time from the working capital contributions or from excess funds not designated for capital reserves. The Declarant shall have the right to pursue the collection of any unpaid assessments on behalf of the Association, as well as the right to act on behalf of the Association (if necessary) in obtaining refunds of all deposits paid for by the Declarant. The Board of Directors, specifically including members of the Board appointed by the Declarant, shall be authorized to execute a promissory note or notes on behalf of the Association to evidence the repayment obligation of the Association; provided however, the failure to execute such a note shall in no way diminish such obligation.

ARTICLE 9 **ARCHITECTURAL STANDARDS**

9.1 General. No Improvements shall be placed, erected, installed, or constructed on, or altered upon, or removed from any Building Site or Unit except in compliance with this Article, and approval of the DRB under Section 9.3.

All Improvements constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a person licensed in the State of Utah to practice architecture, engineering, or landscape architecture, or other work consistent with the intended construction in accordance with applicable laws, rules and regulations, unless otherwise acceptable to the DRB, in its discretion. All plans and specifications shall be subject to review as provided herein.

This Article shall not apply to the activities of the Declarant or any Declarant-Related Entity, nor to Improvements to the Common Area by or on behalf of the Association. This Article may not be amended during the Declarant Control Period without the Declarant's written consent.

9.2 Design Review. Each Owner, by accepting a Deed or other instrument conveying any portion of the Properties acknowledges that, as the developer of the Properties, the Declarant has a substantial interest in ensuring that all structures and Improvements within the Properties enhance Declarant's reputation as a community developer and do not impair the Declarant's ability to market, sell or lease any portion of the Properties or the Additional Property. Therefore, the Declarant may, on its behalf, establish an DRB to be responsible for administration of the Design Guidelines and review of all applications for use, construction and modifications under this Article shall be handled by the DRB. The members of the DRB need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the DRB. Until such time as Declarant establishes the DRB, Declarant shall perform the functions of the DRB. The DRB or the MC (as defined

in Section 9.2(b) below) may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, landscape architects, engineers or other professionals that the DRB or MC employ or with whom they contract. The Board may include the compensation of such Persons in the Association's annual operating budget or, if appropriate, in a Service Area operating budget. In addition, the DRB or the MC may require the posting of deposits or bonds while construction is pending on any Building Site or Unit, to ensure completion of all work in compliance with plans approved by the DRB or the MC, in conformance with all Design Guidelines, and without damage to the Properties.

(a) Design Review Board. The DRB shall consist of at least one, but not more than five, persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. The Declarant retains the right to appoint all members of the DRB who shall serve at the Declarant's discretion until the termination of the Declarant Control Period. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by the Declarant. Upon expiration or surrender of such rights, the Board shall appoint the members of the DRB, who shall thereafter serve and may be removed in the Board's discretion.

(b) Modifications Committee. The Board of Directors may, but shall not be obligated to, establish a Modifications Committee ("MC") to consist of at least three and no more than five persons, all of whom shall be appointed by and shall serve at the discretion of the Board. If established, the MC shall have jurisdiction over modifications, additions, or alterations made on or to existing Improvements on Building Sites or Units or Improvements comprising Building Sites or Units. The MC may delegate its authority as to a particular Service Area to the Service Area Association, if any, so long as the MC has determined that such Service Area Association has in force review and enforcement practices, procedures, and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. The DRB shall have the right to veto any action taken by the MC or a Service Area Association which the DRB determines, in its discretion, to be inconsistent with the guidelines promulgated by the DRB. The MC may be eliminated and its duties assumed by the DRB at any time in the discretion of the Board.

9.3 Guidelines and Procedures.

(a) Design Guidelines. The Declarant may prepare and amend from time to time Design Guidelines and application and review procedures for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions for each Building Site, and additional provisions which vary according to land use and from one portion of the Properties to another depending upon the location, unique characteristics, and intended uses. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the DRB in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the committees and compliance with the Design Guidelines does not guarantee approval of any application.

The DRB shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of Improvements and structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the DRB is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The MC may promulgate guidelines, procedures and standards governing its area of responsibility, consistent with those set forth in the Design Guidelines and subject to review and approval or disapproval by the DRB. Any architectural guidelines and standards adopted by the MC may be more restrictive than the Design Guidelines, but under no circumstances shall they be inconsistent with the Design Guidelines.

(b) Procedures. No activities within the scope of Section 9.1 shall commence on any portion of the Properties until an application for approval of the proposed work has been submitted to and approved by the DRB or the MC, as appropriate, and the specific use for such portion of the Properties has been approved by the Declarant in accordance with Article 10. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and Improvements shall be submitted to the appropriate reviewing body for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, grading, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines. Either committee may require the submission of application forms and information as it deems necessary to consider any application and may require multiple stages of application and review for any use, construction or modification.

The DRB shall make a determination on each application after receipt of a completed application with all required information, materials and fees. If the DRB permits or requires an application to be submitted or considered in stages, a final decision shall not be required until after the final, required submission. The DRB may: (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. No approval shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the DRB pursuant to Section 9.6. In the event that the DRB fails to respond in writing to any stage of application within thirty (30) Days after submission of all required information, materials and fees, the application shall be deemed denied unless an extension of such time period is agreed to by the DRB and the applicant.

In the event that the DRB fails to approve or to disapprove in writing any stage of application within thirty (30) Days after submission of all information and materials reasonably requested, the application shall be deemed denied unless an extension of such time period is agreed to by the DRB and the applicant.

(c) Exceptions. Any Owner may remodel, reconfigure interior improvements, repaint, refinish or redecorate the interior of structures within its Building Site or Unit without DRB approval. Modifications that will alter the exterior appearance of a Building Site or Unit or any portion thereof, including but not limited to the interior of patios, outdoor dining or public entertainment areas, Signage and similar portions of a Building Site or Unit, that are visible from the Common Areas, the Private Streets, any public right of way, or another Building Site or Unit shall be subject to DRB approval. No DRB approval shall be required to repaint, refinish or repair the exterior of a structure in accordance with the originally approved color scheme or to construct or rebuild in accordance with originally approved plans and specifications. In addition, the DRB by resolution may exempt certain activities, for example Signage for a national tenant, from the application and approval requirements of this Article, provided that such activities are undertaken in strict compliance with the requirements of such resolution.

(d) Copyright. Each application to the DRB shall be deemed to contain a representation and warranty by the Owner that use of plans submitted does not violate any copyright associated with the plans. Neither the submission of the plans to the DRB, nor the distribution and review of the plans by the DRB shall be construed as publication in violation of the designer's copyright, if any.

Each Owner submitting plans to the DRB shall hold the members of the DRB, the Association and the Declarant harmless and shall indemnify said parties against any and all damages, liabilities, and expenses incurred in connection with the review process of this Declaration.

(e) Delinquent Assessments and Other Charges. Notwithstanding the provisions of subsection (b) above, any application for the approval of plans and specifications as set forth in this Article shall be deemed to be disapproved unless and until any and all delinquent assessments and other charges permitted by the Declaration have been paid current by the Owner submitting such plans and specifications for approval.

(f) Basis of Approval. In reviewing and acting upon any request for approval, the DRB shall be acting solely in the Declarant's interest and shall owe no duty to any other person. The DRB may consider (but shall not be limited to consideration of) the quality of workmanship and design, harmony of external design with existing Improvements and structures, and location in relation to surrounding Improvements, structures, topography, setbacks and finish grade elevation, among other things. Decisions of the DRB may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as committee members change over time. The DRB shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and whether proposed improvements are consistent with Design Guidelines.

Review of the plans shall be based on general adequacy of site dimensions, conformity and harmony of the exterior design, location with neighboring Improvements, structures and sites, relation of finished grades and elevations to neighboring sites, compatibility with first class commercial, retail, and mixed use developments, and conformity to both the specific and general restrictions and covenants set forth herein, and in the Design Guidelines. The DRB shall have the right to disapprove any submitted plans of any Building Site or Unit if such plans are not in conformity with the provisions of this Declaration or the Design Guidelines, or if the DRB, acting pursuant to Article 9 hereof in its discretion determines that such plans are not in the best interest of the contemplated development of the Properties as a master planned mixed use development as described by this Declaration.

(g) Commencement and Completion. All work shall be commenced and completed within such period as provided in the Design Guidelines or as the DRB may specify in the notice of approval, unless commencement or completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the DRB. In the event construction of the work called for by the approved plans has not substantially commenced within such period then approval shall be deemed expired and no construction shall thereafter commence unless a written renewal is granted by the DRB.

Once construction of an Improvement has been commenced by an Owner, the Owner shall diligently pursue completion of such Improvement in accordance with the approved plans. If construction of an Improvement stops for any reason (other than for Events or causes beyond the reasonable control of such Owner) for an unreasonable period of time as measured by industry standards for South Jordan, Utah and the Owner's approved construction schedule, then the Association shall have the right, in addition to any other rights or remedies available under Applicable Laws or this Declaration, to obtain such judicial relief as may be appropriate under the circumstances including, without limitation, injunctive relief stopping such construction and mandating the removal of any partially completed Improvements.

(h) Easements and Common Area Dedications. As a prerequisite of approval of plans, the DRB shall have the power to require an Owner who has submitted plans to grant any reasonable Utility and drainage easements as may be required for the enjoyment and benefit of the Owners or the Association. Where possible, the DRB shall attempt to locate any such required easements

along the perimeter of the Building Site or Unit, within existing or proposed rights-of-way, within other existing or proposed easements, or in such a manner as to not materially impair the proposed use of the Building Site or Unit.

(i) Stop Work Orders. During any Event, the DRB may, and upon request of the Declarant shall, issue "stop work" orders. "Stop work" orders may prohibit the commencement of or suspend the work on any architectural change, construction, addition, alteration, change, maintenance, repair, reconstruction or other work that is visible or audible from outside a Building Site or Unit or that may cause an increase in traffic flow, from being performed by an Owner or Occupant within the Properties. Any stop work order shall be set forth in writing, shall identify the Building Sites or Units subject to the stop work order (if not applicable to all of the Properties), shall set forth the scope of the prohibited and suspended activities and shall specify the start and stop dates for such stop work order, which period of time shall not exceed seven (7) consecutive Days.

(j) Certificate of Compliance. Upon completion of the construction or alteration of any Improvement in accordance with plans and specifications approved by the DRB, the DRB shall, upon written request of the Owner, or any Mortgagee thereof, issue a recordable certificate of compliance (a) identifying such Improvement and the Building Site or Unit on which such Improvement is placed, and (b) stating that the plans and specifications for such Improvement and the use or uses to be conducted thereon have been approved, subject to a disclaimer of obligation as set forth in Section 9.8. Preparation of such certificate shall be at the expense of such Owner or Mortgagee. Any certificate of compliance issued in accordance with the provisions of this subsection shall be *prima facie* evidence of the facts therein stated and may be relied upon by any bona fide purchaser of such Building Site or Unit, Mortgagee or any title insurer.

(k) Governmental Approvals. Approval under this Article shall be obtained prior to requesting any building or other permit or submitting any documentation to any governmental authority whose review or approval may be required for the proposed work. The Declarant and the Association shall have the right and standing to take action to suspend or enjoin processing of any request for review or approval by a governmental authority submitted prior to any necessary approval being granted hereunder. Approval under this Article is not a substitute for any approvals or reviews required by the City of South Jordan or any municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

9.4 Specific Design Guidelines.

(a) Construction Activities. No construction, erection, or placement of any Improvement, permanently or temporarily, on the outside portions of the Building Site or Unit, whether such portion is improved or unimproved is permitted, except in strict compliance with the provisions of Article 9 of the Declaration. The following restrictions shall also apply:

(i) After commencement of construction of any Improvement in the Properties, the Owner shall diligently prosecute the work thereon, to the end that the Improvement shall not remain in a partly finished condition any longer than reasonably and normally necessary for completion thereof.

(ii) The Owner of the Building Site or Unit on which Improvement are being constructed shall at all times keep streets and parking contiguous to the Building Site or Unit free from excess dirt, mud, garbage, trash or other debris as may be occasioned by construction of the Improvement.

(iii) Rocks and trees removed during construction of Improvements shall be disposed of in strict conformance with the Design Guidelines.

(iv) Storage of construction materials and equipment shall strictly conform to the Design Guidelines. The foregoing materials and equipment shall not be permitted within the natural barriers established under the Design Guidelines prior to construction.

(v) No overhead Utility lines shall be permitted within the Properties, except for temporary lines during construction as deemed appropriate by the Declarant and lines constructed or installed by or at the request of the Declarant.

(b) Signage and Off-Premises Advertising. No Signage of any kind that is visible from the exterior of a Building Site or Unit or Common Area shall be erected, modified, maintained, held or displayed on any portion of the Properties unless in conformance within the Design Guidelines and unless prior written approval of the DRB is obtained. The DRB shall have the specific right to approve any off-premises messaging or signage (i.e., signage that has an off-premises message) or advertising visible from the exterior of any Building Site or Unit or Common Area, and the right to approve any sponsorship or promotional activities conducted outside, or visible from the exterior, of any Building Site or Unit or Common Area. The Design Guidelines may implement a standard Signage program, which may vary according to, among other factors, location within the Properties, product type or intended use. The restrictions of this Section shall not apply to the Declarant or any Declarant-Related Entity or in connection with the Digital Media Towers. Specifically with respect to, but not necessarily limited to, Units limited to Multifamily Use, unless specifically approved in writing by the DRB, no "for sale" or "for lease" signs visible from the exterior of the Building Site or Unit or posted in any window shall be permitted within any portion of the Properties. In addition, no brochure racks, boxes or any other item or object may be placed on or erected within the Properties or attached to or placed on or adjacent to any permitted Signage, either permanently or temporarily, without the prior written consent of the appropriate reviewing body. The Declarant and the DRB reserve the right to prohibit other types of signs and/or displays, and may also restrict the size, content, color, lettering, design and placement of any approved Signage. Any approved Signage must be in conformance with the Design Guidelines.

In addition to all other rights and remedies set forth in the Declaration, the DRB, Declarant and the Board shall have the right, at the expense of the Owner, to enter property and to remove any Signage, display, or advertising structure erected in violation of this provision or Section 9.3. Such entry shall not constitute a trespass. In addition, the DRB, Declarant and the Board shall have the right to enjoin the display or installation of any such signage or advertising as well as any sponsorship or promotional activities scheduled or conducted without prior approval by the DRB.

(c) Roads. To the extent that any roadways, streets, alleys or other means of egress and ingress are approved by the DRB in accordance with this Article 9, once constructed, such accessways may not later be blocked or obstructed in any manner (e.g. planters, bollards, fences, etc.) that prevents access by Motorized Vehicles without the prior written consent of the DRB.

(d) Temporary Structures. Except as specifically approved in writing in advance by the DRB, no temporary buildings (including construction trailers) shall be erected or placed on the Properties.

(e) Lighting. Exterior lighting must be approved by the DRB and installed pursuant to the Design Guidelines. Seasonal decorative lights may be used only pursuant to Rules and Regulations established by the Board from time to time.

(f) Tree Removal. Living trees shall be removed from the Properties only in conformance with the Design Guidelines.

(g) Fences and Walls. Except as expressly provided in this Declaration, no fence, wall, structure or other obstruction of any kind shall be placed, kept, permitted or maintained upon any Building Site or Unit, without the prior written approval of the DRB. Notwithstanding the foregoing, temporary fencing or physical barriers may be utilized from time to time at the direction of an Event Holder to provide for crowd control and public safety in connection with Events, which structures shall be removed as soon as practicable following any applicable Event.

(h) Antennas. Unless otherwise set forth in a Supplemental Declaration or Building Site Declaration applicable to a Building Site, no transmission antenna, except for customer-end antennas that receive and transmit fixed wireless signals, may be erected anywhere on the Properties without the prior written approval of the DRB. Unless otherwise set forth in a Supplemental Declaration or Building Site Declaration applicable to a Building Site, no direct broadcast satellite ("DBS") antenna or multi-channel multi-point distribution service ("MMDS") larger than one meter (39.37") in diameter shall be placed, allowed, or maintained upon any portion of the Properties, including but limited to any Building Site or Unit without the prior written approval of the DRB. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may be installed only in accordance with Federal Communications Commission ("FCC") rules and any requirements of the DRB that are consistent with the rules of the FCC, as they may be amended from time to time. Such items shall be installed in the least conspicuous location available on the Building Site or Unit which permits reception of an acceptable signal. Except as otherwise provided by this Section, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on the exterior portions of the Properties, whether attached to a structure or otherwise; provided, however, that the Declarant and the Association shall have the right to erect, construct and maintain such devices.

(i) Solar Collecting Panels or Devices. The Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power. At the same time, the Declarant desires to promote and preserve the attractive appearance of the Properties and the Improvements thereon, thereby protecting the value generally of the Properties and the various portions thereof. Subject to prior approval of the plans by the DRB, solar collecting panels and other active solar devices may be placed, constructed or maintained upon a Building Site or Unit so long as such solar collecting panels and devices are placed, constructed and maintained in such location(s) and with such means of screening or concealment as the DRB may deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed from any street or from any other property (whether within or outside the Properties).

(j) Cameras and Virtual Reality. The Design Guidelines may, but are in no way required, to establish requirements, rules, and regulations regarding the installation, placement and use of cameras, recording devices, data collection devices, or other advancements in technology, such as augmented reality, virtual reality, artificial intelligence, digital footprint services, and/or digital data sourcing and information. For instance, the placement of cameras on the exterior of a building is an alteration that requires the prior approval of the DRB, who shall have the exclusive jurisdiction over the placement of cameras and the directional orientation. The DRB shall have the right to request plans showing the installation method, location, viewing area, and equipment to be submitted for approval. Each Owner acknowledges and agrees that the DRB is not obligated to approve the placement of exterior cameras and also is not the guarantor of safety within the Properties. Each Owner acknowledges and agrees that the approval of cameras or recording devices or any other similar item by the DRB, the Association or otherwise shall not be deemed an endorsement of the effectiveness of such measures to

address security at the Properties and that neither the DRB, the Declarant, the Association, nor the Board of Directors shall be responsible for any security issues that may arise after either the approval or the denial of a request to install a camera, recording device, or other similar item. Each Owner shall expressly waive any and all claims and hold the Declarant, any Declarant-Related Entity, the Association, and members of the DRB and the Board harmless from any claim whatsoever with respect to cameras installed on the Properties (including, without limitation, any claim with respect to privacy or safety matters) and shall indemnify said parties against any and all damages, losses, liabilities, and expenses incurred as a result of any such aforesaid claim.

9.5 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.6 Variance. The DRB, in its discretion, may authorize variances from compliance with any of its guidelines and procedures. In determining whether to grant a variance, the DRB may consider circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations, or advancements in technology or products warrant such deviation. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the DRB from denying a variance in the future under similar circumstances. The DRB shall not be required to grant a variance under any circumstances, including but not limited to, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing. Additionally, the approval of any plans or the granting of any variance by the DRB shall not supersede any requirement for approval of such variance by the City and shall not serve as a representation or warranty by the DRB that such variance shall be approved by the City. Approval by the DRB of any plans and specifications or the granting of a variance with respect to this Declaration, the Design Guidelines or any Rules and Regulations of the Association, shall not in any way be construed to set a precedent for approval, alter in any way this Declaration, the Design Guidelines or any Rules and Regulations of the Association or be deemed a waiver of the DRB's right, in its discretion, to disapprove similar plans and specifications, use of any Improvement, or any of the features or elements which are subsequently submitted for use in connection with any other Building Site or Unit.

9.7 Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall plan and aesthetics of the Properties only and shall not create any duty to any Person. Neither the Declarant or Declarant-Related Entity, the Association, the Board, or the DRB shall bear any responsibility for ensuring the marketability of any Building Site or Unit, structural integrity or soundness of approved construction or modifications or the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all Improvements are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property Owners. Neither the Declarant or Declarant-Related Entity, the Association, the Board, the DRB, the MC, any committee nor any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Building Site or Unit. In all matters, the Declarant, the Board, the DRB, the MC and their members shall be defended and indemnified by the Association as provided in Section 4.8.

9.8 Enforcement. The Declarant, any member of the DRB, the MC, the Board, and the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Building Site or Unit to inspect the same for the purpose of ascertaining whether any Improvement is in violation of this Article. Any Improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written notice from the DRB, the Board or the Declarant,

Owners shall, at their own cost and expense, cure any violation or remove such structure or Improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to cure any violation or remove and restore the property as required, any authorized agent of the Declarant, the DRB, the MC, or the Board shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute a trespass. In addition, the Board may enforce the decisions of the Declarant, the DRB and the MC by any means of enforcement described in Section 4.3. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the violating Building Site or Unit and the Owner thereof and collected as a Specific Assessment.

Unless otherwise specified in writing by the DRB or MC, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Building Site or Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after ten (10) days' notice to the Owner of the Building Site or Unit and an opportunity to cure, to enter upon the Building Site or Unit and remove or complete any incomplete work and to assess all costs incurred against the Building Site or Unit and the Owner thereof as a Specific Assessment.

The DRB, the MC, the Association, the Declarant or Declarant-Related Entity, and the members, officers or directors of the foregoing shall not be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the DRB from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the DRB, Association, the Declarant or any Declarant-Related Entity nor any of their respective officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the DRB, and the MC.

ARTICLE 10 **USE RESTRICTIONS AND RULES**

10.1 General. Declarant has established a general plan of development for the Properties as a master planned mixed use development in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the DRB's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the master planned mixed use development and to regulate and control the Area of Common Responsibility. In order to carry out the general plan of development, create enhancements to the Properties and maintain the values thereof, Declarant has been given and retains in its discretion in Article 13 and throughout this Declaration, the specific right and authority to limit the specific use or uses of any portion of the Properties, including any one Building Site or Unit or portions thereof or group of Building Sites or Units, or negatively restrict any Building Site or Unit or portions thereof or group of Building Sites or Units from being used for a certain use or uses. The use of any Building Site or Unit and the limitations on use imposed by the Declarant may not be changed without the prior written consent of the DRB as set forth in this Article.

This Article shall not apply to the activities of the Declarant, nor to Improvements to the Common Area by or on behalf of the Association, nor to Events conducted by Declarant or the Association. This Article may not be amended during the Declarant Control Period without the Declarant's written consent.

10.2 Use Review. The Properties are subject to the Master Plan, the Zoning Conditions, the Design Guidelines, the land development, architectural, and design provisions described in Article 9, the other provisions of this Declaration governing individual conduct and uses of and actions upon the Properties, any applicable Supplemental Declaration, the Use Guidelines, and the Rules and Regulations, all of which establish affirmative and negative covenants, easements, and restrictions on the Properties, and which are enforceable by the Association as set forth in this Declaration.

10.3 Guidelines and Procedures.

(a) **Use Guidelines.** The Declarant may establish the use guidelines and application and review procedures applicable to all or any portion of the Properties on a case by case basis (the "Use Guidelines"). The Use Guidelines may include procedures for the review, approval and enforcement of the use or uses of and for all Building Sites or Units. The Design Guidelines and Use Guidelines may be incorporated into a single document. The DRB shall adopt such Use Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. There shall be no limitation on the scope of amendments to the Use Guidelines; the DRB is expressly authorized to amend the Use Guidelines to remove requirements previously imposed or otherwise to make the Use Guidelines less restrictive; provided, however, any amendments to the Use Guidelines shall be prospective only and shall not apply to prohibit a previously approved use existing within the Properties as of the date that such amendment becomes effective. Nothing in this Article shall authorize the Board or the Owners to modify, repeal or expand the Use Guidelines.

The DRB shall be responsible for the administration of the Use Guidelines and review of all applications for changes in use under this Article shall be handled by the DRB. The DRB may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application.

The DRB shall make the Use Guidelines available to Owners and may charge a reasonable fee to cover reproduction costs.

(b) **Procedures For Review and Enforcement.** No activities within the scope of Section 9.1 shall commence on any portion of the Properties, and no change of permitted uses of any Building Site or Unit, shall occur until an application for approval of the proposed use or uses for the specific Building Site or Unit or Building Sites or Units or other portion of the Properties in question, has been submitted to and approved in writing by the DRB. Thereafter, the use for all or any portion of a specific Building Site or Unit or group of Building Sites or Units shall not be changed from that last approved by the DRB in accordance with this Article 10 unless and until an application for such change in use has been submitted to and approved in writing by the DRB. The DRB may require the submission of application forms and such information as it deems necessary to consider any application for approval of an initial use and/or for the approval of a change in use from one previously approved. Notwithstanding the foregoing, in the event the DRB fails to approve or to disapprove in writing an application for initial use or for a change of use within thirty (30) Days after submission of all requested information and materials, the application and the specific use for which approval is being sought shall be deemed disapproved unless an extension of such time period is agreed to by the DRB and the applicant. All such review and approval of the use or uses for any portion of the Properties shall be done and made in the DRB's discretion and an approval of a specific use for a Building Site or Unit or portion thereof, or a

group of Building Sites or Units shall not be deemed an approval for any other Building Sites or Units nor shall it constitute a waiver of the right to withhold approval as to any similar proposals for use of a specific Building Site or Unit or of other Building Sites or Units within the general area. In addition, the DRB may grant variances to the Use Guidelines as set forth in Section 9.6. The failure of an Owner to submit and obtain approval for the specific use to be carried out on or within its Building Site or Unit (whether initial uses or change in use), or to comply with such use after approval thereof, shall be deemed a violation of this Declaration and shall be subject to enforcement by the Declarant and/or the Association as provided in this Declaration and in the By-Laws. The Declarant may, without limitation, designate all or certain of its rights and authority under this Section 10.3 to the DRB.

(c) Assessment and Voting Allocations. Any change on the limitations on use of a Building Site or Unit or the change of the actual use of a Building Site or Unit may impact the assessment and voting allocations for the affected Building Site or Unit as determined in accordance with the formula set forth in Exhibit "C". The Board may, but shall not be obligated to, revise the Association's budgets to reflect such change and send the revised budgets to the Service Area Assessors or Owners in accordance with Article 8.

10.4 Specific Use Guidelines.

(a) Permitted Uses. The Properties shall be used only for such purposes as permitted by the Zoning Conditions, the Master Plan, and the Use Guidelines, and as specifically approved by the DRB, consistent with this Declaration, any Supplemental Declaration, and any Building Site Declaration.

(b) Prohibited Uses. Without the prior written consent of the Declarant, which consent may be withheld in the Declarant's discretion, no portion of any Building or Unit shall be used for the following purposes:

(i) trailer courts, mobile home parks, recreational vehicle campgrounds, and facilities for the sales or service of mobile homes;

(ii) junkyards, scrap metal yards, automobile used parts sales facilities, motor vehicle dismantling operations, and sanitary landfills;

(iii) dumping, storage, disposal, incineration, treatment, processing, or reduction of garbage or refuse of any nature, other than handling or reducing waste produced on the premises from authorized uses in a clean and sanitary manner;

(iv) consignment shops, pawn shops, thrift stores, flea markets, salvage businesses, or discount stores whose merchandise consists primarily of used goods or merchandise, excess inventory, discontinued items, and/or goods acquired through liquidation of other businesses or file or bankruptcy sales; provided, periodic Association sponsored or sanctioned Events or activities (such as, without limitation, craft fairs, arts festivals, or farmers markets) shall be permitted;

(v) truck terminals and truck stop-type facilities, including truck parking lots (except as may be incidental to a use which is not prohibited):

(vi) tanning parlors, massage parlors, or any establishment which offers entertainment or services by nude or partially dressed persons, except that the provision shall not preclude tanning and massage services offered by fully clothed, trained personnel as part of a hotel, a legitimate fitness or health facility, or a day spa operation that also offers beauty, body care, skin care, or similar services;

(vii) "adult entertainment uses", which term shall mean, for the purpose of this Declaration, any theater or other establishment which shows, previews, or prominently displays, advertises or conspicuously promotes for sale or rental: (A) movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) that are rated "X" by the movie production industry (or any successor rating established by the movie production industry) or are otherwise of a pornographic or obscene nature or inconsistent with the prevailing community standard within the City; or (B) sexually explicit games, toys, devices, or similar merchandise;

(viii) tattoo parlors, vaping, cannabis and body piercing shops, and so-called "head shops" (i.e., shops offering or promoting illegal drug paraphernalia or items intended for or commonly associated with the use of illegal drugs);

(ix) mini-warehouses, warehouse or distribution centers, and motor and freight terminals;

(x) any facility for the dying and finishing of textiles, the production of fabricated metal products, or the storage and refining of petroleum;

(xi) dry cleaning plants; provided, facilities for the drop-off or pick-up of items dry cleaned outside of Downtown Daybreak are permitted;

(xii) engine and motor repair facilities (except in connection with any permitted automobile service station);

(xiii) heavy machinery sales or storage facilities; and

(xiv) any use which would cause or threaten the cancellation of any insurance maintained by the Association, or which would measurably increase insurance rates for any insurance maintained by the Association, Owners, or Occupants above the rates that would apply in the absence of such use, except such uses as are specifically authorized under the Master Plan.

(c) Other Prohibited Uses. The Use Guidelines shall set forth activities and uses which are prohibited and restricted within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the DRB in its discretion. The Use Guidelines may designate certain areas or zones within the Properties, and the activities and uses permitted or prohibited and restricted within the Properties may vary by zone. The prohibitions and restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed or limited as provided in this Article.

(d) Obnoxious or Offensive Activity. No obnoxious or offensive activity shall be allowed on the Properties, nor shall any use or practice be allowed which is a source of annoyance, embarrassment or discomfort to Owners or their Occupants, or which interferes with the peaceful possession and proper use and enjoyment of the Properties, nor shall any improper, unsightly, offensive or unlawful use be made of any Building Site or Unit or of the Common Area, and all laws, Zoning Conditions, and regulation of all governmental bodies having jurisdiction shall be observed, except as otherwise permitted by Declarant or the Board. Restricted and prohibited activities include without limitation the following:

(i) Each Unit Owner and their Occupants shall own, operate, maintain, repair, or replace, or shall cause to be owned, operated, maintained, repaired, or replaced, its respective Building Site or Unit in such a manner as (i) to minimize smoke, dust, or dirt; unusual fire or explosive

hazards, vibration or light, noise, odors, and other disturbances originating and emanating therefrom and (ii) to prevent any smoke, dust, or dirt; unusual fire or explosive hazards, vibration or light, noises, odors, and other disturbances originating and emanating therefrom from rising to levels that would offend a reasonable Person of ordinary sensibilities. Notwithstanding anything to the contrary contained in this subsection, the standard set forth herein shall be measured and considered in a manner that takes into account the mixed-use nature of Downtown Daybreak. For example, events may be conducted within the Properties in accordance with the provisions of the Declaration. In addition, each Owner and Occupant further acknowledges and understands that the area including Ballpark, plaza, stage, square, green area, and surrounding area managed by Declarant, Association, or their designees may involve noise, light, fireworks and other activity that may otherwise be considered obnoxious under this section. Also, Retail Uses may include restaurants, coffee shops, and sandwich shops, which by the nature of such businesses will emanate odors into the surrounding area, and ambient music shall be permitted for outdoor dining areas in a manner consistent with similar first-class mixed-use projects in the South Jordan area.

(ii) Loading, service and refuse areas shall be constructed in accordance with the Design Guidelines and approved by the DRB. No accumulation of rubbish, trash, or garbage shall be made except between regular garbage pick-ups, and then only in approved containers and screened from view from streets and other Building Sites or Units.

(iii) Discharge of firearms, firecrackers and other fireworks is prohibited except in connection with fireworks, laser shows or similar displays under a license or permit issued for that purpose and approved in advance by the DRB, which specifically includes Ballpark plaza, stage, square, green area, and surrounding area managed by Declarant, Association, or their designees, and except when such use is specifically approved by the DRB as incidental to the approved use of a Building Site or Unit. The term "firearms" includes without limitation "BB" guns, pellet guns, and firearms of all types. The Board shall have no obligation to take action to prevent or stop such discharge.

(iv) Uses that are in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties, as determined by the Board.

(v) Structures, equipment or other items on a Building Site or Unit which have become rusty, dilapidated or otherwise fallen into disrepair are prohibited and shall be removed or repaired by the Owner of the Building Site or Unit at the request of the Board. If an Owner fails to honor such request, the Board may exercise its enforcement rights as set forth in Section 4.3 and/or remove the offending structure in accordance with the requirements set forth in Section 9.8, and charge the costs of removal thereof to the Owner as a Specific Assessment.

(vi) Picketing, protest marches, sit-in demonstrations, protest speeches, and other forms of public protest or conduct, including, without limitation, displaying signs or placards on a Building Site or Unit or any Motorized Vehicle, Personal Mobility Device, apparatus or otherwise within public view in the Properties, which tends to vilify, ridicule, denigrate, or impugn the character of Declarant, the Association, their respective officers, directors or employees, or any Owner or Occupant shall be prohibited. Each Owner, by acceptance of the Deed to any Building Site or Unit, shall be deemed to have accepted the foregoing prohibitions as reasonable limitations on such Owner's constitutional right of free speech.

10.5 Common Area, Plazas, Sidewalks, Pedestrian Ways, and Bike Ways. Owners of Units, as well as their Occupants and Permittees, and pets shall refrain from any actions that deter from the enjoyment by other Owners of areas within the Properties designated as Common Area, pedestrian plazas, sidewalks, pedestrian ways, bike ways, and similar areas. Owners of Units, as well as their Occupants and Permittees, and pets shall also refrain from any actions that deter from the use and enjoyment by an Event

Holder and its invitees of areas within the Properties designated as Event Area. Prohibited activities shall include without limitation, maintenance of dogs or other pets under conditions which interfere with the use of the specified areas by other Owners, their Occupants and Permittees, playing of loud radios or musical instruments, holding of large gatherings or special events without advance approval of the Board, conducting commercial activities within such areas without advance approval of the Board, loitering, or use of facilities, tents or other temporary structures, stages, vending machines or facilities, except for events approved in advance by the Board and otherwise permitted under this Declaration. The DRB may adopt additional Use Guidelines, and the Board may promulgate Rules and Regulations, further regulating the use of these areas. Nothing herein contained shall be deemed to prohibit or interfere with the Declarant's or the Association's right to establish an open container area within Downtown Daybreak, subject to any applicable governmental regulations, and to adopt Rules and Regulations regarding the use of any established open container area.

10.6 Special Events. Events held within the Properties, including without limitation social events, displays, or commercial activities expected to draw increased vehicle, bicycle and pedestrian traffic to a Building Site or Unit, the Common Area, pedestrian plazas, sidewalks, pedestrian ways, and bike ways within the Properties, must be approved in advance by the Board. Any Owner who desires to conduct an Event shall be required to submit an application for the Event to the Board at least thirty (30) Days prior to such Event. The Board may permit or deny any request for an Event in its discretion and may adopt a calendar of Events to facilitate coordination between Event Holders. All Ballpark Events shall be included on any calendar of Events. All revenue collected by the Person operating or conducting any Event shall be the sole property of such Person, provided that the Person receiving such revenue shall be responsible for all costs incurred in connection with the Event and shall pay to the Association such fees, rents and other charges, if any, for the use of the Common Area or services provided by the Association as established or agreed by Declarant or the Association from time to time (provided that the Declarant or Association may elect not to charge a fee, rent, or other charge for any such activity or services or costs incurred by the Declarant or Association as it may determine in its sole discretion). In addition to other enforcement rights set forth in the Governing Documents, the Board shall have the right to enjoin any Event scheduled or conducted without prior approval by the Board. Notwithstanding the foregoing, approval shall not be required in connection with an Event held at the Ballpark or relating thereto.

10.7 Parking and Vehicles.

(a) Parking Facilities shall be constructed as set forth in the Design Guidelines and Parking Management Plan, each as may be modified from time to time by Declarant in its discretion. Such Design Guidelines and Parking Management Plan may contain general provisions applicable to all Parking Facilities, as well as specific provisions that vary according to land use and from one Parking Facility to another depending upon the location, unique characteristics, and intended uses of the Parking Facility. In the event of a conflict between the provisions of this Section and the provisions of any Access and Parking Easement Agreement, then the more restrictive provision shall control.

(b) Owners of Parking Facilities and permitted users of such Parking Facilities shall be obligated to refrain from any actions that would deter from or interfere with the use and enjoyment of the Parking Facilities by other authorized users of the Parking Facilities. Prohibited activities shall include, without limitation, obstruction of any of the Parking Facilities or charging parking-related fees in excess of such amounts permitted by any Parking Management Plan. Each Parking Owner, with the consent of the Board, may adopt, amend and repeal reasonable rules regulating the use and enjoyment of the Parking Facility.

(c) The Board may prohibit, restrict, regulate or designate certain areas for the parking of construction vehicles or equipment, delivery vans and vehicles, buses, ride share vehicles and taxis, mobile homes, recreational vehicles, boats, trailers, stored or inoperable vehicles, and other similar vehicles; provided, however, that the Association shall not impair the right of Event Holders to conduct Events or to operate trams, shuttle systems, passenger vehicles and valet services in connection with Events.

(d) Operation of Motorized Vehicles and Personal Mobility Devices on pedestrian ways, bike roadways, sidewalks and plazas within Downtown Daybreak is subject to Applicable Law and any Rules and Regulations, including prohibitions, established by the Board.

(e) Nothing herein contained shall interfere with any provision under the Americans with Disabilities Act, any Discrimination Law (as described in Section 14.5), or Applicable Law.

(f) Declarant shall not be responsible for any loss or damage to any private property used, placed or stored in, on, or within the Parking Facilities. Without limiting the foregoing, any Person parking a Motorized Vehicle or Personal Mobility Device in, on or within the Parking Facilities assumes all risk of loss with respect to such Person's Motorized Vehicle or Personal Mobility Device in such Parking Facilities.

(g) Declarant hereby reserves the right to eject from the Parking Facilities any Persons not authorized by the applicable Owner to use the same. Declarant additionally reserves the right to close off any portion of the Parking Facilities subject to the easements granted herein, for such reasonable periods of time as may be legally necessary to prevent any acquisition of prescriptive rights; provided, however, that before closing off any portion of the Parking Facilities as provided above, Declarant shall utilize reasonable efforts to give notice to the applicable Owners of its intention to do so and shall utilize reasonable efforts to coordinate its closing with the activities of the affected Owners so that no material interference with the use by such Owners occurs.

(h) Unless otherwise set forth in a Supplemental Declaration, Building Site Declaration or Cost Sharing Agreement applicable to such Parking Facility, Declarant reserves the right to impose from time to time, in its discretion, such parking fees as it deems appropriate with respect to parking by any Owner or their Occupants upon all or any portion of the Parking Facilities in accordance with the Parking Management Plan.

(i) Declarant shall have the right to implement sanctions for violations of this Declaration, the Design Guidelines, or any applicable Parking Management Plan by an Owner or an Owner's Occupants. Such sanctions may include, without limitation:

(i) Imposing monetary fines which shall constitute a lien upon the applicable Building Site or Unit or, in the event the fine is imposed upon an owner, tenant or other occupant of an individual condominium Unit, a lien upon the Unit itself;

(ii) Suspending the right of an Owner or Occupant's right to use any or all of the Parking Facilities;

(iii) Exercising self-help, including, without limitation, the towing or booting of Motorized Vehicles; and

(iv) Exercising any and all other rights and remedies as set forth herein.

10.8 Unmanned Aerial Vehicles. Except those utilized by governmental agencies for any governmental purposes, including, without limitation, traffic control, life safety measures, crowd control, policing legal compliance and any other legitimate governmental functions, the Board reserves the right to approve, disapprove or prohibit the use of unmanned aerial vehicles and drones ("UAVs") within the Properties on a temporary or permanent basis and may adopt Rules and Regulations and prohibitions regarding the time, place and manner of the use of such UAVs; provided, however, that the use of UAVs shall not interfere with the use, operation or safety of the Ballpark or South Valley Regional Airport or any arriving, departing, hovering or other aircraft in the vicinity of Downtown Daybreak. Neither the Association, the Declarant, any Declarant Related Entity, nor any successor Declarant shall be held liable for any loss or damage by reason of use or operation of UAVs within the Properties.

10.9 Subdivision. Subdivision of a Unit into two (2) or more Units, including but not limited to the formation of a horizontal property regime, or changing the boundary lines of any Unit after a plat including such Unit has been approved and filed in the Public Records is prohibited, except with the prior written consent of the DRB and, during the Declarant Control Period, the Declarant. Review shall include the right to approve all preliminary and final site plans and subdivision plats, Building Site lay-outs, street locations, and the size, density and configuration of any subdivided parcels within the Properties. Such approval may be granted or withheld in the DRB's and the Declarant's discretion and may be conditioned upon any reasonable requirements, including but not limited to the review and approval of any additional covenants as set forth in Section 13.10 and the requirement that the Owner grant any access, parking, Utility, drainage and other easements within the Unit to be subdivided that the DRB reasonably deems necessary or beneficial for the development and use of the resulting subdivided Unit, other property subject to the Declaration, or Downtown Daybreak.

10.10 Firearms. Subject to Applicable Law, the Board may adopt Rules and Regulations and prohibitions regarding the carrying and discharge of firearms within the Properties, which Rules and Regulations and prohibitions may vary according to land use and from one portion of the Properties to another depending upon the location, unique characteristics, and intended uses. The Board may impose fines and exercise other enforcement remedies as set forth in this Declaration, but shall have no obligation to exercise self-help to prevent or stop any violation of a rule, regulation or prohibition. The term "firearms" includes without limitation "BB" guns, pellet guns, and firearms of all types.

10.11 Portable Stalls and Kiosks. Selling, or offering for sale, or operating any Motorized Vehicle, push cart, portable stall, kiosk, catering or food truck for sale of, or conducting any business for the purpose of causing the sale or resale of, goods, merchandise, food, and/or beverages from any Motorized Vehicle, push cart, portable stall, kiosk or catering or food truck parked, stopped, or standing upon any portion of the Properties or any dedicated roadways or other public property within Downtown Daybreak shall require the prior approval of the Declarant. Such approval shall be granted or withheld in the discretion of the Declarant. Prior to any approval, the Declarant may require submittal of information, the issuance of permits, the payment of fees, and compliance with any Rules and Regulations and operational guidelines as Declarant deems appropriate. Approval by the Declarant shall not supersede any requirement for approval by or as may be required by Applicable Law and shall not serve as a representation or warranty by the Declarant, or the Association that such approvals and permits may be obtained pursuant to Applicable Law. Notwithstanding the foregoing, approval shall not be required in connection with the use of the Ballpark or in connection with any Events relating thereto.

10.12 Water Conservation. Downtown Daybreak is being developed to recapture the stormwater and other water runoff. Each Owner shall abide by any and all water conservation requirements affecting its Building Site or Unit and must collect storm water on their parcel and adjacent roadways. Declarant reserves the right to install, operate, and maintain water reclamation devices

throughout Downtown Daybreak and an easement for access, installation and maintenance of such devices and to pass on to each Owner expenses related to such installation and maintenance.

10.13 Environmental Protection. Except as permitted by the DRB, any activities which materially disturb or destroy the vegetation or air quality within the Properties or adjoining buffers or which use excessive amounts of water are prohibited. Restricted and prohibited activities include without limitation the following:

(a) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any buffer, drainage or irrigation ditch, swale, stream, pond, wetlands, creek, or elsewhere within the Properties or adjoining areas is prohibited, except that fertilizers may be applied to landscaping on Building Sites or Units provided care is taken to minimize runoff.

(b) Obstruction, rechanneling or any other interference with drainage flows after location and installation of drainage swales, storm sewers, or storm drains is prohibited, except that the Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Building Site or Unit without the Owner's consent.

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from creeks, streams, wetlands, or other ground or surface waters within the Properties are prohibited unless approved by the DRB, except that Declarant and the Association shall have the right to draw water from such sources. Neither the Declarant nor the Association make any representations as to the suitability of the water for any purpose.

(d) Geothermal tapping, wells, and plants within the Properties are prohibited unless approved by the DRB, except that Declarant and the Association shall have the right to draw water from such sources.

No Owner shall use, or permit the use of, Hazardous Materials on, about, under or in its Building Site or Unit or any of the Properties, except in the ordinary course of its usual operations conducted thereon, and any such use shall be at all times in compliance with Applicable Law. Each Owner agrees to defend, protect, indemnify and hold harmless each other Owner from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including but not limited to costs of investigation, remedial or removal response, and reasonable attorneys' fees and cost of suits, arising out of or resulting from any Hazardous Material used or permitted to be used by such Owner whether or not in the ordinary course of operations.

10.14 Fuel Storage and Dispensing. Onsite storage and dispensing of gasoline, heating, or other fuels may be permitted on a Building Site or Unit in connection with the approved use of a Building Site or Unit, such as a convenience store or a big-box retail facility. Dispensing of fuel from facilities must be approved for such use by the DRB in accordance with Applicable Law, including any underground fuel tank and any underground or above-ground fuel tank used for storage of fuels used incident to (a) cooking operations in connection with the operation of a restaurant or other food service facility approved by the DRB and (b) a reasonable amount of fuel as necessary for the operation of any generator located on a Building Site with the approval of the DRB. In addition, the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. All fuel storage and dispensing operations and the installations of such facilities shall be in accordance with Applicable Law, including without limitation, the Zoning Conditions, and any requirements set forth in the DRB approval of such use.

10.15 Animals and Pets.

(a) Raising, breeding or keeping of animals, of any kind is restricted within the Units to the keeping of a reasonable number of dogs, cats, or other usual and common household pets. The Board, in its discretion, may make further restrictions regarding pets, including without limitation restrictions on the number, size, and types of pets permitted within Units.

(b) Pets shall be kept on a leash or otherwise confined in a manner acceptable to the Board, and shall not be permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the Owners or Occupants of Units, their Permittees, or Persons utilizing any portion of the Common Area. Pets shall be registered, licensed and inoculated as required by Applicable Law. The owners of the pet shall be responsible for all of the pet's actions. Pet waste shall be promptly removed and disposed of in proper receptacles. If, in the opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, it shall be removed from the Properties. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 4.3 of the Declaration.

(c) Nothing herein contained shall interfere with any provision under the Americans with Disabilities Act or Applicable Law.

10.16 Rules and Regulations. In addition to the Use Guidelines, the Board may adopt Rules and Regulations applicable to all or portions of the Properties. The Board may amend, modify, expand, limit, or restrict such Rules and Regulations. At least thirty (30) Days prior to the effective date of any such modification, amendment, expansion or repeal of the Rules and Regulations pursuant to this Section, the Board shall provide notice of such modification or amendment. The posting of Rules and Regulations in a conspicuous manner and location within the Properties or the publication in a printed or "electronic" community newsletter of general circulation within the Properties shall be deemed sufficient notice to all Owners, Occupants, and other Permittees; provided, the Board, in its discretion, may provide notice by other means or methods. The Association shall provide, without cost, a copy of the Rules and Regulations then in effect to any requesting Member or Mortgagee.

10.17 Applicability. All provisions of this Declaration, any Use Guidelines and Rules and Regulations shall apply to all Owners, Occupants and Permittees of any Unit. Any lease on any Unit shall provide that the lessee and all Occupants of the leased Unit shall be bound by the terms of the Governing Documents.

10.18 Owners' Acknowledgment and Notice to Purchasers. All Owners and Occupants of Building Sites or Units and purchasers are given notice that the specific operational use or uses of each Building Site or Unit is limited by the use review and approval rights of the DRB and the general Use Guidelines and the Rules and Regulations, as either of them may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a Deed or entering into a contract for the purchase of a Building Site or Unit, acknowledges the rights of Declarant and DRB with respect to review and approval of the specific uses of the Properties and the Board with respect to the Rules and Regulations, agrees to abide thereby, and further acknowledges and agrees that the specific use and enjoyment and marketability of its Building Site or Unit can be affected and that the Use Guidelines and Rules and Regulations may change from time to time.

Each Owner further acknowledges that certain uses on one Building Site or Unit may impact the use of another Building Site or Unit. For example, the use of a Building Site or Unit for a child care

facility may impact the use of another Building Site or Unit due to governmental rules and regulations. Each Owner shall be responsible for determining the impact of such uses on its Unit.

10.19 Restrictions During Events. During any Event, each Owner shall be prohibited from using any portion of the Common Area or any portion of its Building Site or Unit, including but not limited to any rooftops, balconies, patios, terraces, and Service Areas, that has a view of the sports field located within the Ballpark: (i) for the establishment of a private "stadium club" or substantially similar facility; (ii) to grant licenses or similar rights, sell tickets, charge a fee, cover charge, admittance fee, or other similar consideration or benefit for the use or occupancy of such areas; or (iii) to install, operate or use any photographic, video, or broadcasting or webstreaming camera or equipment, to generate revenues (whether directly, through social media, or otherwise) in connection with the viewing of an Event being conducted on or within the Ballpark sports field without the prior written consent of the Owner of the Ballpark Site which consent may be granted in its sole and absolute discretion. In addition to requirements of Article 9, installation or placement of seats, bleachers, or Signage, including any temporary Signage, in such areas shall require the consent of the Owner of the Ballpark Site.

10.20 Protected Sponsors. Unless otherwise permitted by the Declarant, and except for Declarant and its designated affiliates, no Owner or Occupant nor the Association shall sell its Building Site or Unit to a competitor of a Protected Sponsor, enter into any lease or sublease for space within Downtown Daybreak™ with any tenant that is a competitor of a Protected Sponsor, nor shall any Owner or Occupant or the Association install or display any temporary or permanent Signage of any competitor of a Protected Sponsor, nor shall any Owner or Occupant or the Association conduct any marketing, advertising, promotional or special event promoting any competitor of a Protected Sponsor if such activity would be visible from the exterior of a Building Site or Unit. Notwithstanding the foregoing, designation of a Protected Sponsor shall not require the removal of any Signage or termination of any lease then in effect at the time of designation of the Protected Sponsor. The Association shall maintain a list of Protected Sponsors that shall be made available to Owners and Occupants upon request. Any transaction that does not comply with this Section shall be voidable at the option of the Board of Directors, with Declarant having the authority to make the final decision.

ARTICLE 11 **EASEMENTS**

Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the benefit and enjoyment of the Declarant, the Association, the Members, the Owners, and their successors in title, as set forth below.

11.1 Easements of Encroachment. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Units, between each Unit and any adjacent Common Area, and between adjacent Units due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2 Easements for Utilities, Etc.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself and any Declarant-Related Entity during the

Declarant Control Period, for the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any Utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through or under a structure) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing telephone systems, cable, digital, satellite, or similar broadcast and reception systems, internet, intranet, 5G, and similar network systems, telecommunications systems, fiber optic systems, audio, and other devices for sending or receiving data or other electronic signals (except as otherwise stated below); security and similar systems; roads, sidewalks, walkways, alley ways, trails, and pathways; ponds, wetlands, irrigation, and drainage systems and street lights, and all Utilities, including, but not limited to, water, sewer, telephone, gas, and electricity systems, lines, and meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above. Notwithstanding the foregoing, Declarant reserves the exclusive right to construct and operate, and to authorize the construction and operation, of commercial cellular, microwave and other wireless communication towers, antennas and related facilities ("Commercial Wireless Facilities") within Downtown Daybreak.

Declarant may assign to the local water supplier, sewer service provider, electric company, telephone company, natural gas supplier, internet service provider, or other Utility service or submetering company, the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining Utility lines, meters and boxes, as applicable.

(b) Declarant reserves, creates, establishes, promulgates and declares for itself and its designees during the Declarant Control Period non-exclusive, perpetual, reciprocal, appurtenant easements and the non-exclusive right and power to grant such specific easements as may be necessary, in the discretion of the Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B".

(c) Any damage to a Building Site or Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. Nothing contained herein shall obligate the Declarant, the Association or the Board to pursue legal recourse against any Person damaging a Building Site or Unit or any portion thereof as a result of the exercise of this easement. The exercise of these easements shall not extend to permitting entry into the structures on any Building Site or Unit, nor shall it unreasonably interfere with the use of any Building Site or Unit and, except in an emergency, entry onto any Building Site or Unit shall be made only after reasonable notice to the Owner or Occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.3 Easement for Slope Control, Drainage and Water Rights. The Declarant, for itself and the Association, and their respective representatives, successors and assigns, contractors and agents, hereby establishes and reserves a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon each Building Site or Unit for the purposes of:

(a) controlling soil erosion, including grading and planting with vegetation any areas of any Building Site or Unit which are or may be subject to soil erosion;

- (b) drainage of natural or man-made water flow and water areas from any portion of the Properties;
- (c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Building Site or Unit or Common Area;
- (d) dredging, enlarging, reducing or maintaining any water areas or waterways within the Properties; and
- (e) installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Properties.

The Declarant further reserves for itself, its successors, assigns, and designees, all rights to ground water, surface water, waste water and storm water runoff originating within or running under or through Downtown Daybreak (including through any drains, pipes, sewer systems or other similar Improvements), and each Owner agrees, by acceptance of a deed to a Building Site or Unit, that the Declarant shall retain all such rights. Such rights shall include the reservation of an easement over Downtown Daybreak for access and for installation and maintenance of facilities and equipment to capture, test, treat and transport such water, and runoff. No Person other than the Declarant, its successors, assigns, or designees shall claim, capture, pump, or collect rainwater, ground water, surface water or storm water runoff from any portion of Downtown Daybreak without prior written permission of the Declarant. The Declarant or its designee may establish programs for reclamation of storm water runoff and wastewater for appropriate uses within or outside Downtown Daybreak and may require Owners and Occupants of Building Sites and Units to participate in such programs to the extent reasonably practical. No Owner or Occupant of a Building Site or Unit shall have any right to be compensated for water claimed or reclaimed from Building Sites and Units. The Declarant further reserves for itself, the Association, and their respective successors, assigns, and designees a perpetual nonexclusive right and easement, but not the obligation, to enter upon the Area of Common Responsibility and such other areas within Downtown Daybreak as hereafter may be dedicated to the City, a STD, or any other governmental entity, to install, construct, operate, maintain, repair or replace pumps, pipelines, structures or related equipment for the treatment, testing, cleansing and/or transportation of groundwater, waste water, irrigation and/or culinary water.

11.4 Easement for Signage. The Declarant reserves, creates, establishes, promulgates and declares for itself and its successors, assigns, and designees a nonexclusive easement to locate, erect, light, maintain, use, install and remove temporary and permanent street, traffic, directional, identification, informational, and other related signs, sign kiosks, digital signs, and mobile signage, on, over, across and through the Properties, including the parking of any vehicle being used for signage purposes, on any public or private street or sidewalk in any location within the Properties; provided, however, that such Signage shall not materially obstruct access to or visibility or use of any Improvement. Declarant hereby reserves the right to retain any revenues generated in connection with the use of any Signage for the purpose of advertising.

11.5 Easements for Digital Media Towers.

(a) Declarant reserves, creates, establishes, promulgates and declares for itself and its successors, assigns, and designees a nonexclusive easement to locate, erect, light, maintain, use, install and remove the Digital Media Towers, on, over, across and through the Properties, including the parking of any Motorized Vehicle being used for Signage purposes, on any public or private street or sidewalk in any location within the Properties.

(b) Declarant shall at all times manage the operation of, and maintain and repair, as needed the DMT Easement Areas and the Digital Media Towers located thereon from time to time, including, without limitation, payment of security costs, on-site personnel costs, utility charges, management fees and expenses, insurance costs, the reasonable cost of complying with Applicable Law, capital expenditures, and ad valorem real estate taxes and other public and private assessments attributable to the DMT Easement Areas or the Digital Media Towers located thereon.

(c) All revenues from the operation of the Digital Media Towers and other facilities located in the DMT Easement Areas shall accrue to the benefit, and shall be the sole property, of Declarant. Notwithstanding anything contained herein to the contrary, Declarant shall have the right, at any time and from time to time and without the consent of any Owner, to assign to one or more third parties the right to use the Digital Media Towers, including the right to determine the images, messages and content presented on the display areas of the Digital Media Towers and other facilities in the DMT Easement Areas. Declarant shall additionally have the exclusive right to determine the images, messages and content of the digital signs or billboards necessary to comply with all Applicable Law relating thereto, including ordinances related to nonconforming building identification signs. The foregoing easement rights shall be exclusive rights.

(d) In addition to the foregoing, Declarant shall have the non-exclusive right, privilege and easement to run Utilities serving the Digital Media Towers and other facilities relating thereto into the DMT Easement Areas from the point of connection with public or private Utility service providers.

(e) Declarant reserves the right, at its sole cost, at any time and from time to time, to relocate all or any part of the DMT Easement Areas to some other portion of the Common Area, provided that the same does not materially diminish or impede the Signage rights of any other Owner or cause any noncompliance with Applicable Laws.

11.6 Easements for Irrigation and Flood Water.

(a) The Declarant reserves, creates, establishes, promulgates and declares for itself and its successors, assigns, and designees, the Association, any STD, or any other local, state, federal governmental or quasi-governmental entity, the non-exclusive, perpetual, appurtenant right and easement, but not the obligation, to enter upon the streams, creeks, and wetlands located within the Area of Common Responsibility to (i) install, keep, maintain, and replace pumps and irrigation systems in order to provide water for the irrigation of all or any portion of the Area of Common Responsibility; (ii) draw water from such sources for purposes of irrigation; (iii) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (iv) remove trash and other debris from such structures and related systems, and fulfill maintenance responsibilities as provided in this Declaration. The Declarant, the Association, a STD, or any other local, state, federal governmental or quasi-governmental entity, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any stream, creek, or wetland to the extent reasonably necessary to exercise their rights under this Section.

(b) Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall, snow melting events, or other natural disasters.

11.7 Easements to Serve Additional Property. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, invitees, and Mortgagees, a non-exclusive easement over the Common Area for the purposes of enjoyment, use, access,

operation, and development of the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads, for the posting of Signage, and for connecting and installing Utilities and Improvements on such property. In addition, the Declarant reserves the non-exclusive right and power to grant such specific non-exclusive easements and licenses over the Common Area as may be necessary, in the sole discretion of the Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B".

11.8 Easement of Entry. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for the Association to enter upon any Unit for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Association's officers, committee members, agents, employees and managers of the Association, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after notice to the Owner. This easement includes the right to enter any Unit to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any structure without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

11.9 Easements for Association Maintenance and Enforcement.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements for the Association to enter all portions of the Properties, including each Unit but excluding the interior of any structure, to (i) perform its maintenance responsibilities under Section 5.1, and (ii) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Unit shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

(b) The Association may also enter a Unit, excluding the interior of any structure, to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys' fees, may be assessed against the violator as a Specific Assessment.

(c) Entry under this Section shall not constitute a trespass, and prior notice to the Owner shall not be required except as provided in Section 5.2.

11.10 Maintenance, Construction, Utility and Drainage Easements. The Owners of all Building Sites and Units recognize and agree that temporary construction and permanent and perpetual maintenance easements and all rights of access reasonably necessary to permit construction and maintenance of the Common Area, including reasonable permanent easements to permit installation, use, operation, and maintenance, relocation and removal of Utilities, roads, walkways and storm water drainage on the Properties are hereby granted to and retained by the Declarant for the benefit of the Declarant and of the Association and their respective Mortgagees, employees, independent contractors, agents and assigns. Such easements must be granted and conveyed hereafter by each Owner to the Declarant and the Association for the benefit of the Declarant and of the Association and their respective Mortgagees, employees, independent contractors, agents and assigns. Each Owner, by taking title to its respective Building Site or Unit, hereby grants and conveys and shall be deemed to have consented and agreed to hereafter designate, grant and convey such easements when requested to do so by the Declarant

or the Association. Each Owner, by taking title to its respective Building Site or Unit, shall also be deemed to have agreed to obtain from all appropriate parties, including its Mortgagees and trustees under deeds to secure debt, the written subordination of any and all Mortgages, deeds to secure debt, security interests and all other liens that encumber or in any way affect its respective Building Site or Unit to such easements and to all other easements, rights-of-way and rights of ingress, egress, access and passage now set forth in or otherwise provided for in or contemplated by this Article and such written subordination instruments shall be provided promptly and without delay to the Declarant and the Association when requested by the Declarant or the Association. Each Mortgagee, noteholder under a deed to secure debt, trustee under a deed to secure debt and other holders of any security interest in any Building Site or Unit by accepting a security interest in or legal or equitable title to a Building Site or Unit, shall be deemed to have consented to and agreed that its security interest or legal or equitable title is subordinate to said easements and agrees to execute any instrument reasonably required to evidence the subordination of its debt and security instruments to such easements, rights-of-way and rights of ingress, egress, access and passage subject to the same not materially adversely affecting the Building Site or Unit serving as the security for the obligations owed to such Mortgagee or noteholder. Failure of a Mortgagee, noteholder under a deed to secure debt, trustee under a deed to secure debt and other holder of any security interest in any Building Site or Unit to execute any instrument reasonably required to evidence the subordination of its debt and security instrument to such easements, rights-of-way and rights of ingress, egress, access and passage shall not affect the automatic subordination of such instrument as set forth herein. Such easements will contain terms and conditions reasonably requested by the Declarant or the Association, as the case may be, but such easements will not unreasonably interfere with the development, use and occupancy of any Building Site or Unit or unreasonably affect access to, or operation of, any such Building Site or Unit. All temporary construction easements, and temporary access rights in connection therewith, of the Declarant shall terminate automatically when construction of the Common Area for which such easement is granted or retained is completed, but the permanent and perpetual maintenance easements, and access rights in connection therewith, of the Declarant and the Association shall continue in full force and effect except as hereinafter provided. Prior to the Declarant's or the Association's exercise of any easement rights created by this Section, a written instrument defining the location of the respective easement shall be approved by the appropriate governmental entity.

11.11 Easement for Walkway Access. Declarant hereby grants to the Owners a perpetual, non-exclusive easement for enjoyment, use and access over and across any areas designated by Declarant as "walkways" or "paths" on any plat of any portion of the Properties, including without limitation the Building Sites or Units. Use of such walkways or paths shall be governed by any Rules and Regulations determined and promulgated by, and any operating practices of, the Association and the Governing Documents. Additionally, Owners and other permitted users of the walkways or paths shall be obligated to refrain from any actions which would deter from or interfere with the use and enjoyment of the walkways or paths by other authorized users of the walkways or paths. Prohibited activities shall include without limitation obstruction of any walkway or path. No Person other than Declarant shall alter any walkway or path without the prior written approval of the owner of the walkway or path, and, during the Declarant Control Period, Declarant's prior written consent.

11.12 Roadside Access Easements. There is hereby reserved to the Declarant, the Association, and the Owners and the general public an easement for access, adjacent and parallel to all public road rights of way and Common Area roads within the Properties, extending from the curb to the far side of any sidewalk or jogging or bicycle path running more or less parallel to the curb, for the purpose of using such sidewalk or path. Such access rights shall be subject to any limitations in favor of Declarant to limit access for Events as described in this Declaration. There is also hereby reserved to Declarant, the Association, and the designees of each, a right to go upon, over and across all property adjacent to public road rights of way, all Private Streets, and any Common Area streets and roads within the Properties to maintain, repair, and replace any street trees, street furniture (including, without limitation, trash

containers, signs, directories, security desks, kiosks, benches, chairs, playground equipment, art installations, markers, and other similar elements), sidewalks and paths, and traffic and directional signs as well as to construct, install and maintain curb cuts as approved by the DRB.

11.13 Easements for Events. Declarant reserves, creates, establishes, promulgates and declares for itself, any Declarant-Related Entity, Event Holders, their successors, assigns and designees a perpetual, non-exclusive, appurtenant easement over the Event Areas, Common Area and Private Streets for the purpose of conducting or allowing its designees to conduct Events at such locations and times as the Declarant, in its discretion, deems appropriate. Declarant and the Association shall have the right to install and maintain temporary physical barriers to limit and/or control any and all use, ingress, egress and access in and to easement areas to be used during an Event. The physical barriers may consist of turnstiles, fences, gates, rolling curbs, removable bollards or other reasonable means of controlling entry and exit by pedestrians and vehicles. All such physical barriers shall be removed at the conclusion of each Event. The Event Holder shall be responsible for providing: (a) any and all licenses and permits required for the Event; (b) Event liability insurance, including host liquor liability in commercially reasonable amounts; (c) all preparation and set up for the Event, including the payment of any expenses for providing barriers for controlling entry and exit by pedestrians and vehicles to the Event; and (d) all post Event cleaning, maintenance, repair and restoration required to restore the easement areas to the condition existing prior to the Event. Each Owner, by accepting a Deed or other instrument conveying any interest in a Building Site or Unit, acknowledges and agrees that the operation of the Ballpark, the use of the Event Areas and the exercise of this easement may result in a temporary increase in noise, music, loudspeakers, horns, whistles, bells, other sound devices, errant baseballs, lights, odors, dust, vibrations, gathering of crowds, pedestrian and vehicular congestion, closed streets or sidewalks, and related inconveniences to Owners, Occupants, and Permittees of Building Sites and Units. Discharge of firecrackers and other fireworks, lights, lasers, and aircraft flyovers may be utilized in connection with Events; provided that such activities are conducted pursuant to Applicable Law. Firework displays may include sudden noise, bright light, smoke and other events associated with the use of incendiary devices. Each Owner agrees on behalf of itself and the Occupants of its Building Site or Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement in accordance with Applicable Law or to recover damages for or as the result of any such activities or the exercise of this easement (except in violation of Applicable Law or the terms hereof), including but not limited to any damage or injury resulting from any activity relating to a Baseball Event or any errant baseball. Notwithstanding any other provision of this Declaration, each Owner covenants and agrees for itself and its Occupants, successors and assigns that its non-exclusive easement for use, ingress and egress in the Event Areas, Common Area and the Private Streets is subject and subordinate to the rights granted under this Section. This provision shall not be deemed to grant the right to limit ingress or egress to or from a Building Site or Unit.

11.14 Easement for Avigation. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements, for itself and any Declarant-Related Entity, a perpetual non-exclusive easement upon, across, and over, all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of operating UAVs to take photographs or record video of any part or all of the Properties or as part of a business, in all cases, in accordance with Applicable Law, in and through the airspace at any height and altitude above that the Properties to the extent such operation of UAVs as part of a business is permitted under federal and state law (the "Avigation Easement Area"). Declarant further reserves the right to use any photographs or videos taken of any portion of the Properties from any UAV for marketing the Properties for sale or lease and reserves the right to retain any revenues generated in connection with the use of any photographs or videos taken of any portion of the Properties from any UAV. The foregoing easement includes the right of UAVs to cause noise, vibrations, fumes, deposits of dust, fuel particles (incidental to the normal operation of UAVs), fear, interference with sleep or communication and any other effects associated with the normal

operation of UAVs taking off, landing or operating within and in the vicinity of the Properties. The easement granted herein includes on behalf of the Declarant, any Declarant-Related Entity and its successors and assigns a perpetual right of ingress and egress in and to the Avigation Easement Area and the right to remove any new structure or vegetation or other Improvement within the Common Area that interferes with the use of the Avigation Easement Area.

11.15 Light, Air and View. No Owner shall have an easement for light, air, or view over any Building Site or Unit of another Owner or any portion of the Properties, and no diminution of light, air, or view of any improvement now existing or hereafter erected shall entitle an Owner to claim any easement for light, air, or view.

11.16 Lateral Support. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements over every portion of the Common Area, every Building Site and Unit, and any Improvement which contributes to the lateral support of another portion of the Common Area or of another Building Site or Unit for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

11.17 Easement for Structural Support. Each Owner shall have and there is hereby reserved by Declarant for the benefit of the Properties and granted to each Owner, a non-exclusive easement in the Structural Supports located in any portion of the Properties necessary for the structural integrity of adjacent Improvements presently located or to be located in the future on the Properties, and any replacement, substitution or modification thereof as permitted by this Declaration. Declarant hereby disclaims any representation or warranty, whether express or implied, concerning any matter with regard to the adequacy or sufficiency of the design, specifications, installation, or construction of the Structural Supports (including any defect(s), omission(s) or error(s) in the design, specifications, installation, or construction thereof) for the purposes herein provided or contemplated; and each Owner hereby acknowledges that it has satisfied or will satisfy itself as to the adequacy and sufficiency of the design, specifications, installation or construction of the Structural Supports. The foregoing disclaimer shall not be construed to affect any contractual arrangement that otherwise may exist with respect to the matters included in the foregoing disclaimer.

11.18 General Development Easements. The Declarant reserves for itself, its successors, assigns and designees a blanket easement over the Properties, to allow the Declarant to take whatever action it determines is appropriate, necessary or beneficial to the construction, development, sales or operation of the Properties, including but not limited to the Building Site and Unit. This blanket easement is for the purpose of enabling the Declarant to construct Improvements within the Properties, whether on Common Areas, or Building Site and Unit, in the manner that it deems appropriate. The Declarant shall have access and use of any Building Site and Unit or Common Area as is appropriate, necessary or beneficial to construct any Improvement within the Properties. This easement is for the further purpose of allowing the Declarant, if it deems appropriate or necessary, to repair, relocate, construct, or maintain any of the Improvements installed in the Properties.

11.19 Crane Swings. Declarant reserves, creates, establishes, promulgates and declares, for itself, its successors, assigns and designees, non-exclusive, perpetual, reciprocal, appurtenant easements to allow or cause the boom of any tower or other crane and its load ("Crane Boom") used to perform any construction or maintenance activities permitted by this Declaration to swing temporarily over any portion of the Properties, excluding the Ballpark Site. Any Owner who allows or causes a Crane Boom to swing over the Common Area or the Building Site or Unit of another Owner shall comply with all Applicable Law in connection therewith and shall indemnify the Declarant, the Association, and the other Owner from any loss, cost, damage, expense or liability which such Person may suffer or incur as a consequence of the swing of the Crane Boom. In no event shall an easement for any Crane Boom be

created or maintained in favor of one Building Site or Unit if the Crane Boom materially and adversely interferes with the use, operation and enjoyment of the Common Area or another Building Site or Unit by an Owner or its Occupants or their Permittees.

11.20 Easement for Use of Roofs.

(a) The Declarant reserves for itself, its successors, assigns and designees, a perpetual, non-exclusive easement to and onto the roof of any building within the Properties for the following purposes: (i) the installation, operation, maintenance, repair or replacement of any telecommunication or broadcasting equipment; (ii) the installation, maintenance, repair or replacement of any rooftop mounted Signage; (iii) the installation, operation, maintenance, repair or replacement of any solar panels and other green technology and Improvements relating thereto; (iv) the use of photographic or video cameras and related equipment; and (v) the use of any rooftop for use by security, law enforcement or public safety personnel for safety and general welfare purposes. The grantees of such easement rights shall be provided with reasonable rights of passage over and across, and access to, stairways, stairwells, elevators, mechanical and electrical rooms and corridors necessary for the exercise of such rights and easements as provided in this Section, and the Owners of any such building shall provide the grantees with such keys, codes and card keys or other access systems that may be installed or utilized from time to time to secure any applicable elevators, stairways, stairwells, mechanical and electrical rooms, corridors and roof areas.

(b) Security, law enforcement and public safety personnel, may, in their discretion, restrict or limit access to any roof top during any Event and for a reasonable period of time preceding and/or following any Event for public safety purposes.

11.21 Easements for Lighting.

(a) Subject to Applicable Law and except as provided in this paragraph, each Owner shall have, and there is hereby reserved by Declarant for the benefit of each Building Site and granted to each Owner, an easement to install and maintain, at the individual expense (including the cost of electricity used in the operation thereof) of each such Owner, accent lights to illuminate Owner's Improvements in accordance with the Design Guidelines. If any Owner desires to exercise its rights under this Section, it shall prepare plans and specifications showing the exact locations of such accent lights and detailing all other specific information with respect thereto, which plans and specifications shall be reviewed and approved by the Declarant. Notwithstanding the foregoing, Declarant shall have the right to withhold its approval if it determines that the placement, luminosity or number of glass lights interferes with the use and enjoyment of the Ballpark Site or the aesthetic appeal of the Ballpark Site.

(b) Declarant reserves for the Association, the Owner of the Ballpark, itself, its successors, assigns and designees, an easement over the Properties for the purpose of permitting any lights emitted or produced in connection with the Ballpark, Ballpark Site, or any portion of the Common Area including, without limitation, the use of ballpark lights and related fixtures, klieg lights, exterior lights illuminating the Ballpark and areas associated therewith, any Ballpark marquees or other illuminated Signage utilized in connection with the Ballpark, any lights produced in connection with any Event in accordance with Applicable Law including fireworks and laser shows, and seasonal or holiday-related lights.

11.22 Use of and Limitations on Easements and Licenses. The Owners of Building Sites or Units benefited by the easements and licenses set forth in this Declaration (if any and only to the extent such easements and licenses are for the benefit of Building Site or Unit Owners) and those other persons granted rights herein shall be entitled to use and enjoy said easements and licenses in common with others

entitled to use same and shall take no action in or with respect to any of said easements and licenses which would unreasonably interfere with the rights of other persons to use said easements and licenses or to enjoy the benefits therefrom.

11.23 Release of Easements. The Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (a) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Article, or (b) to define the limits of any such easements.

11.24 Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, any Declarant-Related Entity, the Association, or their successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

ARTICLE 12 **MORTGAGEE PROVISIONS**

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

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

12.3 Failure of Mortgagee to Respond. Except as otherwise agreed to in writing by the Board or Declarant, any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) Days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE 13 **DECLARANT'S RIGHTS**

13.1 Transfer or Assignment.

(a) Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned, in whole or in part, and subject to the terms and conditions set forth in such transfer or assignment, to the Association, to a Declarant-Related Entity, or to other Persons. No transfer or assignment shall reduce an obligation or enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

(b) Except as may be specifically set forth in any transfer or assignment, there shall be only one (1) Person entitled to exercise the rights and powers of the "Declarant" hereunder at any time, and, upon any such transfer or assignment, Declarant shall be automatically released from any and all liability arising with respect to such transferred and assigned rights and obligations.

13.2 Association Incorporation. Declarant may elect to incorporate the Association at any time. If the Declarant does not incorporate the Association prior to or simultaneously with the recording

of this Declaration, then until such time as the Association is incorporated, (a) Declarant shall exercise all rights, duties and obligations of the Association under the Governing Documents; (b) Declarant shall be primarily responsible for and shall perform the obligations of the Association under the Governing Documents; (c) Declarant will have the rights of the Association, including but not limited to, the easement rights and the right to levy assessments, as described in the Governing Documents; and (d) the provisions of the Governing Documents regarding membership rights in the Association shall not be applicable. Upon incorporation of the Association, Declarant shall prepare the Articles of Incorporation and the By-Laws of the Association, which instruments shall provide that each Owner shall be a mandatory member of the Association and shall incorporate voting rights of the Owners consistent with each Building Site's or Unit's Assessment Share.

13.3 Development, Sales and Operation. The Declarant and any Declarant-Related Entity authorized by the Declarant may maintain and carry on the Properties such activities as, in the discretion of the Declarant, may be reasonably required, convenient, or incidental to the development and operation of the Properties and the construction or sale of Building Sites and Units, such as sales activities, tournaments, Events, and promotional activities, and may restrict Owners and Occupants from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the use and enjoyment of the Properties by the Owners and Occupants. In the event that any such activity necessitates exclusion of Owners and Occupants from Common Areas, such activities shall not exceed seven (7) consecutive Days. The Declarant, all Declarant-Related Entities and others authorized by the Declarant shall have easements over the Properties for access, ingress and conducting such activities.

In addition, the Declarant, any Declarant-Related Entity and others authorized by the Declarant may establish within the Properties, such facilities as, in the discretion of the Declarant, may be reasonably required, convenient, or incidental to the development and operation of the Properties or the construction or sale of Building Sites and Unit, including, but not limited to, business offices, construction trailers, construction-related signs, construction equipment, leasing, sales, and management offices, kiosks, portable stalls and Parking Facilities. During the Declarant Control Period, Owners may be excluded from use of all or a portion of such facilities in the Declarant's discretion. The Declarant and Declarant-Related Entities authorized by the Declarant shall have easements over the Properties for access, ingress, and egress and use of such facilities.

Declarant may permit the use of any facilities situated on the Common Area by Persons other than Owners without the payment of any use fees.

13.4 Improvements to Common Areas. The Declarant and its employees, agents and designees shall have the right and discretion to determine what Improvements, if any, will be located on the Common Area, provided that no Improvements to the Common Area shall materially impair ingress and egress to and from any Building Site or Unit as determined in the discretion of the Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such Improvements to the Common Area as Declarant deems appropriate in its discretion. Such Improvements may be utilized for community or civic activities pursuant to the Governing Documents and the Master Plan including, without limitation, entertainment and recreational activities, holiday and seasonal displays and activities, art festivals or exhibitions, sporting events, bocce courts, skating rinks or other recreational activities, farmers' markets, gardens, concerts, exhibitions and other Events.

13.5 Leases and Concessions of Common Area. Declarant shall have the authority to lease or grant licenses or concessions with respect to portions of the Common Area for such purposes and subject to such conditions as may be agreed to by the Declarant or Board, including without limitation to conduct,

permit, license, lease or grant others the right to conduct activities or otherwise activate the Common Area with kiosks for the retail sale of goods, merchandise or services; farmer's or outdoor markets; rentals of bicycles, boats or other recreational equipment; leasing of dock space; water, land or air transportation, delivery or tour services; and other retail, entertainment, recreational or similar activities; provided however, that such leases, licenses or concessions shall be consistent with this Declaration and shall be subject to the reserved rights of Declarant set forth herein. The Declarant shall have the right, but shall not have an obligation, to collect rent or fees for use of portions of Common Area under this provision, and the Declarant shall have the discretion to determine whether and in what amount, if any, fees should be charged and collected under such leases, licenses and concessions. Declarant shall have the discretion in granting leases, licenses and concessions for such Common Area to determine whether to charge a fee therefor. Declarant hereby reserves the right to retain any revenues generated in connection with such leases, licenses and concessions.

13.6 Publicity Release. Each Owner (and any other Person bound by this Declaration) shall be deemed to have agreed that photographs or film footage taken of participants at any Event may be subsequently used by Declarant or any Declarant-Related Entity for commercial purposes in advertising, marketing and public relations materials, including, without limitation, newsletters, community calendars, welcome centers, and websites published or sponsored by Declarant or any Declarant-Related Entity. In addition, by attending an Event, each Owner (and any other Person bound by this Declaration) acknowledges and agrees to allow such use and waives any right to pre-approval, royalties or other compensation arising from or related to the use of such photographs or film footage, which shall remain the sole copyrighted property of Declarant or Declarant-Related Entity, as applicable.

13.7 Photography of Buildings. Declarant or any Declarant-Related Entity shall have and hereby retain and reserve the non-exclusive right to photograph, videotape, televise, take motion pictures of, make miniatures, reproductions and/or representations, by any method whether or not now technologically existent (collectively, "Reproductions"), of the exterior of the Properties, the improvements on the Building Sites and Units or portions thereof, and to display and otherwise use any such Reproductions in any manner, or through any media, for any purpose whatsoever, whether or not now technologically existent, on a royalty-free basis, world-wide and without any fee being paid to Owner or Occupant therefor, as Declarant or Declarant-Related Entity deems appropriate with all such Reproductions being the sole and exclusive property of Declarant or such Declarant-Related Entity.

13.8 Open Container Areas. Declarant reserves the right to establish areas within the Properties that are designated as Open Container Areas and to amend such areas, from time to time, by enlarging or contracting any of the Open Container Areas so designated, by designating more areas within the Properties as Open Container Areas, or by removing the "Open Container Area" designation from a previously designated area. In the event the Declarant elects to establish or amend an Open Container Area within a Building Site or Unit, the Declarant shall be required to secure the consent of the Owner of the property, which consent not to be unreasonably conditioned, withheld, or delayed. In the event the Declarant elects to establish or amend an Open Container Area within the Common Area, such amendment shall not require the consent of any Person and the Association shall consent to such amendment upon the request of Declarant. Such amendment will be memorialized by a written instrument, executed by Declarant and the Association (as applicable), and if the Open Container Area is located within a Building Site or Unit, the Owner of such property, and recorded in the Public Records.

13.9 Liability for Association Operations. The Association shall, to the fullest extent permitted by Applicable Law, shall indemnify, defend, and hold harmless Declarant and any predecessor Declarant (including, without limitation, their respective Declarant-Related Entities, successors, and assigns) from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, legal costs), which relate to or arise out of Association management and

operations, including, without limitation, improvement, maintenance, and operation of amenities and other portions of the Area of Common Responsibility and the collection of assessments.

13.10 Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Properties without the Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person, other than the Declarant pursuant to Section 7.4, may conflict with the Declaration, By-Laws or Articles.

13.11 Limitations of Use. During the Declarant Control Period, the Declarant, acting in its discretion, retains the right, but not the obligation, to limit the use of any portion of the Properties, including any one Building Site or Unit or group of Building Sites or Units, to one or more, but less than all, of the permitted uses under the Zoning Conditions and the Governing Documents. By way of example only, the Declarant may limit the use of certain Units or Service Areas to Multifamily Use. In the alternative, the use of a Building Site or Unit or Service Area may be limited to a nonresidential use permitted under the Zoning Conditions such as, by way of example only, a specific non-food service retail use, or the use of certain Building Sites or Units may be restricted against a use already being conducted by an Owner of a Building Site or Unit within Downtown Daybreak. Each Owner acknowledges that, for purposes of granting exclusivity rights to future purchasers of Building Sites or Units, the Declarant may impose additional limitations on all or portions of the Properties, provided that such limitations shall not interfere with or prohibit an existing use or a use that has been specifically permitted by Declarant. Any limitations on use imposed by the Declarant are in addition to and not in lieu of the Use Guidelines and may be changed only as set forth in Article 10.

13.12 Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Design Guidelines, Use Guidelines or Rules and Regulations shall be effective without prior notice to and the written consent of the Declarant, during the Declarant Control Period. In addition, this Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate two years following the termination of the Declarant Control Period.

ARTICLE 14 **GENERAL PROVISIONS**

14.1 Duration.

(a) The provisions of this Declaration shall run with, bind the Properties and remain in effect for a minimum of thirty (30) years from the date it is recorded. After thirty (30) years this Declaration shall be automatically extended for successive periods of ten (10) year periods unless Owners of at least seventy-five percent (75%) of the total Units within the Properties, execute and record an instrument terminating the Declaration and that document is recorded in the Public Records within the year before any extension. Notwithstanding the foregoing, (i) this Declaration may not be terminated during the Declarant Control Period without the prior written consent of the Declarant, and (ii) any such instrument shall also require the consent of the Declarant, if the Declarant owns any portion of the Properties. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

(b) If any covenant, condition, restriction or other provision of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities or by reason of any rule

restricting the period of time that covenants may affect title to property, then such provision shall expire twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

14.2 Amendment.

(a) By the Declarant. During the Declarant Control Period, the Declarant may unilaterally amend this Declaration or any Supplemental Declaration at any time and from time to time:

- (i) for the purpose of curing any ambiguity or any inconsistency among the provisions contained herein;
- (ii) to release any Building Site or Unit from any part of the covenants and restrictions contained herein;
- (iii) to amend this Declaration or any Supplemental Declaration in any manner 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 of the Building Sites or Units; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on any of the Building Sites or Units; (d) to enable any reputable private insurance company to insure mortgage loans on any of the Building Sites or Units; or (e) to satisfy the requirements of any local, state or federal governmental agency; and
- (iv) to amend this Declaration or any Supplemental Declaration without vote or consent of the Owners for any other purpose.

The foregoing amendments may be made without the joinder or approval of any Owner, mortgagee, or the Association.

(b) By the Board. The Board shall be authorized to amend this Declaration without the consent of any Owner (i) to correct scrivener's errors and other mistakes of fact; (ii) to remove provisions creating impediments to the implementation, use and operation of advancements in technology or products within the Properties; (iii) for the purpose of submitting all or any portion of the Properties to the Utah Condominium Ownership Act, Utah Code Section 57-8-1, et seq. or the Utah Community Association Act, Utah Code Section 57-8a-101, et seq. and conforming this Declaration to any mandatory provisions thereof; and (iv) for the purposes of bringing any provision contained herein into compliance with the Discrimination Laws, as more fully set forth in Section 14.5; provided that amendments under this provision have no material adverse effect on the rights of the Owners unless the Owner of such Building Site or Unit consents. During the Declarant Control Period, any such amendments shall require the written consent of the Declarant.

(c) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding seventy-five percent (75%) of the total Class "A" votes in the Association, and, during the Declarant Control Period, the written consent of the Declarant. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

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

(d) Validity and Effective Date. No amendment may remove, revoke or modify any right or privilege of the Declarant, any Declarant-Related Entity or the Class "B" Member without the written consent of the Declarant, any Declarant-Related Entity or the Class "B" Member, respectively (or the assignee of such right or privilege).

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

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

14.3 Merger or Consolidation. Upon a merger or consolidation of the Association with any other association, the property, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the property, rights and obligations of another association may, by operation of law, be added to the property, rights and obligations of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other property as one scheme; however, no such merger or consolidation shall effect any revocation, change or addition to the covenants established by this Declaration.

14.4 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

14.5 Discrimination Laws. The provisions of the Governing Documents shall be subordinate to the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, *et seq.*, and the Americans with Disabilities Act of 1990, 42 U.S.C. § 1201, *et seq.* (hereinafter collectively referred to as "Discrimination Laws") and shall be applied so as to comply with the Discrimination Laws. In the event that there is a conflict between or among the Governing Documents and the Discrimination Laws, the Discrimination Laws shall prevail. Notwithstanding anything to the contrary contained herein, in the event that any provision of this Declaration conflicts with the Discrimination Laws, the Board of Directors, without the consent of the Members or of the Declarant, shall have the unilateral right to amend this Declaration for the purpose of bringing this Declaration into compliance with the Discrimination Laws. Furthermore, notwithstanding Section 2.4 hereof, the Board shall have the unilateral right to assign portions of the Common Area as Exclusive Common Area or to reassign Common Area previously assigned as Exclusive Common Area to one (1) or more Units to one (1) or more Owner(s) or Occupant(s) should such action be required in order to make a reasonable accommodation under the Discrimination Laws.

14.6 Dispute Resolution. It is the intent of the Association and the Declarant to encourage the amicable resolution of disputes involving the Properties and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Association, the Declarant and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Properties, including,

without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures.

Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, then the parties may proceed with litigation.

14.7 Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Owners holding at least seventy-five percent (75%) of the total Class "A" votes in the Association, and during the Declarant Control Period, the written consent of the Declarant. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of Governing Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to property taxation; (d) counter claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods and services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

14.8 Non-Merger. Notwithstanding the fact that the Declarant is the current owner of the Properties, it is the express intention of the Declarant that the easements established in the Declaration for the benefit of the Properties and owners shall not merge into the fee simple estate of individual Building Sites and Unit conveyed by the Declarant or its successor, but that the estates of the Declarant and individual Owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

14.9 Grants. The grants and reservations of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted or reserved in this Declaration.

14.10 Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with any additional recorded covenants, restrictions and declarations applicable to any Service Area, Building Site or Unit, and the Association may, but shall not be required to, enforce such additional covenants, restrictions and declarations applicable to any Service Area, Building Site or Unit; provided, however, in the event of a conflict between or among this Declaration and such covenants or restrictions, or declarations and/or the provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, this Declaration, the By-Laws, Articles and use restrictions and Rules and Regulations of the Association shall prevail over those of any Service Area, Building Site or Unit. Notwithstanding the foregoing, in the event of a conflict between or among the provisions of this Declaration and any Supplemental Declaration or Building Site Declaration applicable to any portion of the Properties that create exceptions to, or otherwise modify the terms of this Declaration in compliance with Section 7.4, the provisions of such Supplemental Declaration or Building Site Declaration shall prevail over this Declaration, and the Association shall have the standing and authority to enforce the same. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Association. Nothing in this Section shall preclude any Supplemental Declaration, Building Site Declaration or other recorded declaration, covenants, restrictions and declarations applicable to any portion of the Properties from containing additional covenants, restrictions,

or provisions that are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

14.11 Downtown Daybreak Marks and Social Media. Each Owner and Occupant acknowledges that Declarant owns all right, title and interest in and to Downtown Daybreak Marks. No Owner or Occupant shall own or acquire any rights to Downtown Daybreak Marks. Any use of Downtown Daybreak Marks, along with any goodwill earned by such use, by any Owner or Occupant shall inure exclusively to the benefit of Declarant. Declarant may establish and maintain one or more Downtown Daybreak websites and Social Media presence to promote Downtown Daybreak. Each Owner hereby acknowledges and agrees that the contents of any Downtown Daybreak website and Social Media shall remain the sole and exclusive property of the Declarant. No Owner or Occupant may establish or maintain a website to promote Downtown Daybreak or develop or maintain any presence on Social Media relating in any manner whatsoever to Downtown Daybreak without the Declarant's prior written approval; provided, however, that Owners and Occupants may refer to their physical location within Downtown Daybreak in connection with such website and Social Media.

14.12 Compliance. Every Owner and Occupant of any Building Site or Unit shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Association, the Declarant, any Declarant-Related Entity, or, in a proper case, by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3. In any legal or equitable proceeding for the enforcement of or to remedy the violation of these covenants or any provision hereof, the losing party or parties shall pay the reasonable attorney's fees and costs of the prevailing party or parties, in such amount as may be fixed by the court in such proceeding. Such fees upon appropriate docketing of a judgment to such effect shall become a lien against the Building Site or Unit (if any) of the losing party. All remedies provided herein or otherwise available, at law or in equity, shall be cumulative and not exclusive.

14.13 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to its Unit (excluding, for the avoidance of doubt, any foreclosure of a Mortgage or deed in lieu thereof) shall give the Association at least seven (7) Days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. After the transfer of title, the transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

14.14 Conflict or Ambiguity. In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction relating to construction against the Declarant or the DRB or any committee thereof are hereby waived by each Owner.

14.15 Further Assurances. Each Owner covenants and agrees to sign, execute and deliver, or cause to be signed executed and delivered and to do or make, or cause to be done or made, any and all agreement, instruments, papers, Deeds, acts or things, supplemental, confirmatory or otherwise, as may be reasonably requested by the Declarant, the Association or the DRB for the purpose of or in connection with clarifying, amending or otherwise consummating the transactions and matters set forth herein.

14.16 Standards for Review. Whenever in this Declaration the Declarant, any Declarant-Related Entity, the Association or the DRB has the right to approve, consent or require any action to be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein, be in the sole and absolute discretion of the Declarant, the Declarant-Related

Entity, the Association or the DRB, respectively, and such approval, consent or required action shall be final and conclusive.

14.17 Exhibits. Exhibits “A,” “B,” “C,” and “D” attached to this Declaration are incorporated herein by this reference and amendment of such exhibits shall be governed by the provisions of Section 14.2.

[SIGNATURES ON FOLLOWING PAGE]

CONSENT OF OWNER

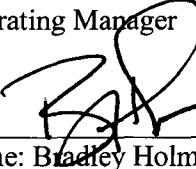
The undersigned owner of a portion of the real property described in Exhibit "A" to this Declaration of Covenants, Conditions and Restrictions for Downtown Daybreak (the "Declaration") hereby consents to the submission of the property to the provisions of the Declaration and declares and agrees on behalf of itself, and its successors, assigns and successors in title, that from and after the date of this Consent, the property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, covenants and restrictions contained in the Declaration. The terms, provisions, covenants and restrictions contained in the Declaration shall run with the title to the property and shall be binding upon all persons having any right, title or interest in the property, their respective heirs, legal representatives, successors, successors in title, and assigns.

IN WITNESS WHEREOF, this Consent has been executed under seal as of this 8th day of April, 2025.

OWNER:

VP DAYBREAK DEVCO LLC,
a Delaware limited liability company

By: LHMRE, LLC,
a Utah limited liability company
Its: Operating Manager

By: 
Name: Bradley Holmes
Its: President

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

On April 8, 2025, personally appeared before me, a Notary Public, Bradley Holmes, the President of LHMRE, LLC, a Utah limited liability company, the Operating Manager of VP DAYBREAK DEVCO LLC, a Delaware limited liability company, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of VP DAYBREAK DEVCO LLC, a Delaware limited liability company.

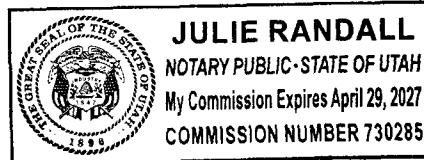
WITNESS my hand and official Seal.



Notary Public

[Notarial Seal]

My commission expires: April 29, 2027



IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 8th day of April, 2025.

DECLARANT:

DTDB OPERATIONS, LLC,
a Utah limited liability company

By: LHMRE, LLC,
a Utah limited liability company
Its: Operating Manager

By: Bradley Holmes
Name: Bradley Holmes
Title: President

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

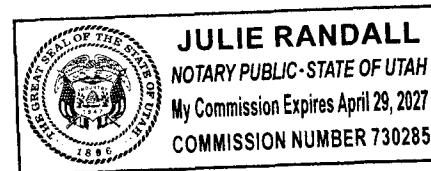
On April 8, 2025, personally appeared before me, a Notary Public, Bradley Holmes, the President of LHMRE, LLC, a Utah limited liability company, the Operating Manager of DTDB OPERATIONS, LLC, a Utah limited liability company, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of DTDB OPERATIONS, LLC, a Utah limited liability company.

WITNESS my hand and official Seal.

Julie Randall
Notary Public

[Notarial Seal]

My commission expires: April 29, 2027



[Consents follow]

CONSENT OF OWNER

The undersigned owner of a portion of the real property described in Exhibit "A" to this Declaration of Covenants, Conditions and Restrictions for Downtown Daybreak (the "Declaration") hereby consents to the submission of the property to the provisions of the Declaration and declares and agrees on behalf of itself, and its successors, assigns and successors in title, that from and after the date of this Consent, the property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, covenants and restrictions contained in the Declaration. The terms, provisions, covenants and restrictions contained in the Declaration shall run with the title to the property and shall be binding upon all persons having any right, title or interest in the property, their respective heirs, legal representatives, successors, successors in title, and assigns.

IN WITNESS WHEREOF, this Consent has been executed under seal as of this 8th day of April, 2025.

OWNER:

DTDB 5, LLC,
a Utah limited liability company

By: LHMRE, LLC,
a Utah limited liability company
Its: Operating Manager

By: Bradley Holmes
Name: Bradley Holmes
Its: President

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

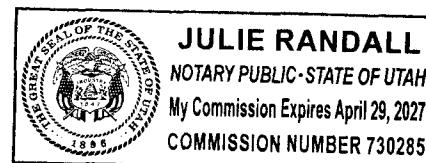
On April 8, 2025, personally appeared before me, a Notary Public, Bradley Holmes, the President of LHMRE, LLC, a Utah limited liability company, the Operating Manager of DTDB 5, LLC, a Utah limited liability company, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of DTDB 5, LLC, a Utah limited liability company.

WITNESS my hand and official Seal.

Julie Randall
Notary Public

[Notarial Seal]

My commission expires: April 29, 2027



CONSENT OF OWNER

The undersigned owner of a portion of the real property described in Exhibit "A" to this Declaration of Covenants, Conditions and Restrictions for Downtown Daybreak (the "Declaration") hereby consents to the submission of the property to the provisions of the Declaration and declares and agrees on behalf of itself, and its successors, assigns and successors in title, that from and after the date of this Consent, the property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, covenants and restrictions contained in the Declaration. The terms, provisions, covenants and restrictions contained in the Declaration shall run with the title to the property and shall be binding upon all persons having any right, title or interest in the property, their respective heirs, legal representatives, successors, successors in title, and assigns.

IN WITNESS WHEREOF, this Consent has been executed under seal as of this 8th day of April, 2025.

OWNER:

DTDB 6, LLC,
a Utah limited liability company

By: LHMRE, LLC,
a Utah limited liability company
Its: Operating Manager

By: Bradley Holmes
Name: Bradley Holmes
Its: President

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

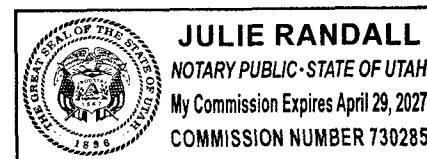
On April 8, 2025, personally appeared before me, a Notary Public, Bradley Holmes, the President of LHMRE, LLC, a Utah limited liability company, the Operating Manager of DTDB 6, LLC, a Utah limited liability company, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of DTDB 6, LLC, a Utah limited liability company.

WITNESS my hand and official Seal.

Julie Randall
Notary Public

[Notarial Seal]

My commission expires: April 29, 2027



CONSENT OF OWNER

The undersigned owner of a portion of the real property described in Exhibit "A" to this Declaration of Covenants, Conditions and Restrictions for Downtown Daybreak (the "Declaration") hereby consents to the submission of the property to the provisions of the Declaration and declares and agrees on behalf of itself, and its successors, assigns and successors in title, that from and after the date of this Consent, the property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, covenants and restrictions contained in the Declaration. The terms, provisions, covenants and restrictions contained in the Declaration shall run with the title to the property and shall be binding upon all persons having any right, title or interest in the property, their respective heirs, legal representatives, successors, successors in title, and assigns.

IN WITNESS WHEREOF, this Consent has been executed under seal as of this 8th day of April, 2025.

OWNER:

DTDB 8, LLC,
a Utah limited liability company

By: LHMRE, LLC,
a Utah limited liability company
Its: Operating Manager

By: Bradley Holmes
Name: Bradley Holmes
Its: President

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

On April 8, 2025, personally appeared before me, a Notary Public, Bradley Holmes, the President of LHMRE, LLC, a Utah limited liability company, the Operating Manager of DTDB 8, LLC, a Utah limited liability company, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of DTDB 8, LLC, a Utah limited liability company.

WITNESS my hand and official Seal.

Julie Randall
Notary Public

[Notarial Seal]

My commission expires: April 29, 2027



CONSENT OF OWNER

The undersigned owner of a portion of the real property described in Exhibit "A" to this Declaration of Covenants, Conditions and Restrictions for Downtown Daybreak (the "Declaration") hereby consents to the submission of the property to the provisions of the Declaration and declares and agrees on behalf of itself, and its successors, assigns and successors in title, that from and after the date of this Consent, the property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, covenants and restrictions contained in the Declaration. The terms, provisions, covenants and restrictions contained in the Declaration shall run with the title to the property and shall be binding upon all persons having any right, title or interest in the property, their respective heirs, legal representatives, successors, successors in title, and assigns.

IN WITNESS WHEREOF, this Consent has been executed under seal as of this 8th day of April, 2025.

OWNER:

DTDB 11, LLC,
a Utah limited liability company

By: LHMRE, LLC,
a Utah limited liability company
Its: Operating Manager

By: Bradley Holmes
Name: Bradley Holmes
Its: President

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

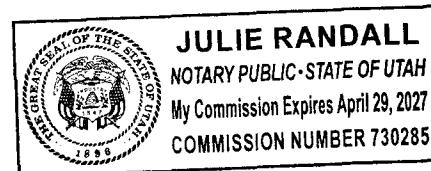
On April 18, 2025, personally appeared before me, a Notary Public, Bradley Holmes, the President of LHMRE, LLC, a Utah limited liability company, the Operating Manager of DTDB 11, LLC, a Utah limited liability company, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of DTDB 11, LLC, a Utah limited liability company.

WITNESS my hand and official Seal.

Julie
Notary Public

[Notarial Seal]

My commission expires: April 29, 2027



CONSENT OF OWNER

The undersigned owner of a portion of the real property described in Exhibit "A" to this Declaration of Covenants, Conditions and Restrictions for Downtown Daybreak (the "Declaration") hereby consents to the submission of the property to the provisions of the Declaration and declares and agrees on behalf of itself, and its successors, assigns and successors in title, that from and after the date of this Consent, the property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, covenants and restrictions contained in the Declaration. The terms, provisions, covenants and restrictions contained in the Declaration shall run with the title to the property and shall be binding upon all persons having any right, title or interest in the property, their respective heirs, legal representatives, successors, successors in title, and assigns.

IN WITNESS WHEREOF, this Consent has been executed under seal as of this 8th day of April, 2025.

OWNER:

DTDB 13, LLC,
a Utah limited liability company

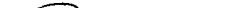
By: LHMRE, LLC,
a Utah limited liability company
Its: Operating Manager

By: Bradley Holmes
Name: Bradley Holmes
Its: President

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

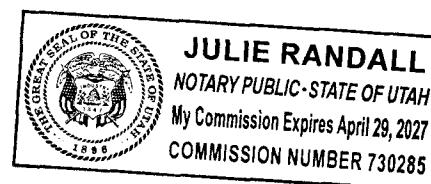
On April 8, 2025, personally appeared before me, a Notary Public, Bradley Holmes, the President of LHMRE, LLC, a Utah limited liability company, the Operating Manager of DTDB 13, LLC, a Utah limited liability company, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of DTDB 13, LLC, a Utah limited liability company.

WITNESS my hand and official Seal.


Julie Randall
Notary Public

[Notarial Seal]

My commission expires: April 29, 2027



CONSENT OF OWNER

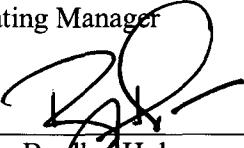
The undersigned owner of a portion of the real property described in Exhibit "A" to this Declaration of Covenants, Conditions and Restrictions for Downtown Daybreak (the "Declaration") hereby consents to the submission of the property to the provisions of the Declaration and declares and agrees on behalf of itself, and its successors, assigns and successors in title, that from and after the date of this Consent, the property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, covenants and restrictions contained in the Declaration. The terms, provisions, covenants and restrictions contained in the Declaration shall run with the title to the property and shall be binding upon all persons having any right, title or interest in the property, their respective heirs, legal representatives, successors, successors in title, and assigns.

IN WITNESS WHEREOF, this Consent has been executed under seal as of this 8th day of April, 2025.

OWNER:

DTDB 14, LLC,
a Utah limited liability company

By: LHMRE, LLC,
a Utah limited liability company
Its: Operating Manager

By: 
Name: Bradley Holmes
Its: President

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

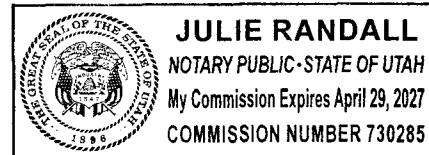
On April 8, 2025, personally appeared before me, a Notary Public, Bradley Holmes, the President of LHMRE, LLC, a Utah limited liability company, the Operating Manager of DTDB 14, LLC, a Utah limited liability company, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of DTDB 14, LLC, a Utah limited liability company.

WITNESS my hand and official Seal.


Notary Public

[Notarial Seal]

My commission expires: April 29, 2027



CONSENT OF OWNER

The undersigned owner of a portion of the real property described in Exhibit "A" to this Declaration of Covenants, Conditions and Restrictions for Downtown Daybreak (the "Declaration") hereby consents to the submission of the property to the provisions of the Declaration and declares and agrees on behalf of itself, and its successors, assigns and successors in title, that from and after the date of this Consent, the property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, covenants and restrictions contained in the Declaration. The terms, provisions, covenants and restrictions contained in the Declaration shall run with the title to the property and shall be binding upon all persons having any right, title or interest in the property, their respective heirs, legal representatives, successors, successors in title, and assigns.

IN WITNESS WHEREOF, this Consent has been executed under seal as of this 8th day of April, 2025.

OWNER:

DTDB 10, LLC,
a Utah limited liability company

By: Michelle Smith
Name: Michelle Smith
Title: President

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

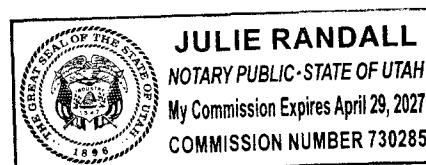
On April 8, 2025, personally appeared before me, a Notary Public, Michelle Smith, the President of DTDB 10, LLC, a Utah limited liability company, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of DTDB 10, LLC, a Utah limited liability company.

WITNESS my hand and official Seal.

~~Notary Public~~

[Notarial Seal]

My commission expires:



CONSENT OF OWNER

The undersigned owner of a portion of the real property described in Exhibit "A" to this Declaration of Covenants, Conditions and Restrictions for Downtown Daybreak (the "Declaration") hereby consents to the submission of the property to the provisions of the Declaration and declares and agrees on behalf of itself, and its successors, assigns and successors in title, that from and after the date of this Consent, the property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, covenants and restrictions contained in the Declaration. The terms, provisions, covenants and restrictions contained in the Declaration shall run with the title to the property and shall be binding upon all persons having any right, title or interest in the property, their respective heirs, legal representatives, successors, successors in title, and assigns.

IN WITNESS WHEREOF, this Consent has been executed under seal as of this 8th day of April, 2025.

OWNER:

LHMRE, LLC,
a Utah limited liability company

By: Bradley Holmes
Name: Bradley Holmes
Its: President

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

On April 8, 2025, personally appeared before me, a Notary Public, Bradley Holmes, the President of LHMRE, LLC, a Utah limited liability company, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of LHMRE, LLC, a Utah limited liability company.

WITNESS my hand and official Seal.

Julie Randall
Notary Public

[Notarial Seal]

My commission expires: April 29, 2027

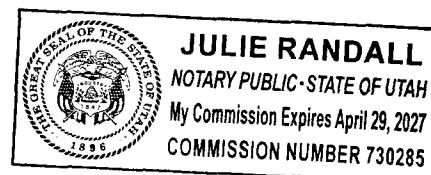


EXHIBIT "A"

Land Initially Submitted

All of Daybreak Urban Center Plat 1, according to the official plat thereof, recorded as Entry No. 14214053 in Book 2024P at Page 058 in the Office of the Salt Lake County Recorder, more particularly described as follows:

Being a portion Lot T5 of the KENNECOTT DAYBREAK MASTER SUBDIVISION #1 AMENDED according to the official plat thereof, recorded as Entry No. 8824749 in Book 2003P at Page 303 in the Office of the Salt Lake County Recorder, and a portion of Private Rights-of-Way of the EAST TOWN CENTER ROADWAY DEDICATION PLAT IN LIEU OF CONDEMNATION according to the official plat thereof, recorded as Entry No. 13061698 in Book 2019 at Page 238 in the Office of the Salt Lake County Recorder being more particularly described as follows:

Beginning at a point on the Northwesterly Right-of-Way Line of Lake Avenue, said point lies South 89°55'30" East 1110.832 feet along the Daybreak Baseline Southeast (Basis of bearings is South 89°55'30" East 10641.888' between Southwest Corner of Section 24, T3S, R2W and the Southeast Corner of Section 19, T3S, R1W) and North 3534.278 feet from the Southwest Corner of Section 24, Township 3 South, Range 2 West, Salt Lake Base and Meridian and running thence North 36°32'54" West 173.652 feet; thence North 29°25'24" West 24.187 feet; thence North 36°32'54" West 278.177 feet to a point on a 279.500 foot radius tangent curve to the left, (radius bears South 53°27'06" West, Chord: North 37°34'18" West 9.983 feet); thence along the arc of said curve 9.983 feet through a central angle of 02°02'48" to a point of compound curvature with a 17.000 foot radius tangent curve to the left, (radius bears South 51°24'18" West, Chord: North 84°32'58" West 24.439 feet); thence along the arc of said curve 27.270 feet through a central angle of 91°54'31"; thence South 49°29'47" West 3.710 feet; thence North 40°30'13" West 41.000 feet to a point on a 17.000 foot radius non tangent curve to the left, (radius bears North 40°30'13" West, Chord: North 02°34'37" East 24.833 feet); thence along the arc of said curve 27.843 feet through a central angle of 93°50'20"; thence North 44°20'33" West 883.270 feet to a point on a 25.000 foot radius non tangent curve to the left, (radius bears South 01°29'56" East, Chord: South 67°04'46" West 18.262 feet); thence along the arc of said curve 18.694 feet through a central angle of 42°50'37"; thence South 45°39'27" West 7.929 feet; thence North 44°20'33" West 33.000 feet; thence North 45°39'27" East 325.084 feet to a point on a 520.500 foot radius tangent curve to the right, (radius bears South 44°20'33" East, Chord: North 49°33'16" East 70.750 feet); thence along the arc of said curve 70.804 feet through a central angle of 07°47'38"; thence North 53°27'06" East 283.878 feet to a point on a 279.500 foot radius tangent curve to the left, (radius bears North 36°32'54" West, Chord: North 51°51'26" East 15.554 feet); thence along the arc of said curve 15.556 feet through a central angle of 03°11'20"; thence North 50°15'46" East 1.783 feet to a point on a 17.000 foot radius tangent curve to the left, (radius bears North 39°44'14" West, Chord: North 03°15'46" East 24.866 feet); thence along the arc of said curve 27.890 feet through a central angle of 94°00'00"; thence North 43°44'14" West 12.213 feet; thence North 46°15'46" East 41.000 feet; thence South 43°44'14" East 50.276 feet; thence North 53°27'06" East 236.825 feet to a point on the Southwesterly Right-of-Way Line of Grandville Avenue; thence along said Grandville Avenue the following (54) courses: 1) South 36°32'54" East 2.480 feet to a point on a 5.500 foot radius tangent curve to the left, (radius bears North 53°27'06" East, Chord: South 59°02'54" East 4.210 feet); 2) along the arc of said curve 4.320 feet through a central angle of 45°00'00"; 3) South 81°32'54" East 6.464 feet to a point on a 4.500 foot radius tangent curve to the right, (radius bears South 08°27'06" West, Chord: South 59°02'54" East 3.444 feet); 4) along the arc of said curve 3.534 feet through a central angle of 45°00'00"; 5) South 36°32'54" East 30.000 feet to a point on a 4.500 foot radius tangent curve to the right, (radius bears South 53°27'06" West, Chord: South 14°02'54" East 3.444 feet); 6) along the arc of said curve 3.534 feet through a central angle of 45°00'00"; 7) South 08°27'06" West

6.464 feet to a point on a 5.500 foot radius tangent curve to the left, (radius bears South 81°32'54" East, Chord: South 14°02'54" East 4.210 feet); 8) along the arc of said curve 4.320 feet through a central angle of 45°00'00"; 9) South 36°32'54" East 217.093 feet to a point on a 5.500 foot radius tangent curve to the left, (radius bears North 53°27'06" East, Chord: South 59°02'54" East 4.210 feet); 10) along the arc of said curve 4.320 feet through a central angle of 45°00'00"; 11) South 81°32'54" East 6.464 feet to a point on a 4.500 foot radius tangent curve to the right, (radius bears South 08°27'06" West, Chord: South 59°02'54" East 3.444 feet); 12) along the arc of said curve 3.534 feet through a central angle of 45°00'00"; 13) South 36°32'54" East 19.000 feet to a point on a 28.000 foot radius tangent curve to the right, (radius bears South 53°27'06" West, Chord: South 01°44'24" West 34.699 feet); 14) along the arc of said curve 37.422 feet through a central angle of 76°34'36"; 15) South 36°32'54" East 28.530 feet to a point on a 28.000 foot radius non tangent curve to the right, (radius bears South 23°07'31" East, Chord: South 74°50'13" East 34.699 feet); 16) along the arc of said curve 37.422 feet through a central angle of 76°34'36"; 17) South 36°32'54" East 19.000 feet to a point on a 4.500 foot radius tangent curve to the right, (radius bears South 53°27'06" West, Chord: South 14°02'54" East 3.444 feet); 18) along the arc of said curve 3.534 feet through a central angle of 45°00'00"; 19) South 08°27'06" West 6.464 feet to a point on a 5.500 foot radius tangent curve to the left, (radius bears South 81°32'54" East, Chord: South 14°02'54" East 4.210 feet); 20) along the arc of said curve 4.320 feet through a central angle of 45°00'00"; 21) South 36°32'54" East 189.098 feet to a point on a 5.500 foot radius tangent curve to the left, (radius bears North 53°27'06" East, Chord: South 59°02'54" East 4.210 feet); 22) along the arc of said curve 4.320 feet through a central angle of 45°00'00"; 23) South 81°32'54" East 6.464 feet to a point on a 4.500 foot radius tangent curve to the right, (radius bears South 08°27'06" West, Chord: South 59°02'54" East 3.444 feet); 24) along the arc of said curve 3.534 feet through a central angle of 45°00'00"; 25) South 36°32'54" East 30.000 feet to a point on a 4.500 foot radius tangent curve to the right, (radius bears South 53°27'06" West, Chord: South 14°02'54" East 3.444 feet); 26) along the arc of said curve 3.534 feet through a central angle of 45°00'00"; 27) South 08°27'06" West 6.464 feet to a point on a 5.500 foot radius tangent curve to the left, (radius bears South 81°32'54" East, Chord: South 14°02'54" East 4.210 feet); 28) along the arc of said curve 4.320 feet through a central angle of 45°00'00"; 29) South 36°32'54" East 193.334 feet to a point on a 5.500 foot radius tangent curve to the left, (radius bears North 53°27'06" East, Chord: South 59°02'54" East 4.210 feet); 30) along the arc of said curve 4.320 feet through a central angle of 45°00'00"; 31) South 81°32'54" East 6.464 feet to a point on a 4.500 foot radius tangent curve to the right, (radius bears South 08°27'06" West, Chord: South 59°02'54" East 3.444 feet); 32) along the arc of said curve 3.534 feet through a central angle of 45°00'00"; 33) South 36°32'54" East 15.000 feet to a point on a 28.000 foot radius tangent curve to the right, (radius bears South 53°27'06" West, Chord: South 01°44'24" West 34.699 feet); 34) along the arc of said curve 37.422 feet through a central angle of 76°34'36"; 35) South 36°32'54" East 28.530 feet to a point on a 28.000 foot radius non tangent curve to the right, (radius bears South 23°07'31" East, Chord: South 74°50'13" East 34.699 feet); 36) along the arc of said curve 37.422 feet through a central angle of 76°34'36"; 37) South 36°32'54" East 15.000 feet to a point on a 4.500 foot radius tangent curve to the right, (radius bears South 53°27'06" West, Chord: South 14°02'54" East 3.444 feet); 38) along the arc of said curve 3.534 feet through a central angle of 45°00'00"; 39) South 08°27'06" West 6.464 feet to a point on a 5.500 foot radius tangent curve to the left, (radius bears South 81°32'54" East, Chord: South 14°02'54" East 4.210 feet); 40) along the arc of said curve 4.320 feet through a central angle of 45°00'00"; 41) South 36°32'54" East 234.635 feet to a point on a 5.500 foot radius tangent curve to the left, (radius bears North 53°27'06" East, Chord: South 59°02'54" East 4.210 feet); 42) along the arc of said curve 4.320 feet through a central angle of 45°00'00"; 43) South 81°32'54" East 6.464 feet to a point on a 4.500 foot radius tangent curve to the right, (radius bears South 08°27'06" West, Chord: South 59°02'54" East 3.444 feet); 44) along the arc of said curve 3.534 feet through a central angle of 45°00'00"; 45) South 36°32'54" East 30.000 feet to a point on a 4.500 foot radius tangent curve to the right, (radius bears South 53°27'06" West, Chord: South 14°02'54" East 3.444 feet); 46) along the arc of said curve 3.534 feet through a central angle of 45°00'00"; 47) South 08°27'06" West 6.464 feet to a point on a 5.500 foot radius tangent curve to the left, (radius bears South 81°32'54" East, Chord: South 14°02'54" East 4.210 feet); 48) along the arc of said curve 4.320 feet through a central

angle of 45°00'00"; 49) South 36°32'54" East 195.798 feet to a point on a 5.500 foot radius tangent curve to the left, (radius bears North 53°27'06" East, Chord: South 59°02'54" East 4.210 feet); 50) along the arc of said curve 4.320 feet through a central angle of 45°00'00"; 51) South 81°32'54" East 6.464 feet to a point on a 4.500 foot radius tangent curve to the right, (radius bears South 08°27'06" West, Chord: South 59°02'54" East 3.444 feet); 52) along the arc of said curve 3.534 feet through a central angle of 45°00'00"; 53) South 36°32'54" East 18.999 feet to a point on a 28.000 foot radius tangent curve to the right, (radius bears South 53°27'06" West, Chord: South 30°53'04" East 5.527 feet); 54) along the arc of said curve 5.536 feet through a central angle of 11°19'42" to the Northwesterly Right-of-Way Line of said Lake Avenue; thence along said Lake Avenue South 53°27'06" West 842.954 feet to the point of beginning.

Property contains 30.632 acres.

EXHIBIT "B"

Land Subject to Annexation



EXHIBIT "C"

Formula for Assessments and Voting Rights

1. **General.** Each Unit shall have the right to cast votes and the obligation to pay assessments based on the number of points ("Assessment and Voting Points") assigned to that Unit in accordance with the following provisions.

a. **Land Points.** Each Unit (other than a Multifamily Unit) shall be assigned one point rounded to two decimal points for each 10,000 square feet of land, or fractional portion thereof, comprising the Unit ("Land Points"); provided, however, each Unit shall be assigned at least one (1) Land Point. With respect to property owned by a Service Area Association for the common use and enjoyment of its members, or owned by the members of a Service Area Association as tenants in common, the Association may, in its discretion, calculate Land Points for such property as set forth above and allocate those Land Points pro rata to the Units within the Service Area in accordance with the formula for the allocation of expenses set forth in a Supplemental Declaration applicable to such Service Area.

b. **Building Points.** Each Unit shall be assigned one point rounded to two decimal points for each 3,000 square feet of gross floor area, or portion thereof, within any Structures (as defined herein below) on the Unit, or fractional portion thereof, ("Building Points"). As used herein, "Structures" shall mean Improvements intended for use and/or occupancy as permitted by these restrictions and for which an initial certificate of occupancy or certificate of construction completion has been issued or which is substantially complete as determined by the Board. The term "Structures" shall be deemed to include parking garages, whether open or enclosed. With respect to property owned by a Service Area Association for the common use and enjoyment of its members, or owned by the members of a Service Area Association as tenants in common, the Association may, in its discretion, calculate Building Points for any Structures on such property as set forth above and allocate those Building Points pro rata to the Units within the Service Area in accordance with the formula for the allocation of expenses set forth in a Supplemental Declaration applicable to such Service Area.

c. **Benefit Factor and Land Classification.**

i. The total Land Points and Building Points for each Unit shall then be multiplied by a Benefit Factor, as shown below, based on the Land Classification to calculate the total Assessment and Voting Points. If the total Assessment and Voting Points results in a fraction, then number shall be rounded to the nearest whole number.

Land Classification	Benefit Factor
National Commercial Retail/Restaurant	2.0
Local Commercial Retail/Restaurant	1.5
Hotel/Motel/Inn	1.5
Apartments	1.5
Village Center	1.5
Office/Campus/Civic/Ballpark	1.0
Light Industrial	1.0
Unimproved/Improved, but Not in Use/Other	1.0

ii. The Declarant, during the Declarant Control Period, and thereafter the Board of Directors, shall determine in its sole discretion the Land Classification for each Unit. By way of example only, Land Classifications may include the following:

(A) National Commercial Retail/Restaurant – chain restaurants, chain retail stores, fast food restaurants, supermarket grocery stores, gas stations, and banks;

(B) Local Commercial Retail/Restaurant – restaurants and retail stores which have a total of five or less locations nationwide;

(C) Hotel/Motel/Inn – hotels, motels and inns;

(D) Apartments – apartments, residential condominium units, and other residential uses;

(E) Village Center – restaurants, retail stores and bed and breakfast inns which are located in that portion of the Properties designated as the Village Center as set forth on the Master Plan;

(F) Office/Campus/Civic/Ballpark – office buildings, ambulatory care, academic campuses, town hall, police department, fire department, wellness center, church, sales office, library, and Ballpark; and

(G) Unimproved/Other – unimproved land and any other use not covered by any of the land classifications set forth in this Section.

Declarant shall have the unilateral right to amend this Exhibit "C" to modify Land Classifications and to create additional Land Classifications in its sole discretion.

If, based on the use of the building, the Unit may be classified into more than one Land Classification, the Declarant, during the Declarant Control Period, and thereafter the Board of Directors, shall have the sole discretion to apply the Land Classification with the highest Benefit Factor to the entire building or to apply different Land Classifications to the separate portions of the Unit based on their respective uses. If one of the Land Classifications that may apply to a Unit is Village Center, then the entire Unit may be classified as Village Center.

Units are subject to re-evaluation and re-classification at the sole option of the Declarant or Board, as applicable, upon the occurrence of the following events: (a) improvement of previously unimproved property, (b) change in ownership of the Unit, (c) change in use of the Unit approved pursuant to Article 10, or (d) on an annual basis in conjunction with the preparation of the budget as set forth in Section 8.2 of the Declaration.

d. Examples.

i. A 25,000 square foot unimproved Unit is assigned 2.50 Land Points (which would also equal the Assessment and Voting Points for that unimproved Unit). The same Unit improved with a 10,000 square foot commercial retail building being used by a national commercial tenant is assigned 3.33 Building Points for a total of 5.83 Land Points and Building Points. This Unit would then have 11.67 Assessment and Voting Points, as follows:

$(2.50 \text{ Land Points} + 3.33 \text{ Building Points}) \times 2 \text{ [Benefit Factor for National Commercial Retail/Restaurant Space]} = 11.67 \text{ Assessment and Voting Points.}$

ii. A 30,000 square foot unimproved Unit is assigned 3.00 Land Points. The same Unit improved with a three-story building located in the Village Center having a total of 30,000 square feet, used for a specialty shop, office space and apartments, is assigned 10.00 Building Points for a total of 13.00 Land Points and Building Points. Based on a Land Classification of Village Center and a Benefit Factor of 1.5, this Unit would then have 19.50 Assessment and Voting Points, as follows:

$(3 \text{ Land Points} + 10 \text{ Building Points}) \times 1.5 \text{ [Benefit Factor for Village Center]} = 19.50 \text{ Assessment and Voting Points.}$

2. Service Area Associations. In the Association's sole discretion, as an alternative to the methodology set forth in Sections 1(a) and 1(b) of this Exhibit, any portion of the Properties subject to the jurisdiction of a Service Area Association, such as a horizontal property regime, may be treated as a single Unit for purposes of calculating Land Points and Building Points under this Declaration.

3. Assessments. The decimal share of the total assessment to be levied on a particular Unit shall be computed by dividing the Assessment and Voting Points assigned to that Unit by the total Assessment and Voting Points for all Units subject to the particular assessment. The Board of Directors shall establish an annual cut off date for computing point totals for all Units. The decimal share of the total assessment for the Unit and the votes attributable to the Unit (including a summary of the computations) shall be sent to each Owner with the annual notice of assessment.

4. Budgets and Notices of Assessments. Notwithstanding the requirements in Article 8 of the Declaration to publish or otherwise deliver budgets and notices of assessments (which requirements shall continue to apply), the Board may publish or otherwise deliver to Owners consolidated invoices that reflect the total of all assessments allocated to a particular Unit or Units to facilitate billing and collection of assessments by the Association.

5. Voting. Each Member of the Association shall be entitled to one weighted vote for each Assessment and Voting Point assigned to the Unit under the above-referenced formula.

EXHIBIT "D"

Ballpark Site

Lot C-113 of Daybreak Urban Center Plat 1, according to the official plat thereof, recorded as Entry No. 14214053 in Book 2024P at Page 058 in the Office of the Salt Lake County Recorder.