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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE
BY: ZJM, DEPUTY - WI 25 P.

When Recorded, Return to:

Kennecott Land Company
5295 South 300 West, Suite 475
Murray, UT 84107
Attention: Senior Associate – Revenue Analyst

COURTESY RECORDING FOR - WIM GROUP

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DAYBREAK TOWNHOME 1 PROJECT**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR DAYBREAK TOWNHOME 1 PROJECT (this "**Declaration**") is made and executed as of January 31, 2005 by KENNECOTT LAND COMPANY, a Delaware corporation (the "**Declarant**"), and is consented to by HOLMES HOMES, INC., a Utah corporation ("**Holmes Homes**").

RECITALS:

A. On February 27, 2004, Declarant and Kennecott Land Residential Development Company caused to be recorded that certain Community Charter for Daybreak, as Entry No. 8989518, in Book 8950, beginning at Page 7784, in the Official Records of Salt Lake County, Utah (the "**Master Residential Declaration**"), to govern the phased development of a community commonly known as "**Daybreak**" located in the City of South Jordan, Utah, and further to govern the Daybreak Community Association, Inc. (the "**Master Residential Association**").

B. In addition, on February 27, 2004, Declarant and Kennecott Land Residential Development Company caused to be recorded that certain Covenant for Community for Daybreak, as Entry No. 8989517, in Book 8950, beginning at page 7722, in the Official Records of Salt Lake County, Utah (the "**Covenant**"), to govern the phased development of Daybreak, and further to govern the Daybreak Community Council, Inc. (the "**Daybreak Community Council**").

C. Pursuant to Section 2.6 of the Master Residential Declaration, Declarant may establish a separate owners association to administer additional covenants applicable to a particular area within Daybreak.

D. Kennecott Land Residential Development Company previously recorded that certain subdivision map entitled "DAYBREAK TOWNHOME 1 SUBDIVISION" (the "**Plat**"), which Plat and a portion of the real property affected thereby are more particularly described on Exhibit A attached hereto and incorporated herein. The Plat is located within the boundary of Phase 1 of Daybreak. The Plat depicts sixty-four (64) Lots (as defined below), which are collectively referred to herein as the "**Project**". The Plat further depicts an area described

thereon as “common area” which is not part of the Project and is not encumbered by this Declaration, but is subject to the Master Residential Declaration and the Covenant.

E. A supplemental declaration, recorded immediately prior to the recording of this Declaration, confirmed that the Project is and will continue to be subject to the terms and conditions, covenants and restrictions set forth in the Master Residential Declaration and the Covenant, and will be governed by the Master Residential Association and the Daybreak Community Council.

F. Holmes Homes is the owner of the Project. Holmes Homes has constructed or plans to construct attached residential units called “Townhomes” on the Lots comprising the Project.

G. Because of the attached nature of the Townhomes, the Project will require special services not provided to all property owners within Daybreak. Therefore, Declarant desires to make the Project subject to this Declaration (in addition to the Master Residential Declaration and the Covenant), and Holmes Homes consents to the same.

H. Daybreak Townhome 1 Owners’ Association, Inc. (the “**Association**”), is being created concurrently herewith by filing Articles of Incorporation therefor (“**Articles**”) with the Utah Division of Corporations and Commercial Code. The Association shall be the governing body of the Project subject hereto and shall operate in accordance with the Association’s Bylaws (the “**Bylaws**”) and the Master Residential Declaration and the Covenant. The Association shall be a “Neighborhood Association” under the terms of the Master Residential Declaration.

ARTICLE 1 DEFINITIONS

- 1.1 **Defined Terms.** Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article. All terms defined in the Recitals shall have the meanings set forth in the Recitals and in this Article.
- 1.2 “**Association**” shall mean the Daybreak Townhome 1 Owners’ Association, Inc., a Utah non-profit corporation.
- 1.3 “**Board**” shall mean the Board of Directors of the Association.
- 1.4 “**Building**” shall mean any building containing Dwellings constructed in the Project.
- 1.5 “**Common Expense Fund**” shall mean the fund created or to be created pursuant to the provisions of this Declaration and into which all funds of the Association shall be deposited.
- 1.6 “**Community-Wide Standard**” shall have the meaning assigned in the Master Residential Declaration.
- 1.7 “**Covenant**” shall mean the Covenant for Community for Daybreak, recorded as Entry No. 8989517, in Book 8950, beginning at page 7722 in the Official Records of Salt Lake County, Utah.

- 1.8 “**Daybreak**” shall mean the community commonly known as Daybreak located in South Jordan, Utah, subject to the Master Residential Declaration and/or the Covenant, as each may be expanded from time to time.
- 1.9 “**Daybreak Community Council**” shall mean the Daybreak Community Council, Inc.
- 1.10 “**Declarant**” shall mean Kennecott Land Company, a Delaware corporation.
- 1.11 “**Design Guidelines**” shall have the meaning assigned in the Master Residential Declaration.
- 1.12 “**Dwelling**” shall mean the portion of a Building situated upon a Lot designated and intended for use and occupancy as a single family residence. Each Dwelling shall be owned by the Owner of the Lot on which the Dwelling is situated subject to all of the terms, covenants, conditions, restrictions and easements of this Declaration, the Master Residential Declaration and the Covenant.
- 1.13 “**Founder**” shall mean Kennecott Land Company, a Delaware corporation.
- 1.14 “**Holmes Homes**” shall mean Holmes Homes, Inc., a Utah corporation.
- 1.15 “**Lot**” shall mean each individual parcel of real property shown on the Plat as a Lot, together with all improvements located thereon and all appurtenances thereunto appertaining. Each Lot shall be owned by the Owner or Owners of such Lot subject to all of the terms, covenants, conditions, restrictions and easements of this Declaration, the Master Residential Declaration and the Covenant. A Lot, as well as the Dwelling to be constructed on the Lot, is included in the definition of a “Unit” under Section 3.1 of the Master Residential Declaration and Section 1.6 of the Covenant.
- 1.16 “**Manager**” shall mean the person, firm, or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and the Project.
- 1.17 “**Master Residential Association**” shall mean the Daybreak Community Association, Inc.
- 1.18 “**Master Residential Declaration**” shall mean the Community Charter for Daybreak, recorded as Entry No. 8989518, in Book 8950, beginning at Page 7784 in the Official Records of Salt Lake County, Utah.
- 1.19 “**Member**” shall mean a member of the Association.
- 1.20 “**Mortgage**” shall mean any mortgage, deed of trust, or other security instrument by which a Lot or any part thereof is encumbered.
- 1.21 “**Mortgagee**” shall mean (i) any person named as the mortgagee or beneficiary under any Mortgage, or (ii) any successor to the interest of such person under such Mortgage.

- 1.22 **“Owner”** shall mean any person or entity or combination thereof at any time owning a Lot within the Project, as shown on the records of Salt Lake County, State of Utah. The term “Owner” shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or entity purchasing a Lot under contract until such contract is fully performed and legal title conveyed; provided, however, if a Lot is sold under a recorded contract of sale, and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. An Owner under this Declaration is also by definition an “Owner” under Section 2.4 of Master Residential Declaration and under Section 1.6 of the Covenant.
- 1.23 **“Plat”** shall mean the official plat entitled “DAYBREAK TOWNHOME 1 SUBDIVISION”, recorded July 21, 2004, as Entry No. 9125568 in Book 2004P beginning at Page 198 in the Official Records of Salt Lake County, Utah.
- 1.24 **“Project”** shall mean the sixty-four (64) Lots depicted on the Plat.
- 1.25 **“Project DRC”** shall mean the design review committee for the Project, which is subject to the Design Review Committee described in the Master Residential Association.
- 1.26 **“Total Votes of the Association”** shall mean the total number of votes appertaining to the Lots in the Project as provided below.

ARTICLE 2 SUBMISSION TO DECLARATION

All of the Project is and shall be subject to the covenants, conditions, restrictions, easements, uses, limitations, and obligations set forth herein and in the Master Residential Declaration and the Covenant, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of said Project and division thereof into Lots. Further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Declarant and Holmes Homes, as their interest may appear, their successors and assigns, and any person acquiring, leasing, or owning an interest in any Lot, their lessees, heirs, executors, administrators, devisees, successors and assigns.

ARTICLE 3 IMPROVEMENTS

- 3.1 **Description of Project.** The Project consists of 64 Lots as shown on the Plat. Each of the Lots shall, when improved, contain one single family Dwelling. Holmes Homes intends to build 16 Buildings, each containing 4 Dwellings in the Project. Each Owner acknowledges that the design and construction of the Dwellings and the Buildings and all other initial improvements within the Project has been performed by Holmes Homes and not by Declarant, and Owner has relied and will rely solely on Holmes Homes with respect to any issues related thereto.
- 3.2 **Description and Legal Status of Lots.** The Plat shows the number of each Lot. All Lots shall be capable of being independently owned, encumbered, and conveyed.
- 3.3 **Building Area.** No house, garage or other improvement, other than landscaping, sidewalks, driveways, street lights and curb and gutter improvements, shall be located on

any Lot outside of the original structure building area without the prior written approval of the Association. The Association shall have the right to restrain the Owner of any Lot from violating the restrictions set forth in this section, and in the event the party seeking to enforce these restrictions prevails in an action in court or otherwise, the Owner attempting to violate the restrictions shall be obligated to pay all of the costs, including reasonable attorneys' fees, incurred by the party enforcing these restrictions.

- 3.4 **Common Area.** The real property depicted on the Plat as "common area" is to be owned, managed and controlled by the Master Residential Association for the common use and enjoyment of the owners of Units in Daybreak, as more fully described in the Master Residential Declaration. Owners of Lots in the Project shall have no rights to use and enjoy such common area except as provided in the Master Residential Declaration. Any costs incurred in connection with such common areas shall be included in assessments levied by the Master Residential Association, as set forth in the Master Residential Declaration. There are no "common areas" included in the Project, subject to this Declaration, or owned or managed by the Association.

ARTICLE 4 NATURE AND INCIDENTS OF OWNERSHIP

- 4.1 **Title.** Title to Lots may be held or owned by any person or entity or any combination thereof and in any manner in which title to any other real property may be held or owned in the State of Utah, including without limitation, joint tenancy or tenancy in common.
- 4.2 **Prohibition Against Subdivision of Lot.** No Owner, by deed, plat or otherwise, shall subdivide or in any manner cause his Lot to be subdivided, partitioned or separated into physical tracts or parcels smaller than the whole Lot as shown on the Plat.
- 4.3 **Inseparability.** Title to any part of a Lot may not be separated from any other part thereof. Every devise, encumbrance, conveyance, or other disposition of a Lot, or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Lot, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth.
- 4.4 **Separate Mortgages by Owners.** Each Owner shall have the right separately to mortgage or otherwise encumber his Lot. Unless otherwise specifically provided herein, any Mortgage or other encumbrance of any Lot shall be subordinate to all of the provisions of this Declaration, the Master Residential Declaration and the Covenant, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.
- 4.5 **Separate Taxation.** Each Lot and all improvements located thereon shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. All such taxes, assessments, and other charges on each respective Lot shall be separately levied against the Owner thereof. No forfeiture or sale of any Lot

for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Lot.

- 4.6 **Mechanics' Liens.** No labor performed or material furnished for use in connection with any Lot with the consent or at the request of an Owner or his agent or contractor shall create any right to file a statement, claim, or notice of mechanic's lien against the Lot of any other Owner not expressly consenting to or requesting the same even if existing by easement over the subject Lot.
- 4.7 **Description of Lot.** Every contract for the sale of a Lot and every other instrument affecting title to a Lot within the Project may describe a Lot by its identifying number or symbol as indicated in this Declaration or as shown on the Plat. Such description will be construed to describe the Lot and to incorporate all the rights incident to ownership of a Lot within the Project and all of the limitations on such ownership.
- 4.8 **Party Walls.** Certain of the Dwellings may have common or party walls with adjacent Dwellings. The boundary between two adjacent Dwellings shall be the vertical boundary running through the center of the party wall, equidistant from the outermost surfaces of studs and structural beams making up the party wall. Each Owner that owns a Dwelling adjoining another Dwelling is hereby granted an easement of support and shelter over the portion of any party, adjacent or retaining wall on the adjoining Dwelling. Each Owner covenants to continue to provide the support and shelter that presently exists (or will exist following construction) and as may be necessary to maintain the integrity of each Building. Each Owner has an easement for pipes, ducts, and utility ways and chases passing through the other Dwellings that serve his Dwelling. Physical structures including party walls serving two separate Dwellings will be shared through a mutual nonexclusive easement of enjoyment for all purposes for which the improvements and their replacements were intended.

ARTICLE 5 MAINTENANCE OF BUILDINGS AND LOTS

- 5.1 **Owner Responsibility Regarding Buildings and Dwellings.** With respect to the maintenance, repair, alteration, and remodeling of Buildings, each Owner shall maintain and be permitted to alter or remodel the interior non-supporting walls, the materials (such as, but not limited to, plaster, gypsum drywall, paneling, wall paper, paint, wall and floor tile and flooring) making up the finished surfaces of the perimeter walls, ceilings, and floors within such Owner's Dwelling, including any non-exterior doors and non-exterior windows. The Owner shall also maintain the surface of the interior supporting walls, and the Association shall maintain the structural integrity of interior supporting walls. Each Owner shall be responsible for the maintenance, repair and replacement of utility lines (such as power, natural gas, water, sewer, telecommunications, cable and any other future utility lines) that serve his or her Dwelling from the point of connection. The Owner shall not alter any utility lines, pipes, wires, conduits, or systems which serve one or more other Dwellings. Such utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Board. Such right to repair, alter, and remodel is coupled with the obligation to replace any materials removed with similar types or kinds of materials. An Owner shall maintain and keep in repair the interior of his or her

Dwelling, including the fixtures thereof. All fixtures and equipment installed within the Dwelling shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act and shall perform no work that will or may impair the structural soundness or integrity of the Building in which such Owner's Dwelling is located, impair any easement or hereditament, or violate any laws, ordinances, regulations and codes of the United States of America, the State of Utah, the County of Salt Lake, the City of South Jordan, or any other agency or entity which may then have jurisdiction over said Lot/Dwelling. Any expense to the Association for investigation under this Article shall be borne by Owner if such investigation establishes a violation of this paragraph.

- 5.2 **Association Responsibility Regarding Buildings and Dwellings.** Except for the Owner's responsibilities set forth in this Article, the Association shall have the duty of maintaining, replacing and repairing the Buildings including, without limitation, footings and foundations, structural components, roofs and common sanitary sewer laterals (if any) and other common utilities (if any). The cost of said maintenance, replacement and repair shall be assessed to all of the Owners. The Board shall not need the prior approval of the Members to cause such maintenance, replacement or repairs to be accomplished, notwithstanding the cost thereof; subject, however, to Article 10 hereof.
- 5.3 **Maintenance of Lots.** The Association shall maintain the landscaping and related improvements on the Lots, as set forth herein. The areas maintained by the Association, including the exterior of the Buildings, shall be referred to herein as the "**Maintained Areas**". The Maintained Areas shall include the front lawn and garden areas, excluding any stand-alone planters, window boxes, fences, walls and enclosed areas within fences or walls. An Owner may only maintain or modify the landscaping in the rear yard if such area is enclosed.
- 5.4 **Maintenance Standard.** All maintenance, repair and replacement obligations shall be performed in a manner consistent with the Master Residential Declaration and the Community-Wide Standard.
- 5.5 **Right of Entry.** The Association shall have a right of entry and access to, over, upon, and through all of the Project, including each Lot and each Dwelling, to enable the Association to perform its obligations, rights, and duties pursuant hereto with regard to maintenance, repair, restoration, and/or servicing of any items, things or areas of or in the Project. In the event of an emergency, the Association's right of entry to a Dwelling may be exercised without notice; otherwise, the Association shall give the Owners or occupants of a Dwelling no less than twenty-four hours advance notice prior to entering a Dwelling.

ARTICLE 6 EASEMENTS

- 6.1 **Easements for Maintenance.** The Association shall have the irrevocable right to have access from time to time as set forth in Section 5.5 above.
- 6.2 **Easements Reserved by Declarant and Association.** The Association shall have power to grant and convey to any third party and Declarant hereby reserves unto itself

easements and rights of way as set forth in Chapter 13 of the Master Residential Declaration. Further the Project shall continue to be subject to the applicable easements set forth in the Master Residential Declaration.

- 6.3 **Easements for Utilities.** Declarant hereby declares, and Holmes Homes consents to, a non-exclusive easement over, under, through and across the Lots and Dwellings for the location of any utility lines, including power, natural gas, telecommunications, cable and any future utilities installed to serve the Dwellings, and the maintenance, repair, and replacement of the same. All work associated with the exercise of this easement shall be performed so as to minimize interference with the use and enjoyment of the Lot and Dwelling burdened by the easement. Upon completion of the work, the person exercising the easement shall make reasonable efforts to restore the Lot and Dwelling, to the extent reasonably possible, to the condition existing prior to the commencement of the work.
- 6.4 **Easements Deemed Created.** All conveyances of Lots within the Project hereafter made shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

ARTICLE 7 RESTRICTIONS ON USE

- 7.1 **Design Guidelines.** Pursuant to the Master Residential Declaration, the Project is subject to certain "Design Guidelines" more particularly described therein. The Association, as may delegated to the Project DRC or other "Reviewer" (as defined in the Master Residential Declaration) , shall have the authority to implement and enforce the Design Guidelines for the Project, in the manner described in Article 5 of the Master Residential Declaration.
- 7.2 **Design Review Committee.** The Association shall have a design review committee for the Project (defined above as the "**Project DRC**") consisting of no fewer than three (3) nor more than five (5) individuals, who shall serve and be removed and replaced in the Board's discretion. The Declarant shall initially designate the members of the Project DRC. Upon Declarant's delegation of authority pursuant to the By-laws , the Board shall appoint the Project DRC. Project DRC members need not be Owners or representatives of Owners. The Association may compensate Project DRC members in such manner and amount, if any, as the Board may determine necessary (which amount shall be included as a Common Expense). Except as otherwise set forth herein, the Project DRC shall function in the same manner with the rights and obligations as, but subject to, the "Design Review Committee" described in Section 5.2 of the Master Residential Declaration.
- 7.3 **Residential Uses Only.** Each Lot contained in the Project is intended to be used for single family residential housing and is restricted to such use. No Lot shall be used for business or commercial activity except as approved in writing by the Board and as set forth in the Master Residential Declaration; provided, however, that nothing herein shall be deemed to prevent any Owner or his duly authorized agent from freely renting or leasing his Lot from time to time subject to the provisions of Section 7.3 of the Master Residential Declaration.

- 7.4 **No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on, in, or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or may cause embarrassment, disturbance, or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property. No trash, garbage, or other waste or unsightly materials shall be left outside of any enclosed structure.
- 7.5 **Restriction on Recreational Vehicles.** No boats, trailers, recreational vehicles, trucks, commercial vehicles, or inoperable vehicles shall be parked or stored within the Project as set forth in the Master Residential Declaration.
- 7.6 **Restriction on Signs.** Except as permitted by the Master Residential Declaration, no signs or advertising devices of any nature, including without limitation commercial, political, informational, or directional signs or devices, shall be erected or maintained on any portion of the Project.
- 7.7 **No Structural Alterations.** No Owner shall, without the prior written consent of the Board, make or permit to be made any structural alteration, improvement, or addition, including without limitation any fences, walls or patios, to the exterior of the Dwelling located on his Lot, or to the Maintained Areas on his Lot, without the prior written consent of the Board, which consent may be granted or withheld in the Board's sole discretion, consistent with the terms of the Master Residential Declaration, Design Guidelines and Community-Wide Standard.
- 7.8 **Prohibition of Damage and Certain Activities.** Except with the prior written consent of the Association, nothing shall be done or kept in or on any Lot or in any other part of the Project which may result in cancellation of any insurance on the Project or any part thereof, nor shall anything be done or kept in or on any Lot which may increase the rate of insurance on the Project or any part hereof over that which the Association, but for such activity, would have to pay. Nothing shall be done or kept in or on any Lot or in the Project or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority.
- 7.9 **Rules and Regulations.** The Owners shall comply with all of the rules and regulations set forth in the Master Residential Declaration. In addition, the Board may adopt, amend, or revise additional rules and regulations pertaining solely to the Project and in accordance with the By-laws.
- 7.10 **Construction Period Exemption.** During the course of actual construction of any structures or improvements which are permitted to be located on the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction, nothing shall be done which would result in a violation of any of said provisions, covenants, conditions, or restrictions following completion of such construction.

- 7.11 **Pets and Animals.** No animals or birds of any kind shall be raised, bred or kept in or on any Lot, except to the extent permitted by the Master Residential Declaration and any additional rules or regulations adopted by the Board.

ARTICLE 8 THE ASSOCIATION; BYLAWS

- 8.1 **Membership and Bylaws.** Each Owner shall be entitled and required to be a Member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Lot is held by more than one Owner, all Co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under this Declaration. An Owner shall be entitled to one membership in the Association for each Lot owned by said Owner. Each Lot shall have one vote in the Association appurtenant thereto, regardless of the number of Owners thereof. Each membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically by conveyance of that Lot. Ownership of a Lot within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance, or other disposition of a Lot shall be construed to be a devise, encumbrance, conveyance or other disposition, respectively, of the Owner's membership in the Association, and the rights appurtenant thereto. Except as otherwise provided in the By-laws with respect to the Declarant, no person or entity other than an Owner may be a member of the Association, and in no event shall membership in the Association be transferred except in connection with the transfer of a Lot.
- 8.2 **Board.** The Board of Directors (the "**Board**") shall initially consist of three (3) members which can be increased up to as many as seven (7) members in accordance with and upon the terms of the By-laws. Declarant reserves the right to appoint all of the Board consistent with the terms of the By-laws.
- 8.3 **Amplification.** The provisions of this Article may be amplified by the Articles of Incorporation and separately adopted Bylaws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

ARTICLE 9 CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

- 9.1 **Manager.** The Association may by written contract delegate in whole or in part to a professional Manager such of the Association's duties, responsibilities, functions, and powers hereunder as are properly delegable. The services of any Manager retained by the Association shall be paid for with funds from the Common Expense Fund.
- 9.2 **Miscellaneous Goods and Services.** The Association may obtain and pay for the services of such personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project, the enforcement of

this Declaration, or any other matter. In addition to the foregoing, the Association may (but is not obligated to) acquire and pay for out of the Common Expense Fund necessary or desirable utility services for the Project and insurance, bonds, and other goods and services common to the Lots.

- 9.3 **Real and Personal Property.** The Association may acquire, hold and own real, personal, and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise. The maintenance, repair and replacement of all such property shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall become part of such Fund.
- 9.4 **Rules and Regulations.** The Association, by action of the Board, may make reasonable rules and regulations governing the use of the Lots, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Association may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations of Owners arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, from the offending Owner.
- 9.5 **Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.
- 9.6 **Indemnification.** To the fullest extent permitted by law, the Association shall indemnify the following persons and entities against all expenses and liabilities including, but not limited to, attorneys' fees, reasonably incurred by or imposed upon such person in connection with any proceeding to which such person may be a party, or in which such person may become involved, by reason of such person being or having served in any capacity on behalf of the Association (or by reason of having appointed, removed or controlled or failed to control members of the Board or the Project DRC):
- (a) every director and officer of the Association and every member of the Project DRC and any other committee of the Association;
 - (b) every director, officer and employee of the Declarant and the Master Residential Association and the Daybreak Community Council, Inc.; and
 - (c) every person serving as an employee of the Association.

Any such person shall be entitled to indemnification whether or not such person is a director, officer or member of the Association or of the Project DRC or any other committee of the Association or is serving in any other such specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that the person to be indemnified hereunder did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of its duties. The

foregoing rights of indemnification shall be in addition to, and not in place of, all other rights to which such persons may be entitled at law or otherwise.

- 9.7 **Cooperation with Declarant.** Declarant or its affiliate is the owner of real property adjacent to or nearby the Project. The plans for such real property currently include development as mixed-use parcels. Different uses may be constructed at different times. Therefore Lots within the Project may be located near other uses when such adjacent or nearby real property is developed, including retail, civic and office property and apartments, townhouses and condominiums. Certain traits of each Lot and the Project may change over time depending on adjacent or nearby uses, such as the view, shade, perceived privacy and amount of traffic. The Association and each Owner hereby acknowledge the plans for adjacent mixed-use development and agree not to challenge or oppose such development with any of the Association, the Master Residential Association, the Daybreak Community Council, the City of South Jordan or the County of Salt Lake, State of Utah, or any other relevant governing body.

ARTICLE 10 ASSESSMENTS

- 10.1 **Agreement to Pay Assessments.** Each Owner of a Lot by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association all assessments, both regular and special, made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article. The obligation to pay assessments shall commence as to each Lot on the first day of the month following the date on which a certificate of occupancy is issued for a Dwelling, or a Dwelling is actually occupied, whichever first occurs.
- 10.2 **Regular Assessments.** Regular assessments shall be computed and assessed against all Lots in the Project as follows:
- (a) Common Expenses.
- (1) Annual Budget. At least sixty (60) days before the beginning of each fiscal year, the Association shall prepare, or cause to be prepared, an operating budget setting forth an itemized statement of the anticipated expenses for the coming year and taking into account the general condition of the Project. The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained. The Board shall send a copy of such budget, together with the amount of the assessments to be levied pursuant to such budget, to each Member at least thirty (30) days prior to the due date of the assessments to be levied pursuant to such budget. The budget shall automatically become effective unless disapproved or amended by a vote of at least seventy-five percent (75%) of the Total Votes of the Association at a Member meeting set in accordance with the By-laws. If the proposed budget is disapproved

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

(2) Basis of Annual Budget. The annual budget shall be based upon the Association's estimates of the cash required to provide for payment of expenses (the "**Common Expenses**") arising out of or connected with maintenance and operation of the Maintained Areas. Such actual expenses and estimated expenses may include, among other things, the following: expenses of management; governmental taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain; repairs and maintenance; wages for Association employees, including fees for a Manager, if any; utility charges, if any; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve; sinking or reserve funds required or allowed herein; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the Owners or by reason of this Declaration.

(3) Annual Assessments. The Association shall establish a regular, equal monthly assessment to be paid by each Owner into the Common Expense Fund. The dates and manner of payment shall be determined by the Association. The foregoing method of assessing the Common Expenses to the Owners may be altered by the Association so long as the method it adopts is consistent with good accounting practice and requires that the portion of Common Expenses borne by each Owner be equal. Each monthly installment of the regular assessment shall bear interest at the rate of ten percent (10%) per annum (or such higher rate as the Board may establish, subject to the limitations of Utah law) from the date it becomes due and payable until paid. Failure of the Association to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of any Lot for such assessment.

(b) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth in Section 10.3 below, except that the vote therein specified shall not be necessary.

10.3 **Special Assessments.** In addition to the regular assessments authorized herein, the Association may levy, at any time and from time to time, upon affirmative vote of at least fifty one percent (51%) of the Total Votes of the Association, special assessments, payable over such periods of time as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Lots, Dwellings, Buildings or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration. This section shall not be construed as an independent source of authority for the Association to incur

expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be apportioned equally among and assessed equally to all Owners, except as otherwise provided herein. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days after such notice shall have been mailed. All unpaid portions of any special assessment shall bear interest at the rate of ten percent (10%) per annum (or such higher rate as the Board may establish, subject to the limitations of Utah law) from the date such portions become due until paid.

- 10.4 **Lien for Assessments.** All sums assessed to the Owner of any Lot pursuant to the provisions of this Article, together with interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Association. To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, and a description of the Lot. Such notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the Salt Lake County Recorder. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in the State of Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including reasonable attorneys' fees, and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid in at any foreclosure sale, and to own, lease, mortgage or convey the subject Lot.
- 10.5 **Personal Obligation of Owner.** The amount of any regular or special Assessment against any Lot (along with any interest charged of such assessments, late charges as determined by Board resolution, costs and reasonable collection and/or attorneys' fees incurred in connection with collection of the same) shall be the personal obligation of the Owner of such Lot to the Association. Suit to recover a money judgment for such personal obligation may be maintained by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by abandonment of his Lot, or by waiving any services or amenities. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.
- 10.6 **Statement of Account.** Upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot and payment of any reasonable fee assessed, the Association shall issue a written statement setting forth the following: (a) the amount of the unpaid assessments, if any, with respect to such Lot, and (b) the amount of the current regular assessment with respect to such Lot and the date such assessment becomes or became due. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

- 10.7 **Personal Liability of a Purchaser.** A purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Lot up to the time of the grant of conveyance; provided, however, that the provisions of this section shall not prejudice the purchaser's right to recovery from the seller of the amount of such assessments paid by the purchaser for such assessments.
- 10.8 **Assessments Part of Common Expense Fund.** All funds received from assessments under this Article shall be a part of the Common Expense Fund.
- 10.9 **Assessment Reserve.** Upon the transfer of title to a Lot, the purchaser of such Lot shall deposit with the Association a reserve in the amount of three (3) months worth of regular assessments to be charged against such Lot. The Association shall hold such reserve and shall apply it to the last three months worth of assessments owed by such purchase (then Owner), or any other outstanding charges owed by such purchaser (then Owner) at the time the Lot is again transferred. Any amounts of the reserve remaining shall be refunded to such Owner at the time of the transfer of title to the Lot to the purchaser.

ARTICLE 11 CASUALTY AND INSURANCE

- 11.1 **Casualty.** In the event of destruction or damage to part or all of the Buildings or other improvements in the Project, the provisions of this section shall apply:
- (a) If proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be promptly carried out.
 - (b) If proceeds of the insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all of the Owners affected by such casualty shall be subject to a special assessment for any deficiency, which special assessment shall be calculated in an equitable manner based upon the amount of the insurance deficiency and the extent of damage to such Owner's Lot or Dwelling.
 - (c) Any insurance proceeds remaining after repairing or replacing the damaged improvements shall be applied to reserves for future repairs and replacements.
 - (d) Any reconstruction or repair which is required to be carried out by this Article shall be accomplished at the request and direction of the Board.
 - (e) The term "reconstruction," as used in this Article, shall mean restoring the damaged Building to substantially the same condition in which it existed prior to the fire or other disaster, with each Building having substantially the same vertical and horizontal boundaries as before.
- 11.2 **Insurance.**
- (a) Fire and Extended Coverage. The Board shall have the authority to, and shall obtain, insurance for all Buildings, structures, fixtures and equipment, and

common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location, and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, issued in the locale of the Property, or, if the policy does not include an "all risks" endorsement, a policy that includes the "broad form" covered causes of loss, in amounts at all times (i) that is sufficient to prevent the Owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and (ii) that is not less than one hundred percent (100%) of the current insurable replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage). This insurance shall also:

- (1) provide coverage for built-in or installed improvements, fixtures, and equipment that are part of a Dwelling, and shall provide for coverage of interior walls, windows and doors, and the frames, sashes, jambs and hardware therefor, even though these improvements may be parts of Dwellings, and/or maintained by the Owner;
- (2) provide that no assessment may be made under the policy against a first mortgage lender, or its insurer or guarantor, and, that any assessment under such policy made against others may not become a lien on a Lot and its appurtenant interests superior to a interest of the first mortgage lender;
- (3) be written in the name of the Association for the use and benefit of the Owners, or its authorized representative, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Owners;
- (4) be written with a company authorized to do business in the State of Utah that satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies as the Board determines appropriate;
- (5) have a deductible amount no greater than the lesser of one thousand dollars or one percent of the policy face amount, or such other amount as reasonably determined by the Board from time to time;
- (6) be paid for by the Association through annual assessments of the Owners;
- (7) contain a waiver of subrogation of rights by the carrier as to the Association, to its officers and directors, and to all Owners;
- (8) contain an inflation guard endorsement, to the extent available at a reasonable cost and terms;

- (9) provide that the insurance shall not be prejudiced by any acts or omissions of individual Owners who are not under the direct control of the Association; and
- (10) be primary, even if an Owner has other insurance that covers the same loss.
- (b) **Liability Insurance.** The Association shall obtain and maintain a commercial policy of general liability insurance covering all of the Maintained Areas and any other areas under the Association's supervision, and Dwellings, if any, owned by the Association, even if leased to others, insuring the Association, the directors of the Board, and the Owners and occupants, with such limits as the Board may determine, but no less than the greater of (i) the amounts generally required by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (ii) one million dollars, for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" provision, or, if it does not, an endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, the Board, or other Owners, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of the Maintained Areas, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party.
- (c) **Fidelity Coverage.** The Board shall obtain and maintain fidelity insurance providing coverage for the Association against dishonest acts on the part of directors, managers, trustees, employees, agents, and volunteers responsible for or handling funds belonging to or administered by the Association. The fidelity insurance policy must name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is in no event less than the greater of (i) an amount equal to the Association's reserve funds plus three months' assessments on all Lots, and (ii) the maximum amount that will be in the custody of the Association or the Manager at any time while the policy is in force. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The policy shall provide that it shall not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association and any insurance trustee. Any Manager who handles funds of the Association shall maintain a policy of fidelity insurance providing coverage no less than that required of the Association, which bond or insurance policy names the Association as an additional obligee.
- (d) **Hazard Insurance Carrier.** Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Utah which has a "B" or better general policyholder's

rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports-international edition, a "BBBQ" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.

- (e) Other Association Insurance. In addition, the Board may purchase and maintain contractual liability insurance, trustees' and officers' liability insurance, and such other insurance as the Board may determine. At the request of the Declarant, the Board will add parties specified by Declarant as additional insured parties to any insurance policy held by the Association.
- (f) Insurance Representative: Power of Attorney. There may be named, under any policy obtained by the Association, as an insured on behalf of the Association, its authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy. Each Owner, by acceptance of a deed to a Lot, irrevocably appoints the Association or such designated representative, or such successor, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or such designated representative, or such successor, shall receive, hold, or otherwise properly dispose of any proceeds of insurance, in trust, for the Owners, as their interests may appear. This power is for the benefit of each and every Owner, the Association, and the Project, and runs with the land, and is coupled with an interest.
- (g) Owners' Insurance. Any Owner or occupant may carry such insurance in addition to that provided by the Association pursuant hereto as that Owner or occupant may determine, subject to the provisions hereof, and provided that no Owner or occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the insurance carried pursuant hereto by the Association which diminishes the Association's hazard insurance. In the event any Owner or occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Owner who acquired or whose occupant acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. Without limiting the foregoing, an Owner or occupant may obtain insurance against liability for events occurring within a Dwelling, losses with respect to personal property and furnishings, and losses to improvements owned

by the Owner or occupant, provided that, if the Association obtains insurance for permanent improvements and built-in fixtures and equipment, then the insurance obtained by the Owner with respect to improvements within the Dwelling shall be limited to the type and nature of coverage commonly referred to as "tenants" improvements and betterments. All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and directors, and all other Owners and occupants.

- (h) Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, Mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner, and each Mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.
- (i) Worker's Compensation and Employer's Liability Insurance. The Board shall acquire workmen's compensation and employer's liability insurance and all other similar insurance in respect to employees of the Association in the amounts and in the forms now or hereafter required by law.
- (j) Directors and Officers Liability. The Association shall obtain and continue in effect insurance for the protection of the directors and officers of the Association from personal liability in the management of the Association's affairs.
- (k) Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Project and shall adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or such other qualified appraisers as the Association may select.

ARTICLE 12 COMPLIANCE WITH DECLARATION AND BYLAWS

- 12.1 **Compliance.** Each Owner shall comply with the provisions of this Declaration, the Articles and Bylaws, rules and regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association or by an aggrieved Owner.
- 12.2 **Enforcement and Remedies.** The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or amended Declaration, enforceable against the Association, shall be enforceable by any Owner of a Lot by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or amended Declaration, enforceable against an Owner or any other person,

shall be enforceable by Declarant or the Association by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid.

- 12.3 **Exemption of Declarant and Holmes Homes.** Notwithstanding anything in this Declaration to the contrary, none of the covenants, conditions, restrictions, easements or other provisions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant or Holmes Homes, their employees, agents and contractors, or parties designated by them in connection with the construction, management, administration, completion, maintenance, operation, sale, leasing, promotion or general development of the Project. This exemption shall not apply to Holmes Homes as an Owner of any Lot in the constructed Project.

ARTICLE 13 MORTGAGEE PROTECTION

- 13.1 **Mortgage Protection.** No breach of any of the covenants, conditions, restrictions, and limitations contained herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions and limitations contained herein shall be binding upon an Owner whose title is derived through foreclosure or trustee's sale.
- 13.2 **Priority of Liens.** No enforcement of any lien provision herein contained shall defeat or render invalid the lien of any Mortgage. All sums assessed in accordance with the provisions herein shall constitute a lien on each respective Lot prior and superior to all other liens except (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any recorded Mortgage on such Lot made in good faith and for value and recorded prior to the date on which any such assessment or assessments become due.
- 13.3 **Prior Liens Relate Only to Individual Lots.** All taxes, assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to the individual Lot and not to the Project as a whole.
- 13.4 **Mortgage Holder Rights in Event of Foreclosure.** Any Mortgagee of a Mortgage of record which obtains title to a Lot by the foreclosure of the Mortgage on the Lot or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments and charges against the Lot which accrued prior to the date of the acquisition of title to such Lot by such acquirer. Any unpaid assessments shall be deemed to be Common Expenses collectible from all of the Lots in the Project, including the Lot that has been acquired in accordance with the provisions of this section.

ARTICLE 14 GENERAL PROVISIONS

- 14.1 **Intent and Purpose.** The provisions of this Declaration and any supplemental or amended Declaration shall be liberally construed to effectuate the development and operation of the Project. Failure to enforce any provision, restriction, covenant, or condition in this Declaration, or in any supplemental or amended Declaration, shall not

operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.

- 14.2 **Construction.** The provisions of this Declaration shall be in addition and supplemental to all applicable provisions of law. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define or otherwise affect the context, meaning, or intent of this Declaration or any Article, section or provision hereof. The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.
- 14.3 **Registration of Mailing Address.** Each Owner shall register from time to time with the Association his current mailing address. All notices or demands intended to be served upon any Owner may be sent by first class U.S. mail, postage prepaid, addressed to the Owner at his registered mailing address, or, if no address has been registered, to the Lot of such Owner. All notice or demands intended to be served upon the Association may be sent by first class U.S. registered or certified mail, postage prepaid, addressed to the Association at the address of its offices as may be furnished to the Owners in writing from time to time. Any notice or demand referred to in this Declaration shall be deemed given three days after deposited in the U.S. mail, postage prepaid, and in the form provided for in this section.
- 14.4 **Audit.** Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association; provided, however, that such Owner shall not be entitled to request an audit or inspection more than once every eighteen (18) months.
- 14.5 **Amendment.** Declarant reserves the right to unilaterally amend this Declaration for any purpose during the "Declarant Control Period" defined and described in the By-laws. Following such period, except as otherwise provided herein, this Declaration may be amended if Owners holding at least fifty one percent (51%) of the Total Votes of the Association consent and agree to such amendment at a meeting of the Owners duly held in accordance with the provisions of the Articles, Bylaws, and this Declaration; provided, however, that for the period of time that the Declarant is a Member of the Association as provided in the By-laws, the Declarant's consent to such amendment shall be required, which consent may be given, withheld or conditioned in Declarant's sole discretion. Properly approved amendments shall be evidenced by instruments which are duly recorded in the office of the County Recorder for Salt Lake County, State of Utah.
- 14.6 **Effective Date.** This Declaration shall take effect upon recording in the Official Records of the Salt Lake County Recorder, State of Utah.
- 14.7 **Term and Termination.** This Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, and thereafter shall

automatically extend for successive 10-year periods unless at least seventy-five percent (75%) of the then-Owners sign a document stating that this Declaration is terminated and that document is recorded within the year before any extension. In such case, this Declaration shall terminate on the date specified in the termination document.


- 14.8 **Agent for Service.** The person to receive service of process for the Association shall be the then current registered agent of the Association as shown on the records maintained in the of Office of the Division of Corporations and Commercial Code of the State of Utah.
- 14.9 **Limitation on Association's Liability.** The Association shall not be liable for any failure of water service or other utility service which may be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or person in the Project, or resulting from electricity, water, rain, snow or ice. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs, maintenance or improvements to the Project or any part thereof, or from any action taken to comply with any law, ordinance or order of a governmental authority.
- 14.10 **Owner's Obligations.** All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting, or selling on contract his Lot. The Owner of a Lot shall have no obligation for expenses or other obligations accruing after he conveys title to such Lot.
- 14.11 **Declarant's Rights Assignable.** The rights of Declarant hereunder or in any way relating to the Project may be assigned. Upon assignment, references to the "Declarant" shall refer to such assignee.
- 14.12 **Master Residential Declaration's Full Force and Effect.** The Master Residential Declaration shall remain in full force and effect, provided, however, that in the event of a specific and clear conflict between the Master Residential Declaration and this Declaration, the terms of this Declaration shall control, but only in connection with the Project and the Lots.

[Signatures Begin on the Following Page]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration, and Holmes Homes has consented to the same, to be effective as of the day and year first above written.

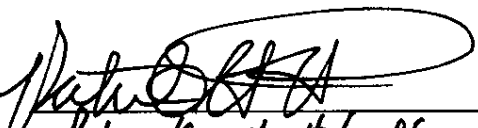
Declarant:

KENNECOTT LAND COMPANY,
a Delaware corporation

By 
Name John Potts
Title V.P. Land Development

Holmes Homes:

HOLMES HOMES, INC.,
a Utah corporation

By 
Name Patrick H. Holmes
Title President

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

On January 31st, 2005, personally appeared before me, a Notary Public, John Potts, the V. P. Land Development of **KENNECOTT LAND 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 **KENNECOTT LAND COMPANY**.

WITNESS my hand and official Seal.



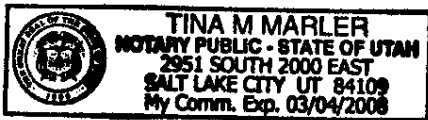
Tina M. Marler
Notary Public in and for said State
My commission expires: 03/04/08

[SEAL]

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

On January 31st, 2005, personally appeared before me, a Notary Public, Patrick H. Holmes, the President of **HOLMES HOMES, INC.** 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 **HOLMES HOMES, INC.**

WITNESS my hand and official Seal.



Tina M. Marler
Notary Public in and for said State
My commission expires: 03/04/08

[SEAL]

EXHIBIT A
LEGAL DESCRIPTION OF THE "DAYBREAK TOWNHOME 1 PROJECT"

Lots 1-64, inclusive, depicted on the "DAYBREAK TOWNHOME 1 SUBDIVISION", according to the official plat recorded July 21, 2004, as Entry No. 9125568 in Book 2004P beginning at Page 198 in the Official Records of Salt Lake County, Utah.

Tax ID# 27-19-382 - 004 tnm 044
27-19-383 - 010 tnm 033