

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

Chapter 1. Name, Principal Office, and Definitions.

1.1 Name.

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

1.2 Principal Office.

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

1.3 Definitions.

The words used in these By-Laws, unless otherwise defined herein, shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain recorded Declaration of Covenants, Conditions, and Restrictions for Daybreak Village, as it may be amended from time to time (the "**Master Commercial Declaration**"). The term "**majority**," as used in these By-Laws, means those votes, Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

Chapter 2. Membership: Meetings, Quorum, Voting, Proxies.

2.1 Membership.

The Association initially has two classes of membership, Owner Membership and Declarant Membership, as more fully set forth in the Master Community Declaration. Provisions of the Master Community Declaration pertaining to membership are incorporated by this reference.

2.2 Place of Meetings.

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

2.3 Association Meetings.

(a) *General.* The first Association meeting of the members, whether a regular or special meeting, shall be held within one year after the Association's incorporation.

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

(c) *Special Meetings.* The President may call special meetings. In addition, the President or the Secretary shall call a special meeting if so directed by a resolution of the Board or upon written request of members holding not less than 25% of the total votes in the Association.

2.4 Notice of Meetings.

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

Such notice shall be delivered by such means as permitted under Section 8.5, at least 10 but not more than 50 days before the date of such meeting.

2.5 Waiver of Notice.

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

2.6 Adjournment of Meetings.

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

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

2.7 Voting.

(a) *Voting Rights.* Members shall have such voting rights and number of votes as set forth in the Master Commercial Declaration, which provisions this reference specifically incorporates.

2.8 Proxies.

Any Owner-member may vote in person or by proxy, subject to the limitations of Utah law and subject to any specific provision to the contrary in the Master Commercial Declaration or these By-Laws.

Every proxy shall be in writing, shall identify the Parcel for which it is given, and shall be signed by the Owner or his duly authorized attorney-in-fact, dated, and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless the proxy specifically provides otherwise, a proxy shall be presumed to cover the entire vote which the Owner giving such proxy is entitled to cast. In the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

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

2.9 Quorum.

Except as these By-Laws or the Master Commercial Declaration otherwise provide, the presence of the Owner-members representing at least 20% of the total votes in the Association shall constitute a quorum at all Association meetings.

2.10 Conduct of Meetings.

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

2.11 Action Without a Meeting.

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

Chapter 3. Board of Directors: Selection, Meetings, Powers.

A. Composition and Selection.

3.1 Governing Body; Qualifications.

The Board shall govern the Association's affairs. Each director shall have one vote. Except with respect to directors appointed by the Declarant, directors shall be Owners.

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

3.2 Number of Directors.

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

3.3 Selection of Directors; Term of Office.

(a) *Directors During Declarant Control Period.* The initial Board shall consist of the three directors identified in the Articles of Incorporation, who shall serve until their successors or replacements are appointed by the Declarant. The three-Director initial Board, with any replacements or successors as appointed by the Declarant, shall serve until termination of the Declarant Control Period. Until the termination of the Declarant Control Period Declarant may appoint, remove, and replace Directors in its sole and absolute discretion.

(b) *Directors After Declarant Control Period.* During the period of time following the termination of the Declarant Control Period but prior to the termination of the Development and Sale Period (or whenever the Declarant earlier determines), the Owner-members shall be entitled to elect one of the three directors, who shall be elected at large. The remaining two directors shall be appointees of the Declarant (directors elected by the Owner-members are referred to as "**Owner Directors**"). The Owner Director elected by the Owners shall not be subject to removal by the Declarant and shall be elected for a term which expires on the date of the second annual meeting following his or her election. Upon expiration of such director's term, and thereafter upon the expiration of each successors' term, a successor shall be elected for a two-year term.

(c) *Directors After Development and Sale Period.*

(i) Within 90 days after termination of the Development and Sale Period, the Board shall be increased to seven directors. The President shall call for an election by which the Owner-members shall be entitled to elect six directors. Three directors shall be elected to serve until the second annual meeting following their election, and three directors shall be elected to serve until the third annual meeting following their election, as such directors determine among themselves.

(ii) So long as the Declarant owns any property in Daybreak Village, the Declarant shall be entitled to appoint, remove, and replace the seventh director. Thereafter, the director appointed by the Declarant shall resign and the remaining directors shall be entitled to appoint a director to serve until the next annual meeting, at which time the Owner-members shall be entitled to elect a director to fill such position. Such director shall be elected for a term of two years.

(iii) Upon expiration of the term of office of each Owner Director, the Owner-members shall be entitled to elect a successor to serve a term of two years. Owner Directors shall hold office until their respective successors have been elected. Directors may serve any number of consecutive terms.

3.4 Election Procedures.

At each election, voting may be by written ballot or may be accomplished via computer. Each Owner-member may cast all votes assigned to its Parcel(s) for each position to be filled from any candidates on which such Owner-member is entitled to vote; however, under no circumstances shall cumulative voting be permitted in any election of Directors.

In the event of a tie vote, the Owner-members shall be informed of the tie vote and given the opportunity to discuss the candidates among themselves in an effort to resolve the tie before another vote is taken. If the second vote results in a tie, the President shall choose one of the candidates as the winner of the election.

3.5 Removal of Directors and Vacancies.

Owner-members holding a majority of the votes of the Association may remove any Owner Director with or without cause. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director the Owner-members shall elect a successor for the remainder of the term of such director.

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

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

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

B. Meetings.

3.6 Organizational Meetings.

The Board shall hold an organizational meeting within 30 days following each annual Association meeting at such time and place as the Board shall fix.

3.7 Regular Meetings.

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

3.8 Special Meetings.

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

3.9 Notice; Waiver of Notice.

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

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

3.10 Telephonic Participation in Meetings.

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

3.11 Quorum of Board.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless Utah law, these By-Laws, or the

Master Commercial Declaration specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any business it might have transacted at the original meeting.

3.12 Conduct at Meetings.

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

3.13 Open Meetings; Executive Session.

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

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

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

3.14 Action Without a Formal Meeting.

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

C. Powers and Duties.

3.15 Powers.

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

3.16 Duties.

The Board's duties shall include, without limitation:

- (a) preparing and adopting, in accordance with the Master Commercial Declaration, an annual budget establishing each Owner's share of the Common Expenses and any Service Area Expenses;
- (b) cooperating with the Daybreak Community Council ("**Council**") in levying and collecting assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard and in accordance with the Covenant for Community for Daybreak;
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on the Association's behalf in a bank depository which it shall approve and using such funds to operate the Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;
- (f) making and amending Rules in accordance with the Master Commercial Declaration;
- (g) opening bank accounts on the Association's behalf and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;
- (i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; however, the Association's obligations in this regard shall be conditioned in the manner provided in the Master Commercial Declaration;
- (j) obtaining and carrying property and liability insurance, as provided in the Master Commercial Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (k) paying the cost of all services rendered to the Association;

- (l) keeping a detailed accounting of the Association's receipts and expenditures;
- (m) making available to any prospective purchaser of a Parcel, any Owner, and the holders, insurers, and guarantors of any Mortgage on any parcel, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 8.4;
- (n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of Daybreak Village;
- (o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Utah law, the Articles, and these By-Laws;
- (p) cooperating with the Council in carrying out its purposes and responsibilities under the Covenant for Community for Daybreak and the by-laws of the Council; and
- (q) cooperating with the Council in upholding the Community-Wide Standard.

3.17 Committees.

(a) *General.* The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

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

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

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

Chapter 4. Officers.

4.1 Officers.

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

4.2 Election and Term of Office.

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

4.3 Removal and Vacancies.

The Board may remove any officer whenever, in its judgment, the Association's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4 Powers and Duties.

The Association's officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for preparing the budget as provided for in the Master Commercial Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5 Resignation.

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

Chapter 5. Standards of Conduct; Liability and Indemnification.

5.1 Standard for Directors and Officers.

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under Utah law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as

directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinary prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, others prepare or present to the extent authorized under Utah law.

5.2 Liability.

(a) A director shall not be personally liable to the Association, any Member, or any other Person for any action taken or not taken as a director if the director has acted in accordance with Section 5.1.

(b) A director also shall not be personally liable for any action taken or not taken as a director if the director:

(i) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(ii) affirmatively undertakes to make decisions which the director reasonably believes are necessary for the Association's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he has a conflict of interest (beyond that which all directors have by virtue of their ownership of a Parcel); provided, however, that the Directors the Declarant appoints shall not be deemed to have any real or potential conflicts of interest, shall not be required to avoid participating in decisions and actions on certain matters by virtue of being an officer, director, or employee of Declarant or any of Declarant's affiliated or controlled entities.

(iv) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

5.3 Indemnification.

Subject to the limitations of and to the fullest extent permitted by Utah law, the Association shall indemnify, hold harmless, and defend every officer, director, and committee member for, from, and against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined,

by the court or in the manner provided above, that the individual met the relevant standard of conduct under Utah law; or

- (b) to the extent that the individual is adjudged liable for conduct that constitutes:
 - (i) appropriation, in violation of his or her duties, of any funds of the Association;
 - (ii) willful and knowing violation of the law; or
 - (iii) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

5.4 Conflicts of Interest; Code of Ethics.

Unless otherwise approved by a majority of the other directors, no Owner Director may transact business with the Association or any Association contractor during his or her term as director or within two years after the term expires. A director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members.

Notwithstanding the above, directors the Declarant appoints may be employed by or otherwise transact business with the Declarant or its affiliate, and the Declarant may transact business with the Association or its contractors. Furthermore, directors appointed by the Declarant shall not be deemed to have an actual or potential conflict of interest or required to disclose a conflict of interest by virtue of being an officer, director, or employee of Declarant or any of its affiliated or controlled entities.

5.5 Advancement of Expenses.

In accordance with the procedures and subject to the conditions and limitations set forth in Utah law, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director, or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

Chapter 6. Management and Accounting.

6.1 Compensation of Directors and Officers.

The Association shall not compensate directors and officers for acting as such unless Owner-members representing a majority of the total votes in the Association approve such compensation at an Association meeting. The Association may reimburse any director or officer

for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association. However, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

6.2 Right of Declarant-Member to Disapprove Actions.

So long as there is a Declarant-member, the Declarant-member shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the Declarant-member's sole judgment, would tend to impair rights of the Declarant under the Master Commercial Declaration or these By-Laws, interfere with development or construction of any portion of Daybreak or Daybreak Village, or diminish the level of services the Association provides.

(a) *Notice.* The Association shall give the Declarant-member written notice of all meetings and proposed actions approved at Association, Board, or committee meetings (or by written consent in lieu of a meeting). The Association shall give such notice by certified mail, return receipt requested, or by personal delivery at the address the Declarant-member has registered with the Association, which notice complies as to Board meetings with Section 3.9, and which notice shall, except in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) *Opportunity to be Heard.* At any such meeting, the Association shall give the Declarant-member the opportunity to join in, or to have its representatives or agents join in, discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this Section have been met.

The Declarant-member, its representatives, or its agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Declarant-member, acting through any officer or director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 business days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action.

6.3 Accounts and Reports.

(a) The Board shall follow the following accounting standards unless the Board by resolution specifically determines otherwise:

(i) accounting and controls should conform to generally accepted accounting principles; and

(ii) the Association's cash accounts shall not be commingled with any other accounts.

(b) Commencing at the end of the quarter in which the first Parcel is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution).

(c) An annual report consisting of at least the following shall be made available for members' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

6.4 Borrowing.

The Association shall have the power to borrow money for any legal purpose, provided it is in accordance with the provisions of the Master Commercial Declaration. However, if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year, then the Board shall obtain Owner-members approval in the same manner as provided in the Master Commercial Declaration for Special Assessments. During the Development and Sale Period, no Mortgage or lien shall be placed on any portion of the Common Area unless in accordance with the Master Commercial Declaration.

6.5 Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements. The Board shall consent to any common management agreement.

6.6 Agreements, Contracts, Deeds, Leases, Checks, Etc.

All Association agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least two officers or by such other person or persons as the Board may delegate by resolution.

Chapter 7. Enforcement Procedures.

The Association shall have the power, as provided in the Master Commercial Declaration, to impose sanctions for any violation of the Governing Documents.

Chapter 8. Miscellaneous.

8.1 Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

8.2 Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Utah law or the Governing Documents.

8.3 Conflicts.

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

8.4 Books and Records.

(a) *Inspection by Members and Mortgagees.* The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Parcel, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Parcel: the Governing Documents, the membership register, books of account, and the minutes of meetings of the members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within Daybreak as the Board shall designate.

(b) *Rules for Inspection.* The Board shall establish rules with respect to:

- (i) notice to be given to the custodian of records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing the documents requested.

(c) *Inspection by Directors.* Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by the Association. A director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

8.5 Notices.

(a) *Form of Notice and Method of Delivery.* Except as otherwise provided or authorized in the Master Commercial Declaration or these By-Laws or by law, all notices, demands, bills, statements, or other communications under the Master Commercial Declaration or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail with written confirmation of transmission.

(b) *Delivery Address.* Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member, at the address, telephone facsimile number, or e-mail address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Parcel of such Member;

(ii) if to the Association, the Board, or a committee of either, at the address, facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the members pursuant to this Section; or

(iii) if to the Declarant, at the Declarant's principal address as it appears on the Utah Corporation Commissioner's records, or at such other address as the Declarant shall designate by notice in writing to the Association pursuant to this Section.

(c) *Effective Date.* Notices sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective at the earliest of the following:

(i) when received;

(ii) if sent by United States mail, five days after its deposit with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(iii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iv) if sent by telephone facsimile or electronic mail; upon transmission, as evidenced by a printed confirmation of transmission.

8.6 Amendment.

(a) *By Declarant.* Prior to termination of the Development and Sale Period, the Declarant may unilaterally amend these By-Laws. Thereafter, the Declarant may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; or (iii) to enable any reputable title insurance company to issue title insurance coverage on the Parcels. So long as there is a Declarant-member, the Declarant-member may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon the rights of more than 2% of the Owners.

(b) *By Members Generally.* Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Owner-members representing 67% of the total votes in the Association, and the consent of the Declarant-member, if such exists.

(c) *Validity and Effective Date of Amendments.* Amendments to these By-Laws shall become effective upon their approval in the manner set forth above, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of approval, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any of the Declarant's rights or privileges without the written consent of the Declarant or the assignee of such right or privilege.

ADOPTED by action of the Board of Directors this ____ day of July, 2005.

By: _____

Print Name: M. Bruce Snyder
Title: Director

By: _____

Print Name: John Potts
Title: Director

By: _____

Print Name: Keith Morey
Title: Director

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

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