

When Recorded Mail To:

Holmes Homes, Inc.
126 W. Segoe Lily Dr., Suite 250
Sandy, UT 84070
(801) 572-6363

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3/13/2020 2:30:00 PM \$216.00
Book - 10909 Pg - 7167-7190
RASHELLE HOBBS
Recorder, Salt Lake County, UT
MERIDIAN TITLE
BY: eCASH, DEPUTY - EF 24 P.

SUPPLEMENT TO COMMUNITY CHARTER FOR DAYBREAK
ESTABLISHING AND/OR EXPANDING SERVICE AREA
FOR
HEIGHTS PARK AT DAYBREAK PROJECT

THIS SUPPLEMENT TO COMMUNITY CHARTER FOR DAYBREAK ESTABLISHING/EXPANDING SERVICE AREA FOR HEIGHTS PARK AT DAYBREAK PROJECT (this "*Supplement*") is made by VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company, as successor-in-interest to KENNECOTT LAND COMPANY, a Delaware corporation ("*Founder*"), pursuant to that certain Community Charter for Daybreak recorded in Book No. 8950 Page No. 7784-7908 as Entry No. 8989518 in the Office of the County Recorder, Salt Lake County, Utah, as subsequently amended from time to time (collectively, the "*Charter*"). Capitalized terms used but not defined herein shall have those meaning ascribed to them in the Charter.

RECITALS

- A. WHEREAS, the Founder is founder of the Daybreak Community;
- B. WHEREAS, pursuant to Section 3.4 of the Charter, Founder may designate Service Areas and assign Units to a particular Service Area in a supplement.
- C. WHEREAS, pursuant to Section 3.4 of the Charter a supplement to the Charter may be recorded to establish and/or designate Units that share Limited Common Areas or received special benefits or services from Daybreak Community Association, Inc. (the "*Association*") that it does not provide to all Units within the Community.
- D. WHEREAS, Holmes Homes, Inc., a Utah corporation, and its assigns (collectively, "*Builder*") is the builder and owner of that portion of real property covered by the Charter described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "*Builder Property*" or the "*Project*"); and

**ACCOMMODATION RECORDING ONLY.
MERIDIAN TITLE COMPANY MAKE NO REPRESENTATION
AS TO CONDITION OF TITLE, PRIORITY OF LIEN, NOR
DOES IT ASSUME ANY RESPONSIBILITY FOR VALIDITY,
SUFFICIENCY OR EFFECT OF DOCUMENT.**

E. WHEREAS, Founder, with the consent of the Builder, desires to create a Service Area within the Builder Property (or expand such Service Area, as applicable), as permitted by the Charter, and impose additional covenants, conditions, restrictions and reservations of easements thereon in addition to those set forth in the Charter.

NOW, THEREFORE, Founder, hereby agrees, acknowledges and declares as follows:

1. SERVICE AREA DESIGNATION. By this Supplement, that portion of the Builder Property described in **Exhibit B** attached hereto is hereby designated and established as a "Service Area" under the Charter and such "Service Area" shall be known as: Heights Park at Daybreak (the "*Service Area*"). The Service Area may be expanded to include additional phases of Heights Park at Daybreak.
2. SUPPLEMENT TO GOVERNING DOCUMENTS. In addition to this Supplement, the Service Area shall be governed by the terms of the Charter and other Governing Documents and shall be subject to all expenses, covenants, conditions, restrictions, and reservations of easements therein. The provisions of this Supplement shall supplement the provisions of the Charter and other Governing Documents, and in the event of a conflict, the terms and provisions of this Supplement shall control. Nothing herein contained shall be construed to relieve any Owner or Unit within the Service Area from the conditions, covenants, and restrictions contained in the Governing Documents, or as limiting or preventing any rights of enforcement granted or available to the Association or by virtue thereof
3. COMMON ELEMENTS. The Common Elements shall be reserved for the use and benefit of the Owners and residents of the Units within the Service Area. Pursuant to Sections 6.3 and 12.1 of the Charter, the Association shall maintain, and be responsible for repairing and replacing, all Common Elements assigned to the Service Area as a Service Area Expense. Upon completion of construction of the applicable Common Elements, Builder shall promptly take and all reasonable steps to convey title to any of the Common Elements to the Association, free and clear of all liens and encumbrances. Those necessary steps may include, without limitation, preparation and execution of any documents and/or deeds relating to the Common Elements, which deeds or other documents shall be in form and substance reasonably acceptable to the Association. The term "*Common Elements*" as used herein means all personal and real property, other than Units, owned by the Association and/or Builder for the use and enjoyment of the Owners and residents of the Units within the Service Area and their guests and invitees, and are more particularly described in **Exhibit C** attached hereto.
 - (a) *Owner's Easement of Enjoyment*. Each Owner and resident of a Unit within the Service Area, and their permitted guests and invitees, is hereby granted a right and easement of enjoyment of the Common Elements consistent with other Common Area easements contained in Section 13.1 of the Charter and such easement shall be appurtenant to and

shall pass with title to every Unit subject to the terms of the Charter and any Rules established by the Association.

- (b) *Limited Common Areas.* Certain portions of the Common Elements which are Limited Common Areas or those which are primarily for the use or primary benefit of less than all Units in the Service Area, as stated in Section 3.1 of the Charter and as described in **Exhibit C**.
- (c) *Delegation of Enjoyment.* Any Owner may delegate, in accordance with the Governing Documents, his or her rights of enjoyment to the Common Elements to the members of his or her family, social invitees, and tenants or contract purchasers subject to reasonable regulations and procedures established by the Board.
- (d) *Limitation on Construction.* No person other than Founder or the Association or its duly authorized agents, delegates or Service Area Committee shall construct, reconstruct, refinish, alter or maintain any improvement upon, or shall make or create any excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub, or other vegetation from any Common Elements.
- (e) *Owner's Liability for Damages to Common Elements.* Each Owner shall be legally liable to the Association for all damages to the Common Elements or to any improvements thereof or thereto, including, but not limited to, curbs, sidewalks, paved surfaces, lighting, any buildings and landscaping, caused by such Owner, his or her licensees, pets, guests, licensee, or any occupant of such Owner's Unit, as such liability may be determined under Utah law.
- (f) *Security.* The Association may, but shall not be obligated to, maintain or support certain activities within the Service Area designed to make the Service Area safer than it otherwise might be. Neither the Association (including the Board and any Service Area Committee) nor Founder nor Builder shall in any way be considered insurers or guarantors of security within the Service Area, nor shall any of the above-mentioned parties be held liable for any loss or damage by reason of (i) failure to provide adequate security, or (ii) ineffectiveness of security measures undertaken, or (iii) inability of emergency access vehicles to access the Service Area. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Service Area cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended.

Each Owner acknowledges, understands and covenants to inform all residents of its Unit, and their respective families and invitees, that neither the Association (including the Board and any Service Area Committees) nor all other persons involved with the governance,

maintenance, and management of the Project, including Founder, are insurers of safety or security within the Service Area. All Owners and residents, and their respective families and invitees, assume all risks of personal injury and loss or damage to persons, Units, and the contents of Units, and further acknowledge that neither the Association (including the Board and any committees), nor Founder have made representations or warranties regarding any entry gate, patrolling of the properties, any fire protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the Service Area, as applicable. All Owners and residents, and their respective families, guests, and invitees, further acknowledge that they have not relied upon any such representations or warranties, expressed or implied.

4. **COMMON BENEFITS.** The Common Benefits shall be reserved for the use and benefit of the Owners and residents of the Units within the Service Area. Pursuant to the Charter and this Supplement, the Association shall provide the Common Benefits assigned to the Service Area as a Service Area Expense. The term "*Common Benefits*" as used herein means those additional benefits and services, excluding the Common Elements, provided by the Association to the Units within the Service Area that the Association does not provide to Units outside the Service Area, and are more particularly described in **Exhibit D** attached hereto.
5. **SERVICE AREA EXPENSES.** Subject to the Charter and this Supplement, and in addition to other expenses identified in the Charter and in this Supplement or its exhibits, if any, the expenses that the Association incurs or expects to incur in connection with the ownership, maintenance, and operation of the Common Elements and Common Benefits now or hereafter assigned to the Service Area for which the Association has such responsibility shall be "Service Area Expenses", as well as any other amounts that are allowed as Service Area Expenses under Section 12.1(b) of the Charter, for which the Owners of Units within the Service Area shall be responsible. In addition, all Service Area Expenses shall be assessed to the applicable Units as a "Service Area Assessment" as provided for in Chapter 12 of the Charter. The Association shall prepare an annual Service Area budget for the estimated Service Area Expenses in accordance with Section 12.2 of the Charter.
6. **COMMON EXPENSES AND SPECIAL EXPENSES.** In addition to and not in limitation of the Service Area Expenses, Units within the Service Area shall also be subject to the Common Expenses, Special Assessments, and other expenses and assessments authorized by the Charter.
7. **PERSONAL OBLIGATION.** All Service Area Assessments are a personal obligation as are any other assessments levied by the Association. All the rights and responsibilities contained in the Governing Documents, including methods of collection, of Association assessments are applicable to Service Area Assessments, including the personal nature of the obligation to pay all Service Area Assessments.

8. **ADDITIONAL COVENANTS.** The Service Area shall also be subject to the additional covenants, conditions, restrictions and reservations of easements imposed upon the Project by Builder as set forth in **Exhibit E** attached hereto, as the same may be further amended from time to time, and such additional covenants, restrictions, and easements shall be binding upon the Owners, residents, and guests of Units within the Service Area, in addition to the terms of the Charter and other Governing Documents.
9. **MAINTENANCE.** Pursuant to Section 6.3 and 12.1(b) of the Charter, the Association, its community manager and/or its designee shall maintain the Service Area Common Elements. In all respects, the Association shall maintain the Service Area in a manner consistent with the Governing Documents and the Community-Wide Standard as described in Section 9.2 of the Charter.
10. **SERVICE AREA COMMITTEE.** Builder, as the initial owner of the Units within the Service Area, shall designate Builder representatives to initially form and govern the Service Area Committee. Thereafter, once 90% of the Units in the Service Area are owned by third-party Owners, then pursuant to Section 3.4 of the Charter, the third-party Owners of Units within the Service Area may elect replacement members of the Service Area Committee in accordance with Section 3.17(c) of the By-Laws, which member(s) shall each serve for a term of no greater than 2 successive years, to represent and act on behalf of the Owners with respect to the services and benefits that the Association provides to the Service Area. In all events, the Service Area Committee shall be subordinate to the Association and any material action taken by the Service Area Committee must first be approved by the Board prior to taking effect. From time to time, the Service Area Committee may make recommendations to the Association concerning the implementation and administration of Service Area services or the operation and maintenance of Common Elements and/or Limited Common Areas.
11. **INSURANCE COVERAGE.** Consistent with Chapter 11 of the Charter, to the extent reasonably available, the Board shall obtain and maintain blanket property insurance coverage as set forth in this Section. If such insurance is not reasonably available, and the Board determines that any insurance described in this Section will not be maintained, the Board shall promptly cause Notice of that fact to all Owners and Eligible Holders. Notwithstanding the foregoing, the Board shall obtain and maintain all coverages as required by Utah law.

(a) *Property Insurance Coverage.*

1. Coverage. Property insurance will cover:
 - (i) All fixtures, equipment and any improvements and betterments which are affixed to or a part of the Common Elements; and
 - (ii) All personal property owned by the Association within the Service Area.

2. Amounts. The insurance will be for an amount (after application of any deductions) equal to one hundred percent (100%) of the actual cash value of the covered items at the time the insurance is purchased and at each renewal date. The Board is authorized to obtain appraisals periodically for the purpose of establishing replacement cost of the insured items, and the cost of such appraisals shall be a Service Area Expense.
3. Risks Insured Against. The insurance shall afford protection against "all risks" of direct physical loss commonly insured.
4. Other Provisions. Insurance policies required by this Section shall provide that:
 - (i) Each Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Service Area.
 - (ii) The insurer waives the right to subrogation under the policy against an Owner or member of the household of an Owner.
 - (iii) An act or omission by an Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will not void the policy or be a condition of recovery under the policy.
 - (iv) If, at the time of a loss under the policy, there is other insurance in the name of an Owner which covers the same risk covered by the policy, the Service Area's policy provides primary insurance.
 - (v) Losses must be adjusted with the Service Area.
 - (vi) Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose, and otherwise to the Association, but, in any case, it is to be held in trust for each Owner and the Owner's Mortgagee.
 - (vii) The insurer may not cancel or refuse to renew the policy until thirty (30) days after Notice of the proposed cancellation or nonrenewal has been mailed to the Association, to each Owner and to each holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.
 - (viii) The name of the insured shall be substantially as follows: The Association, for the use and benefit of the individual Owners.

(b) *Liability Insurance.* Liability insurance, including medical payments insurance, will be maintained as determined by the Board. This insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements and the activities of the Association. Insurance policies carried pursuant to this Section shall provide that:

1. Each Owner in the Service Area is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Service Area.
2. The insurer waives the right to subrogation under the policy against an Owner in the Service Area or member of the household of an Owner in the Service Area.

(c) *Right and Duty of Owners to Insure.* It is the responsibility of each Owner to provide insurance on such Unit, personal property and all other property and Improvements on or part of the Unit. Nothing herein shall preclude any Owner from carrying any liability insurance as such Owner deems desirable to cover the Owner's individual liability for damage to person or property occurring on or within the Owner's Unit or elsewhere with the Service Area. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Service Area.

(d) *Premiums.* Insurance premiums for insurance carried or to be carried by the Association for the Common Elements shall be a Service Area Expense unless the Board otherwise determines consistent with Section 11.4 of the Charter.

(e) *Other Insurance.* The Association may carry other insurance on the Service Area which the Board considers appropriate to protect the Association and/or the Owners.

12. **DISPUTE RESOLUTION.** Any dispute related to the Service Area, the Service Area Committee, or any other matters hereunder shall be subject to Chapter 18 of the Charter. The Service Area and Owners subject to the Service Area will be considered "Bound Parties" as defined in Section 18.1 of the Charter.

13. **AMENDMENTS.** This Supplement may be amended consistent with Sections 3.4 and 20.2 of the Charter.

14. **MISCELLANEOUS.**

- (a) *Waiver.* No provision contained in this Supplement is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.
- (b) *Invalidity.* The invalidity of any provision of this Supplement does not impair or affect in any manner the validity, enforceability or effect of the remainder, and if a provision is invalid, all of the other provisions of this Supplement shall continue in full force and effect.
- (c) *No Public Right or Dedication.* Nothing contained in this Supplement shall be deemed to be a gift or dedication of all or any part of the Builder Property to the public, or for any public use.

[Signatures on following page]

Founder:

VP DAYBREAK OPERATIONS LLC,
a Delaware limited liability company

By: DAYBREAK COMMUNITIES LLC,
a Delaware limited liability company Its:
Project Manager


By: 

Name: TM McCutcheon

Its: PRESIDENT & CEO

Builder:

HOLMES HOMES, INC.,
a Utah corporation

By: 

Name: DARON SMITH

Its: SECRETARY

Association:

DAYBREAK COMMUNITY
ASSOCIATION, INC.,
a Utah nonprofit corporation

By: 

Name: Ruth Sanatog

Its: President

Founder:

VP DAYBREAK OPERATIONS LLC,
a Delaware limited liability company

By: DAYBREAK COMMUNITIES LLC,
a Delaware limited liability company Its:
Project Manager

By: _____

Name: _____

Its: _____

Builder:

HOLMES HOMES, INC.,
a Utah corporation

By:  _____

Name: DARON SMITH

Its: SECRETARY

Association:

DAYBREAK COMMUNITY
ASSOCIATION, INC.,
a Utah nonprofit corporation

By: _____

Name: _____

Its: _____

STATE OF UTAH

) ss

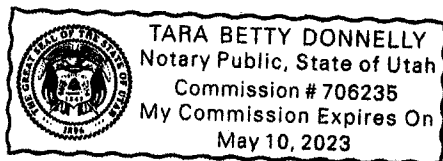
COUNTY OF SALT LAKE

)

On March 12, 2020, personally appeared before me, a Notary Public, Ty McCutcheon, President and CEO of Daybreak Communities LLC, a Delaware limited liability company, the Project Manager of VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he executed the above instrument on behalf of VP DAYBREAK OPERATIONS LLC, a Delaware limited liability company.

WITNESS my hand and official Seal.

[SEAL]



Tara Betty Donnelly
Notary Public in and for said State
My commission expires: 5-10-23

STATE OF UTAH COUNTY

) ss

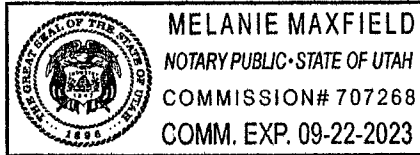
OF SALT LAKE

)

On 3/12/2020, personally appeared before me, a Notary Public, Daron Smith of Holmes Homes, Inc., a Utah corporation, 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., a Utah corporation.

WITNESS my hand and official Seal.

[SEAL]



MMM
Notary Public in and for said State

My commission expires: 9/22/23

STATE OF UTAH

COUNTY OF SALT LAKE

) ss
)

On March 12, 2020, personally appeared before me, a Notary Public, Rebecca S. Aulai
the President of Daybreak Community Association, Inc., a Utah nonprofit corporation,
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 Daybreak Community Association,
Inc., a Utah nonprofit corporation.

WITNESS my hand and official Seal.

[SEAL]

Rebecca S. Aulai
Notary Public in and for said State

My commission expires: 2/24/23

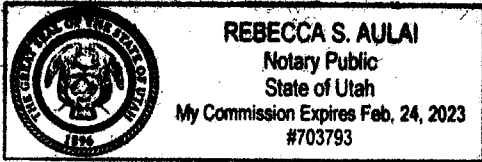


EXHIBIT A

"Legal Description of Builder Property"

That certain real property located in the City of South Jordan, Salt Lake County, Utah, described as follows:

Lots 846, 847, 848, 849, 850, 851, 852, 853, 854, and 855 (inclusive) as shown on that certain final plat entitled "DAYBREAK VILLAGE 5 MULTI FAMILY #3 AMENDING LOTS T3 & V3 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED", recorded on January 29, 2019, as Entry No. 12925747, Book 2018P, at Page 041 of the Official Records of Salt Lake County, Utah, and any common area and facilities as shown thereon and owned by Builder, its successors and assigns.

PARCEL NOS.:

26133760040000	26133760030000	26133760020000	26133390070000
26133390060000	26133390050000	26133390040000	26133390370000
26133390020000	26133390010000		

And

Lots 134 through 185 (inclusive) and Lots 194 through 203 (inclusive) as shown on that certain final plat entitled "DAYBREAK VILLAGE 5 MULTI FAMILY #4 AMENDING LOTS T3 & V3 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED", recorded on April 18, 2019, as Entry No. 12970391, Book 2019P, at Page 130 of the Official Records of Salt Lake County, Utah, and any common area and facilities as shown thereon and owned by Builder, its successors and assigns.

PARCEL NOS.:

26133370260000	26133370270000	26133370280000	26133370290000
26133370300000	26133370310000	26133370320000	26133420010000
26133420020000	26133420030000	26133420040000	26133430010000
26133430020000	26133430030000	26133430040000	26133430050000
26133430060000	26133430070000	26133430080000	26133430090000
26133430100000	26133430110000	26133430120000	26133430130000
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26133860120000	26133860130000	26133860140000	26133860150000
26133860160000	26133970010000	26133970020000	26133970030000
26133980090000	26133980100000	26133980110000	26133980120000
26133990010000	26133990020000	26133990030000	26133990040000
26133990050000	26133990060000		

And

Lots 277 through 305 (inclusive) as shown on that certain final plat entitled "DAYBREAK VILLAGE 5 MULTI FAMILY #6 AMENDING LOTS T3 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED", recorded on June 10, 2019, as Entry No. 13006091, Book 2019P, at Page 182 of the Official Records of Salt Lake County, Utah, and any common area and facilities as shown thereon and owned by Builder, its successors and assigns.

PARCEL NOS.:

26131670020000	26131670030000	26131670040000	26131670050000
26131670060000	26131670070000	26131680010000	26131680020000
26131680040000	26131680050000	26131680060000	26131680070000
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26131680120000	26131680130000	26131680140000	26131680150000
26131680160000	26131680170000	26131680200000	26131680210000
26131680220000	26131690010000	26131690020000	26131690030000
26131690040000			

EXHIBIT B

"Service Area"

The real property comprising the Service Area is described more particularly as follows:

That certain real property located in the City of South Jordan, Salt Lake County, Utah, described as follows:

Lots 846, 847, 848, 849, 850, 851, 852, 853, 854, and 855 (inclusive) as shown on that certain final plat entitled "DAYBREAK VILLAGE 5 MULTI FAMILY #3 AMENDING LOTS T3 & V3 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED", recorded on January 29, 2019, as Entry No. 12925747, Book 2018P, at Page 041 of the Official Records of Salt Lake County, Utah, and any common area and facilities as shown thereon and owned by Builder, its successors and assigns.

PARCEL NOS.:

26133760040000	26133760030000	26133760020000	26133390070000
26133390060000	26133390050000	26133390040000	26133390370000
26133390020000	26133390010000		

And

Lots 134 through 185 (inclusive) and Lots 194 through 203 (inclusive) as shown on that certain final plat entitled "DAYBREAK VILLAGE 5 MULTI FAMILY #4 AMENDING LOTS T3 & V3 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED", recorded on April 18, 2019, as Entry No. 12970391, Book 2019P, at Page 130 of the Official Records of Salt Lake County, Utah, and any common area and facilities as shown thereon and owned by Builder, its successors and assigns, together with: P-lots P-149 and P-150 as shown thereon.

PARCEL NOS.:

26133370260000	26133370270000	26133370280000	26133370290000
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26133980090000	26133980100000	26133980110000	26133980120000

26133990010000 26133990020000 26133990030000 26133990040000
26133990050000 26133990060000

And

Lots 277 through 305 (inclusive) as shown on that certain final plat entitled "DAYBREAK VILLAGE 5 MULTI FAMILY #6 AMENDING LOTS T3 OF THE KENNECOTT MASTER SUBDIVISION #1 AMENDED", recorded on June 10, 2019, as Entry No. 13006091, Book 2019P, at Page 182 of the Official Records of Salt Lake County, Utah, and any common area and facilities as shown thereon and owned by Builder, its successors and assigns, together with: "Private Lane # 1"; and P-lots: P-153, P-154, and P-155 as shown thereon.

PARCEL NOS.:

26131670020000	26131670030000	26131670040000	26131670050000
26131670060000	26131670070000	26131680010000	26131680020000
26131680040000	26131680050000	26131680060000	26131680070000
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26131680220000	26131690010000	26131690020000	26131690030000
26131690040000			

EXHIBIT C

"Common Elements"

"Common Elements" and/or "Common Area" means, refers to, and includes: the open space areas and any improvements constructed thereon as shown on the Plats and any other land included within the Service Area that is not a Unit, and for which the maintenance, repair and replacement responsibility has not been assigned to the Owners or to a governmental entity. The Common Elements may consist of landscaping, irrigation equipment, walkways, the storm water detention basin, park strip(s), private roads, private lanes, parking spaces, landscaped common area, and perimeter fencing installed by Builder and other improvements and all common areas as defined in the Community Association Act, Utah Code 57-8a-101 *et seq.*, located within the Builder Property, whether or not enumerated herein. The Association shall own all Common Elements as described further elsewhere in this Supplement unless and until such time as the Association transfers ownership of all or a portion of the Common Elements to a governmental entity, at which point in time any portion so transferred shall cease to be Common Elements.

EXHIBIT D

"Common Benefits"

ASSOCIATION RESPONSIBILITY REGARDING COMMON AREAS. The Association shall be responsible for maintenance, repair, and replacement upon the Common Area and the Limited Common Areas which are not being maintained by the Owner as set forth herein.

The Association shall also maintain all Common Area amenities which may be installed from time to time. However, if the Common Areas, Limited Common Areas, or a Unit are damaged by the willful misconduct or negligence of an Owner, their guests, tenants, or invitees, such Owner shall be responsible for all such damage.

ASSOCIATION RESPONSIBILITY REGARDING BUILDINGS AND UNITS. Except for the Owner's responsibilities set forth herein, the Association shall have the duty of maintaining, replacing, and repairing the Common Areas including, without limitation, footings and foundations, structural components (inclusive of structural post of any kind), 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 Owners to cause such maintenance, replacement or repairs to be accomplished, notwithstanding the cost thereof.

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, fences, retaining walls installed by Builder and front yard garden areas, excluding any stand-alone planters or window boxes.

SNOW PUSHING. The Association shall perform reasonable snow pushing from all Common Area streets, Common Area access ways, Common Area fire lanes and Common Area sidewalks serving multiple Units, driveways and driveway aprons. Owners shall be responsible for snow pushing and/or removal of all other entry points to their Unit, including, without limitation patios, porches, stairs, balconies, pathways, and sidewalks bordering an Owner's Unit and sidewalks serving the Owner's Unit exclusively.

MAINTENANCE STANDARD. All maintenance, repair and replacement obligations shall be performed in a manner consistent with the Charter, the Community-Wide Standard and Exhibit E.

Right of Entry and Access at Reasonable Hours. The Association shall have a right of entry and access to, over, upon, and through the entire Project consistent with the Charter, including, but not limited to, Chapter 13, including each lot, to enable the Association to perform its obligations and duties and exercise its rights with regard to maintenance, repair, restoration and 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 Unit may be exercised without notice.

CLARIFICATION AND ALTERATION OF CERTAIN MAINTENANCE DUTIES BY RULE. To the extent not clarified herein and not inconsistent with the provisions of the Charter, the Association may, by duly adopted Board resolution, identify and assign those areas of maintenance and responsibility that are either (1) Owner responsibilities; or (2) Association responsibilities.

EXHIBIT E

"Additional Covenants"

The following covenants, conditions, restrictions, and easements are in addition to those stated in the Charter pursuant to Section 8 of this Supplement:

1. RESTRICTIONS ON USE

- (a) *External Apparatus.* No Lot Owner shall cause or permit anything (including, without limitation, awnings, canopies, or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Board of Directors. No sheds or outbuildings are permitted.
- (b) *Noise Disturbance.* Residents shall exercise extreme care to minimize noise and to use musical instruments, radios, televisions, amplifiers, or any other device so as to not disturb other residents. Noise disturbances shall subject the Owner of the Unit from which the noise originates to a fine, as levied by the Board in its sole discretion.
- (c) *Signs.* Signs may be posted only in a manner consistent with the Governing Documents.
- (d) *Increase in Insurance Cost.* Nothing shall be done or kept within any Unit or on the Common Areas which will increase the cost of insurance to the Association or to other Owners. No Owner shall permit anything to be done or kept within their Unit or in the Common Areas which will result in cancellation of insurance.
- (e) *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, decking, patios, pergolas, hot tubs/spas or pergolas, to the exterior of the Unit, or to Maintained Areas on their 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 Charter, Design Guidelines and Community-Wide Standard..
- (f) *Association Rules and Regulations.* In addition to the restrictions and requirements above, as well as any rules and regulations adopted by the Association, the Board from time to time may adopt such additional rules and regulations governing the conduct of persons and the operation and use of the Units and Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of all property within the Project. Reasonable fines may be levied and collected as an assessment for violations of said rules and regulations and for violations of any restrictions contained in this Supplement or

other Governing Documents. A schedule of fines shall be adopted by the Board specifying the amounts of such fines, and any other provisions or procedures related to, and prior to, the levying of such fines.

2. MAINTENANCE OBLIGATIONS

(a) *Owner's Responsibility Regarding Buildings and Units.* 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 Unit, including any non-exterior doors. Each Owner shall furnish and be responsible for, at such Owner's own expense, all of the maintenance, repairs and replacements within the Owner's Unit. Such obligation shall include, without limitation:

1. maintenance, repair and replacement of all interior and exterior doors, including interior and exterior caulking (provided that the Association's contractor(s) may caulk as needed and appropriate in connection with an exterior painting project), thresholds, casings and door jams, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, fireboxes of fireplaces and any other materials constituting the finished surfaces of floors, ceilings, or interior walls, except that the Association shall retain the obligation to paint the exterior of the Unit's exterior doors, including thresholds, casings and door jams.
2. maintenance, repair and replacement of all windows and window components including but not limited to window frames, skylights, and door glass or equivalent materials, caulking, and the interior and exterior cleaning of all windows, skylights and door glass, except that the Association shall retain the right and obligation to paint the exterior portion of window frames and window shutters.
3. maintenance, repair and replacement of all utility lines (such as power, natural gas, water, sewer, telecommunications, cable and any other future utility lines) that serve the Owner's Unit from the point of connection, as well as maintaining, running, insulating, and/or sufficiently heating utility lines and any exterior hose bibs that are exclusively used by that Owner to prevent frozen pipes regardless of whether or not the Owner's Unit is occupied at the time, and any pop-up drains located on an Owner's lot (if located within an Owner's fenced yard), to ensure proper functionality and drainage;
4. maintenance of decking, patios (inclusive of, but not limited to, posts, balusters, railings, skirting, and steps), balconies, exterior screens, shutters and chimney flues, that are with in Owner's exclusive control, in a clean and sanitary condition, free of pests and rodents, and in good order and repair (provided, however, that the Association shall retain the right to

paint or repaint any decking or patios, inclusive of posts, balusters, railings, skirting, and steps, to maintain a harmonious aesthetic appearance in the Project).

5. maintenance, repair and replacement of the Owner's garage door, including the mechanical systems and all parts of the door, except that the Association shall maintain the exterior painting of the exterior of the garage door. The Association may seek reimbursement or contribution for any damages arising from the negligent or intentional damage to garage doors by an Owner or the Owner's tenants, family members, guests, visitors, or invitees
 6. maintenance, repair and replacement of the garage interior concrete slab and driveways or driveway apron. The Owner is also responsible for maintenance of patios, stairs and walkways which serve the Owner's Unit exclusively;
 7. maintenance, repair and replacement of all of the following which serve the Owner's Unit exclusively: lighting fixtures (except exterior building mounted lights and walkway lights which are not located within patios and balconies which are not exclusively controlled by the Owner), fans, plumbing fixtures, stoves, refrigerators, hot water heaters, air conditioning units (including compressors, condensers and forced air units) and other HVAC systems and installations, electrical systems and installations, any part of a solar energy system, intercoms, security systems and other such appliances, and fixtures and decorations as an Owner may install;
 8. pest control on the interior of an Owner's Unit;
3. **ADDITIONAL OWNER COVENANTS.** The Owner shall not alter any utility lines, pipes, wires, conduits or systems that serve one or more other Units. 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 good repair the interior of his or her Unit, including the fixtures thereof. All fixtures and equipment installed within the Unit shall be maintained and kept in good 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 Unit is located, impair any easement or hereditament, or violate any laws, ordinances, regulations and codes of any federal, county, city, or any other agency or entity which may have jurisdiction over said Lot and/or Unit. Any expense to the Association for investigation or enforcement under this provision shall be borne by Owner if such investigation establishes a violation of this provision.
4. **MISCELLANEOUS PROVISIONS**

- (a) *Joint Owners.* In any case in which two or more persons share the ownership of any Unit, regardless of the form of ownership, the responsibility of such persons to comply with this Supplement shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter in accordance with the Bylaws.
- (b) *Interpretation.* All questions of interpretation or construction of any of the covenants or restrictions in this Supplement shall be resolved by the Board, and its decision shall be final, binding and conclusive on all parties affected for all purposes. The covenants, restriction, and terms of this Supplement are to be interpreted broadly to give effect to the Association's role as the governing body of the Project and to grant all the powers necessary for management of the common property, administration of the servitude regime, carrying out other functions set forth herein, and furthering the purposes of the Association. The enumeration of specific items, acts, rights, or powers in this instrument does not limit or restrict and is not to be construed or interpreted as limiting or restricting, the general powers granted to the Association or Board except where powers are expressly restricted.
- (c) *Premises Liability.* From the time that the Common Area, or any portion thereof, is opened and put into use for the enjoyment of Owners, Founder shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners, and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities; inasmuch as the control, operation, management, use and enjoyment, of the common area shall be within, under, and subject to the Association-and not Founder, and an Owner shall defend, indemnify and hold harmless the Founder against such claim, loss or liability asserted by such Owner or their guest, invitee, licensee, tenant, or visitor. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of the Common Area to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.
- (d) *Notice of Sale, Mortgage, Rental, or Lease.* Immediately upon the sale, mortgage, rental, or lease of any Unit, the Owner shall promptly inform the Association of the name and address of said grantee, vendee, mortgagee, lessee, or tenant.