

# EXPEDITE

## ARTICLES OF INCORPORATION

OF

### DAYBREAK COMMUNITY ASSOCIATION, INC.

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Utah Div. Of Corp. & Comm. Code

I, the undersigned, being of the age of eighteen years or more, acting as incorporator of a corporation under the Utah Revised Nonprofit Corporation and Cooperative Association Act, *Utah Code Ann. §16-6a-101, et seq.*, as it may be amended, do hereby adopt the following Articles of Incorporation for such corporation:

**Article 1. Name.** The name of the Corporation is the Daybreak Community Association, Inc. (the "**Association**").

**Article 2. Principal Office.** The address of the initial principal office of the Association and the initial mailing address of the Association is 5295 South 300 West, Suite 475, Murray, Utah 84107.

**Article 3. Duration.** The Corporation shall exist in perpetuity unless otherwise terminated or dissolved by law or in accordance with Article 12.

**Article 4. Applicable Statute.** The Corporation is a nonprofit corporation organized pursuant to the provisions of the Utah Revised Nonprofit Corporation Act, §16-6a-101, *et seq.* ("**Code**").

**Article 5. Definitions.** All capitalized terms used herein which are not defined shall have the meaning set forth in the Community Charter for Daybreak, recorded or to be recorded by Kennecott Land Company, a Delaware corporation ("**Founder**"), in the Office of the Recorder of Salt Lake County, Utah, as it may be amended from time to time (the "**Charter**").

**Article 6. Purposes and Powers.** The Association does not contemplate pecuniary gain or profit, direct or indirect, to its members.

(a) By way of explanation and not limitation, the purposes for which the Association is formed are:

(i) to be and constitute the Association to which reference is made in the Charter, to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified therein, in the By-Laws of Daybreak Community Association, Inc. ("**By-Laws**"), and as provided by law; and

(ii) to provide an entity for the furtherance of the interests of the owners of the real property that is described in and submitted to the terms of the Charter (the "**Community**").

(b) In furtherance of its purposes, the Association shall have the following powers, which, unless indicated otherwise by the Charter or By-Laws, may be exercised by its board of directors:

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(i) all of the powers conferred upon nonprofit corporations by common law and the Utah statutes in effect from time to time;

(ii) all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles of Incorporation, the By-Laws, or the Charter, including, without limitation, the following:

(A) to fix and collect assessments and other charges to be levied pursuant to the Charter;

(B) to lease, manage, control, operate, maintain, repair, and improve property subject to the Charter or any other property as to which the Association has a right or duty to provide such services pursuant to the Charter, By-Laws, or any covenant, easement, contract, or other legal instrument;

(C) to enforce covenants, conditions, or restrictions affecting any property, to the extent the Association may be authorized to do so under the Charter, By-Laws, or other recorded covenants;

(D) to engage in activities that will actively foster, promote, and advance the common interests of all owners of property subject to the Charter;

(E) to buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Association;

(F) to borrow money for any purpose, subject to such limitations as may be set forth in the By-Laws;

(G) to enter into, make, perform, or enforce contracts of every kind and description and to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in concert with any other association, corporation, or other entity or agency, public or private;

(H) to act as agent, trustee, or other representative of other corporations, firms, or individuals and, as such, to advance the business or ownership interests of such corporations, firms, or individuals, as the Board deems advisable in its business judgment;

(I) to adopt, alter, and amend or repeal such By-Laws as may be necessary or desirable for the proper management of the Association's affairs, consistent with the Charter; and

(J) to provide or contract for services to the Community as the Board of Directors may determine to be necessary or desirable to supplement the services provided by local government.

The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers that may now or hereafter be allowed or permitted by law;

and the powers specified in each of the paragraphs of this Article are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provisions of this Article.

**Article 7. Membership.** The Association shall be a membership corporation without certificates or shares of stock. The Founder, for such period as is specified in the Charter, and each Person who is the Owner of a Unit within the Community (as such capitalized terms are defined in the Charter) shall be a member of the Association and shall be entitled to such voting rights and membership privileges as are set forth in the Charter and the By-Laws.

**Article 8. Board of Directors.** The Association's business and affairs shall be conducted, managed, and controlled by a Board of Directors ("**Board**") performing the same role as a board of directors under the Code. The Board may delegate its operating authority to such companies, individuals, or committees as it, in its discretion, may determine.

The Board shall consist of not less than three or more than seven members, as provided in the By-Laws. The initial Board shall consist of three directors. The names and addresses of the initial directors, who shall hold office until their successors are elected and have qualified or until removed, are as follows:

John Taylor Potts  
5295 South 300 West, Suite 475  
Murray, Utah 84107

Keith Lee Morey  
5295 South 300 West, Suite 475  
Murray, Utah 84107

Marshall Bruce Snyder  
5295 South 300 West, Suite 475  
Murray, Utah 84107

The method of election, removal, and filling of vacancies, the term of office, and the number of directors shall be as set forth in the By-Laws.

**Article 9. By-Laws.** The By-Laws shall be adopted by the Board and may be altered, amended, or rescinded in the manner provided in the By-Laws. Provisions for the regulation of the internal affairs of the Association shall be set forth in the By-Laws.

**Article 10. Indemnification of Directors.** The Association shall indemnify its officers, directors, and committee members as and to the extent required by the By-Laws. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Association for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

**Article 11. Amendments.** These Articles of Incorporation may be amended only upon a resolution duly adopted by the Board and approved by the affirmative vote of members representing at least two-thirds (2/3) of the total number of Units in the Community; provided, the members shall not be entitled to vote on any amendment to these Articles of Incorporation adopted for the sole purpose of complying with the requirements of any governmental or quasi-governmental entity or any institutional lender authorized to fund, insure, or guarantee mortgages on individual Units, which amendments may be adopted by the Board without a membership

vote. During the Development and Sale Period, the Founder's consent shall also be required for any amendment.

**Article 12. Dissolution.** The Corporation may be dissolved only as provided in the By-Laws and by the laws of the State of Utah.

**Article 13. Merger and Consolidation.** The Association may merge or consolidate only upon a resolution duly adopted by its Board and members representing at least two-thirds (2/3) of the total number of Units in the Community. During the Development and Sale Period, the Founder's written consent shall also be required.

**Article 14. Registered Agent and Office.** The initial registered office of the Association is Gateway Tower East, Suite 900, 10 East South Temple, Salt Lake City, Utah 84133. Such office may be changed at any time by the Board without amendment of these Articles of Incorporation.

The Association's initial registered agent at such address shall be

Corporation Service Company

We hereby acknowledge and accept appointment as the registered agent:

*JKP*  
Name: Kurt Pleuder  
Its: Assistant Vice-President  
Registered Agent

**Article 15. Incorporator.** The name of the incorporator of the Association is John Taylor Potts, and such incorporator's address is 5295 South 300 West, Suite 475, Murray, Utah 84107.

IN WITNESS WHEREOF, I, John Taylor Potts, the undersigned incorporator, have executed these Articles of Incorporation in duplicate this 14 day of APRIL, 2004, and say:

That I am the sole incorporator herein, that I have read the above and foregoing Articles of Incorporation and know the contents thereof, and that the same is true to the best of my knowledge and belief, excepting as to matters herein alleged upon information and belief and as to those matters they believe to be true.

*John Taylor Potts*  
John Taylor Potts, Incorporator