

Assessment Collection Policy

WHEREAS, The Daybreak Community Association Board of Directors is empowered to conduct, manage, and control the affairs and activities of the Association, and has this authority pursuant to Chapter 3, C, Powers and Duties of the Bylaws of Daybreak Community Association.

WHEREAS, Daybreak has been established and is administered pursuant to various documents, described in Chapter 1 of the Community Charter for Daybreak, that have a legal and binding effect on all owners, which include the resolutions the Board adopts.

WHEREAS, The Board of Directors of the Association finds there is a need to adopt an Assessment Collection Policy pursuant to Chapter 12.5 Authority to Assess Owners; Time of Payment and 12.6 Obligation for Assessment, of the Community Charter for Daybreak.

NOW THEREFORE, IT IS RESOLVED that the following Daybreak Assessment Collection Policy be adopted.

Daybreak Assessment Collection Policy

1. **POLICY OBJECTIVE.** The collection of assessments pursuant to the Community Charter for Daybreak and this Assessment Collection Policy will be governed by the following objective:

a. The Association will pursue collection of all Annual Assessments according to the steps described. Should the recovery of amounts owing by a particular Property and the Owner thereof require commencement of legal proceedings, those proceedings will be initiated for which the unpaid annual assessments are due, and the Association will seek to recover all amounts due through the completion of any proceeding which may be filed, including, where appropriate and allowed, acceleration of the unpaid indebtedness for the entire year in the name of the Owner of the Property.

b. At each step within the collection process, the Board will analyze the facts and circumstances then known concerning a given delinquency to direct collection efforts toward the most expedient course of action for curing the delinquency, including the filing of a lawsuit if such is deemed reasonable and necessary.

c. Certain Units within the Daybreak Association (the Master Association) may be subject to Assessments from Sub Associations in addition to the Assessments due and owing to the Daybreak Association. Sub Associations may have their own Collection and Enforcement Policies; all Associations within the Daybreak Association may, at their own election, pursue their own collections or work with other Associations. In any event, delinquent Owners are responsible for all costs of collection incurred by all Associations.

2. OWNERSHIP INTERESTS. Pursuant to Charter Section 12.6.(a), Personal Obligation, the person who is the Owner of a Property as of the date an assessment becomes due is personally liable for the payment of the assessment. The personal obligation for Delinquent Assessment shall not pass to the successors in title of the Owner unless expressly assumed by them. As used herein, the term "Delinquent Owner" refers to that person who held title to a Property on the date an assessment became due. As used herein, the term "Current Owner" refers to that person who holds title to a Property on the date relevant to the reference herein to such person. Unless expressly denoted otherwise, the "Owner" of a Property refers to the Delinquent Owner or the Current Owner or both, as may be appropriate under the circumstances at hand.

3. DUE DATES. The due date for a given assessment is prescribed by Chapter 12, Section 12.5 of the Charter and is referred to in this Assessment Collection Policy as the "Due Date". The current due dates are January 1, April 1, July 1, and October 1, of each year. This Assessment Collection Policy affixes a delinquency date of the 15th day of the month, beyond the above stated "Due Dates" as being delinquent if not paid in full, and is referred to in this Assessment Collection Policy as the "Delinquency Date".

4. LATE PAYMENT FEE ESTABLISHED. A late fee is established pursuant to Section 12.6(a) in an amount approved by the Board of Directors by Resolution. These late fees shall accrue and accumulate upon the assessment due dates, for such time as the Assessments are delinquent. Interest shall accrue on past due balances, and shall be collectible by the association, whether or not the interest is reflected upon invoices that may be prepared and sent to Owners.

5. HANDLING CHARGES AND RETURNED CHECK FEE. In order to recoup for costs incurred because of the additional administrative expenses associated with collecting delinquent assessments, the following fees and charges shall be assessed and are part of the Collection Policy:

a. Any handling charges, administrative fees, postage, or other expenses incurred by the Association in connection with the collection of any assessment or related amount owing beyond the Delinquency Date for such assessment will become due and owing by the Owner responsible for the unpaid assessments which are the focus of the collection action.

b. A reasonable charge will become due and payable for any check tendered to Daybreak Community Association which is dishonored by the drawee bank of such check, the charge being in addition to any other fee or charge Daybreak Community Association is entitled to recover from an Owner in connection with collection of assessments owing respect to such Owner's Property.

c. Any fee or charge becoming due and payable pursuant to this paragraph will be added to the amount outstanding and is collectible to the same extent and in the same manner as the delinquent assessment.

d. The fees and charges arising from the necessity of notices, letters, liens and related collection proceedings will be approved by the Board of Directors by Resolution.

e. All fees and costs imposed in connection with collection proceedings are subject to change, with or without notice. Fees and costs will accumulate as collection proceedings continue.

6. OWNER PRIVILEGES. Pursuant to Section 8.2(a)(iii) of the Charter, the Owner's rights to use Common Area Facilities (including the rights of other Property occupants) and services including but not limited to Century Link Telecommunity, which the Association provides will be suspended beginning 30 days following the "Due Date" for any assessment owing by such Owner and will remain suspended until the assessment and all related interest, handling charges and attorney's fees are paid in full or other arrangements have been made. Notice of the suspension of voting rights and owner privileges shall be included in the "Second Late Notice and Pre-Lien Demand".

7. VOTING PRIVILEGES. Pursuant to Section 8.2(a)(ii) of the Charter, the voting rights of an Owner will be suspended beginning 30 days following the "Due Date" for any assessment owing by such Owner and will remain suspended until the assessment and all related interest, handling charges and attorney's fees are paid in full or other arrangements have been made. Notice of the suspension of voting rights and owner privileges shall be included in the "Notice of Lien" letter, and will be contemporaneous with the referral of the matter to counsel.

8. BILLING. Currently, the Daybreak Community Association (Master Association) and Daybreak Sub Association assessment billings, if the latter is applicable, are mailed to residents by the Master Association on one statement. This is done as a courtesy to the various Sub Associations and the associated residents. This billing arrangement can be discontinued by either Association, at any time. At that time, each Association will then be responsible for all billings and collections of their specific assessments due.

9. APPLICATION OF FUNDS RECEIVED. All moneys received by the Daybreak Community Association, except for funds received on behalf of a Sub Association, will be applied to amounts outstanding to the extent of and in the following order:

- a. First to the unpaid assessment amount;
- b. Next, to interest accrued;
- c. Last to late fees, collection costs and attorney's fees incurred by or on behalf of the Association.

All monies received on behalf of a Daybreak Sub Association by the Master Association, will be paid to that association.

10. OWNERSHIP RECORDS. All collection notices and communications will be directed to those persons shown by the records of the Association as being the Owner of the Property for which assessments are due and will be sent to the most recent address of such Owner solely as reflected by the records of the Association. Any notice or communication directed to a person at an address, in both cases reflected by the records of the Association as being the Owner and address for a given property, will be valid and effective for all purposes pursuant to the Community Declaration and this Assessment Collection and Enforcement Policy until such time as there is actual receipt by the Association of written notification of any change in the identity or status of such Owner or its address or both.

11. NOTIFICATION OF OWNER'S REPRESENTATIVE. Where the interest of an Owner in a Property has been handled by a representative or agent of such Owner or where an Owner has otherwise acted so as to put the Association on notice that its interest in a Property has been and are being handled by a representative or agent, any notice or communication from the Association pursuant to this Assessment Collection and Enforcement Policy will be deemed full and effective for all purposes if given to such representative or agent.

12. NOTIFICATION TO OWNER.

a. LATE NOTICE. A payment by a member is deemed delinquent if it is unpaid fifteen (15) or more days after the due date. A late notice will be sent and the account will be charged a late fee in an amount approved by the Board of Directors by Resolution.

b. LATE LETTER. No sooner than Forty-five (45) days after the due date, the Association will send a letter (referred to as the "Initial Late Letter") to the Owner setting forth the amount of the delinquent assessment owing. The Initial Late Letter will be sent via regular first-class mail. All fees associated with this letter will be charged to the Owner's account.

c. DEMAND-LIEN LETTER. No sooner than Sixty (60) days beyond the due date, the Association will send a demand letter (referred to as the "Demand-Lien Letter") to the Owner making formal demand for immediate payment for all outstanding amounts. The Demand Letter will be sent via regular and certified mail, return receipt requested. All fees and costs associated with this letter will be charged to the Owner's account.

d. NOTICE OF LIEN. Ninety (90) days after the due date, if an Owner fails to pay in full the entire amount covered by a Demand Letter by the date specified, A Notice of Lien letter will be issued. In the event of the failure to pay the entire balance which is due within ten days of the Notice of Lien Letter, the Board, (and/or its agents) may cause to be prepared and recorded with the Salt Lake County Recorder a written notice of Lien (referred to as the "Notice and Claim of Lien") and may, at its option, accelerate the unpaid indebtedness for the entire year in the name of the Owner of the Property covered by the lien.

e. REFERRAL TO COUNSEL. Contemporaneously with the filing of the Notice of Lien, the collection of the Assessment will be referred to counsel. In the event that the entire balance is not paid within ten days of the Notice of Intent to Lien letter, the Association's

counsel will commence legal proceedings, and all communications respecting the deficiency must thereafter be communicated through counsel. All fees and costs incurred thereafter, including attorney's fees, will be charged to the Owner's account or billed directly to the Owner by the Association's legal counsel.

f. COURT ACTION. One hundred and twenty-five (125) days after the assessment due date, a Court Action will be filed in the appropriate Court. All fees associated with preparation and filing of this Court Action will be charged to the Owner's account or billed directly to the Owner by the Association's legal counsel including, but not limited to, filing fees, process service fees, and additional court costs.

g. PERSONAL JUDGMENT SUIT. Where the Board has directed that the collection action to be taken is a suit for personal judgment against the Owner, upon the expiration of the time period given in the most recent demand for payment, the continued delinquency of unpaid assessments owing will be reported to the Board, together with all pertinent facts concerning the delinquency. Any further action will be taken at the discretion of the Board.

13. PAYMENT AGREEMENT. Neither the Association nor its designated agent has any obligation to accept partial payments on an assessment account. An owner may petition the Board of Directors in writing for a payment agreement to allow the owner to make periodic partial payments on the entire balance of the assessment account, in addition to the ongoing assessment payments, in amounts and on a payment schedule agreed to by the Board of Directors. Any agreement entered into with the owner shall be reasonable, as determined by the Board in its sole discretion, and for the sole purpose of assuring that the best interest of the Association is served. The payment agreement shall be in writing and a provision shall be included that failure to meet any term of the agreement shall give the Board the right to immediately continue the collection process without further notice to the owner. Any request for a payment agreement following the filing of a lawsuit must be directed to the Association through its counsel, and will require, as a condition thereof, for the confession and/or entry of judgment in the event of nonpayment. In the event assessments for both the Master Association and any Sub Association are being collected jointly, partial payments of Assessments and related fees shall be split between DCA and the sub association in proportion to the amount owing each association.

14. FORECLOSURE SUIT. The Board may, at its election, seek to pursue collection of proceedings via a foreclosure, either judicially or non-judicially. When allowed by law, such foreclosure may be in addition to, or in lieu of a personal collection action.

15. ALTERNATIVE COLLECTION PROCEDURES. At each step in the collection process the Board, acting with input and recommendation from management and counsel, may evaluate which course of legal action appears to be in the best interest of the Association for recovery of unpaid assessments. Where foreclosure of the assessment lien in favor of the Association against a Property, together with pursuit of personal judgment against the Owner, is determined to be advisable, the Board will direct counsel to proceed accordingly.

16. VERIFICATION OF INDEBTEDNESS. Where an Owner requests verification of the indebtedness, Management will, upon notification of the Owner's request, supply such verification within fifteen (15) business days before any further collection action is taken with respect to such Owner. The exercise of the collection rights of the Association regarding assessments will in all ways comply with the Fair Debt Collection Practices Act and Utah Law, as may be applicable.


IT IS FURTHER RESOLVED THAT this Assessment Collection and Enforcement Policy is effective upon adoption hereof, to remain in force and effect until revoked, modified, or amended.

IN WITNESS WHEREOF, the said Board of Directors has caused this Resolution and Policy to be signed by its President and Secretary, this 23rd day of May, 2012.

DAYBREAK COMMUNITY ASSOCIATION

By: 

Ty McCutcheon, President

By: 

Cameron Jackson, Secretary