

After Recording Return To:  
Law Office of Kirk A. Cullimore  
Attn: Sam Bell  
644 East Union Square  
Sandy, UT 84070

**AMENDED AND RESTATED DECLARATION  
OF  
RESTRICTIVE COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
KAUFMAN AND BROAD AT PILGRIMS LANDING  
(including Bylaws)**

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**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

is made and executed this \_\_\_ day of \_\_\_\_\_, 2008, by Harbor Point Home Owners Association with its principal place of business located in Lehi, State of Utah.

**RECITALS**

- A. A Declaration of Restrictive Covenants, Conditions and Restrictions were filed November 18, 2008, as Entry No. 119013:1998, in the Utah County Recorder's office;
- B. The original declaration was amended February 12, 1999, as Entry No. 17724:1999, and again May 24, 1999, as Entry No. 60311:1999 in the Utah County Recorder's office;
- C. The Bylaws were adopted January 22, 1999 and amended March 12, 2007. The amendment to the Bylaws was recorded as Entry No. 61059:2007 in the Utah County Recorder's Office;
- D. This Amended and Restated Declaration supercedes and replaces in its entirety the previously recorded Declaration and all amendments thereto, the previous Bylaws and all amendments thereto, and shall be binding on all Lots in all phases of the Project;
- E. Harbor Point Home Owners Association, is the authorized representative of the owners of certain real property known as Kaufman and Broad at Pilgrims Landing, located in Utah County, Utah and more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Project");
- F. The Subdivision is a portion of the property constituting a certain project known as "Pilgrim Landing" concerning which a Master Declaration of Covenants, Conditions and Restrictions was filed with the Utah County Recorder's Office on July 30, 1998, as Entry No. 75697;
- G. It is intended that all Owners, guests, invitees and residents abide by these covenants, conditions and restrictions in order to maintain property values and a desirable living environment;
- H. The Association controls the Project as managing agent for the Unit Owners;
- I. The time to expand the Project has expired;
- J. Pursuant to Utah Code Ann. § 57-8a-104, more than sixty-seven percent (67%) of the Owners have approved this amended and restated Declaration;
- K. Pursuant to Article X, Section 10.1 of the Bylaws, more than fifty-one percent (51%) of the Owners have approved the amended and restated Bylaws;
- L. These covenants, conditions, restrictions, easements and limitations shall run with the said real property and shall be binding on all parties having or acquiring any right, title or interest in the described real property or any part thereof and shall inure to the benefit of each owner thereof and are imposed upon said real property and every part thereof as a servitude in favor of each and every parcel thereof as the dominant tenement or tenements;

NOW, THEREFORE, for the benefit of the Project and the Owners thereof, the Association hereby

executes this Declaration, for and on behalf of all of the Owners.

## ARTICLE I. DEFINITIONS

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

### **Section 1.01 Articles of Incorporation or Articles**

Articles of Incorporation or Articles shall mean and refer to the Articles of Incorporation for Harbor Point Home Owners Association, Inc., on file with the Utah State Department of Commerce, as amended.

### **Section 1.02 Assessment**

Assessment means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the terms of this Declaration, the Bylaws or applicable law.

### **Section 1.03 Association**

Association means and refers to Harbor Point Home Owners Association. It is intended that the Association will be incorporated under the laws of the state of Utah. Said Association shall administer the affairs of all Lots, within the Property.

### **Section 1.04 Board of Trustees**

Board of Trustees shall mean and refer to the Board of Trustees of Harbor Point Home Owners Association, Inc., as it exists at any given time.

### **Section 1.05 Bylaws**

Bylaws mean the Bylaws of the Association and recorded simultaneously with this Declaration, as they may be amended from time to time.

### **Section 1.06 Common Areas**

Common Areas means shall mean the property (including improvements thereon) shown on the subdivision plat for the Project as Common Area, which property shall be owned by the Association for the common use and benefit of

the Members, and all other property owned by the Association for the common use and benefit of the Members.

### **Section 1.07 Common Expenses**

Common Expenses shall mean and refer to all sums which are expended on behalf of all the Owners and all sums which are required by the Board to perform or exercise its functions, duties, or rights under the this Declaration, the management agreement for operation of the Project, and such rules and regulations as the Board may from time to time make and adopt.

### **Section 1.08 Common Profits**

Common Profits shall mean and refer to the balance of income, rents, profits and revenues from the Common Areas remaining after deduction of the Common Expenses.

### **Section 1.09 Dwelling**

Dwelling means a residential unit that is designated and intended for use and occupancy as a residence by a single family.

### **Section 1.10 Family**

Family shall mean and refer to Family as defined by the local zoning ordinance.

### **Section 1.11 Improvements**

Improvements means every structure or improvement of any kind, including but not limited to landscaping required under the Project Documents and any Dwelling, deck, porch, awning, fence, garage, carport, driveway, storage shelter or other product of construction efforts on or in respect to the Property (but does not include any exterior antenna or satellite dish, authorized in accordance with the Declaration).

### **Section 1.12 Lot**

Lot means a subdivided parcel, lot or plot of ground (exclusive of the Common Area) as designated on the Plat.

Lot shall also include mechanical equipment, ducts, pipes, and appurtenances located outside the Lots boundaries but designated and designed to serve only the Lot, such as air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Lot. All pipes, wires, conduits, or other public utility lines or installations serving only the Lot shall be considered part of the Lot.

**Section 1.13 Member**

Member shall mean and refer to an Owner.

**Section 1.14 Mortgage**

Mortgage shall mean any mortgage, deed of trust or other security instrument by which a Lot or any part thereof is encumbered.

**Section 1.15 Mortgagee**

Mortgagee shall mean a holder, insurer or guarantor of a first mortgage on a Dwelling or the beneficiary, insurer or guarantor of a first deed of trust on a Lot.

**Section 1.16 Owner**

Owner means the person or persons owning any Lot (including the holder of a vendee's interest under a land sale contract, unless otherwise stated in the contract), but does not include a tenant or holder of a leasehold interest or person holding only a security interest in a Lot (including the holder of a vendor's interest under a land sale contract, unless otherwise stated in the contract).

**Section 1.17 Plat, Map or Maps**

Plat, Map, or Maps shall mean and refer to the Maps on file with the Utah County Recorder for the Project.

**Section 1.18 Project or Property**

Project or Property means all of the land described in attached **Exhibit A**.

**Section 1.19 Project Documents**

Project Documents shall mean and refer to the Declaration of Covenants, Conditions and Restrictions, Bylaws, Articles of Incorporation, the Plat, and Rules and Regulations.

**Section 1.20 Resident**

Resident shall mean and refer to any person living or staying at the Project. This includes but is not limited to all lessees, tenants, and the family members of Owners, tenants or lessees.

**ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION**

**Section 2.01 Property Subject**

The real property which is, and shall be, transferred, held, sold, conveyed and occupied subject to this Declaration is located in Utah County, Utah, and is described on **Exhibit "A"** attached hereto, all of which real property is referred to herein as the "Property."

All of the Property shall be owned, conveyed hypothecated, encumbered, used, occupied and improved subject to this Declaration. The easements, covenants, conditions, restrictions and charges, described in this Declaration shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of the Association, and each Owner thereof.

**ARTICLE III. PROPERTY RIGHTS IN LOTS**

**Section 3.01 Use and Occupancy**

Except as otherwise expressly provided in this Declaration or the Bylaws, the Owner of a Lot shall be entitled to the exclusive use and benefit of such Lot and Dwelling. Each Lot shall be bound by, and the Owner shall comply with the Project Documents for the mutual benefit of the Owners.



**Section 3.02 Easements Reserved**

In addition to the easements shown on the Plat or provided for under this Declaration, the Bylaws or law, the following easements are hereby reserved for the benefit of the Owners and the Association:

(a) Right of Entry.

The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of performing maintenance and determining whether or not the Lot is in compliance with this Declaration and Bylaws. Requests for entry shall be made in advance and at a time convenient to the Owner, except in the case of an emergency, when such right shall be immediate. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot. The right of entry granted by the subsection applies only to Lots upon which the Association has maintenance responsibilities as provided for in the Project Documents

(b) Utility Easements

The Association or any public utility provider shall have an easement over all Lots for the installation, maintenance and development of utilities and drainage facilities. The easement area of each Lot and all Improvements therein shall be maintained continuously by the Owner of the Lot of the Association in accordance with the terms of the Project Documents, except for those improvements for which a public authority or utility provider is responsible.

**Section 3.03 Easements Shown on the Plat**

Lots shall be subject to the easements shown on the Plat.

**ARTICLE IV. PROPERTY AND USE RIGHTS IN COMMON AREA**

**Section 4.01 Title to Common Area**

Title to the Common Area shall be held by the Association.

**Section 4.02 Member's Right of Enjoyment**

(a) The Project will have permanent open spaces and other common areas and facilities as designated in the Plat for the benefit of all owners. Every member of the Association shall have a non-exclusive right and easement for the use, benefit and enjoyment in and to the Common Area and such nonexclusive right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions herein set forth.

(b) Except as otherwise permitted by the provisions of this Declaration, the Common Area shall be retained in the state of improvement it is in as originally constructed, and no other Structure or Improvement of any kind shall be erected, placed or maintained thereon. Structures or improvements designed exclusively for community use, shelters, benches, chairs or other seating facilities, fences and walls, walkways, playground equipment, game facilities, drainage and utility structures, grading and planting, may be erected, placed and maintained thereon for the use, comfort and enjoyment of the members of the Association, or the establishment, retention or preservation of the natural growth or topography of the area, or for aesthetic reasons.

(c) No portion of the Common Area may be used exclusively by any Owner or Owners for personal gardens, storage facilities.

**Section 4.03 Nuisance**

No noxious or offensive activity shall be carried on upon the Common Area nor shall anything be done thereon which will become an annoyance or nuisance to the Project. Nuisances shall include, by way of reference and without limitation, failure to maintain landscaping, excessive noise after hours, offensive smells, leaving trash receptacle on the curb for more than 24 hours, failure to screen trash receptacle, second hand smoke drifting to neighboring Lots, and any other nuisance defined by law or by the Board by resolution.

**Section 4.04 Restrictions**

The right of each member of the Association to use the Common Area shall be subject to the following:

(a) Any rule or regulation now or hereafter set forth in this Declaration and, further, shall be subject to any rule or regulation now or hereafter adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Area;

(b) The right of the Association, in accordance with the Project Documents, to borrow money for the purpose of improving the Common Area in a manner designed to promote the enjoyment and welfare of the members, and in aid thereof to mortgage any of the Common Area;

(c) The right of the Association to take such steps as are reasonably necessary to protect the property of the Association against mortgage default and foreclosure;

(d) The right of the Association to suspend the voting rights and the rights to use of the Common Area for any infraction of any of the Project Documents after notice and opportunity for hearing.

(e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the members; and further subject to the written consent of the transferee or any relevant municipality; provided, however, that except no dedication, transfer, mortgage, or determination as to the purposes or as to the conditions thereof, shall be effective unless two-thirds (2/3) of the members of the Association consent to such dedication, transfer, purpose and conditions; and

(f) The right of the Association,

acting by and through its Board of Trustees, to grant licenses, rights-of-way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, or any other person; provided, however, that no such license, right-of-way or easement shall be unreasonably and permanently inconsistent with the rights of the members to the use and enjoyment of the Common Area.

(g) All of the foregoing rights specified in this Section shall inure to the benefit of, and be enforceable by, the Association, its respective successors and assigns, against any member of the Association, or any other person, violating or attempting to violate any of the same, either by action at law for damages or suit in equity to enjoin a breach or violation, or enforce performance of any term, condition, provision, rule or regulation. Further, the Association shall have the right to abate summarily and remove any such breach or violation by any member at the cost and expense of such member.

**Section 4.05 Delegation of Right of Use**

Any member of the Association may delegate its rights to the use and enjoyment of the Common Area to family members who reside permanently with such member and to its tenants, contract-purchasers, invitees and guests, all subject to such reasonable rules and regulations which the Association may adopt and uniformly apply and enforce.

**Section 4.06 Compliance with Covenants and Restrictions and Rules and Regulations**

Each Owner and Resident shall comply with the covenants and restrictions imposed by this Declaration on the use and enjoyment of the Common Area. Further, each Owner and Resident shall fully and faithfully comply with the rules, regulations and restrictions applicable to use of the Common Area, as such rules, regulations and restrictions are from time to time

adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Area.

**ARTICLE V. ENCROACHMENTS**

***Section 5.01 Encroachments***

No Lot or Dwelling shall encroach upon an adjoining Lot, Dwelling or the Common Area without the express written consent of the Board. If, however, an encroachment occurs due to the settlement or shifting of a Structure or any other reason whatsoever beyond the control of the Board of Trustees or any Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives and assigns, to provide for the encroachment and non disturbance of the Structure. Such easement shall remain in full force and effect so long as the encroachment shall continue.

***Section 5.02 Easements***

The conveyance or other disposition of a Lot shall be deemed to include and convey, or be subject to, any easements arising under the provisions of this Article without specific or particular reference to such easement.

***Section 5.03 Liability***

Nothing in this Section shall relieve an Owner of liability in the case of the Owner's willful misconduct or failure to adhere to the Plat.

**ARTICLE VI. ARCHITECTURAL CONTROL**

***Section 6.01 Architectural Control Committee***

(a) Unless delegated to a separate body of Lot Owners, the Board of Trustees shall serve as the Architectural Control Committee ("ACC").

(b) No Improvement shall be commenced, erected, placed or altered on any Lot until an application and construction plans and specifications, showing the nature, shapes, heights, materials, colors and proposed location of Improvements or changes have been submitted to and approved in writing by the ACC as provided in this article. It is the intent and purpose of this Declaration to assure quality of workmanship and materials, to assure harmony of exterior design with the existing improvements and landscaping and as to location with respect to topography and finished grade elevation.

(c) The Board of Trustees shall function as the ACC and their terms as an ACC member shall be for as long as their Board of Trustee term. However, the Board of Trustees may elect to delegate the ACC functions to a separate committee. In such an event, the committee shall consist of no fewer than three (3) members. The terms of office for each member of the ACC, appointed by the Board, shall be for one (1) year unless lengthened or shortened by the Board of Trustees at the time of appointment. The Board may appoint any or all of its members for the ACC and there shall be no requirement for non-Board members to serve on the ACC.

***Section 6.02 Architectural Standards and Guidelines***

(a) The procedure and specific requirements for review and approval of an application shall be set forth in design guidelines and standards ("Architectural Standards and Guidelines") adopted from time to time by resolution of the Board of Trustees at its sole discretion.

(b) The Architectural Standards and Guidelines shall interpret and implement the provisions of this Declaration and the Bylaws for architectural review and guidelines for architectural design of Dwelling and other Improvements, including, but not limited to,

decks, porches, awnings, carports, garages, and storage structures, color schemes, exterior finishes and materials and similar features which may be used on the Property and landscaping; however, Architectural Standards and Guidelines may not be in derogation of the minimum standards established by this Declaration and the Bylaws.

**Section 6.03 Action by Committee**

A majority of the members of the ACC shall have the power to act on behalf of the ACC, without the necessity of a meeting and without the necessity of consulting the remaining member or members of the ACC. All decisions rendered by the ACC must be by written instrument setting forth the action taken by the members consenting thereto.

**Section 6.04 Duties**

The ACC shall consider and act upon the proposals or plans submitted pursuant to this article.

**Section 6.05 ACC Decisions**

The ACC shall render its approval or denial decision with respect to the proposal within thirty (30) business days after it has received all material required by it with respect to the application. All decisions shall be in writing. If the ACC fails to render its decision of approval or denial in writing within such thirty (30) business days of receiving all material required by it with respect to the proposal, the application shall be deemed approved. The ACC shall store ACC applications in accordance with industry standards.

**Section 6.06 ACC Discretion**

The ACC may, at its sole discretion, withhold approval of any proposal if the ACC finds the proposal would be inappropriate for the particular Lot or incompatible with the Architectural Standards and Guidelines. Considerations such as sitting, shape, size, color, design, height, solar access or other effects on the enjoyment of other Lots or Common Area, and any other factors which the ACC reasonably

believe to be relevant, may be taken into consideration by the ACC in determining whether or not to approve any proposal.

**Section 6.07 Waiver, Precedent, Estoppel**

Approval or disapproval by the ACC of any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent, waiver or estoppel impairing its right to withhold approval or grant approval as to any similar matter thereafter proposed or submitted to it.

**Section 6.08 Appeal**

Any Owner adversely impacted by action of the ACC may appeal such action to the Board of Trustees. If, however, the ACC's duties are being carried out by the Board of Trustees, then no such right to appeal shall exist.

All appeals and hearings shall be conducted in accordance with procedures set forth by the Board by resolution.

**Section 6.09 Effective Period of Consent**

The ACC's approval of any proposal shall automatically be revoked within three (3) months after issuance unless construction or other work relating to the proposal has been commenced or the Owner has applied for and received an extension of time from the ACC.

**Section 6.10 Determination and Notice of Noncompliance**

(a) Inspection. The ACC may inspect from time to time, all work performed and determine whether it is in substantial compliance with the approval granted.

(b) Notice of Noncompliance. If the ACC finds that the work was not performed in substantial conformation with the approval granted, or if the ACC finds that the approval required was not obtained, the ACC shall notify the Owner in writing of the noncompliance. The notice of noncompliance shall specify the particulars of noncompliance and shall require

the owner to remedy the noncompliance by a specific date.

**Section 6.11 Noncompliance**

Any construction, alteration, or other work done in violation of this Declaration shall be deemed to be in noncompliance. Upon receipt of a Notice of Noncompliance, Owners shall, at their own cost and expense, remove such nonconforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the ACC or Board of Trustees, or their designee, shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work, without being deemed to be a trespasser. All costs incurred by the Association shall be an Individual Assessment against the Owner.

**Section 6.12 Liability**

Neither the Board of Trustees, ACC nor any member thereof shall be liable to any Owner, occupant, builder or other person for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ACC or a member thereof, provided only that the member has in accordance with the actual knowledge possessed by him or her, acted in good faith. The ACC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Owner.

**Section 6.13 Estoppel Certificate**

(a) Within fifteen (15) business days after written request is delivered to the ACC by an Owner, and upon payment to the ACC of a reasonable fee fixed by the ACC to cover costs, the ACC shall provide such Owner with a certificate executed by the chairman, or other authorized member of the ACC certifying

with respect to any Lot owned by the Owner, that as of the date thereof either:

(i) All improvements made or done upon or within such Lot by the Owner that are subject to the requirements of this article comply with the Declaration and the Bylaws; or

(ii) Such improvements do not comply, in which event; the certificate shall also identify the non-complying improvements and set forth with particularity the nature of such noncompliance.

(b) The Owner, Owner's heirs, devisees, successors and assigns shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between and among the ACC, the Association and all Owners and such persons deriving any interest through any of them.

**Section 6.14 Fees**

There may be an application fee in an amount to be determined by the ACC for any new construction upon a Lot. There may also be an application fee to be determined by the ACC for all other Improvements other than the construction of new Dwelling. In addition to any fees set forth herein, the ACC may charge a reasonable application fee and charge applicants additional costs incurred or expected to be incurred by the ACC to retain architects, attorneys, engineers, landscape architects and other consultants to advise the ACC concerning any aspect of the application or compliance with any appropriate architectural criteria or standards. Such fee schedule shall be adopted by Board resolution and shall be collectible as assessments pursuant to this Declaration and the Bylaws.

**ARTICLE VII. ASSESSMENTS**

**Section 7.01 Covenant for Assessment:**

(a) Each Owner, by acceptance of a deed hereafter conveying any such Lot to it,

whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments:

1) Annual assessments (the "Annual Assessment") as provided in Section 7.02 below;

2) Special assessments ("Special Assessments") as provided in Section 7.05 below;

3) Emergency assessments ("Emergency Assessments") as provided in Section 7.06 below;

4) Individual assessments ("Individual Assessments") as provided in Section 7.07 below;

(b) Assessments shall be established and collected as provided in this article.

(c) No Owner may exempt itself from liability for Assessments by abandonment of any Lot owned by such Owner.

**Section 7.02 Annual Budget and Assessment:**

(a) Annual Budget. The Board shall prepare, or cause the preparation of, an annual budget for the Association, which shall provide, without limitation, for the maintenance of the landscaping, the common areas, private drives, and for the administration, management and operation of the Association. If Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

(b) Determination of Annual Assessment:

1) The Board of the Association shall fix the amount of the annual assessment ("Annual Assessment") against each Lot for each assessment period at least thirty (30) days

in advance of the beginning of the period. Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning any assessment period.

2) The omission by the Board, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.

**Section 7.03 Apportionment of Assessments**

Assessments shall be apportioned as follows:

1) Annual, Special and Emergency Assessments. All Lots shall pay their pro rata share of the Annual Assessment, Special Assessments and Emergency Assessments commencing upon the date the Lots are made subject to this Declaration. The pro rata share shall be based upon the total amount of each such assessment divided by the total number of original Lots. If an Owner combines original Lots, they shall pay one assessment for each original lot.

(b)

(c) Individual Assessments. Individual Assessments shall be apportioned exclusively against the Lots benefited or to which the expenses are attributable as provided in Section 7.07.

(d) Payment of Assessments. Upon resolution of the Board, installments of Annual Assessments may be levied and collected on a quarterly, semi-annual or annual basis rather than on the monthly basis. Any member may prepay one or more installments of any

Assessment levied by the Association, without premium or penalty.

**Section 7.04 Personal Obligation and Costs of Collection:**

(a) Assessments imposed under this Declaration, together with interest at a rate to be established by resolution of the Board, not to exceed the maximum permitted by law, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof, shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment became due.

(b) The personal obligation for any delinquent Assessment, together with interest, costs and attorneys' fees shall not pass to the Owner's successor or successors in title unless expressly assumed by such successor or successors or if title is acquired by quit-claim deed.

**Section 7.05 Special Assessments**

In addition to the Annual Assessments authorized in this Article, the Association may levy in any assessment year, a special assessment ("Special Assessment"), applicable for that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Areas; provided that such assessment shall first be approved by a majority of the votes of members of the Association, in accordance with the Bylaw procedures for member approval.

**Section 7.06 Emergency Assessment:**

(a) If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board shall, as soon as practicable, determine the approximate amount of the inadequacy and adopt a resolution which

establishes a supplemental budget and levies the additional assessment ("Emergency Assessment"). The resolution shall specify the reason for the Emergency Assessment.

(b) Any Emergency Assessment in the aggregate in any fiscal year would exceed an amount equal to fifty percent (50%) of the budgeted expenses of the Association for the fiscal year may be levied only if approved by a majority of the Owners in accordance with Bylaw procedures for member approval.

(c) Emergency Assessments shall be apportioned as provided in this Article.

**Section 7.07 Individual Assessments:**

(a) Any expenses benefiting or attributable to fewer than all of the Lots may be assessed exclusively against the Lots affected or benefited ("Individual Assessment"). Individual Assessments shall include, but are not limited to:

1) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with the provisions of this Declaration or rules and regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation of this Declaration, the Bylaws or any rules and regulations of the Association.

2) Any reasonable services provided to an unimproved or vacant Lot by the Association due to an Owner's failure to maintain the same in order to protect the health, safety and welfare of adjoining Lot owners and the Association in general.

3) Maintenance, repair, and replacement cost of private drives shall not be by Individual Assessment, but by Annual Assessment, Emergency Assessment or Special Assessment.

**Section 7.08 Nonpayment of Assessments**

Any assessment or portion thereof not paid within thirty (30) days after the due date (which shall be established by resolution of the Board):

(a) Shall be delinquent and shall bear interest from the date of delinquency at the rate, established by resolution of the Board, not to exceed the maximum rate permitted by law; and/or

(b) Shall be subject to a late charge in an amount to be determined by the Board by resolution; and

(c) If paid by installments, the Board may accelerate (including interest as provided for above) the remaining balance for the fiscal year and declare the remaining payments for the fiscal year due and payable.

**Section 7.09 Lien for Assessments**

All Assessments imposed shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article and shall be construed as a real covenant running with the land.

**Section 7.10 Subordination of Lien to Mortgages:**

(a) The lien of the Assessments provided for in this Article shall be subordinate to the lien of any first mortgagees or deeds of trust now or hereafter placed upon the Lot subject to assessment, except as provided in subsection (b) of this Section.

(b) The sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability for any Assessments thereafter becoming due, or from

the lien of any future assessment.

**Section 7.11 Enforcement of Lien**

The Association may establish and enforce the lien for any Assessment, including Annual, Special, Individual or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which the Assessment is made. The lien may be established and enforced for damages, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for in this Declaration or by law or awarded by a court for breach of any provisions of the Project Documents. The lien may be foreclosed in the same manner as either deeds of trust, mortgages, or in any other manner permitted by Utah law. The collection remedies stated herein are cumulative and the use of one does not preclude the use of other remedies.

**Section 7.12 Suspension of Voting Rights**

The Board shall have the right to suspend any Owner's right to vote during any period of time that the Owner carries a past due assessment balance of more than thirty (30) days.

**ARTICLE VIII. RESTRICTIONS ON USE**

**Section 8.01 Use of Lots - Residential Use - Subordination of Project Documents**

Each of the Lots in the Project is limited to residential use only. Each Lot and Owner is subject to the uses and restrictions imposed by such restrictions (including any parking restrictions). The Project Documents shall be subordinate to any municipal, state or federal law that is more restrictive than the Project Documents.

**Section 8.02 No Obstruction of Common Areas**

There shall be no obstructions of the Common Areas by the Owners, Residents, and their tenants, guests or invitees without the prior written consent of the Board. The Board may by



Rules and Regulations prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Lots or the Common Areas.

Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Board, except as specifically provided herein. Nothing shall be altered on, constructed in or removed from the Common Areas except upon the prior written consent of the Board.

**Section 8.03 Cancellation of Insurance, Illegal Activity, Nuisance**

Nothing shall be done or kept in any Lot or in the Common Areas or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof over what the Board, but for such activity, would pay, without the prior written consent of the Board.

Nothing shall be done or kept in any Lot or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Board and the Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees.

No noxious, destructive or offensive activity shall be carried on in any Lot or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

**Section 8.04 Rules and Regulations**

No Owner or Resident shall violate the Rules and Regulations for the use of the Lots and of the Common Areas as adopted from time to time by the Board. An Owner shall be responsible to advise their guests and invitees about the rules and shall be responsible for their guests and invitees compliance with the rules and regulations.

**Section 8.05 Structural Alterations**

No improvements, alterations, repairs, excavation or other work which in any way alters the exterior appearance of the Property or the improvements located thereon shall be made without the prior approval of the Board of Trustees. No building, fence, wall, or other structure shall be erected, maintained, improved, altered, made or done (including choice of exterior color scheme and building materials) without the prior written approval of the Board of Trustees.

**Section 8.06 Window Coverings**

The Board, by rule, may require that certain colors and types of window covering be used.

Under no circumstances shall any cardboard or tinfoil be used as window coverings in the Project.

**Section 8.07 Signs**

No signs shall be erected or maintained in the Common Areas without the prior written consent of the Board. No signs shall be displayed on a Lot except name plates and one sign four (4) square feet or less advertising the sale of the home; or during election season, a political candidate or political view.

**Section 8.08 Pets**

Pets shall be regulated by rules and regulations promulgated by the Board of Trustees.

In no event may an owner have more pets than allowed by government ordinance, law, code, rule, or regulation.

If a pet owner violates any of pet rules and regulations, the Board shall have the express authority to issue citations or levy assessments, and collect these by judgment, lien or foreclosure. In extreme cases, the Board may require that the Owner or Resident to remove their pet from the premises.

**Section 8.09 Storage and Parking of Vehicles**

No truck larger than 1-ton, trailer, or recreational vehicle, including but not limited to campers, boats, motor homes, off-road vehicles, motorcycles and similar equipment not used on a regular basis (hereinafter collectively referred to as the "Recreational Vehicles") shall be permitted to be parked overnight or for any period of time longer than twenty-four (24) hours, upon any street.

Visitors may only park their motor vehicles temporarily in accordance with the Rules and Regulations promulgated by the Board.

No Owners or occupants shall repair or restore any motor vehicle of any kind upon any Lot or Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

Motor Vehicles parked in unauthorized areas, or in violation of the parking rules and regulations established by the Board, may, at owner's expense, be towed away. The Board shall be required to follow all municipal ordinances and codes regarding towing enforcement prior to towing a vehicle.

All parking spaces shall be used for the purpose of parking operable and licensed motor vehicles and shall not be used as storage facilities.

All trailers shall be screened from view and shall be stored behind the front setback of the house.

**Section 8.10 Leasehold Restrictions**

The leasing of a Lot by any Owner shall be subject to the following restrictions so long as

the property shall be owned in accordance with the terms and conditions of this Declaration:

(a) All leases and lessees shall be subject to the provisions of the Project Documents. Any owner who leases his/her Lot shall be responsible for assuring the Residents' compliance with the Project Documents. All leases shall be in writing with a copy submitted to the Association.

(b) "Leasing or renting" of a Lot means the granting of a right to use or occupy a Lot for a specific term or an indefinite term in exchange for the payment of rent (money, property or other goods or services of value); but shall not mean and include joint ownership of a Lot by means of joint tenancy, tenancy-in-common or other forms of co-ownership.

(c) Failure to Take Legal Action. Failure by an Owner to take legal action against his Resident who is in violation of Project Documents within ten (10) days after delivery of written demand to so do from the Board, shall entitle the Association to take any and all such action for and in behalf of said Owner and as his or her agent, including but not limited to the institution of legal proceedings on behalf of such Owner against his or her Resident for eviction, injunctive relief or damages. Neither the Association nor any agent retained by the Association to manage the Project shall be liable to the Owner or Resident for any legal action commenced under this Section that is made in good faith. Any expenses incurred by the Association, including reasonable attorneys' fees and costs of suit, shall be an Individual Assessment.

(d) Requesting Unpaid Assessments from Tenant. In the event that a Lot is leased or rented, and the absentee owner fails to pay their regular, special or any other assessment, the Board may demand that the tenant pay his or her rental payment to the Association until such time as the delinquent assessment is cured.

(e) Owner Obligation to Inform

Tenant and Association. The Owner shall provide the tenant or lessee with a copy of the Project Documents then in effect and shall take a receipt for delivery of the Project Documents. In the event the Project Documents are amended, revised, changed, or supplemented by the Association, the Owner shall provide the tenant or lessee with a copy of the amendments, revisions, changes, or supplements within ten (10) calendar days of adoption by the Association, its Board of Trustees, or its membership.

(f) Termination of Lease or Rental Agreement for Violations. In addition to any other remedies available to the Association, the Board may require the owner to terminate a lease or rental agreement if the Board determines that any lessee or tenant has violated any provision of the Project Documents.

**Section 8.11 Aerials, Antennas and Satellite Dishes**

It is the intent that this policy not be inconsistent, incongruent or in conflict with applicable local, state and federal legislation. Aerials, antennas and satellite dishes shall be prohibited within the Project, except (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (b) antennas or satellite dishes designed to receive video programming services via multipoint distribution services which are one meter or less in diameter or diagonal measurement (hereafter referred to as "Permitted Devices") shall be subject to the following:

(a) located in the attic, garage, or other interior spaces of the Dwelling, so as not to be visible from outside the Dwelling;

(b) attached to or mounted behind the area appurtenant to the Dwelling on the rear wall of the Dwelling so as to extend no higher than the plane commencing the next story of the building or the eaves of the building at a point directly above the position where attached or

mounted to the wall.

Notwithstanding the foregoing, should an Owner determine that a Permitted Device cannot be located in compliance with the above guidelines without precluding reception of an acceptable quality signal, then the Owner may install the device in the least conspicuous alternative location on the Lot where an acceptable quality signal can be obtained.

The Board may adopt rules establishing a preferred hierarchy of alternative locations and require screening of all Permitted Devices, so long as such rules do not unreasonably increase the cost of installation, maintenance, or use of the Permitted Device. Anything to the contrary notwithstanding, no Permitted Device may be located in the common area without the express prior written consent of the Board. Permitted Devices may only be installed in, on or within property which a party owns or is subject to his exclusive use.

**Section 8.12 Timeshares**

Timeshares and time-sharing of Dwellings within the Project is prohibited, and under no circumstances shall any condominium be owned or used for time sharing, including but not limited to a "Timeshare Interest" as that term is defined in Utah Code Ann. § 57-19-2(17), as amended.

**Section 8.13 Utility Service**

All lines, wires, or other devices for the communication or transmission of electric current of power, including telephone, television and radio signals, shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Board.

**Section 8.14 Temporary Structures, etc**

No structure of a temporary character, or trailer, camper, tent, shack, garage, or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently, unless first expressly approved in writing by the

Board.

**Section 8.15 Repair of Buildings**

No improvement upon any Lot shall be permitted to fall into disrepair, and each such improvement shall be at all times be kept in good condition and repair and adequately painted or otherwise finished.

**Section 8.16 Subdivision of Lots**

No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion less than all of any such Lot, shall be conveyed or transferred by any Owner without the prior written approval of the Board. No Lot may be converted into a condominium or cooperative or other similar type of entity without the prior written approval of the Board. No further covenants, conditions restrictions or easements shall be recorded against any Lot without the written consent of the Board being evidenced on the recorded instrument containing such restrictions and without such approval such restrictions shall be null and void. No applications for rezoning, variances, or use permits shall be filed without the written approval of the Board and then only if such proposed use in compliance with this Declaration.

**Section 8.17 Drilling Operations**

No oil drilling oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon any Lot nor shall oil wells, tunnels, mineral excavations or shafts be permitted. No derrick or other structure designed for use in drilling for oil or natural gas or water shall be erected, maintained or permitted upon any Lot.

**Section 8.18 Rubbish and Unsightly Debris, Garbage, etc**

Notwithstanding any other provision in this Declaration, no Owner shall allow his or her Lot to become so physically encumbered with rubbish, unsightly debris, garbage, equipment, or other things or materials so as to constitute an eyesore as reasonably determined by the Board

or the Association.

**ARTICLE IX. ASSOCIATION**

**Section 9.01 Organization**

(a) The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the State of Utah (Utah Code Annotated Title 16-6a).

(b) The Articles of Incorporation of the Association provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. Such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws (as the same may be amended from time to time) as if they had been drafted to constitute the governing documents of the unincorporated association.

(c) The affairs of the Association shall be governed by a Board of Trustees as provided in the Bylaws.

**Section 9.02 Membership**

Each Owner during the entire period of Owner's ownership of one or more Lots within the Project shall be a member of the Association. The membership shall commence, exist and continue by simply virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

**Section 9.03 Voting Rights**

Voting rights within the Association shall be allocated as follows:

(a) **Class A.** Class A Members shall be all Owners. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

(b) **Method of Voting.** The method of voting shall be as provided in the Bylaws.

**Section 9.04 Powers, Duties and Obligations**

The Association shall have such powers and duties as may be granted to it or imposed by the Project Documents and any applicable statute, as such statute may be amended to expand the scope of association powers.

**Section 9.05 Adoption of Bylaws**

The Association has adopted Bylaws which are being recorded simultaneously with this Declaration.

**ARTICLE X. ASSOCIATION AND OWNER MAINTENANCE OBLIGATIONS**

**Section 10.01 Common Area**

The Association shall improve, develop, supervise, manage, operate, examine, insure, inspect, care for, repair, replace, restore and maintain the Common Area.

**Section 10.02 Lots**

(a) **Owner's Responsibility.** All maintenance of the Lots and Dwellings and improvements shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in accordance with the Project Documents of the Association. This shall include, without limitation, front yard areas.

(b) **Maintenance by Association.** The Board of Trustees, after notice and opportunity for hearing, or in the case of an emergency immediately, may assume the maintenance responsibility over a Lot if, in the opinion of the Board of Trustees, the Owner is unwilling or unable to adequately provide such maintenance. Should the Board exercise its right under this provision, it shall not be liable for trespass or nuisance and shall have the right to levy an Individual Assessment to recover its maintenance costs.

**ARTICLE XI. COMPLIANCE AND ENFORCEMENT**

**Section 11.01 Compliance**

Each Owner or Resident of a Lot shall comply with the provisions of this Declaration, the Bylaws and the rules and regulations adopted pursuant thereto and any applicable statute. Failure to comply therewith shall be grounds for an action or suit maintainable by the Association or an aggrieved Owner.

**Section 11.02 Remedies**

Violation of any provisions of the Project Documents, or of any decision of the Association made pursuant to such documents, shall give the Board of Trustees acting on behalf of the Association, the right, in addition to any other rights set forth in the Project Documents, or under law, to do, any or all of the following after giving notice and an opportunity to be heard:

(a) To enter the Lot which or as to which such violation exists and to summarily abate and remove, at the expense of the

defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board of Trustees shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished. Costs and attorney's fees shall be an Individual Assessment;

(b) To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

(c) To levy reasonable fines pursuant to a schedule of fines adopted by resolution of the Board of Trustees;

(d) To terminate the right to receive utility services paid for out of assessments, if any, or, except for the right to an assigned parking space, to terminate the right of access to and use of recreational and service facilities of the Association, until the correction of the violation has occurred; or

(e) The right of the Association to suspend the voting rights and the rights to use of the Common Area after notice and a hearing for any period not to exceed sixty (60) days for any infraction of any of the Project Documents; or

(f) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto. Costs and attorney's fees shall be an Individual Assessment.

**Section 11.03 Action by Owners**

Subject to any limitation imposed under the Project Documents or Utah law, an aggrieved Owner may bring an action against such other Owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

**Section 11.04 Injunctive Relief**

Nothing in this Section shall prevent an Owner, the Association, or other interested party from resort to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

**Section 11.05 Hearing**

The Board shall, by resolution, promulgate procedures for hearings. When a hearing is requested or required, the hearing shall be conducted in accordance with the Board's resolution on hearings.

**ARTICLE XII. INSURANCE**

**Section 12.01 Types of Insurance Maintained by the Association**

The Association shall have the authority to and shall obtain and maintain, to the extent reasonably available, the insurance specified below:

(a) The Board of Trustees may adopt General Insurance Rules, Policies and Procedures intended as a guide for Owners and residents in order to maintain the insurability of the project, keep the insurance premium reasonable, and enforce the maintenance responsibilities of the individual owners. The Association shall obtain the following insurance coverages ("The Association Master Policy"):

(i) Public Liability. Public liability for the Common Areas and Facilities;

(ii) Common Area. Property, fire and extended hazard for all Common Areas;

(iii) D&O. Directors and officers in not less than \$1,000,000; and

(iv) Fidelity Bond. Fidelity bond, in an amount not less than the reserves and operating capital of the association.

**Section 12.02 Insurance Company.**

The Association shall use a responsible insurance company or companies duly qualified and licensed in the State of Utah.

**Section 12.03 Minimum Amount of Insurance Coverage.**

The limits of each liability insurance policy purchased for the Association shall be in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate for bodily injury, death, and property damage. This amount may be increased by resolution of the Board of Trustees.

**Section 12.04 Premium as a Common Expense.**

The premium for the Association's insurance; including but not limited to: general liability, property coverage, directors and officers, and fidelity bond coverage is to be a Common Expense.

**Section 12.05 Insurance by Owner.**

Each Owner shall obtain and maintain the following types of insurance coverages:

(a) Public Liability Insurance. Each Owner will obtain public liability insurance for his Lot and shall provide the Association with a Certificate of Insurance upon request;

(b) Casualty and Fire Insurance. Each Owner will obtain a casualty and fire insurance policy for his Dwelling, for the full replacement value of the Dwelling, and shall provide the Association with a Certificate of Insurance upon request.

(c) Premium. The insurance premium on the Owner's policies shall be paid by the Owner.

(d) Maintenance of Coverage. The Owner shall obtain and keep in full force and effect at all times the required insurance coverage provided by companies duly

authorized to do business in Utah.

(e) Not a Limitation. The provisions of this subsection shall not be construed to limit the power or authority of the Owner to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as he may deem appropriate.

(f) Default. If an Owner fails to maintain the required insurance or fails to provide a Certificate of Insurance within three (3) days of a request, and fails to remedy a default within ten (10) days of written notice, the Association may but is not obligated to, without further notice, purchase the required insurance and treat the cost as an Individual Assessment.

(g) Contents. The Association Master Policy DOES NOT cover the contents of the Dwelling or the personal property of the Owner or Resident such as automobiles, furniture, furnishings, appliances, paintings, pictures, wall hangings, clothing, personal belongings and effects, and other contents, or personal liability.

**Section 12.06 Loss of Rents.**

The Association Master Policy DOES NOT cover loss of rents or rental income.

**Section 12.07 Insurance of Contents and Lost Rents.**

Providing insurance to cover contents and lost rents or rental income is the responsibility of the individual Owner or Resident.

**Section 12.08 Payment of Deductible.**

It is presumed that the claimant is responsible to pay the deductible; provided, however, the deductible on a claim made against the Association Master Policy shall be paid for by the party (i) who would be liable for the loss, damage, claim, or repair in the absence of insurance or (ii) from whose Lot the causal event originates. In the event of multiple responsible parties, the loss shall be allocated in

relation to the amount each party(s) responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the parties, then the Owner shall be responsible for the deductible. Each Owner is encouraged to purchase insurance to cover the cost of the deductible as stated above. The association deductible will be \$10,000 or less. 60 days written notice will be given to Owners in the event the board of Trustees elects to increase the deductible in an amount greater than \$10,000. Owners shall be responsible for the Association deductible despite inadequate insurance personally carried.

**Section 12.09 Damages.**

Each Owner is responsible for the maintenance of his Unit and for the repair of any damage he causes to another Lot, Dwelling, or the Common Area and Facilities.

**Section 12.10 Right to Adjust Claims.**

The Association has the right, power and authority to adjust claims.

**Section 12.11 Use of Insurance Proceeds and Repairs.**

Repair of damage shall be completed within a reasonable time and insurance proceeds shall be used to repair the covered damage.

**Section 12.12 Damage and Destruction of Common Area**

(a) Immediately after any damage or destruction by fire or other casualty to all or any part of the insurable improvements on the Common Area, the Board of Trustees, or its agent, shall proceed with the filing and adjustment of all claims arising under the fire and extended coverage insurance maintained by the Association and obtain reliable estimates of the cost of repair or reconstruction of the damaged or destroyed improvements. Repair or reconstruction means repairing or restoring the improvements to substantially the same condition in which they existed prior to the fire

or other casualty.

(b) Any damage or destruction to insurable improvements on the Common Area shall be repaired or reconstructed unless at least seventy-five percent (75%) of the members present at a meeting of the membership held within ninety (90) days after the casualty shall decide not to repair or reconstruct.

(c) If, in accordance with subsection (b) of this section, the improvements are not to be repaired or reconstructed and no alternative improvements are authorized by the members, then and in that event the damaged Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. In such event, any excess insurance proceeds shall be paid over to the Association for the benefit of the Property, which proceeds may be used and/or distributed as determined by the Board of Trustees, in its discretion, or as otherwise provided in the Articles of Incorporation and/or the Bylaws of the Association.

**Section 12.13 Repair and Reconstruction of Common Area**

If any improvements on the Common Area are damaged or destroyed, and the proceeds of insurance received by the Association are not sufficient to pay in full the cost of the repair and reconstruction of the improvements, the Board of Trustees shall, without the necessity of a vote of the members, levy a Special Assessment against all Owners in order to cover the deficiency. If the proceeds of insurance exceed the cost of repair, such excess shall be retained by the Association and used for such purposes as the Board of Trustees shall determine.

**Section 12.14 Obligation of Lot Owner to Repair and Restore**

(a) In the event of any damage or destruction of the improvements on a Lot, the



insurance proceeds from any insurance policy on an improved Lot, unless retained by a Mortgagee of a Lot, shall be applied first to the repair, restoration or replacement of the damaged or destroyed improvements. Any such repair, restoration or replacement shall be done in accordance with the plans and specifications for such improvements originally approved by the ACC; unless the Owner desires to construct improvements differing from those so approved, in which event the Owner shall submit plans and specifications for the improvements to the ACC and obtain its approval prior to commencing the repair, restoration or replacement.

(b) If any Owner of an improved Lot fails to maintain the insurance required by this Article, the Association may, but shall not be obligated to, obtain such insurance and pay any premiums required in connection with obtaining such insurance. Such Owner shall be personally liable to the Association for any costs incurred by the Association in obtaining such insurance, to the same extent as such Owner is liable for assessments levied against its Lot, and, upon the failure of the Owner to pay such costs within ten (10) days after such Owner's receipt of a written demand therefor from the Association, the Association may establish a lien therefor upon the Owner's Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

**ARTICLE XIII. AMENDMENT AND DURATION**

***Section 13.01 Amendments***

(a) How Proposed. Amendments to the Declaration shall be proposed by either a majority of the Board of Trustees or by Owners holding thirty percent (30%) or more of the voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval or consent to the amendment

(b) Approval Required. Except as otherwise provided in this Declaration, this Declaration may be amended by approval of Owners holding sixty-seven percent (67%) of the voting rights of the Association.

(c) Execution and Recordation. An amendment shall not be effective until the amendment is certified by the president and secretary of the Association as being adopted in accordance with this Declaration is acknowledged and is recorded in the Recorder's Office of Utah County, Utah.

**ARTICLE XIV. MISCELLANEOUS PROVISIONS**

**Invalidity; Number; Captions**

The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

***Section 14.01 Joint Owners***

In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration 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 of Trustees, 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.

**Section 14.02 Lessees and Other Invitees**

Lessees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration, the Bylaws and rules and regulations adopted by the Association restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

**Section 14.03 Nonwaiver**

Failure by the Association or any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

**Section 14.04 Waiver, Precedent and Estoppel**

No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association or Owner as to any similar matter.

**Section 14.05 Notice of Sale, Mortgage, Rental, or Lease**

Immediately upon the sale, mortgage, rental, or lease of any Lot, the Owner shall promptly inform the secretary or manager of the name and address of said grantee, vendee, mortgagee, lessee, or tenants.

IN WITNESS WHEREOF, the Association, has caused this Declaration to be executed by its duly authorized officers on the 23 day of Sept., 2009.

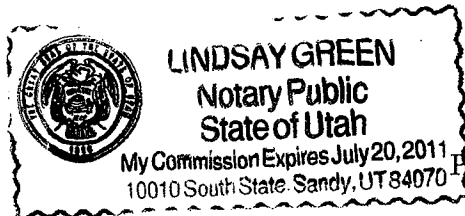
**Harbor Point Home Owners Association**

K Rand  
By: Kevin Rand  
Its: President

STATE OF UTAH )  
  ) :ss.  
County of Salt Lake )

On this 23 day of September, 2008, personally appeared before me Kevin Rand, who being by me duly sworn, did say that he/she is the president of the Association, authorized to execute this Declaration.

Lindsay Green  
NOTARY PUBLIC



**EXHIBIT A**

**(LEGAL DESCRIPTION)**

ALL OF LOTS 1 THROUGH 65 KAUFMAN AND BROAD AT PILGRIMS LANDING SUBDIVISION PLAT ONE AS SHOWN ON THE MAPS AS RECORDED IN THE UTAH COUNTY RECORDER'S OFFICE, STATE OF UTAH.

Parcel Nos: 44:124:0001 and all other parcels found in Plat One.

ALL OF LOTS 66 THROUGH 132 KAUFMAN AND BROAD AT PILGRIMS LANDING SUBDIVISION PLAT TWO AS SHOWN ON THE MAPS AS RECORDED IN THE UTAH COUNTY RECORDER'S OFFICE, STATE OF UTAH.

Parcel Nos: 44:126:0066 and all other parcels found in Plat Two.

ALL OF LOTS 133 THROUGH 209 KAUFMAN AND BROAD AT PILGRIMS LANDING SUBDIVISION PLAT THREE AS SHOWN ON THE MAPS AS RECORDED IN THE UTAH COUNTY RECORDER'S OFFICE, STATE OF UTAH.

Parcel Nos: 44:157:0133 and all other parcels found in Plat Three.

ALL OF LOTS 65 AND 210 THROUGH 252 KAUFMAN AND BROAD AT PILGRIMS LANDING SUBDIVISION PLAT FOUR AS SHOWN ON THE MAPS AS RECORDED IN THE UTAH COUNTY RECORDER'S OFFICE, STATE OF UTAH.

Parcel Nos: 44:156:0210 and all other parcels found in Plat Four.

ALL OF LOTS 50 AND 254 KAUFMAN AND BROAD AT PILGRIMS LANDING SUBDIVISION PLAT FIVE AS SHOWN ON THE MAPS AS RECORDED IN THE UTAH COUNTY RECORDER'S OFFICE, STATE OF UTAH.

Parcel Nos: 44:154:0050 and all other parcels found in Plat Five.

**EXHIBIT B**

**BYLAWS OF THE HARBOR POINT HOME OWNERS ASSOCIATION**

## ARTICLE I.

### BYLAW APPLICABILITY

#### ***Section 1.01 Property Submission***

The Property is located in Utah County, Utah, has been submitted to the provisions of a Declaration recorded in the Office of the County Recorder of Utah County, Utah, simultaneously herewith, and shall hereafter be referred to as the "Project."

#### ***Section 1.02 Bylaws Applicability***

The Provisions of these Bylaws are applicable to the Project as the same may be expanded as provided in the Declaration and the use, occupancy, sale, lease or other transfer thereof. All Owners of any fee or leasehold interest, all occupants or users of the Project, and the agents and servants of any of them are subject to the provisions of the Project Documents.

#### ***Section 1.03 Personal Application***

All present and future Owners, tenants, future tenants, their guests, licensees, servants, agents, employees and any other person or persons who shall be permitted to use the facilities of the Project, shall be subject to the Project Documents. Acquisition, rental or occupancy of any of the Lots in the Project shall constitute an acknowledgment that such Owner, tenant or occupant has accepted and ratified these Bylaws, the provisions of the Project Documents and will comply with them.

#### ***Section 1.04 Office***

The office of the Association and of the Board of Trustees shall be located at the Project or at such other place as may be designated from time to time by the Board of Trustees (hereinafter sometimes called the "Board").

## ARTICLE II. ASSOCIATION

#### ***Section 2.01 Composition***

All of the Lot Owners acting as a group in accordance with the Utah Revised Nonprofit

Corporations Act, as amended (the "Act"), and the Project Documents shall constitute the Association. Except as to those matters which the Act specifically requires to be performed by the vote of the Lot Owners, the administration of the Project shall be performed by the Board.

#### ***Section 2.02 Voting***

Each Lot Owner shall have one vote. Since a Lot Owner may be more than one person, if only one of such persons is present at a meeting of the Association that person shall be entitled to cast the vote appertaining to that Lot. But if more than one of such persons is present, the vote appertaining to that Lot shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the vote appertaining to that Lot without protest being made forthwith by any of the others to the person presiding over the meeting.

Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this Section to include, without limitation, any natural person having authority to execute deeds on behalf of any person, excluding natural persons, which are, either alone or in conjunction with another person or persons, a Lot Owner.

Except where a greater number is required by the Act or the Project Documents, a majority of the votes of Lot Owners present in person or represented by proxy in good standing and entitled to vote is required to adopt decisions at any meeting of the Association.

#### ***Section 2.03 Place of Meeting***

Meetings of the Association shall be held at the principal office of the Project or at such other suitable place as may be designated by the Board and stated in the notice of the meeting.

**Section 2.04 Annual Meeting**

Annual meetings for any other purpose than the election of the Board of Trustees may be held at any time on call of the President of the Board, by a majority of the Board or by Lot Owners representing twenty percent (20%) of the Lot Owners. Notice of such meeting shall be given in accordance with the provisions of Section 6.02.

Thereafter, the annual meetings of the Association shall be held in October. The Board in its discretion may designate another date for the annual meeting. At such annual meetings the Board shall be elected by ballot of the Owners in accordance with the requirements of these Bylaws. The Association may transact such other business as may properly come before them at such meetings.

**Section 2.05 Special Meetings**

It shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Board or, after all of the Board has been elected by Lot Owners, upon a petition signed and presented to the Secretary by Owners having not less than twenty percent (20%) of the votes of all Owners. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

**Section 2.06 Notice of Meetings**

It shall be the duty of the Secretary to mail, by United States mail, postage prepaid, a notice of (a) each annual meeting of the Owners, at least twenty (20) days in advance of such meeting and (b) each special meeting of the Owners at least ten (10) days in advance of such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner of record, at the address of their respective Lots and at such other address as each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

**Section 2.07 Voting Requirements**

An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he shall have fully paid all due installments of assessments made or levied against him and his Lot, together with all interest, costs, attorney's fees, penalties and other expenses, if any, properly chargeable to him and against his Lot, and shall have no reported or obvious violations of the Project Documents at least three (3) days prior to the date fixed for such annual or special meeting.

**Section 2.08 Proxies**

The votes appertaining to any Lot may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Lot Owner, or, in cases where the Lot Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the Lot Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice as aforesaid. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy, and must be filed with the Secretary not less than three (3) days before the meeting.

**Section 2.09 Absentee Ballots**

(a) A Member who is incapacitated, or who will be absent, on the date set for balloting may cast an absentee ballot at the place or time of balloting, or by mail, in the manner required by the Election Committee, but in no event shall the vote be cast more than fourteen (14) days prior to the voting date.

(b) Ballot boxes containing absentee votes shall be opened and the ballots tabulated at the same time and place and under the same conditions as the regular ballots.

**Section 2.10 Mail-in Ballots**

(a) Any action that may be taken by the Unit Owners, except election of Board members, may be taken by written consent in accordance with the procedure established in the Utah Revised Nonprofit Corporation Act Section 16-6a-709, as amended.

(b) A combination of mail-in ballots and "in person" ballots may be used.

**Section 2.11 Written Consent in Lieu of Vote**

Any action that may be taken by the Owners, except election of Board members, may be taken by written consent in accordance with the procedure established in the Utah Revised Nonprofit Corporation Act Section 16-6a-707, as amended.

**Section 2.12 Quorum**

Except as may otherwise be provided in the Project Documents or by statute, the Owners present in person, by proxy, or by absentee ballot at a meeting shall constitute a quorum for the adoption of decisions.

**Section 2.13 Order of Business**

The order of business at all meetings of the Association shall be as follows: (a) roll call; (b) proof of notice of meeting; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) report of special committees, if any; (f) election of inspectors of election, if applicable; (g) election of Board Members, if applicable; (h) unfinished business; and (i) new business. In its sole discretion, the Board of Trustees may change the order of business.

**Section 2.14 Title to Lot**

Title to Lots may be taken in the name of a natural person or in the names of two or more natural persons, or in the name of a corporation, partnership, association or other entity capable of holding title to real property, or any combination thereof.

**Section 2.15 Conduct of Meeting**

The President shall, or in his absence the Vice-President shall, preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted by the meeting as well as a record of all transactions occurring thereat.

**ARTICLE III. BOARD OF TRUSTEES**

**Section 3.01 Powers and Duties**

The affairs and business of the Association shall be managed by the Board which shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things as are not by the Act or by these Bylaws directed to be exercised and done by the Association.

The Board shall have the power from time to time to adopt any Rules and Regulations deemed necessary for the enjoyment of the Project provided such Rules and Regulations shall not be in conflict with the Act, the Declaration or these Bylaws. The Board shall delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the Managing Agent, if any, which might arise between meetings of the Board. Subject to any limitations or provisions contained in the Declaration, the Board shall be responsible for the following:

(a) Preparation of an annual budget, in which there shall be established the

contribution of each Owner to the Common Expenses;

(b) Making assessments against Owners to defray the cost and expenses of the Project, establishing the means and methods of collecting such assessments from the Owners, and establishing the period of the installment payment of the annual assessment for Common Expenses. Unless otherwise determined by the Board, the annual assessment against each Owner for his proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month.

(c) Providing for the operation, care, upkeep, replacement, maintenance and surveillance of all of the Common Areas and services of the Project.

(d) Designating, hiring and dismissing the personnel necessary for the maintenance, operation, repair and replacement of the Common Areas, and providing services for the Property, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed the common property of the Owners.

(e) Collecting the assessments against the Owners, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to carry out the administration of the Property.

(f) Making and amending Rules and Regulations respecting the use of the Property.

(g) Opening of bank accounts on behalf of the Association and designating the signatories required therefor.

(h) Making, or contracting for the

making of, repairs, additions, and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property, in accordance with the Declaration and other provisions of these Bylaws, after damage or destruction by fire or other casualty.

(i) Enforcing by legal means the provisions of the Project Documents for the use of the Property adopted by it, and bringing any proceedings which may be instituted on behalf of the Owners.

(j) Obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof.

(k) Borrow money upon majority vote of Owners present in person or by proxy at a meeting where a quorum is present.

(l) Paying the cost of all services rendered to the Project and not billed to Owners of individual Lots.

(m) Keeping books with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Association, specifying any maintenance and repair expenses of the Common Areas and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Board for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices, and the same, upon resolution of the Association, shall be audited every three (3) years by an outside auditor employed by the Board who shall not be a resident of the Project, or an Owner therein. The cost of such audit shall be a Common Expense. A copy of the annual audit report shall be supplied to any first mortgagee of any Lot in the Project who requests the same in writing



from the Secretary.

(n) Selling, encumbering, or otherwise disposing of Common Areas.

(o) To do such other things and acts not inconsistent with the Act or the Project Documents.

**Section 3.02 Manager**

The Board may employ a Manager at a compensation established by the Board, to perform such duties and services as the Board shall authorize, including, but not limited to, the duties listed in Section 3.01.

The Board may delegate to the Manager all of the powers granted to the Board by these Bylaws; provided that any actions by the Manager with respect to the powers set forth in paragraphs (b), (f), (g) and (I), of Section 3.1 shall require the written consent of the Board.

**Section 3.03 Number of Board Members**

After the Turnover Meeting, the Board shall be composed of three (3) to nine (9) persons, who are members in good standing. The Board by resolution shall determine the number of Board members. The number of the board shall be determined by Board resolution. If the number is increased, the new positions created shall be filled by Board appointment until the next annual meeting, where the new positions shall be filled by Owner vote.

**Section 3.04 Selection and Term of Office of the Board**

Unless appointed under the provisions of Section 3.10, Board members shall be elected as follows:

(a) Board members shall be elected by a plurality of the Members present in person or by proxy at the annual meeting. Cumulative voting shall not be permitted.

(b) All Board members shall hold office until the members shall have elected their respective successors.

(c) Board members' terms shall be staggered. The initial term of each member (1, 2, or 3 years) shall be decided by vote of the newly elected Board members at their first meeting. Upon the natural expiration of a Board member's term, a successor shall be elected for a three (3) year term. If the number of the Board is increased, the Board shall stagger the terms of the new members after the Owner election of the new members. There shall be no limit on the number of terms an Owner may serve as a Board member.

**Section 3.05 Organization Meeting**

The first meeting of the members of the Board following the annual meeting of the Association shall be held within ten (10) days after the annual meeting at such place as shall be fixed by the Board at the meeting at which such Board-members were elected, and no notice shall be necessary to the newly elected Board members in order legally to constitute such meeting provided that majority of the whole Board shall be present thereat.

**Section 3.06 Regular Meetings**

Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Board, but at least three (3) such meetings shall be held during each fiscal year after the first annual meeting of the Association. Notice of regular meetings of the Board shall be given to each Board member at least three (3) business days prior to the day named for such meeting.

**Section 3.07 Special Meetings**

The President on three (3) business days' notice to each member may call special meetings of the Board. Such shall state the time, place and purpose of the meeting. The President or Secretary shall call special meetings of the Board in like manner and on like notice on the

written request of at least two (2) Board members.

**Section 3.08 Waiver of Notice**

Before or at any meeting of the Board, any Board member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Board member at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Board members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

**Section 3.09 Board's Quorum**

At all meetings of the Board, a majority of the Board shall constitute a quorum for the transaction of business, and the acts of the majority of the Board present at a meeting at which a quorum is present shall be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business, which might have been transacted at the meeting as originally called, may be transacted without further notice.

**Section 3.10 Vacancies**

Vacancies in the Board caused by any reason other than removal of a Board member by a vote of the Association shall be filled by vote of the majority of the remaining Board members at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the Board members present at such meeting may constitute less than a quorum of the Board; and each person so elected shall be a Board member for the remainder of the term of the Board member so replaced and until a successor is elected at the next annual meeting of the Association.

**Section 3.11 Removal of Board Member**

(a) A Board member may be removed with or without cause, and his successor elected, at any duly called regular or

special meeting of the Association at which a quorum is present, by an affirmative vote of the majority of the votes represented and voting. Any Board member whose removal has been proposed by the Owners shall be given at least thirty (30) days written notice of the calling of the meeting and the purpose thereof and shall be given a reasonable opportunity to be heard at the meeting.

(b) Any Board member who allows his installments of assessments made or levied against him and his Lot by the Board to become three (3) months overdue, and fails to cure the default within ten (10) days after written notice shall automatically forfeit his membership on the Board.

**Section 3.12 Compensation**

Board members shall not be compensated in excess of the Annual Assessment for their work. They may seek reimbursement for actual costs incurred associated with their service.

**Section 3.13 Conduct of Meetings**

The President shall preside over all meetings of the Board and the Secretary shall keep a Minute Book of the Board recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings.

**Section 3.14 Report of Board**

The Board shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, full and clear statement of the business and condition of the Association.

**Section 3.15 Fidelity Bonds**

The Board shall require that all officers, agents (including professional Manager and its employees) and employees of the Association handling or responsible for funds furnish adequate fidelity bonds. The premiums on such bonds shall constitute a Common Expense. The Board shall provide a fidelity insurance coverage as required by the Declaration. The

Board shall also require all contractors to have a minimum of \$1,000,000.00 of liability insurance.

**Section 3.16 Dispensing with Vote**

Any action by the Board required or permitted to be taken at any meeting may be taken without a meeting if all the members of the Board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

**Section 3.17 Liability of the Board**

The members of the Board shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the Board members from and against all contractual liability to others arising out of contracts made by the Board on behalf of the Owners unless any such contract shall have been made in bad faith or contrary to the provisions of the Project Documents.

**ARTICLE IV. OFFICERS**

**Section 4.01 Designation**

The principal officers of the Association shall be a President, Vice President, Secretary, and a Treasurer, all of whom shall be elected by and from the Board.

The Board may appoint assistant secretaries and such other officers as in its judgment may be necessary. With the exception of the President, no officer need be a member of the Board. The same person may hold two or more offices, except that the President shall not hold any other office.

**Section 4.02 Election of Officers**

The officers of the Association shall be elected annually by the Board at the organization meeting of each Board and shall hold office at the pleasure of the Board. The Board at a

regular meeting or special meeting called for such purpose shall fill any vacancy in an office.

Nevertheless, the Board members may serve as the officers of the Association, with such positions therein determined amongst them.

**Section 4.03 Removal of Officers**

The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the whole Board, and his successor may be elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

**Section 4.04 President**

The President shall be the chief executive officer; he shall preside at meetings of the Association and the Board and shall be an ex officio member of all committees; he shall have general and active management of the business of the Association and shall see that all orders and resolutions of the Board are carried into effect.

**Section 4.05 Vice President**

There shall be a Vice President. The Vice President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board or the President shall prescribe. If neither the President nor the Vice President is able to act, the Board shall appoint a member of the Board to do so on an interim basis.

**Section 4.06 Secretary**

The Secretary shall attend all sessions of the Board and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him for that purpose and shall perform like duties for committees when required. He or she shall give, or cause to be given, notice of all meetings of the Association, the Board and committees and

shall perform such other duties as may be prescribed by the Board.

The Secretary shall compile and keep current at the principal office of the Project, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the minute book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Board including resolutions.

**Section 4.07 Treasurer**

The Treasurer shall have the custody of all funds and securities that are not under the control of the Managing Agent, and, with the assistance of the Managing Agent, shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all moneys and other valuable effects in such depositories as may be designated by the Board. He or she shall disburse funds as ordered by the Board taking proper vouchers for such disbursements, and shall render to the President and Board members, at the regular meetings of the Board, or whenever they may require it, an account of all of his transactions as Treasurer and of the financial condition of the Association.

**Section 4.08 Agreement, Contracts, Deeds, Checks, etc.**

All agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures shall be executed by any person or persons as may be designated by the Board.

**ARTICLE V. FISCAL YEAR**

**Section 5.01 Fiscal Year**

The fiscal year of the Association shall consist of the twelve month period commencing on January 1 of each year and terminating on December 31 of the same year. The fiscal year

herein established shall be subject to change by the Board should it be deemed advisable or in the best interests of the Association.

**ARTICLE VI. AMENDMENT TO BYLAWS**

**Section 6.01 Amendments**

Except as otherwise provided in this Section, these Bylaws may be modified or amended either (i) by the management committee at any time, to add, change or delete a provision, unless it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class or unless it is prohibited by the Declaration.

**Section 6.02 Recording**

A modification or amendment of these Bylaws shall become effective only if such modification or amendment is recorded in the office of the County Recorder of Utah County, Utah.

**Section 6.03 Conflicts**

No modification or amendment of these Bylaws may be adopted which shall be inconsistent with the provisions of the Declaration. A modification or amendment once adopted and recorded as provided for herein shall then constitute part of the official Bylaws of the Association and all Owners shall be bound to abide by such modification or amendment.

**ARTICLE VII. NOTICE**

**Section 7.01 Manner of Notice**

All notices, demands, bills, statements or other communications provided for or required under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U.S. Mail, first class postage prepaid, (i) if to an Owner, at the address of his Lot and at such other address as the Owner may have designated by notice in writing to the Secretary, or (ii) if to the Board or

the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section. The Association may, by resolution, collect and give notice by electronic mail or other electronic means.

**Section 7.02 Waiver of Notice**

Whenever any notice is required to be given under the provisions of the statutes, the Declaration or of these Bylaws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Act.

**ARTICLE VIII. COMPLIANCE, CONFLICT AND MISCELLANEOUS PROVISIONS**

**Section 8.01 Compliance**

These Bylaws are set forth in compliance with the requirements of the Act.

**Section 8.02 Conflict**

These Bylaws are subordinate and subject to all provisions of the Declaration and to the provisions of the Act. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration or the Act. In the event of any conflict between these Bylaws and the Declaration, the provisions of the Declaration shall control; and in the event of any

conflict between the Declaration and the Act, the provisions of the Act shall control.

**Section 8.03 Severability**

These Bylaws are set forth to comply with the requirements of the State of Utah. In case any of the Bylaws are in conflict with the provisions of any of its statutes, the provisions of the states will apply. If any provisions of these Bylaws or any section, sentence, clause, phrase, or word, or the application thereof in any circumstance are held invalid, the validity of the remainder of these Bylaws shall not be affected thereby and to this end, the provisions hereof are declared to be severable.

**Section 8.04 Waiver**

No restriction, condition, obligation or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

**Section 8.05 Captions**


The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

**Section 8.06 Gender, etc.**

Whenever in these Bylaws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders

IN WITNESS WHEREOF, the Association, has caused these Bylaws to be executed by its duly authorized officers on the 8 day of July, 2008.

**Harbor Point Home Owners Association**

  
By: Kevin Rand President

**INDIVIDUAL ACKNOWLEDGMENT**

State/Commonwealth of Utah }  
County of Utah } ss.

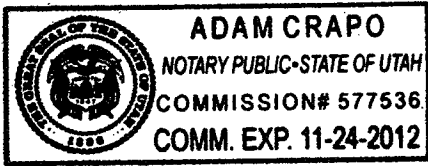
On this the 8 day of July, 2009, before  
me, Adam Crafo, the undersigned Notary  
Public, personally appeared Kevin Rand  
Name of Notary Public Name(s) of Signer(s)

personally known to me – OR –

proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same for the purposes therein stated.

WITNESS my hand and official seal.



Adam Crafo  
Signature of Notary Public  
Adam Crafo  
Other Required Information (Printed Name of Notary, Residence, etc.)

Place Notary Seal and/or Any Stamp Above

**OPTIONAL**

*Although the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Right Thumbprint of Signer**

Top of thumb here