

WHEN RECORDED RETURN TO:  
SEB Legal  
2225 Murray Holladay Rd., Suite 111  
Salt Lake City, UT 84117

AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
HARBOR BAY SUBDIVISION

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This Declaration is made on the date executed below by the Association after being approved by at least 67% of the total voting interests in the Association.

**RECITALS**

A. Harbor Bay Subdivision is a planned community located in Saratoga Springs, Utah County, Utah;

B. Harbor Bay Subdivision is subject to a declaration of covenants, conditions, and restrictions recorded as Entry No. 5326:2006 in the Utah County Recorder’s Office (“Original Declaration”);

C. The Original Declaration was amended June 28, 2006, by Entry No. 81581:2006; November 8, 2006, by Entry No. 150367:2006; March 9, 2007, by Entry No. 35342:2007; and June 17, 2009, by Entry No. 67154:2009;

D. The Bylaws were adopted June 27, 2006, but not recorded (“Original Bylaws”);

E. This Declaration replaces the Original Declaration and Original Bylaws and all their amendments, annexations, and supplements in their entirety;

F. All Owners, guests, invitees, agents, and residents shall abide by the provisions of this Declaration;

G. These covenants, conditions, restrictions, easements, and limitations shall run with the land described in Exhibit “A” and shall be binding on and burden all parties having or acquiring any right, title, or interest to the land or any part thereof and shall create servient tenements on the land. The covenants, conditions, restrictions, easements, and limitations shall also benefit all parties having or acquiring any right, title, or interest to the land and shall create dominant tenements on the land;

H. The Association may be incorporated as a Utah nonprofit corporation. If incorporated, it shall be entitled to the rights, obligations, and benefits of the Revised Nonprofit Corporation Act (Utah Code Ann. 16-6a-101, *et. seq.*) as amended from time to time.

I. As required by Utah Code § 57-8a-204, the period of administrative control has terminated and more than 67% of the voting interests in the Association have approved this Declaration;

J. This Declaration does not eliminate the rights of Declarant under the Original Declaration. However, under Original Declaration Section 19.6(a) Declarant's signature is not required;

K. This Declaration does not alter the Mortgagee rights under the Original Declaration. Accordingly, Mortgagee approval is not required.

L. Under the Original Bylaws Article X, the Bylaws attached to this Declaration as Exhibit "B" were approved by \_\_\_ Owners out of a total \_\_\_ votes in the Association, which represents more than 50% of the total votes;

NOW THEREFORE, for the benefit of the Project and the Owners thereof, the following covenants, conditions, restrictions, and easements shall apply to and be binding on the Project:

**1 DEFINITIONS**

Capitalized terms used in the Project Documents (including recitals) have the following meanings:

**1.1 Articles**

Articles mean the Articles of Incorporation for Harbor Bay Subdivision Homeowners Association, Inc.

**1.2 Association**

Association means Harbor Bay Subdivision Homeowners Association, Inc. It is intended that the Association be a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in dissolution of the Association. The Association may renew its corporate status, reinstate its corporate status, or incorporate without Owner approval.

**1.3 Board**

Board means the Board of Directors. The Board governs the property, business, and affairs of the Association.

**1.4 Bylaws**

Bylaws mean the bylaws of the Association, as amended or restated from time to time. The Bylaws are attached to this document as Exhibit "B."

**1.5 City**

City means the City of Saratoga Springs, its departments, officials, and boards.

**1.6 Common Areas**

Common Areas mean all land described on the Map as areas to be dedicated to the Association and all areas described as Common Areas in this Declaration. Common Areas include trails, walking paths, landscaping, and equipment, fixtures, facilities, personal property, and improvements installed in the Common Areas. Common Areas do not include fencing

comprising the boundary line of a Lot, whether or not such fencing was installed by Declarant.

#### **1.7 Common Expenses**

Common Expenses mean all sums spent to administer, maintain, or replace the Common Areas; expenses agreed upon as common expenses by a majority of the Owners; expenses authorized by the Governing Documents or the Community Association Act as common expenses; any other expenses necessary for the common benefit of the Owners.

#### **1.8 Community Association Act**

Community Association Act shall mean Utah Code §§ 57-8a-1 *et seq.*, as amended or replaced from time to time.

#### **1.9 Declarant**

Declarant means Summit Development & Management, LLC, a Utah limited liability company. Declarant shall also include any Person or Persons that have been assigned and have agreed to assume Declarant's rights and obligations. Such assignment and assumption shall be effective upon the recording of a written instrument in the Utah County Recorder's Office.

#### **1.10 Declaration**

Declaration means this document, as amended, annexed, supplemented, or restated from time to time.

#### **1.11 Development Agreement**

Development Agreement means the Master Development Plan Agreement for Harbor Bay dated May 10, 2005, and recorded January 17, 2006 in the Utah County Recorder's Office as Entry No. 5331:2006.

#### **1.12 Director**

Director means a member of the Board.

#### **1.13 Governing Documents**

Governing Documents mean the Declaration, Bylaws, Articles of Incorporation, Map, and rules and regulations.

#### **1.14 Improvement**

Improvement shall mean all structures and appurtenances of every kind including, without limitation, buildings, dwellings, garages, storage buildings, additions, walkways, retaining walls, gazebos, fences, driveways, landscaping, pools, decks, tennis courts, hard surfaced areas, stairs, poles, lighting, signs, satellite dishes or other antennas, and mechanical equipment located on the exterior of any building.

#### **1.15 Lot**

Lot means a separately numbered parcel of property as shown on the Map. Lots shall include fencing, all utility lines and other installations exclusively serving the Lot whether under or over the Common Areas or not.

#### **1.16 Map**

Map means the plat maps for Harbor Bay Subdivision Phases 1, 2, 3, 4, 5, and 5-A on file with the Utah County Recorder.



**1.17 Member**

Member means an Owner.

**1.18 Mortgage/Mortgagee**

Mortgage means the first mortgage or deed of trust or other financing document used to finance the purchase of a Lot. Mortgagee means the holder or beneficiary of the Mortgage.

**1.19 Nonprofit Act**

Nonprofit Act means Utah Code §§ 16-6a-101 *et seq.*, as amended or replaced from time to time.

**1.20 Owner**

Owner means the Person who owns the fee in a Lot as shown on the county records.

**1.21 Person**

Person means an individual, corporation, partnership, association, trustee, or other legal entity.

**1.22 Project**

Project means all phases of Harbor Bay Subdivision as shown on the Map. The project includes the land, buildings, improvements and structures, easements, rights, appurtenances, and articles of personal property intended for use in connection therewith. Exhibit "A" contains the legal description for the Project.

**1.23 Resident**

Resident means any Person living or staying at the Project. Residents include without limitation: Owners, tenants, family members of Owners and tenants, and guests staying more than a week.

**2 SUBMISSION**

The Project and the Governing Documents are submitted to provisions of the Community Association Act.

**2.1 Expansion of Project**

The Association shall have the right, without approval of the existing Members, to bring all or a part of the land known as Lake Mountain Estates Plat B ("Additional Land") within the scheme of this Declaration as provided in this Section.

Additional Land may be annexed into the Property by recording a supplemental declaration signed by the property owner and the Association. The supplemental declaration shall extend the scheme of the Declaration to the annexed property and subject the annexed property to the Declaration. The described property shall thereupon become part of the Property. Upon the recording of a supplemental declaration, owners of annexed property shall be subject to the same obligations and entitled to the same privileges as apply to the existing Owners.

Any annexed property shall conform to the general plan of development as shown on the plat map and as evidenced by the preexisting construction.

### **3 EASEMENTS**

#### **3.1 Easement for Encroachment**

If any part of the Common Areas encroaches on a Lot, an easement for the encroachment and for maintenance shall exist. If any part of a Lot encroaches upon the Common Areas, an easement for the encroachment and for maintenance shall exist. Such encroachments will not be considered to be encumbrances to the Common Areas or Lots. Encroachment causes include, without limitation, errors in the original construction; errors in the Map; settling, rising, or shifting of the earth; or changes in position caused by repair or reconstruction of the Project.

#### **3.2 Right of Ingress, Egress, and Enjoyment**

Each Resident, guest, or invitee has the right to ingress and egress across the Common Areas necessary for access to his Lot. Subject to the rules and regulations, each Resident has a right to enjoyment of the Common Areas. The rights described in this Section are appurtenant to and pass with title to the Lot.

#### **3.3 Association Easement**

The Association, its Board, employees, agents, and contractors shall have non-exclusive easements to use the Common Areas to perform their duties as assigned by the Governing Documents.

#### **3.4 Public Access Areas**

Some of the Property has been dedicated as public access. Declarant and Association reserve the right to dedicate to the City other areas as designated as public trails and open space on the Map ("Public Access Areas"). The Public Access Areas shall be dedicated to and maintained by the City. The Public Access Areas are for the use and benefit of the general public and are dedicated as a public easement. No Owner shall obstruct or interfere with the use of the Public Access Areas crossing his or her Lot. The Public Access Areas are for non-motorized use only (except for authorized maintenance vehicles or equipment).

#### **3.5 Easement for Utility Services**

The Project is subject to a blanket easement over, across, above, and under it for ingress, egress, installation, maintenance, repair, and replacement of utilities. Utilities include, without limitation, water, sewer, gas, telephone, electricity, data, video, and cable.

### **4 MAINTENANCE**

#### **4.1 Common Areas**

The Association shall maintain, repair, and replace the Common Areas.

#### **4.2 Lots**

Owners shall maintain, repair, and replace their Lot at their cost. An Owner's maintenance responsibility extends to all components of their Lot as defined in the Declaration, on the Map, and in the Community Association Act. Lots shall be maintained so as not to detract from the appearance of the project and to maintain the value of any other Lot. Lots shall be maintained to protect and preserve the health, safety, and welfare of the other Lots and Common Areas. Prior to maintaining, repairing, or replacing any exterior feature, an Owner must submit their plans showing color, style, and shapes for approval by the Association. Owners shall maintain

the fencing around their Lots, including any side that faces the Common Area.

After casualty loss or damage to a Lot, the Owner may take temporary measure to secure the damages portion of the lot without Design Review Committee approval. Owners shall use insurance proceeds to promptly restore the Lot and Improvements to a satisfactory condition. No damaged structure is allowed to remain on a Lot for more than 90 days without repairs commencing. Any damaged structure remaining longer than 90 days without repair will be deemed a nuisance which may be abated by the Association at the expense of the Owner. Any costs incurred by the Association shall be deemed an Individual Assessment.

## **5 MEMBERSHIP AND ASSOCIATION**

### **5.1 Membership**

Every Owner is a Member of the Association. Membership in the Association is mandatory, is appurtenant to the Lot, and shall not be separated from the Lot.

### **5.2 Voting Rights**

Each Lot shall have one vote. Voting is governed by the Bylaws.

### **5.3 Status and Authority of Board**

The Board is the governing body of the Association. It is obligated to manage, operate, and maintain the Project and to enforce the Governing Documents. The Board has exclusive authority to act in the Association's name. Any action taken by the Board on behalf of the Association will be deemed to be done in the Association's name. The rights and powers of the Board are governed by the Bylaws.

### **5.4 Composition and Selection of Board**

The Bylaws govern how the Board is established and selected.

## **6 USE RESTRICTIONS**

### **6.1 Use of Lots**

Lots may be used for residential use only. Home businesses must be licensed and comply with zoning code. The Board may place additional restrictions on home businesses if it receives complaints about increase traffic or exterior evidence of the home business. Such restrictions will be on a case by case basis.

### **6.2 No Obstruction of Common Areas**

Owners and Residents shall not obstruct Common Area. Owners and Residents shall not use Common Areas for their private use, unless approved by the Board. Owners and Residents shall not store anything in the Common Areas. Owners and Residents shall not alter Common Areas. Owners and Residents may not damage or commit waste to the Common Areas. If any Owner or Resident causes damage to the Common Areas, they shall be liable for the damages, which shall be an Individual Assessment.

### **6.3 Cancellation of Insurance/Nuisance**

Owners and Residents shall not do or keep anything in a Lot, which would result in the cancellation of insurance or increase the Association's premium. Owners and Residents shall not do or keep anything in a Lot which would violate a law. No noxious, destructive, or offensive

activity shall be done in a Lot. No activity shall be done which creates a nuisance.

#### **6.4 Rules and Regulations**

Owners and Residents shall obey the rules created by the Board.

#### **6.5 City Ordinance**

Owners shall abide by all City ordinances which relate to the maintenance, upkeep, design, and use of their Lot. The Board may enforce any such ordinances, in addition to City enforcement.

#### **6.6 Signs**

Owners and Residents shall not post signs in the Common Area. One for sale or for rent sign may be placed on the Lot. Such signs may not exceed 2 feet by 3 feet in size. Other signs must be approved by the Design Review Committee.

#### **6.7 Vehicles**

Except to load and unload, no trucks larger than 1-ton, commercial vehicles, and similar equipment shall be parked in the Project, unless it is parked in the garage. Trailers and recreational vehicles (for example, campers, boats, motor homes, off-road vehicles, etc.) may be parked in the side yard set-back behind the front of the home. If a trailer or recreational vehicle cannot fit in the side yard set-back behind the front of the home, it may not be parked in the Project. Trailers and recreational vehicles stored in the Project must be maintained in good repair. Trailers and recreational vehicles may not be stored under tarps. Recreational vehicles may be parked on a street or in a driveway for a maximum of 24 hours for loading and unloading.

Except for emergency repairs to enable movement to a repair facility, Owners and Residents shall not repair or restore vehicles in the Project. No inoperable or unlicensed vehicles shall be stored in the Project, unless parked in the garage.

Vehicles parked in unauthorized areas, or in violation of parking rules, may, at the owner's expense, be towed away. The Board shall be required to follow all laws regarding towing enforcement prior to towing a vehicle. Vehicles shall not be parked on a street for longer than four days without being moved or stored inside a garage.

#### **6.8 Aerials, Antennas, and Satellite Dishes**

Aerials, antennas, and satellite dishes larger than one meter in diameter are prohibited. Aerials, antennas, and satellite dishes may not be installed on Common Areas. Up to three antenna or satellite dish smaller than one meter in diameter may be installed within the Lot.

#### **6.9 Timeshares**

Timeshares and time-sharing of Lots is prohibited. Under no circumstances shall any Lot be owned or used as a "time period unit" as defined by Utah Code § 57-8-3(26), as amended from time to time.

#### **6.10 Garage Sales**

Owners may host no more one garage sale per year on their Lot.

#### **6.11 Open Fires**

Open fires are prohibited on the Lots, unless contained within a fire pit. Open fires are prohibited in the Common Area.

### **6.12 Firearms and Projectile Weapons**

The use of firearms, airsoft guns, BB guns, pellet guns, archery equipment, or any other projectile weapon, however powered, is prohibited in the Common Area.

## **7 RESTRICTIONS ON IMPROVEMENTS**

### **7.1 Compliance with Design Guidelines and MDP**

All dwellings and Improvements to a lot and all constructions and landscaping activities must comply with: (i) the Governing Documents, (ii) the design guidelines, and (iii) the codes, rules, regulations, and requirements of the City, and (iii) the Development Agreement.

### **7.2 Number of Dwellings**

Only one dwelling may be constructed on any Lot. All Dwellings shall have an attached garage large enough to enclose a minimum of two cars.

### **7.3 Setbacks**

Building setbacks shall comply to the stricter of the design guidelines, city ordinance, Map, or Development Agreement.

### **7.4 Driveway and Parkstrip Material**

Rock and gravel shall not be used as landscape material in parkstrips, as driveways, or as driveway extensions. Parkstrip landscaping shall be sod and trees (as approved by the Design Review Committee). Driveways, driveway extensions, and parking pads located in front of the house shall be concrete, brick, or other permanent hard surface (as approved by the Design Review Committee).

### **7.5 Size of Dwelling**

The minimum livable square footage of a single story dwelling shall be 1,800 square feet on the main level (not including bonus rooms and basements). The minimum livable square footage of a multi-story dwelling shall be 1,300 square feet on the main level and 2,500 square feet above grade (not including basements). Livable square footage does not include garage space, porches, patios, balconies, decks, vent shafts, or courts.

### **7.6 Sewer Connection**

All Lots shall have a connection to sanitary sewer service. Cesspools, septic tanks, or other types of waste disposal systems are prohibited. Owners of downhill Lots or with basements may encounter difficulty in providing gravity flow sewer connections to the street. The cost of private ejector systems serving a Lot will be borne by the Owner of the Lot.

### **7.7 Redwood Height Restriction**

To the fullest extent required by the Development Agreement, no Dwelling on a Lot shall exceed one story and 26 feet in height as measured from the front curb if the Lot either directly borders State Road 68 (Redwood Road), or is adjacent to the open space area that borders State Road 68 (Redwood Road).

## 8 ARCHITECTURAL CONTROL

### 8.1 Design Review Committee

The Design Review Committee shall be responsible to establish and administer the Design Guidelines and to carry out all other responsibilities assigned to the Design Review Committee in order to carry out the purposes and intent of this Declaration. The Design Review Committee shall be composed of three to seven Owners in good standing (as defined in the Bylaws). All of the Design Review Committee members shall be appointed, removed, and replaced by Declarant in its sole discretion until Declarant sells, leases, or occupies its last Lot. After Declarant's right to appoint the Design Review Committee expires, the Board shall appoint, remove, and replace the Design Review Committee members. In the absence of a Design Review Committee, either Declarant, if it still has the right of appointment, or the Board shall act as such.

8.1.1 Chairman and Operations. Design Review Committee chairman shall be appointed by the Declarant, as long as it is in control, and then elected by the Design Review Committee members by majority vote of such members. The chairman shall take charge of and conduct all meetings and shall provide notice of the meetings to each Design Review Committee member. Notice shall set forth the time and place of the meeting. In the absence of a chairman, the party responsible for selecting the chairman may appoint or elect a successor, or if the absence is temporary a temporary successor.

8.1.2 Quorum/Voting. A quorum is a majority of the Design Review Committee members. The affirmative vote of a majority of a quorum of the Design Review Committee members shall govern its actions.

8.1.3 Expert Consultation. The Design Review Committee may retain technical and professional advisers and consultants as it deems appropriate. The Design Review Committee may also delegate its responsibilities to professional advisers and consultants.

8.1.4 Expenses/Design Review Fees. Except as provided in this Article, all expenses of the Design Review Committee shall be common expenses and shall be paid by the Association. To help offset costs, the Design Review Committee shall have the right to set, charge, and collect fees for plan review and compliance inspections. The Design Review Committee shall remit all fees collected to the Association. Design Review Committee fees shall be Individual Assessments. Failure to pay a Design Review Committee Fee in full within 14 days of notice shall entitle the Design Review Committee to:

8.1.4.1 Withdraw approval previously given and issue a stop work order, whereupon the Owner shall immediately stop all work on the Lot;

8.1.4.2 Issue fines as established in the Design Review Guidelines; and/or

8.1.4.3 Refer the matter to the Board for formal collection of all fees, interest, and attorney's fees and collection costs.

### 8.2 Purpose

The Design Review Committee shall review, study, and either approve, reject or request resubmittal of additional information with respect to all proposed Improvements to a Lot. The Design Review Committee shall review the proposed Improvements to ensure compliance with the Governing Documents and Design Guidelines. Each builder or Owner shall demonstrate to the Design Review Committee that its proposed Improvements have been approved by the City

and that such items are in compliance with the Governing Documents and Design Review Guidelines. The Design Review Committee shall have the right to require a builder or Owner to prepare and submit a construction mitigation plan for review and approval.

### **8.3 Submission to Committee**

No building, accessory, addition, repair to the exterior of a building, or other Improvement shall be constructed, maintained, or altered unless complete plans and specifications have first been submitted and approved by the Design Review Committee. Compliance with the design review process is not a substitute for compliance with the City's building, zoning, and subdivision regulations and requirements. Owners are responsible for obtaining all City approvals, licenses, and permits required in addition to obtaining Design Review Committee approval.

### **8.4 Standard**

The Design Review Committee shall exercise its best judgment to see that all Improvements conform and harmonize with any existing structures and surroundings as to external design, quality and type of construction, materials, colors, location on the Lot, height, grade and finished ground elevation, and all aesthetic considerations set forth in the Governing Documents and Design Guidelines. The Design Review Committee may grant variances, if required by the lot shape, topography, or any other special circumstance out of control of the Owner or which would unreasonably increase the cost of construction or make a Lot unbuildable.

### **8.5 Design Guidelines**

The Design Review Committee may adopt, modify, and amend design guidelines, which shall be considered a Governing Document. Design guidelines shall define and describe design standards for the Project. Any item not specifically discussed in the design guidelines shall be review by the Design Review Committee for general aesthetic compliance.

### **8.6 Security Deposit**

The Design Review Committee shall have the right to establish and require a cash security deposit for the purpose of securing complete and compliant performance by the Owner. The Design Review Committee may retain the security deposit until the Owner has fully performed all of its obligations under the approved plans and paid all Design Review Committee fees. Security deposits shall be held in the Association's bank accounts with the Association retaining any interest. The security deposit is not an advance payment of Design Review Committee fees or a measure of damages if Owner defaults in its obligations. If the Owner defaults in its obligations, the Design Review Committee may use, apply, or retain all or any part of the security deposit to pay Design Review Committee fees, and to reimburse the Association for any damages it incurs as a result of the default. Any action to enforce an Owner's default is not limited to the amount of the security deposit. The use of the security deposit does not constitute a waiver of any rights or remedies or limit the Association's right to bring seek its remedies at law or in equity. The Design Review Committee shall request the Association issue a refund of the security deposit, or any remaining portion thereof, after Owner has fully completed and complied with approved plans.

### **8.7 Approval and Appeal Procedure**

**8.7.1 Approval.** The Design Review Committee may include the procedures for application and approval in the design guidelines. The Design Review Committee shall, within 30 days after receipt of a completed application and all required information, respond in writing to the Owner at the address specified in the application. The response may: approve the

application, with or without conditions; approve a portion of the application and disapprove other portions; request resubmittal with requested changes; or deny the application. The Design Review Committee may, but shall not be obligated to, specify the reasons for denial or objections. No approval shall be inconsistent with the design review guidelines or Governing Documents. If the Design Review Committee fails to respond within 30 days, the application is deemed denied.

8.7.2 Appeals. All final decisions of the Design Review Committee are appealable to the Board. An Owner desiring to appeal a decision shall provide written notice to the Board stating the final decision rendered and the grounds for appeal. Unless otherwise agreed to by the Board, a hearing for the appeal shall be scheduled at the next regularly scheduled meeting of the Board. Any decisions on appeal are final.

## **8.8 Inspection and Compliance**

The Design Review Committee shall have the right, but not the obligation, to inspect any Lot or Improvement to ensure compliance with the approved plans and design guidelines. If a violation exists, the design review committee shall provide written notice of non-compliance to the Owner describing the violation. The Owner has 14 days from notice to cure or begin curing the violation. If no cure is undertaken, the Design Review Committee may:

8.8.1 Withdraw approval previously given and issue a stop work order, whereupon the Owner will immediately stop work until the cure is made;

8.8.2 Issue fines as allowed in the design guidelines;

8.8.3 Enter onto the Lot, without liability for trespass or nuisance, and use the security deposit to cure the violations, whereupon the Owner will be required to replenish the security deposit prior to commencing further work. Any overage spent by the Design Review Committee in curing the violation shall be an Individual Assessment against the Owner; or

8.8.4 Refer the matter to the Board for further action.

## **8.9 No Liability for Damages**

The Design Review Committee, its members, and professional advisors shall not be liable to any Person for an official act of the Design Review Committee, unless such party is guilty of willful misconduct. Approval of plans does not assure approval of such plans by the City or other governmental authority. Approval of plans does not certify that the plans meet code requirements. Inspection of the Improvements does not guarantee their safety, soundness, or compliance with code. The Design Review Committee, its members, professional advisors, agents, Declarant, and Association shall not be liable for any loss, liability, claim, or expense which may arise by reason of Design Review Committee approval or inspection. The Design Review Committee, its members, professional advisors, agents, Declarant, and Association shall not be liable for any defect in the approved plans or work done according to such plans. The Association shall defend the Design Review Committee in any action arising by reason of the Design Review Committee's decisions. However, the Association is not obligated to defend any Design Review Committee member adjudged to be liable for gross negligence or willful misconduct.



## **9 CONSTRUCTION REGULATIONS**

### **9.1 Portable Office or Trailer**

Any Owner whose contractor desires a portable office or trailer on the Lot during construction, must first apply for and receive permission from the Design Review Committee. The Design Review Committee will work with the owner to determine the best location for the office or trailer. The office or trailer shall only be located in a location approved by the Design Review Committee. The office or trailer may not be installed prior to construction and must be removed on the first to occur: (i) issuance of a certificate of occupancy; (ii) termination, expiration, or cancellation of the building permit; or (iii) suspension of construction activity for a period of 60 days.

### **9.2 Construction Debris Removal**

Owners and their contractors must collect trash at the end of each work day and deposit it into the jobsite trash container. Lightweight material must be weighed down to prevent it blowing out of the container. Jobsite dumpsters must be emptied regularly. No trash may be burned or buried. No concrete trucks may be cleaned out on any Lot or anywhere within the Project.

### **9.3 Construction Area Appearance**

The Lot must be maintained in a reasonably organized and neat conditions during construction. Materials shall be kept in neat stacks and covered when not in use. No more material may be delivered to a Lot than can be reasonably consumed in a week's time. However, once the dwelling is enclosed, materials may be stored inside indefinitely.

### **9.4 Sanitary Facilities**

Owners are responsible to supply a portable toilet facility during construction of the dwelling. The portable toilet must be located on the Lot at a location approved by the Design Review Committee. Portable toilets must be regularly serviced. Portable toilets must be removed as soon as the plumbing system is operational.

### **9.5 Removal of Mud**

Owners and their contractors are responsible for keeping mud from the construction site on the Owner's Lot. This may require cleaning truck tires before they leave the Lot.

### **9.6 Duration of Construction**

Owners shall proceed with reasonable speed once construction has commenced. All exterior surfaces of the building shall be substantially complete within 12 months from commencement. Front yard, side yard, and park strip landscaping shall be completed within one year from issuance of a certificate of occupancy. Back yards shall be completed within two years from issuance of a certificate of occupancy.

## **10 ENFORCEMENT**

### **10.1 Compliance**

Each Owner and Resident shall comply with the Governing Documents. Failure to comply will be grounds for the remedies provided in this Declaration.

### **10.2 Remedies**

The remedies for violations shall be levied against the Owner in all cases and the Residents in

cases involving injunctive relief. Remedies shall not be mutually exclusive and can be exercised concurrently. The Association shall have rights to take the following actions to correct violations of the Governing Documents:

10.2.1 After 15 days notice, to enter a Lot and abate and remove any violation of the Governing Documents. Any expense incurred in abating the violation will be an individual assessment against the Owner. If the Association exercises this right of entry, they will not be guilty of any manner of trespass or nuisance;

10.2.2 To levy fines pursuant to procedures adopted by the Board. The procedures shall comply with the Community Association Act

10.2.3 To suspend the voting right of the Owner; and

10.2.4 To bring suit for damages, to enjoin, abate, or remedy the violation on behalf of the Association and the Owners.

### **10.3 Action by Owner**

An Owner may bring an action against another Owner or the Association for damages, to enjoin, abate, or remedy a violation being committed by another Owner or the Association.

### **10.4 Hearings**

The board shall adopt procedures for hearings. When a hearing is requested or required, the hearing shall be conducted in accordance with the Board's procedures.

## **11 ASSESSMENTS**

### **11.1 Covenant for Assessment**

By accepting a deed or other conveyance, each Owner covenants and agrees to pay the Association all regular assessments, special assessments, emergency assessments, individual assessments, late penalties, and collection costs (including attorney's fees) whether or not a lawsuit is commenced. No Owner may exempt themselves from liability for assessments by abandonment of their Lot, failure of the Association to maintain the Common Areas, or non-use of the Common Areas. Except for foreclosures, the personal obligation for unpaid assessments, late fees, interest, and collection costs, including attorney's fees, shall pass to the successor in title. A successor in title is entitled to a statement from the Association setting forth the amounts due by the prior owner. The amounts set forth in the statement shall be binding upon the Association. If an Owner loses their Lot to foreclosure or voluntarily conveys it, they shall remain personally liable for unpaid assessments, late fees, interest, and collection costs (including attorney's fees).

### **11.2 Annual Budget**

The Board shall prepare an annual budget for the Association. The annual budget shall provide for: the maintenance, repair, and replacement of the Common Areas; and the administration, management, operation, and reserves of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect. An annual budget may be augmented or amended at any time the Board sees fit.

### **11.3 Reserve Account**

The Association shall establish a reserve account and conduct reserve studies as required by the

Community Association Act.

#### **11.4 Regular Assessment**

The Association may collect the regular assessment on an annual basis, semi-annual basis, quarterly basis, or monthly basis. Written notice of the regular assessment amount and payment schedule shall be sent to Owners at least 30 days in advance of the date which the regular assessment will be due. Apart from the initial notice of regular assessment, the Association is not obligated to send periodic invoices for regular assessments. If the Board fails to fix a regular assessment, the amount of the last regular assessment and payment schedule will continue in effect.

#### **11.5 Special Assessment**

The Association may levy a special assessment for the cost of any capital improvement. The Association may levy a special assessment up to 50% of the annual budget without approval from the Owners. If a special assessment exceeds 50% of the annual budget, it must be approved by a majority of a quorum of Owners.

#### **11.6 Individual Assessment**

Any expenses attributable to less than all the Lots may be assessed exclusively against the affected Lots. Individual assessments include, without limitation:

11.6.1 Assessments levied against a Lot to reimburse the Association for costs incurred in correcting a violation of the Governing Documents;

11.6.2 Fines, late fees, interest, collection costs (including attorney's fees);

11.6.3 Services provided to a Lot due to an Owner's failure to maintain, for emergency repairs, or to protect the health, safety, and welfare of adjoining Lots and Common Areas;

11.6.4 Design Review Committee Fees;

11.6.5 Reinvestment or transfer fees; and

11.6.6 Any charge described as an individual assessment by the Governing Documents.

#### **11.7 Apportionment of Assessments**

Regular, special, and emergency assessments will be apportioned equally among the Lots. Individual assessments shall be apportioned exclusively to the Lots benefitted or affected.

#### **11.8 Nonpayment of Assessment**

Assessments not paid within 30 days after the due date established by the Board will be late and subject to interest at 18% per annum on any delinquent balance and a late fee in an amount to be determined by the Board. Late fees may only be charged once per missed payment.

#### **11.9 Application of Partial Payments**

Partial payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

#### **11.10 Acceleration**

If an Owner fails to pay their assessments for 61 days or more, the Board may elect to accelerate

the remainder of the Assessments due that year.

**11.11 Suspension of Voting Rights**

If an Owner has a delinquent assessment balance, the Association may suspend their right to vote.

**11.12 Lien for Assessment**

All assessments, late fees, interest, and collection costs (including attorney’s fees) not timely paid shall be a charge and continuing lien upon each Lot against which the assessment is made. The Association shall file a notice of lien with the county recorder as evidence of nonpayment.

**11.13 Enforcement of Lien**

Without waiving its right to personally pursue an Owner for unpaid assessments, the Association may foreclose its lien in the same manner as deeds of trust, mortgages, or any other manner permitted by Utah law.

**11.14 Appointment of Trustee**

The Owners hereby convey and warrant pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to Samuel E. Bell, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of assessments under the terms of the Declaration.

**12 INSURANCE**

**12.1 Types of Insurance Maintained by the Association**

To the extent reasonably available, the Association shall obtain the following insurance coverage:

- 12.1.1 Public liability for the Common Areas for at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate for property damage, bodily injury, or death;
- 12.1.2 Property, fire, and extended hazard for all Common Areas, if available and advisable;
- 12.1.3 Directors and officers for at least \$1,000,000.00;
- 12.1.4 Worker’s compensation, whether or not there are employees;
- 12.1.5 Fidelity bond or dishonest acts insurance for at least the value of the reserves and operating capital of the Association.

The Board may adopt insurance rules and policies to maintain the insurability of the Project, keep the premiums reasonable, and enforce responsibilities of the Owners.

**12.2 Insurance Company**

The Association shall use an insurance company knowledgeable with community association insurance, which is licensed in Utah.

**12.3 Premium as Common Expense**

The premiums for the Association’s insurance policies shall be a Common Expense.

#### **12.4 Insurance by Owner**

Each Owner shall insure their Lot and personal property. Owners shall carry property, fire, and extended hazard for any Improvements on their Lot. Owners shall also carry liability insurance covering property damage, bodily injury, or death.

#### **12.5 Payment of Deductible**

The deductible on a claim made against an Association policy shall be paid for by the party:

12.5.1 Who would be liable for the loss, damage, claim or repair in the absence of insurance; or

12.5.2 From whose Lot the cause originates.

If there are multiple responsible parties, the loss shall be allocated equally amongst the parties. If a loss is caused by an Act of God, nature, or risk or peril beyond the control of the parties, then the Owner shall be responsible for the deductible. Responsibility for and the amount of the deductible shall be determined by the Board. If the Board changes the deductible amount, 60 days notice will be given to the Owners. Owners found to be responsible for the deductible, shall be so despite inadequate personal insurance. If the Board finds an Owner to be responsible for the deductible, it shall be an Individual Assessment.

#### **12.6 Right to Adjust Claims**

The Association has the right and authority to adjust claims.

### **13 DECLARANT'S SALES PROGRAM**

#### **13.1 Declarant's Rights**

Declarant shall have the following rights in furtherance of any sales, promotions, or other activities designed to accomplish or facilitate the sale of all Lots owned by Declarant:

13.1.1 Declarant shall have the right to maintain one or more sales offices and one or more model homes. Such offices or models may be one or more of the Lots owned by it, or one or more of any separate structures of facilities placed in the Project for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;

13.1.2 Declarant shall have the right to maintain a reasonable number of promotional, advertising, and/or directional signs, banners, or similar devices at any place or places within the Project; and

13.1.3 Declarant shall have the right to use the streets, trails, and other areas designated for use by the Owners within the Project to facilitate sales.

### **14 LAKE FRONT DEVELOPMENT**

#### **14.1 Assumption of Risk, Waiver of Claims, and Indemnification**

Each Owner, by its purchase of a Lot, hereby acknowledges that the Project is a lake front community. As a lake front community, the Project has activities with may include, without limitation: boating, swimming, trails for hiking and biking, open spaces, wildlife, rugged terrain, horses and horseback riding, events, activities, and programs ("Lake Front Activities"). Each

Resident expressly assumes the risk of noise, nuisance, hazards, personal injury, death, or property damage related to any and all of the Lake Front Activities. Each Resident agrees that neither Declarant, Association, nor any of their agents shall be liable to an Owner or Resident claiming any loss or damage, including without limitation: indirect, special, consequential, or punitive damage or loss arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to: (a) the proximity of the Lot to any Lakeside Activity; (b) any claim arising in whole or in part from the negligence of Declarant, Association, or any of their agents; or (c) any Lakeside Activity ("Waived Claims"). Each Owner and Resident hereby agrees to indemnify, defend, and hold harmless from and against any Waived Claims asserted by the Owner, Resident, or their visitors or tenants, and by others upon the Owner's Lot. Each Owner further covenants that the Association, Declarant, or their agents and Members, and participants in Lake Front Activities that they shall have a right, in the nature of an easement, to subject all or a portion of the Property to nuisances incidental to the carrying out of Lake Front Activities.

#### **14.2 Disclaimer Regarding Development**

All Persons are hereby advised that no representations, warranties, or commitments have been or are made by Declarant or any other Person with regard to the present or future development, ownership, operation, or configuration of, or right to use facilities within, near, or adjacent to the Project, whether or not depicted on the Map, or any other land use plan, sales brochure, or other marketing display, rendering, or plan. No purported representation, warranty, or commitment, whether written or oral, in such regard shall ever be effective without an amendment hereto executed by the Declarant.

### **15 MORTGAGEE PROTECTION**

#### **15.1 Mortgagee Protection**

No breach of any of the covenants, conditions, restrictions, and limitations contained herein shall defeat or render invalid the lien of any Mortgagee made in good faith and for value; provided, however, that all such covenants, conditions, restrictions, and limitations contained herein shall be binding upon an Owner whose title is derived through foreclosure or trustee's sale.

#### **15.2 Priority of Liens**

No enforcement of any lien provision herein contained shall defeat or render invalid the lien of any Mortgage. All sums assessed in accordance with the provisions of Article 11 shall constitute a lien on each respective Lot prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (2) the lien or charge of any recorded Mortgage on such Lot made in good faith and for value and recorded prior to the date on which any such Assessment or Assessments become due.

#### **15.3 Mortgage Holder Rights in Event of Foreclosure**

Any mortgagee of a Mortgage of record which obtains title to a Lot by the foreclosure of the Mortgage on the Lot or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid Assessments by the Association and charges against the Lot which accrued prior to the date of the acquisition of title to such Lot by such acquirer. Any unpaid Assessments shall be deemed to be association expenses collectible from all of the Lots in the Harbor Bay Subdivision, including the Lot that has been acquired in accordance with the provisions of this Section.

**15.4 Amendment**

No provision of this Article shall be amended without prior written consent of at least two-thirds of all first Mortgagees on the Lots within the Harbor Bay Subdivision as appear on the official records of the Utah County, Utah, as of the date of such amendment.

**16 MISCELLANEOUS****16.1 Amendment of Declaration**

A minimum of 67% of all Owners must approve any amendment to the Declaration. However, the Board may amend without Owner approval, to correct misspellings, grammar, or to comply with changes in the loan underwriting guidelines, if failure to comply would disqualify the Project from financing eligibility.

**16.2 Termination of Declaration**

A minimum of 75% of all Owners must approve a termination of the Declaration.

**16.3 Votes without a Meeting**

The Association may collect votes without a meeting as outlined in the Bylaws.

**16.4 Service of Process**

The registered agent of the Association will be the Person named in the corporate records on file with the Utah State Department of Commerce.

If the corporate status of the Association expires, the president shall be the successor agent. The name and address of the president shall be kept with the Association's records at its principal place of business.

**16.5 Taxes on Lots**

Each Owner will pay all taxes which may be assessed against him or his Lot.

**16.6 Covenants Run with the Land**

The Declaration contains covenants which run with the land and create equitable servitudes. The Declaration shall be binding upon and inure to the benefit of the Association, all parties who hereafter acquire any interest in or occupy a Lot or any part of the Project, their heirs, successors, assigns, grantees, devisees, personal representatives, guests, and invitees. Each Owner or Resident shall comply with the Governing Documents. All interests in the Lots shall be subject to the Governing Documents. Failure to comply shall be grounds for an action for damages or injunctive relief by the Association or an Owner. By acquiring any interest in a Lot, each Owner or Resident agrees to be bound by the Governing Documents.

**16.7 Severability**

If any provision of the Declaration is determined to be invalid or unenforceable, it shall not affect the remaining provisions of the Declaration.

**16.8 Waiver**

No provision of the Declaration shall be waived or abrogated by reason of a failure to enforce it.

**16.9 Gender**

The use of one gender shall be deemed to refer to all genders. The use of the singular shall be

deemed to refer to the plural and vice versa.

**16.10 Headings**

The headings are for reference only and not to describe, interpret, limit, extend or affect the content of the Declaration.

**16.11 Conflicts**

If the Declaration conflicts with the Community Association Act, the Community Association Act shall control. If the Declaration conflicts with the Map, the Map shall control. If the Declaration conflicts with the Bylaws, Articles, or rules, the Declaration shall control.

**16.12 Effective Date**

The Declaration and any amendments take effect upon recording in the Utah County Recorder's Office.

IN WITNESS WHEREOF, the Association, has caused this Declaration to be executed by its duly authorized officers.

DATED: 29 May 12

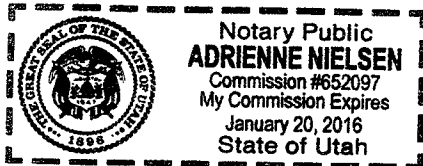
**Harbor Bay Subdivision Homeowners Association, Inc.**

Brandy C. Tilo  
By: Brandy Tilo  
Its: President

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

On this 29<sup>th</sup> day of May, 2012, personally appeared before me Brandy Tilo who being by me duly sworn, did say that they are the agent of the Association authorized to execute this Declaration and did certify that more than 67% of the Owners approved this Declaration.

Adrienne Nielsen  
NOTARY PUBLIC





**Exhibit A**

**Legal Description**

Lots 101 through 124 within Harbor Bay Subdivision Phase 1, as shown on the official map thereof on file in the Utah County Recorder's Office.

Parcel Nos.: 41:620:0101 and all other parcels with in Harbor Bay Subdivision Phase 1.

Lots 201 through 225 within Harbor Bay Subdivision Phase 2, as shown on the official map thereof on file in the Utah County Recorder's Office.

Parcel Nos.: 41:633:0201 and all other parcels with in Harbor Bay Subdivision Phase 2.

Lots 301 through 309 within Harbor Bay Subdivision Phase 3, as shown on the official map thereof on file in the Utah County Recorder's Office.

Parcel Nos.: 41:647:0301 and all other parcels with in Harbor Bay Subdivision Phase 3.

Lots 401 through 484 within Harbor Bay Subdivision Phase 4, as shown on the official map thereof on file in the Utah County Recorder's Office.

Parcel Nos.: 41:726:0401 and all other parcels with in Harbor Bay Subdivision Phase 4.

Lots 501 through 522 within Harbor Bay Subdivision Phase 5, as shown on the official map thereof on file in the Utah County Recorder's Office.

Parcel Nos.: 41:664:0501 and all other parcels with in Harbor Bay Subdivision Phase 5.

Lots 506 through 510 within Harbor Bay Subdivision Phase 5A, as shown on the official map thereof on file in the Utah County Recorder's Office.

Parcel Nos.: 41:708:0506 and all other parcels with in Harbor Bay Subdivision Phase 5A.

Together with any unsubdivided land described below:

A parcel of land located in Section 18, Township 6 South, Range 1 East, Salt Lake Base and Meridian, located in the City of Saratoga Springs, County of Utah, State of Utah, being more particularly described as follows:

Commencing at the South ¼ Corner of Section 18, Township 6 South, Range 1 East, Salt Lake Base and Meridian; thence along the south line of said Section 18, S89°45'55"E, 74.83 feet; thence North 56.03 feet to the true point of beginning; thence N33°32'19"W 427.38 feet; thence S62°02'24"W 244.68 feet; thence N33°32'19"W 303.28 feet; thence N32°54'18"W 384.22 feet; thence N25°56'08"W 320.90 feet; thence N23°19'52"W 510.14 feet; thence N23°51'55"W 227.47 feet; thence N25°42'32"W 465.22 feet; thence N26°21'33"W 153.11 feet; thence N26°18'35"W 133.08 feet; thence N26°32'07"W 168.59 feet; thence N26°30'11"W 264.34 feet; thence N25°18'29"W 230.98 feet; thence N22°30'16"W 89.86 feet; thence N20°57'25"W 211.01 feet to the beginning of a curve to the right having a radius of 25.01 feet; thence northeasterly along the arc of said curve 48.55 feet through a central angle of 111°14'02"; thence S89°43'23"E 272.12 feet; thence S26°04'37"E 684.48 feet; thence N62°02'24"E 439.87 feet; thence S31°27'08"E 284.34 feet to the beginning of a curve to the right having a radius of 472.38 feet; thence southeasterly along the arc of said curve 35.66 feet through a central angle of 04°19'30"; thence N62°02'24"E 767.42 feet; thence S45°19'58"E 103.62 feet; thence S46°35'15"E 103.28 feet; thence S29°00'40"E 71.80 feet; thence S23°05'10"E 166.00 feet; thence S15°17'31"E 212.54 feet; thence S19°25'06"E 219.06 feet; thence S21°43'30"E 249.98 feet; thence S26°17'24"E 116.97 feet; thence S39°13'04"E 62.10 feet; thence S48°35'14"E 253.07 feet; thence S44°28'49"E 102.10 feet; thence S34°04'35"E 85.51 feet; thence S25°18'14"E 212.18 feet; thence S37°05'12"E 219.22 feet; thence S26°56'54"E 91.87 feet; thence S20°27'06"E 118.54 feet; thence S28°10'31"E 93.06 feet; thence S36°20'32"E 177.78 feet; thence S39°06'59"E 338.82 feet; thence S46°55'23"E 42.18 feet; thence S60°10'55"W 798.70 feet; thence N24°36'42"W 62.13 feet to the beginning of a curve to the left having a radius of 272.09 feet; thence northwesterly along the arc of said curve 30.70 feet through a central angle of 06°27'54"; thence N89°45'59"W 188.96 feet; thence S00°14'05"W 189.47 feet; thence N89°45'55"W 482.30 feet to the true point of beginning.

## **Exhibit B**

### **Bylaws of Harbor Bay Subdivision Homeowners Association, Inc.**

## **1 BYLAW APPLICABILITY/DEFINITIONS**

### **1.1 Definitions**

The capitalized terms used in the Bylaws shall have the same meaning given to them in the Declaration, unless otherwise specifically stated.

### **1.2 Bylaw Applicability**

The provisions of these Bylaws are binding upon the Association and the Owners. All present and future Owners shall be subject to these Bylaws, as amended from time to time. Acquisition of any Lot constitutes an acknowledgment that the Owner has agreed to and ratified these Bylaws and will comply with them.

## **2 ASSOCIATION**

### **2.1 Composition**

All of the Owners acting as a group in accordance with the Governing Documents shall constitute the Association. Except for matters specifically reserved for a vote of the Owners, the Board, on behalf of the Owners, shall administer the Association's affairs.

### **2.2 Annual Meeting**

Annual meetings shall be held once a year. The Board shall determine the date, time, and place of the annual meeting. The Association shall send notice of annual meetings at least 20 days in advance of the meeting. At the annual meeting the Association shall conduct the following business:

- 2.2.1 Roll call and verification of quorum;
- 2.2.2 Approval of minutes from preceding annual meeting;
- 2.2.3 Reports of officers;
- 2.2.4 Special committee reports;
- 2.2.5 Election of directors;
- 2.2.6 Review of reserve analysis, vote on funding reserves;
- 2.2.7 Unfinished business from preceding annual meeting; and
- 2.2.8 New business.

### **2.3 Special Meeting**

Special meetings may be held at any time for any purpose. A special meeting may be called by a majority of the Directors or upon petition of at least 20% of the Owners in good standing. The Association shall schedule and send notice of a special meeting within 30 days of request. The

notice of a special meeting shall state the date, time, place, and purpose of the meeting. The Association shall send notice of a special meeting at least 10 days in advance of the meeting. No business may be transacted at a special meeting except as stated in the notice.

#### **2.4 Place of Meeting**

Meetings shall be held at a place designated by the Board and stated in the notice of meeting. Meetings shall be held in Utah County.

#### **2.5 Conduct of Meeting**

The President shall preside over all meeting of the Association. The Secretary shall keep the minutes of the meeting and take record of all resolutions adopted at the meeting.

#### **2.6 Quorum**

A quorum shall be the Owners present in person or by proxy at a meeting.

#### **2.7 Voting**

Each Lot shall have one vote. An Owner must be in good standing to vote. If a Lot is owned by more than one Person and multiple Owners are present at a meeting, the vote appertaining to that Lot shall be cast by agreement of a majority of the Owners. If a Lot is owned by more than one Person and a single Owner is present at a meeting, the vote appertaining to that Lot shall be cast by the Owner present. The Association may conclusively presume the consent of all a Lot's Owners when a vote is cast by a Lot with multiple Owners.

Except where a greater number is required by the Governing Documents or the Nonprofit Act and elections of directors, any decision requiring Owner consent shall be passed by majority vote of a quorum.

#### **2.8 Good Standing**

An Owner shall be in good standing if he has no reported violations of the Governing Documents and has paid assessments levied against his Lot, including late fees, interest, fines, collection costs, and attorney fees. An Owner must have paid in full at least five business days prior to the meeting or action.

#### **2.9 Proxies**

An Owner in good standing may vote or otherwise act by proxy. An Owner may appoint a proxy by signing a proxy appointment form. The proxy appointment form may be submitted to the Association in person, by mail, or electronically. The proxy appointment form must name a proxy, be dated, and signed by the Owner. Any proxy appointment form that does not contain a proxies name, date, or signature shall be void. A proxy appointment form is valid until revoked by the Owner's attendance at a meeting, a signed and dated revocation delivered to the Association, a subsequent proxy appointment, notice of death or incapacity of the Owner, or the passage of 11 months.

#### **2.10 Mail-in Ballots**

Any action requiring a vote of the Owners, except election of directors, may be taken by mail-in ballots. Action by mail-in ballot shall comply with the procedures set forth in Nonprofit Act Section 16-6a-709, as amended from time to time. A combination of mail-in ballots, ballots collected electronically, and ballots cast in person may be used.

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

Any action requiring a vote of the Owners, except election of directors, may be taken by written consent. Action by written consent shall comply with the procedures set forth in Nonprofit Act Section 16-6a-707, as amended from time to time. Written consents may be collected electronically.

### **2.12 Record Date**

The record date for determining which people are entitled to vote shall be the date notice of the meeting or action is sent. The Board may change the record date prior to sending notice of the action. The Owners shown on the records of the Association on the record date shall be the people entitled to vote on an action.

## **3 BOARD OF DIRECTORS**

### **3.1 Number and Qualification of Directors**

There shall be three to five Directors. The number of Directors shall be determined by Board resolution. Directors must be Owners in good standing.

### **3.2 Selection and Term of Directors**

Unless appointed by the Board under this Article, Directors shall be elected by the Owners. Cumulative voting shall not be permitted. The candidates with the most votes shall be elected.

Directors shall serve staggered terms of two years. Directors shall hold office until their successor is elected. If the Directors' terms become non-staggered (*i.e.*, after removal of the entire Board or expansion or contraction of the Board), the initial term of each member (1 or 2 years) shall be decided by vote of the newly elected Directors at their organization meeting. There is no limit on the number of terms a Director may serve.

### **3.3 Vacancies**

Director vacancies, for any reason other than removal by vote of the Association, shall be filled by vote of a majority of the remaining Directors. The Board shall conduct a special meeting for the purpose of filling the vacancy. The meeting shall be valid even if a quorum is not present. Each replacement Director shall serve until the next annual Owners' meeting, then the vacancy shall be filled by vote of the Owners. The replacement Director elected by the Owners shall serve the remaining term of the replaced Director.

### **3.4 Removal of Directors**

A Director may be removed with or without cause by vote of a majority of the Owners. If the Owners propose to remove a Director, the Association shall give the Director and Owners at least 15 day written notice of the meeting and the purpose of the meeting. The Director shall be given an opportunity to be heard at the meeting prior to the vote to remove him. At any meeting where a Director is removed by the Owners, the Owners must vote to replace the Director. The replacement will serve the remaining term of the removed Director.

Any Director who allows his assessments to become more than 90 days past due or fails to cure a violation of the Governing Documents within 90 days may be removed and replaced by vote of a majority of the Board. The Board shall give the Director 10 day written notice to cure the default prior to voting to remove the Director.

### **3.5 Organization Meeting**

The Directors shall hold a meeting following the annual owners meeting for the purpose of electing officers. Notice of the organization meeting shall be given verbally at the annual meeting. The organization meeting shall be conducted within seven days of the annual meeting.

### **3.6 Regular Meetings**

The Board shall hold regular meetings. The Board shall determine frequency, times, and locations of regular meetings. However, the Board shall conduct at least two regular meetings per year. Notice of regular meetings shall be given to each Director at least five days prior to the meeting.

### **3.7 Special Meetings**

A Director may call a special meeting of the Board. Notice shall be given at least three days prior to the meeting. Notice shall state the time, place, and purpose of the meeting.

### **3.8 Conduct of Meetings**

The President shall preside over all meetings of the Board. The Secretary shall take minutes of the Board meetings and shall make record of all resolutions.

### **3.9 Quorum**

A majority of the Board shall constitute a quorum. A quorum shall be required to conduct business at a meeting. If less than a quorum is present at a meeting, the majority of those present may adjourn the meeting until such time as a quorum is present. Once established, a quorum will be present even if directors leave. Directors may attend a meeting telephonically.

### **3.10 Waiver of Meeting Notice**

Directors may waive notice of meetings in writing. A waiver shall be deemed equivalent to notice. Attendance of a Director at a meeting will be considered a waiver of notice, unless the Director attends to dispute notice. If all Directors are present at a meeting, notice of the meeting is waived and any business may be conducted.

### **3.11 Action without Meeting**

Any action by the Board may be taken without a meeting if all the Directors give written consent to the action. Written consent may be given in person, by mail, or electronically. The Association shall file the written consents with its record of minutes.

### **3.12 Powers and Duties**

The Board shall manage the affairs and business of the Association. The Board is vested with all power and authority necessary to administer the affairs of the Association in accordance with the Governing Documents. The Board may do any act required or allowed by the Governing Documents, the Community Association Act, the Nonprofit Act, or any other rule of law.

Subject to the limitations contained in the Declaration, Bylaws, or Community Association Act, the Board shall have the following authority:

- 3.12.1 Prepare an annual budget and establish what constitutes a Common Expense;
- 3.12.2 Adopt and amend rules, regulations, policies, and procedures governing the Common Areas, administration of the Association, and to enforce and interpret the Governing Documents;
- 3.12.3 Delegate authority to a managing agent to act on behalf of the Association;
- 3.12.4 Provide for the maintenance, repair, and replacement of the Common Areas;
- 3.12.5 Hire, contract for, and terminate personnel or contractors necessary for the maintenance repair and replacement of the Common Areas and administration of Association business. Provide for the compensation of personnel. Purchase supplies, equipment, and materials for use in the Association.
- 3.12.6 Open and maintain bank accounts on behalf of the Association. Designate authorized signers for the bank accounts;
- 3.12.7 File lawsuits or initiate other legal proceedings on behalf of the Association.
- 3.12.8 Defend lawsuits, administrative actions, and other legal proceedings against the Association;
- 3.12.9 Pay costs of any services rendered to the Project or multiple Owners, but not billed to the Owners individually;
- 3.12.10 Keep books with detailed accounts of the receipts and expenditures of the Association. Make the books available to the Owners as required by the Community Association Act and Nonprofit Act. The books shall be kept in accordance with generally accepted accounting practices. Upon resolution by the Board, retain an independent auditor to audit the books;
- 3.12.11 Grant easements, licenses, or permission over, under, and through the Common Areas;
- 3.12.12 Upon approval by 67% of the total votes, to convey Common Areas;
- 3.12.13 Create committees;
- 3.12.14 Any other act allowed or required by the Governing Documents, the Community Association Act, or the Nonprofit Act;
- 3.12.15 Any act allowed or required to be done in the name of the Association.

### **3.13 Manager**

The Board may employ a manager to perform such duties and services as the Board shall authorize. The Board may delegate to the manager all powers granted to the Board and officers by the Governing Documents. However, the manager must obtain the Board's written consent to exercise the powers listed in Bylaw Sections 3.12.2, 3.12.6, 3.12.7, 3.12.8, 3.12.11, 3.12.12.

### **3.14 Compensation**

Directors shall not be compensated for their work. However, Directors may seek reimbursement for actual costs and mileage incurred during their service.

### **3.15 Limitation of Liability**

The Directors shall not be liable to the Owners for any mistake of judgment, negligence, or other errors, unless it was by willful misconduct or criminal conduct. The Association shall indemnify and hold the Directors harmless against liability to third parties for actions taken on behalf of the Association, while acting in their capacity as Director, unless the action constitutes willful misconduct or criminal conduct.

## **4 OFFICERS**

### **4.1 Election and Term of Officers**

The Board shall elect the officers of the Association. Officers shall serve one-year terms and shall serve until their successor is elected.

### **4.2 Removal of Officers**

The Board may remove any officer with or without cause by affirmative vote of a majority of a quorum of the Board. If an officer is removed, the Board shall replace them.

### **4.3 Offices**

The Association officers shall be president, vice president, secretary, and treasurer. The Board may appoint assistant officers as it may deem necessary. Except for the president, the same person may hold two offices.

#### **4.3.1 President**

The president shall be the chief executive officer. He shall preside at meetings of the Association and the Board. He shall be an unofficial member of all committees. He shall have general and active management of Association business. He shall see that all resolutions and policies of the Association are executed.

#### **4.3.2 Vice President**

The vice president shall perform the duties and exercise the powers of the president in the absence or disability of the president. If the president and vice president are unable to act, the Board shall appoint a Director to fulfill the duties on an interim basis.

#### **4.3.3 Secretary**

The secretary shall attend all meetings and take minutes thereof. He shall also make record of all resolutions, rule, policies, and procedures. He shall give or cause to be given notice of all meetings. He shall compile or cause to be compiled a complete list of the owners and their contact information.

#### **4.3.4 Treasurer**

The treasurer shall oversee the finances of the Association. He shall be responsible to ensure that the Association has full and accurate records of income and expenses. He shall give financial reports at regular Board meetings and the annual Owners' meeting.

### **4.4 Delegation of Duties**

The Association officers may delegate any of their duties to a manager or to committee. However, the officers shall be responsible to oversee and ensure that the duties so delegated are being properly discharged.



#### **4.5 Compensation**

Officers shall not be compensated for their work. However, officers may seek reimbursement for actual costs and mileage incurred during their service.

### **5 NOTICE**

#### **5.1 Manner of Notice**

All notices and other communications required under the Governing Documents shall be in writing.

5.1.1 Notices to Owners may be delivered using the following methods:

5.1.1.1 By professional courier service or First-class U.S. mail, postage prepaid, to the address of the Lot or to any other address designated by the Owner in writing to the Association;

5.1.1.2 By hand to the address of the Lot or to any other address designated by the Owner in writing to the Association; or

5.1.1.3 By facsimile, electronic mail, or any other electronic means to an Owner's number or address as designated by the Owner in writing to the Association.

5.1.2 Notice to the Association may be delivered using the following methods:

5.1.2.1 By professional courier service or First-class U.S. mail, postage prepaid, to the principal office of the Association as designated in writing to the Owners; or

5.1.2.2 By facsimile, electronic mail, or any other electronic means to the Association's official electronic contact as designated in writing to the Owners.

5.1.2.3 Notices sent via courier or mail shall be deemed received 3 days after being sent. Notices hand delivered or sent via electronic means shall be deemed received upon delivery or being sent.

#### **5.2 Waiver of Notice**

Whenever any notice is required under the Governing Documents, the Community Association Act, or the Nonprofit Act, an owner may waive notice in writing. The waiver may be signed before or after the time for notice. A waiver of notice shall be equivalent to notice.

### **6 FINANCES**

#### **6.1 Fiscal Year**

The fiscal year of the Association shall be the calendar year.

#### **6.2 Checks, Agreements, Contracts**

All checks, contracts, deeds, leases, and other instruments used for expenditures or obligations may be executed by any person authorized by the Board.

#### **6.3 Availability of Records**

Association financial records shall be available as provided by the Community Association Act

and Nonprofit Act.

**7 AMENDMENT TO BYLAWS**

**7.1 Amendments**

These Bylaws may be amended either by the Board, unless it would result in changing 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. These Bylaws may also be amended by a majority vote of the Owners.

**7.2 Recording**

Any amendment to these Bylaws shall become effective on the date it is recorded in the Utah County Recorder's Office.

**8 MISCELLANEOUS**

**8.1 Office**

The principal office of the Association shall be located at any place within the State of Utah which may be designated from time to time by the Board.

**8.2 Conflicts**

The Bylaws are subordinate to any conflicting provisions in the Community Association Act, the Nonprofit Act, the Articles, the Map, or the Declaration. The Bylaws are superior to the rules, regulations, and policies of the Association.

**8.3 Severability**

If any provision of these Bylaws is held by a court of law to be invalid, the validity of the remainder of these Bylaws shall not be affected.

**8.4 Waiver**

No provision of these Bylaws shall be deemed to be waived because of a failure to enforce the provision.

**8.5 Captions**

The captions contained in these Bylaws are for convenience only. The captions shall not be used to interpret, limit, or enlarge the provisions of these Bylaws.

**8.6 Gender, etc.**

Whenever the context so requires, the singular shall include the plural and vice versa. The use of any gender shall include all genders.

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officers.

DATED: 29 May 12

**Harbor Bay Subdivision Homeowners Association, Inc.**

Brandy Tilo  
By: Brandy Tilo  
Its: President

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

On this 29<sup>th</sup> day of May, 2012, personally appeared before me Brandy Tilo who being by me duly sworn, did say that they are the president of the Association authorized to execute these Bylaws and did certify and verify that as required by Original Bylaws Article X more than 50% of the total votes approved these Bylaws.

Adrienne Nielsen  
NOTARY PUBLIC

