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**MASTER DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS  
FOR  
SOUTHVIEW PLANNED UNIT DEVELOPMENT**

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**MASTER DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS  
FOR  
SOUTHVIEW**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE SOUTHVIEW PLANNED UNIT DEVELOPMENT ("Declaration") is made by Southview Properties, LLC, an Oregon Limited Liability Company ("Declarant").

**RECITALS**

Declarant is the owner of all the real property and improvements thereon located in Klamath County, Oregon, described in Exhibit A hereto.

Declarant intends to develop Southview as a Class II planned community, which includes residential, commercial and mixed-use districts. To establish Southview as a planned community, Declarant desires to impose these mutually beneficial covenants, conditions, restrictions, easements, assessments, and liens on the Property, under a comprehensive general plan of improvement and development for the benefit of all Lots and Common Area in Southview.

Declarant has deemed it desirable for the efficient preservation of the values and amenities in Southview to create a nonprofit corporation, to which will be delegated and assigned the powers and authority to own, maintain, and administer the Common Area and facilities, to administer and enforce the covenants, conditions, and restrictions of this Declaration, and to collect and disburse the assessments and charges hereinafter created.

Declarant shall convey any Tract or Parcel designated as Common Area or Association Property to the Southview Master Association ("Association"). The Association shall assume the maintenance obligation of all Tracts and Common area for the benefit of the Owners and equitably assess the Owners of Lots for expenses.

This Declaration is Supplemental to the Southview Development Guide, recorded as Auditors File No. \_\_\_\_\_, in the records of Klamath County, Oregon. ("Development Guide")

NOW THEREFORE, Declarant declares that the Property shall be held, transferred, sold, conveyed, and occupied subject to the Oregon Planned Community Act as may be amended from time to time (ORS 94.550–94.783) and subject to the following covenants, conditions, restrictions, easements, charges, and liens, which shall run with the land, which shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof, and which shall inure to the benefit of the Association and of each Owner.

**ARTICLE 1  
DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Master Declaration shall have the following meanings

**1.01 APARTMENT BUILDING** shall mean any building (including all improvements and fixtures contained therein) located within the Property within which are located one or more separate apartment units which may be offered for rental or lease by the Owners thereof and which has not been created as a Condominium Unit pursuant to a Supplemental Declaration.

**1.02 DESIGN REVIEW COMMITTEE** (hereinafter sometimes "Committee") shall mean the committee created pursuant to the Development Guide.

**1.03 DESIGN COMMITTEE RULES** (hereinafter sometimes "Committee Rules") shall mean the rules and guidelines adopted by the Design Committee pursuant to Section 8.03 hereof.

**1.04 ARTICLES** shall mean the Articles of Incorporation of the Southview Master Association, which have been or will be filed in the office of the Secretary of State of the State of Oregon, as the same from time to time may be amended.

**1.05 ASSESSMENTS** shall mean assessments of the Master Association and includes both regular and special assessments. An **ASSESSMENT** shall have the meaning set forth in Section 6.06A hereof.

**1.06 ASSESSMENT UNIT** shall mean a Lot, a Condominium Unit, an apartment unit within an Apartment Building, any 1,800 square feet of net rentable space, or portion thereof, in a Commercial Site, or any 10,00 square feet of Recreation Area.

**1.07 COMMON AREA or MASTER COMMON AREA** shall mean all real and personal property now or hereafter owned by the Master Association

**1.08 BOARD** shall mean the Board of Directors of the Master Association.

**1.09 BYLAWS** shall mean the Bylaws of the Master Association, which may be adopted by the Board, as such Bylaws may be amended from time to time.

**1.10 COMMERCIAL SITE** shall mean any parcel of land, whether or not improved, which is designated for Commercial Use. If such **COMMERCIAL SITE** is shown on a recorded Subdivision plat, its size and dimensions shall be as shown thereon and if such **COMMERCIAL SITE** is not shown on a recorded Subdivision plat, its size and dimensions shall be established by the legal description in the deed of record when such property is first subjected to this Master Declaration. A **COMMERCIAL SITE** may also be established as such by a recorded instrument wherein the Owner thereof and Declarant designate a parcel of land as a **COMMERCIAL SITE**.

**1.11 COMMERCIAL USE** shall mean any governmental, professional, office, business, business park, eleemosynary, trade or industrial use, including any activity involving the offering of goods or services.

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**1.12 A CONDOMINIUM BUILDING** shall mean a building containing Condominium Units.

**1.13 CONDOMINIUM UNIT** shall mean only a residential condominium unit as defined in ORS 100.005 (as amended), unless this Declaration or any Supplemental Declaration specifically identifies a Condominium Unit as a commercial Condominium Unit.

**1.14 DEVELOPMENT GUIDE** shall mean the Southview Development Guide, dated June 23, 2000, as amended.

**1.15 SOUTHVIEW** shall mean all that real property described on Exhibit "A" to this Master Declaration. SOUTHVIEW shall also mean such additional lands as are now described on Exhibit "B" hereto and which, in either case, have been subjected to this Master Declaration by Declarant or by other Persons with Declarant's written consent.

**1.16 FIRST MORTGAGE** shall mean any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of Klamath, Apartment Building or Commercial Site having priority of record over all other recorded liens except those governmental liens made superior by stature (such as general ad valorem tax liens and special assessments). "First Mortgage", shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the said Administrator and is owned by the Administrator's assignee, or a remote assignee, and the records in the Office of the Clerk and Recorder of the County of Klamath, Oregon, show the said Administrator as having the record title to the real property described in such contract.

**1.17 FIRST MORTGAGEE** shall mean any person named as a mortgagee or beneficiary under any First Mortgage and any successor to the interest of any such person under such First Mortgage, and with respect to notice of termination, subordination or modification of certain insurance policies, as provided in Section 10.08, the Administrator of Veterans Affairs, and Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not and the records of the Clerk and Recorder of the County of Klamath, Oregon, show the said Administrator as having the record title to the real property in such contract.

**1.18 SOUTHVIEW MAINTENANCE FUND** shall mean the fund created for the receipts and disbursements of the Master Association, pursuant to Section 9.01 hereof.

**1.19 SOUTHVIEW RESTRICTIONS** shall mean this Master Declaration together with any and all Supplemental Declarations which may be recorded pursuant to Article II hereof, as this Master Declaration or said Supplemental Declaration may be amended from time to time, together with the Southview Rules from time to time in effect, and the Articles and Bylaws of the Master Association from time to time in effect.

**1.20 SOUTHVIEW RULES** shall mean the rules adopted by the Board pursuant to Section 6.05F hereof, as they may be amended from time to time.

**1.21 DECLARANT** shall mean Southview Properties, LLC, an Oregon limited liability company, and its successors and assignees designated by recorded instrument.

**1.22 IMPROVEMENT** shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, patios, tennis courts, swimming pools, garages, doghouses, mailboxes, aerials, antennas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting, planted trees and shrubs, poles, signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, walls, tanks, reservoirs, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

**1.23 LOCAL COMMON AREA** shall mean any portion of Southview designated as Local Common Area in a Final Plat. Local Common Areas are for the primary benefit of the Owners and occupants of a particular area. It may be owned by such Owners, or by a nonprofit corporation or an unincorporated association in which all such Owners shall be entitled to membership.

**1.24 LOT** shall mean any parcel of land, which is designated on any recorded Subdivision plat, whether or not improved, as a separate parcel of land, whether for commercial or residential use.

**1.26 MANAGER** shall mean the person, firm or corporation employed by the Master Association pursuant to Section 6.06E and delegated the duties, powers or functions of the Association pursuant to said Section.

**1.27 MASTER ASSOCIATION** (hereinafter sometimes "Association") shall mean Southview Master Association, the Oregon nonprofit corporation described in Article VI hereof, and its successors.

**1.28 MASTER DECLARATION** (herein sometimes "Declaration") shall mean this instrument as it may be amended from time to time.

**1.29 MEMBER** shall mean any person who is a member of the Master Association pursuant to Section 6.02 hereof.

**1.30 MORTGAGE** shall mean any mortgage or deed of trust given to secure the payment of a debt and encumbering any Lot, portion of a Multi-Family Site, Condominium Unit, Apartment Building or Commercial Site, or any Improvements located on any of the above.

**1.31 MORTGAGEE** shall mean any person named as a mortgagee or beneficiary under any Mortgage, under which the interest of any Owner is encumbered, or any successor to the interest of any such mortgagee or beneficiary under such Mortgage, and specifically includes the Administrator of veterans Affairs of the Veterans Administration under any executory land sales contract wherein the Administrator of Veterans Affairs of the Veterans Administration is seller

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(whether owned by the said Administrator or assigned to another, and whether or not the executory land sales contract is recorded), and any assignee of said Administrator under any executory land sales contract.

**1.32 MULTI-FAMILY SITE** shall mean any parcel of land, including a Lot, whether or not shown on a recorded subdivision plat and whether or not improved, which is designated for Apartment Buildings, Condominiums or Townhouses.

**1.34 NOTICE AND HEARING** shall mean ten days' written notice given as in Section 10.03 provided and a public hearing at which the person to whom the notice is directed shall have the opportunity to be heard in person or by counsel at his expense.

**1.35 OWNER** shall mean (1) the person or persons, including Declarant, holding an aggregate fee simple interest in a Lot, Townhouse, other parcel of land within the Property, Commercial Site or a Condominium Unit, or, as the case may be, (2) the purchaser of an aggregate fee simple interest in a Lot, Townhouse, other parcel of land, Commercial Site, or a Condominium Unit under an executory sales contract.

**1.36 PERIOD OF DECLARANT CONTROL** shall mean the period of time during which the Declarant has the right to appoint the Members of the Board of the Master Association.

**1.37 PERMITTED USERS** shall mean any Member and any Member's lessee, guest, invitee and member of the family of any Member.

**1.38 PERSON** shall mean a natural individual or any entity with the legal right to hold title to real property.

**1.39 PLANS AND SPECIFICATIONS** shall mean any and all documents designed to guide or control an Improvement or other use of property, including but not limited to those indicating size, shape, configuration or materials, all site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to the Improvement or proposed use of property.

**1.41 PROPERTY** shall mean all of the real property described on Exhibit A, together with any or all of the real property annexed to Southview if and when such real property is made subject to this Master Declaration pursuant to Section 2.02.

**1.42 RECORD, RECORDED, and RECORDATION** shall mean, with respect to any document, the recordation of such document in the office of the Clerk and Recorder of the County of Klamath, State of Oregon.

**1.43 RESIDENTIAL AREA** shall mean any part of the Property zoned or otherwise designated or limited by the Declarant for development and use for residential purposes, including single-family detached houses, apartments, Townhouses and condominiums.



**1.44 RESIDENTIAL LOT** shall mean a Lot, which is designated for single-family, detached residence use.

**1.45 RECREATIONAL DISTRICT** shall mean areas designated as Recreational District in an approved Conditional Use Permit or Site Plan by the City of Klamath Falls, but shall not include Chalk Rocs Amphitheater.

**1.45 SUBASSOCIATION** shall mean any Oregon nonprofit corporation or unincorporated association and its successors, organized and established by Declarant pursuant to or in connection with a Supplemental Declaration recorded by Declarant, as provided in Sections 2.01 and 6.01.

**1.46 SUBDIVISION** shall mean a parcel of land, which has been shown, on a recorded final subdivision plat approved pursuant to the applicable ordinances of Klamath Falls, Oregon.

**1.47 SUPPLEMENTAL DECLARATION** shall mean any declaration of covenants, conditions and restrictions, which may be hereafter recorded by Declarant.

## **ARTICLE 2**

### **PROPERTY SUBJECT TO THIS DECLARATION**

**2.1 Development.** The development of Southview shall consist of the Property, which shall be held, transferred, sold, conveyed, and occupied subject to this Declaration. Southview will be divided into several areas, which will be developed by Declarant. At Declarant's option, some of said areas will be dedicated as Local Common Areas, Common Area, or for other purposes for the benefit of the developed areas, in accordance with the master plan for Southview. It is contemplated that Southview will be developed pursuant to such master plan, as it may from time to time be amended or modified, as a unified planned development district in which the development of, and restrictions upon, each portion thereof will benefit each other portion and the whole thereof. As each area is developed or dedicated, Declarant may record one or more Supplemental Declarations with respect thereto which will refer to this Master Declaration and designate the use classification for such area, and which may supplement the Master Declaration with such additional covenants, conditions, and restrictions as Declarant may deem appropriate for that area. Such Supplemental Declaration may, but need not, provide for the establishment of a Subassociation to be comprised of Owners within the area subject thereto. Any Supplemental Declaration may provide its own procedure for the amendment of any provisions thereof, subject to Declarant consent. All lands, Improvements and uses in each area so developed shall be subject to both this Master Declaration and the Supplemental Declaration, if any, for that area. In the event of any conflict between any such Supplemental Declaration and this Master Declaration, the terms and provisions of this Master Declaration shall govern.

**2.2 Right to Annex Additional Property or to Withdraw Property.** Declarant is the owner of additional real property contiguous to the Real Property described in Exhibit "A" to this Declaration. Declarant reserves the right to record a Memorandum incorporating this Declaration by reference to include all or any part of such contiguous property (contiguous to include property separated by public street) to the effect that this Declaration would apply to the property

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described in the Memorandum, the same as if it had been described in Exhibit "A" of this declaration. Declarant may withdraw any area from the Property, and thus from operation of this Declaration, so long as Declarant is the sole owner of such area.

**2.3 Design Guidelines and Architectural Control.** The Design Guidelines and process for architectural review in Southview are set forth and governed by the Development Guide, which is incorporated herein by this reference.

### **ARTICLE 3 OWNERSHIP AND EASEMENTS**

**3.1 Nonseverability.** The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. No Lot shall be conveyed by the Owner separately from the interest in the Common Area. Any conveyance of any Lot shall automatically transfer the right to use the Common Area without the necessity of express reference in the instrument of conveyance. There shall be no judicial partition of the Common Area. Each Owner, whether by deed, gift, devise, or operation of law, for such Owner's benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests, and causes of action for judicial partition of any interest in the Common Area and agrees that no action for judicial partition shall be instituted, prosecuted, or reduced to judgment. Ownership interests in the Common Area and Lots are subject to the easements granted and reserved in this Declaration. Each of the easements granted or reserved herein shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Lots and shall be superior to all other encumbrances applied against or in favor of any portion of Southview.

**3.2 Ownership of Lots.** Title to each Lot in a residential area of Southview shall be conveyed in fee to an Owner. If more than one person and/or entity owns an undivided interest in the same Lot, such persons and/or entities shall constitute one Owner.

**3.3 Ownership of Common Area.** Title to any Common Area shall be conveyed to the Association not later than the date of the Turnover Meeting for any Phase.

**3.4 Easements.** Individual deeds to Lots may, but shall not be required to, set forth the easements specified in this Article.

**3.4.1 Easements on Plat.** The Common Area and Lots are subject to the easements and rights-of-way shown on the Plat.

**3.4.2 Easements for Common Area.** Every Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot. Such easement is subject to ORS 94.665, as may be amended from time to time.

**3.4.3 Easements for Recreation Area.** Every Owner shall have a limited, nonexclusive right and easement of use and enjoyment in and to the Recreation Area, which shall be appurtenant to and shall pass with the title to every Lot. Such easement is subject to the following:

- (a) The right of Declarant to reasonably limit the number of guests of Owners using the Recreation Area, and facilities located thereon;
- (b) The right of Declarant to establish and enforce reasonable Rules and Regulations pertaining to the use of the Recreation Area, and all facilities located thereon;
- (c) The right of Declarant to close portions of the Recreation Area for maintenance, construction or any other purpose.
- (d) The right of Declarant to close all or any portion of the Recreation District from time to time, and to charge admission to all or portion of the Recreation District for public or private events.

**3.4.4 Limitations on Owners' Easement Rights.** In addition to those limitations set forth in Section 3.4.3 above, the rights and easements of access, use and enjoyment set forth in Section I hereinabove shall be subject to the provisions of this Declaration, including, but not limited to, the following:

- (a) The right of the Association to reasonably limit the number of guests of Owners using the Common Area, and facilities located thereon;
- (b) The right of the Association to establish and enforce reasonable Rules and Regulations pertaining to the use of the Common Area, and all facilities located thereon;
- (c) The right of the Association to suspend the voting rights and rights and easements of use and enjoyment of the recreational amenities located on the Common Area of any Member, and all persons deriving such rights and easements from any Member (as provided herein) for any period during which any Assessment against such Member's Lot remains unpaid and delinquent; and, after Notice and Hearing, to impose monetary penalties or suspend such use rights and easements for a period not to exceed thirty (30) days for any violation of the Association Documents, it being understood that any suspension for either nonpayment of any Assessments or breach of such restrictions shall not constitute a waiver or discharge of the Member's obligations to pay Assessments as provided herein;
- (d) The right of the Association, in accordance with the Association Documents, to borrow money for the purpose of improving the Common Area, and Improvements located thereon, with the assent of sixty-seven percent (67%) of the voting power of the Association and/or, subject to the terms and provisions of the Article herein entitled "Mortgagee Protection," to mortgage, pledge, deed in trust or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (e) Subject to the terms and provisions of the Article herein entitled "Mortgagee Protection," the right of the Association to dedicate or transfer all or any part of the Common Area to any public Agency or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless approved by sixty-seven percent (67%) of the voting power of the Association, and a certificate executed by the President and the Secretary of the Association evidencing such approval shall be recorded in the Office of the County Recorder for Klamath County; provided, however, that the dedication or transfer of Common Area and/or easements for utilities or for other public purposes consistent

with development of the Project shall not require the prior approval of the Members of the Association;

(f) The right of Declarant (and their respective sales agents, representatives and prospective purchasers) to the nonexclusive use of the Common Area, and the facilities located thereon, without charge for access, for sales, display and exhibit purposes; provided, however, that such use shall cease upon the date that Declarant no longer owns a Lot in the Project or any portion of the Annexation Property. Such use shall not unreasonably interfere with the rights of enjoyment of other Owners as provided herein; (g) The right of Declarant to designate additional Common Area, pursuant to the terms of the Article herein entitled "Annexation of Additional Property"; (h) The right of the Association, acting by and through its Architectural Control Committee, to enact uniform and reasonable architectural guidelines, in accordance with the Article herein entitled "Architectural Control"; (i) The right of the Association to reasonably restrict access to the Common Area;

(j) The right of the Association to perform and exercise its duties and powers as set forth herein;

(k) Other rights of the Association, the Architectural Control Committee, the Board, the Owners and Declarant with respect to the Common Area as may be provided for in this Declaration; and

(l) Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Common Area imposed by Declarant or by any Public Agency having jurisdiction to impose any such limitations, restrictions or conditions, including, but not limited to, the right of any and all Public Agencies to use their vehicles or appropriate equipment as reasonably necessary over those portions of the Common Area designed for vehicular movement to perform municipal functions or emergency or essential public services.

**3.4.5 Delegation of Common Area Use Rights.** Subject to the rights reserved to the Association in Section 2 above, any Owner who resides within the project may delegate his rights of use and enjoyment to the Common Area, and any recreational facilities thereon, to the members of his immediate family and any other persons residing within his Residence, in the event an Owner has rented or leased his Residence, his rights of use and enjoyment to the Common Area, and any recreational facilities thereon, shall be automatically delegated to his tenants or lessees for the duration of their tenancy, and the Owner's rights of use and enjoyment to the Common Area, and any recreational facilities thereon, shall be deemed suspended for the duration of such tenancy, except such rights as may be reasonably required to perform the necessary functions of a landlord. The seller under an installment sales contract shall be deemed to have delegated any rights of use and enjoyment to the Common Area, and any recreational facilities thereon, to the purchaser under the contract.

**3.4.6 Easements Reserved by Declarant.** As long as Declarant owns any Lot, Declarant reserves an easement over, under, and across the Common Area in order to carry out sales activities necessary or convenient for the sale of Lots. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress to, from, over, in, upon, under, and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the improvements on the Property in such a way as not to interfere unreasonably with the occupancy,

use, enjoyment, or access to an Owner's Lot by such Owner or such Owner's family, tenants, employees, guests, or invitees.

**3.4.7 Additional Utility and Drainage Easements.** Notwithstanding anything expressed or implied to the contrary, this Declaration shall be subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of Southview. No structure, planting, or other material that may damage or interfere with the installation or maintenance of utilities, that may change the direction of flow of drainage channels in the easements, or that may obstruct or retard the flow of water through drainage channels in the easement areas shall be placed or permitted to remain within any easement area.

**3.4.8 Easements for Drainage.** There are hereby created, granted and reserved over each Lot in the Project easements for drainage according to the patterns for drainage created by the approved grading plans for the Project, as well as according to the actual, natural and existing patterns for drainage. In the event the approved grading plans make provisions for "cross-lot drainage," whereby water runoff from one (1) or more contiguous Lots drains across another Owner's Lot, each Owner of a Lot affected by such "cross-lot drainage" covenants and agrees not to obstruct or otherwise interfere with said drainage patterns of waters from adjacent Lots in the Project over his Lot, or, in the alternative, that in the event it is necessary and essential to alter said drainage pattern for the protection and use of his Lot, such Owner shall submit all plans and specifications therefore to the Architectural Control Committee for prior review and approval. Easements created and reserved herein shall at all times be subject to the Protective Covenants created in this Declaration, and such Rules and Regulations as may be adopted, from time to time, by the Board.

**3.4.9 Association's Easements.** Declarant grants to the Association and its duly authorized agents and representatives such easements over the Lots and Common Area as are necessary to perform the duties and obligations of the Association, as set forth in this Declaration, the Bylaws, and the Articles, as the same may be amended.

**3.4.10 Easement to Governmental Entities.** Declarant grants a nonexclusive easement over the Common Area to all governmental and quasi-government entities, agencies, utilities, and their agents for the purposes of performing their duties as utility providers.

**3.4.11 Perimeter Easement Benefiting Association.** Declarant grants to the Association and its duly authorized agents and representatives an easement over that perimeter portion of each Lot that is included within the building setbacks set by applicable ordinances for the purposes of installation, maintenance, repair, and replacement of utilities, communication lines, and drainage. The Board may grant or convey the easements reserved herein to any governmental body or agency and/or any public or private utility company or provider, on a two-thirds vote of the Board members at a duly called and held Board meeting.

**3.4.12 Electrical Service Easements Benefiting Lot Owners.** The Owners of a Home developed within a single building shall have an easement over, under, and through all other Lots

on which the building is located for underground electrical service to the Lot Owner's Home. This easement shall be perpetual and shall run with the land and be binding on the successors and assigns to the Lots and the Homes located within a single building. The electrical lines within the easement area shall be maintained by the Lot owner benefited by the easement. Any damage caused to the servant Lot (and Home) by the maintenance repair, removal, or replacement of the electrical service lines shall be paid by the Lot Owner causing such damage.

**3.5 Declarant's Right to Dedicate Common Area and Grant Easements; Board's Authority After Title Transferred to Association.** Declarant reserves the right and power to dedicate and/or convey any portion or all of any Common Area to any governmental body or agency. Declarant further reserves the right and power to grant an easement over any Common Area to any governmental body or agency or any public or private utility. Thereafter, the Board shall have the same powers reserved to Declarant and may exercise such power upon a two-thirds or greater vote of the Board members at any duly called and held Board meeting. The provisions of this Section 3.5 shall control over any provisions to the contrary contained in any other Section of the Declaration.

#### **ARTICLE 4 RIGHTS OF MAINTENANCE AND ENTRY BY ASSOCIATION**

**4.1 Right of Maintenance and Entry by Association.** If an Owner fails to perform maintenance and/or repair that such Owner is obligated to perform pursuant to this Declaration, any Phase Declaration or the Development Guidelines, and if the Board determines, after notice, that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature, and/or value of Southview the Board may cause such maintenance and/or repair to be performed and may enter any such Lot whenever entry is necessary in connection with the performance thereof. An Owner may request, and the Board shall conduct, a hearing on the matter. The Owner's request shall be in writing delivered within five days after receipt of the notice, and the hearing shall be conducted within not less than five days nor more than 20 days after the request for a hearing is received. Entry shall be made with as little inconvenience to an Owner as practicable and only after advance written notice of not less than 48 hours, except in emergency situations. The costs of such maintenance and/or repair shall be chargeable to the Owner of the Lot as a Reimbursement Assessment, which may be collected and enforced as any other assessments authorized hereunder.

**4.2 Ordinances and Regulations.** The standards and restrictions set forth in this Article 4 shall be the minimum required. To the extent that local governmental ordinances and regulations are more restrictive or provide for a higher or different standard, such local governmental ordinances and regulations shall prevail.

#### **ARTICLE 5 COMMON AREA**

**5.1 Use of Common Areas.** Use of Common Areas is subject to the provisions of the Declaration, Bylaws, Articles, and the Rules and Regulations adopted by the Board. There shall be no obstruction of any part of any Common Area. Nothing shall be stored or kept in the

Common Area without the prior written consent of the Board. No alterations or additions to the Common Area shall be permitted without the prior written consent of the Board. There shall be no parking, loading, unloading, or "standing" of any kind or of any type of vehicle on any Common Area for any length of time. The Association shall post "No Parking" signs on the Common Area.

**5.2 Maintenance of Common Area.** The Association shall be responsible for maintenance, repair, replacement, and upkeep of Common Areas except where such maintenance is provided by a government agency or utility company at the expense of the Owners of Lots. The Association shall keep all Common Areas in good condition and repair, provide for all necessary services, and cause all acts to be done that may be necessary or proper to assure the maintenance of the Common Area.

**5.3 Alterations to Common Area.** Only the Association shall construct, reconstruct, or alter any improvement located on the Common Areas. A proposal for any construction of or alteration, maintenance, or repair to any such improvement may be made at any Board meeting. The Board may adopt a proposal, subject to the limitations contained in the Bylaws, this Declaration provided, however, no improvements may be made to the Common Area except the construction, repair, and reconstruction of the private streets, utility installations, landscaping, curbs, and sidewalks.

**5.4 Funding.** Expenditures for alterations, maintenance, or repairs to an existing improvement for which a reserve has been collected shall be made from the Reserve Account. As provided in Section 10.5, the Board may levy a special assessment to fund any construction, alteration, repair, or maintenance of an improvement (or any other portions of the Common Area) for which no reserve has been collected or for which the Reserve Account is insufficient to cover the cost of the proposed improvement.

**5.5 Landscaping.** All landscaping on any Lot or on the Common Area shall be maintained and cared for in a manner that is consistent with Declarant's or the DRC's original approval of such landscaping. Weeds and diseased or dead lawn, tree, groundcover, or shrubs shall be removed and replaced. Lawns shall be neatly mowed and trees and shrubs shall be neatly trimmed.

**5.6 Condemnation of Common Area.** If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain, or by purchase in lieu of eminent domain, the Board shall receive and expend the entire award in a manner that, in the Board's discretion, is in the best interest of the Association and the Owners. The Association shall represent the interest of all Owners in any negotiations, suit, action, or settlement in connection with such matters.

**5.7 Damage or Destruction of Common Area.** If all or any portion of the Common Area is damaged or destroyed by an Owner or any of Owner's guests, Occupants, tenants, licensees, agents, or members of Owner's family in a manner that would subject such Owner to liability for such damage under Oregon law, such Owner hereby authorizes the Association to repair such damage. The Association shall repair the damage and restore the area in workmanlike manner as

originally constituted or as may be modified or altered subsequently by the Association in the discretion of the Board. Reasonable costs incurred in connection with effecting such repairs shall become a special assessment on the Lot and against the Owner who caused or is responsible for such damage.

**5.8 Power of Association to Sell, Dedicate, or Transfer Common Area.** As provided in ORS 94.665, the Association may sell, dedicate, transfer, grant a security interest in, or grant an easement for installation and maintenance of utilities or for similar purposes with respect to, any portion of the Common Area. Except for grants of easements for utility-related purposes, no such sale, dedication, transfer, or grant of a security interest shall be effective unless approved by 80% of the votes of both Class A and Class B. Provided further, if there is only one class of votes, such sale, dedication, transfer, or grant of a security interest (other than a grant of an easement for utility-related purposes) must be approved by 80% of the votes held by Owners other than Declarant.

## **ARTICLE 6 USE RESTRICTIONS AND NOTIFICATION OF ACTIVITIES**

**6.1 Construction Activities.** This Master Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by any Owner (including Declarant) upon property within Southview, provided that when completed such Improvements shall in all ways conform to this Master Declaration and the Development Guidelines. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Master Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence, is in compliance with applicable federal, state and local laws and ordinances and any rules and regulations adopted pursuant thereto, and conforms to usual construction practices in the area. In the event of any dispute, a temporary waiver of the applicable provision, including but not limited to any provision prohibiting temporary structures, may be granted by the Master Architectural Committee, provided that such waiver shall be only for the reasonable period of such construction. Such waiver may, but need not, be recorded or in recordable form. No construction activities shall be carried on in such a way as to create a health hazard or unreasonably interfere with the use and enjoyment by any Owner or his family of any Residential Lot, Condominium Unit, Townhouse or apartment unit. No portion of the Property may be stripped of natural vegetation unless in connection with construction of Improvements or installation of landscaping within such portion of the Property. If such construction or installation has not commenced within a reasonable time after the natural vegetation has been stripped, the Owner of such portion of the Property shall take appropriate steps to prevent the erosion or blowing of soil from the Property.

**6.2 Notification of Overflights.** SouthView is located within the overflight patterns for aircraft departing and/or arriving from Klamath Falls International Airport and the National Guard Airbase. Accordingly, Owners can expect airplane, jet and helicopter noise and other disturbances from such overflights.



**6.3 Notification of Amphitheater Activities.** Southview contains an amphitheater located in the Southview Recreation District. The amphitheater will host and produce numerous special events, including concerts and other noisemaking activities. Sound levels are limited to 102 dab at the sound mixing board located within the theater area, and 65 dab at the Sound Limitation Overlay Boundary, as shown in the map attached as Exhibit B, hereto. Complete conditions of operation are set forth within the SouthView Recreation District Conditional Use Permit on file at the City of Klamath Falls Planning Department.

## **ARTICLE 7 MEMBERSHIP IN THE MASTER ASSOCIATION**

**7.1 Organization.** The Master Association is an Oregon nonprofit corporation created for the purposes, charged with the duties, and invested with the powers prescribed by law or set forth in its Articles and Bylaws or in this Master Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Master Declaration. In case of conflict between the Master Declaration and the Articles of Incorporation and Bylaws, the Master Declaration shall control, and in case of conflict between the Articles of Incorporation and Bylaws, the Articles of Incorporation shall control. Nothing in this Master Declaration shall prevent the creation, by provision thereof in Supplemental Declarations executed and recorded by Declarant, of Subassociations to own, assess, regulate, operate, maintain or manage the portions of Southview subject to such Supplemental Declarations or to own or control portions thereof for the common benefit of Owners and occupants of any portions of the real property or Condominium Units in the portion of Southview subject to such Supplemental Declarations. In case of conflict between the Master Declaration and Articles of Incorporation of the Master Association on the one hand and the Supplemental Declaration and other organizational documents of any Subassociation on the other hand, the Master Declaration and Articles of Incorporation of the Master Association shall control.

**7.2 Membership.** Only the Owners defined in paragraph 1.35 shall be Members of the Master Association; provided, however, that no Person shall be a Member by reason of ownership of lands used for public school or governmental or quasi-governmental purposes, or by reason of ownership of any park, public land, road, easement, right of way, mineral interest or Mortgage. Each Owner as defined in the preceding sentence shall automatically be a Member of the Master Association without the necessity of any further action on his part, and Master Association membership shall be appurtenant to and shall run with the property interest, ownership of which qualifies the Owner thereof to membership. Membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated, except together with the title to the property interest, ownership of which qualifies the Owner thereof to membership, and then only to the transferee of title to said property interest, and except that such membership may be assigned to a First Mortgagee in connection with the financing of a Member's property. Any attempt to make a prohibited severance, transfer, pledge, mortgage or alienation shall be void.

### **7.3 Voting Rights.**

**7.3.1.** The Association shall have the following five classes of voting membership:

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**7.3.1.A. Class A:** Class A Members shall be all of the Owners of Residential Lots, Townhouses and Condominiums including Declarant. Each Class A Member shall be entitled to one (1) vote per Residential Lot for each Residential Lot in the Property owned by said Class A Members. When more than one person owns any Residential Lot, all such Persons shall be Members, but the vote appurtenant to such Residential Lot shall be exercised as the several Owners among themselves determine and in no event shall more than one (1) vote be cast with respect to any Residential Lot.

**7.3.1.B. Class B:** Class B members shall be the Declarant.

**7.3.1.C. Class C:** Class C members shall be all of the Owners of Apartment Buildings, including Declarant. Each Class C Member shall be entitled to one (1) vote for the greater of the number of rental units within an Apartment Building or each 1,800 gross square feet within such Apartment Building (referred to herein as "Apartment Unit"). When more than one person holds and interest in an Apartment Building, all such Persons shall be Members, but the vote appurtenant to such Apartment Building shall be exercised as the several Owners among themselves determine and in no event shall more than one (1) vote be cast with respect to any Apartment Unit. In the event any Apartment building is converted to Condominium ownership during the term of the Master Declaration, all Class C memberships within such Apartment Building shall be converted to Class A memberships with each Condominium Unit receiving a Class A membership on the effective date of such conversion. In the event all Apartment Buildings within the Property are converted to Condominium Ownership, the Class C membership shall terminate.

**7.3.1.D. Class D:** Class D Members shall be all of the Owners of Commercial Sites, including Declarant. Each Class E Member shall be entitled to one (1) vote for each 1,800 square feet of net rentable area within such Commercial Site. When more than one Person holds an interest in a commercial Site, all such Persons shall be Members, but the vote appurtenant to such Commercial Site shall be exercised as the several Owners among themselves determine and in no event shall more than (1) vote be cast with respect to any 1,800 square feet of net rentable area within such Commercial Site.

**7.3.1.E. Class E:** Class E Members shall be all of the Owners of parcels of land within the Southview Recreation District, not included within classes A through D, including Declarant. Each Class E Member shall be entitled to one (1) vote for each acre of land within the area.

**7.3.2. Joint or Common Ownership.** If any property interest, ownership of which entitles the Owner thereof to vote, is held jointly or in common by more than one Person, the vote or votes to which such property interest is entitled shall also be held jointly or in common in the same manner. However, the vote or votes for such property interest shall be cast, if at all, as a unit, and neither fractional votes nor split votes shall be allowed. In the event that such joint or common owners are unable to agree among themselves as to how their vote or votes shall be cast as a unit, they shall lose their right to cast their votes on eh matter in question. Any joining or common Owner shall be entitled to cast the vote or votes belonging to the joint or common Owners unless another joint or common Owner shall have delivered to the Secretary of the Master Association prior to the election a written statement to the effect that the Owner wishing

to cast the vote or votes has not been authorized to do so by the other joint or common Owner or Owners, in which even no vote may be cast for such joining or common Owners.

**7.3.3. Proxy Voting.** Any Owner, including Declarant, may give a revocable written proxy to any person authorizing the latter to cast the Owner's votes on any matter. Such written proxy shall be in such form as may be prescribed by the Bylaws of the Master Association.

**7.3.4. Cumulative Voting.** The cumulative system of voting shall not be used for any purpose.

**7.3.5. Appointment of Directors During Period of Declarant Control.** Declarant shall have the right, at Declarant's option, to appoint all the officers and directors of the Master Association prior to termination of the Period of Declarant Control. The Board of Directors shall appoint the officers of the Master Association and direct the business of the Master Association in accordance with Articles of Incorporation and By-Laws of the Master Association and the Southview Restrictions. After termination of the Period of Declarant Control, the Board of Directors shall be elected in a manner consistent with the procedures set forth in the Master Association Bylaws

**7.3.6. Termination of Period of Declarant Control.** The Period of Declarant Control shall terminate upon the first to occur of the following events:

**7.3.6.A.** 120 days following the date when seventy-five percent (75%) of the Lots, Condominium Units, Townhouses, Apartment Buildings and Commercial Sites and property representing 75% of the votes allocated to parcels of land within the Class E Membership, within the Property have been conveyed by Declarant to the first owner thereof (other than Declarant); provided, however, that if, during such 120-day period, additional real property is annexed to the Property pursuant to Section 2.02 above, so that Declarant again owns at least twenty-five percent (25%) of the Lots, the Condominium Units, Townhouses, Apartment Buildings, Commercial Sites or property in the Class F Membership within the Property, the Period of Declarant Control shall not be deemed to have been terminated;

**7.3.6.B.** Fifteen (15) years from the date upon which this Master Declaration is recorded in the office of the Clerk and Recorder for the County of Klamath, Oregon; or

**7.3.6.C.** On a date certain set forth in a written notice from the Declarant to the Secretary of the Master Association stating Declarant's intent to terminate the Period of Declarant Control as of such date.

## **ARTICLE 8 DECLARANT CONTROL**

**8.1 Interim Board and Officers.** Declarant hereby reserves administrative control of the Association. Declarant, in its sole discretion, shall have the right to appoint and remove members of an interim board (the "Interim Board"), which shall manage the affairs of the Association and be invested with all powers and rights of the Board until the Turnover Meeting (as hereinafter defined). The Interim Board shall consist of from one to three members. Notwithstanding the MASTER DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR SOUTHVIEW.

provision of this Section 8.1, at the Turnover Meeting, at least one Director shall be elected by Owners other than Declarant, even if Declarant otherwise has voting power to elect all three Directors.

**8.2 Turnover Meeting.** Declarant shall call a meeting for the purposes of turning over administrative control of the Association from Declarant to the Class A members within 60 days of the earlier of the following dates:

**8.2.1 Earliest Date.** The date on which Lots representing 75% of the total number of votes of all Lots in Southview have been sold and conveyed to persons other than Declarant;

**8.2.2 Optional Turnover.** The date on which Declarant has elected in writing to terminate Class B membership.

Declarant shall give notice of the Turnover Meeting to each Owner as provided in the Bylaws. If Declarant does not call the Turnover Meeting required under this Section [the transitional advisory committee or any Owner may do so.

## ARTICLE 9 DECLARANT'S SPECIAL RIGHTS

**9.1 General.** Declarant is undertaking the work of developing Lots and other improvements within Southview. The completion of the development work and the marketing and sale of the Lots is essential to the establishment and welfare of the Property as a mixed-use community. Until the Homes on all Lots on the Property have been constructed, fully completed, and sold, with respect to the Common Area and each Lot on the Property, Declarant shall have the special rights set forth in this Article 9.

**9.2 Marketing Rights.** Declarant shall have the right to maintain a sales office and model on one or more of the Lots that Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week. Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property, including, without limitation, on the Common Area.

**9.3 Declarant Easements.** Declarant reserves easements over the Property as more fully described in Sections 3.4 and 3.5 hereof.

**9.4 Additional Improvements.** Declarant does not agree to build any improvements not described in this Declaration.

## ARTICLE 10 FUNDS AND ASSESSMENTS

**10.1 Purpose of Assessments; Expenses.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, aesthetics, and welfare of the Owners

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and Occupants of Southview; for the improvement, operation, and maintenance of the Common Areas, Association Property, Streets, Sewer and Street Lights; for the administration and operation of the Association, for property and liability insurance.

**10.2 Covenants to Pay.** Declarant and each Owner covenant and agree to pay the Association the assessments and any additional charges levied pursuant to this Declaration or the Bylaws. All assessments for operating expenses, repairs and replacement, and reserves shall be allocated among the Lots and their Owners as set forth in Section 10.4.2.

**10.2.1 Funds Held in Trust.** The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely as set forth in Section 10.1. On the sale or transfer of any Lot, the Owner's interest in such funds shall be deemed automatically transferred to the successor in interest to such Owner.

**10.2.2 Offsets.** No offsets against any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

**10.2.3 Right to Profits.** Association profits, if any, shall be the property of the Association and shall be contributed to the Current Operating Account.

**10.2.4 Association Capital.** The first Owner of each Lot, Townhouse, Condominium Unit, Apartment Building or Commercial Site (other than Declarant) who purchases any such Lot, Townhouse Condominium Unit, Apartment Building or Commercial Site from Declarant, its assigns or successors shall make a non-refundable capital contribution to the Master Association in an amount equal to One Thousand Dollars (\$1,000.00) per Assessment Unit (the "Master Association Funding Contribution") at the time of conveyance of the Lot, Townhouse, Condominium Unit, Apartment Building or Commercial Site.

**10.2.5 Master Association Funding Contribution Adjustments.** The Master Association Funding Contribution shall be adjusted annually as of the first day of each calendar year by multiplying the Master Association Funding Contribution by the CPI Adjustment. The "CPI Adjustment" shall be a fraction, the numerator of which shall be the CPI for the adjustment date, and the denominator of which shall be the CPI for January 1, 2005 (the "Commencement Date"). "CPI" shall mean the All Items, All Urban Consumers Price Index for the Portland -Vancouver Consolidated Metropolitan Statistical Area (1982-1984-100), as published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or revised, then such other index or computation with which it is replaced, or, another index reasonably chosen by Board shall be used. If the CPI is not published for the Commencement Date of any Adjustment Date, then the CPI published closest to and before such date shall be used.

**10.2.6 Allocation and Segregation of Master Association Funding Contribution.** All such contributions shall be allocated as follows:

**10.2.6.A** Two thirds (66.66%) of any such Master Association Funding Contribution shall be held in a segregated account by the Master Association for the purpose of paying its annual operating expenses.

**10.2.6.B** One third (33.33% of any such Master Association Funding Contribution shall be held in a segregated account by the Master Association for its use and benefit as it deems desirable, including but not limited to ensuring that the Board of Directors of the Master Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board.

Payment of any such Master Association Funding Contribution shall not relieve an Owner from making the regular payment of assessments as the same become due.

**10.3 Basis of Assessment; Commencement of Assessments.** Declarant shall pay all common expenses of the Association until the Lots are assessed for common expenses. The amount and date of commencement of the initial annual assessment to Owners other than Declarant shall be determined by Declarant. In the sole and unfettered discretion of Declarant, Declarant may defer payment of reserves for a Lot until the Lot is conveyed to a third party. However, Declarant may not defer payment of accrued reserves beyond the date of the Turnover Meeting.

**10.4 Annual Assessments.** Annual assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. The initial annual assessment shall be determined by Declarant and shall be prorated on a monthly basis at the time of the closing of the first sale from Declarant. For proration purposes, any portion of a month shall count as a full month. Annual assessments shall be payable on a periodic bases, not more frequently than monthly, as determined by the Board. The fiscal year shall be the calendar year unless another year is adopted by vote of the Association members.

**10.4.1 Budgeting.** Each year the Board shall prepare, approve, and make available to each Member a pro forma operating statement (budget) containing (a) estimated revenue and expenses on an accrual basis; (b) the amount of the total cash reserves of the Association currently available for replacement or major repair of the Common Area and Commonly Maintained Property and for contingencies; (c) an itemized estimate for the remaining life of, and the methods of funding to defray repair, replacement, or additions to major components of such improvements as provided in Section 10.6.2; and (d) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement, or additions to major components of the Common Area and the Commonly Maintained Property. Notwithstanding that budgeting shall be done on an accrual basis, the Association's books shall be kept on a cash basis and the Association shall be a cash basis taxpayer, unless applicable governmental regulations require otherwise. For the first fiscal year, the budget shall be approved by the Board no later than the date on which annual assessments are scheduled to commence. Thereafter, the Board shall annually prepare and approve the budget and distribute a copy or summary thereof to each Member, together with written notice of the amount of the annual assessments to be levied against the Owner's Lot, within 30 days after adoption of such budget.

**10.4.2 Allocation of Assessments.** The total amount in the budget shall be charged against all Developed Lots as annual assessments as follows:

**10.4.3 Drainage and Water Quality Facilities.** Each area of Southview will be served by various stormwater drainage and water quality facilities. Some facilities may serve only a single phase or project, other facilities may serve larger areas, or the entire development. The Board shall equitably allocate the costs of those facilities and assess lots, districts or areas according to the impact each has on that facility.

**10.4.4 Nonwaiver of Assessments.** If before the expiration of any fiscal year the Association fails to fix annual assessments for the next fiscal year, the annual assessments established for the preceding year shall continue until a new annual assessment is fixed.

**10.5 Special Assessments.** The Board and/or the Owners shall have the power to levy special assessments against an Owner or all Owners in the following manner for the following purposes:

**10.5.1 Correct Deficit.** To correct a deficit in the operating budget, by vote of a majority of the Board;

**10.5.2 Special Obligations of an Owner.** To collect amounts due to the Association from an Owner for breach of the Owner's obligations under this Declaration, the Bylaws, or the Rules and Regulations, by vote of a majority of the Board;

**10.5.3 Repairs.** To collect additional amounts necessary to make repairs or renovations to the Common Area or Commonly Maintained Property if sufficient funds are not available from the operating budget or replacement reserve accounts, by vote of a majority of the Board; or

**10.5.4 Capital Improvements.** To make capital acquisitions, additions or improvements, by vote of at least 80% of all votes allocated to the Lots.

**10.5.5 Reimbursement Assessments.** The Association shall levy a reimbursement assessment against any Owner and such Owner's Lot if a failure to comply with this Declaration, Bylaws, Architectural Standards, or any Rules and Regulations has (a) necessitated an expenditure of monies by the Association to effect compliance or (b) resulted in the imposition of a fine or penalty against such Owner or such Owner's Lot (a "Reimbursement Assessment"). A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association except on at least 10 days' written notice to the Owner being assessed. If, within said 10-day period, the Owner makes a written request to the Board for a hearing, a hearing shall be held. On request for a hearing, the Board shall conduct it not less than 10 nor more than 30 days after the request by the Owner, and shall make its decision within not more than 30 days after the hearing is held. If a notice has been previously given, and the hearing has already been held or waived (in writing or by the Owner's failure to appear) for the violation resulting in the Reimbursement Assessment, no additional notice and hearing is required before levying the Reimbursement Assessment.

## 10.6 Accounts.

**10.6.1 Types of Accounts.** Assessments collected by the Association shall be deposited into at least two separate accounts with a bank, which accounts shall be clearly designated as (a) the Current Operating Account and (b) the Reserve Account. The Board shall deposit those portions of the assessments collected for current maintenance and operation into the Current Operating Account and shall deposit those portions of the assessments collected as reserves for replacement and deferred maintenance of capital improvements into the Reserve Account. Withdrawal of funds for the Association's Reserve Account shall require the signatures of either two Directors or one Director and an officer of the Association who is not a Director. In its books and records, the Association shall account separately for operating expenses relating to the Common Area/Commonly Maintained Property and operating expenses relating to all other matters, as well as for necessary reserves relating to the Common Area/Commonly Maintained Property and necessary reserves relating to all other matters.

**10.6.2 Reserve Account.** Declarant shall establish a Reserve Account, in the name of the Association, which shall be kept separate from all other funds held by the Association. The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair, or replacement of Common Area property and Commonly Maintained Property that normally requires replacement, in whole or in part, within three to 30 years and not for regular or periodic maintenance and expenses. No funds collected for the Reserve Account may be used for ordinary current maintenance and operation purposes.

**10.6.2.1 Calculation of Reserve Assessment; Reserve Study.** The Board of Directors of the Association shall annually conduct a reserve study, or review and update an existing study, of the Common Area and Commonly Maintained Property to determine the reserve account requirements. A reserve account shall be established for those items of the Common Area and Commonly Maintained Property all or part of which will normally require replacement in more than three and less than 30 years, for exterior painting, and for the maintenance, repair, or replacement of other items as may be required under the Declaration or Bylaws or that the Board of Directors, in its discretion, may deem appropriate. The reserve account need not include items that could reasonably be funded from operating assessments. The reserve study shall include:

- (a) identification of all items for which reserves are required to be established;
- (b) the estimated remaining useful life of each item as of the date of the reserve study;
- (c) the estimated cost of maintenance, repair or replacement of each item at the end of its useful life; and
- (d) a 30-year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule. The reserve account assessment shall be allocated pursuant to Section 10.4.2.

**10.6.2.2 Loan from Reserve Account.** After the Turnover Meeting described in Section 8.2, the Board may borrow funds from the Reserve Account to meet high seasonal demands on the Association's regular operating fund or to meet unexpected increases in expenses. Funds borrowed must be repaid later from assessments if the Board has adopted a resolution,



which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment within a reasonable period.

**10.6.2.3 Increase or Reduction, or Elimination of Reserve Account Assessment.**

At any time after the second year after the Turnover Meeting, future assessment for the Reserve Account may be increased or reduced by the vote of Owners of Lots representing 75% of the votes computed in accordance with Section 7.3.

**10.6.2.4 Investment of Reserve Account.** Nothing in this Section 10.6 prohibits the prudent investment of Reserve Account funds, subject to any constraints imposed by the Board, the Bylaws, or the Rules and Regulations.

**10.6.2.5 Refunds of Assessments.** Assessments paid into the Reserve Account are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers or Owners of Lots may treat their outstanding share of the Reserve Account's balance as a separate item in the sales contract providing for the conveyance of their Lot.

**10.6.3 Current Operating Account.** All costs other than those to be paid from the Reserve Account pursuant to Section 10.6.2 may be paid from the Current Operating Account.

**10.7 Default in Payment of Assessments, Enforcement of Liens.**

**10.7.1 Personal Obligation.** All assessments properly imposed under this Declaration or the Bylaws shall be the joint and several personal obligation of all Owners of the Lot to which such assessment pertains. In a voluntary conveyance (i.e., one other than through foreclosure or a deed in lieu of foreclosure), the grantees shall be jointly and severally liable with the Declarants for all Association assessments imposed through the recording date of the instrument effecting the conveyance. A suit for a money judgment may be initiated by the Association to recover such assessments without either waiving or foreclosing the Association's lien.

**10.7.2 Association Lien.** The Association shall have a lien against each Lot for any assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof that is delinquent. Such lien shall accumulate all future assessments or installments, interest, late fees, penalties, fines, attorney fees (whether or not suit or action is instituted), actual administrative costs, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Recording of the Declaration constitutes record notice and perfection of the lien. Said lien may be foreclosed at any time pursuant to the Planned Community Act. The Association shall record a notice of a claim of lien for assessments and other charges in the deed records of Klamath County, Oregon, before any suit to foreclose may be filed. The lien of the Association shall be superior to all other liens and encumbrances except property taxes and assessments, any first mortgage, deed of trust or land sale contract recorded before the Association's notice of lien, and any mortgage or deed of trust granted to an institutional lender that is recorded before the Association's notice of lien.

**10.7.3 Interest; Fines; Late Fees; Penalties.** The Board, in its reasonable discretion, may from time to time adopt resolutions to set the rate of interest and to impose late fees, fines, and penalties on delinquent assessments or for violations of the provisions of this Declaration, the Bylaws, Architectural Standards, and the Rules and Regulations adopted by the Board or the DRC. The adoption of such impositions shall be communicated to all Owners in writing not less than 30 days before the effective date by a notice mailed to the assessment billing address of such Owners. Such impositions shall be considered assessments that are lienable and collectible in the same manner as any other assessments; provided, however, that fines or penalties for violation of this Declaration, the Bylaws, or any rule and regulation, other than late fees, fines, or interest arising from an Owner's failure to pay regular, special, or reimbursement assessments may not be imposed against an Owner or such Owner's Lot until such Owner is given an opportunity for a hearing as elsewhere provided herein.

**10.7.4 Acceleration of Assessments.** If an Owner is delinquent in payment of any assessment or installment on any assessment, the Association, on not less than 10 days' written notice to the Owner, may accelerate the due date of the full annual assessment for that fiscal year and all future installments of any special assessments.

**10.7.5 Association's Right to Rents; Receiver.** In any foreclosure suit by the Association with respect to such lien, the Association shall be entitled to collect reasonable rent from the defaulting Owner for the use of such Owner's Lot or shall be entitled to the appointment of a receiver.

## **ARTICLE 11 GENERAL PROVISIONS**

**11.1 Records.** The Board shall preserve and maintain minutes of the meetings of the Association, the Board and any committees. The Board also shall keep detailed and accurate financial records, including individual assessment accounts of Owners, the balance sheet, and income and expense statements. Individual assessment accounts shall designate the name and address of the Owner or Owners of the Lot, the amount of each assessment as it becomes due, the amounts paid on the account, and the balance due on the assessments. The minutes of the Association, the Board and Board committees, and the Association's financial records shall be maintained in the State of Oregon and reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for providing copies.

**11.2 Indemnification of Directors, Officers, Employees, and Agents.** The Association shall indemnify any Director, officer, employee, or agent who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by the Association) by reason of the fact that such person is or was a Director, officer, employee, or agent of the Association or is or was serving at the request of the Association as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorney fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action, or proceeding if such person acted in good

faith and in a manner that such person reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe that such person's conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or with a plea of nolo contendere or its equivalent, shall not of itself create a presumption that a person did not act in good faith and in a manner that such person reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had reasonable cause to believe that such person's conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit, or proceeding as and when incurred, subject only to the right of the Association to reimbursement of such payment from such person, should it be proven at a later time that such person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a Director, officer, employee, or agent shall have a right of contribution over and against all other Directors, officers, employees, or agents and members of the Association who participated with or benefited from the acts that created said liability.

**11.3 Enforcement; Attorney Fees.** The Association and the Owners and any mortgagee holding an interest on a Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens, and charges now or hereinafter imposed by any of the provisions of this Declaration as may appertain specifically to such parties or Owners by any proceeding at law or in equity. Failure by either the Association or by any Owner or mortgagee to enforce any covenant, condition, or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration (including without limitations, for the collection of assessments), the prevailing party shall be entitled to its actual administrative costs incurred because of a matter or event that is the subject of the suit or action, attorney fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorney fees, to be set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorney fees and costs incurred in any enforcement activity or to collect delinquent assessments, together with the Association's actual administrative costs, whether or not suit or action is filed.

**11.4 Severability.** Invalidity of any one of these covenants, conditions, or restrictions by judgment or court order shall not affect the other provisions hereof and the same shall remain in full force and effect.

**11.5 Duration.** The covenants, conditions, and restrictions of this Declaration shall run with and bind the land for a term of 35 years from the date of this Declaration being recorded, after which time they shall be automatically extended for successive periods of 10 years, unless rescinded by a vote of at least 90% of the Owners and 90% of the first mortgagees; provided, however, that amendments that do not constitute rescission of the planned community may be adopted as provided in Section 11.6 and that if any of the provisions of this Declaration would violate the rule against perpetuities or any other limitation on the duration of the provisions herein contained imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law.

**11.6 Amendment.** Except as otherwise provided in Section 11.5 or ORS 94.590, and the restrictions set forth elsewhere herein, this Declaration may be amended at any time by an instrument approved by not less than 75% of the total votes of each class of members that are eligible to vote. Any amendment must be executed, recorded, and certified as provided by law; provided, however, that no amendment of this Declaration shall effect an amendment of the Bylaws or Articles without compliance with the provisions of such documents, and the Oregon Nonprofit Corporation Act and that no amendment affecting the general plan of development or any other right of Declarant herein contained may be effected without the express written consent of Declarant or its successors and assigns, including, without limitation, amendment of this Section 11.6.

**11.7 Release of Right of Control.** Declarant may give up its right of control in writing at any time by notice to the Association.

**11.8 Unilateral Amendment by Declarant.** In addition to all other special rights of Declarant provided in this Declaration, Declarant may amend this Declaration in order to comply with the requirements of the Federal Housing Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission, or agency of the United States or the State of Oregon, or any other state in which the Lots are marketed and sold, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon, or such other state, the approval of which entity is required in order for it to insure, guarantee, or provide financing in connection with development of the Property and sale of Lots. Before the Turnover Meeting, no such amendment shall require notice to or approval by any Class A member.

**11.9 Resolution of Document Conflicts.** In the event of a conflict among any of the provisions in the documents governing Southview, such conflict shall be resolved by looking to the following documents in the order shown below:

1. Southview Development Guide
2. Declaration;
3. Articles;
4. Bylaws;
5. Rules and Regulations.

51818

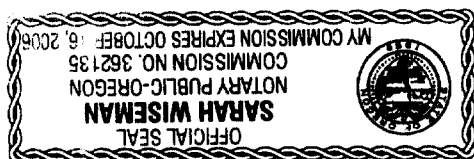
IN WITNESS WHEREOF, Declarant has executed this instrument this \_\_\_\_ day of August, 2004.

Southview Properties, LLC

By: Gregory P. Bessert  
Gregory P. Bessert, Manager

STATE OF OREGON           )  
  ) ss.  
County of Klamath )

This instrument was acknowledged before me on Aug 6<sup>th</sup>, 2004, by  
Gregory P. Bessert of [company]. Southview Properties



Sarah Wiseman  
Notary Public for Oregon  
My commission expires: 10/16/08

Exhibit A  
Southview Planned Unit Development Parcel I

A parcel of land situated in the NE¼ and SE¼ of Section 36, Township 38 South, Range 8 East of the Willamette Meridian, the NE¼ of Section 1 Township 39 South, Range 8 East of the Willamette Meridian, and the NW¼ NW¼ of Section 6, Township 39 South, Range 9 East of the Willamette Meridian, all in Klamath County, Oregon and being more particularly described as follows:

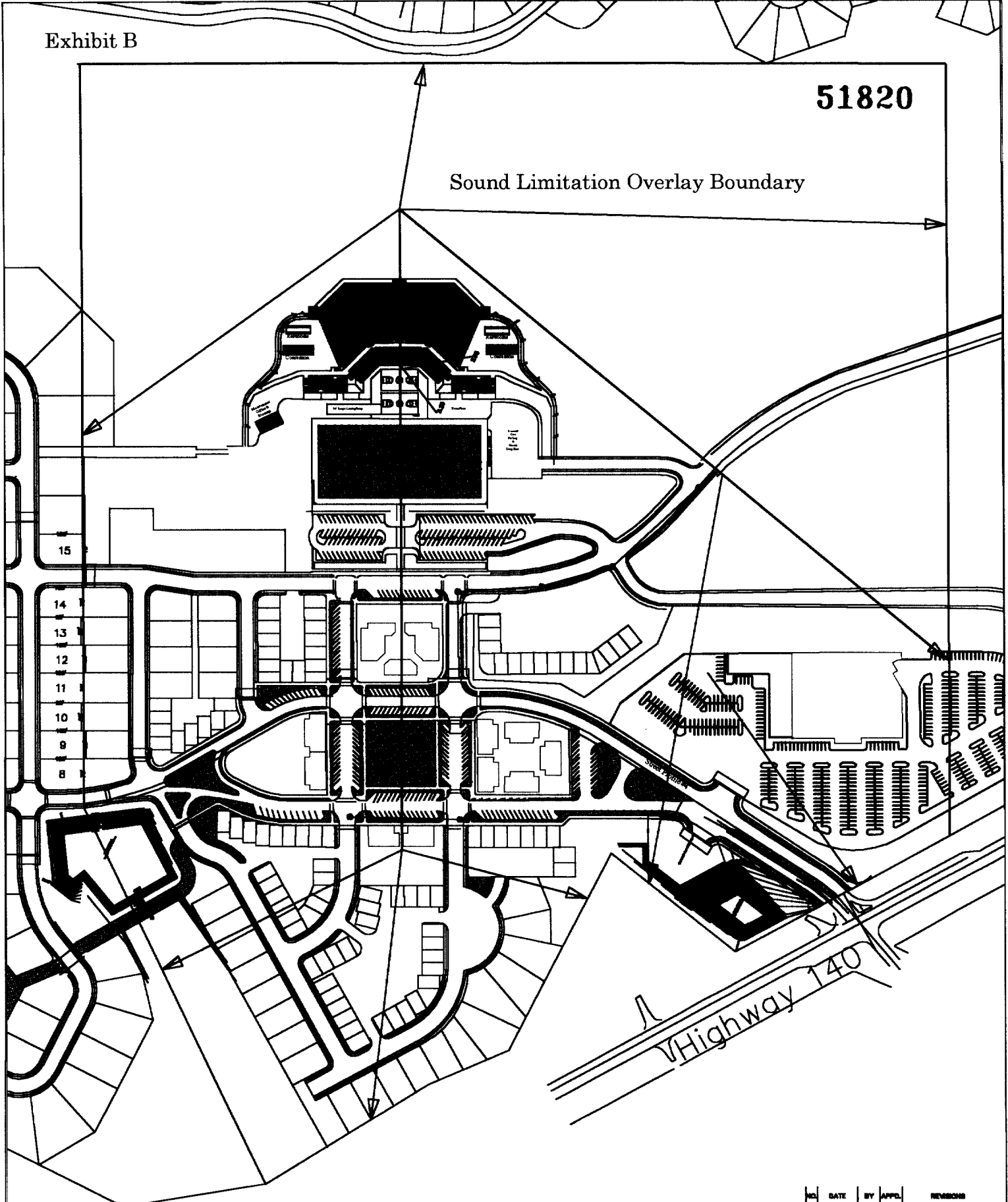
Beginning at a point on the north-south centerline of Section 36 from which the NW corner of the SW¼ NE¼ of said section bears North 00°11'27" East 427.59 feet; thence South 89°58'12" East 619.61 feet; thence South 27°18'39" East 3530.91 feet; thence South 62°41'21" West 250.36 feet; thence South 27°18'39" East 1811.20 feet to a point on the south line of the NW¼ NW¼ of Section 6; thence along said south line South 89°28'21" West 199.91 feet to the SW corner thereof; thence along the south line of the NE¼ NE¼ of Section 1 North 89°29'44" West 1330.62 feet to the SW corner of said NE¼ NE¼; thence along the west line of the SE¼ NE¼ of Section 1 South 00°06'44" East 458.90 feet to the northerly right of way line of State Highway 140; thence along said northerly right of way line North 56°12'28" West 194.88 feet; thence leaving said right of way line North 11°59'09" East 364.18 feet to the south line of the NW¼ NE¼ of Section 1; thence along said south line South 89°56'08" West 516.20 feet to the said northerly right of way line of State highway 140; thence along said northerly right of way line North 50°28'23" West 199.25 feet; thence North 59°17'52" West 439.78 feet; thence leaving said northerly right of way line North 36°42'45" West 329.35 feet to the north-south center section line of Section 1; thence along said center section line North 00°04'15" East 722.87 feet to the ¼ corner common to Section 1 and Section 36; thence along the center section line of Section 36 North 00°11'27" East 3508.58 feet to the point of beginning, containing 195.46 acres, more or less, with bearings based on County Survey 6513

2174-01

June 11, 2003

51820

Sound Limitation Overlay Boundary



REV	DATE	BY	APPROV	REVISIONS

**KS**  
Development  
L.L.C.

Southview P.U.D. - Southview Recreation District  
Sound Limitation Overlay  
Klamath Falls, Oregon

DATE	DESIGNED	DRAWN	CHECKED	APPROVED