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Klamath County, Oregon



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AFTER RECORDING RETURN TO:  
Donald R. Crane  
Attorney at Law  
37070 Highway 62  
Chiloquin, OR 97624  
(541) 783-7725

**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS  
FOR  
HARBOR VIEW**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HARBOR VIEW ("Declaration") is made by Harborview 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 as follows (the "Property"):

A parcel of land situated in Government Lot 2, Section 18, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows: Beginning at the 2" iron pipe that marks the center 1/4 corner of said Section 18, which point is also the southeast corner of First Addition to Terminal City, according to the official plat thereof on file in the office of the Klamath County Clerk; Thence S.01° 33' 39" W., 1348.74 feet to a 3/4" rebar with a 2" aluminum cap stamped "LS 993" at the southeast corner of Government Lot 2 of said Section 18; Thence N.88° 32' 08" W., 46.31 feet along the south line of said Lot 2 to its intersection with the easterly right of way line of the Dalles-California Highway 97; Thence along said easterly right of way line the following eight courses, N.51° 28' 40" W., 13.91 feet; Thence N.29° 29' 38" W., 271.15 feet; Thence N.44° 43' 52" W. 520.28 feet; Thence N.32° 42' 24" E., 145.70 feet; Thence N. 03° 41' 59" W., 145.58 feet; Thence N. 35° 05' 46" W., 239.30 feet; Thence N. 49° 38' 25" W., 136.40 feet; Thence N. 12° 54' 07" W., 203.57 feet to a point on the north line of said government Lot 2, said line also being the south line of First Addition to Terminal City; Thence S. 88° 45' 12" E. a distance of 811.41 feet to the Point of Beginning, containing 14.64 acres more or less. Basis of bearings is grid north, based upon the Oregon Coordinate System of 1983, South Zone, records of Klamath County, Oregon, known as Tract 1436-Harbor View according to the official plat thereof.

Declarant intends to develop Harbor View as a Class II planned community. To establish Harbor View as a planned community, Declarant desires to impose these mutually beneficial

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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 Areas in Harbor View.

Declarant has deemed it desirable for the efficient preservation of the values and amenities in Harbor View to create a nonprofit corporation, to which will be delegated and assigned the powers and authority to own, maintain, and administer the Common Areas 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.

The Declarant shall convey Common Areas A, B, and C to the Harbor View Homeowners' Association ("Association"). The Association shall assume the maintenance obligation of Common Areas A, B, and C for the benefit of the Owners and assess the Owners of all Lots equally for the expenses.

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**

**1.1** *Architectural Review Committee* or "ARC" shall refer to that committee constituted and acting pursuant to Article 6 of this Declaration.

**1.2** *Articles* shall mean the Articles of Incorporation for the nonprofit corporation, Harbor View Homeowners' Association, as filed with the Oregon Secretary of State.

**1.3** *Association* shall mean and refer to Harbor View Homeowners' Association, its successors and assigns.

**1.4** *Board* shall mean the Board of Directors of the Association.

**1.5** *Bylaws* shall mean and refer to the Bylaws of the Association, which shall be recorded in the Klamath County, Oregon, deed records.

**1.6** *Common Areas* shall mean and refer to Common Areas A, B and C, shown on the recorded Plat of the Property, including a detention pond and a 10' strip of land along the westerly property line of Common Area A and any other improvements located thereon, which areas and improvements are intended to be devoted to the common use and enjoyment of the members and which land has been conveyed to the Association.

**1.7** *Commonly Maintained Property* shall mean the landscaping between the sidewalk and the street and the sidewalks in the following described area: Harbor View Drive from the intersection with ESI west to the easterly subdivision boundary of Harbor View near Lot #1 and Common Area B, together with the waterfall and associated landscaping located at the Northwest and Southwest corners of Harbor View Drive at its intersection with ESI Way.

1.8 *Declaration* shall mean the covenants, conditions, restrictions, and all other provisions set forth in this Declaration.

1.9 *Declarant* shall mean and refer to Harborview LLC, an Oregon limited liability company, and its successors or assigns, or any successor or assign to all or the remainder of its interest in the Property.

1.10 *General Plan of Development* shall mean Declarant's general plan of development of the Property, as approved by appropriate governmental agencies, as may be amended from time to time.

1.11 *Home* shall mean and refer to any portion of a structure situated on a Lot and designed and intended for use and occupancy as a residence.

1.12 *Lot* shall mean and refer to each and any of Lots 1–47, excluding Lot 7; provided, however, that *Lot* shall not include Common Areas A, B, and C.

1.13 *Members* shall mean and refer to the Owners of Lots in Harbor View.

1.14 *Occupant* shall mean and refer to the occupant of a Home, whether such person is an Owner, a lessee, or any other person authorized by the Owner to occupy the Home.

1.15 *Owner* shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or a purchaser in possession of a Lot under a land sale contract. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation.

1.16 *Plat* shall mean and refer to the Plat of Harbor View recorded in the Plat Records of Klamath County, Oregon.

1.17 *Property* shall have the meaning attributed to such term in the Recitals of this Declaration.

1.18 *Reserve Account(s)* shall mean and refer to an account set up by the Board to hold funds for construction, improvements or maintenance of the Common Areas and the Commonly Maintained Property.

1.19 *Rules and Regulations* shall mean and refer to the documents containing rules and regulations and policies adopted by the Board or the Architectural Review Committee, as may be from time to time amended.

## ARTICLE 2

### PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Development.** The development of Harbor View shall consist of the Property, which shall be held, transferred, sold, conveyed, and occupied subject to this Declaration. Declarant does not intend to build any Common Area improvements in Harbor View other than certain sidewalks, walking paths and storm water facilities. One or more cul-de-sacs currently existing may become roadways to property adjoining Harbor View subject to the approval of governmental agencies as required by law.

2.2 **Right to Annex Additional Property or to Withdraw Property.** Declarant reserves the right to annex additional property to or to withdraw property from Harbor View.

### 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 Areas. Any conveyance of any Lot shall automatically transfer the right to use the Common Areas without the necessity of express reference in the instrument of conveyance. There shall be no judicial partition of the Common Areas. 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 Areas and agrees that no action for judicial partition shall be instituted, prosecuted, or reduced to judgment. Ownership interests in the Common Areas and Lots are subject to the easements granted and reserved in this Declaration and Master Documents. 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 Harbor View.

**3.2 Ownership of Lots.** Title to each Lot in Harbor View 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 Areas.** Title to any of the Common Areas shall be conveyed to the Association not later than the date of the Turnover Meeting.

**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 Areas 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 Areas, 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 Reserved by Declarant.** As long as Declarant owns any Lot, Declarant reserves an easement over, under, and across the Common Areas 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 Areas 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.

**3.4.4 Additional Utility and Drainage Easements; Public Walkway 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 storm drainage facilities necessary for the development of Harbor View. Lots 46 and 47 are subject to

an thirty-foot wide private drive easement as shown on the Plat. 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.

**3.4.5 Association's Easements.** Declarant grants to the Association and its duly authorized agents and representatives such easements over the Lots and Common Areas 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.

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

## **ARTICLE 4 LOTS AND HOMES**

**4.1 Lot and Home Restrictions.** Lots shall only be used subject to the restrictions set out in this Section 4.1 and other restrictions contained in these Declarations.

**4.1.1 Residential Use.** Lots shall only be used for residential purposes. More than one Lot may be used for the construction of a single Home and associated buildings. Although Harbor View is zoned MD by the City of Klamath Falls, use of Lots for other than single family homes is discouraged. Declarant, so long as it is the owner of any Lot in Harbor View, reserves the right to decide whether any Lot will be used for other than a single family Home. At no time shall there be more than six (6) Lots in Harbor View approved for Homes other than single family Homes. When Declarant no longer owns any Lots in Harbor View, the ARC, in exercising the rights of review granted to it in Article 8, shall enforce this provision.

**4.1.2 Minimum Size.** The minimum square footage area of a Home, exclusive of open porches, garages and outbuildings, shall be 1,700 square feet.

**4.1.3 Color.** The exterior colors of each improvement shall be subject to approval by the ARC. No door, including a garage door, shall be white in color without the approval by the ARC. Any sheet metal or venting on the roof or roof line shall be painted to match the roof color.

**4.1.4 Roofing.** The roof on each Home shall be of a 30-year architectural composition minimum. Roof colors shall generally be of black, brown or gray tones, but the ARC shall have authority to approve other tones on a case-by-case basis if it determines that the same will result in an attractive Home that is consistent with the Harbor View design standards.

**4.1.5 Sidewalks and Driveways.** Each Lot owner shall be responsible to obtain a curb cut permit, pour a driveway approach, construct a driveway of concrete or pavers and pour a concrete sidewalk of length, width, and quality required by the City of Klamath Falls Building Code and Architectural Standards of the ARC, all of which shall comply with the requirements of the General Plan of Development and as approved by the ARC, not later than at the time of completion of a Home on the Lot; provided, however, that the ARC may permit a delay in installation of one or more of the improvements if weather would affect workmanlike construction.

**4.1.6 Landscape Strip or Tree Lawn.** Each Lot owner shall be responsible to plant, install and maintain appropriate landscaping, including underground sprinklers, grass and trees as required by the City of Klamath Falls Building Code and Architectural Standards of the ARC, on the strip of property which is adjacent to Owner's property and which is between the front sidewalk and street, known as the Landscape Strip or Tree Lawn. Trees shall be of a size which is the compatible with trees previously planted in the area. Initial installation shall commence within 60 days after final building inspection of a completed Home by the local government jurisdiction and shall be completed within six months after such inspection.

**4.1.7 Exterior Appearance of Homes.** No less than 10% and no more than 50% of the front of each Home shall be constructed of or covered by stone or brick and no metal front doors shall be permitted; provided, however that the ARC shall have authority to approve other materials and metal front doors on a case-by-case basis if it determines that the same will result in an attractive Home that is consistent with the Harbor View design standards. No grooved T-11 siding shall be used on the exterior of any building. Batt and Board siding may be permitted by the ARC in its discretion.

**4.1.8 No Business Use.** Except with the Board's consent no trade, craft, business, profession, commercial, or similar activity of any kind shall be conducted on any Lot, and no goods, equipment, vehicles, materials, or supplies used in connection with any trade, service, or business shall be kept or stored on any Lot. Nothing in this Section 4.1 shall be deemed to prohibit (a) activities relating to the sale of residences, (b) the right of Declarant or any contractor or homebuilder to construct residences on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any residence as a sales office or model Home for purposes of sales I the right of the Owner of a Lot to maintain such Owner's personal business or professional library, keep such Owner's personal business or professional records or accounts, handle such Owner's personal business or professional telephone calls, or confer with business or professional associates, clients, or customers in such Owner's residence. The Board shall not approve commercial activities otherwise prohibited by this Section 4.1 unless the Board determines that only normal residential activities would be observable outside of the residence and that the activities would not be in violation of applicable local government ordinances.

**4.1.9 Detached Buildings.** No detached accessory buildings, including, but not limited to, detached garage and storage buildings, shall be erected, placed or constructed upon any Lot without the prior consent of the ARC. Every detached accessory building, inclusive of such structures as storage buildings, greenhouses, doghouses, or children's playhouses shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition.

**4.2 Landscaping.** Each Owner other than Declarant shall obtain the ARC's prior approval of all landscaping plans before commencing installation of any landscaping. Landscaping for the portions of the Lot in front of the Home shall commence within 60 days after final building inspection of a completed Home by the local government jurisdiction and shall be completed within six months after such inspection. This Section 4.2 shall apply to Lots with finished Homes being held for sale as well as to other Lots. Owners shall irrigate their front yard to keep lawns green and other landscaping fresh. The Association may irrigate from hose bibs

connected to individual Homes of Owners who fail to properly irrigate their yards. If plantings on any Lot have died or are dying because the Owner of the Lot neglected to properly care for and irrigate the plants, or because of other harm to the plants caused by such Owner, the Association may replace the plantings and may assess the Owner for the cost as a Reimbursement Assessment, which may be collected and enforced as any other assessments imposed pursuant to the Declaration and Bylaws. Except for irrigation, the Association shall maintain the landscaping in the front yards only.

**4.3 Maintenance of Lots and Homes.** Each Owner shall maintain such Owner's Lot and all improvements thereon in a clean and attractive condition, in good repair, and in such fashion as not to create a fire hazard. Such maintenance shall include, without limitation, maintenance of the Lot as well as of windows, doors, garage doors, walks, patios, chimneys, and other exterior improvements and glass surfaces. All repainting or restaining and exterior remodeling shall be subject to prior review and approval by the ARC. Each Owner shall repair damage caused to such Owner's Lot or improvements located thereon by fire, flood, storm, earthquake, riot, vandalism, or other causes within a reasonable period. Insurance purchased by the Association may be used to effect such repairs, subject to the Association's Board of Directors' right to adjust the losses with the Association's insurance carrier.

**4.4 Rental of Homes.** An Owner may rent or lease such Owner's Home or a portion thereof, provided that the following conditions are met:

**4.4.1 Written Rental Agreements Required.** The Owner and the tenant enter into a written rental or lease agreement specifying that (i) the tenant shall be subject to all provisions of the Declaration, Bylaws, and Rules and Regulations, and (ii) a failure to comply with any provision of the Declaration, Bylaws, and Rules and Regulations shall constitute a default under the rental or lease agreement;

**4.4.2 Minimum Rental Period.** The period of the rental or lease is not less than 30 days;

**4.4.3 Tenant Must be Given Documents.** The Owner gives each tenant a copy of the Declaration, Bylaws, and Rules and Regulations.

**4.5 Animals.** No animals, livestock, or poultry of any kind, other than a reasonable number of household pets that are not kept, bred, or raised for commercial purposes and that are reasonably controlled so as not to be a nuisance, shall be raised, bred, kept, or permitted within any Lot. Owners whose pets cause any inconvenience or unpleasantness to other Owners shall take all steps reasonably necessary to prevent recurrence thereof and Owners whose pets damage other Owners' Lots or personal property shall reimburse such other Owners for reasonable costs actually incurred by such other Owners in repairing such damage. An Owner shall ensure that such Owner's dog is leashed when on the Property and outside of such Owner's Lot. An Owner may be required to remove a pet on the receipt of the third notice in writing from the Board of a violation of any rule, regulation, or restriction governing pets within the Property.

**4.6 Nuisance.** No noxious, harmful, or offensive activities shall be carried out on any Lot or Common Areas. Nor shall anything be done or placed on any Lot or Common Areas that interferes with or jeopardizes the enjoyment of, or that is a source of annoyance to, the Owner or other Occupants.

**4.7 Parking.** Boats, trailers, commercial vehicles, mobile homes, campers, and other recreational vehicles or equipment, regardless of weight, shall not be parked on any part of the

Common Areas, and may not be parked on any streets adjacent to the Property for any reason, including loading or unloading, for more than six hours or such other period as may be permitted by the Association Rules and Regulations. Such vehicles and equipment, if parked on a Lot, shall be stored behind an appropriate fence as approved by the ARC.

**4.8 Vehicles in Disrepair.** No Owner shall permit any vehicle that is in a state of disrepair or that is not currently licensed to be abandoned or to remain parked on the Common Area or on any street on or adjacent to the Property at any time and may not permit them on a Lot for a period in excess of 48 hours. A vehicle shall be deemed in a "state of disrepair" when the Board reasonably determines that its presence offends the occupants of the neighborhood. If an Owner fails to remove such vehicle within five days following the date on which the Association mails or delivers to such Owner a notice directing such removal, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner as a Reimbursement Assessment, which may be collected and enforced as any other assessments imposed pursuant to the Declaration and Bylaws.

**4.9 Signs.** No sign or emblem of any kind may be kept or placed upon any Lot or Common Areas or mounted, painted or attached to any unit, fence or other improvement upon such Lot so as to be visible from public view or mounted on any vehicle or trailer parked or driven on the property or carried by any person or by any other means displayed within any Lot or Common Area except that not more than one "For Sale" or "For Rent" sign placed by the Owner or by a licensed real estate agent, not exceeding 24 inches high and 36 inches long, may be temporarily displayed on the front yard of any Lot. The restrictions contained in this Section 4.9 shall not prohibit the temporary placement of "political" signs on any Lot by the Owner or Occupant. Provided, however, political signs shall be removed within three days after the election day pertaining to the subject of the sign. Real estate signs shall be removed within three days after the sale closing date. Signs or billboards may be erected by the Declarant and are exempt from the provisions of this section.

**4.10 Rubbish and Trash.** No Lot or part of the Common Areas shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate containers for proper disposal and out of public view. Yard rakings, dirt, and other material resulting from landscaping work shall not be dumped onto streets, the Common Areas, or any other Lots. If an Owner fails to remove any trash, rubbish, garbage, yard rakings, or any similar materials from any Lot, any streets, or the Common Areas where deposited by such Owner or the Occupants of such Owner's Lot after notice has been given by the Board to the Owner, the Association may have such materials removed and charge the expense of such removal to the Owner. Such charge shall constitute a Reimbursement Assessment, which may be collected and enforced as any other assessments imposed pursuant to the Declaration and Bylaws.

**4.11 Fences and Hedges.** No fences or boundary hedges shall be installed or replaced without prior written approval of the ARC.

**4.12 Service Facilities.** Service facilities (garbage containers, fuel tanks, clotheslines, etc.) shall be screened so that such facilities are not visible at any time from the street or a neighboring property. All telephone, electrical, cable television, and other utility installations shall be placed underground in conformance with applicable law and subject to approval by the ARC.

**4.13 Antennas and Satellite Dishes.** Except as otherwise provided by law or this section, no exterior antennas, satellite dishes, microwave, aerial, tower, or other devices for the transmission or reception of television, radio, or other forms of sound or electromagnetic radiation shall be erected, constructed, or placed on any Lot. With prior written consent from the ARC, exterior satellite dishes or antennas with a surface diameter of one meter or less and antennas designed to receive television broadcast signals only may be placed on any Lot if they are not visible from the street and are screened from neighboring Lots. The Board or ARC may adopt reasonable rules and regulations governing the installation, safety, placement, and screening of such antennas, satellite dishes, and other transmission devices. Such rules shall not unreasonably delay or increase the cost of installation, maintenance, or use or preclude reception of a signal of acceptable quality. (The ARC, in its sole discretion, may determine what constitutes a signal of acceptable quality.) Such rules may prohibit installation of exterior satellite dishes or antennas if signals of acceptable quality can be received by placing antennas inside a Home without causing an unreasonable delay or cost increase.

**4.14 Exterior Lighting or Noise-making Devices.** Except with the consent of the ARC, no exterior lighting or noise-making devices, other than security and fire alarms, shall be installed or maintained on any Lot.

**4.15 Basketball Hoops.** No Owner may install a permanent basketball hoop on any Lot without the ARC's prior approval. The ARC may, in its discretion, prohibit such basketball hoops. Basketball hoops shall be prohibited in the Common Areas and on any Lot if the area of play is intended to be the street or any Common Areas.

**4.16 Drainage.** Each Lot owner shall maintain such drainage and drainage systems as are appropriate to assure that water which falls or flows onto the property, naturally or artificially, shall not flow onto any other Lot or Common Area or any real property outside Harbor View unless adequate alternative provision is made for proper drainage and is approved by the ARC.

**4.17 Tree-Cutting Restrictions.** No tree the diameter of which is six inches or more may be removed from any Lot without the prior approval of the ARC unless it is diseased, poses an immediate danger to persons or property, or is within 10 feet of an existing or proposed building or five feet of a paved surface. Provided, however, the ARC shall have unfettered authority, but not the obligation, to cause the Association to trim or top trees, shrubs, or hedges located on any Lot that is creating a nuisance, is damaging, or is a threat to Commonly Maintained Property or that increases the cost of insurance for the Association.

**4.18 Damage or Destruction to Home and/or Lot.** If all or any portion of a Lot or Home is damaged by fire or other casualty, the Owner shall either (a) restore the damaged improvements or (b) remove all damaged improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration proceeding under (a) above must be performed so that the improvements are in substantially the same condition in which they existed before the damage, unless the owner complies with the provisions of Article 6. The Owner must commence such work within 60 days after the damage occurs and must complete the work within six months thereafter.

**4.19 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, 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 Harbor View 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.

**4.20 Association Rules and Regulations.** The Board from time to time may adopt, modify, or revoke such Rules and Regulations governing the conduct of persons and the operation and use of Lots and the Common Areas as it may deem necessary or appropriate to assure the peaceful and orderly use and enjoyment of the Property and the administration and operation of the Association. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification, or revocation thereof, shall be delivered by the Board promptly to each Owner and shall be binding upon all Owners and occupants of all Lots on the date of delivery or actual notice thereof. The method of adoption of such Rules and Regulations shall be provided in the Bylaws of the Association. Subject to the Board's approval or consent, the ARC may adopt rules and regulations pertinent to its functions.

**4.21 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.

**4.22 Temporary Structures.** No structure of a temporary character or any trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Lot as a residence, either temporarily or permanently.

**4.23 Declarant Exemptions.** Declarant shall be exempt from the application of Section 4.9.

## **ARTICLE 5 COMMON AREAS**

**5.1 Use of Common Areas.** Use of the Common Areas is subject to the provisions of the Declaration, Bylaws, Articles, and the Rules and Regulations adopted by the Board. Nothing shall be stored or kept in the Common Areas without the prior written consent of the Board. No alterations or additions to the Common Areas shall be permitted without the prior written consent of the Board. The Common Areas owned by the Association consists solely of Common Areas A, B and C, which storm water facilities which benefit all Lots. There shall be no parking, loading, unloading, or "standing" of any kind or of any type of vehicle on the Common Areas for any length of time. The Association may post "No Parking" signs on the Common Areas.

**5.2 Maintenance of Common Areas.** The Association shall be responsible for maintenance, repair, replacement, and upkeep of the Common Areas except where such maintenance is provided by a government agency or utility company at the equal expense of the Owners of all Lots. The Association shall keep the 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 Areas.

**5.3 Alterations to Common Areas.** 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 or this Declaration; provided, however, no improvements may be made to the Common Areas except the construction, repair, and reconstruction of the storm water facilities, 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 Areas) 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 Areas shall be maintained and cared for in a manner that is consistent with Declarant's or the ARC'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. The Association shall maintain all landscaping located between the sidewalk and the street on Harbor View Drive from the intersection with ESI west to the easterly subdivision boundary of Harbor View near Lot #1 and Lot #46 and in the public walkway easement areas, if any. All other Landscape Strips or Tree Lawns shall be maintained by the adjoining Lot owner as provided in Section 4.1.6.

**5.6 Condemnation of Common Areas.** If all or any portion of the Common Areas 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 Areas.** If all or any portion of a 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 Areas.** 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 Areas.

## ARTICLE 6 ARCHITECTURAL REVIEW COMMITTEE

**6.1 Architectural Review.** No improvement shall be commenced, erected, placed, or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the improvement have been submitted to and approved in writing by the ARC. This Article's purpose is to assure quality of workmanship and materials and harmony between exterior design and the existing improvements and landscaping and as to location with respect to topography and finished grade elevations. The ARC shall not be responsible for determining compliance with structural and building codes, solar ordinances, zoning codes, or other governmental regulations, all of which are the applicant's responsibility. The procedure and specific requirements for review and approval of construction shall be set forth in design guidelines and standards adopted from time to time by the ARC. The provisions of this Article shall apply in all instances in which this Declaration requires the ARC's consent.

**6.2 Architectural Review Committee, Appointment and Removal.** Declarant reserves the right to appoint all members of the ARC and all replacements thereto until Harbor View is 100% built out. The ARC shall consist of no fewer than three members and no more than five members. Each ARC member shall serve for one year. After buildout, Declarant shall assign to the Board the right to appoint and remove members of the ARC. Board members and persons who are not come before the ARC may serve as all or some of the ARC's members. In the Board's sole discretion, non-Owner members of the ARC may be paid. The Board may appoint itself as the ARC or any of its members to the ARC. If an ARC has not been appointed, the Board shall serve as the ARC.

**6.3 Majority Action.** Except as otherwise provided in this Declaration, a majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a meeting and without the necessity of consulting the remaining member or members of the ARC. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

**6.4 Duties.** The ARC shall consider and act on the proposals and/or plans submitted pursuant to this Article. The ARC, from time to time and at its sole discretion, may adopt architectural rules, regulations, and guidelines ("Architectural Standards"). The Architectural Standards shall interpret and implement the provisions of this Declaration for architectural review and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials, and similar features that may be used in Harbor View; provided, however, that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration.

**6.5 ARC Decision.** The ARC shall render its written decision approving or denying each application submitted to it within 15 working days after its receipt of all materials required with respect to such application. If the ARC fails to render such written decision within 30 days of its receipt of all required materials or request an extension, the application shall be deemed approved. The ARC shall be entitled to request one or more extensions of time, not to exceed 45 days. In the event of such extension requests, if the ARC does not render a written decision within 15 days after the expiration of the extension(s), the application shall be deemed approved. Provided, however, the applicant may agree to further extensions to allow the applicant to complete or supplement the application.

**6.6 ARC Discretion.** The ARC, at its sole discretion, may withhold consent to any proposed work if the ARC finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the ARC intends for Harbor View. The ARC may consider siting, shape, size, color, design, height, solar access, or other effect on the enjoyment of other Lots or the Common Areas, and any other factors that it reasonably believes to be relevant in determining whether or not to consent to any proposed work.

**6.7 Nonwaiver.** Consent by the ARC to any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

**6.8 Appeal.** After Declarant has assigned the right to appoint ARC members to the Board pursuant to Section 6.2, any Owner adversely impacted by ARC action may appeal such action to the Board. Such appealing Owner shall submit to the Board a written notice of appeal, setting forth specific objections or mitigating circumstances justifying the appeal, within 10 days after the ARC's action. The Board shall issue a final, conclusive decision within 45 days after receipt of such notice, and such decision shall be final and binding on the appealing Owner and the ARC. Provided, however, the Board shall make reasonable efforts to reach a decision within 20 days. If the Board is serving as the ARC, then such appeal shall be deemed a request for reconsideration.

**6.9 Effective Period of Consent.** The ARC's consent to any proposed work shall automatically expire three months after issuance unless construction of the project has been commenced or the Owner has applied for and received an extension of time from the ARC.

**6.10 Determination of Compliance.** The ARC may inspect, from time to time, all work performed and determine whether it is in substantial compliance with the approval granted. If the ARC finds that the work was not performed in substantial conformance with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of noncompliance and shall require the Owner to remedy the noncompliance.

**6.11 Noncompliance.** If the ARC determines that an Owner has not constructed an improvement consistent with the specifications of an ARC approval or has constructed an improvement without obtaining ARC approval, sends a notice of noncompliance to such Owner, and such Owner fails to commence diligently remedying such noncompliance in accordance with such notice, then, effective at 5:00 p.m. on the third day after issuance of such notice, the ARC shall provide notice of a hearing to consider the Owner's continuing noncompliance. The hearing shall be set not more than 30 days from the date on which the notice of noncompliance was issued. At the hearing, if the ARC finds that there is no valid reason for the continuing noncompliance, the ARC shall determine the estimated costs of achieving compliance and may issue a fine against the noncomplying Owner for such amount. The ARC also shall require the Owner to remedy such noncompliance within 10 days after the date of the ARC's determination. If the Owner does not comply with the ARC's ruling within such period or any extension thereof granted by the ARC, at its sole discretion, the ARC may remove the noncomplying improvement, remedy the noncompliance, and/or record a notice of noncompliance in the county deed records. The costs of any such action shall be assessed against the Owner as a Reimbursement Assessment either before or after any remedial action is taken.

**6.12 Liability.** Neither the ARC nor any member thereof shall be liable to any Owner, Occupant, or builder for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided only that the ARC or the member has, in accordance with its or his or her actual knowledge, acted in good faith.

**6.13 Estoppel Certificate.** Within 15 working days after the ARC's receipt of a written request from an Owner and the ARC's receipt of payment of a reasonable fee fixed by the ARC to cover costs, the ARC shall provide such Owner with a certificate executed by the Chairperson or other authorized member of the ARC certifying with respect to any Lot owned by the Owner, that, as of the date thereof either (a) all improvements made or done upon such Lot comply with this Declaration, or (b) such improvements do not so comply, in which event, the certificate shall also identify the noncomplying improvements and set forth with particularity the nature of such noncompliance. The Owner and such Owner's heirs, devisees, successors, and assigns shall be entitled to rely on the certificate with respect to the matters set forth therein. The certificate shall be conclusive as among Declarant, the ARC, the Association, all Owners, and all persons deriving any interest through any of them.

**6.14 Fees.** The ARC may charge applicants a reasonable application fee and additional costs incurred or expected to be incurred by the ARC to retain architects, attorneys, engineers, and other consultants to advise the ARC concerning any aspect of the applications and/or compliance with any appropriate architectural criteria or standards, including, without limitation, those pertinent to house siting and height. Such fees shall be collectible as assessments pursuant to Article 10.

**6.15 Declarant and Successor Exempt from ARC.** The Declarant or a successor to all of the unsold Lots shall be exempt from the requirement to submit and have plans approved by the ARC. However, the Declarant and its successor shall not be exempt from the provisions of Article 4 of the Declaration, except as set forth in Section 4.23.

## ARTICLE 7

### MEMBERSHIP IN THE ASSOCIATION

**7.1 Members.** Each Owner shall be a member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of any Lot. Transfer of ownership of a Lot shall automatically transfer membership in the Association. Without any other act or acknowledgment, Occupants and Owners shall be governed and controlled by this Declaration, the Articles, Bylaws, and the Rules and Regulations of the Association and any amendments thereof.

**7.2 Proxy.** Each Owner may cast such Owner's vote in person, by written ballot, or pursuant to a proxy executed by such Owner. An Owner may not revoke a proxy given pursuant to this Section 7.2 except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one year after its date, unless the proxy specifies a shorter term.

**7.3 Voting Rights.** The Association shall have two classes of voting members:

**7.3.1 Class A.** Class A members shall be all Owners of Lots other than Declarant, and each Class A member shall be entitled to one vote for each Lot owned with respect to all matters on which Owners are entitled to vote.

**7.3.2 Class B.** The Class B member shall be Declarant, its successors, and its assigns. The Class B member shall have three votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of the following dates (the "Termination Date"):

(a) The date on which 75% of the total number of Lots in Harbor View have been sold and conveyed to Owners other than Declarant; and

(b) The date on which Declarant elects in writing to terminate Class B membership.

After the Termination Date, each Owner, including Declarant, shall be entitled to one vote for each Lot owned with respect to all matters on which Owners are entitled to vote, and the total number of votes shall be equal to the total number of Lots subject to this Declaration, initially or through annexation.

When more than one person or entity owns a Lot, the vote for such Lot may be cast as they shall determine, but in no event shall fractional voting be allowed. Fractional or split votes shall be disregarded, except for purposes of determining a quorum.

**7.4 Procedure.** All meetings of the Association, the Board, the ARC, and Association committees shall be conducted with such rules of order as may from time to time be adopted by the Board. Notwithstanding which rule of order is adopted, the President shall be entitled to vote on all matters, not merely to break a tie vote. A tie vote does not constitute a majority or approval of any motion or resolution.

## **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 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 Harbor View 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 Harbor View. 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 residential community. Until the Homes on all Lots on the Property have been constructed, fully completed, and sold, with respect to the Common Areas 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 Areas.

**9.3 Declarant Easements.** Declarant reserves easements over the Property as more fully described in Section 3.4 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 and Occupants of Harbor View, for the improvement, operation, and maintenance of the Common Area and the Commonly Maintained Property, for the administration and operation of the Association, and 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.

**10.3 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 Areas 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 Areas 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 Lots equally as annual assessments.

**10.4.3 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 from the Association's Reserve Account shall require the signatures of those persons determined by the Board of Directors to have authority to make such withdrawals. In its books and records, the Association shall account separately for operating expenses relating to the Common Areas/Commonly Maintained Property and operating expenses relating to all other matters, as well as for necessary reserves relating to the Common Areas/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 Areas and Commonly Maintained Property to determine the reserve account requirements. A reserve account shall be established for those items of the Common Areas 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 grantors 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 ARC. 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 benefitted 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.** Invalidation 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 or, in the event the rule against perpetuities applies,

until 21 years after the death of the last survivor of the now living descendants of George W. Bush.

**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 Harbor View, such conflict shall be resolved by looking to the following documents in the order shown below:

1. Declaration;
2. Articles;
3. Bylaws;
4. Rules and Regulations.

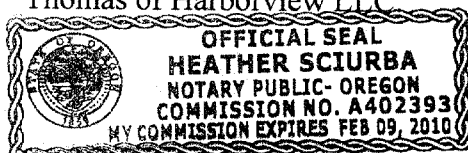
IN WITNESS WHEREOF, Declarant has executed this instrument this 21<sup>st</sup> day of November, 2006.

HARBORVIEW LLC

By: Kenneth E. Thomas member

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on November \_\_\_\_, 2006, by Kenneth E. Thomas of Harborview LLC



Heather Sciorba  
Notary Public for Oregon  
My commission expires: Feb. 9, 2010

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