

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
For
DAVE'S VIEW AT MARTIN'S BLUFF PHASE-2

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ARTICLE I

DEFINITION

The following words, phrases or terms used in this Declaration shall have the following meanings:

- A. "Annual Assessment"** shall mean the charge levied and assessed each year against each Lot, Owner, or Lessee pursuant to Article VI, Section 2, hereof.
- B. "Architectural Review Committee (ARC)"** shall mean the committee of the Association to be created pursuant to Article X below.
- C. "Articles"** shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.
- D. "Assessment"** shall mean an Annual Assessment, Special Assessment, or Maintenance Charges.
- E. "Assessment Lien"** shall mean the lien created and imposed by Article VI.
- F. "Assessment Period"** shall mean the term set forth in Article VI, Section 8.
- G. "Association"** shall mean the Washington non-profit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, its successors, and assigns. Declarant hereby reserves the exclusive right to cause such Association to be incorporated and intends to name the association "DAVE'S VIEW at Martins Bluff Homeowners Association."
- H. "Association Land"** shall mean such real property of DAVE'S VIEW at Martins Bluff, together with the buildings, structures, and improvements thereon, and other real property which the Association may, at any time, own in fee, have been granted an easement upon, or in which the Association may at any time have a leasehold interest, for as long as the Association is the owner of the fee or leasehold interest. Lots 43 and 44 of DAVE'S VIEW at Martins Bluff shall be excluded from the definition of "Association Land" under this Declaration.
- I. "Board"** shall mean the Board of Directors of the Association.
- J. "No Building Area"** shall mean any area of any lot where no buildings or structures of any sort may be placed. These areas are defined in the legal descriptions of these lots and identified on the plat.
- K. "Bylaws"** shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.
- L. "Common Area and Common Easements"** shall mean (a) all Association Land; (b) all land within DAVE'S VIEW at Martins Bluff which the Declarant, by this Declaration or other recorded instrument, makes available for use by Members of the Association and evidences its intent to convey to the Association at a later date; (c) all private roads which are deeded to the Association or the use of which is given the Association by easement, and by agreement the Association accepts responsibility for maintenance; and (d) any water system or other utility or service for which the Association accepts or is appointed by legal authority to own and/or maintain.
- M. "Covenants"** shall mean the Covenants, Conditions and Restrictions set forth herein, and any amendments thereto and/or CC&Rs
- N. "Declarant"** shall mean not only Dave's View LLC, but any successors or assigns.
- O. "Declaration"** shall mean this Declaration of Covenants, Condition and Restrictions ("CC&Rs"), as amended, or supplemented from time to time.
- P. "Deed"** shall mean a deed or other instrument conveying the fee simple title in a Lot.
- Q. "Designee"** shall mean a person designated by a Member pursuant to Article V, Section 6, to exercise certain of the rights of a Member.
- R. "Dwelling Unit"** shall mean any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a single family.

- S. "Exempt Property"** shall mean the following parts of DAVE'S VIEW at Martins Bluff:
- 1) All land and improvements owned by or dedicated to and accepted by the United States, the State of Washington, Cowlitz County, or any political subdivision thereof, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective;
 - 2) All Association Land, for as long as the Association is the owner thereof; and
 - 3) other Lot(s) as determined by the Declarant.
- T. "Government Mortgage Agency"** shall mean the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association or any similar entity, public or private, authorized, approved, or sponsored by any governmental agency to insure, guarantee, make or Purchase mortgage loans.
- U. "DAVE'S VIEW at Martins Bluff"** shall mean the real property set forth on Exhibit "A" of this Declaration and/or the plat and the development to be completed thereon (unless the context otherwise requires that the reference is to the Declarant).
- V. "DAVE'S VIEW at Martins Bluff Architectural Rules"** shall mean the rules established by the DAVE'S VIEW at Martins Bluff Architectural Review Committee ("ARC"), and any modifications thereof, which rules shall become a part of this Declaration enforceable in the same manner as this Declaration. In the event of a conflict between the DAVE'S VIEW at Martins Bluff Design Guidelines and the DAVE'S VIEW at Martins Bluff Rules, the Design Guidelines shall prevail.
- W. "DAVE'S VIEW at Martins Bluff Design Guidelines"** shall mean the published document recorded together with this declaration that establishes concepts and rules for the general development of DAVE'S VIEW at Martins Bluff, and any modifications thereof. DAVE'S VIEW at Martins Bluff Design Guidelines shall be integrated by and administered by the Architectural Review Committee as herein enforceable in the same manner as this Declaration. The Architectural Review Committee may amend the DAVE'S VIEW at Martins Bluff Design Guidelines and each amendment shall be recorded with 180 days of such amendment.
- X. "DAVE'S VIEW at Martins Bluff Rules"** shall mean the rules for DAVE'S VIEW at Martins Bluff adopted by the Board pursuant to Article IV Section 3.
- Y. "Lot"** shall mean any area of real property Within DAVE'S VIEW at Martins Bluff designated as a Lot on any subdivision plat or survey recorded or approved by Declarant and limited to Single Family Residential Use.
- Z. "Plat"** Plat shall mean the survey map recorded in conjunction with the subdivision approval by Cowlitz County Building and Planning Department.
- AA. "Maintenance Charges"** shall mean any and all costs assessed pursuant to Article IX, Sections 2 or 3.
- BB. "DAVE'S VIEW at Martins Bluff Survey"** DAVE'S VIEW at Martins Bluff Survey prepared by the Declarant as the same may be from time to time amended, a copy of which shall be on file at all times in the office of the Association and as recorded in Cowlitz County, Washington, also the individual lot surveys recorded as attachments to this Declaration.
- CC. "Member"** shall mean any person holding a Membership in the Association pursuant to this Declaration.
- DD. "Membership"** shall mean a membership in the Association and the rights granted to the Owners, Lessees and Declarant pursuant to Article V to participate in the Association.
- EE. "Owner"** shall mean (when so capitalized) the record holder of legal title to the simple interest in any Lot including contract sellers but excluding others who hold such title merely as security. In the case of Lots, the fee simple title to which is vested of record in a trustee, legal title shall be deemed to be in the Trustee. An Owner shall include any person who holds record title to a Lot in joint ownership with any other person or holds an undivided fee interest in any Lot.

- FF.** **"Private Driveway"** shall mean pavement or road grade providing access to one or more Lots from the Private Road maintained by the Association.
- GG.** **"Private Roads or Private Streets"** shall mean any street, roadway, drive, sidewalks, walkway, path or other right of way within the Project, which comprises a portion of the Private Road Easement.
- HH.** **"Project"** shall mean the property situated in the County of Cowlitz, State of Washington, as described in any Exhibit(s) to this Declaration.
- II.** **"Recording"** shall mean placing an instrument of public record in the office of the County Recorder of Cowlitz County Washington and "Recorded" shall mean having been so placed of public record.
- JJ.** **"Resident"** shall mean:
- 1) Each buyer under a contract of sale covering any part of the DAVE'S VIEW at Martins Bluff property regardless of whether the contract is recorded and each tenant (other than a Lessee) actually residing on any part of the property; and
 - 2) Members of the immediate family of each Owner and of each buyer and Tenant referred to in subparagraph (I) actually living in the same household with such Owner or such buyer or Tenant. Subject to such rules and regulations as the Association may hereafter specify the term Residents also shall include the guests or invitees of any such Owner, buyer, or Tenant if and to the extent the Board in its absolute discretion by resolution so directs.
- KK.** **"Single Family"** shall mean a group of one or more persons each related to the other by blood marriage or legal adoption or a group of not more than three (3) persons not all so related who maintain a common household in a Dwelling Unit.
- LL.** **"Slope Easements"** shall mean the continuous strip of land sixty (60) feet in width along and around the Private Road Easements within DAVE'S VIEW at Martins Bluff.
- MM.** **"Special Assessment"** shall mean any assessment levied and assessed pursuant to Article VI, Section 6.
- NN.** **"Special Use Fees"** shall mean special fees authorized by this Declaration which an owner, Lessee, Resident or any other person is obligated to pay to the Association over, above and in addition to any Annual or Special Assessments or Maintenance Charges imposed or payable hereunder.
- OO.** **"Tenant"** shall mean any person who occupies property located on DAVE'S VIEW at Martins Bluff under any type of rental arrangement but is not included in the definition of a Lessee.
- PP.** **"Visible From Neighboring Property"** shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of such neighboring (i.e., adjacent) property.
- QQ.** **"Lessee"** shall mean the holder of a lease in excess of one year in connection with any of the real property described in Exhibit "A".
- RR.** **"Lot Numbers"** refer to the lot numbering system used on the recorded plat.

ARTICLE II
PROPERTY SUBJECT TO DAVE'S VIEW at Martins Bluff
DECLARATION

Section 1. General Declaration Creating

DAVE'S VIEW at Martins Bluff, Declarant intends to develop DAVE'S VIEW at Martins Bluff / Phase Two by administratively segregating, short platting, short subdividing or creating by rural subdivision various Lots and to sell and convey such Lots. As portions of DAVE'S VIEW at Martins Bluff / Phase Two are developed, Declarant intends, with respect to particular property, to record one or more surveys covering Lots and designing easements which will incorporate this Declaration, and which may establish such additional covenants, conditions, and restrictions as may be appropriate for that property. Declarant hereby declares that all of the real property within DAVE'S VIEW at Martins Bluff and shall be occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any recorded survey applicable thereto, as amended or modified from time to time; provided, however, property which is not part of a Lot, properties which are specifically exempt, and properties which are dedicated to the public or a governmental entity for public purposes shall not be subjected to this Declaration and the Covenants herein contained while owned by the public or the governmental entity, although restrictions imposed in this Declaration upon the Owners, Lessees and Residents concerning the use and maintenance of such exempt and public areas at all times apply to the Owners, Lessees and Residents. This Declaration is established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of DAVE'S VIEW at Martins Bluff and every part thereof. All of this Declaration shall run with all Lots for all purposes and shall be binding upon and inure

to the benefit of Declarant, the Association, all Owners, Lessees and Residents and their successors in interest.

Declarant reserves the right to add, combine or withdraw any real property to the Association Land hereunder by amendment to this Declaration.

Section 2. Association Bound.

Upon issuance of a Certificate of Incorporation by the State of Washington to the Association, the Covenants shall be binding upon and shall benefit the Association.

ARTICLE III
LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

Section 1. Land Use Classifications.

As DAVE'S VIEW at Martins Bluff is readied for development, a survey shall be recorded. Any such survey shall be construed as a supplement to this Declaration and fully a part hereof for all purposes to the same extent as if all of the provisions thereof were set forth in this Declaration. In exercising its authority to record additional surveys, Declarant shall not impose any new land use classifications or new restrictions which are not generally in conformance with then existing uses and restrictions applicable to DAVE'S VIEW at Martins Bluff or with the scheme of development contemplated by this Declaration. The land use classifications for Lots established by a recorded survey shall not be changed except as specifically permitted by this Declaration. Contemplated Land Use Classifications are as follows:

- (a) Single Family Residential Use.
- (b) Association Use.
- (c) General Public Use.

All Land Use Classifications shall be subject to applicable zoning laws.

Section 2. Covenants, Conditions, Restrictions and Easements Applicable to all Lots.

The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Leases, the Owners and Lessees thereof, and all Residents.

- a) **Architectural Control.** No improvements, alterations, repairs, excavations, grading, or other work which in any way alters the exterior appearance of any property within DAVE'S VIEW at Martins Bluff, or the improvements located thereon, from its natural or improved state existing on the date of recording of this Declaration, shall be made or done without prior approval of the Architectural Review Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, improved, altered,

or made without the prior written approval of the Architectural Review Committee. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots, shall be subject to the prior written approval of the Architectural Review Committee. No changes or deviations in or from the plans and specifications once approved by the Architectural Review Committee shall be made without prior written approval of the Architectural Review Committee.

- b) **Animals and Wildlife.** No animal, bird, fowl, poultry or livestock, other than a reasonable number (not more than two dogs of breeding age and not more than two cats of breeding age) of generally recognized house pets (dogs, cats, caged birds other than poultry, or small pets such as gerbils, hamsters or lizards which are kept inside a cage which is kept inside the residence), shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. Specifically, no horses, cattle, donkeys, burros, llamas, goats, pigs, poultry, or other livestock animals shall be maintained on any Lot. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be visible from the common road easement, or within 50 feet of drainage ditch, detention pond or swale. All pets accompanied by owner while in common areas shall be required to be on a leash. Specifically, no barking dogs shall be maintained on any lot. Any dog(s) barking between the hours of 9 p.m. and 7 a.m. or any consistent barking or growling at any time shall constitute a nuisance. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a generally recognized house pet, whether such a pet is a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein. Owners will take precautions as required to prevent the alteration of native fauna by ensuring that pet food, garbage, and refuse are properly stored or covered.
- c) **Temporary Occupancy and Temporary Buildings.** No trailer, camper, mobile home, tent, basement or any incomplete building, shack, garage or barn, and no temporary or out-buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used (for other than dwelling purposes) during the construction of a dwelling on any property shall be removed immediately after the completion of construction. In no instance shall a temporary construction period structure be allowed to remain on a Lot for more than 12 months.
- d) **Maintenance of Landscaping.** The theme for landscaping shall emphasize plantings and other features that will complement and enhance the native, existing character of the immediate area. Landscaping after installation will be maintained to provide a neat and attractive appearance, including the removal of dead bushes, trees, trash, and debris. The Association will have the right to require any Owner to landscape and/or maintain landscaped areas, or to maintain natural areas in its natural state on any right-of-way between a Lot and a street that is immediately adjacent to such Lot. The Association also has the right, by agreement with the Owners, to maintain parts of Lots directly adjacent to public or private rights-of-way at the expense of the Association when the board determines that it is to the benefit of all Members that the Association accepts such responsibility. No tree with a trunk diameter of more than six inches may be cut down or removed

unless (1) it is either inside or within 15 feet of the footprint of a building approved by the ARC; (2) it is dead, dying, diseased or damaged to the extent that it presents a hazard; or (3) the ARC grants prior written approval to cut or remove the tree, including instances where the ARC finds that the tree unduly restricts the view of another owner as per Section X.

- e) **Nuisances; Construction Activities.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit there from, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such property. Woodpiles or other material shall be stored in a manner so as not to be attractive to native rodents, snakes, and other animals and to minimize the potential danger from fires. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers played at such a volume that it is offensive to others. horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods; trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved by the Architectural Review Committee. The Board in its sole discretion shall have the right to determine the existence of a nuisance.
- f) **Diseases and Insects.** No Owner shall permit anything or condition to exist upon any Lot that shall induce, breed or harbor infectious animal or plant diseases or noxious insects.
- g) **Repair of Building.** No building or structure on any Lot shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted and maintained or otherwise finished. In the event any building or structure is damaged or destroyed then subject to the approvals required by Subsection (a) above such building or structure shall be immediately repaired or rebuilt or shall be demolished. Construction of any dwelling shall be completed including exterior decoration within 12 months from the date of the start of such construction.
- h) **Antennas.** No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Lot whether attached to a building or structure or otherwise unless approved by the ARC.
- i) **Mineral Exploration.** No lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind except for designated well-sites used to supply the common water systems.
- j) **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot except in covered containers of a type, size and style that are approved by the ARC. In no event shall such containers be maintained so as to be visible from neighboring property or Common Area except to make the same available for collection and then only for the shortest reasonable time necessary to affect such collection. All rubbish, trash, or garbage shall be removed from the

Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

- k) **Clothes Drying Facilities.** Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be visible from neighboring property or Common Area.
- l) **Machinery and Equipment.** No commercial machinery, equipment or vehicles of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery, equipment or vehicles as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other improvements, or that which Declarant or the Association may require for the operation and maintenance of DAVE'S VIEW at Martins Bluff/ Phase Two.
- m) **Signs.** No signs shall be erected or maintained on any Lot except:
 - 1. Signs required by legal proceedings.
 - 2. Not more than one (1) identification sign for individual residences.
 - 3. Real estate offering signs, the nature, number, and location of which have been approved in advance and in writing by the ARC.
 - 4. Signs of builders on any Lot approved from time to time in writing, by the ARC, as to number, size, colors, design, message content, location and type.
- n) **Restriction on Further Subdivision, Property Restrictions and Rezoning.** No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner. This provision shall not prohibit Declarant from granting use of existing easements to others. No portion of a Lot but for the entire Lot, together with the improvements thereon, may be rented, and then only to a single family. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other person against any Lot without the provisions thereof having been first approved in writing by the Board and any covenants, conditions, restrictions or easements recorded without such approval being evidence thereon shall be null and void. No application for rezoning of any Lot, and no applications for variances or use permits, shall be filed with any governmental authority unless and proposed use of the Lot has been approved by the Board and the proposed use otherwise complies with this Declaration and any applicable tract declaration.
- o) **Utility Easements.** Each Lot and the Common Area shall be submit to all utility easements shown on the DAVE'S VIEW at Martins Bluff survey and plat defined easements upon, across, over and under each Lot for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and service lines and systems, including, but not limited to water, gas, telephones, electricity, television cable or communication lines and systems, etc., as may be added or amended by the Declarant. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots. Notwithstanding anything to the contrary contained in this subsection, no septic system, electrical

lines, water lines, or other utilities or service lines may be installed or relocated on any Lot except as initially programmed and approved by the Declarant or the ARC.

- p) **Shared Walls/Shared Fences.** Except as hereinafter provided, the rights and duties of Owners with respect to shared walls or shared fences between Lots shall be as follows:
1. The Owners of contiguous Lots who have a shared wall or shared fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.
 2. In the event that any shared wall or shared fence is damaged or destroyed through the act of an Owner or any of his tenants, Lessees, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the shared wall or shared fence without cost to the Owner of the adjoining Lot within thirty (30) days or such sooner time as may be reasonably necessary. Any dispute over an Owner's liability for such damage shall be resolved as provided in subsection (5) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefore from the persons causing such damage.
 3. In the event any shared wall or shared fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his tenants, Lessees, agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such shared wall or shared fence to rebuild and repair such wall or fence at their joint expense within a reasonable time as set forth herein, such expense to be allocated among the owners in accordance with the frontage of their Lots on the shared wall or shared fence.
 4. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any shared wall or shared fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.
 5. In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a shared wall or shared fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.
- q) **Utility Service.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits, or cables installed and maintained underground or concealed in, under or on buildings, excepting that television antennas and satellite receiving dishes may be installed subject to prior written approval of the ARC. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the ARC.
- r) **Overhead Encroachments.** No tree, shrub, or planting of any kind on any Lot or property shall be allowed to overhang or otherwise encroach upon any street, pedestrian way or other common use area without the prior approval of the ARC.
- s) **Trucks, Trailers, Campers and Boats.** No motor vehicle classed by manufacturer rating as exceeding ¼-ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, recreational vehicle, recreational trailer, or other similar equipment or vehicle

may be parked, maintained, constructed, reconstructed or repaired on any Lot or on any road or drive in DAVE'S VIEW at Martins Bluff so as to be Visible From Neighboring Property or the common area; provided, however, the provisions of this Section shall not apply to pickup trucks of ¼ ton or less capacity with camper shells not exceeding 7 feet in height measured from ground level and mini-motor homes not exceeding 7 feet in height and 22 feet in length which are parked as provided in Subsection (u) below and are used on a regular and recurring basis for basic transportation. Notwithstanding the foregoing, any of the above-described vehicles may be stored on a Lot provided a garage or enclosed shelter for each vehicle is approved by the ARC and is constructed as an integral part of the dwelling or substructure and is maintained in the same manner as all other parts of the dwelling constructed thereon. The ARC may, however, at its discretion, determine limitations as to size and shape of such vehicles to be stored, and such storage areas may not be permitted on certain individual Lots solely on the merits of the overall aesthetic impact for that Lot, regardless of the fact that other Lots with other building designs, terrain features, and locations may have been given approval for like or similar structures for like or similar vehicles.

- t) **Motor Vehicles.** No off-road motorcycle or three or four wheel, all-terrain vehicle or other recreational vehicle intended primarily for off-road use will be operated or Visible From Neighboring Property on any common area at DAVE'S VIEW at Martins Bluff, except that shared roads may be used solely for ingress and egress from and to Cloverdale Road & Martins Bluff Road. Four-wheel drive vehicles, ATV's or three wheeled vehicles when used for agricultural or landscape maintenance purposes are permitted. No automobile, motorcycle, motorbike or other motor or recreational vehicle shall be constructed, reconstructed or repaired upon any Lot, road or common area in DAVE'S VIEW at Martins Bluff and no inoperable vehicle may be stored or parked on any such Lot or common area so as to be Visible From Neighboring Property or to be visible from Private Roads; provided, however, that the provisions of this Section shall not apply to (1) emergency vehicle repairs, (2) vehicles parked in garages on Lots so long as such vehicles are in good condition and appearance and are not under repair, (3) the storage of any vehicles in an area designated for specific purposes approved by the ARC.
- u) **Parking.** It is the intent of the Declarant to restrict on-street parking as much as possible. Vehicles of all Owners, Lessees and residents, and of their guests and invitees, are to be kept in garages, carports or residential driveways of the Owner, wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot; provided, however, this Section shall not be construed to permit the parking in the above described areas of any vehicle for which parking is otherwise prohibited, the parking of any inoperable vehicle, or the temporary on- street parking of any vehicle for a period of more than 24 hours.
- v) **Right of Entry.** During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, any member of the ARC, any member of the Board, or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot, and the improvements thereon, except for the interior portions of any completed residence, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.
- w) **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development or sale of property within DAVE'S VIEW at Martins Bluff.

- x) **Health, Safety and Welfare.** In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents, the Board may make rules restricting or regulating their presence in DAVE'S VIEW at Martins Bluff as part of the DAVE'S VIEW at Martins Bluff Rules or may direct the ARC to make rules governing their presence on Lots as part of their architectural guidelines.
- y) **Model Homes.** The provisions of this Declaration which prohibit non-residential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by persons engaged in the construction of residential dwellings in DAVE'S VIEW at Martins Bluff and parking incidental to the visiting of such model homes so long as the location of such model homes are approved by the ARC, the opening and closing hours are approved by the Board and the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. The ARC may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as parking and parking areas are in compliance with the ordinances of Cowlitz County and any rules of the ARC. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner, builder or builder's successor in rights thereof is not actively engaged in the construction and sale of such homes at DAVE'S VIEW at Martins Bluff and no home shall be used as a model home for the sale of homes not located in DAVE'S VIEW at Martins Bluff.
- z) **General.** Lots in DAVE'S VIEW at Martins Bluff may be used only for the construction and occupancy of single-family detached dwellings and typical residential activities incidental thereto such as the construction and use of a family swimming pool or hot tub. No structure whatever other than one private single-family residence together with private garage (attached or detached) and one outbuilding shall be placed or permitted to remain on any Lot. Square foot requirements for all out outbuildings are subject to ARC approval.
- aa) **Tenants.** The entire Dwelling Unit on a Lot may be let to a single family tenant from time-to-time by the Owner subject to the provisions of this Declaration and the DAVE'S VIEW at Martins Bluff rules.
- bb) **Private Road Easements.** There is hereby granted to each Owner and their Successors and assigns a perpetual easement over Private Roads as shown on the Plat for the limited uses of ingress, egress and underground utilities in favor of the Association and all Lots in DAVE'S VIEW at Martins Bluff.
- cc) **Home Occupation.** A home occupation carried on by the occupant of a residence as a secondary use, including professional and semi-professional offices is permitted in DAVE'S VIEW at Martins Bluff provided: 1) The activity is conducted and entered from within a building on the Lot; 2) There is no public display of advertising or products; 3) Not more than one non-resident of the Lot is employed; and 4) Such occupation does not cause any unpleasant or unusual noise, light, noxious fumes or odors, or parking or traffic congestion.
- dd) **Water System.** Each Lot in DAVE'S VIEW at Martins Bluff has been provided with domestic water from a public water systems. Owners of Lots in DAVE'S VIEW at Martins Bluff are prohibited from drilling private wells.

- ee) **Slope Easement.** Immediately adjacent to and along the constructed Private Roads there is hereby granted a perpetual Slope Easement for the limited uses of road maintenance and underground utilities in favor of the Association and all Lots in DAVE'S VIEW at Martins Bluff. which easement is delineated on the Plat.
- ff) **View Easement/Benefited Parcels.** APN 3283826 (as set forth on Exhibit A) shall be subject to an appurtenant and exclusive view and utility easement (along with all necessary rights for access and maintenance) for the benefit of Lots 43,44 within Dave's View Phase-2, in addition Lot #WC2713003. Said benefited parcels shall also be entitled to avail itself of all provisions of this Declaration.
- gg) **Firearms and Hunting.** The discharge of firearms is expressly prohibited on any property at DAVE'S VIEW at Martins Bluff. No hunting is allowed.
- hh) **Seasonal Decorations.** The Declarant and/or the Association shall have the right to place seasonal decorations within DAVE'S VIEW at Martin's Bluff and such costs associated with this item shall be a cost of the Association

ARTICLE IV

ORGANIZATION OF ASSOCIATION

Section 1. Formation of Association.

The Association shall be a nonprofit Washington corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 2. Board of Directors and Officers.

The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws as the same may be amended from time to time. The initial Board shall be composed of three (3) members. The Board may also appoint various committees. Members of the Board shall be chosen by a vote of the members as per Article V.

Section 3. The DAVE'S VIEW at Martins Bluff Rules.

By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration adopt, amend and repeal rules and regulations to be known as the DAVE'S VIEW at Martins Bluff Rules, The DAVE'S VIEW at Martins Bluff Rules may restrict and govern the use of any area by any Member or Resident by the family and Designees of such Member; provided, however that the DAVE'S VIEW at Martins Bluff Rules shall not discriminate among Members and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the DAVE'S VIEW at Martins Bluff Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 4. Personal Liability.

No member of the Board or of any committee of the Association, no officer of the Association and no manager or other employee of the Association shall be personally liable to any Member or to any other person including the Association for any damage loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the managers, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

ARTICLE V **MEMBERSHIP AND VOTING**

Section 1. Owners of Lots.

Each Lot that is subject to assessment shall have one (1) Membership in the Association. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable.

Section 2. Voting.

The Association shall have two (2) classes of voting Membership;

Class A.

Class A Membership shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves shall determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The vote for each such Membership must be cast as a unit, and fractional votes shall not be allowed. In the event that a Membership is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall forfeit their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Membership unless objection thereto is made at the time the vote is cast. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof.

Class B.

Class B members shall be the Declarant and shall be entitled to two (2) votes For each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (a) when the total votes outstanding in the Class A Membership equal or exceed the total votes outstanding in the Class B Membership; or (b) as determined by the Declarant.

Section 3. Cumulative Voting for Board Members.

In any election of the members of the Board every Membership entitled to vote at such an election shall have the number of votes for each Membership equal to the number of directors to be elected. Each Membership shall have the right to cumulate his votes for one candidate or to divide such votes among any number of the candidates. The candidates receiving the highest number of votes up to the number of the Board members to be elected shall be deemed elected.

Section 4. Membership Rights.

Each Membership shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws as the same may amended from time to time.

Section 5. Transfer of Membership.

Except as provided in Section 6 of this Article V, the rights, and obligations of the owner of a Membership in the Association shall not be assigned in any way except upon transfer of ownership to an Owner's Lot. A transfer of ownership of a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Washington. Any attempt to make a prohibited transfer shall be void. Any transfer of Ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof.

Section 6. Use of Membership; Designees.

Subject to the DAVE'S VIEW at Martins Bluff Rules all of the Owners of a Membership may designate one or more non-Members (herein referred to as a "Designee") to exercise all of the rights of the Member under this Declaration except the Member's voting rights but such designation shall not relieve the Member of any liabilities or obligation as an Owner or Lessee or with respect to the Membership. So long as such designation is in effect, the Member shall be permitted to exercise only his voting rights and the Board may among other things, in its discretion, set maximum or minimum periods for which such designation may be in effect and limit the number of persons who may be so designated by any Member at any one time.

ARTICLE VI

COVENANTS FOR ASSESSMENTS AND CREATION OF LIEN

Section 1. Creation of Lien and Personal Obligation of Assessments and Maintenance Charges.

The Declarant for each Lot hereafter established within DAVE'S VIEW at Martins Bluff hereby covenants and agrees and each Owner by acceptance of a Deed thereto (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree to pay the Association the following assessments and charges:

- (1) Annual Assessments established by this Article VI
- (2) Special Assessments for Capital Improvements or other extraordinary expenses or costs established by this Article VI
- (3) Maintenance Charges established by Article IX and all such Assessments to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments, and Maintenance Charges together with interest costs and reasonable attorney's fees shall be a charge on the Lot and shall be a continuing servitude and lien upon the Lot against which each such Assessment is made. Each such Annual and Special Assessment and Maintenance Charge shall be the personal obligation of the

person who was the Owner of the Lot at the time the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

Section 2. Annual Assessments.

In order to provide for the uses and purposes specified in Article IX and Article X hereof including the establishment of replacement and maintenance reserves the Board in each year commencing with the year 2006 shall assess against each Lot an Annual Assessment. The amount of the Annual Assessment subject to the provisions of Section 5 hereof shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration.

Section 3. Rate of Assessment.

The amount of any Annual or Special Assessment intended specifically for the maintenance of any common area, shared roads and their associated 60 foot wide easements as shown on the DAVE'S VIEW at Martins Bluff survey, including asphalt paving or road repairs, electric power and telephone utilities, slope and drainage maintenance, culverts, and landscaping, if any, will be shared equally and each Owner shall pay an equal amount.

The Association will establish and maintain a separate bank account exclusively for funds used for maintenance of any common area and shared roads within DAVE'S VIEW at Martins Bluff. Initially, the total assessment for road maintenance in Phase 2 shall be Five Thousand Dollars (\$5,000) per year. This amount may be adjusted by a majority vote of the membership. All other assessments will also be equal, and each owner shall pay an equal amount. Annual Assessments may be collected on a quarterly or annual basis and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment.

Section 4. Maximum Annual Assessment.

The Annual Assessment to be established by the Board may not exceed a certain amount hereinafter referred to as the "Maximum Annual Assessment" which shall be determined and shall vary in accordance with the following provisions:

- a) Until January 1 of the year 2007 the Maximum Annual Assessment against each Owner or Lessee shall be One Thousand Dollars (\$1,000.00) per each Membership.
- b) From and after January 1, 2007, and during such year, the Maximum Annual Assessment may be increased effective January 1st of each year without a vote of the Membership by a maximum of ten percent (10%).
- c) From and after January 1, 2007, the Annual Assessment may be increased above the Maximum Annual Assessment otherwise determined under Subsection (b) above by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 5. Special Assessments for Capital Improvements and Extraordinary Expenses.

In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, easements, including fixtures and personal property related thereto, including the water system, or for the purpose of defraying other extraordinary expenses, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in any such Special Assessment. The provisions

of this Section are not intended to preclude or limit the assessment, collection. Or use of Annual Assessments for the aforesaid purposes.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 4 and 5.

Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes (exclusive of suspended voting rights) of the Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Establishment of Annual Assessment Period.

The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, and the first Assessment Period shall commence on January 1, 2006 and terminate on December 31, 2007. Assessments for new Owners will be prorated as of the date the Owner becomes an Owner. The Board in its sole discretion from time to time may change the Assessment Period by recording with the County Recorder of Cowlitz County, Washington, an instrument specifying the new Assessment Period.

Section 8. Rules Regarding Billing and Collection Procedures.

The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Annual and Special Assessment and the Maintenance Charges imposed pursuant to Article IX provided that said procedures are not inconsistent with the provisions hereof. Such procedures may include an obligation for the Owner to collect Assessments imposed on a Lessee and forward the collected amounts to the Association. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefore shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement at the address of the Member on the records of the Association that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period; successor Owners of Lots and successor Lessees shall be given credit for prepayments, on a prorated basis, made by prior Owners and Lessees. The amount of the Annual Assessment against Members who become such during an Assessment Period shall be prorated and such new Members shall not be liable for any previously levied Special Assessment.

Section 9. Collection Costs and Interest on Delinquent Assessments.

Any Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear interest from thirty (30) days after the due date until paid at a rate of twelve percent (12%) per annum. The Member shall be liable for all costs including attorney's fees that may be incurred by the Association in collecting the same; The Board may also record a notice of Delinquent Assessment against any Lot as to which an Assessment is delinquent and constitutes a lien and may establish a fee to reimburse the Association for the Association's cost in recording such notice, processing the delinquency and recording a notice of payment, which fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

Section 10. Evidence of Payment of Annual and Special Assessments and Maintenance Charges.

Upon receipt of a written request by a member or any other person the Association within a reasonable period of time thereafter shall issue to such member or other person a written certificate stating:

- a) that all Annual and Special Assessments and Maintenance Charges (including interest costs and attorney's fees if any as provided above) have been unpaid with respect to any specified Lot as of the date of such certificate; or
- b) if all Annual and Special Assessments and Maintenance Charges have not been paid the amount of such Annual and Special Assessments and Maintenance Charges (including interest costs and attorney's fees if any) due and payable as of such date.

The Association may make a reasonable charge for the issuance of such certificates which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

ARTICLE VII

ENFORCEMENT OF PAYMENT OF ANNUAL AND SPECIAL ASSESSMENTS AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN

Section 1. Association as Enforcing Body.

The Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration.

Section 2. Association's Remedies to Enforce Payment of Annual and Special Assessments and Maintenance Charges.

If any Member fails to pay the Annual or Special Assessments or installments when due, or to pay Maintenance Charges assessed pursuant to Article IX, the Association may enforce the payment of the Annual or Special Assessments, Maintenance Charges and/or the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

- a) Bring an action at law and recover judgment against the Member personally obligated to pay the Annual or Special Assessments or the Maintenance Charges;
- b) Foreclose the Assessment Lien against the Lot in accordance with the then prevailing Washington law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and the Lot may be redeemed after foreclosure sale as provided by law.

Section 3. Subordination of Assessment Lien to First Mortgagor Deed of Trust: Priority of Lien.

The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or deed of trust of which the beneficiary is, a lender who has lent funds with the Lot or Parcel as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. Sale or transfer of any Lot shall not affect the Assessment then; provide, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot free of the assessment Lien for all Annual and Special Assessments and Maintenance

Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except made superior), and such mortgage or deed of trust foreclosure sale purchases or grantee shall take subject to all Annual and Special Assessments, Maintenance Charges and Assessment Liens thereof accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

Section 4. Costs to be Borne by Member in Connection with Enforcement of Payment of Annual and Special Assessments and Maintenance Charges.

In any action taken pursuant to Section 2 of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual and Special Assessments and Maintenance Charges together with interest and the Association's collection costs and attorney's fees, including those costs and fees specified in Article VI, Section 9.

ARTICLE VIII
USE OF FUNDS; BORROWING POWER

Section 1. Purposes for which Association's Funds may be Used.

The Association shall apply all funds and property collected and received by it (including the Annual and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of DAVE'S VIEW at Martins Bluff and the Members and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, security, programs, studies and systems, within or without DAVE'S VIEW at Martins Bluff, which may be necessary, desirable or beneficial to the general common interests of DAVE'S VIEW at Martins Bluff, the Members and the Residents. The Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Washington or such municipality's charter.

Section 2. Borrowing Power.

The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such period of time as is necessary or appropriate.

Section 3. Association's Rights in Spending funds From Year to Year.

The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 4. Administration of Special Use Fees.

The Association is authorized to bill for, sue for, collect, administer and disburse all Special Use Fees and the payment thereof shall be secured by the Assessment Lien; provided however that all Special Use Fees collected shall, if imposed in connection with a particular improvement, be separately accounted for as to each separate improvement pertaining to which they are collected and shall be expended on the particular improvement to which they pertain.

Section 5. Insurance.

The Association shall maintain insurance against liability incurred as a result of death, injury to persons or damage to property on the Common Easements, a fidelity bond to protect against embezzlement or theft of funds and any other insurance that the Association deems commercially reasonable.

ARTICLE IX **MAINTENANCE AND SECURITY**

Section 1. Common Areas, Common Easements and Private Roads.

The Association or its duly delegated representative shall maintain and otherwise manage all Common Area and Common Easements, including but not limited, all Private Roads and entrances to Lots, and landscaping. Specifically, the Association (at its option) shall maintain landscaping and improvements within those easements shown on the exhibits hereto and described as follows:

- 1) Private Roadways as shown on the Plat
- 2) Entry areas
- 3) Slope Easements
- 4) common walkways, paths or parks within DAVE'S VIEW at Martins Bluff.

The Board shall use areas on a reasonably high standard of care in providing for the repair, management, and maintenance of said property so that the DAVE'S VIEW at

Martins Bluff development will reflect a high pride of ownership. In this connection the Association may, subject to any applicable provisions on Special Assessments for capital improvements, in the discretion of the Board:

- a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon the Common Area and Common Easements. Replace injured and diseased trees and other vegetation in any easement and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes.
- b) Place and maintain upon any Common Area or Common Easement such signs as the Board may deem appropriate for the proper identification, use or regulation thereof.
- c) Provide or contract for snow removal services on private roadways. Do all such other and further acts that the Board deems necessary to preserve and protect the Common Area and Common Easements and the beauty thereof in accordance with the general purposes specified in this Declaration.

The Association shall be responsible for a prorata contribution, as determined by Declarant, toward the maintenance of any private road, easement or other Common Area (of any Phase of DAVE'S VIEW at Martins Bluff) used by any Member of the Association defined in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all Common Area and Common Easements and other properties maintained by the Association. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article IX and in order to promote uniformity and harmony of appearance the Board may also cause the Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

Section 2. Assessments of Certain Costs of Maintenance and Repair of Common Areas and Common Easements.

In the event that the need for maintenance or repair of Common Area and Common Easements and other areas maintained by the Association is caused through the willful or negligent act of any Member, his family, guests, invitees or Designees, or by the use of heavy trucks, equipment or construction related traffic used by any Member, his family, guests, invitees, designees, contractors, or agents the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to Section 1 of this Article IX in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

Section 3. Improper Maintenance and Use of Lots.

In the event any portion of any Lot is so maintained as to present a public or private nuisance or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of DAVE'S VIEW at Martins Bluff which are substantially affected thereby or related thereto or in the event any portion of a Lot is being used in a manner which violates this Declaration, or the spirit thereof, or in the event the Owner of any Lot is failing to perform any of its obligations under this Declaration, or the architectural guidelines and standards of the ARC, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective actions are taken within fourteen (14) days, the Board may cause such actions to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

Section 4. Security.

The DAVE'S VIEW at Martins Bluff Association or its duly delegated representative may, subject to Cowlitz County approval, operate and maintain a card or code actuated security gate system at the entrance to DAVE'S VIEW at Martins Bluff. If so, the Board shall use a reasonably high standard of care in providing for the operation of the security gate so that the DAVE'S VIEW at Martins Bluff development will provide reasonable protection to its Owners, Lessees and Residents; provided, however, the DAVE'S VIEW at Martins Bluff Association shall not have any liability to any Owner, Lessee, Resident or other person for any damages, injury or theft to person or property caused by any failure of the entrance security gate system. A majority vote of the members of the Association will be required to create a security gate. The Board shall be the sole judge as to the appropriate level and type of security provided. The Board may cause the Association to contract with others for the performance of the security obligations under this Section.

ARTICLE X
ARCHITECTURAL REVIEW COMMITTEE

Section 1. Establishment.

The Declarant shall establish an Architectural Review Committee ("ARC") to perform the functions of the ARC set forth in this Declaration and shall adopt the procedural rules and regulations for the performance of such duties by the ARC, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration. The ARC shall consist of such number of regular members and alternate members as the Declarant may designate and such members shall be appointed by the Declarant. The appointees need not be architects, Owners, Lessees or Residents and do not need to possess any special qualifications of any type except such as the Declarant may, in its discretion, require. The ARC shall hold regular meetings, a quorum for such meeting shall consist of a quorum of the regular members, and the concurrence of a majority of the regular members shall be necessary for any decision of the ARC. An alternate member, approved by the Declarant, may participate at any meeting at which there is not a quorum of regular members present, may constitute a quorum by their presence and shall have all of the authority of a regular member while so participating. The ARC shall follow the DAVE'S VIEW at Martins Bluff Design Guidelines as the standard to be used in rendering its decisions and developing its rules. Subject to the provisions of Section 2 of this Article, the decision of the ARC shall be final on all matters submitted to it pursuant to this Declaration.

Section 2. Appeal.

Any Owner, Lessee or other Resident aggrieved by a decision of the ARC may appeal the decision to the ARC in accordance with procedures to be established by the ARC. Such procedures include the requirement that the appellant has modified the requested action or has new information that would in the ARC's opinion warrant reconsideration.

Section 3. Fee.

The Board may establish a reasonable processing fee to defer the costs of the Association in considering any request for approvals submitted to it which fee shall be paid at the time the request for approval is submitted.

Section 4. Appointment of Architectural Review Committee Members.

ARC members are appointed by the Declarant and may be replaced at the discretion of the Declarant. Declarant's rights to appoint ARC members shall cease and the Board shall be vested with that right and all other rights of the Declarant pertaining to the ARC as stated in Article X, at such time Declarant no longer owns any property at DAVE'S VIEW at Martins Bluff, or when such right is expressly relinquished by Declarant to the Board in writing, whichever occurs first. At such time that the Board assumes the right to appoint and terminate ARC members, such actions will be by majority vote of the Board.

ARTICLE XI **RIGHTS AND POWERS OF ASSOCIATION**

Section 1. Association's Rights and Powers.

In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers subject to the approval thereof by any agencies or institutions deemed necessary by Declarant may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a

copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.

Section 2. Association's Rights of Enforcement of Provisions of This and Other Instruments.

The Association, as agent and representative of the Owners and Lessees, shall have the right to enforce the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which;

- a) shall have been executed pursuant to or subject to the provisions of this Declaration, or
- b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant.

Section 2. Contracts with Others for Performance of Association's Duties.

Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee is employed by, or otherwise connected with Declarant or its affiliates; provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract transaction or approval with like force and effect as if he were not so interested.

Section 4. Change of Use of Association Land and Procedure.

Upon;

- a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Association's interest in other Common Area is no longer in the best interests of the Owners and Residents, and
- b) the approval of such resolution by a majority of the votes of Members who are voting in person or by a proxy at a meeting duly called for such purpose

the Board shall have the power and right to change the use thereof (and in connection therewith construct, reconstruct, alter, or change the improvements thereon in any manner deemed necessary by the Board to accommodate the new use) provided such new use shall be for the benefit of the Owners and Residents, and shall be consistent with any deed restrictions (or zoning regulations) restricting or limiting the use of the Association Land.

**ARTICLE XII
TERM AMENDMENTS; TERMINATION**

Section 1. Term; Method of Termination.

This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. From and after said date, this Declaration as amended shall be automatically extended for successive periods often (10) years each unless there is an affirmative vote to terminate this Declaration by the then Members casting seventy five percent (75%) of the total votes cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may be

terminated at any time if seventy five Percent (75%) of the votes cast by the Members shall be cast in favor of termination at an election held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from the holders of recorded first mortgages or deeds of trust to which the Assessment Lien is subordinate pursuant to Article VII, Section 3 above, on seventy-five percent (75%) of the Lots upon which there are such recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Cowlitz County, Washington, a certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon, these Covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

Section 2. Amendments.

This Declaration may be amended by recording at Cowlitz County, Washington, a Certificate of Amendment, duly signed and acknowledged as required for a Certificate of Termination in Section 1 of this Article. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Section 3 of this Article, shall certify that an election duly called and held pursuant to the provisions of the Articles and Bylaws the members casting seventy five percent (75%) of the votes at the election vote affirmatively for the adoption of the amendment. Except, if the Declarant controls enough votes to determine the outcome of an election, the Declarant may sign and record at Cowlitz County, Washington, a Certificate of Amendment, setting forth in full the amendment adopted.

Section 3. Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions.

Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration to such extent and with such language as maybe requested by the Federal Housing Administration ("FHA") the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA") or requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to lending funds upon the security of any Lot(s) or portions thereof. Any such amendment shall be effected by the recordation, by Declarant, of a Certificate of Amendment duly signed by or on behalf of the partners, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when recorded, shall be binding upon all of DAVES VIEW at Martins Bluff and all persons having an interest therein. It is the desire of the Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes, or alters such control, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other, and different control provisions. Except as provided in this Section 3, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of Section 2 of this Article.

ARTICLE XIII

MISCELLANEOUS

Section 1. Interpretation of the Covenants.

Except for judicial construction, the Association by its word shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent Jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the Covenants and provisions hereof.

Section 2. Severability.

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

Section 3. Rule Against Perpetuities.

If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be

- a) those which would be used in determining the validity of the challenged interest plus,
- b) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

Section 4. Change of Circumstances.

Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

Section 5. Rules and Regulations.

In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's right, activities and duties provided said rules and regulations are not inconsistent with the provisions of this Declaration.

Section 6. Declarant's Disclaimer of Representations.

Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat, survey Of other instrument recorded in the office of the County Recorder of Cowlitz County, Washington, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of DAVE'S VIEW at Martins Bluff can or will be carried out or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not is has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

Section 7. Dispute Resolution.

If a dispute arises out of or relates to this Declaration, the parties agree first to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American

Arbitration Association. This mediation shall be a prerequisite to any litigation with regard to this Declaration. Each party shall bear its own costs and fees in connection with any such mediation.

Section 8. Attorney's Fees.

In the event suit or action shall be brought by any of the parties affected by these Declarations for the enforcement of any of the covenants or conditions on the part of any parties to be kept or performed, the parties agree that the prevailing party shall be entitled to reasonable attorneys fees. References to the Covenant in Deeds. Deeds to any Lot or any part of DAVE'S VIEW at Martins Bluff may contain the Covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed each and all of the Covenants shall be binding upon the grantee-Owner and his heirs, executors, administrators, successors and assigns.

Section 10. Successors and Assigns of Declarant.

Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder.

Section 11. Gender and Number.

Wherever the context of this Declaration so requires words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

Section 12. Captions; Titles and Defined Terms.

All captions, titles, headings, or defined terms of this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify, or otherwise affect any of the provisions hereof or to be used in determining the intent or context hereof.

Section 13. Notices.

If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or Resident then unless otherwise specified herein or in the resolution of the Board such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Cowlitz County, Washington. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

**DAVE'S VIEW at Martins Bluff Phase Two DESIGN GUIDELINES
(Cowlitz County Auditor File 3283826 January 3, 2006)**

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SECTION 1. PURPOSE AND INTRODUCTION.

The design guidelines have been prepared to ensure that the overall planning

philosophy of DAVE'S VIEW at Martins Bluff is carried out. Hence, the guidelines are intended first as an information source to builders, developers, architects or Owners, and second as a regulatory mechanism to ensure that all improvements in the community are completed in an aesthetic and environmentally sensitive manner. These guidelines will thus ensure a high standard of project-wide design consistency throughout the life of the community. As a part of the design guidelines, a mandatory program of architectural review has been established to evaluate every proposal for development in the community. The purpose of the review program is to ensure that the high standards of the community set forth in this document are upheld in each phase of the development. The DAVE'S VIEW at Martins Bluff Design Guidelines are intended to be a conceptual, dynamic guide to development and as such are subject to change where the Architectural Review Committee ("ARC") determines such change is in the best interests of the community. These design standards are binding on any persons, company or firm which intends to construct, reconstruct or modify any permanent or temporary improvement in the DAVE'S VIEW at Martins Bluff community or in any way alter the natural setting of the environment. Accompanying the design guidelines are the Covenants, Conditions and Restrictions (the "Covenants" and/or "CC&Rs"), which have been adopted formally and recorded to establish the homeowner's association and to guarantee long-term maintenance of all common facilities within the community. All construction and improvements on all Lots must be pre-approved by the ARC (no exceptions); must commence within two (2) years of purchase of the Lot; and must be complete within one (1) year, unless extended by the ARC in writing. All construction and improvements on all Lots shall be completed by a Washington licensed and bonded contractor.

All improvements to any Lot must be submitted for approval prior to application for any permit or commencement of construction. Additionally, all Lot Owners are responsible for obtaining the most recent Design Guidelines from the Association prior to submittal of plans to ARC.

SECTION 2. DESIGN STANDARDS.

2.1 GENERAL THEME

2.1.1 ARCHITECTURAL DESIGN THEME.

The architectural theme for the DAVE'S VIEW at Martins Bluff community reflects the thoughtful integration of structures with the rural and wooded mountain environment. Themes of the Northwest, as well as other building types that respond appropriately to the natural surroundings, are encouraged. Generally, muted colors that do not predominate are acceptable for use on building exteriors. Highly reflective colors or materials are prohibited on all wall and roof surfaces. All architectural elements, including color, are subject to approval of the ARC.

2.1.2 LANDSCAPE THEME.

Consistent with the overall design philosophy a landscape theme has been established emphasizing the preservation and enhancement of native plant life. A complete landscape design and implementation schedule will be required for ARC approval within six (6) months of the date of occupancy. Where removal of plant life occurs, outside design perimeters reasonable efforts shall be made to replant and re-establish the natural wooded environment using native plant species. The only exception to this policy is that non-native material may be used in private areas (atriums, behind walls etc.) and in yards directly adjacent to the residence or special screening and accent situations as determined by the ARC to enhance the visual integrity of the community.

2.1.3 NO BUILDING ZONES/SPECIFIC LOT LIMITATIONS

Certain areas on lots have been designated as NO BUILDING ZONES to protect view corridors for adjacent lots. In these zones no buildings may be placed or constructed. On certain lots only one-story or daylight basement buildings with a maximum elevation of 20 feet above the currently existing grade are permitted.

2.2 SITE DEVELOPMENT STANDARDS

2.2.1 RESTRICTIONS ON PRE-EXISTING AND MANUFACTURED STRUCTURES AND CERTAIN BUILDING MATERIALS.

No pre-fabricated or existing structures, mobile homes, or manufactured housing is permitted, with the exception of small, manufactured items such as self-contained spas or hot tubs and their associated gazebos and children's playhouses or doghouses (and as pre-approved by the ARC). No T-111 grooved plywood siding or other plywood siding is permitted. Copper roofing is permitted if it is allowed to develop its natural untreated patina. Other metal roofing or siding will be considered if, at the sole discretion of the ARC, it is high quality material with a long lasting non-reflective baked on coating. No corrugated fiberglass material is permitted. Composition or asphalt roofing shingles are permitted only if they carry a manufacturer's guarantee for thirty years or more.

2.2.2 GRADING, DRAINAGE, EROSION CONTROL.

A grading plan that illustrates existing and proposed contours cut and fill areas and all existing significant trees within the subject area shall be presented with the preliminary submittal to the ARC for review. Site grading shall be done with a minimum of disturbance to topographical features and environmental elements. Where topographic constraints exist, architectural design solutions shall be used rather than grading solutions. Mass grading in the form of large pads is prohibited. Stem wall, or other construction techniques shall be implemented. Graded areas shall be kept to an absolute minimum to reduce impacts on the surrounding environment. Grading, when necessary, shall result in curved, undulating, not

sharp or squared contours, to create a rolling, natural appearance. Graded areas shall be re-vegetated as soon as possible and special care shall be given to the prevention of erosion and silt migration. Grading plans must indicate temporary erosion control placement and methods. Existing drainage patterns must not be altered in such a manner as to adversely affect adjacent property. Exposed, manufactured cut slopes shall have a maximum slope of 1:1 and manufactured filled slopes of 2:1. The height of retaining walls shall not exceed six (6) feet unless pre-approved by the ARC. Walls shall be constructed of materials that are harmonious with the adjacent structure(s) and the indigenous materials of the site. Exposed cut or fill slopes must be restored so that the finished product blends smoothly with the surrounding terrain and architecture. Native rock and/or native plant material shall be used to prevent erosion and create visually pleasing treatment. Existing mature trees shall be maintained wherever possible. However, upon pre-approval by the ARC existing trees may be pruned or removed to provide reasonable view corridors for the residence. Existing view corridors from adjacent lots shall not be obscured. Both planted and indigenous trees shall be pruned in such a manner as to preserve existing view corridors of adjacent lots.

Certain areas are identified on the plat, the geotechnical hazard map, as containing potential geotechnical constraints, concerns, or hazards. In areas labeled as such, no building of any kind is permitted, removal of native vegetation is prohibited, no wheeled or tracked equipment or machinery may be operated and no improvements of any kind are allowed except for the removal or trimming of vegetation by use of hand tools to create and maintain walking paths. Within these areas no activity or construction or vegetation removal that might, in the opinion of the ARC, lead to soil erosion or degradation of the watershed is permitted. All recommendations contained in the geologic evaluation supplied by the ARC must be followed. Lots identified on that report that may have setback, slope or stability concerns must have additional professional Geotechnical analysis prior to any construction or grading. Prior to any foundation construction a geo-tech inspection of said foundation sub-grade will be required by the ARC and the Cowlitz County Building & Planning Department.

2.2.3 UTILITIES.

All utility lines shall be placed underground. All utilities within Dave's View (all phases) will be installed at Lot Owners expense, by Dave's View, LLC or by a qualified sub-contractor approved by Dave's View, LLC. In the event Dave's View, LLC cannot perform contracting services or no longer controls any phase within Dave's View, all Lot owners at their discretion may select a licensed and bonded contractor of their choice.

2.2.4 PARKING/RECREATIONAL VEHICLES.

A minimum of two (2) enclosed off-street parking spaces shall be provided per residence. Three (3) additional guest-parking spaces shall also be provided on the Lot. No on-street parking shall be allowed except for emergencies or special occasions. Pursuant to the Covenants, no boats, trailers or other recreational vehicles shall be stored onsite unless they are parked inside an enclosed area or unless alternate storage plans are approved by the ARC. Alternate storage plans must provide for shielding the view of large vehicles from the common road easements and minimizing the view of such vehicles from adjacent Lots. Temporary placement of guest recreational vehicles for more than 24 hours may be allowed only with prior written approval by the ARC.

2.2.5 PAVING.

All private drives and individual driveways and parking areas shall be paved within one (1) year from the date of occupancy. All lots have designated driveway approach areas; under no circumstances are temporary or permanent driveways to be constructed outside of these

approach areas without prior written approval from the ARC. All driveway contractors will be required to follow specific guidelines for the tie into the existing right-of-way. Said guidelines are made available by the ARC upon request. Acceptable paving shall be asphalt, concrete, brick or other hard surface material as approved by the ARC.

2.2.6 LIGHTING.

The use of exterior lighting shall be minimized and shall not be directed upon any adjacent Lot or Private Road. All exterior lighting mounted more than seven (7) feet above ground level will be shielded in such a manner that light is directed downward. No yard or utility light or any exterior lighting will be operated by a photo sensitive or light sensitive switch, but only by manual switching or a motion detector switch except that low intensity 12-volt lighting mounted less than two feet above ground level or low intensity lighting for an identifying address sign may be on a photo sensitive switch. After 10 p.m., the use of exterior lighting is not allowed unless actually in use for the safety, security, or convenience of persons outside the residence. Lighting shall be utilized only as necessary to provide the functional requirements of safety, security and identification. Unnecessary use of light is prohibited in the interest of energy efficiency and maintenance of the quiet nighttime environment.

2.2.7 SWIMMING POOLS AND TENNIS COURTS.

Swimming pools or tennis courts, if any, should be designed as being visually connected to the residence through walls or courtyards. All designs and materials will require approval of the ARC.

2.2.8 SIGNS.

All signs, including real estate signs, shall be of design and materials approved by the ARC. Plans showing design and location must be submitted for review and approval prior to installment of any signs. One (1) lighted address identification monument sign is permitted for each dwelling. Monument signs may only include the resident's name and/or address and in design should be of permanent materials that complement the design and materials of the residence. No additional signs shall be allowed except as approved by the ARC.

2.2.9 FENCING.

Perimeter fencing of individual Lots is discouraged to protect the natural character of DAVE'S VIEW at Martins Bluff. However, where approved by the ARC fencing may be installed. Fencing design and materials shall be open wood rail or non-reflective plastic composite with wood, matching plastic, or masonry posts. No wire fencing or metal "T" posts shall be allowed except for wire fencing around a garden or crops for protection from animals if approved by the ARC. All fencing materials, design and color shall be approved by the ARC prior to construction.

2.2.10 SETBACKS.

No building or structure shall be placed within 25 feet of a property line unless approved by the ARC.

2.2.11 VIEW PROTECTION/VIEW EASEMENT.

For the purposes of this provision, view is defined as the view of the horizon in a 180-degree arc centered on due South that is visible from the largest measured room with a view that is used as living space (exclusive of bedrooms, bathrooms, or separate dining rooms) on the

main floor (the floor on which the kitchen is located) of a residence. Each Lot within DAVE'S VIEW at Martins Bluff shall have a View Easement. Furthermore, Lot WC2713003 which is not defined as Association Land in this Declaration is hereby granted a perpetual View Easement under this Declaration. Trees that block or obscure the view as of the date of recording of this Declaration will be allowed to remain. The ARC reserves the right to remove/trim any tree(s) that in its sole discretion creates a danger, or the ARC concludes that said tree(s) negatively affect future view sites within Dave's View. The ARC cannot remove trees from occupied Lots without the Owner's consent. Other trees, whether planted by an owner or occurring naturally, will not be allowed to block the view of any other Owner. If a view is blocked by another Owner's tree, the Owner of the offending tree will be responsible for having the tree topped or removed so that it no longer blocks the view. If the Owner of an offending tree fails to top or eliminate the offending tree within thirty (30) days of a determination by the Association of a violation of this provision the Association may hire a contractor to top or eliminate the offending tree at the expense of the owner of said tree, and any such expense not repaid to the Association within thirty (30) days of billing shall be subject to collection in accord with other provisions of this Declaration.

2.3 ARCHITECTURAL STANDARDS

2.3.1 BUILDING SIZE

One-story single-family detached residences shall have a minimum size of (~~3,400~~ amended in 2009) 2600 square feet. Two story homes shall have a minimum size of (~~5,000~~ amended in 2009) 3600 square feet. This square footage measurement includes only finished living space and is exclusive of garages and porches. These size restrictions may be reduced if, in the sole discretion of the ARC, the proposed residence has exceptional architectural merit. Three-story homes will be allowed at the sole discretion of the ARC. Proposed three level homes will be required to have unique, architectural merit. Square symmetric three level designs will not generally be allowed. Accessory structures Shall be limited to one structure per Lot with a maximum size of 1,000 square feet and shall be constructed of the same materials as the main residence. The size restrictions may be increased if, in the sole discretion of the ARC, the structure has exceptional architectural merit. The principal garage of a residence will not be considered an accessory structure if it is capable of storing not more than three vehicles.

2.3.2 BUILDING HEIGHT.

The height of single-family detached buildings shall not exceed thirty (30) feet from the existing grade. The height of accessory structures is limited to one story or twenty (20) feet from the existing grade. Height restrictions may be increased if, at the sole discretion of the ARC.

2.3.3 SOLAR APPLICATIONS.

The use of passive and active solar designs is encouraged. Components of these systems shall be designed and installed so as not to create any adverse visual impact upon any portion of the community. All designs are subject to review and approval by the ARC. It is recommended that owners consider orienting the longest side of the residence on an East-West axis to maximize solar gain and views.

2.3.4 ROOFS.

Roof design and material are subject to prior review and approval by the ARC. Sloped rooflines shall have a minimum pitch of 5 in 12. Color of roofing shall be muted. All vents and other projections shall be colored to blend with the roof. The use of continuous ridge venting is encouraged. No mechanical equipment will be permitted on roofs.

2.3.5 EXTERIOR MATERIAL AND COLOR.

Exterior building materials shall be of materials that blend into and are compatible with the natural landscape. This includes wood, brick, masonry, stucco, stone, fiber cement lap siding or other suitable material as pre-approved by the ARC to promote and enhance the wooded mountain environment. Exterior treatments and colors will be of muted tones.

2.3.6 BUILDING PROJECTIONS.

All architectural building projections; including chimney flues, vents, gutters, downspouts, utility boxes, porches, railings, and stairways shall match the color of the main residence or shall be of a pre-approved color. No radio or television antenna or satellite dish are permitted to be located so as to be visible from any adjacent Lot or Private Road unless exceptional circumstances exist and only with pre-approval of the ARC. Furthermore, all such devices must be approved by the ARC prior to construction or installation.

2.3.7 WALLS.

Walls constructed of wood, stone or masonry may be used to delineate the private or door areas of the residence. They should be a visual extension of the architecture of the main residence. The texture and color of walls shall conform to the same color standards as the main residence and the indigenous materials of the surrounding natural slopes. Walls or fences shall not be used to define or delineate property lines unless pre-approved by the ARC. Walls or fences shall not exceed six (6) feet in height unless pre-approved by the ARC for protection of gardens or crops against animals.

2.3.8 SERVICE YARDS.

Walls are required as screening for a service yard, if any, to enclose all above-ground garbage and trash containers, clotheslines, mechanical equipment, heat pumps, propane or fuel tanks and other outdoor maintenance and service facilities.

2.3.9 MAILBOXES.

DAVE'S VIEW at Martins Bluff mailbox and newspaper delivery facilities will be provided at the community entrance gate area or other such areas determined by the ARC and or the United States Postal Service. No other roadside mail or newspaper boxes are permitted.

2.3.10 OUTBUILDINGS.

Outbuildings shall be in kind, style, material, and color the same as or complementing the residence. Designs and materials are subject to pre-approval by the ARC

2.3.11 GARAGE DOORS AND GARAGE PLACEMENT.

If practical, garage doors should not aesthetically dominate that elevation or face of a residence that is most visible from the Private Roads (herein defined, as the front of the house.) Owners are encouraged to use detached or semi-detached garages or, if attached, to place garage doors on the side or rear of the residence. A detached garage which is the primary garage (the most often used storage for the most often used vehicles) will not be considered an accessory structure, and the owner of same may also build one (1) additional

structure on the Lot, subject to the above restrictions and preapproval of the ARC. The ARC will give special consideration to Owners whose Lots have steeply sloped building sites and may not in any case require that the design guidelines in this Section be followed if the cost of a driveway would be more than twice as much than if these guidelines are not followed.

2.3.12 RENOVATIONS AND MODIFICATIONS.

Any changes to the approved plans before, during or after the construction of an improvement must first be submitted to the ARC for pre-approval. IT SHALL BE THE SOLE AND EXCLUSIVE RESPONSIBILITY OF THE LOT OWNER TO OBTAIN APPROVAL FROM THE ARC FOR ANY SUCH MODIFICATIONS.

SECTION 3 DESIGN REVIEW PROCESS

3.1 ARCHITECTURAL REVIEW COMMITTEE (ARC) MEMBERSHIP.

The ARC shall consist of any number of such members and alternates as the Declarant shall designate. Each member shall hold his or her office until such time as he or she shall resign or be

removed. Except as provided for in the Declaration (Article X, sections 1 and 4), the right to appoint and remove members of the ARC shall be solely vested with the Declarant or its assignees. Members shall serve a maximum of 10 consecutive years and may resign from the ARC during the term of office upon. Written notice to the Association.

3.2 DUTIES OF THE ARC.

The ARC shall consider and act upon proposals for construction and improvements within the DAVE'S VIEW at Martins Bluff community to see that such proposals are in compliance with the standards, goals, and objectives of these Guidelines. The ARC shall perform other such duties as from time to time may be delegated to it by the Association. The ARC may also amend the guidelines. The ARC shall meet periodically as necessary to perform its duties pursuant to the Declaration. The vote or written consent of a majority of members shall constitute an act by the ARC unless the unanimous decision of its members is otherwise required by the Declaration or these Design Guidelines. The ARC shall keep and maintain a written record of all actions taken by the committee. Unless specifically authorized by the Association, members of the committee shall not receive any compensation for services rendered. All members shall be entitled to reimbursement for reasonable expenses incurred in the performance of their function or duty. Professional consultants retained by the committee shall be paid such compensation as determined by the committee.

3.3 AMENDMENTS TO DESIGN GUIDELINES.

The ARC may from time to time adopt, amend and repeal by unanimous vote these Design Guidelines that may serve to supplement, clarify, interpret or implement the Guidelines. All such rules and regulations shall be appended and made a part of the Architectural Rules and shall thereupon have the same force and effect as if they were a part of the original guidelines. Each property Owner is responsible for obtaining a copy of the most current standards prior to any construction or improvements on any Lot.

3.4 NON-LIABILITY.

Neither the ARC, nor any member thereof, shall be liable to the DAVE'S VIEW at Martin's Bluff Homeowner Association or to any other Owner or person for any damage, loss or prejudice suffered or claimed on account of

- a) the timing and/or the approval or disapproval of plans, drawings and specifications, whether or not defective,
- b) or the construction or performance of work, whether or not pursuant to approved plans, drawings and specifications.

Furthermore, the ARC reserves the right to amend its design criteria and/or its standards of review as it deems necessary in its sole discretion and shall not be responsible to any Lot Owner for such modifications or changes. It shall be the sole responsibility of any Lot Owner or their agent to ensure that the most current guidelines and design criteria are being adhered to on any Lot within DAVE'S VIEW at Martin's Bluff.

3.5 SUBMITTAL AND REVIEW OF PLANS.

Plans and specifications shall be submitted to the ARC in accordance with the following procedures:

All plans shall be submitted to the ARC prior to the application for any permit and prior to the commencement of any construction and shall be submitted by the Lot Owner with a list of recently completed construction projects (including address of project) by the Owner's proposed contractor, who shall also submit proof of current Washington licensing and bonding. The ARC shall conduct reviews of plans during regular meetings or at such times as deemed appropriate.

Applicants, architects, engineers, builders or Owners may not attend any meeting of the ARC unless specifically requested by the committee. The ARC shall respond in writing within 10 working days after the review, provided the plans are in accordance with the requirements outlined in this Section. Any response by an Owner or applicant may wish to make in response to a decision made by the committee must be made to the committee in writing. Two submittals are required for each improvement:

1. a preliminary design submittal
2. and a final plan submittal.

In the event of any disapproval by the ARC of either a preliminary design or a final submittal, a resubmission of the plans shall follow the same procedure as an original submittal. An additional architectural review fee shall accompany each such resubmission as required by the ARC.

3.6 REVIEW FEES; ROAD DAMAGE BOND DURING CONSTRUCTION PERIOD.

Review fees will be established by the ARC on the basis of each proposal subject to the scale, scope and complexity of the associated review process. The standard fee amount for a complete design submittal is \$250.00 per review. Additional reviews will be charged by the ARC at \$75.00 per hour for review. Said fees will be applied to the homeowners association fund. At the time of plan submittal, the Owner will be required to place the sum of One Thousand Dollars (\$1,000.00) in escrow with the Association as a guarantee against roadway damage. This amount will be refunded upon issuance of an occupancy permit from Cowlitz County Building and Planning Department, if no road damage occurs. All right-of-way damage assessments are determined at the sole discretion of the ARC.

3.7 PRELIMINARY DESIGN SUBMITTAL.

Preliminary plans including all the exhibits described below are to be submitted to the ARC:

- a) Site plan at the appropriate scale showing the following; location of the buildings, building envelope, the residence and all buildings or other major structures and parking areas and a grading plan including existing and proposed topography.
- b) ALL SITE PLANS MUST INCLUDE A COMPLETE DESIGN LAYOUT FOR PRIMARY AND RESERVE SEPTIC AREAS. All septic drain field areas "DFA" are delineated approximately on the Dave's View, Phase-2 plat. A qualified licensed engineer will be required to design a septic system that will be unique to your homes physical requirements. All primary and reserve septic areas are required to be clearly marked by designer and left in a natural, undisturbed state. All engineered systems are to be installed by a licensed installer. Fill dirt placement and or excavation of any kind is explicitly prohibited in the "DFA " areas prior to system installation. The ARC reserves the right to levy penalties for contractors or Lot Owners that violate this mandatory provision.
- c) Survey prepared by a licensed surveyor or civil engineer showing lot boundaries and dimensions, topography on a scale standard in the industry for similar projects, major terrain features, significant trees which will be removed during construction or that are within 20 feet of the proposed improvements. Any applicant submitting plans for approval to the ARC shall be responsible for the verification and accuracy of all lot dimensions, grade elevations and the location of the key features of the natural terrain.
- d) Roof plan and floor plans (at no less than 1/8 inch = 1 foot).
- e) All exterior elevations with both existing and proposed grade lines at same scale as floor plans
- f) Indication of all exterior materials and colors.
- g) Design review fee in the amount specified by the ARC.
- h) Any accessory improvements contemplated on the lot must be shown on the

- preliminary submittal.
- i) Any other drawing materials or samples requested by the ARC.

The ARC will then review the preliminary plans and provide a written response to the applicant. At the ARC's sole discretion, the ARC may approve plans based on less complete information than that required in sections 3.7 and 3.8.

3.8 FINAL PLAN SUBMITTAL.

After preliminary approval is obtained from the ARC the following documents are to be submitted for final approval prior to any grading or construction:

- a) An approximate time schedule indicating starting and completion dates of construction, utility hook-up, completion of landscaping work and anticipated occupancy date.
- b) Site plan showing the location of the building, building envelope, the residence and all buildings or other major structures, driveway and parking areas, a grading plan including existing and proposed topography, utility connections and finished floor elevations including garage.
- c) ALL SITE PLANS MUST INCLUDE A COMPLETE DESIGN LAYOUT FOR PRIMARY AND RESERVE SEPTIC AREAS. All septic drain field areas "DFA" are delineated approximately on the Dave's View, Phase-2 plat. A qualified licensed engineer will be required to design a septic system that will be unique to your homes physical requirements. All primary and reserve septic areas are required to be clearly marked by designer and left in a natural, undisturbed state. All engineered systems are to be installed by a licensed installer. Fill dirt placement and or excavation of any kind is explicitly prohibited in the "DFA" areas prior to system installation. *The ARC reserves the right to levy penalties for contractors or Lot Owners that violate this mandatory provision.*
- d) Roof plan and floor plans (at no less than 1/8"= 1'0").
- e) Samples of all exterior materials and colors and window and glass specifications.
- f) All exterior elevations with both existing and proposed grades shown.
- g) Wall section and details of exterior decks or porches.
- h) The service area where storage of materials, mechanical devices, heat pumps, fuel tanks, and debris will be confined.
- i) Cross sections or plans indicating existing and proposed grade lines on the site, maximum heights of all retaining walls, and earth cut and fill slopes.
- j) Exterior building corners of the proposed residence or other structures and other major improvement areas including the driveway location will be marked on site if requested by the ARC.

The final response by the ARC shall be issued in writing. The securing of a building permit including septic system permit is the responsibility of the Owner and/or builder. Construction documents (working drawings and specifications) are to be in accordance with the final design and plans approved by the ARC. Clearing, grading or construction shall not commence until the ARC final plan approval and building permits are obtained.

3.10 CONSTRUCTION COMPLETION.

Upon completion of any residence or other improvement for which final approval was given by the ARC, the Owner shall give written notice of completion to the ARC. Within such reasonable time as the ARC may determine, but in no case exceeding ten (10) days from receipt of such written notice of completion from the Owner or its duly authorized representative, a representative from the ARC may inspect the residence and/or improvements. If it is found that

such work was not done in compliance with the final plan approved by the ARC, the Owner shall be notified in writing of such non-compliance within ten (10) days after its inspection specifying in reasonable detail the particulars of non-compliance and the Owner shall be required to remedy same. If upon the expiration of thirty (30) days from the date of such notification by the ARC, the Owner shall have failed to remedy such non-compliance, the ARC shall notify the Owner and the ARC may take such action to remove the non-complying improvements (at the Owner's expense) as provided for in the Design Guidelines and the Declaration, including without limitation, injunctive relief of the imposition of a fine. If, upon the expiration of ten (10) days after receipt of written notice of completion from the Owner, the ARC fails to notify the Owner of any failure to comply within the provided period following the ARC's inspection, the improvements shall be deemed to be in accordance with the final plan.

3.11 FAILURE TO COMPLETE CONSTRUCTION.

Upon the receipt of approval from the ARC, the Owner shall, as soon as practicable, satisfy all conditions thereof, if any, and diligently proceed with the commencement and completion of all construction pursuant to the approved plans. The Owner shall satisfy all conditions and the construction, reconstruction, refinishing, alterations, or other work pursuant to the approved plans within one (1) year from the date of such approval. If the Owner shall fail to comply with this Section, any approval given shall be deemed revoked unless, upon the written request of the Owner made to the ARC prior to expiration of said one (1) year period, and upon a finding by the ARC that there has been no change in circumstances, the time for such commencement is extended in writing by the ARC. The ARC shall determine, on a case-by-case basis, the appropriate maximum construction period permitted for any proposed improvement(s). The Owner shall in any event complete the major construction or reconstruction of any improvement on its Lot within one (1) year after commencing construction thereof. Construction or reconstruction of the roof, exterior walls, windows and doors shall be completed within six (6) months from the commencement of construction, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, or natural calamities. If the Owner fails to comply with this Section, the ARC shall notify the Association of such failure and the Association, at its option, shall either complete the exterior in accordance with the approved plans or remove the improvement, and the Owner shall reimburse the Association for all expenses incurred in connection herewith.

3.12 NON-WAIVER AND RIGHT TO WAIVER.

The approval by the ARC of any plans, drawings, or specifications for any work done or proposed, or in connection with any other matter requiring the approval of the ARC under the Design Guidelines or the Declaration, including a waiver by the ARC, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification, or matter whenever subsequently or additionally submitted for approval by any Lot Owner. The ARC reserves the right to waive or vary any of the procedures or standards set forth herein as to any Lot Owner at its sole discretion.

3.13 ESTOPPEL CERTIFICATE.

Within 30 days after written demand therefore is delivered to the ARC by any Owner, and upon payment therewith to the ARC of a reasonable fee, from time to time as may be required, the ARC shall record an estoppel certificate executed by any two of its members, certifying with respect to any Lot of said Owner, that as of the date thereof either

- a) all improvements and other work made or done upon or within said Lot by the Owner comply with the Design Guidelines and Declaration
- b) or such improvements and/or work do not so comply, in which event the certificate shall also

1. identify the non-complying improvements and/or work
2. and set forth with particularity the use or causes for such non-compliance.

Any purchaser from the Owner or mortgagee or other encumbrance shall be entitled to rely on said certificate with respect to the matters therein set forth such matters being conclusive as between the Association the ARC, Declarant, all Owners and other interested persons and such purchaser, mortgagee, or other encumbrances.

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SECTION 4. CONSTRUCTION REGULATIONS.

4.1 PURPOSE.

To assure the protection of the existing natural environment and to minimize disturbance to existing residents the following construction regulations shall be enforced during the construction period. Any violation by the contractor, subcontractors or builder shall be deemed to be a violation by the Owner of the Lot. The Lot Owner shall indemnify and defend the Association for any loss, cost or injury caused to any property within DAVES VIEW at Martins Bluff and/or any person by such Owner or its agents during construction.

4.2 HEALTH AND SAFETY COMPLIANCE.

All applicable OSHA regulations and guidelines must be strictly observed at all times as well as compliance with state and local health and safety rules.

4.3 TEMPORARY FACILITIES.

Any Owner or Builder who desires to place a construction trailer, field office or the like on any Lot in DAVE'S VIEW at Martins Bluff shall first apply for and obtain written approval from the ARC. Such temporary structures shall be placed only in a location approved by the ARC and shall be removed upon completion of construction or within 12 months of initial placement, whichever occurs first. Each Owner and builder shall be responsible for providing adequate sanitary facilities for his construction workers. Portable toilets or similar temporary toilet facilities shall be located only on the Lot in an area approved by the ARC. Temporary construction signs shall be limited to one sign per site not to exceed six (6) square feet of total surface area. The sign shall be free standing and the design and location of such a sign shall be approved first by the ARC. At least one 10-pound ABC-rated dry chemical fire extinguisher shall be present and available in a conspicuous place on the construction site at all times.

4.4 CONSTRUCTION ACCESS.

The only approved construction access during the time a residence or other improvements are being built will be over the approved driveway for the Lot unless the ARC approves an alternative access point.

4.5 CLEANUP.

Owners and builders shall clean up all external trash and debris on the construction site (and any affected common area) at the end of each day. Trash and debris shall be removed from each construction site at least once a week to a dumping site located off the project. Lightweight material, packaging, and other items shall be covered or weighted down to prevent wind from blowing such materials off the construction site. Owners and builders are prohibited from dumping, burying, or burning trash anywhere on the Lot except in areas, if any, expressly designated by the ARC. During the construction period, it shall be the responsibility of any Lot Owner, to ensure that all areas of the construction site be kept neat and properly monitored to prevent a public eyesore, nuisance and/or affect any other Lots and any open space. Any trees or branches removed during construction must be promptly cleaned up and removed immediately from the construction site. Excess excavation materials must be hauled away from the DAVE'S VIEW at Martins Bluff.

4.6 BLASTING.

If any blasting is to occur, the ARC must be informed in advance to allow it to make such investigation as it deems appropriate to confirm that all measures, including protective actions, have been taken prior to the blasting. No blasting or impact digging causing seismic vibrations may be undertaken without the approval of the ARC. Applicable governmental regulations must be followed and necessary permits obtained prior to any blasting activity. No blasting of any type will be permitted on any part of DAVE'S VIEW at Martins Bluff without the prior written approval of Williams Pipeline Company.

4.7 RESTORATION OR REPAIR OF ADJACENT PROPERTY.

Damage and scarring to other property, including, but not limited to, open space, other Lots, roads, driveways, and/or other improvements will not be permitted. If any such damage occurs, it must be repaired and/or restored promptly at the expense of the person causing the damage or the Owner of the Lot. Upon completion of construction, each Owner and builder shall clean the

construction site and repair all property which was damaged, including but not limited to restoring grades, planting shrubs and trees as approved or required by the ARC, and repair of streets, private roads, driveways, pathways, drains, culverts, ditches, signs, lighting, and fencing.

4.8 PARKING AND CONSTRUCTION VEHICLES.

Construction crews shall not park on, or otherwise use, other Lots or any open space. Private and construction vehicles and machinery shall be parked only in areas designated by the ARC. All vehicles will be parked so as not to affect traffic and within the designated areas so as not to damage the natural landscape.

4.9 DUST, NOISE AND EROSION CONTROL.

The Owner and builder shall provide for and be responsible for controlling dust, noise and erosion on and from the construction site.

4.10 HOURS OF OPERATION/CONDUCT.

Daily working hours for each construction site shall be 7:00 a.m. to 6:00 p.m. Monday through Saturday. No construction work shall be permitted on Sundays. This provision shall not apply to an Owner working alone inside a building. All Owners shall be liable for the conduct and damages caused by their agents, representatives, builders, contractors, and subcontractors, and shall indemnify the Association thereto.

February 26, 2009 Amendment to Declaration of Covenants, Conditions and Restrictions

ABBREVIATED LEGAL DESCRIPTION: **Dave's View at Marlin's Bluff; Dave's View Phase 2 and proposed Dave's View Phase 3**

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED: 3283826

Recitals:

This Amendment to Declaration of Covenants, Conditions and Restrictions applies to all real property defined in Exhibit "A" attached herein, and amends the covenants recorded on January 3, 2006 as Cowlitz County Auditor File NO. 3283826 for the Dave's View at Martin's Bluff subdivision as approved by Cowlitz County, Washington on August 20, 2002 ("Dave's View at Martins Bluff Rural Subdivision"). Except as specifically set forth in this Amendment, this amendment and the covenants set forth in Auditor File No. 3283826 shall hereby replace, in their entirety, the covenants recorded on April 20, 2004 as Cowlitz County Auditor File No. 3221251 and the amended and restated covenants recorded on October 7, 2004 as Cowlitz County Auditor File No. 3238049. Hereinafter all covenants, conditions and restrictions defined in Cowlitz County Auditor File. No. 3283826 and any amendment thereto recorded for Dave's View at Martin's Bluff shall apply to all real property further defined in Exhibit "A" attached herein, as phases within Dave's View and shall apply to all conveyed property owners and/or lot owners within Dave's View at Martin's Bluff (collectively the "Declaration" and/or the

"CC&Rs"). Real property within Dave's View may hereafter be referred to as Lot and/or Property, or in the plural the Development. The owners of such lots or property may hereafter be referred to as Owner and/or Member. The Declarant, Association and/or Board of Directors, and the ARC are subject to the control and direction of the Declarant until the Turn Over as defined in Section 1 (B) below (Formation of Association).

This Amendment must be read in conjunction with Auditor No. 3283826. The objective and intent of the Declaration and this Amendment is to clarify, revise, and modify to protect the integrity and welfare of the Development as reasonably necessary. Additionally, this amendment is intended to make clear the overall planning philosophy, vision, and the original intent of the Declarant of Dave's View at Martins Bluff.

The recitals contained herein shall be incorporated as though fully set forth herein. All other provisions of Auditor File No. 3283826 shall remain in full force and effect except as specifically set forth herein.

NOW, THEREFORE, pursuant to Cowlitz Auditor File No. 3221251, Section 3 (*...Provided, further, that Declarant reserves the right to modify the Declaration, or waive nonconformity therewith, at any time during the Development Period for Dave's View at Martin's Bluff*) and pursuant to the consideration of the Recitals set forth above, which is hereby acknowledged, and Notwithstanding anything that may be to the contrary contained in the Declaration.

- 1) The building standards contained in the Declaration recorded as Auditor File No. 3283826 and any amendment thereto shall apply to all lots in all phases within Dave's View at Martin's Bluff subdivision as approved by Cowlitz County Commissioners on August 20, 2002, with the exception of the following: Lots 1 through 35 within Phase-1 of the Dave's View Plat and Lots 55 and 56 within Phase-2 of Dave's View Plat shall at a minimum comply with the square footage requirements, aggregate requirements, and roofing requirements as set forth in Auditor File No. 3221251. All other provisions set forth in this Amendment and in Auditor File No. 3283826 (and amendments thereto) shall apply to all Lots and all Property within all phases of Dave's View.
- 2) Homeowner association dues shall not be assessed on any real property owned by the Declarant, Declarant's affiliations and or assigns prior to initial conveyance on said property and until Declarant has sold or transferred title to all but 2 lots within Dave's View. Dues will commence on the date of transfer of title to any third party and will be owed based on a prorated share for the remaining of that calendar year.
- 3) Declarant retains the right to modify and amend any conditions, standards and/or requirements for any Common Area property within Dave's View prior to the turn-over of the Dave's View homeowner association at the conclusion of the Development Period ("Turn Over"). Provided, further, that Declarant reserves the right to modify the Declaration, or waive nonconformity therewith, at any time during the Development Period for Dave's View at Martin's Bluff. It is the sole responsibility of each property owner to obtain the most current copy of the declaration and/or any amendments thereto.
- 4) Association dues and funds may be used by the Declarant to effectuate and enforce the Declaration during the development period. At the discretion of the Declarant, funds may be used for management and/or administrative costs incurred by the Declarant for circumstances that may fall outside the scope of normal day-to-day management expenses. Including but not limited to the enforcement of the Declaration costs and fees provided for in Article I, Section NN contained within Auditor File No. 3283826.

- 5) Non-conforming properties within Dave's View may be assessed additional fines and penalties by the Declarant and Association and shall become a permanent lien against said property until paid in full.
- 6) The minimum size of the residential structures within Dave's View shall be 2,600 square feet for any single story and 3,600 square feet for any 2-story residence, all subject to prior written review and approval of the Architectural Review Committee ("ARC").
- 7) Property owners are required to keep all vacant lots reasonably maintained and free from debris and trash prior to and during home construction. Declarant reserves the right to reasonably maintain brush, weeds and debris on any undeveloped property within Dave's View (whether owned by Declarant or any third party) at such property owner's sole cost and expense. Upon notice of termination of the development period by the Declarant, the association reserves the same rights to (Maintain brush, weeds and debris as outlined herein.
- 8) Limitation of Liability. Neither the ARC nor any member thereof shall be liable to the Association or to any other Owner or member for any damage, loss or alleged prejudice suffered or claimed due to: (a) the approval or disapproval of plans, drawings and specifications whether or not defective, and/or (b) the construction or performance of work, whether or not pursuant to approved plans, drawings and specifications.

Neither Declarant, the Association nor any officer, employee, contractor, subcontractor, representative or agent thereof (including without limitation engineers) shall be liable to any Owner or third party due to any action or failure to act in performing its duties or rights hereunder, provided said Declarant, Association nor any officer, employee, contractor, subcontractor, representative or agent has, in accord with actual knowledge possessed by it, acted in good faith and without gross negligence. Further, the Association shall indemnify, defend and hold harmless said party from and against any actions, claims, liens, judgments, costs, expenses, liability and/or damages (including those arising from injuries to yd parties) related to this Declaration, the Common Areas, Drainage Facilities and Right of Ways.

- 9) **Enforcement.** If any Owner violates or attempts to violate any of the provisions of this Declaration, the Declarant during the development period and/or the Association, at its option, shall have the full power and authority, but not the requirement, to prosecute any proceedings at law or in equity against the Owner(s) violating or attempting to violate any of the provisions of this Declaration, either to prevent such act or to recover damages sustained by reason of such violation. Failure by the Declarant and/or the Association to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter for any Owner or Member.

10) Article IV entitled "Organization of Association" contained within Cowlitz Auditor File No. 3283826 shall be amended as follows:

Section 1. Formation of Association.

The Declarant has formed the Dave's View at Martins Bluff Homeowners' Association, a non-profit corporation under the laws of the State of Washington, hereinafter referred to as the "Association". The Association shall be charged with the duties and invested with the powers prescribed by law and set forth

in the Declaration, Articles of Incorporation and Bylaws (as may be amended). The Declarant may appoint at his/her sole discretion an interim board for the purposes of assessing and collecting association dues and the distribution thereof. Said dues are collected and applied toward the maintenance and day-to-day expenses of governing Dave's View during the development period. All property owners are defined as nonvoting members during the development period of Dave's View. All voting rights among property owners during the development period and as described in this Declaration apply only after one of the following occur: i) Declarant retains no more than 2 lots in any phase of Dave's View; or ii) Declarant elects to terminate its authority during the development period and elects to transfer control to a new Board of Directors comprised solely of Dave's View property owners to govern all phases of Dave's View at Martins Bluff.

A.) Declarant's Reservation of Authority During Development Period.

Pursuant to the Dave's View at Martins Bluff Homeowners Association's Articles of Incorporation and Bylaws adopted on 12/12/2003 or any amendments thereto, the Declarant of Dave's View hereby reserves for itself, its successors or assigns, during the development period, all of the rights, powers and functions of the Association and/or the Board of Directors and/or the ARC which shall be exercised and/or performed in a reasonable manner by the Declarant, including, but not limited to the adoption and/or amendment of architectural control standards and rules and regulations and the designation of the ARC.

B.) Transfer of Control

The Declarant shall not be required to but may elect to designate and appoint a Board of Directors of the Association during the development period until all but two (2) lots in any phase are sold and/or sooner upon the election of the Declarant to terminate the development period, at which time control of the Association shall be turned over to its members. Once control is turned over, the Association's members may elect from their numbers at large a new Board of Directors, as provided for in the Articles of Incorporation and/or Bylaws. The Declarant will on an ongoing basis, retain two (2) votes for each lot, which it continues to own.

11. Article VI entitled "Covenants for Assessments and Creation of Lien" Section 1 contained within Cowlitz Auditor File No. 3283826 shall be amended as follows:

Section 1. Creation of Lien and Personal Obligation of Assessments and Maintenance Charges.

The Declarant for each Lot hereafter established within Dave's View hereby covenants and agrees and each Owner by acceptance of a Deed once conveyed thereto (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree to pay the Association the following assessments and charges: (1) Annual Assessments established by Article VI; (2) Special Assessments for Capital Improvements or other extraordinary expenses or costs established by Article VI; (3) Maintenance Charges established by Article IX and all such Assessments to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments, and Maintenance Charges together with late fees, interest costs and reasonable attorney's fees shall be a charge on the Lot and shall be a continuing servitude and lien upon the Lot against which each such Assessment is made. The Declarant and/or Association may record a notice of lien against said property until it is paid in full. Each such Annual and Special Assessment and Maintenance Charge shall be the personal obligation of the Lot Owner at the time the Assessment was due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless

expressly assumed by them. The annual assessment for road and right-of-way maintenance in all phases shall be set and or approved by the Declarant during the development period.

Section 3. Rate of Assessment.

The amount of any Annual or Special Assessment intended specifically for the maintenance of any common area (or any aspect thereof), shared roads, easements, and their associated 60-foot-wide easements as shown on the Dave's View survey, including without limitation, asphalt paving or road repairs, electric power and telephone utilities, slope and drainage maintenance, culverts, and landscaping, if any, will be shared equally by each Lot Owner and said sums shall be timely delivered to the Declarant and/or Association.

The Association will establish and maintain a separate account exclusively for maintenance of any common area and or shared roads within Dave's View. Initially, the assessment for road maintenance shall be Five Thousand Dollars (\$5,000) per year shared equally by each conveyed lot owner. The Declarant may either adjust this amount during the development period or the Association by a majority vote of the membership after the turnover.

All other assessments will also be equal, and each owner shall pay an equal amount. Annual Assessments may be collected on a quarterly or annual basis and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment.

12. Section 1 entitled "Purpose and Introduction" of the Design Guidelines contained within Cowlitz Auditor File No. 3283826 shall be amended as follows:

The design guidelines have been prepared to ensure that the overall planning philosophy of Dave's View is carried out. Hence, the guidelines are intended first as an information source to builders, developers, architects, or Owners, and second as a regulatory mechanism to ensure that all improvements in the community are completed in an aesthetic and environmentally sensitive manner. These guidelines will thus ensure a high standard of project-wide design consistency throughout the life of the community. As a part of the design guidelines, a mandatory program of architectural review has been established to evaluate every proposal for development in the community. The purpose of the review program is to ensure that the high standards of the community set forth in this document are upheld in each phase of the development. The Dave's View Design Guidelines are intended to be a conceptual, dynamic guide to development and as such are subject to change where the Architectural Review Committee ("ARC") determines such change is in the best interests of the community. These design standards are binding on any persons, company or firm which constructs, reconstructs or modifies any permanent or temporary improvement in the Dave's View community or in any way alters the natural setting of the environment. Accompanying the design guidelines are hereby incorporated into the Declaration in their entirety, which have been adopted formally and recorded to establish the homeowner's association and to guarantee long-term maintenance of all common facilities within the community. All construction and improvements on all Lots must be pre-approved in writing by the ARC (no exceptions). The commencement of construction of homes/residential structures shall occur within five (5) years of the close of escrow for all property conveyed after 1/10/2008. Lots 1 through 35 (Phase-I) are exempt from this provision and will not be required to construct residences per the construction commencement schedule. When a lot within Dave's View is re-sold or otherwise re-conveyed by a property owner (not the Declarant), construction of the residence shall commence within 5 (five) years from the date of the original conveyance. In the event a property is sold after the expiration of the required commencement date, the

new owner will be granted a one (1) year extension to commence construction. All property within Dave's View conveyed before 12/01/2007 is subject to the construction commencement schedules as set forth in Auditor File No.

3283826. The completion period of any such construction shall be within I (one) year. All improvements to any lot must be Submitted for approval prior to application for any permit or commencement of construction. Additionally, all lot owners and and/or their contractors are responsible for obtaining the most recent design guidelines from the Declarant or Association prior to submittal of plans to the ARC. The Declarant reserves the right to waive nonconformity of this provision as it relates to future lot purchasers and contingencies placed upon the Declarant as conditions of sale.

13. Article 12, Section 2 entitled "amendments" contained within Cowlitz Auditor File No. 3283826 shall be amended as follows:

This Declaration may be amended by recording at Cowlitz County, Washington, an Amendment duly signed and acknowledged as required for such an amendment. The Amendment shall set forth in full the amendment adopted, and, except as provided in Section 3 of this Article. shall certify that an election duly called and held pursuant to the provisions of the Articles and Bylaws provided 2/3 of the votes at the election vote affirmatively for the adoption of the amendment. The Declarant may also sign and record at Cowlitz County, Washington, an Amendment, setting forth in full the amendment adopted if:

- 1) The Declarant controls enough votes to determine the outcome of an election or
- 2) The Declarant elects at any time during the "development period" to amend the Declaration.

14. Article 13, Section I. "Interpretation of the Covenants" contained within Cowlitz Auditor File No. 3283826 shall be amended as follows:

Except for judicial construction, the Declarant, during the "development period" and the Association by its word shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent Jurisdiction, the Association's construction, or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefited or bound by the Covenants and provisions hereof. Any waiver or change due to judicial construction shall not affect any other portion of the Declaration, which shall remain in full force and effect.

15. Article 6, Section 4. "Maximum Annual Assessment" contained within Cowlitz Auditor File No. 3283826 shall be amended as follows:

The Annual Assessment to be established by the Board may not exceed a certain amount hereinafter referred to as the "Maximum Annual Assessment" which shall be determined and shall vary in accordance with the following provisions:

- a) Until January 1 of the year 2012 the Maximum Annual Assessment against each Owner or Lessee shall be Six Hundred Dollars (\$600.00) per each Membership.
- b) From and after January I, 2008, and during such year, the Maximum Annual Assessment may be increased effective January 1 of each year without a vote of the Membership by a maximum of ten percent (10%).
- c) From and after January 1, 2008, the Annual Assessment may be increased above the Maximum Annual Assessment otherwise determined under Subsection (b) above by a vote of two-thirds

(2/3) of the Members who are voting in person or by proxy at a meeting duly called for such purpose.

16. Article 6, Section 5. "Special Assessments for Capital Improvements and Extraordinary Expenses" contained within Cowlitz Auditor File No. 3283826 shall be amended as follows:

In addition to the Maximum Annual Assessments authorized above, the Association may levy, in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying, in whole or in part, the cost repairing damages to roadways or common areas caused by natural disasters, litigation and or arbitration expenses not covered by the Associations insurance provider or any construction, reconstruction, maintenance, repair or replacement of a capital improvement upon the common area, easements, including fixtures and personal property related thereto, including the water system, or for the purpose of defraying other extraordinary expenses. Any such assessment shall apply upon:

- a) Two-thirds (2/3) of the votes of the Members who are voting in any such Special Assessment attest, or
- b) The Declarant, during the development period requires funds for unforeseen/emergency expenses. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Annual Assessments as set forth in the Declaration.

17. Section 2.3 entitled "Architectural Standards" contained within Cowlitz Auditor File No. 3283826 shall be amended as follows:

A. BUILDING SIZE.

One-story single-family detached residences shall have a minimum size of 2,600 square feet. Two story homes and daylight basement designs shall have a minimum size requirement of 3,600 square feet. This square footage measurement includes only finished living space and is exclusive of garages and porches. These size restrictions may be reduced if, in the sole discretion of the ARC, the proposed residence has exceptional architectural merit. Three-story homes will be allowed at the sole discretion of the ARC. Proposed three level homes will be required to have unique, architectural merit. Square symmetric designs are subject to ARC approval Three level homes will be required to have a minimum footprint of 2,000 square feet at the main floor or ground level. Accessory structures shall be limited to one structure per Lot with a maximum size of 1,500 square feet and shall be constructed of the same materials as the main residence. The size restrictions may be increased if, in the sole discretion of the ARC, the structure has exceptional architectural merit. The principal garage of a residence will not be considered an accessory structure if it is capable of storing not more than three (3) vehicles.

B. GARAGE DOORS AND GARAGE PLACEMENT.

Garage doors should not aesthetically dominate that elevation or face of a residence that is most visible from the Private Roads (herein defined, as the front of the house.) A minimum of three (3) garages are required on all home designs. Owners are encouraged to use detached or semi-detached garages or, if attached, to place garage doors on the side or rear of the residence. A detached garage which is the primary garage (the most often used storage for the most often used vehicles) will not be considered an accessory structure, and the owner of same may also build one (1) additional structure on the Lot, subject to the above restrictions and pre-approval of the ARC. The ARC may give special consideration to Owners whose Lots have steeply sloped building sites and may not in any case require that the design guidelines in this Section be followed if the cost of a

driveway or the construction of a third garage would be unreasonable. "Unreasonable" will be determined at the sole discretion of the ARC.

18. Section 3.6 entitled "Design Review Process" contained within Cowlitz Auditor File No. 3283826 shall be amended as follows:

Review fees will be established by the ARC on the basis of each proposal subject to the scale, scope and complexity of the associated review process. The standard fee amount for a complete design submittal is \$250.00 per review. Additional reviews will be charged by the ARC at \$75.00 per hour. Fees will be deposited into the homeowner's association administrative account.

It is the intent of the Declarant with this provision to protect the integrity of the Dave's View private right-of-way/road system from damage caused during the "construction period". At the time of plan submittal, the Owner or its agent(s) will be required to place the sum of One Thousand Dollars (\$1,000.00) in escrow with the Association as a guarantee and damage deposit to be used for common area, easements, right-of-way/roadway damage. This amount or a portion thereof will be applied, if applicable to said repairs or refunded if no road damage occurs. All such assessments are determined at the sole discretion of the ARC at time of occupancy.

19. Article 1, "Definition" contained within Cowlitz Auditor File No. 3283826 shall be amended as follows:

SS. "Development Period" Development Period" means that period of time that the Declarant holds title to at least two (2) lots for development, sale, or resale in any phase within Dave's View as defined in the Cowlitz County conditions of approval dated August 22, 2002.

The Declaration shall run with the land and become binding on any assignee or successor in interest within Dave's View. The recitals contained hereinabove shall be incorporated as though fully set forth herein. All other provisions of Cowlitz County Auditor File No. 3283826 shall remain in full force and effect except as expressly set forth hereinabove.

**December 14, 2005
(Exhibit A)
PERIMETER DESCRIPTION
OF
"DAVE'S VIEW AT MARTINS BLUFF, PHASE 2"**

A portion of the Northwest quarter and the Northeast quarter of Section 34, Township 6 North, Range 1 West, Willamette Meridian, Cowlitz County, Washington, described as follows (bearings and distances are "NAD83", Washington Coordinate System, South Zone):

BEGINNING at a concrete monument at the Quarter Corner between Sections 27 and 34; thence North 88° 29' 50" West, 2653.42 feet to a concrete monument at the Northwest corner of Section 34; thence South 00° 00' 00" West, 2083.00 feet and North 90° 00' 00" East, 1316.20 feet to a 5/8 inch iron rod on the North right-of-way line of Martins Bluff Road at the Southeast corner of Lot 35 of "Dave's View at Martins Bluff, Phase 1", as recorded in Volume 13 of Plats, pages 192-194, Cowlitz County Auditor's Records and the TRUE POINT OF BEGINNING; thence, leaving said North right-of-way line, North 28° 26' 16" West, along the East line of Lots 35 and 28, for a distance of 723.84 feet; thence following the South right-of-way line of Dave's View Drive, along the arc of a 450.17 foot radius curve to the left (the radial bearing of which is North 40° 00' 00" West), through a central angle of 15° 00' 00", for an arc distance of 117.85 feet; thence along the arc of a 150.61 foot radius curve to the right, through a central angle of 48° 13' 14", for an arc distance of 126.75 feet; thence leaving said right-of-way line, North 6° 46' 46" West, 60.00 feet to the North right-of-way line of Dave's View Drive; thence North 29° 42' 38" East, 365.78 feet to the Northeast corner of Lot 27 of "Dave's View at Martins Bluff, Phase 1"; thence North 35° 00' 00" West, 1100.00 feet to the Northeast corner of Lot 23 of "Dave's View at Martins Bluff, Phase 1" at a point on the North line of the Northwest quarter of Section 34; thence South 88° 29' 50" East, along the North line of the Northwest quarter of Section 34, for a distance of 893.42 feet to a point that bears North 88° 29' 50" West, 1060.00 feet from the Quarter Corner between Sections 27 and 34; thence South 40° 30' 00" East, 255.00 feet; thence South 71° 00' 00" East, 125.00 feet; thence North 73° 00' 00" East, 200.77 feet; thence North 03° 00' 00" West, 73.70 feet; thence North 19° 28' 20" West, 96.27 feet to the North line of the Northwest quarter of Section 34; thence South 88° 29' 50" East, 620.00 feet to the concrete monument at the Quarter Corner between Sections 27 and 34; thence South 88° 15' 43" East, along the North line of the Northwest quarter of the Northeast quarter of Section 34, for a distance of 250.00 feet; thence South 01° 30' 00" West, 199.00 feet; thence North 88° 30' 00" West, 212.86 feet; thence South 30° 00' 00" West, 345.05 feet; thence South 28° 13' 55" East, 193.49 feet; thence along the arc of a 358.10 foot radius curve to the left, (the radial bearing of which is South 40° 00' 00" East), through a central angle of 24° 00' 00", for an arc distance of 150.00 feet; thence South 64° 00' 00" East, 30.00 feet; thence South 41° 38' 53" East, 485.87 feet; thence South 31° 08' 15" East, 507.29 feet to the North right-of-way line of Martins Bluff Road as described in Cowlitz County Auditor's File No. 950117076; thence South 56° 38' 50" West, along said North right-of-way line, 155.94 feet; thence along the arc of a 3789.72 foot radius curve to the right, (the radial bearing of which is North 15° 48' 31" West), through a central angle of 03° 13' 07", for an arc distance of 212.89 feet to a point which bears North 12° 35' 24" West, 30.00 feet from a 5/8 inch iron rod (in a case with cover) on the centerline of Martins Bluff Road at Engineers Station 0+35.44 (Auditor's File No. 950117076); thence South 77° 24' 36" West, 35.44 feet to the Western terminus of the additional right-of-way acquired by Cowlitz County under Auditor's File No. 950117076; thence continuing Westerly on the North right-of-way line of Martins Bluff Road, along the arc of a 919.26 foot radius curve to the right, through a central angle of 09° 07' 24", for an arc distance of 146.38 feet; thence South 86° 32' 00" West, 150.57 feet; thence along the arc of a 2013.32 foot radius curve to the left, through a central angle of 05° 12' 00", for an arc distance of 182.72 feet; thence South 81° 20' 00" West, 184.00 feet; thence along the arc of a 901.89 foot radius curve to the left, through a central angle of 09° 12' 00", for an arc distance of 144.82 feet; thence along the arc of a 4214.13 foot radius curve to the right, through a central angle of 05° 24' 00", for an arc distance of 397.17 feet; thence South 77° 32' 00" West, 260.00 feet to the TRUE POINT OF BEGINNING.