

N 53006

AUG 6 1997

AMENDMENT TO DECLARATION CREATING  
HARBORVIEW HOMEOWNERS ASSOCIATION  
(PHASES 3 through 9)

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, CRAIG A. PORTER, was made the Trustee, by the Declaration Creating Harborview Homeowners Association (Phases 3 through 9) executed on October 28, 1993,\* of certain real property described as:

All of:

Plat 3 Lots 1-68; Plat 4 Lots 1-17; Plat 5 Lots 1-57  
Plat 6 Lots 1-53; Plat 7 Lots 1-60; Plat 8 Lots 1-58;  
and Plat 9 Lots 1-20, Harborview, a subdivision of Clay  
County, Missouri.

\*recorded November 2, 1993, in Book 2285, at Page 793,

WHEREAS, CRAIG A. PORTER, hereinafter referred to as "Trustee" was granted the power to amend the Declaration Creating Harborview Homeowners Association (Phases 3 through 9), hereinafter referred to as "Declaration", pursuant to Article VI of said Declaration; and

WHEREAS, Trustee hereby amends the Declaration Creating Harborview Homeowners Association (Phases 3 through 9) by adding the following provisions:

WHEREAS, this amendment was made and entered into this day of August, 1997, by CRAIG A. PORTER, Trustee; and

WHEREAS, the Trustee has dedicated certain real property located within Harborview in the City of Smithville, Missouri, as park ground pursuant to the Trustee's rights and powers as set forth in Article III-General Powers of the Declaration Creating Harborview Homeowners Association (Phases 3 through 9) executed on the 28th day of October, 1993; and

WHEREAS, the Trustee is desirous of installing, maintaining, and operating a swimming pool, bath house, parking lot, and surrounding common area for the use, enjoyment, and benefit of the residents of Harborview (Phases 3 through 9); and

WHEREAS, the Trustee believes that the creation of a not for profit corporation is the most beneficial means of accomplishing this purpose and Trustee formed Harborview Swim Club, Inc., a Missouri not for profit corporation on August 5, 1997; and

WHEREAS, it is the purpose and intention of this Amendment to the Declaration Creating Harborview Homeowners Association (Phases 3 through 9) to create Harborview Swim Club, Inc., a not for profit corporation to install, maintain, operate, and promote a swimming pool, bath house, parking lot, and surrounding common areas located within that certain property as described as Tract B of Harborview Townhomes (hereinafter referred to as "Park ground");

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NOW, THEREFORE, HARBORVIEW SWIM CLUB, INC. (hereinafter referred to as "Swim Club") is hereby formed subject to the uses, purposes, terms, conditions, and restrictions set forth in this Amendment and the Declaration.

ARTICLE VII

GENERAL POWERS OF HARBORVIEW SWIM CLUB, INC.

1. Harborview Swim Club, Inc., hereinafter referred to as "Swim Club", shall have the right and power to provide for, maintain, promote, and operate the Park ground and any improvements made thereon, including but not limited to, the swimming pool, bath house, parking lot, and common area.

2. The Swim Club shall have the right and power to care for and maintain any and all common area on said Park ground, remove weeds, and cut grass thereon, to pick up and remove therefrom loose materials, trash and rubbish of all kinds, and to do anything and all other things necessary or desirable in the judgment of the Swim Club to keep such Park ground neat in appearance and in good order.

ARTICLE VIII

COVENANTS OF HARBORVIEW SWIM CLUB, INC.

These covenants shall run with the land and shall be binding upon all parties hereto and all persons claiming under them until December 31, 2003, at which time said covenants shall be automatically extended for a period of ten (10) years unless, by a vote of the owners of not less than 51% of the lots entitled to vote, it is agreed to change such covenants in whole or in part, it being understood that an owner shall be entitled to cast as many votes as he may own lots in said subdivision.

ARTICLE IX

ORGANIZATION OF HARBORVIEW SWIM CLUB, INC.

1. The Swim Club shall be operated by a Board of Directors, hereinafter referred to as "Board". The initial Board shall be Craig A. Porter, Trustee, who shall serve for a term ending on December 31, 2003, or until his successors shall be named. In the event of Trustee's resignation, he shall appoint a Board comprised of five (5) Directors. In the event of Trustee's death or inability prior to the expiration of his term, his successors shall be named by the owners of a majority of the lots entitled

to vote who shall select and appoint a Board comprised of five (5) Directors. Directors must be members of Harborview Homeowners Association. The term of such Board shall be two (2) years. Successor Boards shall be elected for a term of two (2) years each.

2. There shall be an annual meeting of lot owners entitled to vote at a convenient place in Smithville, Clay County, Missouri, for the purpose of electing a Board, or for the transaction of such other business as may properly come before said meeting, on the third Tuesday in January in each year, beginning in the year 2004 and each year thereafter. Notice of the meeting shall be given by insertion of a notice in a newspaper circulated in Clay County, Missouri, at least seven (7) days before the date of the meeting, or, at the election of the Board, notice of said meeting may be had by mailing to each lot owner, a letter setting forth the date, time and place of said annual meeting.

3. The owner or owners of each lot shall be entitled to one (1) vote for each full lot owned, which vote may be cast in person or by proxy. The persons receiving the five highest numbers of votes shall be deemed elected. Any lot owner who has failed to pay any assessment due and payable shall not be entitled to vote at any annual or special meeting as provided above. All Board members must also be members of the Harborview Homeowners Association. A majority of the lot owners or Board, respectively, shall constitute a quorum at the respective meeting of each.

4. In any election of the Board, the owner of each lot shall be entitled to one (1) vote for each full lot owned by him, which vote may be cast in person or by proxy subject to the conditions above. No person shall, however, be considered as the owner of a lot until fee simple title of said lot shall have been conveyed to him by Warranty Deed, duly recorded.

5. At each annual meeting, the Board shall render an accounting of all monies received, disbursed and held by them during and at the end of the preceding year.

#### ARTICLE X

#### ASSESSMENTS OF HARBORVIEW SWIM CLUB, INC.

1. The Board and its successors are hereby authorized, empowered and granted the right to make assessments upon and against the said several lots and said parcels of and in the subdivision known as Harborview (Phases 3 through 9) for the purposes and at the rates hereinafter provided over and above those assessments made by the Harborview Homeowners Association

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for Phases 3 through 9 as set forth in the Declaration Creating Harborview Homeowners Association (Phases 3 through 9):

(A) To make uniform assessments (except as herein provided) of One Hundred Dollars (\$100.00) per lot per year upon and against the several lots or parcels of land in Harborview (Phases 3 through 9) for the purpose of carrying out the general duties and powers of the Swim Club as described herein.

(B) If, at any time, the Board shall consider it necessary to make any expenditures requiring an assessment, in addition to the assessments above provided, it shall transmit in writing to the owners of lots within Harborview (Phases 3 through 9), for their approval, an outline of the plan for the project contemplated and the estimated amount required for completion of same and the total assessment required. If such project and the assessment so stated be approved at a meeting of such lot owners, duly called and held in the manner provided by the Board, by the owners of not less than fifty-one (51%) of all of the lots which are entitled to vote, the Board shall notify all owners of said tracts of the additional assessments. The limit of Two Hundred and Fifty Dollars (\$250.00) per lot per year for general purposes shall not apply to any assessment made under the provisions of this paragraph.

(C) It being understood that for notwithstanding any other provisions of this agreement, no special assessments shall be made against lots owned by Craig A. Porter without his consent.

2. All assessments, either general or special, made by the Board for the purposes hereinabove enumerated shall be made in the manner and subject to the following procedure, to-wit:

(A) Notice of all assessments may be given by mail addressed to the last known or usual post office address of the holder of legal title and deposited in the United States mail, postage prepaid, or may be given by posting a brief notice of the assessment upon the lot itself. Service in either of the above methods shall be sufficient.

(B) Every assessment shall become due and payable within thirty (30) days after notice is given as hereinabove provided. From and after the date when said payment is due, it shall bear interest at the rate of eight percent (8%) per annum, until paid, and such payment and interest shall constitute a lien upon said lot and said lien shall continue in full force and effect until said amount is fully paid. At any time after the passage of the resolution levying an assessment and its entry in the Board's minutes, the Board may, in addition, execute and acknowledge an instrument reciting the levy of the assessment with respect to any one or more lots and cause same to be recorded in the Office of the Recorder of Deeds of Clay County, Missouri; and, the Board, may upon payment, cancel or release any one or more lots from the liability of assessment (as shown by recorded

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instrument) by executing, acknowledging and recording (at the expense of the owner of the property affected) a release of such assessment with respect to any lot or lots affected, and the Board shall cause to be noted from time to time in the corporate minutes of its proceedings, the payments made on account of assessments.

3. Failure of an owner to pay any assessment whether assessed by the Harborview Swim Club, Inc. or by the Harborview Homeowners Association, Inc. in a timely manner terminates his right to use the Swim Club and such privilege will not be restored until payment in full of all due assessments plus interest is received.

4. An owner may not opt out of membership in the Swim Club. Every owner of a lot within Harborview (Phases 3 through 9) is automatically a member of the Swim Club and is obligated to pay the annual assessment levied by the Swim Club in addition to those assessments levied by the Harborview Homeowners Association, Inc.

5. Swim Club memberships are non-transferrable and may not be sold, leased, assigned, gifted, or transferred in any way. Said membership terminates for a current lot and/or house owner upon the closing of the sale of the respective lot and/or house to a new owner. The new owner of the lot and/or house located within Harborview Phases 3 through 9 is automatically a member of the Swim Club and is obligated to pay the annual assessment levied by the Swim Club.

6. All rights, duties, powers, privileges and acts of every nature and description which said Board might execute or exercise under the terms of this Declaration may be executed or exercised by a majority of said Board unless otherwise provided in this Declaration.

#### ARTICLE XI

##### HARBORVIEW (Phases 1 and 2)

1. The Board and its successors are hereby authorized, empowered and granted the right to offer Swim Club memberships for sale to the record owners of lots located in Harborview Phases 1 and 2.

2. Said memberships may be purchased for an initial fee of Six Hundred Dollars (\$600.00). Purchasers of memberships are subject to annual assessment as set forth in Article IV. The membership will become effective as of the date of receipt of the initial fee plus annual assessment. Purchasers of memberships are entitled to vote in the manner set forth in Article III. Members residing in Harborview Phases 1 and 2 may not hold a

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position(s) on the Board of Directors.

3. Failure to pay such annual assessment results in revocation of the membership and privileges to utilize the Swim Club. Said membership will not be restored until all past due annual assessments and interest are paid in full.

4. Said memberships are non-transferrable and may not be sold, leased, assigned, gifted, or transferred in any way. Said memberships must be purchased and all required money received by October 31, 1997, or within one year of purchasing a home located within Harborview Phases 1 and 2. Memberships purchased by October 31, 1997, will also be required to pay a pro-rata share of the annual assessment based on the number of remaining days in the 1997 season with said season ending on Labor Day, September 1, 1997. Said memberships terminate upon the sale of the lot and/or home to a new owner.

ARTICLE XII

RESTRICTIONS ON HARBORVIEW SWIM CLUB, INC. MEMBERSHIPS

1. All Swim Club memberships, whether issued to owners in Harborview Phases 3-9 or purchased by owners in Harborview Phases 1 and 2, are subject to the following restrictions in addition to those previously set forth in Articles VII-XI:

(A) Swim Club privileges are limited to owners and their immediate family who reside in Harborview.

(B) Each Swim Club membership may have two (2) guests per day, but said guests may not live within a fifteen (15) mile radius of Harborview.

(C) Children under the age of fourteen (14) must be accompanied by a parent.

2. Failure to abide by the Restrictions as set forth or those to be promulgated in the future by the Board may result in termination of the owner's Swim Club privileges for the remainder of the season.

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*Craig A. Porter*

CRAIG A. PORTER, TRUSTEE

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STATE OF MISSOURI )  
COUNTY OF CLAY ) ss.

On this 5 day of AUGUST, 1997, personally appeared ~~before me Craig A. Porter, who is personally known to me to be~~ the person who executed the foregoing instrument and acknowledged that he executed same as his free act and deed.

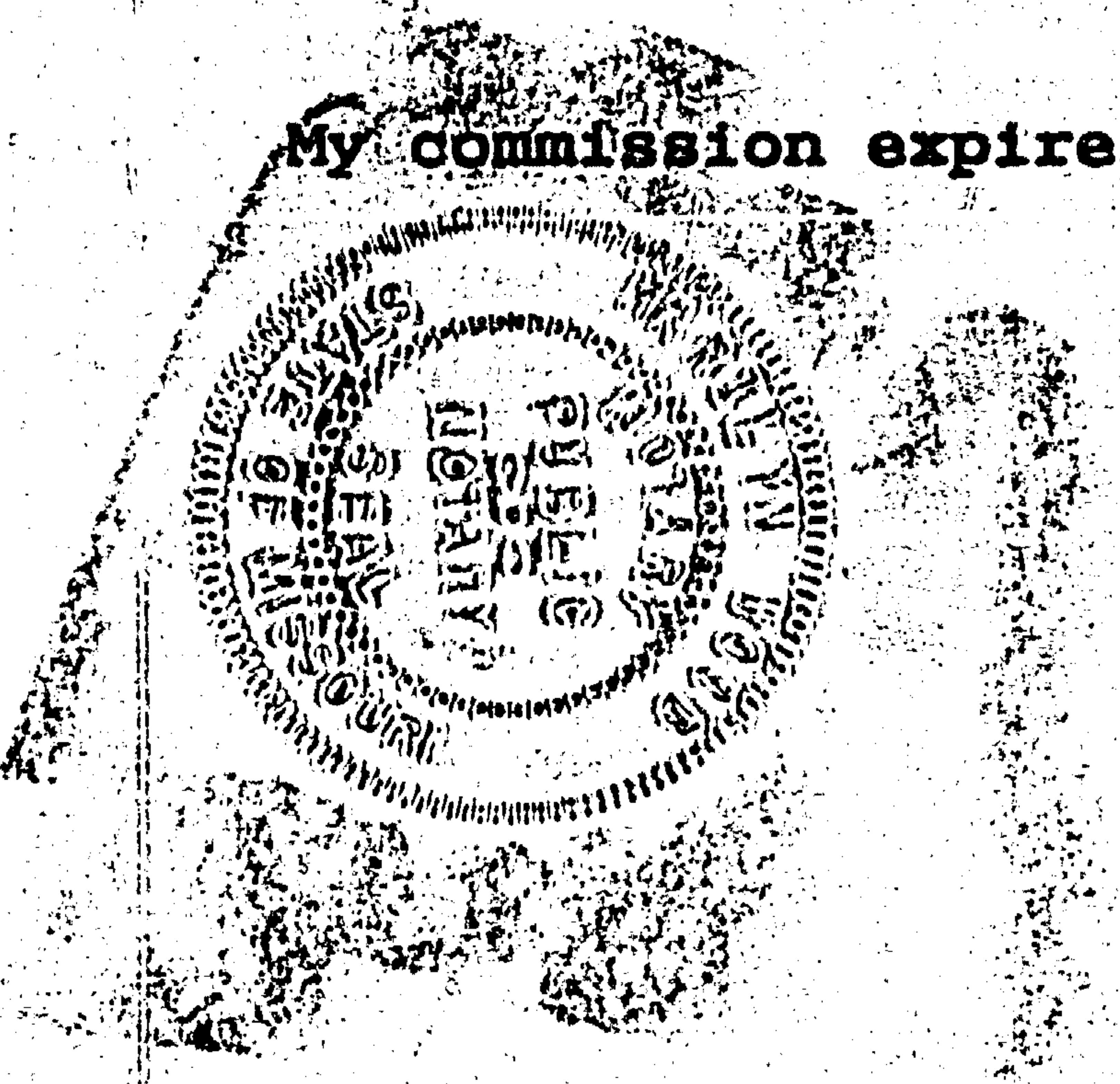
In Testimony Whereof, I have hereunto affixed my signature and notarial seal this 5 day of AUGUST, 1997.

*Marilyn Wood*

Notary Public

My commission expires: Oct 23, 2000

MARILYN WOOD  
NOTARY PUBLIC STATE OF MISSOURI  
DE KALB COUNTY  
MY COMMISSION EXP OCT 23, 2000



*By Mary Moberly*

STATE OF MO.  
CLAY COUNTY  
RECORDING INSTR. REC'D  
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MARY E. MOBERLY  
RECORDER OF DEEDS