

## **RECORDING MEMORANDUM**

Instrument: Amendment to Declaration of Creating

Grantor: Harborview Homeowners Association, Inc.  
c/o Community Association Management  
5000 W. 95<sup>th</sup> St., Ste. 280  
Prairie Village, KS 66207

Grantee: Harborview Homeowners Association, Inc.  
c/o Community Association Management  
5000 W. 95<sup>th</sup> St., Ste. 280  
Prairie Village, KS 66207

Date: September 18, 2020

Legal Description: See Exhibit A, which is attached hereto and incorporated herein by reference

County: Clay County, Missouri

Reference: Book 2250, Page 87

Return To: Sandberg Phoenix & The Community Association Lawyers  
600 Washington Ave., 15th Floor  
St. Louis, MO 63101  
(314) 231-3332

This cover page is attached solely for the purpose of complying with the requirements stated in Mo. Rev. Stat. §§ 59.310.2 and 59.313.2 (2000). The information provided on this cover page shall not be construed as either modifying or supplementing the substantive provisions of the attached instrument. In the event of a conflict between the provisions of the attached instrument and the provisions of this cover page, the attached instrument shall control.

## **AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS AMENDMENT to the Declaration of Covenants and Restrictions is made and entered into as of this 18 day of September, 2020 by Harborview Homeowners Association, Inc.

WHEREAS, Harborview Subdivision ("Subdivision") exists by virtue of the "Declaration of Covenants and Restrictions" as recorded in Book 2250, Page 87 in the records of Clay County, Missouri, as may be amended ("Subdivision Declaration"); and

WHEREAS, Phases 3 through 9 of the Subdivision is subject to additional restrictions by virtue of the "Declaration Creating Harborview Homeowners Association" as recorded in Book 2285, Page 793 as recorded in Book 2285, Page 793 of the records of Clay County, Missouri, as may be amended ("Phases Declaration"); and

WHEREAS, pursuant to Article VI, Section 3 of the Subdivision Declaration, the Owners are authorized to amend the Subdivision Declaration by an instrument signed by 75% of all the Owners; and

WHEREAS, the Owners desire to adopt an updated amendment process for future amendments, reduce quorum requirements for owner meetings, and expressly authorize the option for owners to vote via an online election application to foster owner participation; and

WHEREAS, this Amendment is in the best interests of the community as a whole.

NOW THEREFORE, the Subdivision Declaration is amended as follows:

A. *Section 3 of Article VI of the Declaration related to Termination and Amendment is deleted in its entirety without replacement.*

B. *Section 4 of Article VI of the Subdivision Declaration related to Transferability is deleted in its entirety and a new Section 4 of Article VI related to the same subject, is inserted in lieu thereof to read as follows:*

**Section 4. Transferability:** The Developer created the Association as the homeowners' association for phases 3 through 9 of Harborview Subdivision and has been carrying out the duties and obligations since the homeowners' association was formed by the Developer pursuant to the Subdivision Declaration and the Phases Declaration as they apply to phases 3 through 9 of Harborview Subdivision.

C. *A new Section 5 of Article VI of the Subdivision Declaration related to Quorum of Membership Meetings and Voting is added to read as follows:*

**Section 5. Quorum and Voting at Meetings of the Membership:** To facilitate owner participation, this Section is to adopt contemporary provisions related to quorum while expressly authorizing use of electronic voting platforms should an owner desire such an option.

**a. Quorum:** The presence at the beginning of any duly called meeting (including the annual meeting of the Owner) under this Section, in person, by proxy or absentee ballot, of 25% of all the Members shall constitute a quorum at any meeting of the Association.

If any meeting of the Association cannot be held because a quorum is not present, the Board shall reschedule the meeting and notify the Members of the rescheduled meeting. At such rescheduled meeting, quorum shall be reduced to 10% of the Members, and if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. Any proxies or ballots prepared and submitted at the adjourned meeting shall remain valid.

**b. Voting:** The purpose of these voting procedures is to provide each Member an opportunity to have his or her voice heard directly on any matter to be taken by the Members.

**(1) Voting by Ballot.** For actions taken at a meeting, the Association shall provide each Lot represented at the meeting a ballot to cast his or her vote on all actions to be decided upon at that meeting by the Members.

For actions that need not be taken at a meeting, the Association shall provide a ballot that contains the proposed action/vote, the deadline and method for submission. The deadline for submission shall not be less than fourteen (14) days from date provided.

**(2) Voting by Proxy.** A Member may appoint a proxy holder to cast a ballot at a meeting of the Members. Any proxy submitted must have the Member's name printed, his or her signature, address within the Subdivision, and printed name of the proxy holder. The proxy shall be submitted to the Board prior to the meeting being called to order.

**(i) Directed Proxy.** A Directed Proxy shall bind the Proxy Holder to submit a ballot at the meeting as directed by the Member.

**(ii) General Proxy.** A General Proxy shall authorize the Proxy Holder to vote on all matters to be voted upon at the meeting. No Proxy Holder may hold more than two (2) general proxies.

**(iii) Conflicting Proxies.** In the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail. If proxies were executed on the same date, both shall be deemed invalid.

**(iv) Qualification of Proxy Holder.** A proxy holder must be a Member of the Association, legal counsel of the Association, or an attorney representing the Member.

**(v) Revocation of Proxy.** Every proxy shall be revocable and shall automatically cease upon conveyance of any Lot for which it was given, receipt by the Secretary of a written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, adjournment of the meeting for which the proxy is given, or eleven months from its date of execution.

**(vi) Association Form.** The Board may require use of an approved proxy form; such form shall not have any vote precasted.

**(3) Voting by Absentee Ballot.** The Association may provide each Member an Absentee Ballot, as prepared by the Association, to cast his or her vote on actions to be decided upon at a meeting of the Members. The Absentee Ballot shall contain the proposed action/vote, the deadline and method for submission. The deadline for submission shall not be less than fourteen (14) days from date provided.

A Member that timely submits an Absentee Ballot shall be deemed present for the purposes of determination of quorum. Only the absentee ballot provided by the Association is permitted.

**(4) Online Election Application.** The Association may provide Owners the option to cast a ballot via a secured online election platform. The Association may not compel any Owner to cast a ballot online. Any vote cast online shall be equivalent as the Owner casting a ballot in-person at the meeting and shall be deemed present for the purposes of determination of quorum.

**(5) Multiple Owners.** Multiple Owners of a Lot shall be deemed to be one Member for purposes of voting, and shall collectively be entitled to one vote. If only one of several Owners of a Lot casts a vote, by any means permitted in these By-Laws, that Owner is entitled to cast the vote allocated to that Lot. If more than one of the Owners is present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. There is a majority agreement if any one of the Owners casts the vote allocated to the Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. In the event of such protest, the vote allocated to that the Lot shall not be counted.

**(6) Voting by Legal Entities.** If an Owner is a corporation (or other legal entity recognized at law), any designated officer of such corporation may cast the vote allocated to such Lot. The person presiding over the meeting may require written authorization that the person voting on behalf of such entity is authorized to vote.

(7) **Lots Owned by Association.** No vote of a Lot owned by the Association may be cast.

(8) **No Cumulative Voting.** There shall be no cumulative voting as defined in Mo. Rev. Stat. §355.296 (2010).

(9) **Action by Association.** The Association may take action by the affirmative vote of a Majority of the Members in Good Standing (51% of the Members In Good Standing) present at a meeting (in person, by proxy or absentee ballot) at which a quorum is present unless a different percentage is required.

*D. A new Section 6 of Article VI of the Subdivision Declaration related to Future Amendments is added to read as follows:*

**Section 6. Future Amendments:** The Subdivision Declaration and the Phases Declaration may be amended at any time with substantial compliance of the following procedures: (1) the Association shall send a copy of the proposed amendment to each Owner subject to the amendment (all Owners or Phases 3-9 of Harborview Subdivision) with a ballot, (2) the Owner shall have a minimum of thirty days from the date the proposed amendment is sent to cast a ballot on the proposed amendment, and (3) 51% of the Members in Good Standing (as defined herein) approve the amendment. The Association may, but is not required to, conduct a meeting to present the amendment.

**a. Unanimous Consent & Other Amendments:** An amendment may change or eliminate any restriction in the Subdivision Declaration or Phases Declaration or add new and/or more burdensome restrictions; however, no amendment can: (1) eliminate the requirement that there be an Association for phases 3 through 9 of Harborview Subdivision, (2) eliminate the power of the Association to levy assessments unless adequate substitution is made, (3) eliminate all covenants unless the process provided for in Section 448.2-118, RSMo. is followed, and (6) unless unanimous consent is obtained, change each Lot's allocated interests, or change a Lot's restricted use (single-family residential).

**b. Challenge to Amendment:** No challenge to the validity of an amendment adopted pursuant to this Section may be brought more than one year after the amendment is recorded; otherwise, such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provision of the Subdivision Declaration or Phases Declaration.

**c. Execution and Recording:** Each amendment to the Subdivision or Phases Declaration shall be recorded in Clay County, Missouri and effective upon recording unless otherwise expressly stated therein. Further, each amendment to the Declaration shall be executed, certified and recorded on behalf of the Association by officers designated in the By-Laws for that purpose or, in the absence of designation, executed by the President and certified by the Secretary.

**d. Conflicts and Definition:** In the event of a conflict between the Subdivision Declaration, the Phases Declaration, and the By-Laws of the Association, this Amendment shall control. Under the Phases Declaration and the By-Laws of the Association, “**Member in Good Standing**” means a Member that is current on any monies owed to the Association including any fines levied after notice and opportunity to be heard, and is not engaged in a pending judicial or administrative proceeding adverse to the Association.

*E. A new Section 7 of Article VI of the Subdivision Declaration related to Application of Governing Documents is added to read as follows:*

**Section 7. Application of Governing Documents:** For clarification and education of current and future owners, the Subdivision Declaration applies to all homes within Harborview Subdivision.

The Phases Declaration only applies to those lots within phases 3 through 9 of Harborview Subdivision. The Subdivision Declaration applies to those lots within phases 3 through 9 of Harborview Subdivision in addition to the Phases Declaration.

As provided in Section 6(d) of the Subdivision Declaration, this Amendment shall control in the event of a conflict with any other provision as may be contained in the Subdivision Declaration, Phases Declaration, any By-Laws and rules and regulations as may be adopted by the Association.

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*F. The Board of Directors is authorized to execute and record this Amendment upon its approval by the Owners and, their signatures below, certify that this amendment has been approved by the Owners in accordance with the Subdivision Declaration.*

*G. This Amendment shall be effective upon the date of its recording with the Recorder of Deeds, Clay County, Missouri, and shall be applicable to events and circumstances occurring after said effective date.*

IN WITNESS WHEREOF, the Board of Directors of Harborview Homeowners Association, Inc. hereby execute this Amendment on the day and year first above written.

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