

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

HARNEY VIEW PARK

[Integrated document incorporating all amendments through October 31, 2019]
[Prepared for use as a reference by Daniel L. Thieme on November 7, 2020]

THIS DECLARATION, made on the date hereinafter set forth by STEPHEN P. WERTHEIMER and MARY JO WERTHEIMER, husband and wife, BERNARD G. GREER and JUDITH A.O. GREER, husband and wife, and JAMES I. HOLLAND and RANDI E. HOLLAND, husband and wife, hereinafter referred to as "Declarants", WITNESSETH:

WHEREAS, the Declarants are owners or are in the process of purchasing certain property in San Juan County, Washington which is legally described in Exhibit "A" attached hereto and this reference is made a part hereof; and

WHEREAS, Declarants may in the future elect to sell portions of their property; and

WHEREAS, it is desirous that said parcels be serviced by easements for ingress and egress and utility purposes, and have the use and benefit of certain parcels of land designated as common areas; and [sic]

NOW THEREFORE, Declarants hereby declare that all of the properties described in Exhibit "A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties, having or acquiring any right, title or interest in the described properties, or any part thereof, and shall endure to the benefit of each owner thereof, and shall be in addition to any covenants, conditions or restrictions imposed on individual sales by the owners thereof.

ARTICLE I.

DEFINITIONS

Section 1. "Association" shall mean and refer to Harney View Park and Road Association, Inc., a non-profit corporation, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in Exhibit "A".

Section 3. "Common Park Area" shall mean all real property or easements for the use of real property owned by the association for the common use and enjoyment of the members of the association.

Section 4. "Common Road Area" shall mean all real property owned by or granted as a non-exclusive easement for the purposes of ingress and egress and utility purposes for the common use and enjoyment of the owners of lots within the properties.

Section 5. "Lot" shall mean and refer to any parcel of property within that certain real property described in Exhibit "A", with the exception of the common park areas.

Section 6. "Member" shall mean and refer to every person or entity who owns a lot and thereby holds membership in the Association.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any "lot" which is a part of the "properties", except that purchasers under a real estate conditional sales contract shall be deemed the "owner", as against the contract seller. Those having an interest merely as security for the performance of an obligation shall not be deemed an "owner" as herein provided.

Section 8. Declarant shall mean and refer to the above described declarants, their successors and assigns of the properties.

ARTICLE II.

COMMON PARK AREAS

Section 1. Declarants hereby agree to convey to the association that certain parcel of real estate situated in San Juan County, Washington, either fee simple title to or an easement for use of as set forth in Exhibit "B" attached hereto and by reference incorporated herein, for park and recreation purposes only, retaining an easement across same for ingress and egress to adjacent property and for utility purposes.

Section 2. It is the intention of Declarants to convey to the association, in the future, other properties for park and recreation or road purposes, and the owners, as members of the association, agree to accept such future conveyances by Declarants and agree to assume the benefits and burdens of same. Nothing herein, however, shall obligate Declarants to make such conveyance.

ARTICLE III.

NON-EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS AND UTILITY PURPOSES

Section 1. Declarants hereby grant to the future owners of lots within properties described in Exhibit "A", non-exclusive easements for ingress and egress and utility purposes. The easements shall be for the benefit of, appurtenant to and construed as a covenant running with the land of the future owners.

Section 2. It is the intention of Declarants to grant additional easements for ingress and egress and for utility purposes, in the future, and owners hereby agree that they will accept future grants by Declarants of easements for ingress and egress and for utility purposes and will assume the benefits and burdens of same. Future grants of easements shall be by supplement to the Declarations as set forth herein.

ARTICLE IV.

LAND USE RESTRICTIONS

Section 1. Land Use.

1. Each lot shall be used for single-family residential purposes only, either permanent or recreational. Mobile homes shall not be allowed on any lot as a permanent structure, whether mounted on a permanent foundation or not.
2. Trailers, motor homes, recreational vehicles, campers and camping units shall not be used for permanent living nor rentals except that they may be used for temporary living by members of the construction crew only for a period of up to twelve months during construction of a permanent residence and provided the placement and location must be approved by the Harney View Board and the Board may impose conditions upon the placement and use of such a temporary unit. They may also be used as temporary living quarters for relatives and friends of the lot owner for short periods of time, not to exceed one month out of each year.
3. Trailers, motor homes, campers, recreational vehicles, camping units and boat trailers may be stored on a lot, either covered or uncovered, provided that they (including covers) are completely screened from view from residences located on other lots, from common roads and waterways.
4. All construction shall be of natural materials (which shall include metal roofing) and be of conventional frame, log or masonry construction.

[The foregoing incorporates the Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions of Harney View Park and Road Association dated April 22, 2005.]

Section 2. Building Locations & Setbacks. No building or physical structure or any part thereof, including eaves and overhangs, shall be constructed, located or permitted on any lot or subdivided portion thereof, within ten (10) feet of all boundary lines of all lots developed or to be developed within the properties, or within ten (10) feet of any common park area boundary line or common road area boundary line.

Section 2.1. No Owner shall cut any trees greater in width than twelve (12) inches at six (6) feet above ground of any kind located on a lot at the time the Owner purchases the lot without the prior written approval of the Board of Directors of the Association and San Juan County, if county approval is required. Clear cutting shall generally not be allowed. Opening up a certain amount of space may be approved, as long as at least fifty percent (50%) of the natural growth is left undisturbed. Under all circumstances, a screen (15 foot wide buffer) of trees shall be left along any all lot lines.

Section 2.2. In the event an Owner cuts or destroys any trees on a lot without prior written approval of the Board of Directors of the Association, the Board is authorized to assess a penalty of:

- (a) TEN AND NO/100 DOLLARS (\$10) per foot of total tree height as such height is estimated by the Association, such penalty being intended to cover the cost of replacing the damaged or removed trees; or
- (b) requiring the Owner to replace each tree with two (2) trees, which replacement trees shall be an evergreen species with a height at planting of between ten (10) and twelve (12) feet.

The Board shall notify the penalized Owner in writing and shall require the Owner to pay the penalty in full and/or plant the replacement trees within a reasonable period of time from the date on which written notification is received by the owner. If the penalized Owner either fails to plant the replacement trees or fails to pay the full prescribed penalty, the Board may plant the replacement trees and file a lien in the amount of the penalty and/or the cost of the replacement trees against the lot(s) of the Owner.

[The forgoing incorporates the Second Amendment to the Declaration of Covenants, Conditions and Restrictions – Harney View Park dated October 15, 1996.]

Section 3. Rentals. The following restrictions shall apply to the rental or lease of any lots or Properties the use of which is governed by the CC&Rs:

- (a) No lots or Properties governed by the CC&Rs, or portion thereof, may be rented or leased for the purpose of providing lodging for a time period of less than thirty consecutive days. All rentals shall be pursuant to a written rental agreement, a copy of which shall be provided to the Association prior to the commencement of the rental. A rental to a tenant who does not intend to occupy the unit for the full permissible rental period shall constitute a violation of this section.
- (b) Each owner of a rental unit who utilizes a rental agent shall notify the rental agent of these Rental Restrictions, and shall notify the Association of the name of the rental agent.
- (c) The rental restrictions set forth herein shall be in addition to any other restrictions contained in the CC&Rs, or in the Articles, Bylaws, or Rules and Regulations of the Harney View Park and Road Association (the “Association”).

[The foregoing incorporates the Third Amendment to Declaration of Covenants, Conditions and Restrictions of Harney View Park and Road Association dated November 4, 2002.]

Section 4. Enforcement. In the event of any violation of the aforesaid restrictions, covenants or conditions, it shall be lawful for any person or persons owning any of the lots covered hereby to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate the same, and either to prevent such person or persons from so doing or to recover damages for such violation. The undersigned shall not be obligated to

enforce any of the terms of this instrument, and all instruments of conveyance signed by the undersigned shall not in any way cause the undersigned to become liable for any such breach.

ARTICLE V.

HARNEY VIEW PARK & ROAD ASSOCIATION

WHEREAS, by the Declaration herein, each owner of a lot has the beneficial use of the common park area or areas and said lots are benefited by the non-exclusive easement for ingress and egress and utility purposes as created by the declaration; and

WHEREAS, it is necessary that a reasonable means of regulating the use of the common park area and common road areas and to determine the maintenance, improvement and allocation of the expense thereof, it is hereby agreed as follows:

Section 1. Membership. Every person or entity who is an owner of record of any lot which is subject to the easements, covenants, conditions and restrictions herein, shall be a member of the association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to the easements, covenants, conditions and restrictions herein. Ownership of such lot shall be the sole qualification.

Section 2. Voting Rights. No person shall have more than one (1) membership regardless of the number of lots owned or being purchased, and the interest of each member shall be equal to that of any other member, and no member may acquire any interest which shall entitle him to any greater voice, vote or authority in the association than any other member. In the case of lots owned jointly by two (2) or more persons, only the joint owner designated as the "member" shall be entitled to vote.

In the event that the Non-Profit Corporation law of the State of Washington, as set forth in Title 24, Revised Code of Washington, is changed to permit one member of a non-profit corporation to exercise greater voting rights than another member, voting shall thereafter be according to the number of lots owned, that is, members shall be entitled to one vote for each lot in which they hold the interest required for membership by Article V. When more than one person holds such interest in any lot, the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

Section 3. Members, Easements of Enjoyment. Every member shall have a right and easements of enjoyment in and to the common park areas and common road areas and such easement shall be appurtenant to and shall pass with the title to every lot subject to the following provisions:

- (1) The right of the association to establish rules and regulations for the use of the common road area;

- (2) The right of the association to charge reasonable admission or other fees for the use of any recreational facilities constructed and situated upon the common park area;
- (3) The right of the association to suspend the voting rights and right to use of the common park areas by a member for any period during which any assessment against his lot remains unpaid and for a period not to exceed one hundred eighty days (180) for any infraction of its publish rules and regulations.

Section 4. Declaration of Use. Any member may delegate, in accordance with the By-Laws of the association, his right of enjoyment to the common park areas and facilities to the members of his family, friends and tenants.

Section 5. Covenant for Association Assessments.

- (1) Creation of Lien and Personal Obligation of Assessments. The Declarants, for each lot owned within the property, hereby covenant and each owner of any lot by acceptance of a deed or contract therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the association:
 - (a) Annual assessments for charges as determined by the Board of Directors for the Association; and
 - (b) Special assessments for capital improvements, such assessments to be affixed and collected from time to time as determined by the Board of Directors.

The annual and special assessments, together with such interest thereon, and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

Section 6. Purpose of Assessments. The assessments levied by the association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the owners.

- (1) Annual Assessments. Annual assessments shall be for the following purposes:
 - (a) The payment of general real estate taxes for the common park areas or other property held by the association;
 - (b) For the care and maintenance of the common park areas and common road areas;
 - (c) For the care and maintenance of capital improvements made on any common park area and/or common road area;
 - (d) For the cost and expense of administering the association. This shall not exempt any past or present lot owner from any obligation for initial road construction he may have contracted for, but shall apply to subsequent maintenance of said road.

- (2) Special Assessments. The purpose of the special assessments shall be for the defraying, in whole or in part, of the cost of any construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the common park areas, including the necessary fixtures, and personal property related thereto.

Section 7. Annual Assessments. The annual assessments shall be established by the Board of Directors of the association. In no event shall there be any assessments before July 1, 1980. Thereafter said [d]ate, the Board of Directors of the association shall fix annually the assessment and the date or dates said assessments become due and payable.

Notice of the Board of Directors' determination regarding annual assessments shall be given in writing to all members thirty (30) days in advance of the annual meeting. A majority vote of the owners, sixty percent (60%) of whom are present, or by their proxy, at any annual meeting may modify or change the annual assessments as fixed by the Board of Directors.

Section 8. Special Assessments. The special assessments shall be as established by the Board of Directors of the association. In no event shall there be any special assessment before July 1, 1980.

Thereafter said date, the Board of Directors of the association may fix the special assessments and the date or dates the special assessments become due or payable, provided that any special assessment shall have the assent of two-thirds (2/3) of the votes of the members, voting in person or by proxy, at a meeting duly called for this purpose, the written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. At this meeting, the presence of members or proxies entitled to cast sixty percent (60%) of all the vote of the membership shall constitute a quorum. If the required quorum is not forthcoming at this meeting, another meeting may be called subject to the notice requirements as set forth above, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 9. Rates of Assessment. Both the annual and special assessments must be fixed at a uniform rate for all lots; except that assessments for the Grindstone Road Lots shall be set at 60% of the rate for other lots, unless a special assessment is made to benefit only the park and recreation areas, in which case the special assessment shall be uniform for all lots including the Grindstone Road Lots. The "Grindstone Road Lots" are the eight (8) lots that, as of January 1, 2019, were only accessed by car from Grindstone Road because they were not accessible by car using the Common Roads of Harney View Park. These lots are identified by the following tax parcel numbers: 262350002, 262350003, 262350004, 262350005, 262350006, 262350007, 262350008 and 262324004. If a Grindstone Road Lot is subdivided, the resulting lots will also be treated as Grindstone Road Lots. Despite the foregoing, if car road access from the Common Roads of Harney View Park is added to any Grindstone Road Lot, that lot will cease to be a Grindstone Road Lot effective January 1 after the access is added.

[The forgoing incorporates the Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions of Harney View Park and Road Association dated October 31, 2019.]

Section 10. General Property Taxes. The general property taxes for the common park areas and other association-owned areas shall be assessed at an equal and uniform rate for all lots within the properties. The county assessor and treasurer is authorized to assess each owner individually in accordance herewith. However, in the event the county assessor or treasurer are either unwilling or unable to assess and collect said general property taxes in this manner, the association will do so as set forth under the provisions for annual assessment. This assessment shall be pro-rated among the lot owners according to the proportio[n] the assessed value of each lot bears to the total assessed valuation of all lots.

Section 11. Effect of Nonpayment of Assessments, Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight (8) percent per annum, and the association may bring an action at law again[s]t the owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs and reasonable attorney fees of any action shall be added to the amount of the assessment. No owner may waive or otherwise escape liability for the assessments provided herein by non-use of the common park area or common road area.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Enforcement. The association or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any of these covenants, or restrictions by judgment or court order shall not affect any other provision which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the association, and the owner of any lot subject to this Declaration, including the Declarants, their respective legal representatives, heirs, successors and assigns.

The Declarants may amend this Declaration to the extent that they may convey to the owners additional property for common park area and may grant additional non-exclusive easements for ingress and egress and utility purposes to the owners. This right, however, shall not obligate Declarants to make such conveyance or grant such easement.

The covenants and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than two-thirds (2/3) of the

owners then owning lots subject to this Declaration or any supplemental Declaration, and thereafter, by an instrument signed by not less than sixty percent (60%) of the owners of the lots subject to this Declaration or any supplemental Declaration, [and] Amendments shall take effect when they are recorded with the Auditor of San Juan County, Washington.

Section 4. In the event of any legal proceeding between the Association and owners of property subject to these CC&R's, regarding the interpretation of the CC&R's and/or the exercise of rights and powers pursuant to the CC&R's, the prevailing party shall be entitled to recover all costs and expenses incurred in connection with such action, including reasonable attorneys fees, and including those incurred on an appeal.

Section 5. San Juan Superior Court Judgment #89-2-05045-6, filed on July 6, 1992, affects the interpretation of these CC&R's.

[The forgoing Sections 4 and 5 were added by the First Amendment to the Declaration of Covenants, Conditions and Restrictions of Harney View Park dated 07/09/1993. The Judgment referenced in Section 5 is set out below as an attachment.]

IN WITNESS WHEREOF, the undersigned have an interest in the properties herein, join this Declaration with the Declarants and approve the same this ____ day of November, 1978 [day is blank in original].

[Signatures omitted]

EXHIBIT "A"
[LEGAL DESCRIPTION OF HARNEY VIEW HOME OWNERS ASSOCIATION AREA]

[The legal description of the area governed by these CC&Rs appears as Exhibit A in Auditor's File No. 105333, filed January 16, 1979. It is omitted here.]

EXHIBIT B
LEGAL DESCRIPTION
COMMUNITY BEACH EASEMENT

[The legal description, as amended and corrected, of the Community Beach Easement (also known as the Common Park Area or the Recreational Easement Area), appears as Exhibit A to the Amendment to Declaration of Covenants, Conditions and Restrictions of Harney View Park and Amendment to and Clarification of Easement Agreement, filed under Auditor's File No. 110835, filed January 21, 1980. It is omitted here.]

[COMMON ROAD AREA]

[Pursuant to the CC&Rs (Article I, Section 4), the "Common Road Area" is the property granted as a non-exclusive easement to the members for purposes of ingress, egress and utilities. That easement area was not established in the CC&Rs themselves. Instead, it is established by the following documents, which are not included here: (a) Easement Agreement recorded under San Juan County Auditor's File No. 105809 (dated February 13, 1979), (b) Amendment recorded under San Juan County Auditor's File No. 107813 (dated May 1979 and recorded June 21, 1979), and (c) Amendment recorded under San Juan County Auditor's File No. 110835 (dated 1979 and recorded January 21, 1980).]

**[SAN JUAN SUPERIOR COURT JUDGMENT #89-2-05045-6
FILED ON JULY 6, 1992]**

[The San Juan Superior Court Judgment referenced in Article VI, Section 5 of the CC&Rs, reads in relevant part as follows:

[1. Harney View Park and Road Association (the "Association") has the sole right to regulate and control the use and maintenance of the Recreational Easement Area.

[Specifically, the Association, for and on behalf of itself and its members who own property within the real property described on Exhibit A to this Judgment, is hereby declared to have the sole right to regulate and control the use and maintenance of the Recreational Easement Area (also referred to as the Common Park Area) legally described on Exhibit B to this Judgment which is located in part on, and burdens in part, the property of defendant Tanselli legally described on Exhibit C attached hereto, the property of defendants Pratt legally described on Exhibit D attached hereto, and the property of Bloxom legally described on Exhibit E attached hereto.

[The property of defendants Tanselli, Pratt and Bloxom legally described on Exhibits C, D and E attached hereto, are subject to such Recreational Easement and such rights of the Association.

- [2. The Recreational Easement Area shall be restricted to park and recreational use only.
- [3. The Association has the sole right to determine within its discretion what is an appropriate park or recreational use for the Recreational Easement Area and what activities would be inconsistent with park and recreational use. The actions which the Association may take related to the use of the Recreational Easement Area for park or recreational purposes include the establishment within the Recreational Easement Area of roads, parking, recreational facilities, other improvements and access thereto.
- [4. The Association's sole right to regulate the Recreational Easement Area includes the right to regulate the use of such Recreational Easement Area by defendants Tansalli, Pratt and Bloxom as fee owners of the Recreational Easement Area. The rights of defendants Tanselli, Pratt and Bloxom, as the fee owners of the Recreational Easement Area, are therefore subordinate to the rights of the Association set forth in paragraph 1 of this Judgment, to the extent that their interests conflict with the stated objectives of the Recreational Easement Area.
- [5. Defendants Tanselli, Pratt and Bloxom may not use or take any action with respect to the Recreational Easement Area to the extent it is inconsistent with the regulation of the Recreational Easement Area by the Association. However, the defendants do have the right to construct, erect, place and maintain any and all reasonable and necessary parts and components of utility-related systems or operations upon their property, to service their property, to the extent that such systems or operations do not conflict with the stated objectives of the Recreational Easement Area.
- [6. The use of the Recreational Easement Area is exclusive to the members of the Association. Defendants Tanselli, Pratt and Bloxom retain no right to grant any interest in or rights to use the Recreational Easement Area to any party who would not qualify as a member of the Association by virtue of ownership of their respective properties in Harney View Park.

* * *

- [10. This Judgment shall be binding upon the parties hereto, their successors, transferees, and assigns, and shall be binding upon and shall burden the respective properties owned by such parties within the plat of Harney View Park.]