

WHEN RECORDED RETURN TO:

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**AMENDMENT TO AND COMPLETE RESTATEMENT OF  
DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS  
THE HARBOR ON FISHERMAN BAY**

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**WHEREAS**, the plat of the Harbor on Fisherman Bay, a private subdivision (the "Plat"), is recorded in Volume 2 of Plats, page 43, records of San Juan County, Washington; and

**WHEREAS**, in order to provide for land use, maintenance of roads, a system of drainage, a water system and such other utilities and recreational facilities, The Harbor on Fisherman Bay Maintenance Corporation (the "Corporation") has been formed as a non-profit, non-stock corporation to manage and administer such land use, road maintenance, drainage and water system and such other utilities and recreational facilities of the Plat; and

**WHEREAS**, the owner of each lot in the Plat is a member of the Corporation, and membership in the Corporation is limited to the owners of the lots in the Plat; and

**WHEREAS**, as a part of the plan of development of such private subdivision, a certain Declaration of Protective Covenants (the "Declaration") was recorded under Auditor's File No. 62098, Volume 13 of Deeds, pages 606 through 616, records of San Juan County, Washington; and

**WHEREAS**, the Declaration has subsequently been amended by amendments recorded under Auditor's File Numbers 940100505, 96102111, 2000 0404020, 2002 1212020, 2008 1030018 and 2010 0818010; and

**WHEREAS**, the membership of the Corporation, at a duly noticed meeting of said membership having approved further revisions to the Declaration.

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NOW, THEREFORE, the following Amendment to and Complete Restatement of Declaration of Covenants, Easements and Restrictions, having been approved by the membership of the Corporation pursuant to its duly adopted bylaws, shall be recorded in the office of the Auditor of San Juan County and shall supersede and replace the Declaration of Covenants, Restrictions and Easements recorded in the office of said Auditor on August 18, 2010 under Auditor's File No. 2010 0818010 and shall replace all prior recorded Covenants, Restrictions and Easements pertaining to the property within the Plat.

The Recitals stated above are incorporated as though fully set forth herein.

This Declaration shall run with the land within the Plat and shall inure to the benefit of and be binding on the owner(s) of each lot within the Plat and on their heirs, successors, assigns, grantees and all persons claiming under any such owner(s) and shall apply to all common areas located within the Plat.

**ARTICLE A**  
**LAND USE AND RESTRICTIONS FOR INDIVIDUAL RESIDENTIAL LOTS**

Use of all lots in the Plat shall be exclusively for private residential purposes only, and all residences must be built on site and be of permanent construction. The requirement that residences be built on site is not satisfied by assembly of prefabricated, mobile or manufactured housing on a site or by moving existing structures or mobile or trailer homes onto a site. Modular homes meeting UBC standards may be submitted to the Architectural Committee for consideration, according to the provisions set forth herein. No more than one (1) single family residence plus lawfully related outbuildings may be built on a single lot.

Any lot owner who wishes to construct an addition to an existing structure or to rebuild an existing structure must comply with these restrictions.

Each residence shall be connected to the central water system for the Plat. Water catchment systems for gardening and landscaping use are strongly encouraged. Water storage systems are subject to prior review and approval of the Architectural Committee.

Each residence shall be equipped with sanitary plumbing facilities and shall be fully connected to (i) an onsite septic tank system of sewage disposal constructed in accordance with all regulations of the state and county agencies having jurisdiction; or (ii) to a public sewer system.

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No commercial use of any lot will be permitted. Use of the property by professional persons for their work or for creative art shall not be considered commercial use, provided the work does not involve a routine reception of business clients and that the residence location shall not be advertised in any fashion as the business location for such person. Any such professional use must be conducted indoors, with no visibility from neighboring sites or common areas.

Long term rental for private, single family residential use is not considered commercial and therefore is permissible. It is the lot owner's responsibility to inform renters of all covenants and the requirements they impose. Any such rental must be for a period of at least thirty (30) consecutive days.

Short term rentals are prohibited, and lot owners are expressly prohibited from advertising the rental of any property within the Plat using nightly or weekly rental rates.

No motor home, house trailer, camper, boat, boat trailer or similar item may be stored or kept on any portion of the common areas and shall not be used for residential purposes. The Corporation shall have the power and authority to establish rules and regulations for storage of such items.

All installations of swimming pools or hot tubs must receive the prior written consent of the Architectural Committee. Hot tubs must be of conventional design with water capacity not to exceed two thousand (2,000) gallons.

No television, radio or other tower shall be maintained on any lot in the Plat in excess of twelve (12) feet in height or above the roof of any structure located on such lot.

No vehicles, vessels or trailers shall be parked overnight on the roadside of any road located in the Plat without prior approval of the Board of Directors of the Corporation.

Construction activities on any property located in the Plat shall be restricted to the hours of 7:30 a.m. to 9:00 p.m., Monday through Saturday, and the hours of 10:00 a.m. to 5:00 p.m. on Sunday.

**ARCHITECTURAL COMMITTEE.** Prior to erection or placing of any structure upon any lot, plans and specifications therefor shall be submitted to the Architectural Committee for its approval as hereafter provided. Such plans and specifications, which may be submitted to any member of the Architectural Committee, shall show with reasonable detail, the location of the structure on the lot, its finished external appearance, sanitary facilities and finished grade elevation. Such plans shall be

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accompanied by the name and address of the owner or builder thereof. No structure shall be placed, constructed or maintained upon such lot unless in conformity with such approved plans and specifications. Approval shall be deemed given unless within 30 days after submission to the Architectural Committee, said Committee shall mail written notice of disapproval of such plans to the name and address submitted. The plans and specifications may be disapproved if in the judgment of the Architectural Committee, the plans, or structure described therein, do not conform with these restrictions, such structure unreasonably interferes with the use and enjoyment of another lot in the Plat or shall fail to conform in harmony of design and external appearance with other structures in the Plat.

The majority of the lots in the Plat were originally intended to be and were developed as view lots. The goal of the Corporation is to maintain water and territorial views over and across the common lands and within the roadway owned by the Corporation for the benefit of the owners of the lots in the Plat. In order to accomplish this goal, the Architectural Committee shall have the power and authority to require all trees and brush on the common lands and within said roadway to be located so as not to unreasonably interfere with the water and territorial views of the owners of the lots in the Plat. On the recommendation of the Architectural Committee, the Corporation shall have the power and authority to remove any trees and brush located on the common areas and roadway within the Plat that unreasonably interfere with said water and territorial views.

The Architectural Committee members are appointed by the Board of Trustees and shall serve a term of three years. In the event of a vacancy in the Architectural Committee, the Board of Trustees may appoint a new member to fill such vacancy.

**ENVIRONMENTAL PROTECTION.** No lot in the Plat shall be used for the dumping of any garbage or other rubbish. Rubbish shall be defined to include, but not be limited to, disabled vehicles and/or vessels. All garbage or other rubbish shall be deposited in suitable sanitary containers, and such containers shall be hidden from the view of other lots and common areas. Garbage and other rubbish must be removed from the property in a prompt and timely manner. The Corporation shall have the power and the authority to establish rules pertaining to refuse collection and the storage of garbage in the Plat.

All construction debris shall be disposed of promptly. No sewage disposal system of any kind shall be permitted in the Plat unless it is designed, located, constructed and maintained in accordance with the requirements and standards of the state and/or county. The use of privies is prohibited except during construction.

No noxious activities shall be allowed on any lot or common areas in the Plat.

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Activities which are or may become an annoyance or nuisance to other lot owners are also prohibited. Noxious activities shall include, without limitation, commercial burning. Commercial burning is defined as any fire which is larger than ten (10) feet in diameter. Recreational and residential burning are permitted. Any recreational or residential burn shall be conducted according to the Open Burning Rules established by the office of the San Juan County Fire Marshal, including but not limited to a valid burn permit issued prior to any such burning.

## **ARTICLE B** **EASEMENTS**

The Corporation shall have the following easement rights, powers and authority :

1. The right and easement to construct, improve, replace, reconstruct and maintain roadways for vehicular and pedestrian traffic as the Corporation may deem advisable for access to the lots in the Plat;

2. The right and easement to construct, improve, replace, reconstruct and maintain a system of culverts, drains and ditches for surface water over, across and under the portion of the property shown as roadways in the Plat, and in addition, the right to maintain, construct, improve, replace, reconstruct and maintain a system of culverts, ditches and drains for surface waters and pipes for water lines, with the right of access, over, across and under a strip or strips of land ten feet in width, the center line or lines of which shall be all of the internal lot lines of all the lots in the Plat;

3. The right and easement described in the preceding paragraph shall include the right to make all necessary slopes for cuts or fills upon the lots in the Plat in the reasonable grading of roads and streets within the Plat;

4. The right, power and authority to grant and convey such easements, licenses, rights and privileges to use the portions of the property shown on the Plat as roadways for the purpose of constructing, reconstructing, repairing, replacing and maintaining, with access, facilities for utilities all of which rights may be granted upon such terms and conditions as the Corporation may deem advisable;

5. The right and easement to construct, reconstruct, improve, repair, replace and maintain in the portion of the property shown as roadways on the Plat a system of pipes and lines to provide water for the use of the lots in the Plat;

6. Subject to the affirmative vote of seventy-five percent of the membership of the Corporation present or represented by proxy at a meeting of membership convened according to its Bylaws, the right and authority to dedicate to public use all or any part of

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the property shown as roadways in the Plat and to transfer all or any part of the easements, powers and authority with jurisdiction over said roadways.

**ARTICLE C**  
**RECREATIONAL FACILITIES**

Subject to the right of amendment in the manner provided for in Paragraph 5, Article E hereof, the real property originally described as Lot 2 of the Plat, and as shown and contained in the Dedication of the Replat of Lots 1 and 2 of the Harbor on Fisherman Bay, together with the Second Class Tide Lands lying between the northwesterly extension of the northerly and southerly lines of said originally described Lot 2 of the Plat, and as shown and contained in the Dedication of the Replat of Lots 1 and 2 of the Harbor on Fisherman Bay, together with any interest hereafter acquired, shall be used solely for the common private use, enjoyment and recreation of owners, residents, and their guests, of the various lots in the Plat, subject further however, to such reasonable rules and regulations as may be adopted by the Corporation according to its Bylaws concerning the use thereof, which rules and regulations shall be of uniform application to all such owners and residents.

**ARTICLE D**  
**LIEN**

1. In order to provide the financial means for the Corporation to maintain, replace, improve and reconstruct the roads, drainage system, water system and recreational facilities for the betterment of the various lots in the Plat, the Corporation may annually assess the parties in interest to each lot in the Plat a sum as the trustees of the Corporation may deem advisable to provide for such purposes, subject to limitations contained in Bylaws of the Corporation, Article I, Section 6.

If such assessments are not paid within 30 days of the due date and after written notice of such assessment is mailed by the Corporation to owner or owners of a lot in the Plat to the address, all as shown by the records of the Corporation, then the Corporation shall have the right to place a lien upon such lot for the amount of such assessment as herein provided. On petition by a member to make periodic payments on the assessment amount, the Corporation's Board of Trustees may make such exception in cases of undue hardship. If such exception is granted, payment must be made in full within the fiscal year in which the exception is granted.

2. Unless increased by the affirmative vote of seventy-five percent of the membership of the Corporation present in person or by proxy at any meeting of its membership called for that purpose in accordance with the Corporation's Bylaws, the amount of such lien shall not exceed the total of dues, assessments, and fees in

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arrears. If an increase is voted, the maximum amount of such lien shall be as determined by such membership and shall be effective for the fiscal year in which notice of such increase is filed of record by the secretary of the Corporation with the auditor of San Juan County. Nothing herein shall be construed to limit the right of the Corporation to impose dues or make changes as it deems advisable for its operations in addition to such assessments.

3. The lien created hereby shall be a lien upon the lot or lots, as the case may be, only on and after the date that written notice of claim of lien is filed for record by the Corporation with the Auditor of San Juan County, which notice shall contain a description of the lot or lots in the Plat against which the lien is claimed and the amount of the lien claimed. Such lien may be foreclosed by the Corporation in the manner of a mortgage upon real property and the Corporation shall recover a reasonable sum as its attorney fees and the reasonable costs incurred in any action to foreclose such lien which sum shall be secured by such lien and may be included in any judgment in favor of the Corporation.

4. All liens and rights appurtenant thereto as provided in this Article D shall be junior, inferior, and subordinate to a recorded first mortgage or deed of trust.

5. The Corporation shall require a performance guarantee in the amount of \$1,000 to ensure compliance with the restrictive covenants of the Corporation regarding the completion of a residence within one (1) year of the commencement of construction; and the Architectural Committee is hereby authorized to collect the \$1,000 performance guarantee fee at the time of the submission of plans to said Committee in accordance with Article A of these Covenants. At the end of the one year period, if the Architectural Committee determines that the covenant has not been complied with, said performance guarantee deposit shall be forfeited to the general fund, and all other applicable fees shall otherwise be paid.

## **ARTICLE E** **MISCELLANEOUS**

1. The covenants, restrictions, easements, rights, liens and encumbrances herein provided for, shall be covenants running with the land and shall be binding upon the lot(s) and any and all parts thereof, the parties in interest thereto and their heirs, assigns, personal representatives and successors in interest. Accepting an interest in and to any portion of the property in the Plat shall constitute an agreement by any person, firm or corporation accepting such interest that they shall be bound by and subject to the provisions hereof.

2. In the event that any provision hereof shall be declared to be invalid by any

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court of competent jurisdiction, no other provision shall be affected thereby and the remaining provisions shall remain in full force and effect. No waiver of the breach of any provision hereof shall constitute a waiver of any other provision or waiver of a subsequent breach of the same provision.

3. Any violations of these covenants and restrictions shall be considered to be a nuisance, and the Corporation, acting on behalf of the owners of property within the Plat, and after providing the member in violation with notice of the violation and the right to be heard, shall have the right and authority to enforce said covenants and restrictions by appropriate legal measures, including but not limited to the following: (1) imposition of monetary penalties or fines in an amount to be determined by the vote of a majority of the duly elected Board members of the Corporation, which if not paid, shall become a lien against the property of the violator; (2) legal action in a court of competent jurisdiction for damages arising from the violation; (3) injunctive relief; (4) suspension of the violator's voting rights pursuant to the Corporation's Articles of Incorporation and Bylaws during such time the violator is delinquent in paying dues and assessments made by the Corporation or has failed to comply with this Declaration, the rules adopted by the Architectural Committee, the Articles of Incorporation and Bylaws of the Corporation; and (5) any other available legal remedies.

The Board members of the Corporation shall develop a list of monetary penalties and/or fines and shall provide said list to the members of the Corporation.

With the exception of the imposition of monetary penalties and fines, the recording of a lien against the property of the violator and the suspension of the violator's voting rights, all of these remedies shall also be available to any property owner in the Plat.

The suspension of voting rights shall not relieve the violator from liability for payment of dues, fees and assessments or from compliance with the provisions of this Declaration, the rules of the Architectural Committee or the Corporation's Articles of Incorporation or Bylaws. The Corporation or any person bringing such action, if deemed to be the prevailing party, shall be entitled to recover from the violator reasonable attorney's fees, court costs and other costs reasonably incurred and awarded by judgment of the court having jurisdiction, which fees and costs shall constitute a lien on the violator's property in the Plat or interest therein. Until decided otherwise by the Board of Directors of the Corporation, general violations of these covenants and restrictions shall result in a one year loss of the violator's voting and dock privileges, beginning on a date to be determined by the Board of Directors of the Corporation.

4. In consideration of the rights and liens conferred upon the Corporation herein,

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the Corporation hereby agrees to maintain the roads, drainage system, water system and recreational facilities in the Plat for the benefit of the parties in interest in and to the property in the Plat and for this purpose joins in the execution hereof.

5. All references herein to the mailing of notices and any other materials relating to the Corporation to its members shall be defined to mean the electronic transmission of such notices and other materials, provided however, that such notices and other materials will be sent by electronic transmission only to those members who have consented to such electronic transmissions. Such consent shall be provided to the Corporation in writing and shall designate the message format accessible to the recipient and the address, location or system to which such notices and other materials may be electronically transmitted. Such consent may be revoked by any member by providing written notice to the Corporation. The writing relating to consent and revocation of consent to receive notices and other materials by electronic transmission may be sent to the Corporation electronically. In the event a member does not consent to receive notices and other materials electronically, or revokes consent previously given, notices and other materials shall be sent to said member by U.S. mail, postage prepaid.

6. These Covenants, Restrictions and Easements may be modified, extended, or removed by a vote of two-thirds of the members present or represented by proxy at any annual meeting or special meeting called for that purpose. Such amendments shall be effective five (5) days after such vote or on the date said amendments are posted on the Corporation's web site, whichever occurs later. Such amendments shall also be recorded with the Auditor of San Juan County.

By their signatures below, the President and Secretary of the Corporation attest that this Amendment to and Complete Restatement of Declaration of Covenants, Restrictions and Easements was approved by a vote of two-thirds of the members present or represented by proxy at the duly noticed annual meeting of the Corporation held on June 16, 2012 and that the minutes of said meeting reflect the votes of the members present or represented by proxy.

Dated this            day of \_\_\_\_\_, \_\_\_\_\_.

HARBOR MAINTENANCE CORPORATION

By \_\_\_\_\_  
Jules McLeland, President

By \_\_\_\_\_  
Rebecca Smith, Secretary

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