

**AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS  
AND RESTRICTIONS (File No. 3283826)  
DAVE'S VIEW AT MARTIN'S BLUFF**

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Recorded 2/27/2009 in Cowlitz County WA. Under Auditors File # **3387490**

**Effective Date:** The date this Amendment is recorded with the office of the Auditor of Cowlitz County, Washington.

**Declarant:** Dave's View, LLC, a Washington limited liability company

**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 3<sup>rd</sup> 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 non-voting 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-1) 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 1 (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 1. “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 1, 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; 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. 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.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2009.

DAVE'S VIEW LLC

By: \_\_\_\_\_  
Its: Managing Member

CM2K INVESTMENTS, LLC

By: \_\_\_\_\_  
Its: Managing Member

STATE OF Washington)

ss.

County of Cowlitz )

I certify that Chad Wilson managing member of Dave's View, LLC and managing member of CM2K Investments, LLC appeared personally before me and that I know or have satisfactory evidence that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

NOTARY PUBLIC in and for the State  
of Washington, residing at

\_\_\_\_\_

EXHIBIT "A"

**LEGAL DESCRIPTION  
FOR  
CHAD WILSON**

**AGGREGATE OF PHASES 1, 2, AND 3 OF "DAVE'S VIEW AT MARTIN'S BLUFF":**

A portion of the North half of Section 34 and the East half of the Northeast quarter of Section 33, Township 6 North, Range 1 West, Willamette Meridian, Cowlitz County, Washington, described as follows:

BEGINNING at a concrete monument at the Quarter Corner between Sections 27 and 34; thence North  $88^{\circ} 29' 50''$  West, 2653.42 feet to a concrete monument at the Northwest corner of Section 34; thence South  $01^{\circ} 30' 51''$  West, 300.48 feet to a 1/2 inch iron rod at the Southeast corner of Tract 5, as shown in Book 19 of Surveys, page 83, Cowlitz County Auditor's Records; thence South  $64^{\circ} 34' 36''$  West, 252.43 feet to a 1/2 inch iron rod at the Southwest corner of Tract 5 (Survey 19-83); thence South  $72^{\circ} 15' 51''$  West, 224.19 feet to an angle point in the South line of Tract 15 (Survey 19-83); thence North  $69^{\circ} 03' 16''$  West, 190.73 feet to another angle point therein; thence North  $88^{\circ} 00' 31''$  West, 90.33 feet to the Southwest corner of Tract 15; thence South  $84^{\circ} 24' 55''$  West, 98.18 feet to an angle point in the South line of Tract 14 (Survey 19-83); thence South  $79^{\circ} 27' 42''$  West, 136.86 feet to another angle point; thence South  $71^{\circ} 46' 55''$  West, 116.41 feet to another angle point; thence South  $61^{\circ} 08' 44''$  West, 136 feet, more or less, to the centerline of Cloverdale Road and the Southwest corner of Tract 14; thence Southerly and Southeasterly along the centerline of Cloverdale Road, 2694 feet, more or less, to its intersection with the centerline of Martins Bluff Road; thence Northeasterly, along the centerline of Martins Bluff Road, 3595 feet, more or less, to the West line of the Northeast quarter of the Northeast quarter of Section 34; thence North  $02^{\circ} 11' 10''$  East, along said West line, 35 feet, more or less, to the North right-of-way line of Martins Bluff Road; thence Northeasterly, along said North right-of-way line, 440.00 feet; thence North  $17^{\circ} 24'$  East, 344 feet, more or less, to the West right-of-way line of the Olympic Pipeline Company 30-foot right-of-way; thence North  $38^{\circ} 30' 00''$  West, along said West right-of-way line, 957 feet, more or less, to the North line of the Northeast quarter of Section 34 at a point that is approximately 1410 feet West of the Northeast corner of Section 34; thence North  $88^{\circ} 26' 16''$  West, 1208 feet, more or less, to the POINT OF BEGINNING.

EXCEPT any portion conveyed to Cowlitz County or the State of Washington for road purposes.