

RETURN ADDRESS

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**Document Title(s)**

Covenants Conditions & Restrictions – Evergreen Heights Phase I

**Reference Numbers(s) of related documents**

\_\_\_\_\_ Additional Reference #=s on page

**Grantor(s)** (Last, First and Middle Initial)

Evergreen Heights, LLC

\_\_\_\_\_

\_\_\_\_\_ Additional grantors on page

**Grantee(s)** (Last, First and Middle Initial)

Public

\_\_\_\_\_

\_\_\_\_\_ Additional grantees on page

**Legal Description** (abbreviated form: i.e. lot, block, plat or section, township, range, quarter/quarter)

SW, SE, SE, NW, 25-18N-1W

\_\_\_\_\_ Additional legal is on page

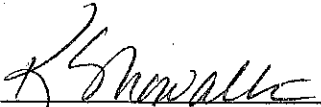
**Assessor's Property Tax Parcel/Account Number**

11825230100

\_\_\_\_\_ Additional parcel #=s on page

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

  
\_\_\_\_\_  
Signature of Requesting Party



**COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR EVERGREEN HEIGHTS, PHASE I  
IN THURSTON COUNTY ACCORDING TO THE PLAT  
RECORDED IN THE OFFICE THURSTON COUNTY AUDITOR  
NUMBER 3879668**

The undersigned, Evergreen Heights, LLC, a Washington limited liability company (“Declarant”), being the owner of lots 1 through 88 and Open Space/Stormwater Tracts A & B & C & D & E & F & G of Evergreen Heights, Phase I, in order to provide for the sound development, the aesthetic quality and the healthful conditions of the aforesaid real property and so as to provide for control of the structures, buildings and improvements to be constructed on the property, do hereby covenant for their successors, heirs and assigns and agree to keep all of the covenants, conditions and restrictions hereinafter set forth and which are hereby made applicable to the aforescribed real property and which shall be binding upon the owners thereof to the extent provided in such covenants and all the property shall be owned, held, used, occupied and developed in conformance with the covenants, conditions and restrictions set forth herein. (See attachment ‘A’ for Resource Protection Plan; Attachment ‘B’ for Stormwater Facilities Maintenance; and Attachment ‘C’ for Legal Description. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Articles of Incorporation and Bylaws of the Evergreen Heights Owners’ Association.

**ARTICLE I  
COVENANTS RESPECTING USE**

A. Land Use and Building Types. All of the lots in Evergreen Heights shall be used for residential purposes only. No more than one detached single family dwelling shall be constructed on each lot.

B. Architectural Control. No building or other permanent structure shall be erected or altered by anyone other than the Declarant on any lot until the construction plans, specifications and the plans showing the location and placement of the building or structure have been approved by the Architectural Committee as to the quality or workmanship and materials, harmony of external design with existing structures and as to location with respect to topography and grade elevation. As a guideline, owner's or purchaser's plans will be reviewed generally as to the following, which shall not be all inclusive:

1. The minimum square footage of living area for single family homes shall be 1,500 square feet excluding porches and garages.

2. The exterior paint or stain on a structure or dwelling must be of an approved color. An approved trim color or stain is permitted. Approval is by the Architectural Committee.



3. No metal, aluminum, plastic or fiberglass structures will be permitted. This is to include accessory structures on the property (i.e. storage sheds, gardening sheds, awnings, patio covers, etc.).

4. Yard landscaping on the front of the dwelling must be completed before occupancy or at the time construction has been completed by the builder and the home is available for sale, whichever is first.

5. Front yard landscaping shall not be significantly altered without approval of the Architectural Committee. In no case shall street tree in planter strip be removed without like replacement.

6. No statues, fountains, or other yard ornaments/decorations may be placed in the front yard of any lot without prior approval of the Architectural Committee.

7. Each lot may display no more than one flag that does not exceed 15 square feet in size, nor is more than 15 feet in height from the ground.

Where the restrictions and covenants herein set forth cannot be complied with because of land limitations or topographical conditions, the proper and orderly development of such lots shall conform to the conditions and terms of these covenants as far as possible. The Architectural Committee is empowered to allow such variations as in its judgment shall permit the reasonable utilization of such lots consistent with the general plan and scheme of development herein. The Architectural Committee may create, adapt and utilize a written handbook of procedures and standards, consistent with this Article I.B, to be used in implementing this Article I.B.

C. Site Plan Review. The approval of the Architectural Committee shall be required prior to the removal of any trees or substantial vegetation on any lot, and shall be further subject to such ordinances and permits which may be required by the Thurston County or any other local governing jurisdiction.

D. Building Location. Buildings and other structures located on each lot shall conform to and comply with the local governing jurisdiction's requirements.

E. Completion of Structures. All buildings commenced on any lot shall be completed, including painting and landscaping, not later than eight months after construction is commenced unless additional time is provided with the written permission of the Declarant.

F. Utility Services. All permanent utility services and connections thereto within the subdivision shall be provided by underground services exclusively. No ham radio antennas or television antennas of any type shall be permitted on the exterior of any buildings on any lot within the subdivision. Satellite dishes may be permitted with a diameter of less than 30".



The approval of the Architectural Committee shall be required prior to the placement of satellite dishes to ensure that their placement is the least intrusive.

G. Noxious and Offensive Activities. No noxious or offensive activity shall be conducted on any Lot, nor shall anything be done or maintained within Evergreen Heights which may become an activity or condition which unreasonably interferes with the rights and quiet enjoyment this Declaration gives other owners. No activity or condition shall be conducted or maintained on any part of Evergreen Heights which detracts from the value of Evergreen Heights as a residential community. No untidy or unsightly condition shall be maintained on any property. Untidy conditions shall include, but are not limited to, publicly visible storage of wood, disabled vehicle of any kind whatsoever, items covered by a tarp, visible kennels, and landscaping which is not properly maintained.

H. Vehicle Maintenance. No vehicle maintenance except emergency service shall be conducted within public view. No vehicle may be stored in the street or left in the public right of way for more than 48 hours.

I. Temporary Structures. No mobile homes shall be permitted on any lot in the subdivision. No structures of a temporary character, including but not limited to trailers, basement houses, tents, garages, barns, motor homes, sheds or outbuildings, shall be used on any lot at any time as a residence, either temporarily or permanently. When referring to trailers, the term trailer shall include all forms of trailers or mobile homes of any size, whether capable of supplying their own motive power or not, without regard to whether the primary purpose of such trailer is or is not the conveyance of persons or objects, and specifically including all automobiles, buses, trucks, cars, vans, trailers, mobile homes, and motor homes, even though they may at any time be immobilized in any way, and the restriction shall apply to any period of any time of whatever duration. Living shall be restricted to a house or dwelling constructed on the property in conformance with these covenants. Storage of these items are prohibited unless screened from view.

J. Boats, Campers, Travel Trailers and Motor Homes. Boats, campers, travel trailers and motor homes may be stored on a lot in conjunction with a permanent residence, but only if such items are screened from public view and from all other lots and all streets within the subdivision. All such storage and the screening shall be approved by the Architectural Committee whose approval shall be final. Any trailers or motor homes parked in conjunction with any lot or parked on the street by any person shall be parked temporarily within the subdivision no longer than 24 hours unless properly screened in accordance with this paragraph.

K. Garbage and Refuse Disposal. No garbage, refuse, rubbish, or cuttings shall be deposited on or left on any lot unless placed in an attractive container suitably located and screened from public view. All garbage cans, refuse containers, and trash cans or receptacles shall be kept out of sight except on the days prescribed for pick up. No building material of



any kind shall be placed or stored upon any property in the subdivision until the owner is ready to commence construction, and then such materials shall be placed within the property lines of the building site upon which structures are to be erected or are being erected and shall not be placed in the street. No outdoor incinerators shall be permitted.

L. Livestock. No animals, except dogs, cats, caged birds kept inside a residence, fish and other small household pets, will be permitted in the subdivision. No animals shall be kept or maintained within any outside cage, coop or similar enclosure, except that dogs may be kept in an appropriate kennel or kennel type enclosure.

Notwithstanding the foregoing, all pets permitted to be kept by this section shall be kept on a leash when on an area outlined as covered property and/or common area, except within the boundary of the owner's lot. The person accompanying a pet on public or private property is required to remove any animal fecal material from that property. Pets are not allowed to habitually or continually disturb the peace and quiet of any neighbor by barking, whining, howling or making other noise. Failure to do these items may result in an allowable charge defined by the Board.

M. Fences and Walls. No fences or wall shall be constructed on any lot unless approved by the Architectural Committee. There will be no front yard fences permitted. Walls such as retaining walls made of brick, rock, or other natural materials up to three feet in height may be permitted as part of a landscaping plan or development. All side and back yard fences shall be of cedar, redwood, or brick materials. No steel or chain link fences are permitted other than in Common Areas. No fence or wall shall be erected, placed, or altered on any lot nearer to any street than the minimum setback for fences as required by the local governing jurisdiction.

N. Discharge of Weapons. The discharge of weapons within the subdivision shall be prohibited. Weapons shall include all firearms, b.b. guns and pistols, air rifles, air pistols, pellet guns, slingshots, and bows and arrows.

O. Water and Sewage. No individual water supply system shall be permitted on any lot. All lots shall be connected to the City water system. No individual sewage disposal system shall be permitted on any lot. All lots shall be connected to the City sewage system.

P. Driveways, Parking & Garage Doors. Each lot shall have a driveway and parking area so as to accommodate a minimum of two cars in front of the garage. No garage door shall be permitted to remain open except for a temporary purpose. Garages are intended for parking of vehicles and not general storage of items. Driveways shall be of concrete to the city street. No roads for ingress or egress except for driveways to the city street shall be permitted. Circular driveways as shown on the site plan may be approved by the Architectural Committee and may be permitted.



Q. Drilling and Mining. No drilling or mining in any form whatsoever shall be permitted on any lot. This shall include but not be limited to drilling, development operations, refining, quarrying, or mining, and the construction of any form of derrick or structure designed for boring or mining purposes.

R. Site Distance at Intersections. No fence, wall, hedge, object, or shrub planting which obstructs sight lines at street intersections shall be placed or permitted to remain on any corner lot except in strict conformance with city ordinances and other applicable law and regulations. The same sight line limitations shall apply to any lot within 10 feet from the intersection of the street property line with the edge of a driveway or alley pavement.

S. No Parking. No parking is permitted on any Open Space/Common Area tract. Without limiting the foregoing, no parking is permitted on any private street or roadway, including, without limitation, on Malia Lane or Tract F.

T. Commercial Use. - No part of a residence shall be used or caused to be used or allowed or authorized in any way directly or indirectly for any business, commercial, manufacturing, mercantile, storing, vending or any nonresidential purposes. Exceptions to this rule would be owners who have home-based businesses allowed by the applicable zoning ordinances that conduct business activity which is not visible to the public view, apparent or detectable by sight, sound, smell, or does not create a disturbance, unduly increase traffic flow or parking issues nor uses common area to promote business.

U. Seasonal Decorations & Lighting. All seasonal decorations and lighting shall be removed in a reasonable time frame and not allowed to remain in place year round. December's lighting and decorations shall be removed from the structure or yard by February 1<sup>st</sup> of the new year.

V. Basketball Hoops. Basketball hoops are strictly prohibited on all common areas, front yards, driveways, public and private streets. Owners may not place, store, erect or install basketball hoops in any of these areas.

W. Signs. No sign or billboard of any kind shall be displayed on private property that contains (a) roofing material, siding, paving materials, flora, balloons, light, or similar building, landscaping, or "nonstandard" decorative components, (b) are attached to plants, traffic control devices, a light, a trailer, a vehicle, or any other existing structure or object (as opposed to ground-mounted), (c) which includes the painting of architectural surfaces, (d) which threaten the public health or safety, (e) which are larger than four feet by four feet, (f) which violates a law, (g) which contain language, graphic, or any display that would be offensive to the ordinary person, (h) that are accompanied by music or other signs or streamers or is otherwise distracting to motorists or (i) placed more than 60 days before an event or left 10 days after event. Signs are not allowed to be left up all year long. Additional reasonable standards may be promulgated by the Board to further limit placement of signs. At no time are signs allowed on common areas or



areas maintained by the association in regards to landscaping, unless placed there by the developer or the Board of Directors.

X. Leases. Any agreement for the leasing or rental of a Residence shall provide that the terms of such lease shall be subject in all respects to the provisions of the Association Documents and any applicable agreements between the Association and any of the Federal Agencies. The Owner of said leased/rented Residence has the duty and obligation to furnish the Board with the name or names of the individuals currently leasing/ renting said Residence and to maintain with the Association a record of the current mailing address of said Owner. Any Owner who shall lease/rent said Residence shall be responsible for assuring compliance by the resident in regards to Association Documents. No Residence shall be leased for transient or hotel purposes, which shall be defined as rental for any period less than thirty (30) days or any rental whatsoever if the occupants of the Residence are provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen and bellboy services.

Y. Repair and Maintenance by Owner. Each Owner shall:

(a) maintain in good condition and repair the residential dwelling structure, garage and other improvements on the Lot;

(b) maintain in good condition and repair facilities within the Lot as required by the city, county, and local jurisdiction;

(c) maintain in attractive condition front yard landscaping. Front yard must be maintained to prevent weeds, overgrowth and general landscape issues.

(d) In the event the Board shall determine that a lot has not been properly maintained the owner will be notified in writing and requested to make said improvements within a timely manner. Lack of response will result in the association taking action to maintain the area and the property owner will be charged for the cost incurred by the association.

Z. Repair, Maintenance and Replacement of Screen Fence and Trees. The Owners of Lots 1 through 19, inclusive, shall each be solely responsible as to their Lot, for the repair, maintenance and replacement of: (I) the fence along the rear of their respective Lots; and (ii) the double row of offset trees planted along the rear of their respective Lots. Such repair, maintenance and replacement shall be performed so as to continue to meet all applicable screening requirements. Each such Owner shall be prohibited from permanently removing any such fence or trees, shall promptly repair any damage to any such fence or trees, and shall remove any such tree which becomes diseased or dangerous and promptly replace it with a tree of like species and of a size sufficient to meet the applicable screening requirements. If any Owner fails to provide the repair, maintenance or replacement required pursuant to this paragraph, the Association may, but is not obligated to, perform the same. Such performance shall not be deemed an election of remedies by the Association. Any costs or expenses incurred



by the Association in enforcing or performing these obligations shall be immediately due and payable by the applicable Owner, and shall be subject to Article II.H as charges and assessments.

AA. Party Fences. Each fence built as part of the original construction on the Lots which shall serve and/or separate two adjoining Lots shall constitute a party fence. To the extent not inconsistent with the provisions of this paragraph, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party fence shall be shared equally by the Owners whose Lots are separated by such fence. If a party fence is damaged or destroyed by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner whose Lot is separated by such party fence from another Lot may restore it. Each other Owner whose Lot is separated from another Lot by the party fence shall contribute to the cost of restoration in proportion to the number of Owners whose Lots are separated by such fence. Such contribution will not prejudice the right to receive a larger contribution from any Owner for negligent or willful acts or omissions to the extent causing the damage or destruction to such fence. The right of any Owner to contribution from any other Owner under this paragraph shall be appurtenant to the Lots, shall benefit and burden such Lots and shall run with the land.

BB. Tract D. The Association shall cause Tract D to be maintained in its original forested state.

## ARTICLE II ARCHITECTURAL COMMITTEE AND HOMEOWNERS ASSOCIATION

A. Architectural Committee.

1. The Architectural Committee shall consist of not less than two (2) nor more than five (5) persons as fixed from time to time by resolution of the Board. The Declarant shall initially appoint the Architectural Committee. The Declarant shall retain the right to appoint, augment or replace a majority of the members of the Architectural Committee until five (5) years after the date of the recording of this Declaration or until eighty percent (80%) of the Lots within Evergreen Heights have been conveyed by the Declarant, whichever shall first occur.

2. Five (5) years after the date of the recording of this Declaration, or when eighty percent (80%) of the Lots within Evergreen Heights have been conveyed by Declarant, whichever shall first occur, the right to appoint, augment or replace all members of the Architectural Committee shall automatically be transferred to the Board.



Persons appointed by the Board to the Architectural Committee must be Owners; however, persons appointed by Declarant to the Architectural Committee need not be Owners, in Declarant's sole discretion.

3. The address of the Architectural Committee shall be the address established for giving notice to the Association. Such addresses shall be the place for the submittal of plans and specifications and the place where the current Architectural Standards shall be kept.

B. Architectural Standards. The Board may, from time to time, adopt and promulgate Architectural Standards to be administered through the Architectural Committee. The Architectural Standards may include among other things those restrictions and limitations upon the Owners set forth below:

1. Time limitations for the completion of the building or structure ("Improvements") for which approval is required pursuant to the Architectural Standards.

2. Conformity of completed Improvements to plans and specifications approved by the Architectural Committee; provided, however, as to purchasers and encumbrancers in good faith and for value unless notice of noncompletion or nonconformance identifying the violating Improvement and its Owner and specifying the reason for the notice, executed by the Architectural Committee, shall be filed of record in the Official Records of Thurston County, and given to such Owner within one (1) year of the expiration of the times limitation described in subsection 1 above, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one (1) year period, the completed Improvements shall be deemed to be in compliance with plans and specifications approved by the Architectural Committee and in compliance with the Architectural Standards of the Association, only with respect to purchasers and encumbrancers in good faith and for value. The Owner to whom a notice of non-completion or noncompliance has been issued shall be bound by such notice regardless of whether such notice has been filed of record in Official Records. Each Owner hereby is deemed to have consented to and authorized the recordation against his Lot of such a notice of non-completion or nonconformance executed only by the Architectural Committee or its delegate.

3. Such other limitations and restrictions as the Board in its reasonable discretion shall adopt, including, without limitation, the regulation of the following: placement, construction, reconstruction, exterior addition, change or alteration to or maintenance of any Improvement including, without limitation, the nature, kind, shape, height, materials, exterior color, surface and location of any Improvement.



4. A description of the types of such construction, reconstruction, additions, alterations or maintenance which, if completed in conformity with the Architectural Standards, do not require the approval of the Architectural Committee.

5. Restrictions controlling the species, placement and height of any trees, plants, bush, ground cover or other growing thing placed or planted on the Covered Property.

C. Functions of Architectural Committee.

1. It shall be the duty of the Architectural Committee to consider and act upon proposals or plans submitted on the proper application form (at the registered address of the Association) pursuant to the terms of the Declaration or the Architectural Standards, and to perform such other duties delegated to it by the Board.

2. The Architectural Committee may delegate its plan review responsibilities to one or more members of such Architectural Committee. Upon such delegation, the approval or disapproval of plans and specifications by such persons shall be equivalent to approval or disapproval by the entire Architectural Committee.

3. The Architectural Committee may, from time to time, subject to the approval of the Board, adopt, amend and repeal Architectural Committee Rules and may assess a reasonable fee as appropriate for the type and nature of the Improvement, in connection with the review of plans and specifications for proposed Improvements, including without limitation, a procedure and approval of preliminary plans and drawings, as well as final approval, the number of sets of plans to be submitted, and may require such detail as it deems proper, including without limitation, floor plans, site plans, elevation drawings, and descriptions or samples of exterior material and colors. Unless any such rules are complied with, such plans and specifications shall be deemed not submitted.

4. The establishment of the Architectural Committee and the systems herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain, repair, alter or modify or otherwise have control over the Lots as may otherwise be specified in this Declaration, the Articles of Incorporation or Bylaws of the Association, or any other applicable Association documents.

D. Approval of Plans.

1. No Improvement shall be constructed, installed, expanded, made, planted, commenced, erected or maintained upon the Property or any Lot except in compliance with plans and specifications therefore which have been submitted to and approved by the Architectural Committee.



2. The Architectural Committee shall review and approve or disapprove all plans and specifics submitted to it for any proposed Improvement solely on the basis of compliance with the Architectural Standards, aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Development generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of building, landscaping, color schemes, exterior finishes and materials, and similar features.

3. The Architectural Committee shall approve plans and specifications submitted for its approval only if it deems that the proposed Improvement will not be detrimental to the appearance of Evergreen Heights as a whole; that the Improvement complies with the Architectural Standards; that the appearance of any Improvements will be in harmony with the surrounding structures; that the construction of any Improvement will not detract from the beauty and attractiveness of Evergreen Heights or the enjoyment thereof by the Owners; that the upkeep and maintenance of any Improvement will not become a burden on the Association; and that no violations of the use restrictions set forth this Declaration exist.

4. The Architectural Committee may condition its approval of plans and specifications for any Improvement on such changes therein as it deems appropriate or may determine that such Improvement cannot be approved because of its effect on existing drainage, utility or other easements, or may condition its approval of such Improvement upon approval of such Improvement by the holder of any such easement, or may condition its approval upon approval of any such Improvement by the appropriate governmental entity, and may require submission of additional plans and specifications or other information or materials prior to approving or disapproving plans and specifications submitted. Any Architectural Committee approval conditioned upon the approval by a governmental entity shall not imply the Association is enforcing any government codes or regulations, nor shall the failure to make such conditional approval imply that any such governmental agency approval is not required.

5. In the event the Architectural Committee fails to approve or disapprove any plans and specifications within thirty (30) days after the same have been duly submitted in accordance with any rules regarding such submission adopted by the Architectural Committee, such plans and specifications will be deemed approved.

E. Nonliability for Approval of Plans. Plans and specifications shall be approved by the Architectural Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, and other applicable statutes, ordinances or governmental rules or regulations, the requirements of any public utility, or any easements or other agreement, and by approving such plans and specifications neither the Architectural Committee, the members thereof, the Association, the Owners, the Board nor Declarant nor agents, employees,



attorneys or consultants of any of the foregoing, assume liability or responsibility therefore, or for any defect in any Improvement constructed from such plans and specifications.

F. Appeal. In the event plans and specifications submitted to the Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board. The written request shall be received by the Board not more than fifteen (15) days following the final decision of the Architectural Committee. The Board shall submit such request to the Architectural Committee for review, whose written recommendations are to be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the appellant.

G. Inspection and Evidence of Approval.

1. The Architectural Committee shall cause an inspection to be undertaken within forty-five (45) days of a request therefore from any Owner as to his Improvement, and if such inspection reveals that the Improvement has been completed in compliance with this Article, the President and the Secretary of the Association, or any other officer or officers authorized by resolution of the Board, shall provide to such Owner a notice of such approval in recordable form which shall be conclusive evidence of compliance with the provisions of this Article as to the Improvement described in such notice, but as to such Improvement only.

2. If for any reasons the Architectural Committee fails to cause an inspection to be made within forty-five (45) days of being notified by the Owner of the completion of an Improvement or fails to notify the Owner of any noncompliance within thirty (30) days after an inspection, the Improvement shall be deemed to be completed in substantial conformance with approved plans and specifications. In such event, the Owner shall be entitled to receive a notice of compliance in recordable form upon request, executed by the President and the Secretary of the Association, or any other officer or officers authorized by resolution of the Board. Such notice of compliance shall be conclusive evidence of compliance with the provisions of this Article as to the Improvements described in the notice.

H. Failure to Submit Plans; Nonconformity. The Association has the right to enter any Lot or Improvement for the purpose of inspecting an Improvement constructed or being constructed upon such Lot. In the event an Improvement was commenced without the required approval of the Architectural Committee, or, if such Improvement was not completed in substantial conformance with the approved plans and specifications, the Architectural Committee shall give notice of the violation to the violating Owner, which



notice shall briefly describe the violation and shall set a date for a hearing before the Board, or a committee selected by the Board for such purpose.

I. Variances. If the Board finds in favor of the Architectural Committee upon appeal of a disapproval of plans and specifications pursuant to the Section entitled "Appeal" of this Article or in the event the Board finds a noncompliance with the provisions of this Article upon review of a decision by the Architectural Committee after an inspection pursuant to the Section entitled "Failure to Submit Plans; Nonconformity" of this Article, the Board may authorize a variance from compliance with the architectural controls set forth in this article when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental consideration may require; provided, however, that no variance from the use restrictions contained in this Declaration may be granted. Such variances must be evidenced in writing, and must be signed by a majority of the members of the Architectural Committee. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Improvement and particular provision of this Article covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all government laws and regulations affecting his use of his Lot or any Improvement including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by any governmental or municipal authority.

### ARTICLE III ASSESSMENTS

A. Covenant of Personal Obligation of Assessments. The Declarant, for each lot owned, hereby covenants, and every Owner of every Lot by acceptance of the deed or other instrument of conveyance thereof including real estate contract (whether or not it shall be so expressed in such deed or other instrument of conveyance) is deemed to personally covenant and agree, jointly and severally, and hereby does so covenant and agree, to pay to the Association: (a) monthly assessments, (b) special assessments, and (c) default assessments applicable to such Lot; such assessments to be established and collected as hereinafter provided. No Owner may waive or otherwise escape personal liability for the payment of the assessments provided for herein by non-use of the Common Area or by abandonment or leasing of such Owner's Lot.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, convenience, and general welfare of the owners, including the improvement and maintenance of the Common Area.



Proper uses of the assessments levied by the Association shall include, but are not limited to, the expenditures of funds for taxes, fees, expenses, charges, levies, premiums, expenditures, or other costs incurred by the Association for:

- (1) Installation, maintenance and repair of common path, walkways, and/or private roads;
- (2) Providing services to the Common Area such as tree care, mowing grass, caring for the grounds and sprinkling and irrigation system, landscaping, shrubs, grass, walkways and pathways;
- (3) Carrying out the powers and duties of the Association;
- (4) Purchase of insurance for the Association;
- (5) Management of the Association;
- (6) Carrying out the duties of the Association as outlined in Attachment "A" - Resource Protection Plan and Attachment "B" - Agreement to Maintain Stormwater Facilities.
- (7) Any other purposes and uses that the Board shall determine to be necessary to meet the primary purposes of the Association, including the establishment and maintenance of reserves for repair, maintenance, taxes, and the other uses specified above.

C. Assessment Years. The first assessment year for the levying of the Association's monthly assessments shall commence upon the date of the recording with the Thurston County Auditor, Thurston County, of the Declarant's first conveyance of the Common Area to the Association (provided, however, that if the date of recording of such conveyance of the Common Area shall be on the first day of a month, then such date shall be the commencement date for the first Assessment year) and continue thereafter until the following 31st of December. Subsequent assessment years shall thereafter commence on the first day of January and continue until the following 31<sup>st</sup> of December.

D. Amount of Monthly Assessments.

Class A. The Association's monthly assessments to be levied by the Association on all Class A Lots with single-family residences thereon for the first six (6) months after the date of recording of this Declaration shall be in an amount, as determined by the Board, not to exceed Forty & Five Dollars (\$45.00) per month, payable quarterly, in advance. Thereafter, the maximum monthly assessments for any particular assessment year shall be in such amount, as is determined in accordance with Section E below.



Each Owner shall, concurrent with its acquisition of its Lot, deposit with the Association a sum equal to three (3) months' assessments as a working capital fund in addition to payment of the first monthly and other assessments. This fee shall be due on each and every transfer of title, on each and every lot and will be used for, but not limited to, improvements, repairs and replacements in the Common Areas.

Class B. For the limited purpose of determining the monthly assessment, Class B Lots shall be assessed in the manner prescribed for Class A Lots effective the first day of the month following the date the building permit is signed off as finalized for the residence located thereon. Prior to that time, each Class B Lot shall be assessed at the monthly rate of Ten Dollars (\$10.00).

Class B lots shall not be subject to the 'Working Capital' Assessment.

E. Determination of Amount of Monthly Assessments. So long as the Association's monthly assessments for a particular assessment year shall not exceed the maximum monthly assessments for the first six months as provided in Section D above, or thereafter be increased by the Board by more than ten percent (10%) per annum, the Board may determine and levy such monthly assessments without a vote or approval being required of either Class of voting membership of the Association. If, however, the Board shall desire to levy monthly assessments to accomplish non-essential improvements or activities or a particular assessment year which shall be in excess of the amount of the monthly assessments for the assessment year immediately preceding the particular assessment year plus ten percent (10%), then the Board shall give written notice thereof to all owners at least 30 days in advance of the commencement date of the particular assessment year and the approval of sixty-six and two-thirds percent (66-2/3%) of the Class A members and the approval of the Class B member, if any, shall be required. Provided, however, if the Board determines a special assessment is necessary to carry out required maintenance activities or to provide for emergency actions necessary for the health, safety, or welfare of the Association such assessment may be increased without approval of either the Class A or Class B membership of the Association. If the Board shall not determine and levy monthly assessments for a particular assessment year in accordance with the foregoing sentence, then the monthly assessments for that particular assessment year shall be deemed to be the same as the monthly assessments for the assessment year immediately preceding that particular assessment year.

F. Special Assessments. Generally, in addition to the monthly assessments authorized above, the Board may, at any time and from time to time, determine and levy in any assessment year a special assessment applicable to that particular assessment year for the purpose of defraying, in whole or in part, the costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacement, or maintenance of the Common Area.



G. Due Dates for Assessment Payments & Late Fees Unless otherwise determined by the Board in an adopted Policy, the monthly assessments and any special assessments which are to be paid in installments shall be paid quarterly, in advance, and shall be due and payable to the Association at its office, without notice, on January 1<sup>st</sup> for the period of January-March; on April 1<sup>st</sup> for the period of April-June; on July 1<sup>st</sup> for the period of July-September; and on October 1<sup>st</sup> for the period of October-December.

If any such assessment shall not be paid within fifteen (15) days after it shall have become due and payable, then the board may assess a "late charge" thereon in an amount not exceeding Fifteen Dollars (\$15.00) to cover the extra expenses involved in handling delinquent assessment payments and to encourage timely receipt of payments. Further, all such delinquent assessments shall bear interest as hereafter provided. Payments shall be applied in the following order: past due regular assessments, past due special assessments, late fees, attorney or collection costs, current assessments, current special assessments and finally, future assessments.

H. Lien. All lots in Evergreen Heights shall be subject to the charges and assessments provided for in and for the purposes set forth in the Articles of Incorporation and By-Laws of Evergreen Heights Owners' Association, a Washington non-profit corporation. Said corporation shall have a lien against all lots in said subdivision for said charges and assessments, including interest at the lesser of twelve percent (12%) per annum or the maximum allowable by law on all such charges and assessments that are not paid when due. If said charges and assessments levied by the corporation shall not be paid within four (4) months after they become due and payable, then in addition to the remedies set forth in the Articles of Incorporation and By-Laws, the corporation may proceed by appropriate action to foreclose said lien. In such foreclosure action and corporation shall be entitled to recover the cost of title search and court costs, together with attorney's fees in such amount as the court may adjudge reasonable in such action. Any first mortgage liens placed upon any of said lots which are recorded in accordance with the laws of the State of Washington shall be from the date of the recording of such mortgage superior to such assessments and the liens provided for herein that are levied by the corporation subsequent to the date that said first mortgage is recorded.

#### ARTICLE IV MODIFICATION OF COVENANTS

These covenants may be modified by an instrument in writing signed by the owners of 75% or more of the lots included in Evergreen Heights, which instrument shall be recorded to be effective.



**ARTICLE V  
TERM AND CONSTRUCTION**

These covenants, conditions, and restrictions shall run with the land and shall be binding upon all parties and persons owning lots or an interest therein as stated above and all persons and parties claiming under these covenants, conditions, and restrictions for a period of 20 years from the date these covenants are recorded, after which these covenants shall be automatically extended for successive periods of 10 years each in perpetuity unless an instrument signed by the owners of 75% or more of the Lots has been recorded altering such covenants in whole or in part.

**ARTICLE VI  
ENFORCEMENT**

Enforcement of these covenants, conditions, and restrictions may be by proceeding at law or in equity against any person or persons violating or attempting to violate such covenants, conditions, and restrictions, and such actions may be to restrain the violation or to recover damages for each violation.

**ARTICLE VII  
ATTORNEY FEES**

In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto reasonable attorneys' fees and costs of such suit as determined by the court or by arbitration as part of the judgment.

**ARTICLE VIII  
ANNEXATION**

A. By the Association. The Association may at any time and from time to time annex additional residential properties and common area to the Property and may add additional members to its membership under the provisions of Article III of the Articles of Incorporation, provided, however, that such annexations shall require the approval of at least two-thirds of the Class A voting members, in person or by proxy, at a meeting duly called for such purpose and the approval of the Class B member thereof.

B. By Declarant. If at any time or times prior to December 31, 2012, Declarant, or its successors or assigns, should develop any additional property or properties contiguous to the Property then such additional property or properties may, at the sole



discretion of Declarant, or its successors or assigns, be annexed to the Property and become subject to the provisions of this Declaration without requiring, needing, or obtaining the approval of the Association, the Board, or any owners. Any Instrument of annexation hereunder by Declarant, its successors and assigns, may also contain additional or other covenants, conditions, restrictions, easements, reservations, and other provisions therein which are applicable to the property or properties thereby being annexed.

**ARTICLE IX  
EASEMENTS RESERVED TO DECLARANT**

A. Amendment to Eliminate Easements. Any attempt to modify or eliminate this Section or any other easement or right reserved to Declarant in this Declaration shall require the prior written approval of Declarant.

B. Nature of Easements. Unless otherwise set forth herein, any easement reserved to Declarant herein shall be nonexclusive.

C. Development Rights and Easements Reserved to Declarant.

1. *Utilities and Storm Drainage*. Easements over the Property for the purpose of constructing, operating and maintaining thereon, therein or thereunder roads, streets, walks, driveways, storm drainage systems, parkways and park areas and for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and storm drainage facilities as are needed to service the Property are hereby reserved by the Declarant together with the right to grant and transfer the same; provided, however, such easements shall not unreasonably interfere with the use and enjoyment by the Members of their residences or of the Common Area. The Declarant shall repair any damage to and complete any restoration of the Property caused or necessitated by such installation and maintenance within a reasonable time after the occurrence of such damage or need for restoration.

2. *Utilities Shown on Plat Map*. There is hereby reserved to Declarant, together with the right to grant and transfer the same, easements over the Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as shown on any recorded final tract or parcel map covering the Property or future annexed property or to connect future annexed properties to the existing systems.

3. *Use of existing improvements*. Without limiting the rights reserves to Declarant in paragraphs 1 and 2 above.



a) Such rights are reserved for the benefit of and with respect to the property described on Attachment D attached hereto and by this reference incorporated herein, whether or not such property is annexed to the Property pursuant to Article VIII.

b) Such rights expressly include the right to hook up to, use, and otherwise benefit from all utilities, roads, streets, walks and other improvements (including, without limitation, all facilities and systems for stormwater treatment, conveyance, detention and retention), whether currently existing or constructed in the future.

## ARTICLE X SEVERABILITY

Invalidation of any one or more of these covenants by judgment or court order shall in no way affect or alter any of the other provisions which remain in full force and effect.

