

PART TWO

COVENANTS CONDITIONS AND RESTRICTIONS

DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS

APPLICABLE TO ELLIOT POINTE
(FORMERLY EAST GOAT TRAIL HEIGHTS)

WITNESSETH

WHEREAS, Declarant is the owner of that certain property in the City of Mukilteo, Snohomish County, State of Washington, specifically described and identified in the Plat of Elliot Pointe recorded under Snohomish County Auditor's File No. 8502285021; and

WHEREAS, Declarant, pursuant to that certain Agreement and Declaration of Trust dated August 10, 1984, and in his own right as owner, has the authority and power to impose such covenants, conditions, and restrictions on said plat, which in his opinion are necessary, after receiving the approval of the holders of the majority ownership of lots within said plat: and

WHEREAS, Declarant has received the approval of the holders of the majority ownership of lots within the plat, and Declarant deems it necessary to subject the property to certain covenants, conditions, and restrictions; and

WHEREAS, Declarant intends by this declaration to replace any and all private covenants, conditions, and restrictions, to which the property has heretofore been subjected, and to that end all covenants, conditions, and restrictions heretofore made between private non-governmental parties affecting the property are hereby declared null and void;

NOW, THEREFORE, Declarant hereby declares that, in addition to all applicable governmental regulations, all of the property described above shall be held, sold and conveyed subject to the following covenants, conditions, and restrictions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in or to the Described property or any portion thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to Elliot Pointe Homeowners' Association, currently an unincorporated association of all owners, its successors and assigns.

Section 2. "Elliot Pointe" shall mean and refer to the real property described as the Plat of Elliot Pointe recorded in Volume 46 of Plats, page 13, records of Snohomish County, State of Washington, under Auditor's file Number **8502285021**.

Section 3. "Declarant" shall mean and refer to the Trustee of property owner within the Plate of Elliot Pointe, as well as the owner of property within the Plate of Elliot Pointe, their successors and assigns.

Section 4. "Declaration" shall mean and refer to the contents of this entire document and amendments.

Section 5. "Owner" shall mean and refer to the record owner, including the Trustee, whether one or more persons or entities, of fee or undivided fee interest in any lot or any dwelling unit located thereon, including grantor and contract purchasers, but shall not include a mortgagee or beneficiary under a deed of trust. Owner shall also include builders who are purchasing lots for construction and resale.

Section 6. "Lot" shall mean and refer to any platted single-family residential lot located within the Plat of Elliot Pointe.

Section 7. "Common Property" shall mean and refer to all real property owned by the Association or over which the Association has a maintenance obligation.

ARTICLE II

Common Property

Section 1. Tract "L".

Tract 'L' of the Plat of Elliot Pointe, shall be owned and maintained by the Association. The trees, shrubs, plants and soil shall be kept in proper condition at all times.

Section 2. Common Open Space.

The common open space (Tracts A,D,F,H,&J) shall be owned and maintained by the Association. Upon request by the City of Mukilteo the common open space will be deeded to the City at no cost.

Section 3. Detention Pond.

The "Detention Pond Greenbelt Area" shall be maintained by the Association until such time as a storm drainage utility is created by the City of Mukilteo and maintenance of this area is accepted by the storm drainage utility.

Section 4. Future Dedications.

The Association has the power to accept additional land dedications by its members to further the common purposes of the plat. In the even the Association accepts future dedications, said property shall become common property of the Association and shall maintained by the Association.

ARTICLE III

Deferred Final Plat Approval Conditions

Section 1. Airport Noise Impact Area.

The Plat of Elliot Pointe lies within the Paine Field Airport "periodic noise impact area" and residents may expect to experience annual noise exposure levels between LON 55 and LON 60, according to the year 2000 Paine Field Operations Forecast.

Section 2. Sidewalks on West Side of Goat Trail Road.

At their sole expense, the owners shall replace interim walkways and install a five-foot wide concrete sidewalk on the west side of Goat Trail Road, from the south line of Lot 86 (extended west) to the south right-of-way line of 70th Street SW and on the south side of 70th Street SW from 49th Avenue West to the west right-of-way of Goat Trail Road. The construction of said sidewalks shall take place at such time as 40 percent of all lots in the Plat of Elliot Pointe are built upon and occupied.

Section 3. LID Non-Protest Agreement.

The owners shall support improvement to the right-of-way in the general neighborhood area lying south of 6th Street, north on 76th Street SW, east of Mukilteo Speedway, and west of Japanese Gulch. The form of such support shall depend on which of the Following three events occurs first:

(a). General LID for North-South Corridor. In the event the North-South Traffic Corridor proposed by Mukilteo's comprehensive Transportation Plan is to be constructed east of the Plat of Elliot Pointe at the time certain, the owner shall support and not protest against the formation of an LID to assess their properties for their fair and equal share of all cost associated with such in proportion to the other properties in the above described general neighborhood area.

(b). General LID for General Neighborhood Streets. In the event the proposed North-South Traffic Corridor is not to be constructed at any time certain, the owners shall support and no protest against the formation of an LID to assess their properties for their fair and equal share of all costs associated with improving local right-of-way in the above described general neighborhood area.

(c). Plat LID for General Neighborhood Streets. In the event, neither of the above occurs by such time as 40 percent of all lots in the Plat of Elliot Pointe are built upon and occupied, the owners shall initiate or not protest against the formation of an LID consisting solely of owners within the Plat of Elliot Pointe which shall pay for all costs associated with:

1. Condemning and widening then-existing roadway to 24 feet (where possible without constructing retaining structures) on:
 - a. Goat Trail Road between Mukilteo Speedway and 70th Street SW.
 - b. The portion of 70th St. SW between Goat Trail Road and 48th Avenue West.
 - c. The portion of 48th Avenue West between 70th Street SW and 73rd Street SW

¹ Sections 2-4 were resolved with the City and the HOA. These sections cannot be removed, however, without a 67% vote by the members, as they were included in the CC&Rs.

- d. The portion of 73rd Street SW between 48th Avenue West and 46th Avenue West; and
 - e. The portion of 46th Avenue West between 73rd Street SW and 76th Street SW
2. Installing concrete sidewalks, at least five (5) feet wide on those portions of Goat Trail Road and 70th Street SW abutting the plat of Elliot Pointe.

Section 4. Agreement to Join in Petition to Vacate.

In the event that adjacent property owners petition the City of Mukilteo to locate portions of the various street right-of-way along the north and east borders of the Plat of Elliot Pointe, the owners agree to join in said petitions for vacation. ²

ARTICLE IV

Elliot Pointe Homeowners' Association

Section 1.

(a) The Elliot Pointe Homeowners Association is an unincorporated association of all owners. It is contemplated that the Declarant, his successors or assigns will file Articles of Incorporation contemporaneously with the execution of this agreement in order to incorporate the Association under the laws of the State of Washington relating to nonprofit corporations. Declarant, his successors or assigns shall also adopt by-laws which, together with the articles will govern the affairs of the Association.

(b) If the Association for any reason is subsequently dissolved as a corporate entity, a nonprofit, unincorporated association consisting of all owners shall forth with and without further action or notice be formed and succeed to all rights and obligations of the Association. The unincorporated association shall be known as Elliot Pointe Homeowners' Association and its affairs shall be governed by the laws of the State of Washington and, to the extent not inconsistent, by the articles and by-laws, respectively, as if they were created for the purpose of governing the affairs of an unincorporated association. As referred to herein, the term "Elliot Pointe Homeowners Association" shall include the unincorporated association set forth in this subparagraph.

² Sections 2-4 were resolved with the City and the HOA. These sections cannot be removed, however, without a 67% vote by the members, as they were included in the CC&Rs.

Section 2. Membership and Votes.

Each owner shall be a member of the Association and shall be entitled to vote for each lot of ownership. The owner of one parcel or dwelling unit shall have only one membership and one vote in the Association even though such owner consists of more than one entity or person. If there is more than one entity or person constituting the owner of a particular parcel dwelling unit, all such entities or persons shall designate one thereof to represent the owners, and the vote of such representative shall be deemed to be for and binding on all entities or persons constituting the owner. If no such representative has been unanimously designated by all entities or persons constituting the owner, such owner shall have no vote in the Association until such a representative has been so designated.

Section 3. Duties, Obligation, Powers, and Authority of the Elliot Pointe Homeowners' Association.

The Association shall have the duties, obligations, powers and authorities set forth in the articles and bylaws and in this declaration, subject to the limitations and restrictions included herein.

Section 4. The Elliot Pointe Homeowners' Association Rules.

(a) The Association may, from time to time adopt, amend and repeal rules and regulations, to be known as the Association Rules governing any and all matters which affect the owners and are not inconsistent with the terms hereof.

(b) The Association Rules may not arbitrarily discriminate between the owners.

(c) Copies of the Association Rules, as from to time amended, certified by the Secretary or any Assistant Secretary of the Elliot Pointe Homeowners' Association, shall be delivered to each owner.

Section 5. Liability.

No member of the Elliot Pointe Board of Directors or Architectural Control shall be personally liable to any owner, guest, or to any other person, including grantor, or any error or omission of the Elliot Pointe Homeowners Association or the Architectural Control Committee, its representatives and employees; provided, however, that such member has acted in good faith in light of the actual knowledge possessed by him.

Section 6. Operation Fund and Assessments.

(a) There shall be an operating fund, into which the Association shall deposit all monies received by it from any source and from which the Association shall make disbursements in performing its functions. It is contemplated that the sources of funding will be primarily assessments on the owners.

(b) Assessments. Thirty (30) days prior to the commencement of each fiscal year the Association shall estimate the cost and expenses to be incurred by it during the succeeding fiscal year in performing its functions, including a reasonable provision for contingencies. This estimate shall be assessed to the owners as an assessment. Each parcel and dwelling unit shall be assessed according to a prorate share of the total amount of each such assessment. If at anytime during any fiscal year the assessment proves inadequate for any reason, including nonpayment of any owner share, the Association may levy an additional assessment in the amount of the inadequacy, which shall be assessed to the owners as above described. Assessments shall be due and payable by the owners to the Association in equal quarterly installments, on or before the first day of each quarter during the fiscal year or, at the election of an owner with approval of the Association, less frequently, provided that cash flow to the Association for any given period shall not be jeopardized.

(c) Special Assessments. The Association may levy a special assessment against any owner whose acts caused monies to be expended from the operating fund by the Association in performing its functions under this declaration or the Association Rules. The assessment shall be in the amount expended together with any consequential costs, and shall be immediately due and payable to the Association when levied.

(d) Default in Payments of Assessments. Each assessment provided for herein shall be a separate, distinct and personal debt and obligation of the owner of the parcel or dwelling against which it assessed. If the owner does not pay the assessment or any installment when due, the owner shall be in default, and the amount of the assessment not paid, together with the amount of any subsequent default, plus interest at twelve (12%) percent per annum and costs, expenses, and reasonable attorney's fees incurred by the Association with or without suit, shall become a lien upon the parcel or dwelling unit of the defaulting owner, upon recordation by the Association of a Notice of Default. The lien shall be subject and subordinate to the lien of any mortgage upon the parcel or parcels of the owner which is made in good faith and for value and is recorded prior to the recordation of the notice of default. The Association shall record the Notice of Default, and may commence proceeding to enforce the lien within three (3) months following recordation. The foregoing remedies shall be in addition to any other remedies provided at law or hereunder. Each entity or person holding an interest in any lot shall be jointly and severally liable for all obligations as an owner hereunder.

ARTICLE V

Architectural Control Committee

Section 1. Membership of Architectural Control Committee.

The initial Architectural Control Committee (hereinafter ACC) shall be composed of:

Carmaletta Peterson, Chairman;

Robert Shaw, Sharon Price, Hans Wold

A majority of the A.C.C. may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining member shall have full authority to designate a successor. Neither the members of the committee nor its designated representative shall be entitled to any compensation for services performed pursuant to the covenants, or hereinafter. The term of each member shall run from date of filing the Plat of Elliot Pointe with the Snohomish County Auditor and shall run for one (1) year. Election of committee members shall be conducted by the Association on an annual basis.

Section 2. Liability.

Neither the A.C.C. nor any member shall be liable to the Association or to any lot owner for any damage, loss or prejudice due to approval or failure to approve any matters submitted to the A.C.C. provided, however, the member must have acted in good faith in light of the member's actual knowledge at the time. Not with-standing the foregoing, the A.C.C. or any member, may consult with the Association with respect to any plans, drawings, or specifications, or any other proposal submitted to the A.C.C.

Sections 3. Approval Requirement.

The following activities shall not take place on any land within Elliot Pointe without the prior approval of the A.C.C.

(a) Clearing, grading, removal, or cutting of natural vegetation or stumps.

(b) Constructing a building, fence, bulkhead or other structure or adding to, or altering the exterior of a building, fence, or bulkhead or other structure.

Section 4. Administration.

List of documents and information required to be submitted to the A.C.C. is set forth in **Article VI**. The A.C.C. may adopt rules and guidelines consistent with this declaration for carrying out its duties

hereunder. Each owner shall be obligated to be familiar with said rules and guidelines. If the A.C.C. committee feels it necessary to enlist the expertise of a qualified architect (licensed), it shall be the duty of the committee to inform the property owner of this necessity and all costs will be borne solely by the property owner. In the event the A.C.C. fails to approve or disapprove documents submitted to it within thirty (30) days, said documents shall be automatically approved and this article will be deemed to have been fully complied with.

ARTICLE VI

Building Restrictions

Section 1.

Prior to commencing site preparation or construction of any improvements the Lot Owner must submit the A.C.C. for its approval two copies of his site plan, building plans, specifications showing the nature, shape, height, materials, colors and location of the proposed improvements, and a landscaping plan. The external design of the proposed improvement must be in harmony with existing structures and the location reasonable in relation to lot topography, surrounding structure and streets.

Section 2.

Any dwelling or structure erected or placed on any land in Elliot Pointe shall be completed as to internal and external appearance, including finish painting, lawns and landscaping within twelve (12) months from date of start of construction, except for reasons beyond the control of the builder, in which case the A.C.C. may in its unlimited discretion permit a longer period after written request to do so.

Section 3.

Temporary structures shall be permitted during the period of construction of a dwelling house if approved by the A.C.C., but such temporary structure shall be removed within thirty (30) days after completion of said dwelling house or within six (6) months after the date said temporary structure was erected, which ever period expires first.

Section 4.

No home, building or structure may be constructed in Elliot Pointe by other than a contractor licensed and bonded as a general contractor under the statutes of the State of Washington unless prior approval of the A.C.C. has been given. All homes, building or structures constructed within Elliot Pointe

shall be built of new material, with the exception of decor items such as using brick, weathered planing, and similar items, the determination of the A.C.C. to be rendered as to whether a used material is a decor item or not. Concreted driveways or an A.C.C. approved alternative will be required on all driveways. Cedar siding and wood shake roofs are required unless otherwise approved by A.C.C.

Section 5.

No residential single-family building shall be located on any lot nearer to the front, side, or rear lot lines or nearer to a street than the minimum building setback lines specified by government ordinance. Provided governmental regulations do not hold to the contrary, eaves, steps and open porches shall not be considered part of the building.

Section 6.

No trees other than alder may be removed from within the above setback areas without prior approval of the A.C.C. except for those trees with a trunk diameter of less than 10 inches and those which may be required for planned landscaping areas, driveways and utilities. Thinning of heavy and low growing branches and limbs is acceptable with approval of the A.C.C.

ARTICLE VII

Land Use Restrictions

Section 1.

Lots may be used only for single-family residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than for one detached single-family dwelling not to exceed two-stories, (for water view lots see Article VII, Section 9), a private garage for not than three cars, and such other building as may be approved by the A.C.C.

Section 2.

No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn or any other outbuildings shall be used on any land in Elliot Pointe as a residence, either temporarily or permanently, provided, however, that a temporary structure or trailer may be used for security personnel or by licensed builders to provide security protection to their buildings under construction. Except for builder's temporary sales offices and model homes, all lots may be used for residential purposes only.

Section 3.

All signs displayed to public view in Elliot Pointe shall be in conformance with local governmental regulation, and in addition must be approved by the A.C.C. except for the following:

- (a) One 5 sq. ft. or less sign advertising a lot for sale.
- (b) One 25 sq. ft. or less sign erected by a builder or representative of to advertise homes during the construction and sales period.

Section 4.

No slope area (greater than 30%) shall be denuded of its natural vegetation. The purpose of this covenant is to prevent erosion of the slope areas.

Section 5.

Storm water generated by, and as a result of, all new construction and impervious surfaces shall be collected and disposed of in a manner approved by the City Engineer prior to insurance of a building permit.

Section 6.

No outdoor overhead wire or service drop for the distribution of electric energy or for telecommunication purposes, nor any pole, tower or other structure supporting said outdoor overhead wires shall be erected, placed or maintained within Elliot Pointe. All owners and builders shall use underground service wires to connect their premises and the structures built there on to the underground electric or telephone utility facilities.

Section 7.

The following activities shall not take place in or upon any lots within Elliot Pointe:

- (a) No garbage, refuse, rubbish or cuttings shall be deposited upon or left on a lot. Garbage cans must be sunken or stored in garages or attractive housing, properly screened from adjacent properties.
- (b) No noxious or offensive activity shall take place in any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No trucks, motor homes, mobile homes, campers, trailers, boats, recreational vehicles or inoperable cars shall be stored on any land in Elliot Pointe with in view of any road way or residential lot.

Section 8.

No fence, wall or hedge shall be erected or placed on any lot nearer to any street than the building setback line, except that nothing shall prevent the erection of a necessary retaining wall, the top of which does not extend more than 2 ft. above the finished grade at the back of said wall. Fences bordering greenbelt areas shall be of natural materials not to exceed six feet in height. No chain link fences shall be allowed.

Section 9.

No dwelling shall be constructed or erected on any lot of a square footage less than 1400 sq. feet.

Section 10.

It is important that all lot owners shall restrict the height of dwellings and improvements on their lots and the height of trees and vegetation growing thereon to the end that the water view of other lot owners shall be preserved to the greatest extent reasonably possible. The A.C.C. shall have the responsibility for determining whether trees, vegetation or proposed improvements on a lot or lots unreasonably impair the water view of other lots. Should the A.C.C. determine that there is such interference by a proposed improvement. With respect to trees and other vegetation, it shall send a notice in writing to the lot owner, which notice shall set forth to the extent to which the tree or other vegetation shall be pruned or removed. If within thirty (30) days after receipt of such notice the owner has not caused trees or other vegetation to be pruned or removed to the extent required by the A.C.C., the Association may do such work provided that the Association, if it desires, may charge the cost of such work to the lot owner who has failed to carry out the pruning or removal of such trees or other vegetation.

Section 11.

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot except that dogs, cats or other household pets may be kept (not to exceed two of each) provided that they are not kept, bred, or maintained for any commercial purpose. To the extent they are more restrictive, The City of Mukilteo Animal Control Laws shall prevail. No dangerous animals may be kept by any owner.

Section 12.

All buildings and other structures shall be maintained in good condition, and kept properly painted or stained. All trees, hedges, shrubs, flowers and lawns shall be regularly maintained and cultivated.

Section 13. Vacant Lots.

It is the intent of this restriction that vacant lots be maintained in a reasonable presentable condition, Therefore, the Association shall have the Right at all times to enter upon any lot or building site

that is vacant and unplanted or untenanted by the owner, after 10-days notice to the owner, to remove debris, weeds or other dead plants, cultivate and or maintain hedges, trees, shrubs, plants or lawns without the permission of the owner and to charge the expense thereof to the owner as an assessment. The Association will have the right with respect to such assessment as set forth in Article IV as to annual and special assessments.

Section 14. Sidewalks

No homeowner shall place or allow objects to be placed on the sidewalk in front of or adjacent to his residence which obstructs the normal flow of pedestrian traffic.

ARTICLE VIII

Interpretation, Administration, and Enforcement of these Covenants

Section 1.

The Association or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by the owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The violator(s) shall be responsible for all costs incurred in enforcing this Declaration, including reasonable attorney's fees.

Section 2.

The Association Board of Directors, A.C.C., and any agents shall not be held liable to any person for acts and missions done in good faith, in the interpretation, administration and enforcement of these covenants.

Section 3.

The Association, A.C.C., and any agents may at all reasonable times enter upon any lot **for the purpose** of performing their functions under this Declaration. They shall also have a right of entry onto the lot to accomplish such work and the reasonable cost of such work shall be the responsibility of the lot owner.

ARTICLE IX

Miscellaneous

Section 1. Amendments

The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended until terminated by an instrument approved by sixty-seven (67%) percent of the votes entitled to be cast. This Declaration may be amended at any time by an instrument approved by sixty-seven (67%) percent of the votes entitled to be cast.

(a) For the purposes of this article owners of single-family residential lots shall have one (1) vote per lot.

(b) Any termination or amendment under Section 1 of this Article must be executed and acknowledged by the Association and recorded with the appropriate governmental offices: It shall describe the amendment, state that it was duly adopted a regular or special meeting of the Association membership and that the required votes for approval were obtained.

Section 2. Government Access

Declarant hereby grants to the Sheriff's department, Fire District, and to other government agents and officials with jurisdiction over Elliot Pointe, the non-exclusive right to enter upon the common property for the purpose of carrying out their official duties.

ARTICLE X

Severability

Section 1.

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

ARTICLE XI

Commencement of Association

Section 1.

In the event Declarant does not incorporate the Association as contemplated in Article IV, Section 1 herein, the lot owners within the Plat of Elliot Pointe, City of Mukilteo, Snohomish County, State of Washington, shall organize and incorporate a nonprofit homeowners' association at any time prior to but no later than June 1, 1985.

ARTICLE XII

Parking of Motor Vehicles

Section 1.

No owner, driver, or other person having charge of any motor vehicle shall permit said vehicle to be parked on the street, alongside of, adjacent to, or in front of any lot within Elliot Pointe for a period exceeding forty-eight (48) hours. If any vehicle is parked or stands for a period exceeding forty-eight (48) hours, the vehicle shall be deemed to constitute a hazard or obstruction to traffic or an abandoned vehicle, and may be impounded by authority of the Board of Directors, and all costs associated with such impoundment shall be deemed a special assessment in accordance with Article IV, Section 6(c).