

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**THE LAKES AT MERCER ISLAND HOMEOWNERS ASSOCIATION**

THIS DECLARATION, made on the date hereinafter set forth by John F. Buchan Construction, Inc. and William E. Buchan, Inc., hereinafter referred to as “Declarant”.

WITNESSETH:

WHEREAS, Declarant is the owner of certain properties situated in the City of Mercer Island, County of King, State of Washington, more particularly described as:

The plats of The Lakes At Mercer Island Division 1 and The Lakes At Mercer Island Division 2, according to plats thereof recorded in volume 131 of Plats, pages 11-22, respectively, records of King County, Washington.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, 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 the described properties or any part 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 The Lakes At Mercer Island Homeowners Association, its successors and assigns.

Section 2. “Owner” shall mean and refer to the record owner, whether one or more persons or entities of the Declarant, of a fee simple title to any lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. “Properties” shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. “Common Area” shall mean those portions of all property and real property (including the improvements thereto) which are held in equal and undivided interest by the property owners at The Lakes At Mercer Island for the benefit of the members of the Association. The areas to be held in joint ownership by the property owners of this plat at the time of the conveyance of the first lot are described as follows: Tract A, B, C, D, E, F, G, H, I, J and K, as shown on the recorded plats.

Section 5. “Common Maintenance Area” shall mean those portions of all real property and property (including the improvements thereto) maintained by the Association for the benefit of the members of the Association. The area to be maintained by the Association at the time of the recording of this Declaration is described as follows: Tracts A through K, as shown on the final recorded plats; all streets within the final plats; all planter islands, planting beds, and storm drainage facilities along and within said streets and road right-of-way including street lights (if any); all

lakes and creeks within the final plats; all pedestrian trails within the plats; all entry feature architectural lights; and all landscape improvements, sprinkler system and associated appurtenances located along the SE 72<sup>nd</sup> Street right-of-way in front of Lots 1, 2, 48, 49, and 50 of Division 1. [Amendment 3]

Section 6. “Lot” shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

Section 7. “Declarant” shall mean and refer to JOHN F. BUCHAN CONSTRUCTION, INC. and WILLIAM E. BUCHAN, INC., their successors and assigns if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of Development.

Section 8. “Board” or “Board of Directors” may be used interchangeably and shall mean the duly appointed or elected Board of Directors of The Lakes At Mercer Island Homeowners Association as provided in the Articles of Incorporation and By-Laws of said Association.

Section 9. “Architectural Control Committee” shall mean the duly appointed or elected committee of the Board of Directors as outlined in Article VII of this Declaration, hereinafter referred to as the “Committee”.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners’ Easements of Enjoyment. The ownership of each lot shall include an undivided 1/100<sup>th</sup> interest in the Common Area. No lot owner shall, by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the undivided interest in the Common Area and no lot owner or other person shall have the right to the Common Area partitioned or subdivided.

Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Effect on Insurance. Nothing shall be done or kept in any Common Area which will increase the rate of insurance on the Common Area or other lots or improvements without the prior written consent of the Board. Nothing shall be done or kept in any Common Area which will result in the cancellation of insurance on any part of the Common Area, or which would be in violation of any laws.

Section 3. Alteration of Common Areas and Common Maintenance Areas. Nothing shall be altered or constructed in or removed from any Common Area and Common Maintenance Area except upon the prior written consent of the Architecture Control Committee, and except as otherwise provided in this Declaration. There shall be no construction within the Common Areas except as otherwise provided in this Declaration.

Section 4. Dumping in Common Areas and Common Maintenance Areas. No trash, plant, or grass clippings, or other debris of any kind shall be dumped, deposited or placed on any Common Areas and Common Maintenance Areas.

Section 5. Construction Activity. No building, structure, fence, plan to change the existing grade or elevation of any lot, nor any exterior alteration to any building, structure, or fence, shall be commenced or erected until the plans and specifications therefor have been submitted to and approved by the Architecture Control Committee according to the provisions outlined in Article VII. Any dwelling or structure erected or placed on any lot in this subdivision shall be completed as to external appearance, including finished staining, within four (4) months after date of commencement of construction. Variances may be granted by the Architecture Control Committee.

Section 6. Building Setbacks. No structure shall be located on any lot nearer to the front line than the minimum dwelling setback line required by ordinance. No building shall be erected upon any lot closer than 35 feet to the shoreline of the artificial lakes and creek banks as they existed at the time the lot was purchased, nor closer than 20 sideyard feet to any shoreline and creek banks. For the purpose of this covenant, eaves, steps and open porches shall not be considered as part of the dwelling; provided, however, that this shall not be construed to permit any portion of a dwelling on a lot to encroach upon another lot, or upon easement areas as delineated on the face of the plat or as otherwise recorded.

Section 7 – Building Materials. All homes, and modifications to existing homes, constructed on each lot shall be built with new materials, with the exception of décor items such as used brick, weathered planking and similar items. The determination of the ACC is to be rendered as to whether a used material is a décor item or not.

All roofs shall be subject to the following minimum standards:

- (a) The roofing material shall be (i) #1 sawn cedar shakes or shingles or (ii) such other roofing materials/systems as are approved by the ACC based upon its evaluation that such material imitates the appearance of cedar shakes or shingles. Approval by the ACC of any alternative roofing material does not constitute any warranty by the Homeowners Association of its fitness, longevity or maintainability.
- (b) Homeowners must apply for and receive approval of the ACC for any new or replacement roofing in accordance with the application procedures contained in Article VII hereof.

Section 8. Landscaping and Fencing. No permanent structures or landscaping of any kind, including fences, walls or shrubs, may be built or placed within any of the road right-of-way and utilities and storm drainage easements as delineated on the plats, except as deemed appropriate by the Architecture Control Committee and approved by the Mercer Island City Engineer, and except as noted herein and on the face of the final plats. No tree, or large shrub taller than four feet (4') in height is to be planted by individual lot owners or builders closer than twenty feet (20') to the lake shores or creek banks, unless approved by the Architecture Control Committee. No hedge, fence, wall or other such structure shall be constructed, erected, placed, planted or permitted closer to any platted street than the setback line therefrom, unless approved by the Architecture Control Committee.

Fences, walls or shrubs are permitted to delineate the lot lines of each lot, subject to Architecture Control Committee approval, subject further to said fences, walls or shrubs possible necessity of removal due to use of utility easements as contained on the face of the plat and other easements elsewhere recorded. Fences shall not be closer than twenty feet (20') from any lake shore or bank, unless approved by Architecture Control Committee. No fence erected within this sub-division shall be over six feet (6') in height, unless approved by the Architecture Control Committee. No barbed wire, chain link or corrugated fiberglass fences shall be erected on any lot. All fences, open and solid, are to meet the standards set by the Architecture Control Committee and must be approved by the Committee prior to construction.

*[Amendment 1, subsequently replaced by Amendment 5]*

Section 9. Temporary Residence. Any structure of a temporary character: trailer, basement, tent, shack, garage, barn or any other outbuilding, shall be approved by the Architecture Control Committee.

Section 10. Contractor. No home may be constructed on any lot by other than a contractor licensed as a general contractor under the statutes of the State of Washington without the prior approval of the Architecture Control Committee.

Section 11. Wiring. The wiring to accessory buildings of any type shall be underground.

Section 12. Antennae. No aerial or antennae of any kind shall be placed or erected upon any Lot or affixed in any manner to the exterior of any building or structure. No receiving dishes of any kind shall be permitted.

Section 13. Plan Check/Construction Cleanup Fee. Each lot owner not using John F. Buchan Construction, Inc. or William E. Buchan, Inc. as house builder upon closing lot sale is responsible for clean-up of his own house construction debris and will be required to pay a \$500.00 fee to the Architecture Control Committee, to be used as follows: \$250.00 for house plan check, non-refundable fee, and the other \$250.00 as a damage deposit to be held until house construction is completed. The damage deposit will be used in the event the owner does not fulfill his clean-up responsibility, in which case the Architecture Control Committee will handle the clean-up and deduct the cost of such clean-up from the \$250.00 deposit, as well as his pro-rata share of street washing as needed to maintain the appearance of the plat.

Section 14. Driveways. All driveways and parking areas shall be paved with concrete or other material approved by the Architecture Control Committee.

Section 15. Yard Lamps. Each owner of a lot within the plat of The Lakes At Mercer Island Division 1 and Division 2 shall install, at the sole expense of the lot owner, a minimum of one yard lamp at the driveway entrance to the lot for the purpose of street and driveway illumination. Said yard lamp(s) shall not exceed five feet (5') in height above road grade. Installation, repair and maintenance shall be the sole responsibility of the individual lot owners. Enforcement shall be as provided in Article III, Section 2 herein.

Section 16. Street Lights. Repair and maintenance of street lights within the plats and along SE 72<sup>nd</sup> Street which are not maintained by Puget Sound Power and Light Company shall be the responsibility of the Association.

Section 17. Water. No water is to be extracted from any creeks or lakes for any purpose.

Section 18. Waste Materials. No waste materials are to be placed into the creeks or lakes and creek lot owners are to use their best efforts to insure the continuous and uninterrupted flow of clean water in the creeks.

Section 19. Docks. No docks or platforms of any type shall be allowed.

Section 20. Boats. Each lot owner of a lot directly abutting the lake(s) shall be entitled to use on the lakes of no more than one canoe, kayak, row boat or sailboat (with centerboard up to one and one-half feet deep from water level), owned by said lot owner, of a maximum length of twelve feet (12') each. No boats shall be powered by motors of any kind. Boats shall be stored on the individual lot owners' property when not in actual use.  
*[Amendment 2]*

Section 21. Maintenance of Lakes and Creeks. The maintenance of the lakes and creeks, particularly as to drainage and weed control, shall be the duty of the Association. The Board of Directors may elect to transfer the maintenance responsibilities to a professional management firm. The cost for professional management/maintenance services and all other necessary costs shall be assessed each member, said assessment to be prorated equally among all lot owners. The method of levying and collecting the assessments shall be the same as the method adopted by the Board of Directors.

Section 22. Water Rights Certificate. The Water Rights Certificate issued to \_\_\_\_\_ by the Supervisor of Water Resources of the State of Washington and recorded in King County Auditor's Office, Auditor's Recording No. \_\_\_\_\_, and all rights appertaining thereto, shall be transferred and assigned to the Association. If for any reason it becomes impossible to so transfer said water rights, the undersigned acknowledge, for themselves and their successors and assigns, that the Certificate of Water Rights is held for the benefit of the Association.

Section 23a. *[sic]*<sup>1</sup> Dilution Water. The City of Mercer Island shall have the right to require the Association to buy City water at a rate greater or equal to 20 gallons per minute, or obtain alternative source of dilution water in the event of health hazards associated with the lakes.

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<sup>1</sup> (a) and (b) are not official. The CC&Rs incorrectly numbered two paragraphs as "23".

Section 23b. Signs. No sign, billboard, or other advertising structure or device shall be displayed to the public view on any lot except that one sign not to exceed five (5) square feet in area may be placed on a lot to offer the property for sale or rent, and signs used by a builder to advertise the property during the construction and sales period will be permitted. No political signs will be permitted during campaign periods. The Committee may cause any sign placed on the Properties in violation of this provision to be removed and destroyed.

Section 24. Animals. No animals, except dogs, cats, caged birds, fish in tanks and other small household pets will be permitted on any lot. Leashed animals trained to respond to voice control are permitted within road right-of-ways. At no time will animals be permitted on road right-of-way or other parts of the Properties unattended. All dogs must be kept in fenced areas. Said fenced areas shall be kept clean, odor and noise free, at all times so as not to offend neighbors. Efforts shall be made by the persons accompanying such animal to exercise "scooping" of animal waste. All pens and enclosures must be approved by the Architecture Control Committee prior to construction and shall be kept clean, and odor free at all times. Any complaints must be substantiated by the Architecture Control Committee and remedied by the said homeowner within ten (10) days of written notice. Failure to comply with said notice will result in a fine of \$25.00 per day.

Section 25. Nuisances. No lot shall be used in whole or in part for storage of anything which will cause the lot to appear in an unclean, disorderly or untidy condition, including but not limited to, boats, trailers, recreational vehicles, and disabled vehicles of any kind whatsoever. No boats, trailers or recreational vehicles shall be stored or kept on any lot for a period of more than 24 hours, unless said boat, trailer or R.V. is enclosed or screened such that it is not visible from any street or other lot in the plat. The streets within the plats of The Lakes At Mercer Island Division 1 and 2 shall not be used for overnight parking of any vehicles other than private automobiles. This covenant specifically restricts street parking of boats, trailers or other R.V. vehicles.

Section 26. Trash. No garbage, refuse, or rubbish shall be deposited or kept on any lot or building unit except in suitable containers. All areas for the deposit, storage, or collection of garbage or trash shall be substantially screened from neighboring property and from the common roads and paths. All equipment for the storage or disposal of trash, garbage or other waste shall be kept in a clean and sanitary condition.

Section 27. Sanitary Sewer. The ownership of all six inch (6") and smaller sewer pipe and appurtenances located in Tract "A" of The Lakes At Mercer Island Division 1, together with the cost of maintenance, repair or reconstruction of said pipe, shall be borne by the Association.

Section 28. Storm Drains. The owner or occupant of any building constructed on any lot within the plats of The Lakes At Mercer Island Division 1 and 2 shall maintain in proper working order all roof drains and area storm drains on that lot.

Section 29. Delegation of Use and Responsibilities. Any owner may delegate in accordance with the By-Laws of The Lakes At Mercer Island Homeowners Association, his right of enjoyment of the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. In the event that an owner rents or leases his property, a copy of this Declaration as well as any rules and regulations that may, in time, be adopted by the Association, shall be made available by said owner to the prospective renter at the time of commitment to the rental agreement. Each lot owner shall also be responsible for relaying to any guests and service personnel the contents of this Declaration, as well as any rules and regulations that may be adopted by the Association, as they may relate to appropriate community behavior.

Section 30. Fuel and Mineral Excavation. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any lot; nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot. Oil storage for heating use of the residence is permissible if buried.

Section 31. Individual Sewage Systems. No individual sewage disposal system shall be permitted on any lot.

Section 32. Individual Water Systems. No individual water supply system shall be permitted on any lot.

Section 33. Land Use. No lot shall be used for anything other than residential purposes. No dwelling shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed three stories in height, inclusive of basement, and a private enclosed car shelter for not less than two cars. No single structure shall be altered to provide residence for more than one family.

Section 34. Covenants Running with the Land. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

Section 35. Lake Use. The lakes are for the visual enjoyment of all lot owners. Physical use and enjoyment of the lakes shall be limited to the abutting lot owners and their guests. As shown on the recorded plats, no public access or ingress/egress easements are provided for access to the lakes. Maintenance easements shown on the recorded plats are for maintenance purposes only. *[Amendment 2]*

### ARTICLE III

#### MAINTENANCE OF EXTERIOR AND GROUNDS

Section 1. Exterior Maintenance by Owner. Each lot shall be maintained by the owner thereof in a neat, clean and slightly condition at all times and shall be kept free of accumulation of litter, junk, containers, equipment, building materials and other debris. All refuse shall be kept in sanitary containers concealed from view of any lot, and the containers shall be regularly emptied with the contents disposed of off the Properties. No grass cuttings, leaves, limbs, branches and other debris from vegetation shall be dumped or allowed to accumulate on any part of the Properties, except that a regularly tended compost device shall not be prohibited. No storage of goods, vehicles, boats, trailers, trucks, campers, recreational vehicles or other equipment or device shall be permitted in open view from any lot, EXCEPT this shall not exclude temporary (less than 24 hours) parking of vehicles on the designated driveway areas adjacent to garages on the lots. This paragraph is not meant to disallow permanent (more than 24 hours) parking or storage of vehicles on the lots, but if stored, they shall be adequately screened from view. Screening shall have approval of the Architecture Control Committee. Upon 48 hours notice to the owner of an improperly parked vehicle, the Committee has authority to have towed at owner's expense any vehicles visible from the street that are parked on any Lot or within the public right-of-way for more than 24 hours. Situations may arise that could require permanent open storage of vehicles within the driveway of a Lot for a short term period. Such special situations shall be reviewed by the Architecture Control Committee, and, if approved by the Committee shall be excepted from this covenant for the time period approved.

Section 2. Exterior Maintenance by Association. In the event an owner shall fail to maintain the exterior of the premises and the improvements situated thereon in a manner consistent with established community standards, the Architecture Control Committee shall, upon receipt of written complaint by any owner, have the right through its agent and employees, to enter upon said parcel and to repair, maintain and restore the lot and the exterior of the buildings or any other improvements thereon if the owner thereof shall fail to respond in a manner satisfactory to the Committee within forty-five (45) days after mailing of adequate notice by certified or registered mail to the last known address of the owner. The cost of such repair, maintenance or restoration shall be assessed against the property, and the Committee shall have the right to cause to be recorded a notice of lien for labor and materials furnished, which lien may be enforced in the manner provided by law. In the event the estimated cost of such repair should exceed one-half of one percent (1/2%) of the assessed value of said property and improvements, the Committee shall be required to have the assent of two-thirds (2/3) of each class of voting memberships before undertaking such repairs.

Section 3. Maintenance of Common Areas. There exists certain areas of property and real property within the plats of The Lakes At Mercer Island designated on the face of the plat as Tracts A through K, which are Common Areas designated as open space, creeks and lakes. The Association shall maintain and regulate the use of said Common

Areas for the benefit of each lot within the plat, and shall do all things necessary to preserve and maintain the same for the purpose intended.

A ten foot (10') maintenance easement is reserved along the shores of lakes and along creek banks for the benefit of the Association and the City of Mercer Island. The Association or its appointees shall have the right to go on the land of the lot owners and the easement areas as may be reasonably necessary to maintain or improve the creeks and lakes; no entry shall be deemed a trespass. Normally the cost of said work shall be the responsibility solely of the Association, and the Association is to assess its member therefor. However, if it shall be determined by the Association or the Architecture Control Committee that the need for work is caused by the act or acts of any lot owner or owners, or if the work done is determined by the Association or Committee to be in the nature of a permanent improvement beneficial to the lot owners, the Association may, in its sole discretion, determine the appropriate proration for the cost of the work between the lot owners and the Association.

The Association or Architecture Control Committee shall, as a condition precedent to any action at law or equity being brought, be requested to require that certain work be performed to the creeks or lakes to correct any condition complained of, and any decision made by the Association or Committee shall be conclusive and binding on the parties; if the Association or Committee does not render a decision within 30 days after being requested to do so, the complaining party or parties may then proceed in accordance with the law.

The lake shores and creek banks are to remain approximately as located on the recorded plat. Any relocation of the lake shores or creek banks is to be approved by the Association.

Section 4. Responsibility for Common Maintenance Areas. There exist certain landscaped areas within the plat of The Lakes At Mercer Island that are herein described as Common Maintenance Areas and are designated for screening and community identification purposes. The Association shall be responsible for the maintenance of the Common Maintenance Areas.

Section 5. Common Area/Common Maintenance Area Repair.

- A. Any damage to the Common Areas or Common Maintenance Areas or the improvements therein, including but not limited to, landscaping plantings, fences, berms, streets, trails and utilities, by the property owners, their children or guest, shall be repaired by said property owner within one week. In the event that repairs are not completed within one week, the Architecture Control Committee shall complete the repairs within one week and the owner shall remit the funds for said repairs plus 12% interest per annum to the Architecture Control Committee.
- B. In the event that any damage is caused to City of Mercer Island utilities within the portion of public right-of-way of SE 72<sup>nd</sup> Street in front of Lots 1, 2, 48, 49, and 50 of Division 1, legally described as:

“The southerly 10.00 feet in width of the SE 72<sup>nd</sup> Street right-of-way (60.00 feet in width) lying adjacent to the plat of The Lakes At Mercer Island Division 1, as recorded in Volume 131 of Plats, pages 11 through [sic] 16, records of King County, Washington.”

by property owners, their children or guest, the Architecture Control Committee, or the Association, said parties hereby agree to be jointly and severally liable to the City of Mercer Island for all costs of repair and or replacement of said utilities, including reasonable attorney's fees in the event that suit is commenced to enforce the provisions hereof.

- C. The Association shall be responsible for repairs and maintenance of all landscaped areas in that portion of the public right-of-way of SE 72<sup>nd</sup> street in front of Lots 1, 2, 48, 49, and 50 of Division 1, legally described as:

“The southerly 10.00 feet in width of the SE 72<sup>nd</sup> Street right-of-way (60.00 feet in width) lying adjacent to the plat of The Lakes At Mercer Island Division 1, as recorded in Volume 131 of Plats, pages 11 through [sic] 16, records of King County, Washington.”

- D. The Declarant, his heirs, assigns, successors in interest, the Architecture Control Committee and the Association, for valuable consideration, hereby agree to indemnify, defend and hold harmless the City of

Mercer Island, its agents, servants and employees for any and all loss, cost, (including reasonable attorney's fees) damage, expenses and liability in connection with claims for damages as a result of injury or death to any person and on property resulting from or in connection with the use of the public right-of-way of SE 72<sup>nd</sup> Street in front of Lots 1, 2, 48, 49, and 50 of Division 1, legally described as:

“The southerly 10.00 feet in width of the SE 72<sup>nd</sup> Street right-of-way (60.00 feet in width) lying adjacent to the plat of The Lakes At Mercer Island Division 1, as recorded in Volume 131 of Plats, pages 11 though [sic] 16, records of King County, Washington.”

by the Architecture Control Committee, the Association, and by the property owners, their children or guests.

- E. The Declarant, his heirs, assigns, successors in interest, the Architecture Control Committee and the Association, for valuable consideration, hereby covenant and agree that no claim for damages or lawsuits will be instituted against the City of Mercer Island, its agents, servants, employees or successors in interest for any and all property loss and/or damage in the hereinafter described public right-of-way which may occur as a result of the City of Mercer Island's repair, maintenance, installation, removal, relocation, and/or replacement of any or all public utilities, within the public right-of-way of SE 72<sup>nd</sup> Street in front of Lots 1, 2, 48, 49, and 50 of Division 1, legally described as:

“The southerly 10.00 feet in width of the SE 72<sup>nd</sup> Street right-of-way (60.00 feet in width) lying adjacent to the plat of The Lakes At Mercer Island Division 1, as recorded in Volume 131 of Plats, pages 11 though 16, records of King County, Washington.”

including, but not limited to, landscaping, irrigation equipment or any other activity of the Architecture Control Committee and/or the Association within said right-of-way.

*[Amendment 3]*

Section 6. Maintenance of Private Roads. The streets within the plats of The Lakes At Mercer Island are designated as private roads and are dedicated to all lot owners with equal and undivided interest. Maintenance, and the cost thereof, is to be shared equally by all lot owners. A public easement is provided over all streets for ingress, egress, pedestrian trail and utility purposes.

Section 7. Maintenance and Monitoring of Lakes. Measuring and monitoring the continued impermeableness of the lake bottom of The Lakes At Mercer Island, to assure compliance with maximum allowable lake water loss due to ground infiltration shall occur as herein described. This method for monitoring ground infiltration and water loss involves observing the change in water surface elevation of each lake independently during a zero rainfall period and adjusting the observation for loss of water due to surface evaporation.

Each lake shall have a lake level staff gauge located on the lake face of each control weir. The gauge shall be calibrated in tenths and hundredths to enable measurements of small changes in lake level elevation. At intervals prescribed in the schedule below, the lake recirculating pump and the well pump will be turned off. The lake level and time shall be noted for each lake. A 48-hour observation period shall be allowed to lapse and the lake level reading for each lake shall be taken again. Care must be taken to assure that the 48-hour observation period is scheduled during a period of zero rain to assure that fluctuation of lake level did not occur due to storm drainage. At the end of the observation period, the lake level shall be again noted and the drop in lake level determined by subtracting the final reading from the initial reading.

A pan evaporation reading shall also be obtained from the Weather Bureau corresponding to the lake level observation period. The pan evaporation reading, which is published in inches per day, should be multiplied by two and then subtracted from the 48-hour lake level fluctuation. The resulting figure represents individual lake level loss due to lake bottom infiltration.

The weighted average of this figure for all five lakes should be less than 1.4 hundredths of a foot in 48 hours. The weighted average of lake level fluctuation for all five lakes is obtained by multiplying the lake level fluctuation in inches per 48 hours by the respective surface area percentage of each lake and dividing this figure by 100. The sum



of these five multiplied figures is the weighted average of lake infiltration in inches over the 48-hour observation period. See Exhibit "A" Attached.

When the weighted average of lake fluctuation exceeds 1.4 hundredths of a foot in 48 hours, a determination shall be made of which lake or lakes need to be repaired to return the average to the allowable maximum. The Declarant will be responsible for repairing the lake when necessary during the 5 year period of the defect bond posted by the Declarant, to the City of Mercer Island, said bond being dated May 28, 1985 and in effect until May 29, 1990. Declarant shall be the contact person during the period of the defect bond.

The Lakes At Mercer Island Homeowners Association shall take over responsibility for maintenance and repair after completion of the lake defect bond period. In the event repair and maintenance to the lake will be necessary, an assessment will be made to cover the cost of repair, as provided for in Article VI, Covenant for Maintenance Assessments, Section 12.

Lake Monitoring Sequence

<u>Duration</u>	<u>Frequency</u>	<u>Total Observations</u>
0 – 6 months	Every other month	3
6 – 12 months	Every third month	2
12 – 24 months	Twice per year	2
3 <sup>rd</sup> year	Once a year	1
4 <sup>th</sup> year	Once a year	1
5 <sup>th</sup> year	Once a year	1

After the fifth year, the lake level shall be monitored once a year, for each year thereafter.

The Declarant or Board of Directors may elect to transfer the maintenance and monitoring responsibilities to a professional firm. The cost for professional maintenance and monitoring services and all other costs shall be assessed each member, said assessment to be prorated equally among all lot owners. The method of levying and collecting the assessments shall be as provided for in Article VI, Covenant for Maintenance Assessments, Section 12, as incorporated herein below.

*[Amendment 3]*

ARTICLE IV

EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the front seven feet, the rear five feet and the side two and one-half feet of each lot within the Properties. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere or change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the lot owner, except for those improvements for which a public authority or utility is responsible.

An easement for the benefit of the Association and City of Mercer Island is reserved ten feet (10') in width adjacent to all weirs, dams, lakes and creeks for the purpose of maintenance and repair.

Section 1. Conservancy Easement. Those areas designated as "Conservancy Easement" on the final plat of The Lakes At Mercer Island shall be maintained to the extent possible, in a natural state. The "Conservancy Easement" is also designated as a public utility and public pedestrian easement. The public pedestrian easement shall apply only over actual improved trails as shown on the final plat of The Lakes At Mercer Island Division 1 and 2.

(a) Restrictions. Within the boundaries of the Conservancy Easement no tree or significant ground cover, as those terms are defined now or as they may hereafter be defined in the Mercer Island Land Clearing Code (Ordinance

No. 312 and Ordinance No. 456) shall be cut, removed or destroyed except as specifically provided herein. Existing vegetation within the Conservancy Easement depicted on the final plat shall be maintained, except where removal of said vegetation is necessary to accommodate the installation and maintenance of utilities and trails.

- (b) Safety. Trees and significant ground cover within the Conservancy Easement may be cut, destroyed or removed when such an action is necessary to remove a present danger to life or property. Dead, dying or diseased trees and ground cover, or trees and ground cover which present a fire hazard, may also be removed. Approval of the Architecture Control Committee shall be obtained for such removal except in cases of imminent danger.
- (c) No Dumping. No trash, debris, rubbish or other material shall be dumped or disposed of within the Conservancy Easements.
- (d) Improvements. No structures may be erected within the Conservancy Easement, except for those related to trail and storm drainage improvements.
- (e) Motor Vehicles. No motorized vehicle shall be allowed within the Conservancy Easement except as required for maintenance of public and private utilities or construction of public walkways.

Section 2. Storm Drainage Easement, Location. Those areas designated as “Storm Drainage Easement” on the final plat maps of The Lakes At Mercer Island Division 1 and Division 2.

- (a) Restrictions. No permanent landscaping, structures, or fencing shall be placed on or within designated public utility and storm drainage easements without the written approval of the Mercer Island City Engineer. If, in the opinion of the City Engineer, utilities or storm drainage facilities require maintenance, repair or replacement, the City or its agent shall have the right to enter those lots adjoining said easement(s) for the purpose of maintaining, repairing, relocating or replacing said utilities and storm drainage facilities. Lot owners shall be responsible for the restoration of any private improvements within the easements(s).

Section 3. Roadway Easements. Private roadway tracts shall also serve as easements for the installation and maintenance of public walkways, utilities and storm drainage facilities.

Section 4. Maintenance. Maintenance and repair of private sewer systems, roads, tracts, trails, appurtenances and storm drainage facilities (including lakes) shall be the responsibility of the Association. In the event that said maintenance and repair are not performed to the satisfaction of the City Engineer after timely demand has been made for such action, the City or its agent shall have the right to enter upon the premises and perform the necessary maintenance and repair to protect the safety and general welfare of the public. The City shall charge the owner of each lot within the plat an equal share of the total maintenance and repair costs. The City or the owner of any lot within this plat shall have the right to bring action in Superior Court to require any maintenance or repair deemed necessary by the City Engineer, and to recover the costs incurred by the City in making or effecting repairs or improvements.

## ARTICLE V

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be

members. The vote for such Lot shall be executed as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. Class B member(s) shall be the Declarant and shall be entitled to four (4) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) On December 31, 1990.

Section 3. The Association shall have the right to suspend the voting rights of an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

## ARTICLE VI

### ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation. Each owner of any lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments. Annual and special assessments shall be established and collected in accord with the following provisions. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. Each assessment, together with the interest, costs and reasonable attorneys' fees incurred to collect such assessments, shall be the personal obligation of the individual who is the Owner of the Property at the time that the assessment fell due. *[Amendment 6]*

Section 2. Purpose of Assessments. The assessments imposed by the Association shall be used (1) to promote the recreation, health, safety and welfare of the residents of the Properties, (2) for the improvement, maintenance and repair of Common Areas and Common Maintenance Areas, (3) for legal fees or damages incurred in any action in which the Association or a member of the Board or Architecture Control Committee, acting in behalf of the Homeowners Association is named as a party, (4) for the repair of The lakes, and (5) for any other reasonable expenses incurred by the Homeowners Association. *[Amendment 6]*

Section 3. Maximum Annual Assessment. Until January 1, 1987, the maximum annual assessment shall be THREE HUNDRED DOLLARS (\$300.00) per Lot; FORTY-FIVE DOLLARS (\$45.00) of which shall be allocated and paid to the Declarant for plat management services provided the Association by the Declarant or by a professional management firm. Such allocation of funds to the Declarant shall cease when the Association assumes collection, bookkeeping and other management responsibilities from the Declarant or professional management firm as described in the By-Laws of the Association.

- (a) From and after January 1, 1987, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership. The annual assessment for Division I will commence on March 1, 1986. The annual assessment for Division II will commence upon beginning construction of the first house. *[Amendment 4]*
- (b) From and after January 1, 1990, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose

of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Maintenance Area or any improvements upon the Common Areas not prohibited within this Declaration, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article VI shall be sent to all members not less than thirty (30) days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and will be collected on an annual basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of responsibility for the Common Area and Common Maintenance Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board Directors shall fix the amount of the annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action of law against the Owner personally obligated to pay the same, or foreclose the lien against the property. The Owner is responsible for payment of all attorney fees that are incurred with regard to collection of delinquent assessments. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All property dedicated to, and accepted by, local or public authority shall be exempt from the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Insurance - Lots. The Association shall have no obligation to pay any insurance on the Lots or the structures thereon except as expressly provided herein.

Section 12. Special Assessments for Lake Repair. In addition to the annual and special assessment authorized in the Declaration of Covenants, Conditions and Restrictions for The Lakes At Mercer Island, recorded under King County Recording Number 8505301145, the Declaration or Association may levy, in any assessment year and as needed, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the lake in accordance with Article III, Section 7.

This assessment shall not be levied unless and until repair is required in accordance with Article III, Section 7. The determination of whether the lake shall need repair shall be made by the Declarant or its agent or the Association and its agents. Any such assessment shall not require the assent of 2/3 of each class member. Each owner of any lot

by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association any such special assessment as herein provided. The special assessment, if called for, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

*[Amendment 3]*

Section 13. Special Assessments for Legal Fees and Damages. In addition to the annual and special assessments authorized in the Declaration of Covenants, Conditions and Restrictions for The Lakes At Mercer Island under King County Recording No. 850531145, the Declarant or the Association may levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, (1) the cost of legal fees and costs incurred in legal actions in which the Homeowners Association is a party, (2) the cost of legal fees and costs incurred in any action in which a member of either the Board or Architecture Control Committee is named as a party as a result of a decision made or action performed while acting in behalf of the Homeowners Association, or (3) any other reasonable expenses incurred by the Homeowners Association.

This assessment shall not require the consent of two-thirds of the members of each class. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in the deed, is deemed to covenant to pay the Association any special assessment imposed under this section. If the Owner fails to timely pay such assessment, the assessment, together with interest, costs and reasonable attorneys' fees incurred to collect such assessment, shall be the personal obligation of the Owner on whom the special assessment was imposed. This personal obligation shall not pass to the Owner's successor in title unless expressly assumed by the successor.

*[Amendment 6]*

ARTICLE VII

ARCHITECTURAL CONTROL

Section 1. There is hereby designated and appointed an Architectural Control Committee consisting of not less than three nor more than five members (hereinafter call the "Committee"). There shall be three initial members of the Committee, namely John F. Buchan, William E. Buchan and Carl Buchan. A member of the Committee may be removed by the Board upon a vote of 66 2/3% of all members of the Board. The Board may increase the number of members of the Committee up to a maximum of five (5) total members by a vote of 66 2/3% of the entire Board.

An election to fill either a newly created position on the Committee or a vacancy on the Committee requires the vote of a majority of the entire Board, however, the Board is not obligated to fill a vacancy on the Committee unless the membership of the Committee numbers less than three (3) persons. The Committee may unanimously designate one or more of its members or a third party to act for and on behalf of the Committee with respect to both ministerial matters and the exercise of judgments vested in the Committee, subject to review by the Committee at the request of any member thereof. The address of the Committee shall be the registered office of the Association. In the event the Committee does not have more than three (3) members, action by the Committee must be by unanimous approval of all members. In the event the Committee has more than three (3) members, a majority of the entire Committee is required for a decision of the Committee. No member of the Committee shall be entitled to any compensation for services performed on behalf of the Committee except as provided under Section 3, Article VI, of this Declaration, and shall have no financial obligation of any kind based upon his/her actions as a member of the Committee, and shall be held harmless from any legal action as a result of its action or inactions.

Prior to the first of January, 1986, the initial Architecture Control Committee shall remain in office until, at the Committee's option, 75% of all lots have been constructed upon and/or John F. Buchan Construction, Inc. and William E. Buchan, Inc., have sold their interest in all lots in the development. On or after the first of January, 1990, the initial Committee may be replaced, at the direction of the Board of Directors, when the Declarants have sold their interest in 95% of the lots in the development. At either such time, the Committee shall notify the various Owners of Lots that it is relinquishing its duties in all respects. The elected Board of Directors shall appoint an

Architecture Control Committee that shall assume the responsibilities of duties described herein. In the event that the initial Board of Directors has not been replaced by an elected Board, an election of a new Board of Directors shall be held as provided in the By-Laws of the Association and the newly elected Board shall appoint an Architecture Control Committee. The newly appointed Committee shall not have architectural control of any lots that remain in the ownership of the Declarant.

Section 2. All buildings and improvements on a Lot shall be of permanent construction, and no temporary structure, trailer, tent, garage, outbuilding or other similar device shall be placed on any Lot except with permission of the Committee. No building, fence, wall or other exterior structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Committee as to harmony of external design and location in relation to surrounding structures and topography.

Section 3. No native trees or significant ground cover, as those terms are now or hereafter may be defined in the Mercer Island Land Clearing Code (Ordinance No. 312 and ordinance No. 456) which are located outside of the approved building site, as provided for in Section 4 herein, shall be cut, removed or destroyed without the approval of the Architecture Control Committee. Any persons wishing to cut, remove or destroy such trees or significant ground cover shall submit a plan showing the location of the trees or ground cover to be cut, removed or destroyed, along with the location of the existing trees or ground cover to be retained. The applicant shall also submit a brief statement of the reasons supporting his request to cut, remove or destroy such trees or ground cover.

The Architecture Control Committee may specify that certain trees are to be preserved within the approved building sites. The following significant trees shall be preserved and sited outside of the building areas:

- (a) 24" cedar – Lot 20
- (b) 30" cedar – Lot 18
- (c) 30" fir – Lot 70
- (d) 24" fir – Lot 82
- (e) 20" fir – Lot 80

Existing shrubs and ground cover within a 20-foot radius of said trees shall be retained during construction. No fill or construction debris shall be deposited within 20 feet of the trunks of said trees.

Section 4. The location and shape of the house footprint on each lot shall be determined by taking into consideration the vegetation, topography, view and relationship to adjacent houses. The minimum size of the house footprint for a one-story house shall be 1800 s.f. After review and approval of the house plans and the plot plan by the Architecture Control Committee, the plans shall be submitted to the building department for their review and issuance of a building permit. Final decision authority regarding the location and shape of the house footprint shall rest with the building code official of the City of Mercer Island.

Section 5. All plans and specifications required to be submitted to the Committee shall be submitted by mail to the address of the Committee in duplicate, shall be in writing, shall contain the name and address of the person submitting the same and the Lot involved, and shall set forth the following with respect to the proposed structure: the elevation of the structure with reference to the existing and finished lot grade; the general design, the interior layout; the exterior finish materials and color including roof materials; the landscape plan; and such other information as provided in Section 4 herein and as may be required to determine whether such structure conforms with these Restrictions and the standards set forth by the Architecture Control Committee.

Section 6. The Committee shall have the authority to determine and establish standards involving aesthetic consideration of harmony of construction and color which it determines to be in the best interest of providing for attractive development of the Subdivision, which authority shall include but not be limited to the height, configuration, design and appearance of the dwelling and fences, walls, outbuildings, pools, and other structures appurtenant to the use of a dwelling. As to all improvements, construction and alteration, the Committee shall have the right to refuse to approve any design, plan or color. The Committee shall have the right to take into consideration the suitability of the proposed structure or building and the material of which it is to be built and the exterior color scheme, to the site upon which it is proposed to erect the same, the harmony thereof with the

surroundings, and the effect of the building or structure or alterations therein as planned on the outlook of the adjacent or neighboring property and any and all other factors, which, in the Committee's opinion, shall affect the desirability or suitability of such proposed structure, improvement or alteration. Such determinations may be amended and shall be binding on all persons.

Section 7. Approval or Disapproval. Within thirty (30) days after the receipt of plans and specifications, the Committee shall approve or disapprove such plans and specifications and may disapprove such plans and specifications which in its opinion do not conform to these restrictions or its aesthetic standards. Approval or disapproval shall be made upon one of the copies thereof and returned to the address shown on the plans and specifications. In the event that no disapproval of such plans and specifications is given within thirty (30) days of submission in compliance herewith, copies of such plans and specifications shall be delivered to the Owner of each adjacent Lot within the Properties together with a statement to the effect that 1) the said plans and specifications have been submitted to the Committee, and that 2) thirty (30) days have expired since the date of said submission and that no action has been taken thereon by the Committee, and that 3) unless suit to enjoin the construction pursuant to the submitted plans and specifications is commenced within ten (10) days after receipt of the delivered copies, construction will be commenced pursuant to said plans and specifications. If no suit to enjoin the construction is commenced within ten (10) days of delivery of copies of submitted plans, specifications and statement detailing above described items, said plans and specifications shall be deemed to be approved by the Architecture Control Committee and construction pursuant to said plans may be commenced. No Owner shall be enjoined or subject to other equitable relief or be required to respond in damages to any other Owner or Owners for any action taken of construction commenced or completed with the approval of the Committee or subsequent to notice as herein provided.

In all cases, the ultimate responsibility for satisfying all local governmental building codes and requirements, etc., rests with the homeowner or builder. The Architecture Control Committee shall be held harmless from building requirements not complied with.

Section 8. Advisors. The Committee may appoint advisors or advisory committees from time to time to advise on matters pertaining to the properties. No person on the Committee or acting for it shall be responsible for any defect in any plan or specification submitted or approved nor for any defect in any work done according to such plans and specifications.

Section 9. Variations. The Committee shall have the authority to approve plans and specifications which do not conform to these restrictions in order to overcome practical difficulties or prevent hardships in the application of these restrictions; provided that such variations so approved shall not be materially injurious to the improvements of other Lots and shall not constitute a waiver of the restrictions herein contained but shall be in furtherance of the purposes and intent of these restrictions.

Section 10. Enforcement. In any judicial action to enforce the Committee's decision the losing party shall pay the prevailing party's attorney's and other consultant's costs and fees including those incurred in connection with any appeal. In the event that the Committee is the prevailing party, the losing party shall also pay for time spent by any member of the Architecture Control Committee to enforce the Committee's decision, such time to be assessed at a rate to be determined by the Board of Directors.

## ARTICLE VIII

### INSURANCE

The Association shall obtain and maintain at all times as a common expense insurance including a casualty insurance policy or policies affording fire and extended coverage for and in an amount consistent with the full replacement cost of all improvements and structures within the Common Area to the greatest extent possible, and a liability insurance policy or policies in amounts not less than \$500,000 for injury, including death, to a single person, \$500,000 per injury or injuries, including death, arising out of a single occurrence, and \$50,000 property damage, covering the Association, the Board of Directors, officers and all agents and employees of the Association, and all owners and other persons entitled to occupy the Common Area. All such insurance shall be written in the name of

the Association as trustee for each of the owners. It shall be the duty of the Board of Directors annually to conduct an insurance review to determine if the policy in force is adequate to meet the needs of the Association and to satisfy the requirements of this Section. Such insurance shall run to the benefit of the Association, the respective lot owners, and their respective mortgagees, as their interests may appear. The City of Mercer Island, its officers, agents and employees shall be named as additional insureds.

The Board of Directors shall utilize every reasonable effort to secure a policy covering physical damage that will provide the following:

1. That the insurer waive its rights of subrogation of any claims against directors, officers, the managing agent, the individual owners, and their respective household members.
2. That the policy cannot be cancelled, invalidated, or suspended on account of the conduct of any director, officer, or employee of the Association or the managing agent without a prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.
3. That any "no other insurance" clause contained in this policy shall expressly exclude individual lot owners' policies from its operation.
4. That the policy may not be cancelled or substantially modified without at least thirty (30) days prior notice in writing to the Board of Directors.
5. An agreed value or amount endorsement and waiver of coinsurance.
6. That the deductible amount per occurrence shall not exceed One Thousand Dollars (\$1,000.00)

In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual lot owners or their mortgagees.

All public liability and officers' and directors' liability insurance shall contain a cross endorsement. In addition to the insurance required herein above, the Board shall obtain as a common expense:

1. Workmen's Compensation Insurance if and to the extent necessary to meet the requirements of law.
2. Fidelity bonds covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds. Such bonds shall be in amount equal to at least one hundred fifty percent (150%) of three months operating expenses, and shall contain waiver of any defense based upon the exclusion of persons serving without compensation.
3. Such other insurance as the Board of Directors may determine to be necessary including officers' and directors' liability insurance.

By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that he shall carry an individual homeowner's policy.

## ARTICLE IX

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. In any judicial action to enforce the contents of this Declaration, the losing party shall pay the prevailing party's attorney and consultant fees and costs, including those incurred in connection with any appeal. In the event that the Association is the prevailing party, the losing party shall also pay for any time



spent by any member of the Association to enforce the contents of this Declaration, such time to be assessed at a rate to be determined by the Board of Directors. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Annexation. Additional residential property and/or Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 4. FHA/VA Approval. In the event there is at least one outstanding loan guaranteed by either the Federal Housing Administration or the Veteran's Administration, the following actions will require the prior approval of the Federal Housing Administration or the Veteran's Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 5. Amendment. The covenants 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 said covenants shall be automatically extended until termination by an instrument which has received the signatures for at least seventy-five percent (75%) of the votes eligible to be cast. This Declaration may be amended during the initial twenty (20) year period by an instrument which has received the signatures for a least ninety percent (90%) of the votes eligible to be cast. This Declaration may be amended any time thereafter by an instrument which has received the signatures for at least seventy-five percent (75%) of the votes eligible to be cast. This Declaration may be amended during the Development Period by an instrument signed by both Declarant and the owner of at least fifty-one percent (51%) of the Lots including Declarant's. The provisions expressly referring to Declarant may not be amended without Declarant's approval. All such amendatory instruments must be recorded with King County Department of Records.

## NOTES

Declaration of Covenants, Conditions and Restrictions signed on May 30, 1985 by John F. Buchan Construction, Inc. and William E. Buchan, Inc recorded under King County Recording No. 8505301145 and as amended by documents recorded under Nos. 8509301151 dated September 24, 1985, 8510180560 dated October 11, 1985, 8604150755 dated April 15, 1986, 8604150756 dated March 24, 1986, 8605150891 dated April 24, 1986, 8706020983 dated June 2, 1987, and 20240723000396 dated July 19, 2024.

**Note:** This is a conformed copy of the Covenants, Conditions and Restrictions ("CC&Rs) of The Lakes at Mercer Island Homeowners Association reflecting all amendments through December 2018. It has been prepared for your reference. A "conformed" document compiles the original document and all amendments into a single document that reflect the most current provisions and removing any provisions that have been deleted. In the event of any discrepancies between this conformed copy and the CCRs as recorded with King County, the recorded version of the CC&Rs will govern. The Table of Contents, footnotes and references to specific amendments are editorial and not part of the recorded CC&Rs. Signature pages and other administrative portions contained in the recorded versions have been eliminated.

EXHIBIT A

Lake	Lake Area in Square Feet	% of Total Lake Area	Pan Evaporation in Inches over 48 hr. Observation Period	Lake Level Meter Reading in Inches at Start of 48 hr. Observation Period	Lake Level Reading in Inches at Completion of 48 hr. Observation Period	Lake level Fluctuation Column 5 Minus Column 6	Individual Lake Level Fluctuation Due to Lake Bottom Infiltration Column 7 Minus Column 4	Area Weighted Fluctuation per Lake Column 8 times Column 3 Divided by 100
#1 (Tr. D)	13,532	8%						
#2 (Tr. E)	32,603	18%						
#3 (Tr. F)	38,366	22%						
#4 (Tr. J)	37,981	21%						
#5 (Tr. K)	54,473	31%						
	176,955	100%	Total:					

Average Lake Fluctuation in Inches for All 5 Lakes