



201005200402 9 PGS
 05/20/2010 2:30pm \$70.00
 SNOHOMISH COUNTY, WASHINGTON

Return Address:
Stephen W. Hansen
Hansen, McConnell & Pellegrini
1636 Third Street
Marysville, WA 98270

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)

1. First Amendment to The Amended Declaration of Establishment of Protective Restrictions, Covenants, Conditions and Reservations Affecting That Certain Residential District Known as Tulare Beach
- 2.

Reference Number(s) of Documents assigned or released: 8607230106

Additional reference #'s on page _____ of document

Grantor(s) (Last name first, then first name and initials)

1. Tulare Beach Association
- 2.

Additional names on page _____ of document

Grantee(s) (Last name first, then first name and initials)

1. Public Tulare Beach
- 2.

Additional names on page _____ of document

Legal description (abbreviated: i.e. lot, block, plat or section, township, range) Plat of Tulare Beach Lot 2, and SE ¼ NE ¼ of Section 7, Township 30N, Range 4E, W.M., SITUATE in the County of Snohomish, State of Washington.

Additional legal is on page _____ of document

Assessor's Property Tax Parcel/Account Number(s) 00600900100101 through 00600900102400, 00600900200101 through 00600900201002, 00600900300001, 00600900300002, 00600900400001, 00600900400002, 00600900500001, 00600900500002, 00600900600001, 00600900600002, 30040700400300 through 30040700401100, 30040700401400 through 30040700401900, 30040700402100 through 30040700402500, and 30040700402700 through 30040700403500

Assessor Tax # not yet assigned

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

FIRST AMENDMENT TO
THE AMENDED DECLARATION OF ESTABLISHMENT OF PROTECTIVE
RESTRICTIONS, COVENANTS, CONDITIONS AND RESERVATIONS AFFECTING
THAT CERTAIN RESIDENTIAL DISTRICT KNOWN AS
TULARE BEACH

This First Amendment To The Amended Declaration Of Establishment Of Protective Restrictions, Covenants, Conditions And Reservations Affecting That Certain Residential District Known As Tulare Beach ("First Amendment") shall be effective commencing the day the same is recorded.

RECITALS

A. An Amended Declaration Of Establishment Of Protective Restrictions, Covenants, Conditions And Reservations Affecting That Certain Residential District Known As Tulare Beach ("Amended Declaration") dated 2/28/86 was recorded in Snohomish County, Washington on or about 7/23/86 under Recording No. 8607230106.

B. Except as previously and hereby amended, the said Amended Declaration and prior Amendments thereto, if any, shall remain in full force and effect. The below amended provisions shall supersede and replace any and all provisions in the Amended Declaration, Bylaws, Articles of Incorporation and Tulare Beach Association regulations/rules to the contrary.

C. The undersigned declares and certifies that this First Amendment was duly adopted by a procedurally proper and duly verified affirmative vote of Tulare Beach Association members owning no less than fifty-one percent (51%) of the Lots in the Tulare Beach residential community in accordance with the provisions of §17 of the Amended Declaration (and Article XII of the Bylaws to the extent that Bylaws are affected).

DEFINITIONS

The following terms when used in this First Amendment, the Amended Declaration or any subsequent amendment to the Amended Declaration shall be defined as set forth below unless a different meaning is plainly intended:

"Association" refers to the Tulare Beach Association.

"The Beach", as used herein (whether or not capitalized), shall refer to that area of land that lies between the water's edge at low tide and the more easterly of the following lines: (a) the water side of a bulkhead or (b) the most westerly legal Lot line of the Lot adjacent to the water.

"Amended Declaration" refers to the Amended Declaration Of Establishment Of Protective Restrictions, Covenants, Conditions And Reservations Affecting That Certain Residential District Known As Tulare Beach dated 2/28/86 was recorded in Snohomish County, Washington on or about 7/23/86 under Recording No. 8607230106.

"Board" shall refer to the Board of Trustees of the Association.

"Common Property" shall refer to that land and/or those facilities presently owned or managed by the Association and such other property and/or facilities as the Association may hereafter own or manage.

“Declaration” shall refer to the terms and provisions of the Amended Declaration as amended by the First Amendment and any additional future amendments.

“First Amendment” refers to this document that is entitled “First Amendment To The Amended Declaration Of Establishment Of Protective Restrictions, Covenants, Conditions And Reservations Affecting That Certain Residential District Known As Tulare Beach”.

“Lot” shall mean a lot, tract or parcel situated in the Tulare Beach community as defined in the first paragraph of the Amended Declaration.

“Lot Owner” or “Property Owner” shall mean any one or more persons or entities who or which hold the record fee interest in any Lot and shall include persons or entities owning a vendee's interest under, or by reason of, a contract of purchase or real estate contract, but shall not include the holder of a vendee's interest in any Lot under an purchase and sale agreement for which no closing has occurred or option agreement nor the holder of an interest in any Lot for security purposes, nor the holder of a vendor's interest in any Lot subject to a contract of sale after the recordation of that contract.

AMENDMENTS TO PROVISIONS

The undersigned on behalf of the Association hereby publishes and declares the following amendments to the aforesaid Amended Declaration:

1. Paragraph 1(a): Paragraph 1(a) is revised to state:

“(a) Community Lot. That lot designated on the Plat of Tulare Beach as Comm. Beach, Block 1, Plat of Tulare Beach, may be used for recreational purposes and temporary parking of cars, boats and boat trailers.

2. Paragraph 1(b): Paragraph 1(b) is unchanged.

3. Paragraph 2: Paragraph 2 is unchanged.

4. Paragraph 3: Paragraph 3 is revised to state:

“3. Building Setbacks. Building height and property line set backs on each Lot shall be governed by the Snohomish County and any other applicable building and zoning codes; provided, however, that all new dwellings shall be set back at least twenty (20) feet from the original water front setback line established by the original plat of Tulare Beach and provided further that the setback for any new dwelling to be built on a Lot to replace an older dwelling shall be located with a setback that is at least as great as the setback of the older dwelling.”

5. Paragraph 4: The existing Paragraph 4 is deleted and replaced with this new Paragraph 4:

“4. Delinquent Assessments. Any assessments not paid within ninety (90) days after they are first due and payable shall be Delinquent ("Delinquent"). Delinquent dues and assessments shall incur a late charge of \$150, shall bear simple interest on the unpaid balance from the date on which payment(s) were due at the rate of 12% per annum until paid, and shall upon becoming delinquent constitute a lien upon each Lot owned by the delinquent Lot Owner in the Tulare Beach community.

The Association shall have the right upon notice to the Lot Owner to suspend the voting rights of such Lot Owner for any period of time during which any assessment or portion thereof against the Lot Owner's Lot remains unpaid for a period of time in excess of 90 days or for any violation of the Declaration, Bylaws or community Rules by the Lot Owner or by tenants or others visiting or occupying the Lot, which violation has not yet been resolved to the Board's reasonable satisfaction."

6. Paragraph 5: The existing Paragraph 5 is deleted and replaced and superceded with Paragraph 3:
7. Paragraph 6: Paragraph 6 is unchanged.
8. Paragraph 7: Paragraph 7 is unchanged.
9. Paragraph 8: The words "six months" in Paragraph 8 shall be deleted and the words "twelve (12) months" substituted.
10. Paragraph 9: Paragraph 9 is revised and moved to paragraph 15 - property appearance:
11. Paragraph 10: Paragraph 10 is unchanged.
12. Paragraph 11: Paragraph 11 is revised to state:

"11. View Protection

11.1 Restricted Height Beach Front Area. In order to preserve views no Tulare Beach Lot Owner of a beach-front Lot shall permit any tree, fence, shrub, flower, planting, structure (other than a bulkhead), driftwood, water-borne or other debris, object or natural vegetation on such Lot to exceed a height of three feet (3') ,from the established finished grade of such lot, including the area from a straight line of the north-south, water-side foundation to each property line, due west (compass direction) to the water.

11.2 Additional Height Restrictions. No tree, fence, shrub, flower, planting, structure, object or natural vegetation on such beach-front Lots outside the aforesaid Restricted Height Beach Front Area shall be permitted by the Lot Owner to exceed the height of the dwelling ridge line (i.e., the highest structural elevation). In addition, owners of non-beach-front Lots shall not permit any tree, fence, shrub, flower, planting, structure, object or natural vegetation on their Lot(s) to block or significantly interfere with beach and/or sound views of other Lot Owners.

Paragraph 12: Paragraph 12 is unchanged.

13. Paragraph 13: Paragraph 13 is unchanged.

14. Paragraph 14: The existing Paragraph 14 is deleted and replaced with this new Paragraph 14:

“14. Bulkhead Construction and Maintenance

14.1 Beach Front Lot Owner Responsibility. All beach front Lot Owners shall in a timely, diligent, competent and workmanlike manner construct, renovate as necessary and maintain in good repair bulkhead-type structures that will function to effectively protect their own Lots as well as all other Lots, Common Property, and community streets, from seawater intrusion in connection with foreseeable sea and weather conditions including, without limitation, tidal flooding, storm and wave action. All such structures shall conform to applicable laws, building codes and government regulations.

As used in this Section, a “diligent, competent and workmanlike manner” shall include consultation with qualified design and construction professionals as necessary to insure a sound design, proper performance and satisfactory construction/renovation/maintenance work. As used above, “foreseeable” conditions are those that occur with an historic frequency of at least once every one hundred (100) years in the general locale.

14.2 Legal Presumption. In the event that seawater enters a beach front Lot Owner’s property in sufficient quantity to cause any damage to or flooding of other Lots, Common Property or community streets and does not enter neighboring lots (or does so only in significantly smaller quantities), there will arise a legal presumption that the Lot Owner is in violation of the provisions of this Paragraph. The Lot Owner will have the legal burden of proof to rebut such presumption in order to prove that no violation occurred.

Violations without such resulting damage shall be subject to injunctive relief following written notice of violation to such violating Lot Owner.

15. Paragraph 15: Paragraph 15 is revised to state:

“15. Property Appearance. No garbage, refuse or rubbish shall be deposited or placed on any Lot or other area within the community except in a suitable container. All containers for the storage or disposal of such material shall be kept in a reasonably clean and sanitary condition and shall not be permitted to fall into a state of disrepair or unsightliness. Without limiting the scope of the foregoing, absolutely no dumping of vegetation, lumber or or any other kind of wood, waste, trash, building (or other) materials of any sort shall be permitted within the Tulare Beach community.

Without limiting the scope of the foregoing, absolutely no dumping of vegetation, lumber or or any other kind of wood, waste, trash, building (or other) materials of any sort onto the beach or into the water shall be permitted. A fine of \$150.00 for each such dumping infraction shall assessed against the Lot Owner who violates (or whose guests violate) this provision.

Lot Owners shall maintain in clean, attractive condition their Lots and the area of the road right-of-way lying between the front boundary of the Lot Owner's Lot and the paved surface of the road. Lot Owners shall not permit their buildings, lawns or landscaping to have an untended or unsightly appearance as viewed from other Lots, the road or the beach. Buildings shall be painted and the lawns regularly mowed during growing seasons.

(Previously Paragraph 9)- Vehicle Parking And Storage. No trailers, mobile homes, recreational vehicles, off-road 3 or 4 wheeled vehicles, motor homes, trailers or similar vehicles/products shall be placed, stored, parked or maintained within the Tulare Beach community (or any Lot, street or Common Property) therein unless the same is entirely screened from the view of neighbors and the public. The following are specifically excluded from this restriction: Boats and boat trailers may be parked off the street on the on the owners property; temporary construction tailer/job shack may be parked on a building site during the construction period.” Inoperable vehicles are not permitted to be parked or stored on any Lot or anywhere else in the community unless kept in a fully enclosed garage or other suitable structure providing complete view screening from other Lots, from the road and from the beach.

16. Paragraph 16: Paragraph 16 is unchanged.

17. New Paragraph A new Paragraph is inserted as Paragraph 17 to state:

“17. Tenants. Lot Owners shall be responsible to insure that all tenants (i.e., lessees and renters) and house guests are informed of and comply with the Association Declaration, Bylaws and rules. Lot Owners shall be personally subject to all enforcement action available under the Declaration (or applicable law) by the Board of behalf of the Association if tenants or guests violate such Association Declaration, Bylaws and rules.”

18. Paragraph 17: Paragraph 17 is renumbered 18 and revised to state:

“18. Amendments and Binding Nature Of Covenants. The provisions of the Amended Declaration as amended by this First Amendment shall constitute binding covenants that shall attach to the Lots and property subject thereto and run with the land until and unless hereafter amended by majority vote of the entire voting power of the then Lot Owners. Such vote may occur at an annual meeting, a special meeting, by petition of such other reasonable method as the Board may adopt for voting; provided that the Lot Owners are given prior written notice of such vote and a reasonable opportunity to review the provisions or action that they are to vote on.

These covenants, and future amendments thereof if any, shall be binding on all Lot Owners, present and future, as well as their transferees, devisees, vendees and others claiming through them. Recordation of the covenants in the appropriate county shall constitute legal notice to all such individuals and entities and the public at large of the provisions of same.”

19. Paragraph 18: Paragraph 18 is renumbered 19 revised to state:

“19. Interpretation And Enforcement Of Covenants.

19.1 Generally. The Board shall have the authority and responsibility to interpret and enforce on behalf of the Association the provisions of the Association Declaration, Bylaws and rules. The Board’s good faith, reasonable interpretation of the Association Declaration, Bylaws and rules shall be authoritative and binding on the Lot Owners. The Board on behalf of the Association shall have the authority to use all lawful means, pursuant to the provisions of the Association Declaration, Bylaws and rules and applicable law, to abate violations and achieve compliance.

19.2 Discretion. The Board shall have discretion to reasonably prioritize and schedule or postpone (but not altogether decline) enforcement action in consideration of budgetary concerns, perceived community sentiment, seriousness of particular violations/noncompliance, repetitive history of particular violations/noncompliance and such other factors as the Board judges to be relevant.

19.3 Nonexclusive Enforcement Rights. The enforcement authority conferred upon the Board in this regard shall be without prejudice to the right of individual Lot Owners to independently enforce the provisions of the Association Declaration, Bylaws and rules by any lawful means.”

19.4 Enforcement of Monetary Assessments and Penalties. - Upon a delinquency in payment of any assessments or monetary penalty, the Association: shall notify the Lot Owner in writing of the delinquency, and the Association may record with the County Auditor a lien (which may be signed by a representative of the Board, a Property Manager or an attorney representing the Association) against each Lot owned by the Lot Owner in the Tulare Beach community for the delinquent amounts including interest, penalties and collection expenses and may periodically amend such lien to update amounts owing and further may bring an action at law against the person personally obligated to pay the dues and assessments and/or foreclose the lien against the Lot(s), and interest, costs and reasonable attorney fees of any such action shall be added to the amount of the dues or assessments, and all such sums shall be secured by a continuing lien on the Lot or Lots in question which lien may be foreclosed in such action and included in any judgment or decree entered in such suit. Interest shall run on recovery items referenced above from the date of delinquency or the date the expenditure is incurred as appropriate. No Lot Owner may waive or otherwise escape liability for the dues or assessments provided for herein by nonuse of the common areas or abandonment of his or her Lot. The homestead exemption of RCW 6.13.080 shall not apply to the foreclosure of any Association lien for dues, assessments and related items hereunder.

19.5 Lien Foreclosure. If any lien authorized hereunder to be asserted by the Association against a Lot is to be foreclosed, which decision shall be made by the Board, the procedure to be followed in such foreclosure process shall be that specified for the foreclosure of mechanics and materialman’s liens under RCW 60.04; provided, however, that the pre-lien notice requirements and time periods specified therein for recording liens and thereafter foreclosing them (90 days and 8 months respectively) shall not be applicable to Association liens. Association liens may be filed and foreclosed at any point in time so long as the delinquencies, interest, penalties or collection expenses owing remain delinquent and unpaid. If for any reason the Court should invalidate or rule inapplicable all or any other provisions of the RCW 60.04 procedure to such foreclosure, the Court may specify as necessary reasonable alternative procedures that shall instead apply so as to not prejudice the foreclosure remedy contemplated herein.

19.6 Expenses Incurred Recoverable. Any expense reasonably incurred by the Board to eliminate a violation of the Declaration, including reasonable attorney fees incurred for advice, assistance or enforcement, shall be charges against the Lot Owner in violation and shall be enforceable in the same manner as delinquent dues following written notice to the Lot Owner of the same that affords the Lot Owner an opportunity to contest such charges at a hearing before the Board and shall thereafter constitute liens against the Lot in question until paid in full.

19.7 Dispute Resolution - If the Association concludes that any provision of this Declaration has been violated (other than with respect to late payment of assessments), it shall give such Lot Owner written notice of the alleged violation. The Lot Owner shall have thirty (30) days to do one of the following: 1) correct violation in totality, 2) present, in writing, a request for additional time, and a plan of action to correct the violation if the violation cannot be corrected within thirty (30) days, or 3) request a hearing before the Board to challenge the violation.

In the case of 2) above, the Board shall review the Lot Owner's proposal and shall have the authority to accept, accept with modification or reject the proposal.

In the case of 3), or if the Lot Owner fails to resolve the violation according to 1) or 2) above, the Lot Owner will be notified of the hearing date by the Board. The hearing must be scheduled within ninety (90) days from the date that the Association receives the Lot Owner's request for a hearing, unless both sides mutually agree to a later date. After the hearing the Board will notify the Lot Owner, within ten (10) days, in writing of its decision. If the Board does not timely notify the Lot Owner, the Association shall be liable for all actual damages suffered by the Lot Owner as a direct and immediate result of such untimeliness, but the Lot owner's ultimate responsibility to eliminate violations shall persist regardless of the timeliness of such notice.

If the Board rejects the Lot Owners request to dismiss the violation, the Lot Owner will have thirty (30) days to correct the violation. If the dispute remains unresolved after the Board's decision, either party may initiate the Arbitration process described below.

19.8 ARBITRATION: If any dispute or disagreement (other than relating to late payment of assessments) arises out of this Declaration between the Association and any Lot Owner(s), the same shall be arbitrated in accordance with the following terms and procedures:

- (a) Arbitration shall be by a single arbitrator to be selected upon agreement of the parties under the auspices of a private arbitration service in the King or Snohomish County area. If the parties cannot agree upon an arbitrator, either party may apply to Snohomish County Superior Court for the appointment of a qualified arbitrator.
- (b) The arbitration shall be conducted under the Superior Court Mandatory Arbitration Rules (MAR) in effect at that time to the maximum extent possible.
- (c) The arbitrator's fee shall be initially split evenly between the parties.
- (d) The substantially prevailing party in the arbitration shall be awarded that party's arbitration expenses, arbitrator's fees and attorney's fees and expenses incurred.
- (e) The arbitrator shall have the authority to render a decision providing monetary, injunctive and/or other relief as shall appear just and reasonable under the circumstances.
- (f) If the Association has recorded a lien related to any claimed violation of this Paragraph 14, the arbitrator shall also have the authority to resolve all issues concerning the validity of such lien and the corresponding rights and obligations in accordance with the applicable provisions of the Tulare Beach Association Declaration. The Superior Court shall retain jurisdiction for purposes of entering judgment consistent with the arbitrator's decision and, if applicable, conducting a foreclosure sale in accordance with the arbitrator's decision.

This arbitration provision shall not be applicable to claims by one Lot Owner against another.

20. Paragraph 19: Paragraph 19 is renumbered to become Paragraph 20.

21. Paragraph 20: Paragraph 20 is renumbered to become Paragraph 21.

Board of Trustees of Tulare Beach Association

By its President and Secretary:

Robert F. Adnan
President of Board

Dorothy Larsen
Secretary of Board

STATE OF WASHINGTON
COUNTY OF SNOHOMISH

On this 11 day of March, 2009, before me, the undersigned, Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Robert F. Adnan to me known to be the person who signed as **President** of the Board of Trustees of the **Tulare Beach Association** executing the within and foregoing instrument as a free and voluntary act and deed of behalf of the said Board for the uses and purposes therein mentioned and on oath stated that he/she was a Director of the said Association authorized to execute said instrument on behalf of the Board and the Association.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

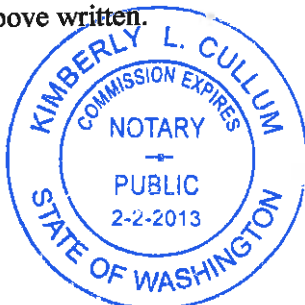


Kimberly L. Cullum
NOTARY PUBLIC in and for the State of Washington,
residing at Everett Washington
My Appointment Expires: 2-2-13

STATE OF WASHINGTON
COUNTY OF SNOHOMISH

On this 9 day of March, 20010, before me, the undersigned, Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Dorothy Larsen to me known to be the person who signed as **Secretary** of the Board of Trustees of the **Tulare Beach Association** executing the within and foregoing instrument as a free and voluntary act and deed of behalf of the said Board for the uses and purposes therein mentioned and on oath stated that he/she was a Director of the said Association authorized to execute said instrument on behalf of the Board and the Association.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



Kimberly L. Cullum
NOTARY PUBLIC in and for the State of Washington,
residing at Everett Washington
My Appointment Expires: 2-2-13