

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF THE PLAT OF BIRCH HEIGHTS

This Declaration of Covenants, Conditions, and Restrictions is made and entered into by the undersigned Declarants for the Plat of Birch Heights, as follows:

A. RECITALS

1. The undersigned Declarants are the owners in fee simple of the following described real property located in the City of Bellingham, Whatcom County, Washington:

Parcel 1: A tract of land located in Section 21, Township 38 North, Range 3 East of the W. M. described as the easterly 190 feet of the northwest one-quarter of the southeast one-quarter south of a line parallel with and 40 feet south of the north line of Silver Beach Avenue extended westerly and described as Assessor's Parcel No. 380321-424165.

Parcel 2: Lot 3, John F. Horst WSP No. 154 Short Plat as recorded in Book 33 of Short Plats, Page 93, and identified as Assessor's Parcel No. 380321-422117.

Parcel 3: Lots 6 and 7 except the south 140 feet of the west 90 feet of Lot 7, Stimson's Lakeview Acre Tracts, and identified as Assessor's Parcel No. 380321-444118.

Parcel 4: The south 140 feet of the west 90 feet of Lot 7, Stimson's Lakeview Acre Tracts, identified as Assessor's Parcel No. 380321-439098.

(Hereinafter referred to as the "Subdivision").

2. Declarants desire to provide the means to enforce the rights, reservations, easements, liens and charges provided in this Declaration, to provide for necessary maintenance and enhancement of the Subdivision and to provide for the formation of an Owner Association in the form of a nonprofit corporation which includes as its members those persons who purchase any lot within the Subdivision.

B. DECLARATION

The Declarants hereby certify and declare that the following covenants, conditions and restrictions shall endure and be binding upon the respective owners of each lot, tract or parcel within the Subdivision, and the Declarants further declare that all of the property within the Subdivision described herein is held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions and restrictions for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision and every part thereof. All of the following covenants, conditions and restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Subdivision or any part thereof.

C. ARCHITECTURAL AND DESIGN REVIEW

1. Design Guidelines. Design shall be generally consistent with the theme of the Subdivision established by the Declarants. The initial Review Coordinator ("RC") shall be David Horst. The RC shall have the authority to adopt specific design guidelines and procedures to implement the basic theme for the Subdivision.
2. Design Review. To preserve the architectural and aesthetic appearance of the Subdivision, no new construction or improvements of any nature shall be placed on any Lot until detailed plans have been reviewed and approved by the RC. Detailed plans shall include, but not be limited to, floor plans exhibiting square footage, front, rear and side elevations. Two copies of such plans, specifications and related data must be submitted to the RC, along with a Design Review fee of \$300.00. Upon approval, one shall be retained in the records of the RC and one copy shall be returned to the Owner, appropriately marked.

3. Design Considerations. The RC shall consider in addition to architectural and aesthetic issues the location of improvements on the Lot and its effect on views from other lots. The RC's determination on all matters shall be solely within the discretion of the RC and shall not be subject to appeal.
4. Review Time. The RC shall approve or disapprove plans, specifications and details within fourteen (14) days of receipt thereof. If the RC fails to respond within fourteen (14) days, then the plans shall be approved, unless within such fourteen (14) day period the RC has sought, in writing, clarifying information concerning the same. No construction activity may commence prior to such approval.
5. Liability. Neither the RC nor any person who succeeds him shall be liable to any party for any action or for any failure to act under or pursuant to the provisions of this Declaration, provided that the RC shall have proceeded hereunder in good faith and without malice.

D. DEFINITIONS.

1. Assessment. Any and all sums chargeable by the Association against a Lot including, without limitation: (a) Regular and Special Assessments for Common Expenses, charges, and fines imposed by the Association; (b) interest and late charges on any delinquent account; and (c) reasonable attorneys' fees, incurred by the Association in connection with any legal action affecting an Owner.
2. Association or Owner's Association. The owners of all Lots in the Subdivision, acting in concert pursuant to the provisions of RCW 64.38, et. seq., may be incorporated as a nonprofit corporation by the Owners of the Lots in the Subdivision to enforce the provisions of the Governing Documents.
3. Board. The Board of Directors of the Association.
4. Common Areas. The real property owned by the Declarants, which shall hereafter be transferred to the Association or otherwise dedicated on the face of the Plat of Birch Heights for common use, benefit, and enjoyment by the lot owners and members of the Association. Common areas transferred or dedicated as part of the Plat of Birch Heights consist of two Tracts, Tract A and Tract B. Such common areas include physical improvements on property owned by Declarants. Improvements on Tract A consist of, but not limited to, landscaping and retaining wall. Improvements on Tract B consist of, but not limited to, landscaping and sports court improvements.
5. Community. All the property within the Subdivision, along with all the improvements constructed therein, the Association, and all other institutions and things serving the Lot Owners therein.
6. Declarants. The Declarants are David and Patricia Horst, who presently own the Subdivision, together with any successor in interest thereto.
7. Governing Documents. Governing documents includes the Declaration, the Subdivision Plat, the Bylaws of the Association along with any Rules and Regulations adopted by the Board of Directors.
8. Improvements. Improvements shall mean and include, but not limited to, any building, outbuilding, driveway, parking area, fencing, retaining wall, swimming pool, screening wall, ornamentation, sign, stair, deck, pole, lighting structure, hot tub, hedge, windbreak, planted tree, planted shrub, or any other structure or landscaping.
9. Lot. Any physical portion of the Subdivision designated for the location and construction of a single family residence.
10. Owner. Any person owning a Lot including any person who has acquired a Lot by real estate contract.
11. Person. Any individual, firm, corporation, partnership, association, unincorporated association, or other legal entity.
12. Property. Property or "the property" means all the real property described as being contained within the Subdivision Plat.

13. RC. The Review Coordinator is the individual initially designated by the Declarant to ensure the architectural and aesthetic integrity of the Community. The term shall also be deemed to include any individual or Committee appointed by the Association to fulfill the functions of the RC following the termination of the Declarant Control Period.
14. Tract. Any parcel of real property within the boundaries of the Subdivision exclusive of the lots or real property.

E. USE RESTRICTIONS AND REQUIREMENTS

1. Residential Use. All lots within the Subdivision shall be used for residential purposes only.
2. Temporary Structures. No structure of a temporary character, and no trailer, shack, shed or other temporary accessory buildings shall be erected, used or maintained on any Lot except in connection with construction activities, and then only during such time periods for residential construction as provided herein.
3. Recreational Vehicles. All boats, utility trailers, trucks of more than one-ton rating, campers, recreational vehicles, travel trailers, motor homes, and similar items or vehicles maintained or kept upon any Lot within the Subdivision shall at all times be enclosed within a garage. Any such vehicle or equipment shall be removed at the request of the Association at the risk and expense of the Lot owner under such reasonable procedures as may be provided by Rules and Regulations adopted by the Association. No such vehicles shall be parked on any street within the Subdivision overnight.
4. Vehicles. All automobiles and all other permitted vehicles, if kept or parked on any Lot or otherwise within the Subdivision, shall be in good order and in working condition. Partially wrecked vehicles, discarded vehicles, unlicensed vehicles or vehicles which are in a state of disrepair shall not be kept on any Lot nor shall they be maintained within the Subdivision, unless enclosed within a garage. Visible vehicle repairs other than ordinary light maintenance are not permitted in the Subdivision.
5. Vehicle Parking. Driveway parking spaces are restricted to use for parking of operable, properly registered automobiles, light trucks and family vans. There shall be no long term parking, except within garages.
6. Signs. No sign of any kind shall be displayed to the public view on or from any Lot without the prior consent of the Board; this section shall not apply to Declarants or their agents, nor shall it be deemed to prohibit the Lot Owner from displaying a reasonable sign on such Lot for a period of time in which their property is for sale or rent.
7. Surface Water Run-Off. No Lot shall be improved in such a way as to cause excess surface water run-off that may damage or inconvenience other Lots or contiguous properties and the Lot Owner thereof.
8. Animals. The ownership and keeping of well-behaved dogs, cats and other limited types of species of animals which do not normally leave a Lot is permitted, subject to Rules and Regulations as promulgated by the City of Bellingham and or which may be adopted by the Board of Directors. The owner of any animal maintained within the Community shall keep such animal properly attended and under such owner's control, and shall clean up after such animal and shall not permit deposits of fecal matter, urinary residue or foodstuffs from or for such animal to accumulate anywhere within the Community. Any person who keeps or maintains any animal upon any portion in the Community shall be deemed to have indemnified and agreed to hold the Association, each Lot Owner and the Declarants free and harmless from any loss, claim, or liability of any kind or character whatsoever arising by reason of keeping or maintaining such animal within the Subdivision. The Board may at any time require the removal of any animal which it finds is or has become a reasonable source of annoyance, and may exercise this authority for specific animals even though other animals are permitted to remain.
9. Garbage/Refuse. No owner shall deposit or permit the accumulation of any trash, ashes, garbage or other refuse or debris on or about such Owner's Lot or any other property within the Subdivision, except in appropriate covered trash receptacles. Each Owner shall keep such Owner's Lot neat and orderly in appearance and shall not cause or permit any noxious or odorous conditions to exist, nor maintain any tangible objects which are unsightly in appearance to exist, on any Lot or parcel within the Subdivision.

10. Offensive/Illegal Activity. No offensive, noxious or illegal activity shall be carried on in any Lot, nor shall anything be done therein which may be or become an unreasonable source of annoyance or nuisance to other Owners. No firearms or explosives shall be discharged within the boundaries of the Subdivision.
11. Noise. No person shall cause any unreasonably loud noise anywhere on the Property, nor shall any person permit or engage in any activity, practice or behavior for the purpose of causing annoyance, discomfort or disturbance to any person lawfully present on any portion of the Property.
12. Fences. Fences are permitted to enclose side and backyard only. No fence may be constructed more than six (6') feet in height unless otherwise approved by the RC or the Board. No fences are permitted in front yards or side yards abutting streets. Fences may be constructed of wood, concrete or stone, or of materials which substantially approximate them in appearance. Style and color must be approved by the RC. No wire or chain link fencing is allowed.
13. Antennas/Dishes. Satellite TV antennas/dishes, thirty-six inches (36") or less in diameter, may be installed within a Lot. Larger satellite dishes and other types of reception or transmission antennas may be installed within a Lot only if substantially screened from view from other Lots. Antennas may be used so long as they do not cause interference with electronic equipment of neighboring property owners.
14. Lighting. No exterior lighting shall be directed outside the boundaries of a Lot.
15. Damaged Improvements. No improvement which has been partially or totally destroyed by fire, wind, water or any other cause shall be allowed to remain in a state of disrepair for a period in excess of three months from the date of such partial or total destruction. Corrective construction or reconstruction shall be required to commence within such three month period and shall be completed in accordance with the provisions for Time of Completion contained herein. Said three month period may be extended by the RC or the Board in the event that corrective construction or reconstruction has not commenced as a result of factors beyond the control of the subject Owner and in the event that the subject Owner has exercised and does thereafter continue to exercise due diligence in an effort to eliminate such factors causing such delay in commencement.
16. Clothesline Restrictions. No clotheslines are permitted on a lot.
17. Chimney Design. Exposed metal chimneys are not permitted.
18. Exterior Appliances. No heating, air conditioning or other mechanical appliances may be located on any roof, unless completely screened from view of other lots. Heating, air conditioning units and other appliances located outside of the house or structure shall be screened such that they are not visible and sound generated conforms with industry standards and does not constitute an annoyance to neighboring lots.
19. Vacant Lots. Vacant lots shall be kept free of unsightly debris and shall not be used for storage, parking or any other purpose until commencement of construction on the lot. Vacant lots shall be mowed such that all young trees, shrubs, grasses and weeds shall be kept at a height of eighteen (18) inches or less.
20. Shrubbery and Tree Height. Any shrubbery or tree(s) planted or previously existing on a Lot that blocks or unreasonably impairs a view from another Lot must on demand be removed, replaced or trimmed back to a height equal to the highest part of the roof of the dwelling located on the same Lot on which such shrubbery or tree(s) is located.
21. Playground Equipment. Any playground equipment on any lot shall be within a fenced area.
22. Landscape Maintenance. Once installed, landscaping and landscaping structures shall be given proper care and maintenance including, but not limited to, mowing, weeding, trimming and routine maintenance of other landscape structures. All plant material shall be adequately fertilized and watered to insure healthy growth and dead or dying shrubs shall be removed and replaced. The RC reserves the right to determine compliance with this provision and may, after written notice, giving ten (10) days to cure, if the RC deems a lot to be in violation of this landscaping provision, then the RC may make written demand to correct the deficiency. If the lot owner fails to correct the deficiency within fourteen (14) days after notice is given, then the RC shall have the right to go upon the lot and correct the deficiencies. Any costs incurred shall become a lien on the lot and shall, in addition, be a personal obligation of the lot owner.

F. CONSTRUCTION AND DESIGN RESTRICTIONS

1. Building Setbacks. A ten foot (10') building setback from each side yard shall be provided on each Lot. The RC may authorize specific exceptions based on Lot size and on the location of homes on adjacent Lots.
2. Height Restrictions. The heights and locations within the Lot of structural improvements erected on Lots shall be restricted to the lower limit of that required under applicable City of Bellingham codes or ordinances. The only exceptions are Lot 17 and Lot 19. Lot 17 can have a maximum roof peak height not to exceed twenty feet (20') above the sidewalk height at the street light adjacent to Lot 17. Lot 19 can have a maximum roof peak height not to exceed fifteen feet (15') above the sidewalk height at the street light adjacent to Lot 19.
3. Minimum Floor Areas for Dwellings. One-story Dwellings constructed on any Lot shall have not less than 2,000 square feet of living space, exclusive of porches, patios, basements and garages. Multi-story Dwellings constructed on any Lot shall have not less than 2,400 square feet of living space, exclusive of porches, patios, basements and garages.
4. Roofing. Laminated shingles with a minimum 40 year rating are required. The color and pitch of all roofs shall be approved by the RC.
5. Exterior Wall Materials. The exterior walls of any Dwelling structure shall be faced with natural stone or brick, architectural stone veneer, cement or wood sidings. Any combination of these materials is strongly encouraged. At least 10% of the front elevation shall be of a stone or brick appearance. Colors and textures of exterior materials shall be approved by the RC. Exposed concrete foundations shall not exceed a maximum of 12" from finished grades to siding. Stepped foundation walls shall not exceed an average of 18" of exposed concrete. No exposed stepped foundations shall exceed 24" in height from finish grade to siding.
6. Fencing. Fences may be constructed of wood, or of materials which substantially approximate the appearance of wood, in the style and color approved by the RC. No boundary line fences extending forward and toward the street from the front corner line of the residence shall be permitted except those comprised of living materials only, such as hedges, shrubs or trees. No fences may be constructed more than six feet (6') in height unless otherwise approved by the RC or the Board. All wire, wire mesh and/or chain link fences are prohibited.
7. Driveways and Walkways. Driveways and walkways shall be approved by the RC. They shall be constructed of concrete, brick or concrete pavers or paving stones. Asphalt or other materials are not permitted.
8. Retaining Walls. Retaining walls shall not exceed a height of six (6) feet and shall be constructed only of the following materials: stone, concrete with brick, decorative block, or exposed aggregate finish. Railroad ties or similar pre fabricated wood products are prohibited.
9. Course of Construction. Any person obtaining approval of the RC for construction of improvements shall commence construction or alteration in accordance with plans and specifications approved within six (6) months after the date of approval and shall substantially complete any construction or alteration within six (6) months after start of excavation/construction, or within such other period as specified in the approval. Construction shall not be deemed to be completed until the improvement is finished, the Lot has been cleaned of construction debris, the Lot has been landscaped and all must be completed no later than nine (9) months after the start date of construction. If any such person does not commence work within six (6) months after approval, or such other time period determined by the RC, then approval shall lapse.
10. Hours of Operation. Hours designated for construction and construction related activities on platted lots shall be Monday through Saturday, 7 a.m. to 6 p.m. Sunday, holiday and evening work shall be limited to activities that exclude any and all machinery noise, unless such tool use cannot be detected beyond the boundaries of the Lot.
11. Landscaping Installation. Each Owner is responsible for landscaping their Lot. Landscaping shall be completed within nine (9) months of the start date of construction. The front yard and areas not screened or fenced from public and private views shall be covered with lawns, landscaping, decking and/or paving. Prior to the start of building construction, \$1,500 shall be deposited with the RC in cash, as a guarantee that landscaping will be completed. The RC shall refund the deposit upon its determination that landscaping has been satisfactorily completed.

12. Authority to Grant Variances. The RC and the Association shall have the authority, to waive enforcement of or grant variances from, any written design guidelines without a specific finding that enforcement of such guidelines would impose an unfair burden on such Owner. The RC and/or the Association shall describe the variance and the reasons in a written instrument which shall be a part of the records of the Association.

G. OWNERS ASSOCIATION.

Declarants shall form an Owners Association designated herein as the "Association" to include as its members all of the Owners of any Lot within the subdivision. This organization shall be a non-profit corporation organized pursuant to Title 24 of the Revised Code of Washington, and shall be known as "Birch Heights Owners Association". In case of any conflict between Chapter 24.06 RCW, the Nonprofit Miscellaneous and Mutual Corporations Act, and the Homeowners Association Act, Chapter 64.38 RCW, the Homeowners Association Act shall control. The rights and obligations of the members and of the Association shall be governed by the provisions of the Homeowners Association Act and this Declaration.

1. Common Areas. The Association has two (2) common areas. They are identified on the face of the Plat as Tract A and Tract B. Tract B is governed by the Order of the Hearing Examiner of the City of Bellingham as per Hearing Examiner Order # HE – 07 – PL – 036 which is attached hereto as Exhibit "A" and incorporated herein.
2. Purpose. The purpose of the Association shall be the regulation, use, care, construction, operation, repair, maintenance and preservation of the common areas; the regulation, maintenance and repair of facilities thereon; maintenance of the planting areas located within the common areas; enforcement of these Covenants and Restrictions; and payment of taxes, if imposed, on common property and improvements; and the furnishing of protection and preservation of the interests of the Lot Owners for the common good.
3. Authority. The Association shall be organized at the instance of the Declarants and each Lot Owner shall be a member of the Association. The Declarants shall designate and appoint a governing board of the Association until such time as the Declarants have sold ninety percent (90%) of its Lots within the subdivision. When ninety percent (90%) of such Lots owned by the Declarants have been sold by the Declarants, the control of the Association shall be turned over to the members and the members shall elect from their number the governing board of the Association as determined by the Articles of Incorporation and Bylaws of the Association. Irrespective of the foregoing, the Declarants, at their sole and exclusive option, may elect at any time prior to sale of ninety percent (90%) of these Lots within the subdivision to transfer control of the Association to the members thereof.
4. Membership and Voting Rights. 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. Members shall be all Owners, including the Declarants 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 exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.
5. Property Rights. Every Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:
 - (a) the use of any facilities shall be limited to Owners and residents of the subdivision and guests as regulated by the Association;
 - (b) commercial use of any facilities is prohibited;
 - (c) the right of the Association to suspend the voting rights and right to use the recreational facilities by an Owner for any period during which an assessment against his/her Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
6. Establishment of Assessment and Charges. Prior to the sale of the first Lot by the Declarants to a third party, the Board and Association shall establish and fix a charge of yearly assessments against the assessable Lots. Each Lot shall be assessed an equal amount. The Board and Association shall thereafter assess an annual amount at the annual meeting held by members of the Association. The Declarants shall not be liable for assessments. Assessments shall not accrue on each Lot until said Lot is sold by the Declarants to the first purchaser thereof. Assessments shall be collected for the purposes set forth in Section # 2. Purpose, above.

7. Annual Statement. As soon as shall be practical in each calendar year, the Association shall send a written statement to each Owner setting forth the dollar amount of the assessment for such Lot for such calendar year. The Association may, in its sole discretion, provide for payment of such assessments on a periodic basis during such calendar year, with or without a service charge.
8. Rules and Procedures for Billing and Collecting Assessments. The Board of the Association shall have the power and authority to adopt rules and procedures respecting the billing and collecting of annual assessments, which shall be binding upon all Lot owners.
9. Penalty on Delinquent Assessments. If an Owner shall fail to pay any installment of an annual assessment within thirty (30) days from the date the same is due, then the entire annual assessment for such Lot shall be delinquent and shall become immediately due and payable, shall bear interest at the rate of twelve percent (12%) per annum thereafter until paid and shall also bear a penalty in such amount as shall be determined by the Board of the Association.
10. Personal Obligation and Lien Foreclosure. Dues and assessments shall constitute a personal obligation of any Owner of record of a Lot on the due date thereof and shall also constitute a lien on the Lot assessed. Such lien may be enforced by the Association in the same form and manner of procedure as foreclosure of real property mortgages under the laws of the State of Washington.
11. Amounts Included. Each owner and each party hereinafter owning or claiming an equity interest in a Lot agrees that in the event of such foreclosure action involving such Lot, the Owner or Owners thereof or other party asserting equity interest therein will pay the Association's expenses of title examination and insurance, the cost of attorney's fees incurred by the Association and court costs, as well as all other costs reasonably and necessarily incurred in such foreclosure action. In any such action, delinquent assessments shall bear interest at the rate of twelve percent (12%) per annum from the date the same became due until the date of the entry of the judgment of foreclosure thereon.
12. Other Liens and Foreclosure Actions. The method and manner provided for foreclosure of liens set forth in this paragraph shall pertain to all liens referred to in this Declaration. First mortgage liens placed upon any Lots for the purpose of constructing improvements thereon shall be superior to any and all charges, assessments and liens thereafter asserted, pursuant to this Declaration.
13. Delinquency For More Than Ninety (90) Days. If the Owner of any assessable Lot shall be delinquent in the payment of the annual assessment, or any installment thereof, for more than ninety (90) days following the date the same is due, then the Association shall have the right to commence legal action seeking a personal judgment against such Owner and, in addition thereto, shall have the right to foreclose its lien upon such Lot. The total amount due from such Owner shall be such sums as provided in Sections # 7 Annual Statement and # 11 Amounts Included above, plus any penalty imposed under Section # 9 Penalty on Delinquent Assessments hereof. The Association may file a notice of lien on any Lot where the assessments are more than ninety (90) days past due. Such lien shall relate back to the first delinquency for the purpose of establishing lien priorities.
14. Increase in Assessments. The amount of the annual assessment against each Lot shall be initially determined and may thereafter be increased or decreased for any one year period, or any such greater period, as may be determined by the affirmative vote of at least sixty percent (60%) of the voting members of the Association, represented in person or by proxy, at a meeting, annual or special, called for such purpose; provided, however, that any Lot Owner who is delinquent in the payment of assessments shall not be entitled to vote thereon.
15. Application of Assessment. The Association shall apply all funds received by it pursuant to this Declaration in the following order:
 - (a) the payment of taxes, insurance premiums and any utility charges on the Common Areas;
 - (b) the service, repair, maintenance and/or replacement of any and all improvements to the Common Areas;
 - (c) administrative costs and expenses incurred by the Association in the exercise of its powers, authority and duties described in its Articles of Incorporation and Bylaws.

16. Authority to Maintain Surplus. The Association shall not be obligated to spend in any particular time period all of the sums collected or received by it during such time period or any other time period. The Association may carry forward, as surplus, any balances remaining. The Association shall not be obligated to apply any such surplus to the reduction of the amount of the annual assessment in any future year but may do so by the affirmative vote of at least sixty percent (60%) of the voting members of the association.

H. PROTECTION OF MORTGAGE OR DEED OF TRUST HOLDER.

No violation or breach of any covenant, condition, reservation or restriction contained in this Declaration, or in any supplement hereto, and no action to enforce the same, shall defeat, render invalid or impair the lien of any mortgage or deed of trust taken in good faith and for value against any title or interest in any Lot which is the subject of an action arising from such violation or breach. A purchaser of any such Lot at a trustee's sale, Sheriff's sale or Tax Foreclosure sale shall take title to such Lot free and clear of any violations or breaches which have occurred on such Lot, or by the previous Owner thereof, prior to such foreclosure, but such purchaser shall nevertheless take subject to any liens attached to the Lot which may arise under section G of these Covenants Conditions and Restrictions and this Declaration and to any supplements hereto.

I. ENFORCEMENT.

The Association, the Declarants and any Owner shall have the right to enforce, by any proceedings at law or in equity, all covenants, conditions, restrictions, reservations, liens and charges now or hereafter imposed by this Declaration. The failure of the Association, of the Declarants or of any Owner to enforce any rights hereunder shall not be deemed to constitute a waiver of the right to do so hereafter. The prevailing party in any litigation involving the enforcement of any provision of this Declaration shall be entitled to judgment for the reasonable attorney's fees and costs incurred in such litigation by such prevailing party.

J. GRANTEE'S ACCEPTANCE.

The grantee of any Lot subject to this Declaration shall, by the acceptance of a deed conveying title thereto or by the execution of any contract for the purchase thereof, whether from Declarants or any subsequent Owner of such Lot, accept such deed or contract upon, and subject to, each and every provision of this Declaration and the provisions contained herein, including the jurisdiction, rights and powers of Declarants, and by such acceptance shall, for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with Declarants and to and with the grantees and subsequent Owners of each of the Lots within the Subdivision, to keep, observe, comply with and perform all obligations set forth herein.

Each such grantee also agrees, by such acceptance, to assume, as against Declarant, its successors or assigns, all of the risks and hazards of ownership and occupancy attendant to such Lot, including, but not limited to, its proximity to the Common Areas.

K. AMENDMENT OF DECLARATION.

1. Procedure for Amendment of Declaration. Amendments to the Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Board, prior to its adoption by the Owners. Except in cases of amendments that may be adopted by the Declarants unilaterally pursuant to Section # 3 below, amendments may be adopted only at a meeting of the Owners if at least sixty percent (60%) of the votes in the Association are cast for such amendment, or without any meeting if all Owners have been duly notified and Owners holding at least sixty percent (60%) of the votes in the Association consent in writing to such amendment. In all cases, the amendment when adopted shall bear the acknowledged signature of the President of the Association, who shall certify that the amendment was properly adopted.
2. Recordation Required. Every amendment to the Declaration must be recorded with the County Auditor and is effective only upon recording. An amendment shall be indexed in the name of the Subdivision and shall contain a cross reference by recording number to the Declaration and each previously recorded amendment thereto.

3. Amendments by Declarants. The Declarants may unilaterally adopt and file amendments to the Declaration and to the Subdivision Plat for so long as the Declarants are the Owner of any Lot in the Subdivision, in order to conform them to the actual location of any of the constructed improvements, to establish, vacate and relocate utility easements, to satisfy the requirements of any title insurance company or institutional lender, or to correct any nonmaterial technical errors contained in the Subdivision Instruments or to clarify provisions of same.

L. NOTICES FOR ALL PURPOSES, DELIVERY

Any notice permitted or required to be delivered under the provisions of the Declaration or the Bylaws may be delivered either personally or by mail, addressed to the person entitled to such notice at the most recent address given by such person to the Board in writing, or to the most recent address known to the Board. Notice to the Owner of any Lot shall be sufficient if mailed to his or her Lot if no other mailing address has been given to the Board. Mailing addresses may be changed from time to time by notice in writing to the Board. Notice to be given to the Association may be given to Declarant until the initial Board has been constituted and thereafter shall be given to the President or Secretary of the Association, or to its Registered Agent.

M. SEVERABILITY.

In the event that any provision hereof is deemed by proper judicial decree to be invalid, then the remaining portion of this Declaration shall in no way be affected.

N. NO WAIVER.

The failure of any party entitled to enforce any provision hereof to take steps to enforce such provision shall not, in any fashion, operate or be deemed to be a waiver of any such provision or of any other provision hereof.

DATED this _____ day of _____, 2008

David W. Horst, Declarant

Patricia L. Horst, Declarant

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this _____ day of _____, 2008, before me personally appeared

DAVID W. HORST and PATRICIA L. HORST, to me known to be the owners of the Plat of Birch Heights and executed the within and foregoing instrument and acknowledged to me that they signed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN UNDER my hand and official seal the day and year first above written.

NOTARY PUBLIC for the State of Washington.
My commission expires _____