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JERRY MCINTURFF
SKAGIT COUNTY CLERK

'88 MAY 20 P2:14

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RECORDED FILED

DECLARATION FOR BIRCHCREST SOUTH, A CONDOMINIUM

THIS DECLARATION, made this 2nd day of MAY, 1988, by the parties signed at the end hereof, hereinafter called the "developer", for such developer and his heirs, successors, grantees and assigns.

WITNESSETH:

1. SUBMISSION TO CONDOMINIUM OWNERSHIP. The purpose of this Declaration is to admit the lands herein described together with the improvements thereon to the condominium form of ownership and use in the manner and form provided by Chapter 64.32 of the Revised Code of Washington, hereinafter called the "Condominium Act".

- a) The name by which this Condominium is to be identified is BIRCHCREST - SOUTH.
- b) The lands in Skagit County, Washington, owned by the developer which are hereby submitted to the Condominium form of ownership are described as follows:

Lot 1, "REPLAT OF LOT 31" of COUNTRY CLUB ESTATES, according to the plat thereof, recorded in Volume 14 of Plats, Pages 24 and 25, records of Skagit County, Washington;

which lands are herein called "the land".

2. DEFINITIONS. The terms used herein and in the association Articles and By-Laws shall have the meaning stated in the Condominium Act.

3. DESCRIPTION OF BUILDING. The building consisting of four (4) units is being changed to Condominium Ownership. The existing building containing four (4) residential units is a single story building except for the north end of the building which is two story, based on a concrete foundation, exterior cedar siding, cedar shake roof, double wall construction between units and sheetrock interior walls. Motor vehicle access and walkways are asphalt surfaced, landscaping with shrubs and beauty bark are in place. Each unit has its own parking garage with a storage area. There is an open asphalted area suitable for parking of six (6) automobiles/pickups. The north end of the building is two (2) story with a separate residential unit on each floor.

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- a) Easements have been reserved through the condominium property and are of record with the Skagit County Auditor.
- b) Each unit shall be used as a residence for a single family. No units shall be used for commercial purposes.

4. UNIT BOUNDARIES. Each unit shall consist of that part of the building which lies within the boundaries of the unit. Said boundaries shall be determined in the following manner, in accordance with the Condominium Act.

- a) The upper boundaries shall be the plane of the lower interior, unfinished surface of the ceiling.
- b) The lower boundaries shall be the plane of the upper, interior unfinished surface of the floor.
- c) The vertical boundaries of the unit shall be the interior, unfinished surface of the unit walls, windows and doors.

5. DESCRIPTION AND LOCATION OF UNITS. The units of the condominium are more particularly described and located as follows:

- a) Unit A is at the south end of the building. The unit consists of 1,888 square feet. It consists of kitchen, dining room, living room, a master bedroom suite including bathroom and wardrobe closet, laundry room, guest bedroom and main bathroom and a storage closet. It has a fireplace. It has a wooden deck containing 112.24 square feet. It has a 2-car garage containing 499 square feet and an office immediately beyond the garage containing 306.6 square feet. It also has the exclusive use of asphalt areas, landscaped areas, covered storage building, concrete patio in the area between brick wall of south property line, and a panoramic view of Valley and mountains.
- b) Unit B borders Unit A garage to the north and consists of 1,176 square feet. It contains a kitchen with dining area, living room with fireplace, 2-bedrooms, a

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full bath, a half bath, laundry area, and storage closet. It has a wooden deck containing 199 square feet and a 1-car garage containing 326 square feet, and a panoramic view of Valley and mountains.

c) Unit C is in the north end of the building on the first floor and borders Unit B on the north. It contains 1,187 square feet. It contains a kitchen with dining area, living room with fireplace, 2-bedrooms, a full bath, a half bath, laundry area, and storage closet. It has a wooden deck containing 195 square feet and a 1-car garage containing 325 square feet, and a panoramic view of Valley and mountains.

d) Unit D is directly above Unit C on the second floor. It contains 1,188 square feet. It contains a kitchen with dining area, living room with fireplace, 2-bedrooms, a full bath, a half bath, laundry area, and storage closet. It has a wooden deck containing 181 square feet and a 1-car garage containing 326 square feet, and a panoramic view of Valley and mountains.

Each unit has its own private access entry way and each has immediate access to public street and common areas leading onto Country Club Drive, a county road in the Plat of Country Club Estates, with a mailing address of 1496 Country Club Drive, Burlington, WA, 98233.

6. DESCRIPTION OF COMMON AREAS AND FACILITIES. The common areas for Units B, C and D consist of landscaping, the entry drive from the county road, intermingled shrubbery and flowerbeds in and around asphalted driving and parking area as set forth in the maps attached to this Declaration of Condominium. The areas lying south of the brick wall are common areas, but they are for the exclusive use of Unit A. The areas lying north of the brick wall are common to Units B, C and D and Unit A shall have access over the common areas north of the brick wall to allow access to telephone pedestals, power vaults, and the garbage bin enclosure which are common to all units. The roof, walls and foundations outside the boundaries of each unit, and all items normally and necessarily in use, and all support or utility lines or chasses (although technically within a unit's boundaries) are in common ownership with all units.

7. PROPERTY VALUE/UNIT VALUE/and PERCENTAGE OF COMMON AREA.
 The value of the entire property is TWO HUNDRED NINETY-ONE THOUSAND (\$291,000.00) DOLLARS.

a) The following Schedule shows the number of each unit and it's value and a pertinent percentage of the undivided interest in the common areas:

<u>UNIT #</u>	<u>VALUE</u>	<u>PERCENTAGES</u>
"A"	\$ 98,940.00	34.00 %
"B"	\$ 64,020.00	22.00 %
"C"	\$ 64,020.00	22.00 %
"D"	\$ 64,020.00	22.00 %

TOTALS = 4 Units

TOTAL VALUE = \$ 291,000.00

TOTAL PERCENTAGE = 100.00 %

8. SHARES OF COMMON ELEMENTS AND COMMON EXPENSES. Each unit owners owns as an undivided share in the common element, is liable for common expense, and has voting rights in accordance with the percentages set out in Section 7 above for his/her unit. There shall ONE HUNDRED (100) Votes in the Owner's Association. Each unit shall have the number of such votes equal to his/her percentage of undivided interest above-established. The value of the common area that solely benefits Unit A has been included in Unit A's value in Section 7.

9. MAINTENANCE AND ALTERATIONS OF COMMON AREAS AND APARTMENTS.

a) The Association of Unit Owners shall at its' expense have the sole right and responsibility to maintain, repair and replace:

(1) All common areas and facilities to the interior surfaces of the units as herein defined which portion shall include, but not be limited to, the outside walls of the building and all fixtures on the exterior thereof; boundary walls of units, load bearing walls; and the roof.

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- (2) The common utility and sewage lines.
- (3) Any conduits, plumbing, wiring and other facilities for the furnishing of utility services which service part or parts of the condominium other than the unit within which contained.
- (4) All support or structural elements of the building.
- (5) The open area lying south of the brick wall, although limited to the use of Unit A, shall be treated as a common area for maintenance and repair purposes and is to be assessed accordingly.

ALL INCIDENTAL DAMAGES CAUSED TO A UNIT BY SUCH WORK SHALL BE PROPERLY REPAIRED AT THE EXPENSE OF THE ASSOCIATION OF UNIT OWNERS.

b) The responsibility of the Unit Owners shall be:

- (1) To maintain, repair and replace at his/her expense and keep the same in good order and appearance all portion of his/her unit. For this condominium, glass windows are to be replaced whenever cracked or broken by the Unit Owner, but no different color or form of window or glass shall be used except upon the written permission of the governing authority of the Owner's Association.
- (2) Not to paint or otherwise decorate or change the appearance of the exterior of the unit so it did not coincide with the rest of the building.
- (3) To promptly report to the Association of Unit Owners any defect or need for repairs, the responsibility for which is that of the Association of Unit Owners.

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c) Neither a unit owner nor the Association of Unit Owners shall make any alterations in the portion of a unit or building which are to be maintained by the Association of Unit Owners or remove any portion thereof, or make any additions thereto, or to do anything which might jeopardize the safety or soundness of the building, or impair any easement, without first obtaining the approval in writing of owners of all units affected or in which such work is to be done and the approval of the Board of Trustees of the Association of Unit Owners.

d) There shall be no alteration or further improvement of the real property constituting the common elements as they now exist on the property without the prior written approval in writing by the owners of not less than 60% of the units, and no such alteration or improvement shall interfere with the rights of any unit owner without his specific consent.

10. ASSESSMENTS.

a) Assessments against units or unit owners for common expenses shall be made pursuant to the Bylaws and shall be allocated on the basis of the percentages set forth in Paragraph "8" of this Declaration. All assessments shall be personal obligations of the owners of the units involved and a lien upon the unit, subject to the provisions of RCW 64.32.200.

b) Assessments and installments thereof paid on or before ten (10) days after the date when due shall not bear interest, but all sums not paid on or before ten (10) days after the date when due shall bear interest at the rate of 12% per annum from the date when due until paid. All payments on account shall first be applied to interest and then to the assessment payment first due.

c) The lien for unpaid assessments shall also secure reasonable attorney's fees incurred by the Association of Unit Owners incident to the collection of such assessment or enforcement of such lien, and all costs relating thereto.

preparation for or in the prosecution of said action, in addition to taxable costs permitted by law.

f) In addition to and not by way of limitation upon other methods of collection assessments, the Board shall have the right (but shall have no obligation), after having given ten (10) days notice to any unit owner who is delinquent in paying his assessments, to cut off any or all utility services to the delinquent owner's unit until such assessments are paid.

g) The remedies provided are cumulative, and the Board may pursue them concurrently, as well as any other remedies which may be available under law although not expressed herein.

11. ASSOCIATION. The operation of the Condominium shall be by the BIRCHCREST SOUTH OWNERS ASSOCIATIONS, hereinafter call the Association, a non-profit corporation under the laws of the State of Washington, which shall be organized and fulfill its functions pursuant to the following provisions:

a) The members of the Association shall be the unit owners.

b) The Association shall be incorporated.

c) The Bylaws of the Association may be adopted, enforced, and relied upon by the declarant concurrently with the recording of the Declaration and shall be adopted by the initial Board of the Association specified in the Articles of Incorporation of the Association.

d) Notwithstanding the duty of the Association to maintain and repair parts of the Condominium property, the Association shall not be liable for injury or damage caused by any latent condition of the property to be maintained or repaired by the Association, nor for the injuries or damages caused by the elements or other owners or persons.

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- e) The share of a member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to his/her unit. No owner has any right to possession or control of any Association funds as against the Association, its Board and officers.

12. INSURANCE.

- a) Insurance policies upon the Condominium property covering the items described in subparagraph (b) of this paragraph shall be purchased by the Association for the benefit of the Association and the unit owners and their mortgagees. Provisions shall be made for the issuance of certificates of insurance to the mortgagees (or beneficiaries under a Deed of Trust) of unit owners. Any provisions of this section may be superseded or modified in any policy if required by a lender in order to meet requirements of the Federal Home Loan Mortgage Corporation.

- b) Insurance shall be written on a multi-peril basis to cover the following:

- (1) All buildings and improvements upon the lands and all personal property included in the common elements in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, as determined annually by the Board of Trustees of the Association. Such coverage shall include at least protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as are customarily covered with respect to buildings similar to the buildings on the lands, such as vandalism and mischief;

- (2) Public liability in such amounts and with such coverage as shall be required by the Board of Trustees of the Association, but not less than coverage of \$300,000 per occurrence;

(3) Such other insurance as the Board of directors shall determine from time to time to be desirable.

- c) Premiums upon such insurance policies purchased by the Association shall be paid by the Association as a common expense.
- d) In addition to the specified coverages there shall, if possible, as to the property coverages, be an "Agreed Amount" endorsement, and a "Demolition" endorsement.
- e) Respecting liability coverage, there shall be coverage against water damage and liability for non-owned and hired automobiles and a "Severability of Interests" endorsement which would preclude the company from denying claims of a unit owner because of the negligent act of the association or another unit owner or owners.
- f) The coverage should, if possible, also contain the following provisions and limitations:
 - (1) Named Insured. The named insured under any such policies shall be the Board (or prior to the existence of any Board, the declarant) as a trustee for the unit owners in accordance with the percentages established in this Declaration, or the authorized representative thereof, including any trustee with which there has been established any insurance trust agreement, or any successor trustee, each of which shall be herein elsewhere referred to as the "insurance trustee" who shall have exclusive authority to negotiate settlement of losses under said policies.
 - (2) Contribution. In no event shall the insurance coverage obtained and maintained pursuant to the requirements hereof be brought into contribution with insurance purchased by unit owners or their mortgagees.

- (3) Matters Association Cannot Control. Such policies shall provide that coverage shall not be prejudiced by (a) any act or neglect of unit owners when such act or neglect is not within the control of the Association, or (b) by failure of the Association to comply with any warranty or condition with regard to any portion of the premises over which the Association has no control.
- (4) Cancellation. All policies shall provide that coverage may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to any and all insureds named thereon, including the servicers on behalf of mortgage insuring companies or agencies, or corporations or agencies administering programs creating any form of market for mortgages.
- (5) Waiver of Subrogation, Co-insurance, and Acts of Insured. All such policies shall contain a Waiver of Subrogation by the insurer as to any and all claims against the Association, or any unit owner or owners and/or their respective agents, employees, or tenants, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.
- (6) Company Restoration Limited. All policies of property insurance shall provide that, notwithstanding any provisions thereof, which give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the association (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the association may be a party, or any requirement of law.

g) The policy should contain a standard mortgagee clause which should:

(1) Define Mortgagee. Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of an apartment or apartment lease or sublease, in their respective order and preference, whether or not named therein.

(2) Protect Mortgagee. Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board, the unit owners, or any persons acting under authority of any of them.

(3) Waive Certain Requirements. Waive any provision invalidating such mortgage clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause.

(4) Recognize Named Insured. Provide that, without affecting any protection afforded by such mortgage clause, any proceeds payable under such policy shall be payable as required herein.

h) Fidelity Bond Coverage. The Association shall be required to maintain adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of such Association and all others who handle or are responsible for handling funds of the Association. Such fidelity coverage shall, to the extent reasonably obtainable in the Board's discretion, meet the following requirements:

(1) Oblige. All fidelity bonds shall name the Association or appropriate representatives thereof as the obligee.

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(2) Amount. Such fidelity bonds shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the Condominium project, including reserves, unless a greater amount is required by mortgage insuring companies or agencies or corporations or agencies administering programs creating a market for mortgages.

(3) Waiver of defense. Non-Compensated Parties. Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expressions.

(4) Cancellation. Such bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 30 days prior written notice to the servicer on behalf of any mortgage insuring company or agencies, or agencies or corporations administering programs creating a market for mortgages.

i) Insurance proceeds for damage or destruction to any part of the property shall be paid to the Board as trustees for the unit owners and purchasers and mortgagees of units. The Association acting through its Board shall have the authority to settle and compromise any claim under insurance obtained by the Association, and the insurer may accept a release and discharge of liability made by the Board on behalf of the named insureds under the policy. The declarant shall act for the Board prior to the time it is established.

j) Each unit owner may obtain additional insurance respecting his unit to the extent permitted by law, at his/her own expense; no unit owner shall, however, be entitled to exercise his right to maintain insurance coverage in any

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manner which would decrease the amount which the Board or any trustee for the Board, on behalf of all of the owners, will realize under any insurance policy which the Board may have in force for the Condominium at any particular time. Each unit owner is required to and agrees to notify the Board of all improvements by the owner to his/her apartment the value of which is in the excess of ONE THOUSAND (\$1,000.00) DOLLARS. Any unit owner who obtains individual insurance policies covering any portion of the Condominium (other than personal property belonging to said owner) is hereby required to file a copy of such policy or policies with the Board within thirty (30) days after purchase of such insurance, and the Board shall immediately review its effect with the Board's insurance broker, agent, or carrier. Each unit owner shall be responsible for his/her own insurance on the contents of his/her unit, additions and improvements to his/her unit, as well as for the insurance coverage protecting him/her from his/her individual standpoint, from liability for injury or damage to persons or property.

13. WHEN DAMAGED PROPERTY IS TO BE RECONSTRUCTED OR REPAIRED.

If the property which is subject to this Declaration is damaged or destroyed, the repair and reconstruction of the property shall be accomplished forthwith by the Association upon majority vote or assent of the owners and any insurance proceeds shall be used for that purpose. Costs of repair or reconstruction in excess of insurance proceeds shall be common expenses. In the event that the unit owners unanimously agree not to repair or rebuild, then the rights of the unit owners shall be governed by RCW 64.32.230.

14. PERSON TO RECEIVE SERVICE OF PROCESS. The name and address of the person to receive service of process in the cases provided by Chapter 64.32 of the Revised Code of Washington is ROBERT W. FISHER, 1496 Country Club Drive, Burlington, WA, 98233.

15. SUBDIVIDING OF UNIT(s). No unit shall be subdivided, nor shall any unit be combined with all or a part of any other unit, without the unanimous approval of all the unit owners. Any owner proposing such action shall furnish the Association with plans for such subdivision and all Declaration, survey maps and planned amendments required for such action.

16. ADMINISTRATION. Administration of the Condominium shall be by a Board of directors of the Association pursuant to the Articles of Incorporation and Bylaws. Bylaws for these purposes shall be adopted initially by the Board of the Association.

17. AMENDMENTS. This Declaration may be amended by the affirmative vote of 60% of the unit owners (said voting right is not to be determined pursuant to Paragraph 8 hereof); provided, however, that any amendment altering the value of the property and of each unit and the percentage of undivided interest in the common areas and facilities shall require the unanimous consent of the unit owners.

18. ADDITIONAL USE RESTRICTIONS.

- a) Each unit shall be used for a single family residence.
- b) Occupancy of each unit shall be in compliance with all local ordinances and State laws.
- c) The common elements shall be used only for the purposes for which they are intended to facilitate the enjoyment of the units.
- d) No use or activities shall be permitted on the Condominium premises which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its owners or tenants. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard allowed to exist. No unit owner shall permit the use of his/her unit or the common property which will increase the rate of insurance upon the Condominium property. No immoral, improper, offensive or illegal use shall be made or allowed on any part of the Condominium property. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No unit shall be sub-leased or sub-divided which would create more than a use for a single family residence.
- e) In order to preserve a uniform exterior appearance to the building, and the common and limited common areas visible to the public, the Board may require and provide

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for the painting and other decorative finish of the building, including planters and patio areas, or other common or limited common areas, and prescribe the type and color of such decorative finishes, and they may prohibit, require or regulate any modification or decoration of the building, patios, planters, or other common limited areas undertaken or proposed by any owner. This power of the Board extends to screens, doors, awnings, rails or other visible portions of each unit and unit building. The Board may also require use of a uniform color of draperies, under draperies, or drapery linings for all units.

- f) No sign of any kind shall be displayed to the public view on or from any unit or common area or limited common area without the prior consent of the Board, provided, that this section shall not apply to the declarant or declarant's agents.
- g) No animals, which term includes livestock, domestic animals, poultry, reptiles or living creatures of any kind shall be raised, bred or kept in any unit, or in the common or limited common areas, whether as pets or otherwise, except subject to rules and regulations adopted by the Board or by Bylaws adopted by the Association. The Board may at any time require the removal of any animal which it finds is disturbing other owners unreasonably, in the Board's determination, and it may exercise this authority for specific animals even though other animals are permitted to remain.
- h) No obnoxious or offensive activity shall be carried on in any unit or common area, nor shall anything be done therein which may be or become an annoyance or nuisance to other owners.
- i) Nothing shall be altered or constructed in or removed from the common area except upon the written consent of the Board and after procedures required herein or by law.

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j) HOUSE RULES. The Board or the Association Membership is empowered to pass, amend and revoke detailed administrative rules and regulations necessary or convenient from time to time to ensure compliance with the general guidelines of this article and the other provisions of this Declaration.

k) Nothing shall prevent declarant from maintaining on the property any model unit, sales facility, parking, storage, signs, equipment, tools, or structures, which is declarant's sole discretion or desirable for completing or marketing the unit.

19. MORTGAGEE PROTECTION.

a) All units, and all owners, lessees, tenants, or users thereof, and the Association and Board shall be bound by all provisions of the Bylaws, and particularly those of Article VIII providing for the protection of mortgagees and those agencies or corporations insuring mortgages or purchasing mortgages from lenders.

b) As used herein and in the Articles and Bylaws of the Association, the following terms have the following definitions:

(1) "Mortgagee" means the secured party under a mortgage, Deed of Trust, or other real property security interest covering a unit or other portion, or all of the property. Similarly, "Mortgage" includes a Deed of Trust or such security instrument, and "Mortgagor" includes the grantor under a Deed of Trust and the debtor under such instrument.

For purposes only of assuring certain rights to the vendor under a real property sale contract to the extent hereinafter provided in the Bylaws, the vendor, the contract itself, and the vendee or purchaser are included in the definition of mortgagee, mortgage, and mortgagor, respectively, otherwise they are not so included.

(2) "Institutional Lender" means a mortgagee which is a bank, savings and loan association, insurance company, or mortgage lender recognized by a governmental agency for participation in governmentally related programs.

(3) "Mortgage Insurer" means any private company or governmental agency or governmentally sponsored company which insured payment of all or any portion of the obligation secured by a mortgage on any unit.

20. REFERENCE TO SURVEY MAP AND PLANS. The survey map and plans for this Condominium Plan of Ownership referred to herein were recorded with the proper County recording authorities simultaneously with the recording of this Declaration under Auditor's Recording No. 8805200028, in Volume 14 of Plats, at Pages 47 & 48, in Skagit County, State of Washington. The recording authority, the Declarant, or any Title Company or Escrow Company or institutional lender, is authorized to insert the correct recording data or correct the same above the signatures on this document.

21. SECURED PARTIES ACCEPTANCE. Skagit State Bank of Burlington, Washington, is a beneficiary under certain Deeds of Trust wherein TransAmerica Title Insurance Company is trustee, which covers all of the property described in the Declaration heretofore filed with the Skagit County Auditor under Receiving No. 8710010031. Said secured party joins in this Declaration.

DATED: 5-2-88

SIGNED BY DECLARANTS:

By: Robert W. Fisher
ROBERT W. FISHER

By: Gloria J. Fisher
GLORIA J. FISHER

SIGNED BY BENEFICIARY:

SKAGIT STATE BANK, Burlington, WA

By: J. E. Parkey
Title: President & Vice Chairman

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