

After Recording Return to:
Paul W. Taylor
Bannister, Clark, Taylor & Wallace
415 Pine Street
Mount Vernon, WA 98273

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JERRY MCINTURE
SKAGIT COUNTY AUDITOR
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REQUEST OF _____

9308240005

**DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR MONTBORNE HEIGHTS**

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*Contained in Instruments Recorded under
Skagit County Auditor's File No. _____
Records of Skagit County, Washington*

9308240005

BK 1226 PG 0175

ORIGINAL

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

MONTBORNE HEIGHTS

This instrument dated this _____ day of August, 1993, is executed by Henry Holt and D. Anna Strazicich also known as D. Anna Holt, hereinafter referred to as "Declarant."

WITNESSETH

WHEREAS, Declarant is the owner of the real property described in Article II, Section 2.1, and legally described in attached Exhibit "B" of this Declaration; and

WHEREAS, Declarant desires to subject the real property referred to Article II, Section 2.1, and legally described in attached Exhibit "B," hereof to the provisions of this Declaration to create a residential community of single family housing in a highly desirable scenic area;

AND WHEREAS, it is the purpose of these covenants to protect the present natural beauty and vistas, to enhance and protect the property values, to maintain desirability of the community, and to maintain the attractive views of Montborne Heights, insofar as is possible in connection with the uses and structures permitted by this instrument; and

NOW THEREFORE, Declarant hereby declares that the real property described in Article II, Section 1 of this Declaration, including the improvements constructed or to be constructed thereon is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens hereinafter set forth, which are for the purpose of protecting the land and desirability of, and which shall run with the title to the real property made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall include to the benefit of each and every owner of all or any portion thereof.

ARTICLE I.

Establishment of Homeowners Association

Declarant has established Montborne Heights Homeowners Association, a Washington non-profit corporation organized under RCW 24.03 for the purpose of owning, maintaining, operating, and managing private roadways, ditches, and open spaces and any recreational amenities, and is and shall be charged with implementing the rights, duties and obligations arising under easements, restrictive covenants and other instruments as may have

been or may hereafter be placed of record with the Auditor of Skagit County relating to roads, land use, buildings, drainage of sewage, waste disposal, open spaces and recreational amenities affecting the property described in Article II.

ARTICLE II.

Property Subject To This Declaration

Section 2.1. Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property described in Exhibit "B", attached hereto and by reference made a part hereof.

Section 2.2. Other Property. Only the real property described in Section 2.1 of this Article II is hereby made subject to this Declaration; provided, however, by one or more supplementary Declarations, Declarant and the Association have the right but not the obligation, to subject other real property to this Declaration as hereinafter provided.

ARTICLE III.

Association Membership and Voting Rights

Section 3.1. The Association shall have one class of voting membership.

Membership in the Association shall be every owner of a lot, including Declarant. Each owner shall be entitled to one (1) vote for each lot owned. When more than one (1) person holds any interest in any lot, all such persons shall be members. The vote for such lot shall be exercised among them as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

ARTICLE IV.

Use Restrictions and Rules

Section 4.1. Land Use. All lots, tracts and parcels of the property described in Article II shall be used only as set forth, and such designated usage shall be changed only by the approval of owners of interest in the lots in Montborne Heights Homeowners Association through its Architectural Committee, as provided in the Articles of Incorporation and Bylaws of said corporation. The property described in Article II shall be used for single family residences except for such lots, tracts or parcels as specifically designated in the survey plat for roads, trails, utilities, greenbelts, and open spaces. Nothing contained in this Declaration shall be construed to prevent the Declarant, their successors and assigns from erecting, maintaining or authorizing erection and maintenance of structures and/or signs for the development and sale of said property while the same or any part thereof is held by the Declarant, their successors or assigns.

Section 4.2. Architectural Control. No permanent building, structure, or fence shall be placed or erected upon any lot, tract or parcel of said property which in its construction does not conform to the Skagit County Building Code and the Uniform Building Code, State of Washington Electrical Code, or the Architectural Committee's requirements. No building or structure shall be erected, placed, expanded, remodeled, or altered upon any lot, tract or parcel of said property until the construction plans and specifications, including a site plan and exterior color schemes, have been submitted to and approved in writing by said Architectural Committee prior to the commencement of any such construction work. Provided further, that prior to commencement of any such construction, the exterior lot corners shall be located and verified as reliable. The work of construction of all buildings and structures shall be prosecuted diligently and continuously so that not more than eight (8) months elapse from commencement to completion of exteriors, including painting or other suitable finish. All buildings or structures shall be new construction.

Section 4.3. Approval of Plans - General Requirements. All plans for the construction of private roads and driveways and all building plans for any building, fence, wall or structure to be erected upon any lot, and landscaping plans including a list of plants to be used, and the proposed location thereof upon any lot, and any changes after approval thereof, any remodeling, reconstruction, alteration or addition to any building, road, driveway or other structure upon any lot in such premises shall require the approval in writing of the Architectural Committee. Before beginning the construction of any road, driveway, building, fence, wall coping or other structure whatsoever, or remodeling, reconstruction or altering such road, driveway or structure upon any lot, the person or persons desiring to erect, construct or modify the same shall submit to the Architectural committee two complete sets of road or driveway plans, showing the locations, course and width of same or two complete sets of building plans and specifications for the building, fence, wall coping or other structure, as if applicable, so desired to be erected, constructed or modified. No structure of any kind, the plans, elevations and specifications of which have not received the written approval of the Architectural Committee, and which does not comply fully with such approved plans and specifications, shall be erected, constructed, placed or maintained upon any lot. *NOTE: Preliminary plans for pad location, driveways, and septic drain field plan and location shall be reviewed with the Architectural Committee before working drawing stage of plan preparation.* Approval of such plans and specification shall be evidenced by written endorsement on such plans and specifications, a copy of which shall be delivered to the owner or owners of the lot upon which the prospective building road, driveway or other structure is contemplated prior to the beginning of such construction. No changes or deviations in or from such plans all specifications as approved shall be made without the prior written consent of the Architectural Committee.

a. Preliminary Approvals. Persons or associations who anticipate constructing improvements upon the land within Montborne Heights, whether they already own lands in the same or are contemplating to own a lot or are contemplating the purchase of a lot may submit preliminary sketches of such improvements to the Architectural Committee for informal and preliminary approval or disapproval. All preliminary sketches should be submitted at least in two (2) sets, should contain a proposed site plan, and should contain sufficient general information on all aspects that will be required to be in the complete architectural plans and specifications to provide the Architectural Committee with sufficient information with which to provide an informed preliminary approval or disapproval. The Architectural Committee shall

never be finally committed or bound by any preliminary or informal approval or disapproval until such time as complete architectural plans are submitted and approved or disapproved.

b. Inadequate Architectural Plans. The Architectural Committee shall disapprove any architectural plans submitted to it which are not sufficient for it to exercise the judgment required of it by these covenants.

c. Architectural Committee Reports. The Architectural Committee's approval or disapproval as required in the foregoing building criteria shall be delivered in writing to the Board of Directors of the Association and to the lot owner submitting same. In the event the Architectural Committee fails to approve or disapprove plans and specifications within thirty (30) days of submission thereto, approval will not be required and this Article will be deemed to have been fully complied with.

d. Architectural Committee Not Liable. The Architectural Committee shall not be liable for damages to any persons or associations submitting any architectural plans for approval, or to any owner or owners of lots within Montborne Heights by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such architectural plans. Any person or association requiring title to any property in Montborne Heights of any person or association submitting plans to the Architectural Committee for approval, by doing so, does agree and covenant that he, she, or it will not bring an action or suit to recover damages against the Architectural Committee, its members and individuals or its advisors, employees, or agents.

Section 4.4. Building Restrictions. All buildings and structures shall be constructed, built and maintained in such a manner so as to blend in with the natural surroundings, existing structures, and landscaping of Montborne Heights. Variances may be granted by the Architectural Committee. In addition to the foregoing, the following criteria shall apply.

a. Separate Structures. Unless approved by the Architectural Committee as to use, location and architectural design, no garage, tool or storage room may be constructed separate and apart from the residential dwelling, nor can any such structure(s) be constructed prior to construction of the main residential dwelling.

b. Layout. No foundation for a building shall be poured, nor shall construction commence in any manner or respect, until the layout for the building is approved by the Architectural Committee. It is the purpose of this approval to assure that the home is placed on the lot in its most advantageous position, respecting both the property rights of the owner and the view and aesthetic rights of neighboring properties.

c. Exterior Color Plan. The Architectural Committee shall have final approval of all exterior color plans and each owner must submit to the Architectural Committee a color plan showing the color of the roof, exterior walls, shutters, trims, etc. The Architectural Committee shall consider the extent to which the color plan is consistent with the homes in the surrounding areas and the extent to which the color plan conforms with the natural color scheme of and for Montborne Heights.

d. Roofs. The composition of all roofs shall be tile, cedar shake, shingle, slate or concrete construction, or other composition approved by the Architectural Committee.

e. Garages. No carports will be permitted unless approved by the Architectural Committee. A structure for a boat or camping trailer kept for personal use shall be allowed, provided that the structure is approved by the Architectural Committee, is compatible in design and decoration with the residence, is constructed on the lot, sufficiently screened from other properties, and is built in accordance with Skagit County ordinances and regulations.

f. Driveway Construction. All driveways shall be paved.

g. Dwelling Quality. The Architectural Committee shall have final approval of all exterior building materials. Eight-inch or larger concrete block shall not be permitted on the exterior of any building or detached structure unless prior approval is obtained from the Architectural Committee. The Architectural Committee shall discourage the use of imitation material for facades, and encourage the use of front materials such as brick, four- or five-inch block, stone, wood and stucco, or a combination of the foregoing.

h. Landscaping. All front yard landscaping must be completed at the time the construction of the residence is complete. Landscaping plans must be included in the construction package submitted for approval to the Architectural Committee simultaneously with the plans and specifications for the residence. In the event of undue hardship due to the weather conditions, the time for construction may be extended for a reasonable length of time upon written approval of the Architectural Committee. Rear and side yard ground cover is to be completed within six (6) months of occupancy unless prohibited by adverse environmental conditions. Trees shall not be permitted to grow higher than fifteen (15) feet.

i. Parking. Boats, trailers, motorcycles, trucks, recreational vehicles, truck campers and like equipment shall not be parked or stored on any street and/or public way. No owner shall permit any vehicle which is in a state of disrepair to be abandoned or to remain parked upon any lot for more than forty-eight (48) hours. Property owners shall provide off-street parking for their personal recreational vehicles.

Section 4.5. Building Size Limitation and Height Requirements. No residence shall be permitted on any lot wherein the finished living area shall be less than (a) 1,200 square feet for one (1) story and (b) 1,500 square feet for more than one (1) story, exclusive of open decks and porches. No dwelling or building shall exceed two (2) stories and a maximum height of twenty (20) feet at any point from the mean grade without a written variance from the Architectural Committee. Height variances, when allowed, will take into consideration view infringement which may be caused to adjacent lots, tracts or parcels. All height variances authorized and approved in writing for a specific lot by the Architectural Committee will be recorded in the Skagit County Auditor's Office at the lot owner's expense.

Section 4.6. View Easement. The height of improvements, vegetation and trees on any lot shall not exceed twenty (20) feet above the mean finished grade or materially impair or restrict the view of other lot owners. The Architectural Committee shall be the sole judge

of the suitability of such height. If the Architectural Committee determines there is such an impairment or restriction of view of other lot owners that has not been previously approved by the Architectural Committee in writing, written notice shall be delivered to the offending lot owner. If, after thirty (30) days following written notice, the improvement and vegetation Or trees are not removed or reduced in height as directed by the Architectural Committee, the Architectural Committee, its representative, contractor or agent shall have the right, but shall not be under obligation to, enter upon the offending lot owner's property, complete the removal or reduction, charging the owner of the lot the actual cost plus ten percent (10%) for services, which charge shall constitute a lien against the property enforceable as provided in the case of dues, assessments and maintenance as provided in the lease and/or conveyance of said lot, tract or parcel of Declarant or as provided in the Articles or Bylaws or Resolutions of Montborne Heights Homeowners Association. This section is not to be interpreted as justification to create views not present when the lot was originally acquired from the Declarant.

Section 4.7. Setbacks. Building and improvements shall comply with the setback requirements set forth by the applicable Skagit County zoning ordinances and regulations.

Section 4.8. Temporary Structures. No Quonset hut, mobile home or any temporary structure of any nature shall be placed or used upon said premises other than that such a structure may be used as a construction shed during the actual period of construction of any permanent dwelling placed thereon.

Section 4.9. Habitation of Temporary Structures. No structure of a temporary character, basement, tent, shack, garage, or any other outbuildings shall be used on any lot at any time as a dwelling except under a temporary written permit which may be granted, upon specific time limitations of such use, at the discretion of the Architectural Committee.

Section 4.10. Signs. No sign of any kind shall be displayed to the public view on any lot or improvement, except one (1) professionally made sign containing not more than a total of six (6) square feet advertising the property for sale. This restriction shall not prohibit the temporary placement of political signs on any lot by the owner, or placement of a professionally made sign by the developer, which must comply with the local sign ordinances. This restriction shall not apply to the signs used by the developer, builders, realtors or agents during the original construction and sale of the residence.

Section 4.11. Fences and Hedges. No fence shall exceed six (6) feet in height from the mean finished lot grade. Side yard fences shall not project beyond the front walls of any dwelling and will not extend out to the garage. Exception will be the permanent signage and fencing at the entry to Montborne Heights. Designs of all fences must be approved in writing prior to construction by the Architectural Committee. Hedges or other solid screen planting may be used as lot line barriers subject to the same height restrictions as fences. No chain link fences will be allowed.

Section 4.12. Retaining Walls. Nothing shall prevent the erection of a necessary retaining wall the top of which does not extend more than two (2) feet above the finished grade at the back of said wall.

Section 4.13. Fuel Tanks. No fuel tank shall be maintained above ground unless properly screened in a manner acceptable to the Architectural Committee.

Section 4.14. Ingress and Egress. No ingress or egress road or improved pathway shall be constructed maintained and/or repaired to or from any lot, except as designated on said plat or survey without prior written consent of the Architectural Committee.

Section 4.15. Outside Fires. Outside fires may be built and maintained only as permitted by governing authorities of Skagit County and the State of Washington.

Section 4.16. Refuse - Waste. No lot shall be used or maintained as a dumping ground for rubbish, waste or fill of any kind. Trash, garbage, or other waste shall be kept in sanitary containers out of public view. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 4.17. Nuisances. No noxious or offensive activity shall be carried on upon any of the said property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the community. The Architectural Committee shall determine what activity is noxious or offensive and such determination shall be conclusive.

Section 4.18. Drainage Easements and Utilities. All lots, tracts, or parcels of said property shall be subject to an easement seven (7) feet in width, parallel with and adjacent to all lot lines fronting street rights-of-way for the purpose of installation and maintenance of utilities and storm drainage facilities.

All utilities shall be located underground. No outdoor, overhead wire or service drop for the distribution of electrical energy or for telecommunication purposes, nor any pole, tower or other structure supporting said outdoor overhead wires shall be erected, placed or maintained within Montborne Heights.

Section 4.19. Drainage. No change in the natural drainage shall be made by any lot owner without prior approval from the Architectural Committee and governing Skagit County agencies.

Section 4.20. Use of Firearms and Explosives. The use of explosives is prohibited, except as required for construction purposes on said property. The use of firearms and hunting within the planned community is prohibited.

Section 4.21. Unkept Lots. The Architectural Committee shall have the right at all times, but shall not be under obligation, to enter upon all lots, tracts, or parcels of said property to care for, cut the grass upon and remove or destroy weeds and rubbish from any such lot, tract, or parcel, if the owner of the lot or leasehold thereof shall not have corrected any such condition after receipt of thirty (30) days' notice, for the purpose of maintaining an attractive overall appearance for said property and to charge the owner or owners of the lot or of the leasehold of said lot, tract or parcel the actual cost plus ten percent (10%) for services rendered in alleviating any such unsightly condition, which charge shall constitute a lien against the property enforceable as provided in the case of dues, assessments and maintenance as provided in the lease and/or conveyance of said lot, tract, or parcel of Declarant or as provided in the

Articles or Bylaws or Resolutions of Montborne Heights Homeowners Association. No noxious weeds shall be permitted to grow upon any of said lots or tracts.

Section 4.22. Business and Commercial Use. Except as provided for below, no trades, crafts, business, professions or commercial or similar activity of any kind shall be conducted in Montborne Heights. Nor shall any goods, equipment, vehicles, materials or supplies used in connection with trade, service or business be kept or stored on any lot; provided, however, that any homebuilder may store construction materials and equipment on said lots in the normal course of said construction and use completed residences as sales models. A home occupation shall not violate this covenant so long as the following criteria are met:

- a. No external signs or display of merchandise;
- b. No personal visits by customers, clientele or suppliers;
- c. The occupation shall be secondary to the use of the dwelling for residential purposes, and shall not use more than one-fourth (1/4) of the total square footage of the residence.
- d. The appearance of the building as a residence shall not be affected, and the occupational use shall not produce noise or odor noticeable outside the property.

Section 4.23. Prohibition Against Subdividing of Lot. No lot shall be divided nor shall any portion thereof ever be sold nor shall a building be constructed beyond the boundaries of any one lot, it being the intent of this paragraph that all lots shall remain as in the plat described, each to be used only for a residential purpose.

Section 4.24. Antennae and Service Facilities. Exterior antennae shall not be permitted to be placed upon any lot or on the roof of any structure. This shall include but not be limited to dish antennae or satellite receivers.

Section 4.25. Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any lot, with the exception of dogs, cats, and other usual, common household pets, in a reasonable manner as determined by the Association's board. Any household pet determined to, in the sole discretion of the Architectural Committee, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the owners of any other lots, or the owner of any property located adjacent to the community may be removed by the board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs which are household pets shall at all times, whenever they are outside the owner's lot, be confined on a leash. Without prejudice to the Architectural Committee's right to remove any such household pets, no household pet that has caused any damage or injury may be left unrestrained in the community. No structure or enclosure for the purpose of containing pets other than a fence at the property line conforming to the requirements herein shall be allowed.

Section 4.26. Clotheslines, Garbage Cans, Woodpiles, Etc. All clotheslines, garbage cans, woodpiles, and other similar items shall be located or screened so as to be concealed from the view of neighboring lots, streets, and property located adjacent to the lot.

Section 4.27. Window Covering. Standard curtain materials or blinds only will be permitted as window coverings. At no time are blankets, sheets, tar paper, foil, etc., to be placed in windows.

Section 4.28. Prohibition Against Storage. If stored for more than twenty-four (24) hours, the following shall be garaged or screened with appropriate materials so they are not in view or visible from any neighboring lots, street and/or property adjacent to the lot: trailers, truck campers, boats, boat trailers, snowmobiles or other recreational vehicles.

Section 4.29. Construction of Improvements Within Road Rights-of-Way. Rights-of-way for both public and private roads within Montborne Heights are sixty (60) feet and thirty-five (35) feet in width, respectively. All abutting lot owners, including the Homeowners Association, shall covenant and agree to maintain the vegetation within said rights-of-way at a height of not more than twenty-four (24) inches so as to maintain adequate sight distance with respect to all rights-of-way. In the event an abutting property should fail to maintain or control vegetation at the aforesaid height, then the Homeowners Association, acting through its Architectural Committee, shall have the right, but not the obligation, to enter upon all lots, tracts, and parcels of property to maintain the vegetation at the required level and may charge the abutting property owner in the manner provided in Section 4.21 for unkept lots.

Section 4.30. Construction of Improvements Within Road Rights-of-Way. Excepting receptacles for newspapers and mail as approved by the Architectural Committee, no lot owner, including the Homeowners Association, shall construct or make any above ground improvements within twenty-four (24) feet of the center line of any public (60-foot) street right-of-way and within twelve (12) feet of the centerline of any private (35-foot) street right-of-way, unless approved in writing by the Architectural Committee and the appropriate Skagit County authority with respect to any county right-of-way,

Section 4.31. Traffic Control. The Homeowners Association shall have the right at all times, but not the obligation, to regulate the use of all private road rights-of-way including, but not limited to, access, vehicular traffic and parking on said rights-of-way. By way of illustration, but not by limitation, the Homeowners Association shall have the right to establish maximum speeds for private roads at less than the speed for which roads have been constructed or designed (i.e., 25 m.p.h.).

ARTICLE V.

Assessments

Section 5.1. Purpose of Assessment. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the owners and occupants of lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 5.2. Creation of the Lien and Personal Obligation for Assessments. Each owner of any lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (i) annual assessments or charges;

(ii) special assessments, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments against any particular lot which are established pursuant to the terms of this declaration including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges and interest, not to exceed the maximum legal rate, costs, and reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, all reasonable attorney's fees actually incurred, shall also be the personal obligation of the person who was the owner of such lot at the time the assessment fell due. Each owner shall be personally liable for his or her portion of each assessment coming due while he or she is the owner of a lot, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first mortgage holder taking title through foreclosure proceedings or deed in lieu of foreclosure.

Assessments shall be paid at a uniform rate per lot in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration upon ten (10) days' written notice of the annual assessment for delinquent accounts. Unless otherwise provided by the Board, the assessment shall be paid in annual installments.

Section 5.3. Computation. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessments to be levied against each lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the owners. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 5.4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments in any year. So long as the total amount of special assessments allocable to each lot does not exceed Three Hundred Dollars (\$300.00) in any one fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any lot to exceed this limitation shall be effective only if approved by a majority of the owners.

Section 5.5. Lien for Assessments. All sums assessed against any lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such lot, except for (i) liens of ad valorem taxes or (ii) liens for all sums unpaid on a first mortgage or on any mortgage to Declarant duly recorded in the land records of the county where the community is located and all amounts advanced pursuant to such mortgage and secured thereby in accordance with the terms of such installment.

All other persons acquiring liens or encumbrances on any lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 5.6. Effect of NonPayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than thirty (30) days shall incur a late charge in the amount of Twenty-Five Dollars (\$25.00) or such amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within thirty (30) days following the due date. If the assessment is not paid within sixty (60) days, a lien as herein provided, shall attach and, in addition, the lien shall include the late charge and interest, not to exceed the maximum legal rate on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after ninety (90) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other owners. The Association, acting on behalf of the owners, shall have the power to bid on the lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same. No owner may waive or otherwise except liability for the assessments provided for herein including, by way of illustration but not limitation, abandonment of the lot. No diminution or abatement of assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each owner.

All payments shall be applied first to costs and attorney's fees, then to late charges, then interest and then to delinquent assessments.

Section 5.7. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all lots then existing and subject to assessment under this Declaration or the first day of the month following the conveyance of the first lot by the Declarant to a person other than Declarant and shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. No lot shall become subject to assessment prior to January 1, 1994.

Section 5.8. Assessment Obligation of Declarant.

a. After the commencement of assessment payments as to any lot, Declarant, on behalf of themselves and their successors and assigns, covenant and agree to pay the full amount of the assessment as to any occupied residence provided, however, each lot owned by Declarant which does not contain an occupied residence shall not be subject to any assessment provided for herein.

b. Notwithstanding anything to the contrary herein, the Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money (herein collectively called "in-kind contribution"). The amount by which monetary assessments shall be decreased as a result of any in-kind contribution shall be the fair market value of the contribution. If the Declarant and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant cannot agree as to the value of any contribution, the Declarant shall supply the Association with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three independent contractors approved by the Declarant who are in the business of providing such services and materials. If the Association and the Declarant are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

Section 5.9. Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess lots for the following:

a. Expenses of the Association, which benefit less than all of the lots may be specifically assessed equitably among all of the lots which are benefitted according to the benefit received.

b. Expenses of the Association which benefit all lots, but which do not provide an equal benefit to all lots may be assessed equitably among all lots according to the benefit received.

ARTICLE VI.

Mortgage Provisions

The Association shall comply with the provisions of the National Mortgage Association or the Federal Home Loan Mortgage Corporation for private covenants and restrictions and notice requirements thereunder; provided, however, each lot owner shall be obligated to provide the Association with the name and address of the holder of any mortgage encumbering the owner's lot. The Association, acting by and through its Board without approval of owners, may cause amendment to this Article to reflect or comply with changes initiated or

adopted by the aforesaid governmental agencies. No provision of this Declaration or the Association Bylaws shall be construed as giving any owner or other party priority over rights of the first mortgagee of any lot in the case of distribution to such owner, insurance proceeds or condemnation awards for losses and taking of common property.

ARTICLE VII.

General Provisions

Section 7.1. Enforcement. Each owner and every occupant of a lot shall comply strictly with the Bylaws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed to his or her lot, if any. The Board of Directors may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors on behalf of the Association or, in a proper case, by an aggrieved owner. Failure by the Association or any owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

Section 7.2. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a lot or any portion of the common property to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the Board shall give the violating lot owner thirty (30) days' written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating lot owner and shall be collected as provided for herein for the collection of assessments.

Section 7.3. Duration. The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law, provided, however, so long as Washington law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, and such provisions may be renewed or extended, in whole or in part, beyond the initial period permitted by such law for successive periods not to exceed the period permitted by such law, provided such renewal or extension is approved by at least a majority of the owners present or represented by proxy at a meeting duly called for such purpose. Further, no such renewal or extension shall be effective unless there is filed for record in the Office of the Clerk of the Superior Court of the county where the community is located on or before the effective date thereof an instrument executed by the President and Secretary of the Association which shall state the terms of such renewal or extension and which shall contain a certification by such Secretary that such extension and renewal was duly approved. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewal as provided in this Section.

Section 7.4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the lots subject to this Declaration; (iii) if such Amendment is required by an institutional or governmental lender or purchaser of mortgage loans including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase a mortgage loan on the lots subject to this Declaration; or (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the lots subject to this declaration; provided, however, any such amendment shall not adversely affect the title to any owner's lot unless any such lot owner shall consent thereto in writing.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof of at least seven percent (7%) of the owners. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein.

Section 7.5. Partition. The common property shall remain undivided, and no lot owner nor any other person shall bring any action for partition or division of the whole or any part thereof without the written consent of all owners and all portions of the property located within the community and without the written consent of all holders of all mortgages encumbering any portion of the property including, but not necessarily limited to the lots located within the community.

Section 7.6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 7.7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application and, to this end, the provisions of this Declaration are declared to be severable.

Section 7.8. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 7.9. Conveyances of Common Property. The Association shall accept such conveyances of common property as are from time to time made to the Association by the Declarant.

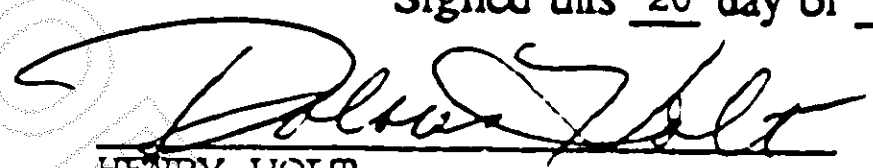
Section 7.10. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including attorney's fees imposed upon or reasonably

incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer a director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made to them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation if such insurance is reasonably available.

Section 7.11. Notice of Sale or Lease. In the event an owner sells or leases his or her lot, the owner shall give to the Association, in writing, the name of the purchaser or lessee of the lot and such other information as the Board may reasonably require.

Section 7.12. Counterparts. For the convenience of the Declarant, this Declaration may be simultaneously executed in counterpart originals each of which, when so executed and delivered, shall constitute an original and shall be fully enforceable as an original if said counterparts of the signature page are signed by all Declarants.

Signed this 20 day of August, 1993.


HENRY HOLT
D. ANNA STRAZICICH AKA D. ANNA HOLT
HIS ATTORNEY IN FACT
DECLARANT

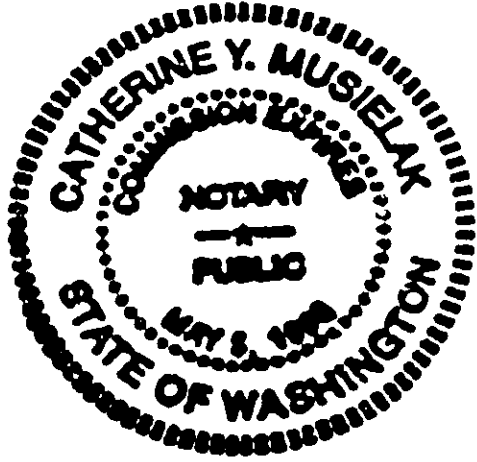

D. ANNA STRAZICICH AKA D. ANNA HOLT
DECLARANT

MONTBORNE HEIGHTS HOMEOWNERS ASSOCIATION

STATE OF WASHINGTON)
)
) SS
COUNTY OF ~~SKAGOT~~ KING)

On this 20 day of August, 1993, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared D. Anna Strazicich, aka D. Anna Holt, to me known to be the owner and developer of Montborne Heights, and who executed the foregoing instrument for self and also as Attorney in Fact for Henry Holt and acknowledged that she signed and sealed the same as her free and voluntary act and deed as Attorney in Fact for said principal for the uses and purposes therein mentioned, and on oath stated that the Power of Attorney authorizing the execution of this instrument has not been revoked and that the said principal is now living and is not insane.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Catherine Y. Musielak
Notary Public for Washington State
My Appointment Expires 5/5/96.

EXHIBIT "A"

Definitions

The following words, when used in this Declaration or in any Supplementary Declaration (unless the context shall prohibit), shall have the following meanings:

1. "Association" shall mean and refer to Montborne Heights Homeowners Association, Inc., a nonprofit Washington corporation, its successors and assigns.
2. "Bylaws" shall refer to the Bylaws of Montborne Heights Homeowners Association Inc., attached to this Declaration as Exhibit "C" and incorporated therein by this reference.
3. "Common Property" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association, for the common use and enjoyment of the owners.
4. "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "B" attached hereto, and (i) such additions thereto as may be made by Declarant (or its mortgagee or transferee, as provided in the Declaration) and (ii) such additions thereto as may be made by the Association by Supplementary Declaration of other real property.
5. "Lot" shall mean any plot of land within the community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site as shown on the plat for the community of amendments thereto, recorded in the land records of the county where the community is located. The ownership of each lot shall include, and there shall pass with each lot as an appurtenance thereto, whether or not separately described all of the right, title, and interest of an owner in the common property, which shall include, without limitation, membership in the Association.
6. "Majority" means those eligible voters, owners or other group as the context may indicate totalling more than fifty percent (50%) of the total eligible number.
7. "Mortgage" means any mortgage, deed to secure debt and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment of satisfaction of an obligation.
8. "Mortgagee" shall mean the holder of a mortgage.
9. "Owner" shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any lot located within the community excluding, however, any person holding such interest merely as security for the performance or satisfaction of any obligation.

10. "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

EXHIBIT B

DESCRIPTION:

Lots 1 through 17, inclusive, Block 23; all of Block 24; Lots 1 through 11, inclusive, Block 25; Lots 1 through 18, inclusive, Block 26 and all of Block 27, all in "PLAT OF THE TOWN OF MONTBORNE, SKAGIT COUNTY, WASHINGTON", as per plat recorded in Volume 2 of Plats, page 80, records of Skagit County, Washington.

TOGETHER WITH those portions of vacated street and alley adjacent to said lots and blocks which have reverted to said premises by operation of law.

ALSO TOGETHER WITH those portions of streets and alleys identified on Exhibit 4 of that certain Agreed Judgment Quieting Title filed March 23, 1992 in Skagit County Cause No. 92-2-00107-8.

Situate in the County of skagit, State of Washington.

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