



Request of: J I J CORP

RETURN DOCUMENT TO:

DAVID EVANS & ASSOC
119 GRAND AVE SUITE D
Bellingham, WA 98225

Use dark black ink and print legibly. Documents not legible will be rejected per RCW 65.04.045 & 65.04.047

DOCUMENT TITLE(S):
 DECLARATION OF RESERVATIONS, RESTRICTIVE COVENANTS, &
 EASEMENTS

**AUDITOR FILE NUMBER & VOL. & PG. NUMBERS OF DOCUMENT(S)
 BEING ASSIGNED OR RELEASED:**

Additional reference numbers can be found on page _____ of document.
GRANTOR(S)

D.B. JOHNSON CONSTRUCTION, INC.

Additional grantor(s) can be found on page _____ of document.
GRANTEE(S):

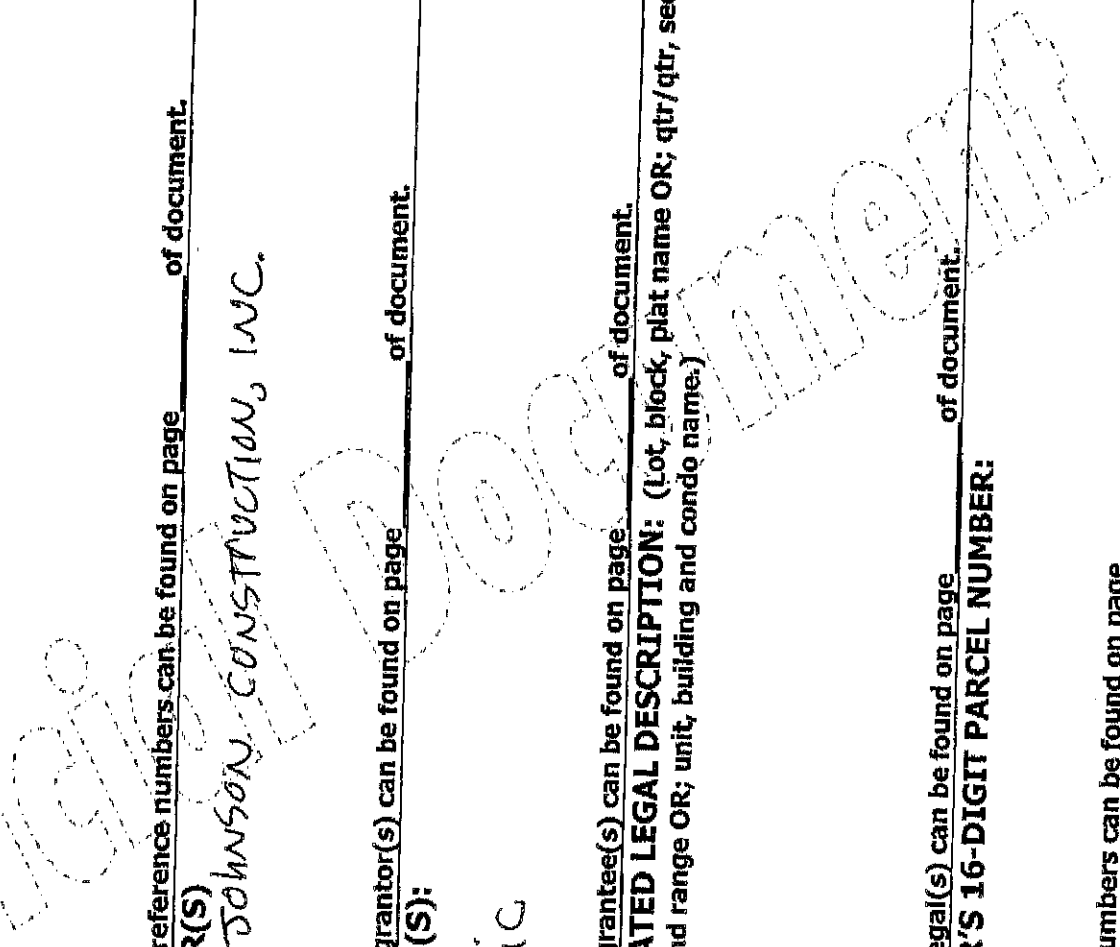
PUBLIC

Additional grantee(s) can be found on page _____ of document.
ABBREVIATED LEGAL DESCRIPTION: (Lot, block, plat name OR; qtr/qtr, section, township and range OR; unit, building and condo name.)

Additional legal(s) can be found on page _____ of document.
ASSESSOR'S 16-DIGIT PARCEL NUMBER:

Additional numbers can be found on page _____

The Auditor/Recorder will rely on the information provided on this form. The responsibility for the accuracy of the indexing information is that of the document preparer.



**PLAT OF BAY-CREST SOUTH
DECLARATION OF RESERVATIONS,
RESTRICTIVE COVENANTS, AND EASEMENTS**

THIS DECLARATION OF RESERVATIONS, RESTRICTIVE COVENANTS, AND EASEMENTS (THIS "Declaration of Covenants") is made on this 8th day of DECEMBER 2005, by D. B. Johnson Construction, Inc., a Washington corporation, hereinafter referred to as "Declarant".

RECITALS

- A. Declarant is the owner of real estate located in Whatcom County legally described in Exhibit A attached hereto and incorporated herein by this reference. This real property is commonly referred to and will hereinafter be referred to as the Lots 1 through 157 (inclusive) of the **Plat of Bay-Crest South**. The **Plat of Bay-Crest South** consists of **One hundred fifty-seven (157)** lots and certain common features including a recreation area tract, open space tracts and a detention facility tract.
- B. This Declaration of Reservations, Restrictive Covenants and Easements for the **Plat of Bay-Crest South** (hereinafter referred to as CC&R's) will relate to Lots 1 through 157 of the **Plat of Bay-Crest South**. The **Plat of Bay-Crest South** is recorded under Whatcom County Auditor's File Number 2051201932 at the Whatcom County Recorder's Office, (hereinafter referred to as the Plat Map).
- C. Declarant will convey Lots 1 through 157 within the **Plat of Bay-Crest South** subject to certain protective covenants, conditions, restrictions, reservations, liens, easements and charges as hereinafter set forth.
- D. **NOW, THEREFORE**, Declarant hereby declares that Lots 1 through 157 within the **Plat of Bay-Crest South** shall be held, sold and conveyed subject to and together with the following easements, restrictions, covenants and conditions together with the restrictions, easements, exceptions, and reservations recorded on the face of the Plat, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property.

**ARTICLE I
GENERAL PROVISIONS**

Section 1.1 - RUN WITH THE LAND. These easements, covenants, restrictions and conditions hereinafter set forth are for the benefit of the above-described real property and for each owner of any portion thereof and shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in said properties or any part thereof, and shall inure to the benefit of and pass with said property and each and every parcel thereof and shall apply to and bind the successors in interest of any owner thereof.

Section 1.2 - AREA COVERED. The area covered by these Covenants is the **Plat of Bay-Crest South**, as identified above and further described in Exhibit A.

Section 1.3 - GENERAL FEATURES. The **Plat of Bay-Crest South**, as of the date of this Declaration of Covenants is located in unincorporated Whatcom County.

Section 1.4 – AMENDMENT. These CC&R's may be amended by an instrument signed by not less than seventy percent (70%) of the owners of all recorded lots in the **Plat of Bay-Crest South**. Further, any amendment must be recorded. In no event shall any amendments require more onerous restrictions than those contained herein as to any existing structure unless the same is unanimously approved in writing by all owners. Notwithstanding any other provision herein, these CC&R's may not be amended so long as the Declarant (or its successor) owns one or more Lots or parcels within the development without the Declarant's (or its successor's) prior written consent.

Section 1.5 – SEVERABILITY. Invalidation, modification or amendment of any one of these Covenants contained herein by judgment or court order shall not, in any way, affect any of the other provisions which shall remain in full force and effect.

ARTICLE II EASEMENTS

Section 2.1 – COMMON-AREA EASEMENTS. The common areas are Tract A, a Detention Pond Facility and Tract B; Tract C, Tract D, Tract E, Tract F, all reserved as Open Space Tracts. Every present and future owner of a Lot within Bay-Crest South ("Owner") shall have the right to an easement for the use and enjoyment of the Common Areas, subject to such uniform rules and restrictions as may be adopted by the Board of Directors and the provisions of the Plat Map. The Common Area cannot be mortgaged or conveyed without the written consent of at least seventy-five percent (75%) of the Owners (excluding Declarant); and obtaining any plat amendment or other governmental approval required by law. For the purposes of this Declaration, Owners shall be defined to include the fee titleholder of any of Lots 1 through 157 within the Development, as well as contract purchasers of lots, but not contract sellers.

Section 2.2 – EASEMENTS APPURTENANT. All of the easements granted herein are appurtenant to all portions of the Development, and are for the benefit of all Owners, and together with all restrictions, reservations, covenants or designations herein, are hereby declared to be covenants running with the land. Said easements, being appurtenant to and for the benefit of all portions of the Development, shall pass, together with any and all restrictions, reservations, covenants, and/or designations contained in this document or hereafter adopted, whether mentioned or not mentioned in the instrument of conveyance of any portion of the Development.

Section 2.3 – SHARING OF MAINTENANCE AND REPAIR COSTS. The Owners hereby covenant and agree, and bind themselves, their heirs, successors and assigns by their acceptance of any conveyance of an interest either by deed or contract, in any portion of the Development, to bear and pay the costs of repair, maintenance and upkeep of the Common Areas of the Plat of Bay-Crest South, the storm water drainage facilities, and all landscape areas in the public right of way, subject to the provisions of the Plat Map. Each party's share of such cost is to be determined by the Homeowners Association hereinafter provided for and in accordance with the provisions of the Plat Map, subject to this Declaration and any amendments thereto.

Section 2.4 – STORMWATER FACILITY MAINTENANCE PLAN. The following are the minimum standards for the maintenance of the stormwater facility:

- 2.4.1 The facility shall be inspected a minimum of once per year during the month of September, in addition to an inspection after each heavy rainstorm event.

- 2.4.2 The inspections shall include an inspection of the grassy swales, and other bio-filters, catch basins and manholes, an inspection for rodent holes and an assessment of the structural integrity of the facility. In addition: the annual inspection shall note the amount of accumulated sediment in the facility.
- 2.4.3 Debris and garbage shall be removed from the facility at a regular intervals of no less than once per month.
- 2.4.4 Vegetation, including grass shall be cut to the height of not less than 6 inches. Vegetation-approved by Whatcom County shall be maintained and replaced to ensure continuous cover.
- 2.4.5 Accumulated sediment of more than 10% of the designed pond depth shall be removed.
- 2.4.6 Disposal of waste from maintenance activities shall be done in accordance with generally accepted standards for the type of waste requiring removal.
- 2.4.7 Maintenance shall include replacement of missing rock in the spillway and culvert inlet and outlets, and repair of any defect in the fence that permits easy entrance to the facility.
- 2.4.8 The access to the facility shall be kept free of obstruction.
- 2.4.9 Following each inspection or maintenance activity, with the exception of mowing activity and garbage removal, records shall be completed noting the inspection results and detailing the activity taken. Inspections shall be recorded on a Stormwater Facility Inspection Form such as the form attached as Exhibit B.
- 2.4.10 The Association Board shall appoint and confirm on an annual basis the person responsible for the maintenance provisions and record maintenance of the facility.
- 2.4.11 The records maintained in accordance with these provisions shall be made available to Whatcom County upon request.
- 2.4.12 Trees and vegetation that interfere with access, function or maintenance of the pond and water quality system shall be removed.
- 2.4.13 The ASSOCIATION has the responsibility to properly maintain all stormwater facilities not within the County right-of-way. Whatcom County may inspect all stormwater facilities and the ASSOCIATION records. If the ASSOCIATION fails to maintain the stormwater facilities, Whatcom County can issue written notice specifying the required actions. If the actions are not corrected in a timely manner or in the event of a public hazard, Whatcom County may enter the property to perform the actions needed and bill the ASSOCIATION. Any action taken by Whatcom County shall not relieve the ASSOCIATION of its responsibility to maintain the stormwater facilities.

ARTICLE III
BAY-CREST SOUTH HOMEOWNERS ASSOCIATION

Section 3.1 - FORM OF ASSOCIATION. The Owners shall constitute the Bay-Crest South Homeowners Association, which will be a nonprofit corporation formed under the laws of the State of Washington, provided, that from and after the formation of such nonprofit corporation, the rights and duties of the Owners and of the corporation shall continue to be governed by the provisions of this Declaration.

Section 3.2 - ARTICLES AND BYLAWS. Before the Transition Date, Declarant will adopt Articles of Incorporation and Bylaws to supplement this Declaration, to provide for the administration of the Association and the Property and for their purposes not inconsistent with this Declaration. Declarant may, without the necessity of obtaining the consent of any Owner, amend the Articles and Bylaws from time to time until the Transition Date.

Section 3.3 - QUALIFICATION FOR MEMBERSHIP. Each Owner (including Declarant) shall be a member of the Association and shall be entitled to one membership for each Lot owned; provided, that if a Lot has been sold on contract, the contract purchaser shall exercise the rights of an Owner for purposes of the Association, this Declaration, and the Bylaws, except as otherwise limited, and shall be the voting representative unless otherwise specified. Ownership of a Lot shall be the sole qualification for membership in the Association.

Section 3.4 - TRANSFER OF MEMBERSHIP. The Association membership of each Owner (including Declarant) shall be appurtenant to the Lot giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except upon the transfer of the Lot. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association to the new Owner.

Section 3.5 - NUMBER OF VOTES. The total voting power of all Owners at the time of recording shall be one hundred fifty-seven (157) votes.

Section 3.6 - VOTING REPRESENTATIVES. An Owner may, by written notice to the Board, designate a voting representative for the Lot. The designated voting representative need not be an Owner. The designation may be revoked at any time by written notice to the Board from a Person having an ownership interest in a Lot, or by actual notice to the Board of the death or judicially declared incompetence of any Person with an ownership interest in the Lot, except in cases in which the Person designated is a Mortgagee of the Lot. This power of designation and revocation may be exercised by the guardian of an Owner, the attorney-in-fact for the Owner under a durable power of attorney, and/or the administrator or executor of an Owner's estate. If no designation has been made, or if a designation has been revoked and no new designation has been made, the voting representative of each Lot shall be the group composed of all of its Owners. If a Lot is owned by husband and wife and only one of them is at a meeting, the one who is present will represent the marital community.

3.6.1 Joint Owner Disputes. The vote for a Lot must be cast as a single vote and fractional votes are not allowed. If joint Owners are unable to agree among themselves how their vote shall be cast, before the vote is taken, they shall lose their right to vote on the matter in question.

3.6.2 Pledged Votes. An Owner may, but shall not be obligated to, pledge his vote on all issues or on certain specific issues to a Mortgagee; provided, however, that if an Owner is in default under a Mortgage on his Lot for ninety (90) consecutive days or more, the Owners, Mortgagee shall automatically be authorized to state in writing at any time thereafter that the Lot Owner has pledged his or her vote to the Mortgagee on all issues arising after such statement and during the continuance of the default. If the Board has been notified of any such pledge to a Mortgagee, only the vote of the Mortgagee will be recognized on the issues that are subject to the pledge.

Section 3.7 - ANNUAL AND SPECIAL MEETINGS. There shall be an annual meeting of the Owners in the first quarter of each fiscal year at such reasonable place and time as may be designated by written notice from the Board delivered to the Owners no less than thirty (30) days before the meeting. Special meetings may be called as allowed for in the Bylaws.

ARTICLE IV NOTICES FOR ALL PURPOSES

Section 4.1 - FORM AND DELIVERY OF NOTICE. All notices given under the provision of the Declaration or the Bylaws or rules or regulations of the Association shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, the notice shall be deemed to have been delivered on the third day of regular mail delivery after a copy has been deposited in the United States mail, first class, postage prepaid, addressed to the Person entitled to such notice at the most recent address known to the Board. Mailing addresses may be changed by notice in writing to the Board. Notices to the Board shall be given to Declarant until the Transition Date and thereafter shall be given to the president or secretary of the association.

Section 4.2 - NOTICES TO MORTGAGEES. Any Mortgagee of a Lot may file with the secretary of the Board a written request that it be given copies of notices. Until the Mortgagee withdraws the request and satisfies the Mortgage of record, the Board shall send to the requesting Mortgagee a copy of (1) all notices of meetings of the Association; (2) all other notices sent to the Owner of the Lot covered by the Mortgagee's Mortgage; and (3) any financial statements. The provisions of this Section 4.2 shall prevail over any inconsistent provisions in the Declaration or in the Articles or Bylaws.

ARTICLE V RESERVATION OF RIGHTS AND POWER OF ATTORNEY

Section 5.1 - RESERVATION OF RIGHTS. The Declarant hereby reserves unto itself, its heirs, successors and assigns, certain rights in the Development and Common Areas, and the rights reserved are hereby expressly declared to be covenants running with the land, binding on all Owners. The rights reserved are as follows:

- A. The right to form a private, non-profit corporation for the benefit of the Owners of property within the Development ("Homeowners Association") and to incorporate the same under the laws of the State of Washington, with the duties and powers discussed in Article VII of this declaration, subject to change, expansion, or modification as provided for herein.
- B. The right to execute and record additional easement, covenant or similar

documents with regard to the Development consistent with the final Plat as approved by Whatcom County.

C. Until such time as all of the lots in the Development have been sold, Declarant reserves the right to modify or amend this Declaration by recording such modification or amendment with the Whatcom County Auditor, and providing copies of said document to all other Owners at the time of said amendment or modification.

D. Each Owner irrevocably appoints the Declarant, or the Declarant's successor and assigns, as his/her true and lawful attorney-in-fact in his name, place and stead, to execute and acknowledge and record any and all instruments necessary or beneficial for carrying out any of the rights reserved above in this Article V.

IT IS EXPRESSLY UNDERSTOOD AND INTENDED THAT THE FOREGOING POWERS OF ATTORNEY GRANTED IN ARTICLE V ARE COUPLED WITH AN INTEREST, ARE IRREVOCABLE, AND SHALL SURVIVE CONVEYANCE OF ANY PORTIONS OF THE DEVELOPMENT, WHETHER OR NOT MENTIONED IN ANY CONVEYANCE DOCUMENT.

Section 5.2 - TRANSFER OF DECLARANT'S RIGHTS AND POWERS. All rights of Declarant shall automatically pass to any person or entity acquiring more than fifty percent (50%) of the recorded lots within the Development from the Declarant named above. In the event of such an acquisition, all references to Declarant herein shall mean the purchaser of such lots. Also, in such event, the initial Declarant named above shall have no further rights, obligations or liabilities hereunder, except, if applicable, as a member with regard to any lots actually retained.

ARTICLE VI ADMINISTRATION OF PROPERTY

Section 6.1 - TRANSITION DATE. The "Transition Date" shall be the date control of the Property passes from Declarant to the Association. The Transition Date will be the earlier of (i) the date designated by Declarant in a written notice to the Owners which date may be at Declarant's election any date after this Declaration has been recorded or (ii) the 180th day after Declarant has transferred title to purchasers of 90% of the Lots in the Plat of Bay-Crest South or (iii) five (5) years after Declarant first conveys a Lot to a person other than an assignee of Declarant's rights hereunder. For purposes of the foregoing clauses (ii) and (iii), however, transfer of title to a Lot by Declarant to any person or entity purchasing the Lot for constructing a Structure and selling it to a person intending to reside in the completed structure shall be ignored and title to any Lot owned by such a person or entity shall not be deemed transferred to a purchaser who intends to reside on the Lot in a completed structure.

Section 6.2 - DECLARANT'S POWERS UNTIL TRANSITION DATE. Until the Transition Date, Declarant shall have the full power of attorney to exercise all of the rights, duties and functions of the Board of Directors and the officers of the Association, including but not limited to reviewing and approving building and landscaping plans, the adoption of rules and regulations, contracting for the purchase of goods and services, buying insurance and collecting and expending all assessments and other Association funds. Declarant may at such times as it deems appropriate select and from time to time replace an interim board of three directors, who need not be Lot Owners and who shall have all the powers, duties, and functions of the Board. Declarant shall have the power to contract with an

experienced professional managing agent and delegate to the managing agent such powers and duties as are desirable or appropriate. Any contract made by Declarant, its managing agent, or the board prior to the Transition Date (including management contracts) that would otherwise extend beyond the Transition Date shall be terminable by the Board after the Transition Date upon thirty (30) days notice.

Section 6.3 – TRANSFER OF ADMINISTRATION. On the Transition Date the authority and responsibility to administer and manage the Association, subject to this Declaration and the Articles and Bylaws shall pass to the Association. A Board of not fewer than three Directors elected from among the Owners shall govern the Association. The First Board (that is, the first Board elected by the Owners) will have three directors. Declarant, or the Board will call a meeting of the Association to be held before the Transition Date for the purpose of electing the First Board.

ARTICLE VII AUTHORITY OF THE BOARD

Section 7.1 – ADOPTION OF RULES AND REGULATIONS. The Board is empowered to adopt, amend and revoke on behalf of the Association detailed administrative rules and regulations necessary or convenient from time to time to insure compliance with this Declaration and to promote the comfortable use, value and enjoyment of the Property. The rules and regulations of the Association shall be binding upon all Owners and occupants and all other Persons claiming an interest in the Property or any portion of it except a governmental entity.

Section 7.2 – ENFORCEMENT OF DECLARATION, Etc. The Board shall have the power and the duty to enforce the provisions of this Declaration, the Articles, the Bylaws and the rules and regulations of the Association for the benefit of the Association. The failure of any Owner to comply with the provisions of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association will give rise to a cause of action in the Association (acting through the Board) and/or any aggrieved Owner for recovery of damages, for injunctive relief, or for both. If a legal action is brought to interpret or enforce compliance with the provisions of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association, the prevailing party shall be entitled to judgment against the other party for its reasonable expenses, court costs, and attorney's fees in the amount awarded by the Court.

Section 7.3 – GOODS AND SERVICES. The Board shall acquire and pay for as common expenses of the Association all goods and services reasonably necessary or convenient for the efficient and orderly functioning of the Common Areas and Common Area Facilities other than Lots. The goods and services shall include (by way of illustration and not limitation) policies of insurance and fidelity bonds, legal and accounting services, maintenance, repair, landscaping, gardening and general upkeep, and all supplies, materials, fixtures, and equipment that are in the Board's judgment necessary or desirable for the operation of the Property and enjoyment of it by the Owners. The Board may hire such full-time or part-time employees as it considers desirable.

ARTICLE VIII BUDGET AND ASSESSMENT FOR COMMON EXPENSES

Section 8.1 – FISCAL YEAR, PREPARATION OF BUDGET. The Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year. Within thirty (30) days prior to the beginning of each fiscal year, the Board shall estimate the charges (including common expenses, and special charges for particular Lots and

reserves) to be paid during such year, shall make provision for creating, funding and maintaining reasonable reserves for contingencies and operations (including, but not limited to, maintenance of Common Area Facilities), and shall take into account any expected income and any surplus available from the prior year's operating fund. If the sum estimated and budgeted at any time proves inadequate for any reason (including non-payment for any reason of any Owner's assessment), the Board may at any time levy a further assessment, which shall be assessed to the Owners in like proportions.

Notwithstanding the provisions of this Section 8.1, until Declarant's management authority under Article V terminates, Declarant may elect to collect neither the full budgeted assessment nor any assessments for reserve-funds, and instead may collect and expend only the actual costs of operation.

Section 8.2 - REGULAR ASSESSMENTS. Each Owner, by acceptance of a deed to a Lot, whether or not it is stated in the deed, is deemed to covenant and agree to pay to the Association all assessments and charges against the Lot pursuant to the Declaration. The sums required by the Association for common expenses as reflected by the annual budget and any supplemental budgets shall be equally assessed to each Lot and its respective Owner, in the ratio that each Lot bears to the number of Lots in the Property.

Upon the initial closing of each home in Lots 1 through 157 of the **Plat of Bay-Crest South** to a homebuyer (not a speculative builder), the buyer of each Lot shall be assessed the amount of one hundred dollars (\$100.00) for the purpose of supporting the Common Areas, providing power for street lights and association set-up costs during the time prior to the Transition Date. After the Transition Date, the Board shall set a budget for determining assessments for the remainder of that fiscal year.

Section 8.3 - SPECIAL ASSESSMENTS. In addition to the regular assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the written assent of seventy percent (70%) of the Owners of lots in the Property.

Section 8.4 - NOTICE OF ASSESSMENT. The Association through the board shall give each Lot Owner not less than 30 days notice of any assessment, before it shall be due.

Section 8.5 - PROCEEDS BELONG TO ASSOCIATION. All assessments and other receipts received by the Association shall belong to the Association.

Section 8.6 - FAILURE TO ASSESS. Any failure of the Board to make the budget and assessments hereunder before the expiration of any fiscal year for the next fiscal year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owners from the obligation to pay assessments during that or any subsequent year, and the annual assessment amount established for the preceding fiscal year shall continue until a new assessment is prospectively established whether for all or a portion of the year.

Section 8.7 - CERTIFICATE OF UNPAID ASSESSMENTS. Upon the request of any Owner or Mortgagee or prospective Mortgagee of a Lot, the Board will furnish a certificate in a recordable form stating the amount, if any, of unpaid assessments charged to the Lot. The certificate shall be conclusive upon the Board and the Association as to the amount of such indebtedness on the date of

the certificate in favor of all purchases and Mortgagees of the Lot who rely on the certificate in good faith. The Board may establish a reasonable fee to be charged to reimburse it for the cost of preparing the certificate.

Section 8.8 – DECLARANT EXEMPTION. Notwithstanding any other provision herein, the Declarant is exempt from any charges or assessments by the Homeowners Association, regardless of whether such charges are monthly, quarterly, or annual or after specific charges.

ARTICLE IX LIEN AND COLLECTION OF ASSESSMENTS

Section 9.1 – ASSESSMENTS ARE A LIEN, PRIORITY. All unpaid sums assessed by the Association for the share of the common expenses are chargeable to any Lot, any sums specially assessed to any Lot under the authority of this Declaration or the Bylaws and any charge or expense otherwise imposed pursuant to this Declaration shall constitute a lien on the Lot and all its appurtenances from the date the assessment becomes due and until fully paid. The lien for such unpaid assessments or sums shall be subordinate to tax liens on the Lot in favor of any assessing or special district, and to all sums unpaid on all First Mortgages of record, but, to the extent permitted by applicable law shall have priority over all other liens against the Lot. A First Mortgagee that obtains possession through a Mortgage foreclosure or deed of trust sale, or a purchaser at a foreclosure sale, shall take the Lot free of any claims for the share of common expenses or assessments by the Association chargeable to the Lot which became due before such possession, but will be liable for the common expenses and assessments that accrue after the taking of possession. The Lot's past-due share of common expenses or assessments shall become new common expenses chargeable to all of the Owners, including the Mortgagee or foreclosure sale purchaser and their successors and assigns, in proportion to the number of Lots owned by each of them. Notwithstanding any of the foregoing, however, the previous Owner or real estate contract purchaser shall continue to be personally liable for past due assessments as provided in Section 10.3. For purposes of this Section, "Mortgage" does not include a real estate contract and "Mortgagee" does not include the vendor or the assignee or designee of a vendor of a real estate contract.

Section 9.2 – LIEN MAY BE FORECLOSED. The lien for delinquent assessments may be foreclosed by suit by the board in like manner as the foreclosure of a mortgage of real property. The Board, acting on behalf of the Association shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, encumber, and convey the same.

Section 9.3 – ASSESSMENTS ARE PERSONAL OBLIGATIONS. In addition to constituting a lien on the Lot, all sums assessed by the Association chargeable to any Lot, together with interest, late charges, costs and attorney fees in the event of delinquency, shall be the joint and several personal obligations of the Owner and any contract purchaser of the Lot when the assessment is made and their grantees. Suit to recover personal judgment for any delinquent assessments shall be maintainable without foreclosing or waiving the liens securing them.

Section 9.4 – LATE CHARGES AND INTEREST ON DELINQUENT ASSESSMENTS. The Board may from time to time establish late charges and a rate of interest to be charged on assessments that may thereafter become delinquent. In the absence of another established, nonusurious rate, delinquent assessments shall bear interest at the rate of 12% per annum from the due date. If an annual assessment against a Lot is not paid when due, the managing agent or the Board may elect to declare all assessments against the Lot to be immediately due and payable.

Section 9.5 – RECOVERY OF ATTORNEY'S FEES AND COSTS. In any action to collect delinquent assessments, the prevailing party shall be entitled to recover as a part of its judgment a reasonable sum for attorneys fees and all costs and expenses reasonably incurred in connection with the action, in addition to taxable costs permitted by law.

Section 9.6 – REMEDIES CUMULATIVE. The remedies provided herein are cumulative and the Board may pursue them, and any other remedies that may be available under the law although not expressed herein, either concurrently or in any order.

Section 9.7 – NO AVOIDANCE OF ASSESSMENTS. No Owner may avoid or escape liability for assessments provided for herein by abandoning his Lot.

ARTICLE X

FAILURE OF BOARD TO INSIST ON STRICT PERFORMANCE NOT A WAIVER

The failure of the Board in any instance to insist upon the strict compliance with this Declaration or Bylaws or rules and regulations of the Association, or to exercise any right contained in such documents, or to serve any notice or institute any action, shall not be construed as a waiver or a relinquishment for the future of any term, covenant, condition, or restriction. The receipt by the Board of payment of any assessment from any Owner, with knowledge of any breach by the Owner, shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless expressed in writing and signed by the Board. This Article also extends to the Declarant, Declarant's managing agent and the interim board of directors exercising the power of the Board before the Transition Date.

ARTICLE XI USE RESTRICTIONS

Section 11.1 – RESIDENTIAL CHARACTER OF PROPERTY AND TYPE OF CONSTRUCTION. No lot shall be used except for residential purposes. Manufactured homes and/or non-site built structures, such as, but not limited to modular homes, shall not be allowed. Further, no building shall be erected, placed or permitted to remain on any lot other than one detached single-family dwelling with a minimum of a double attached or detached private garage. No storage sheds shall be placed on the Lot unless its style and construction conforms to the general style of the residence itself and does not detract from the general appearance. The final decision as to what is permissible shall vest in the Architectural Control Committee.

Section 11.2 – EXTERIOR MATERIALS. Replacement roofing and siding material shall be the same, as far as possible, in color and style as the original roofing and siding materials on the majority of residences within the development. Utilization of different exterior materials including, without limitation, roofing materials, building siding materials and fencing must be approved by the applicable Architectural Control Committee before installation.

Section 11.3 – COMPLETION OF CONSTRUCTION. Any dwelling or structure erected or placed on any lot in this subdivision shall be completed as to external appearance, including finish painting, within nine months from date of construction.

Section 11.4 – LANDSCAPE/FENCES AND HEDGES. All front yard landscaping must be completed within a six (6) month period of time from the date of issuance of an occupancy permit for a residence constructed on a lot or 6 months following the first date of occupancy, whichever is later. As defined in this section, "fencing" shall mean any barrier or wall. All side yard and back yard fences shall not exceed a height of six (6) feet, or the maximum height permitted by applicable regulation, whichever is less. Front yard decorative fences shall not exceed four (4) feet in height. Fences shall be well constructed and shall not detract from the appearance of the development. Fences must be approved by the Architectural Control Committee before construction.

Section 11.5 – TRAILERS/MOTORHOMES. PARKING. Parking – Parking within the plat shall be subject to local parking rules for public roads within the plat and the following additional restrictions:

11.5.1 Commercial vehicles parked overnight on a lot shall be screened from view from any street. Commercial vehicles shall not be parked overnight on any street within the plat. Passenger vehicles, pickup trucks, and vans or trucks with single rear axles and single rear tires shall not be considered commercial vehicles even if marked with business logos or signage.

11.5.2 Boats, campers, trailers and similar vehicles shall not be parked on a lot for a period in excess of twenty-four hours (for loading/unloading) unless the part of the vehicle nearest to the street at the front of the house is even with or behind the front wall of the garage and the vehicle is screened from view from any street.

11.5.3 For the purposes of this parking section, screened from view shall mean behind a six-foot tall solid fence.

11.5.4 A visitor to the Owner shall not park their recreational vehicle in the street or in the driveway of a lot for more than fourteen consecutive days, not more than a total of thirty days within any twelve-month period.

11.5.5 No goods, equipment or vehicle (including buses or trailers of any description) shall be dismantled or repaired outside any building or residential lot in view from any street. In addition, no owner shall permit any vehicle that is in a state of disrepair to remain parked in view from any street or in the street for a period in excess of forty-eight (48) hours. A vehicle that has not moved for a period of forty-eight hours and is not operable in its then present condition shall be deemed to be in a state of disrepair.

11.5.6 Parking on private roads shall be subject to the above rules for public roads and shall not prevent access to any lot.

In the event that there is any violation of this parking restriction then the board may take corrective action, as it deems necessary in accordance with Section 7.2 of this Declaration.

Section 11.6 – ANTENNAS AND SERVICE FACILITIES. All permanent utility services and connections thereto shall be provided by underground services exclusively. No radio or television antennas, clotheslines and other service facilities shall be placed on a lot within the **Plat of Bay-Crest South**; provided, however, a "mini-dish" may be acceptable if its location on the property is approved in advance by the Architectural Control Committee.

Section 11.8 – BUSINESS AND COMMERCIAL USE. No visible or audible trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any lot nor shall any goods, construction equipment, materials or supplies used in connection with any trade, service or business be placed outside on any lot at any time excepting the right of any home builder and the Declarant to construct residences on any lot at any time and to store construction equipment on said lots in the normal course of construction. Home occupation use of residences may be allowed if municipal regulation permit such use; provided, however, the home occupation use shall in no way affect the appearance of the residential structure and/or garage, shall be fully enclosed without outside storage and shall not create noise, vibration, smoke, dust, odors, heat, light, or glare beyond which is acceptable in a residential area.

Section 11.9 – OFFENSIVE ACTIVITIES. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Further, no lot shall be used in a fashion, which unreasonably interferes with the other lot owners' right to the use and enjoyment of their respective properties. All Owners are responsible at all times for the conduct of their guests.

Section 11.10 – RUBBISH AND TRASH. No lot shall be used or maintained as a dumping ground for rubbish, debris, salvage, garbage, trash, equipment, cars, vehicles or other waste; such as rocks, roots, dead grass and other materials accumulated as a result of landscaping. Nor shall any such material be dumped on any other lot, common area or streets. The proper removal and disposal of all such materials shall be the sole responsibility of individual lot owners.

Section 11.11 – SIGNAGE. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

Section 11.12 – DRILLING, MINING, ETC. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

Section 11.13 – MAINTENANCE OF STRUCTURES AND GROUNDS. Each owner shall maintain his lot and residence thereon in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard.

Section 11.14 – NO FIREARMS/MOTORCYCLES. No firearms of any kind shall be used within the property except by appropriate government officials. Muffled, licensed motorcycles shall be permitted on the property and roadways except trails, therein. Muffled trail bikes, snowmobiles and similar vehicles are permitted within the boundaries of the individual lots. Non-muffled motorcycles, motorbikes, trail bikes, snowmobiles or similar vehicles are prohibited on any portion of the property whether licensed or unlicensed.

Section 11.15 – COMPLIANCE WITH APPLICABLE STATUTES, REGULATIONS AND ORDINANCES. Notwithstanding anything stated herein, each lot owner(s) shall be responsible for compliance with all applicable federal, state, county and/or governmental statutes, ordinances and regulations, and any amendments thereto relating in any way to the ownership and/or improvement of the lots within the **Plat of Bay-Crest South**.

Section 11.16 – ENFORCEMENT. The Declarant shall have no obligation to enforce or seek the enforcement of these covenants. The Declarant shall have no liability for the enforcement or non-enforcement of these covenants. The Homeowners Association, in its absolute discretion, by its Board of Directors, and any Owner, shall have the right to prosecute any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant herein, to prevent such violation and/or to recover damages for such violation.

Section 11.17 – MODIFICATION. The restrictions herein may be amended or modified by the Homeowners Association as provided hereinabove in Section 1.4.

Section 11.18 – INVALIDATION. Invalidation of any one of these use restrictions by judgment or court order shall in no way affect any of the other provisions, and said other provisions shall remain in full force and effect.

ARTICLE XII ARCHITECTURAL STANDARDS

Section 12.1 – ESTABLISHMENT OF ARCHITECTURAL CONTROL COMMITTEE. An Architectural Control Committee (ACC) is hereby established for the **Plat of Bay-Crest South** and shall substantially follow the requirements, procedures and performances standards set forth in this Declaration of Covenants, Conditions, Restrictions and Easements.

The initial ACC for the Plat shall be the Declarant, by and through the Declarant's designee, who shall perform the functions of the ACC as set forth herein. The Declarant shall retain the responsibility for performing the functions of the ACC until 100 % of the lots have been sold or until the Declarant surrenders that responsibility prior to that time, in a written document in recordable form. Upon the termination or expiration of the right of the Declarant to act as the ACC, the Homeowner's Association, acting through its Board of Directors, shall designate a minimum of two (2), but not more than five (5) lot owners who shall, by majority action, perform the responsibilities of the ACC. In the event the lot owners are not designated, the Homeowners' Association Board of Directors may temporarily perform the function of the ACC.

Section 12.2 – AUTHORITY OF ACC. No structure shall be erected, placed or altered on any lot within the **Plat of Bay-Crest South** until the building plans, with respect to the exterior design, materials and specifications and color schemes have been approved in writing by the ACC, as to the quality of materials, color schemes which must exclude primary, bright or harsh colors, harmony of exterior design with existing structures, location of structure on a lot with reference to topography, elevation and relation to structures on adjacent lots. The authority of the ACC is to be exercised in a reasonable manner with the goal of insuring consistent architectural standards for the benefit of the owners of lots in the **Plat of Bay-Crest South**. Fencing shall be treated as a structure for the purposes of ACC review.

Section 12.3 – SUBMISSION OF DATA TO ACC AND APPROVAL BY ACC. All applications to the ACC for approval shall be in writing and shall be supplemented by such supporting data, as the ACC shall reasonably require. The ACC's approval or disapproval shall be in writing; any disapproval by the ACC shall specify reasons for the disapproval. Submittals by or on behalf of lot owners shall include a plot plan drawn to scale reflecting the location of any and all structures within the Lot and relevant elevations. In addition, the submittal shall depict or describe the design of the

structure with sufficient detail that the ACC is able to identify and review that design as well as describe the type and color scheme of all exterior materials.

In the event the ACC fails to approve or disapprove a complete application submitted to it within forty-five (45) days after the receipt of the complete application or supplemental information reasonably requested by the ACC, further approval from the ACC for the structure or improvement identified in the application will not be required and the Lot Owner shall be deemed to have complied with this Covenant unless, prior to the completion of the structure, the Lot Owner or his/her contractor has made material changes form the application submitted to the ACC and/or failed to comply with the plans and specifications submitted to the ACC or local building official.

DATED this 8th day of DECEMBER, 2005

DECLARANT:
D. B. JOHNSON CONSTRUCTION, INC.

By David B. Johnson
David B. Johnson, President

STATE OF WASHINGTON
COUNTY OF WHATCOM

On this day personally appeared before me David B. Johnson, to me known to be the President of D. B. JOHNSON CONSTRUCTION, INC., the Washington corporation that executed the within and foregoing instrument, and acknowledged to me the said instrument was the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument for and on its behalf.

SUBSCRIBED AND SWORN TO before me by David B. Johnson on this 8th day of DECEMBER, 2005.

Andrew R. Wojciechowski
PRINTED NAME: ANDREW R. WOJCIECHOWSKI
NOTARY PUBLIC in and for the State of Washington
residing at FERNDALE WASHINGTON
My commission expires: MAY 3, 2008

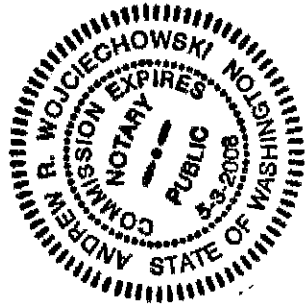


EXHIBIT B

STORMWATER FACILITY INSPECTION FORM

Association Name: _____

Date: _____

Reason for Inspection: _____

(annual, storm event, other)

Bio-Filtration Swale:

- Remove garbage and other debris and dispose of appropriately.
- Mow grass to 4 - 5 inches and remove all clippings.
- Re-seed any bare spots.
- Replace or reset riprap at the culvert inlets and outlets.
- Clean and repair trash rack
- Remove brush and tree saplings.

Detention and/or Wet Ponds:

- Remove accumulated sediment if more than 10% of the design pond depth.
- Re-seed any bare spots
- Mow grass to 4 - 5 inches and remove all clippings.
- Remove garbage and any other debris and dispose of appropriately.
- Remove or reset riprap at the culvert inlets and outlets.
- Clean and repair trash rack.
- Replace or reset rock for spillway.
- Remove vegetation from spillway
- Remove brush and tree saplings

Detention and/or Wet Pond Control Structure:

- Remove garbage or other debris and dispose of appropriately
- Repair or replace non-functioning shear gate.
- Repair or replace any rusted or damaged parts and or pipes.
- Mortar any loose or leaking joints

Comments:

Signature: _____

Print and Sign

(inspector)