



WHEN RECORDED RETURN TO:

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Document Title:	Declaration of Covenants, Conditions, Restrictions and Easements for Madrona Pointe North and Madrona Pointe South Short Plats
Grantor/borrower:	1) MADRONA POINTE DEVELOPERS, LLC. 2) MICHAEL T. MCCORMACK and SIGNA S. MCCORMACK
Grantee/assignee/beneficiary:	GENERAL PUBLIC
Legal Description:	Madrona Pointe North Short Plat and Madrona Pointe South Short Plat
Assessor's Tax Parcel ID#:	370214 380485 0000 and 370214 399449 0000

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR MADRONA POINT NORTH AND MADRONA POINT SOUTH SHORT PLATS

This Declaration of Covenants, Conditions, Restrictions and Easements (referred to herein as the "Declaration") is made and entered into by MADRONA POINTE DEVELOPERS, LLC., a Washington limited liability company, and MICHAEL T. MCCORMACK and SIGNA S. MCCORMACK, husband and wife (referred to herein collectively as "Declarant"), as follows:

**RECITALS**

1. The undersigned Declarant is the owner in fee simple of certain real property, referred to herein as the "Property," located in Bellingham, Whatcom County, Washington, and more particularly described on the attached Exhibit "A." The Property is a combination of two adjacent short plats Madrona Pointe North Short Plat ("Madrona Pointe North") and Madrona Pointe South Short Plat ("Madrona Pointe South"), Whatcom County, Washington, which constitutes the entire development of the Declarant on the Property and is sometimes referred to herein as the "Project."

2. Declarant desires to provide the means to enforce the rights, reservations, easements, liens and charges provided in this Declaration; to provide architectural control for necessary maintenance and enhancement of the Property; and to provide for the formation in the future of a homeowners' association in the form of a non-profit corporation which will include as its members those persons who own any Lot within the Property.

**NOW, THEREFORE,** the Declarant hereby certifies and declares that the following covenants, conditions, restrictions and easements shall enure to the benefit of and be binding upon the respective owners of each Lot, tract or parcel within the Property and the Declarant further declares that all of the land within the Property is held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions and easements for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and every part thereof. All of the following covenants, conditions, restrictions and easements shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof.

**1. LAND CLASSIFICATION AND DEFINITION**

The following words and classifications of land shall have the following meanings under this Declaration:

**1.2 Association.** The term Association means a homeowners' association of all Lot owners which may be established at the election of the Lot owners as more fully described in paragraph 6 below.

**1.3 Board.** The Board of Directors of the Association.

**1.4 Common Property.** Consists of rights of real or personal property owned by Lot Owners for their common use, benefit and enjoyment. Additional common properties may be added or designated in the future, as well.

**1.5 Declarant.** The Declarant is the undersigned, who presently owns the Property, together with any successor in interest thereto.

**1.6 Design Review Committee.** The Design Review Committee (DRC) is the entity established to enforce the Architectural Control and Standards provisions of this Declaration.

**1.7 Improvements.** Improvements shall mean and include, without limitation, any buildings, out-buildings, private roads, driveways, parking areas, fencing, retaining walls, swimming pools, screening, walls, ornamentation, signs, stairs, decks, hedges, wind breaks, plantings, planted trees, shrubs, poles, lighting, hot tubs and any other structure or landscaping.

**1.8 Lot.** Any parcel of real property within the boundaries of the Property identified by Arabic numerals and letters which may be utilized for the location and construction of a single-family residence, now or in the future.

**1.9 Person.** Any individual, firm, corporation, partnership, association, unincorporated association or other legal entity.

**1.10 Open Space Tract.** As used herein, the term Open Space Tract means the lagoon designated on the short plat map of Madrona Pointe South Short Plat. The lagoon is subject to the terms and conditions of this Declaration and the Conservation Easement identified herein and on the short plat map.

**1.11 Owner.** Any person owning a Lot including any person who has acquired a Lot by real estate contract.

**2.0 RESERVATION OF EASEMENT.** Declarant reserves and declares the easements identified and discussed below, all of which are non-exclusive and perpetual and intended to survive any amendment or failure to renew this Declaration by the Owners. These easements are further shown and discussed on the plat maps.

**2.1 Drainage, Utility and Sign Easements.** Slope and utility easements in favor of the City of Bellingham and all present and future utility companies are shown on each lot adjacent to the newly constructed Bayside and Briar Roads.

An easement for the location of a private plat monument has been designated on the plat maps on Lots 7, Madrona Pointe North Short Plat and Lot 4, Madrona Pointe South Short Plat. This easement is for the benefit of the Declarant of the plats and also all of the owners of the lots.

**2.2 Railroad Protection Easement.** An easement for railroad protection is noted on the face of the plats. The purpose of this easement is to limit clearing and vegetation removal within 50 feet of the top of the bluff abutting the railroad right-of-way until a clearing and conservation plan has been approved by the City of Bellingham. This easement is not for the benefit of the railroad and the railroad shall have no right to enforce this easement.

**2.3 Conservation Easement.** A conservation easement was required by the Shoreline Substantial Development Permit issued in connection with the Project. The terms of that easement are discussed in more detail on the plat signature page and the extent of the conservation easement is identified on the plat maps and in the specific conservation easement document recorded in the public record.

### **3.0 GENERAL USE RESTRICTIONS AND REQUIREMENTS**

**3.1 Permanent Residential Purposes.** All Lots within the Property shall be used exclusively for residential purposes and approved home occupations.

**3.2 Pets.** No animals, livestock, birds or poultry of any kind shall be raised, bred, or kept by any owner upon any portion of the lot, provided that a reasonable number of generally recognized house pets may be kept subject to rules and regulations adopted by the Declarant and/or the Association (should one be established) and further provided that such pet or pets are kept or maintained solely as domestic pets and not for a commercial purpose. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance.

**3.3 Garbage/Refuse.** No Owner shall deposit or permit the accumulation of any trash, ashes, garbage or other refuse or debris on or about such Owner's Lot or any other parcel within the Property, except in appropriate covered trash receptacles. Each Owner shall keep such Owner's Lot neat and orderly in appearance and shall not cause or permit any noxious or odorous conditions to exist, nor maintain any tangible objects which are unsightly in appearance to exist, on any Lot or parcel within the Property.

**3.4 Vehicles.** All automobiles and all other permitted vehicles, if kept or parked on any Lot or otherwise within the Property, shall be in good order and in working condition. Any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than pick-up trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft, boat trailer, motorcycle, motorized bicycle, motorized go-cart, or any other related forms of transportation devices shall be stored inside or completely screened from view. Partially wrecked vehicles, discarded vehicles, unlicensed vehicles or vehicles which are in a state of disrepair shall not be kept on any Lot nor shall they be maintained within the Property, unless enclosed in a garage or otherwise completely screened from view from outside the Lot. Provided, that out-of-county resident guests of an Owner may, with such Owner's permission, park (but may not live in) a recreational vehicle or travel trailer on an Owner's Lot for up to a maximum of two (2) weeks within any calendar year without being in violation of this subparagraph.

**3.5 Lease/Rental.** The lease or rental of a dwelling for residential purposes shall also not be considered to be a violation of this Declaration provided so long as the lease is (i) for not less than the entire dwelling and all of the improvements thereon; (ii) for a term of at least three months; and (iii) otherwise in compliance with any rules and regulations adopted by the Declarant, or the Association if applicable, from time to time. Any Lessee or tenants shall in all respects be subject to the terms and conditions of this Declaration and any rules or regulations adopted hereunder.

**3.6 Surface Water Run-off.** No Lot shall be improved in such a way as to cause excess surface water run-off that may damage or inconvenience other Lots, contiguous properties and/or the Owners thereof.

**3.7 Owner's Maintenance Responsibilities.** The maintenance, up-keep and repair of individual Lots and homes shall be the sole responsibility of the individual owners thereof. Owners shall maintain their Lots and homes in good repair in a clean, sightly and sanitary condition at all times, including without limitation, maintaining the landscaping on the Lot in a healthy and attractive state and in a manner comparable to that on the other Lots in the

Project. No storage of firewood shall be permitted in front yards. Owners are further responsible for maintenance of any portion of the private drainage system situated on their respective lots.

**3.8 Damaged Improvements.** No improvement which has been partially or totally destroyed by fire, earthquake or any other cause shall be allowed to remain in a state of disrepair for a period in excess of four months from the date of such partial or total destruction. Corrective construction or reconstruction shall be required to commence within such four month period and shall be completed in accordance with the provisions of Paragraph 4.1 hereof; provided, however, that said four month period shall be extended for a reasonable period thereafter in the event that corrective construction or reconstruction has not commenced as a result of factors beyond the control of the subject Owner and in the event that the subject Owner has exercised and does thereafter continue to exercise due diligence in an effort to eliminate such factors causing such delay in commencement.

**3.9 View Protection.** Protection and preservation of westerly views towards the water is particularly important. This is especially so in light of environmental and permit requirements limiting clearing and removal of natural vegetation. In light of the foregoing, structures and new and existing vegetation shall not unreasonably restrict the panoramic westerly view from the main living level of the existing homes on adjacent lots or from the most likely main living level elevation on the lots with homes not yet constructed.

Further, the westerly wall of any home to be constructed or added to any residence shall not extend more than 10 feet in a westerly direction beyond the westerly wall of the nearest existing adjacent home. The purpose of this provision is to provide a semblance of uniformity between adjacent homes so that one does not extend significantly beyond the adjoining home to the detriment of that adjoining home's westerly view.

Homes built topographically below other homes must demonstrate significant preservation of westerly views to the water for the home above them. Plans submitted to the DRC for review should provided site cross sections through upper homes to demonstrate compliance with this provision.

Any existing or new landscaping that grows up to block an existing view is to be trimmed, subject to existing regulations by the City of Bellingham and the judgment of the DRC.

Disputes relating to view preservation between Lot Owners shall be subject to arbitration by the DRC pursuant to provisions of RCW Chapter 7.04. In making its determination on any dispute, the DRC shall act reasonably and in good faith while providing for the collective interests of the home owners of the Project. The decision of the DRC in such matters shall be final and may be enforced by a proceeding in Superior Court. Because the governmental regulations applicable to the project provide for retention of much of the existing vegetation, preservation of the remaining views shall be a paramount goal.

**3.10 Relief from certain Provisions.** In cases where an Owner has made a factual showing that strict application of the provisions of this Declaration constitute a severe hardship, then the DRC, or its successor, may grant relief from any such provision; provided, however, that such relief shall be limited by its scope or by conditions to only that necessary to relieve the hardship; and provided further, that no such relief shall be granted if the condition thereby created would in the reasonable judgment of the DRC, or its successor, violate the intent of provisions of this Declaration or provisions of the various permits and governmental regulations applicable to the Project. The decision to grant or deny such relief shall be final, conclusive and not subject to appeal.

**4. ARCHITECTURAL CONTROL AND PROCEDURE.**

**4.1** Architectural control shall be accomplished by one or more individuals designated as the DRC. Initially, the DRC shall have a single member who shall be Michael McCormack or his designee who shall occupy the position until such time as all lots in the project are sold, or resignation by McCormick. Thereafter, the DRC shall be enlarged to three members who shall be appointed by a majority of the owners of the Lots subject to this Declaration, or by the Association in the event one should be formed.

**4.2** To preserve the architectural and aesthetic appearance of the Property, no new construction or improvements of any nature whatsoever shall be placed on any Lot or

other parcels within the Property until detailed plans have been reviewed and approved by the DRC in accordance with this Declaration.

**4.3** Any person requesting approval of the DRC shall submit two copies of the plans, specifications and related data to the DRC together with a fee in the amount of \$250.00 for the review specifically, the applicant shall provide a site plan, site/building cross section, floor plans, exterior elevations, roof plan and outline specifications of major exterior materials with examples of final color choices for all exterior surfaces. The application fee may be adjusted by the DRC, subject to review by a majority of the Owners of the Lots, or the Association in the event one is formed. The DRC may obtain the advice of development consultants, including (without limiting), architects, engineers, landscapers, and arborists. Fees incurred for the review by such consultants shall be the responsibility of the Owner. Upon approval of plans, one set shall be retained in the records of the DRC and one copy shall be returned to the Owner, appropriately marked.

**4.4** The DRC shall consider, in addition to Architectural Standards and aesthetic issues, the location of improvements on the Lot, the effect on views from other Lots and compliance with governmental regulations applicable to the Project. The DRC's determination on all matters shall be solely within the discretion of the DRC and shall not be subject to appeal.

**4.5** The DRC shall approve or disapprove plans, specifications and details (with or without conditions) within sixty (60) days of the actual receipt thereof and the submission of any further information required by the DRC in order to make a decision. If the DRC fails to respond within sixty (60) days of receipt of plans and any additional information, then the plans shall be automatically approved. DRC should be requested prior to submitting applications for approvals of permits from the City of Bellingham or other governmental authorities with jurisdiction.

**4.5** Neither the DRC nor any person who succeeds him/them shall be liable to any person for any action or for any failure to act under or pursuant to the provisions of this Declaration, provided that the DRC shall have proceeded hereunder in good faith and without malice.



## **5. ARCHITECTURAL STANDARDS AND REQUIREMENTS.**

**5.1 Purpose.** The purpose of the Architectural Standards is to preserve and enhance property values by encouraging environmentally sensitive home designs that work in harmony with the natural topography and minimize disturbance to the land. In order to objectively review home design submittals and encourage innovative variations within the specific written requirements and restrictions, all projects will be evaluated against the following goals:

1. Minimize high, bulky, unmodulated wall expanses along all sides of the home.
2. Strongly encourage designs that step down the sloping topography towards the view.
3. Reduce impacts of exposed foundation walls or under floor supports with landscape buffers or Architectural siding to match upper floors.
4. Minimize impact of garages facing the street by stepping back or providing side entry drives.
5. Encourage various roof heights to provide more open space, light and view corridors, especially between lots.
6. Minimize high retaining walls and landscaping that does not appear native to the location.
7. Every effort should be made to consider the positive design effects on view, open space and the relationship to any existing built homes, trees and solar access.

### **5.2 Design Objectives.**

1. The objective is to enhance and preserve the overall character and desirability of the Lots as they are improved and maintained.
2. The landscape and architectural design and all other proposed improvements shall be compatible with the existing terrain and site features, in a style that evokes the

character of the northwest vernacular concept as set forth in the Architectural Character section (5.4) of these requirements.

3. Esthetic considerations in the design shall include acknowledgement of the context, proportion and scale of the architectural and landscape design. Important features include the grading, massing, rooflines, selection of materials, textures and color palette.

**5.3 Architectural Review.** The DRC is commissioned to review for approval, all proposed architectural and landscape improvements. Subsequent additions, modifications, and maintenance of the built or landscaped environment also require DRC review and approval. All improvements need to be monitored for conformance to approved plans, specifications and revisions in their implementation.

Additional requirements by City of Bellingham, Whatcom County and all State and Federal regulating authorities also apply. Each Lot Owner and respective agents (i.e. architect, designer and contractors) shall be familiar with all these regulations.

**5.4 Architectural Character.** Of foremost importance is the compatibility between the Project, its hillside and waterfront context, the neighborhood and that of the Northwest.

The architectural character established for the Project originates from the vernacular styles of residential architecture found in other coastal areas of the northwest. These styles include Shingle, Neo-Shingle (Contemporary), Craftsman, Cottage, Bungalow, Prairie (Wrightian), Northwest Contemporary and Timberframe. These styles are further described in Appendix A. It is the intent to allow for unique architectural expression for each home, within the vocabulary of these styles.

Some of the expressive elements of these styles include wide overhangs, large window trim and fascias, knee braces, trellises, wood and stone detailing, defined entry articulation, indigenous landscaping, and warm, earth tone colors.

**5.5 Lot Development.** A portion of the lot development, including (without limiting) grading, new landscaping, and structures is limited herein, by the project permits and other governmental regulations, discussed elsewhere herein. For a complete determination for

requirements, the City of Bellingham and other agencies with jurisdiction should be consulted.

**5.6 Site Design.** In keeping with the existing hillside terrain, it is recommended that all grading shall result in topography simulating natural contours in the immediate vicinity of the Lot. Designing of multi-level residences that follow the existing terrain with terracing, is to be encouraged, in order to reduce the need for excavation, fill and retaining walls.

Where retaining walls are necessary, walls shall be offset from the structures being retained, in order to minimize the height of these grade transitions. If walls are necessary over 8 feet high, terracing with a series of offset walls shall be used.

When considering location of buildings and other structures, building height should be minimized near side yard property lines to enhance view corridors between lots. Architectural features, such as wall offsets, building projections, and changes of materials shall be introduced to provide visual contrast. Extended or continuous wall planes are to be avoided.

In the landscape, terraces, courtyards, trellises, porches, decks, terraces, pergolas and selection of plant materials shall contribute to defining exterior spaces and developing a relationship to the site.

**5.7 Dwelling Size.** There is no minimum or maximum size requirement, if new buildings meet other requirements stated elsewhere. However, any residence greater than 5500 sq.ft. of total floor area (excluding unroofed areas), including garages, basements, storage areas, etc., will require a public meeting and Conditional Use approval from the City of Bellingham. Current regulations should be verified from the City Planning Department.

**5.8 Building Height and Setbacks.** All structures shall meet the current height requirements for the City of Bellingham. As a general design review issue, lower height buildings are to be encouraged, with modulated elevations and roof tops. Proposed building height should be sensitive to view protection issues noted elsewhere in this Declaration.

**5.9 Roofs.**

1. No roof top mechanical equipment shall be allowed except for flues and vent stacks. Solar collectors and skylights are allowed, but their visibility is to be minimized from

viewing by adjacent and/or uphill homes.

2. All exposed roofing materials shall be wood, tile, slate, similar natural material, or approved composition roofing material. Any new, composite material, such as composition roofing or other similar approved material is to have an earth tone color and a dull (non-shiny) finish. Metal roofing will only be allowed if it tarnishes to a soft, dull patina over a short time period, similar to natural copper. Provided, copper roofs are prohibited in accordance with the shoreline substantial development permit issued by the City. A sample of the proposed material is to be submitted for prior approval from DRC.

3. Limited use of non-vinyl awnings are permitted, but shall be reviewed for location and appearance by the DRC.

**5.10 Exterior Walls.** Exterior wall surfaces shall be restricted to wood siding or shingles, stone (natural or cultured) or brick masonry veneer. Siding materials of metal, vinyl, plastic, fiber-reinforced cement or exposed concrete block are not allowed. Very reflective exterior materials, siding, hardware, windows and sash or fittings are not permitted. Exterior colors are to be "earth tone" hues. All finish materials and colors are subject to approval by the DRC.

**5.11 Exterior Lighting.** All exposed fixtures shall have a non-reflective finish. Lighting levels shall be minimized by shielding all lamps or directing them to the ground. No new or maintained fixture shall present an exposed lamp over 20 watts, or lamps in a group, to a neighboring property or roadway.

High wattage lighting, such as HID, Metal halide, strip fluorescent, flashing lamps or light fixtures shall not be installed or maintained.

**5.12 Walls, Fences and Enclosures.** Required screening, trellis, pergolas or fences shall be comprised of approved building materials relating to the architectural character of the main residence. Such fences or enclosures may be used in conjunction with landscape hedges or other equally effective plant materials to achieve an opaque effect. All structures shall be finished on all sides.

Heights of walls or fences shall be limited to maximum of 60" in height above finish grade, with decorative features at a maximum 72" height. Specialized features, such as, entries and gates may exceed these heights to a maximum 8 feet in height and 6 feet in width, and subject to final approval by the DRC.

**5.13 HVAC, Water features, Mechanical and Appurtenances.** All mechanical equipment shall be visually screened behind enclosures to attenuate sound. Sound levels and other occasional noise emanating from the mechanical equipment shall not exceed 40 decibels at any property line.

Satellite dishes, antennae, related wiring and equipment shall be screened from view of adjacent properties and the roadway. All wiring shall be underground. No permanent exterior speakers, apart from annunciators serving entry gates, shall be permitted.

The exposure of all metering devices shall be minimized and integrated within the building design while meeting requirements from utilities for monitoring.

**5.14 Service yards, Driveways, Signage and Parking.** Each lot shall provide visually-screened areas to serve as service yards for garbage receptacles, fuel tanks, meters, mechanical equipment, vehicles, supplies, materials, etc. to conceal them from view from roads and adjacent properties. Any visual barrier shall be at least 6 feet high.

Development of each lot shall provide covered and enclosed parking for 2 cars per dwelling unit within the setback lines. Driveway material shall be concrete, brick or cementitious pavers. Gravel surfaces are not permitted. New, sustainable and permeable materials, such as "grass crete", may be allowed, subject to DRC approval.

No signs or billboards shall be placed on any Lot, except that one identification sign bearing the Owner's name and address may be placed upon the Owner's Lot.

**5.15 Time for Completion.** Construction of all improvements shall be prosecuted diligently from the date of commencement of work until the exterior is completed and painted or finished and all sanitation and health requirements have been fulfilled. Furthermore, the maximum time limit for the completion of construction of an improvement shall be twelve months from the date construction commences, which is defined as the date building materials are first delivered to the Lot for such purpose. Construction shall not be

deemed to be completed until the improvement is finished, the Lot has been cleaned of construction debris and the Lot has been landscaped.

**5.16 Sprinklers.** Lots 7N, 8N and 9N shall be sprinklered in accordance with the requirements of the local fire department serving the Project, as shown on the plat map.

**6. HOMEOWNER'S ASSOCIATION.**

Initially there shall be no Association established by the Declarant. Once the project is completed and the lots are sold, a majority of the Lot Owners may elect to establish an "Association" by forming a non-profit corporation organized pursuant to Title 24 of the Revised Code of Washington.

**6.1 Purpose.** The purpose of the Association shall be the enforcement of the provisions of this Declaration; the protection and preservation of the interests of the Lot Owners for the common good; the regulation, use, care, construction, operation, repair, maintenance and preservation of common property which the Association may own or hereinafter acquire, including maintenance of the entrance landscaping and signage on Lots 7N of Madrona Pointe North and 4S of Madrona Pointe South.

**6.2 Maintenance of Common Property.** Initially, the common property is limited to the easement rights and entrance signs mentioned above and located on the plat maps.

**6.3 Assessments and Liens.**

(a) **Authority.** The Association shall be organized at the request of a majority of the Lot Owners. Each Lot Owner shall be a member of the Association.

(b) **Purposes.** Assessments shall be collected for the purposes set forth in Section 6.1 and 6.2 above.

(c) **Personal Obligation and Lien Foreclosure.** Assessments shall constitute a personal obligation of any Owner of record of a Lot on the due date thereof and shall also constitute a lien on the Lot assessed. Such lien may be enforced by the Association in the same form and manner of procedure as foreclosure of real property mortgages under the laws of the State of Washington.

(d) **Amounts Included.** Each Owner and each party hereinafter owning or claiming an equity interest in a Lot agrees that in the event of such foreclosure action involving such Lot, the Owner or Owners thereof or other party asserting an equity interest therein will pay the Association's expenses of title examination and insurance, the cost of attorney's fees incurred by the Association and court costs, as well as all other costs reasonably and necessarily incurred in such foreclosure action. In any such action, delinquent assessments shall bear interest at the rate of twelve percent (12%) per annum from the date the same became due until the date of the entry of the judgment of foreclosure thereon.

(e) **Other Liens and Foreclosure Actions.** The method and manner provided for foreclosure of liens set forth in this paragraph shall pertain to all liens referred to in this Declaration. First mortgage liens placed upon any Lots for the purpose of constructing improvements thereon shall be superior to any and all charges, assessments and liens thereafter asserted, pursuant to this Declaration.

**6.4 Establishment of Assessment and Charges.** When and if the Association is formed, the Board shall establish and fix a charge of yearly assessments against the Lots. Each Lot shall be assessed an equal amount. The Board and Association shall thereafter assess an annual amount at the annual meeting held by the Members of the Association. Assessments shall not accrue on each Lot until said Lot is sold by the Declarant to the first purchaser thereof.

**6.5 Annual Statement.** As soon as shall be practical in each calendar year, the Association shall send a written statement to each Owner setting forth the dollar amount of the assessment for such Lot for such calendar year. The Association may, in its sole discretion, provide for payment of such assessments on a periodic basis during such calendar year, with or without a service charge.

**6.6 Penalty on Delinquent Assessments.** If an Owner shall fail to pay any installment of an annual assessment within thirty (30) days from the date the same is due, then the entire annual assessment for such Lot shall be delinquent and shall become immediately due and payable, shall bear interest at the rate of twelve percent (12%) per annum thereafter until

paid and may bear a penalty in such amount as shall be determined by the Board of the Association.

**6.7 Delinquency For More Than Ninety (90) Days.** If the Owner of any assessable Lot shall be delinquent in the payment of the annual assessment, or any installment thereof, for more than ninety (90) days following the date the same is due, then the Association shall have the right to commence legal action seeking a personal judgment against such Owner and, in addition thereto, shall have the right to foreclose its lien upon such Lot. The total amount due from such Owner shall be such sums as provided in paragraphs 6.4 and 6.3(d), plus any penalty imposed under paragraph 6.6 hereof. The Association may file a notice of lien on any Lot where the assessments are more than ninety (90) days past due. Such lien shall relate back to the first delinquency for the purpose of establishing lien priorities.

**6.8 Rules and Procedures for Billing and Collecting Assessments.** The Board of the Association shall have the power and authority to adopt rules and procedures respecting the billing and collecting of annual assessments, which shall be binding upon all Owners.

**6.9 Increase in Assessments.** The amount of the annual assessment against each Lot shall be initially determined and may thereafter be increased or decreased for any one year period, or any such greater period, as may be determined by the affirmative vote of at least fifty-one (51%) percent of the voting members of the Association, represented in person or by proxy, at a meeting, annual or special, called for such purpose; provided, however, that any Owner who is delinquent in the payment of assessments shall not be entitled to vote thereon.

**6.10 Application of Assessment.** The Association shall apply all funds received by it pursuant to this Declaration in the following order:

(a) Administrative costs and expenses incurred by the Association in the exercise of its powers, authority and duties described in its Articles of Incorporation, Bylaws and this Declaration.



(b) The payment of taxes and insurance premiums on the Common Properties and the payment of utility charges therefore, including any charge for electricity supplied for the entrance signs.

(c) The service, repair, maintenance and/or replacement of any and all improvements to the Common Property.

**6.11 Authority to Maintain Surplus.** The Association shall not be obligated to spend in any particular time period all of the sums collected or received by it during such time period or any other time period. The Association may carry forward, as surplus, any balances remaining. The Association shall not be obligated to apply any such surplus to the reduction of the amount of the annual assessment in any future year.

## **7. GOVERNMENTAL REGULATIONS.**

Development in the Project by individual Lot Owners is governed by a number of conditions, requirements and regulations imposed by various state and local governmental bodies. These are outlined below for convenience. This list is not intended to be exhaustive. Lot Owners and their agents are encouraged to conduct independent inquiries to ensure compliance with all applicable requirements.

**7.1** At or before the time of building permit application and prior to any site disturbance, a Lot Owner of each lot shall provide a clearing and native vegetation conservation plan which shall preserve or restore approximately thirty percent (30%) retention of native trees greater than 6 inches in diameter and native ground cover. Replacement may be permitted on a like for like basis at a 1:1 ratio. Plans shall be prepared by a certified arborist or licensed landscape architect. (MDNS dated May 20, 2003 and Shoreline Substantial Development Permit dated June 24, 2003).

**7.2** All lots lying south and west of the new internal through-road (Lots 1S, 2S, 5S, 1N, 2N, 3N, 4N, 5N, 6N) shall provide a conservation easement for the purpose of retaining existing vegetation lying within: The greater of 100 feet from the Mean Higher High Tide (MHHT) elevation, or 100 feet from either of the regulated estuarine wetlands adjacent to the site, or from the top of the bank. No clearing or vegetation removal shall be permitted within these areas whatsoever except as permitted for storm water discharge by the City.

Provided, no clearing or vegetation removal shall occur on lots lying within 50 feet of the top of the bluff abutting the rail right-of-way until a clearing and conservation plan giving consideration to slope stability, rock fall and tree fall which might adversely affect rail road operations has been submitted by the proponent and reviewed and approved by the City. The plan may require the inclusion of recommendations from a professional geo-tech and/or arborist. The clearing and vegetation removal may only occur in connection with the development of each individual lot on a case by case basis after the location and orientation of the residence proposed before construction or site preparation begins. This requirement is embodied in the Conservation Easement identified on the plat map and filed for record.(MDNS dated May 20, 2003).

**7.3** At least 58 conifer trees that are 24 inches dbh (diameter at breast height, or 4 ½ ft. above the ground) or larger (“Leave Trees”) shall be retained permanently in the Project. This number of trees represents 50% of the conifers which are equal to or greater than 24 inches dbh and currently present in the individual lots areas, and outside of the conservation easement areas. The location of the 58 Leave Trees are shown on each short plat map. To allow for flexibility in site design for individual lots, other available suitable (greater than or equal to 24 inches dba) trees may be substituted (1 for 1) for the Leave Trees. Such proposed substitution shall be addressed in the native vegetation conservation and management plan(s) developed for each lot as part of the Shoreline Substantial Development Permit compliance and shall require an amendment to the Eagle Management Plan (applicable to the individual lots under construction) approved by WDFW (WDFW Plan approved 8/21/03).

**7.4** Leave trees required under the WDFW Plan may be pruned, limbed, and/or windowed for the purpose of view enhancement provided such activity does not jeopardize the survival of such trees and is in accordance with specifications to be detailed in the native conservation and management plan(s) developed as required by the Shoreline Substantial Development Permit. Topping of Leave Trees is not allowed.

**7.5** Except for a tree that presents eminent danger to the safety or property of individuals, a report from a certified arborist, indicating the health of the tree and the need to

remove the tree, shall be submitted to WDFW and the City of Bellingham prior to cutting the dangerous tree.

**8. PROTECTION OF MORTGAGE OR DEED OF TRUST HOLDER**

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

**9. ENFORCEMENT**

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

The City of Bellingham shall have the limited right to enforce this Declaration in the same manner as the Association, Declarant and any Owner as provided herein.

**10. GRANTEE'S ACCEPTANCE**

The grantee of any Lot subject to this Declaration shall, by the acceptance of a deed conveying title thereto or by the execution of any contract for the purchase thereof, whether from Declarant or any subsequent Owner of such Lot, accept such deed or contract upon, and subject to, each and every provision of this Declaration and the provisions contained herein, including the jurisdiction, rights and powers of Declarant, and by such acceptance shall, for

himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with Declarant and to and with the grantees and subsequent Owners of each of the Lots within the Property, to keep, observe, comply with and perform all obligations set forth herein.

Each such grantee also agrees, by such acceptance, to assume, as against Declarant, its successors or assigns, all of the risks and hazards of ownership and occupancy attendant to such Lot, including, but not limited to, its proximity to the rail road, Common Property, public paths, streams or other water courses.

**11. AMENDMENT TO DECLARATION**

Each and every provision of this Declaration shall run with and bind the land and shall inure to the benefit of, and be enforced by, the Association, the Declarant, the Owners of any Lots subject hereto, their respective legal representatives, heirs, successors and assigns, for a period of ten (10) years from the date that this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument terminating or amending this Declaration is filed of record with the Whatcom County Auditor. This Declaration may be amended by approval of the proposed amendment by the owners of 75% of the owners of all lots within the property. Any such amendment shall take effect upon being recorded with the Whatcom County Auditor.

**12. SEVERABILITY**

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

**13. PARAGRAPH HEADINGS**

The paragraph headings in this Declaration are for convenience only and shall not be considered in construing this Declaration.

**14. NO WAIVER**

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

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

DATED this 13 day of January, 2005.

Declarant:

MADRONA POINTE DEVELOPERS, LLC.

BY: Michael T. McCormack  
Michael T. McCormack

Michael T. McCormack  
Michael T. McCormack, Individually

Signa S. McCormack  
Signa S. McCormack, Individually

~~STATE OF WASHINGTON )  
  )ss.  
COUNTY OF WHATCOM )~~

*see attached acknowledgment*

~~On this \_\_\_ day of \_\_\_\_\_, 2005, before me personally appeared MICHAEL T. MCCORMACK to me~~

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

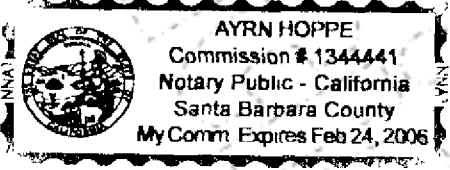
State of California

County of Santa Barbara } SS

On January 13, 2005, before me, Ayrn Hoppe, Notary Public  
Date Name and Title of Officer (e.g., Jane Doe, Notary Public)

personally appeared Michael T. McCormack + Signa S. McCormack  
Name(s) of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Ayrn Hoppe  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document Declaration of Covenants, Conditions, Restrictions + Easements for Madrona Pointe North + Madrona Pointe South Plats  
Document Date: January 13, 2005 Number of Pages: 2

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer

- Signer's Name: \_\_\_\_\_
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner — Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

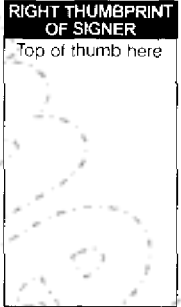


EXHIBIT "A"

Parcel A:

Lot 1, Madrona Pointe 2 L.L.A. as recorded in Book 25 of Short Plats, Page 88, recorded in the office of the Whatcom County Auditor under file number 2021203876.

Parcel B:

Lot 2, Madrona Pointe 2 L.L.A. as recorded in Book 25 of Short Plats, Page 88, recorded in office of the Whatcom County Auditor under file number 2021203876.

## APPENDIX A

### Architectural Character

Many of the styles noted below are prevalent throughout the Bellingham coastal area. The intent of the descriptions is to give a basis for design. Home designs can literally be true to a style, or use variations to create an aesthetically pleasing composition, based on sound, traditional proportions, detailing and scale. The most appropriate home designs for lots west of the Bayside Road will have hip roofs near adjacent side yards to open up through-vistas to the water, between homes, as much as possible. It is also desired that all new home designs incorporate the latest materials for sustainable materials, site development usage, and energy efficient strategies.

#### CRAFTSMAN or Bungalow Style

This style was originally popular from about 1900 to 1930. Identifying features include low-pitched, gabled roof (occasionally hipped), with wide, unenclosed eave overhang; roof rafters usually exposed, decorative (false) beams or braces commonly added under gables; porches, either full- or partial-width, with roof supported by tapered square columns; columns or pedestals frequently extend to ground level (without a break at level or porch floor)

#### WRIGHTIAN or PRARIE Style

Low-pitched roof, usually hipped, with widely overhanging eaves, two stories, with one-story wings or porches; eaves, cornices, and façade detailing, emphasizing horizontal lines, often with massive, square porch supports.

#### NEO-SHINGLE or SHED style

This contemporary "Post-Modern" style is derived from vernacular prototypes and often used shingles. The design is "crisp and clean" with minimal overhangs, except at porches and decks, much like a "Cape-Cod" Style home. It can include multi-directional shed roofs, often accompanied by additional gable roof forms. The effect may be intersecting geometric shapes with stone or wood shingle exterior siding. Roof-wall junctions are usually smooth and simple, with little, or no overhang, usually a single board is used for a cornice. The overall effect is of bold angles, counterpointed shapes and multiple massing.

#### SHINGLE

Wall cladding and roofing of continuous wood shingles (Shingled walls may occur on second story only; wooden roofing may be replaced by a composition type shingle); shingled walls without interruption at corners (no corner boards); asymmetrical façade with irregular, steeply pitched roof line; roofs usually have intersecting cross gables and multi-level eaves; commonly with extensive porches.

#### NORTHWEST CONTEMPORARY (no drawing exhibit shown)

Many of these styles are derived from then traditional ranch style homes of the 1960's and the Prairie style described above. They are characterized by low several low pitched, hip roofs, wood & stone siding, heavy, horizontal wood detailing at wall/eave and floor lines and large expanses of glass.



TIMBERFRAME (no drawing exhibit shown)

There has been a revival recently, of the traditional "Post and Beam" home style. These homes utilize high quality, finished, wood timbers. (Not logs) Timberframe homes do not look alike. They are easily adapted to the numerous styles mentioned above. What is consistent is the crafted integrity of the timberframe and its' integration into traditional home designs.

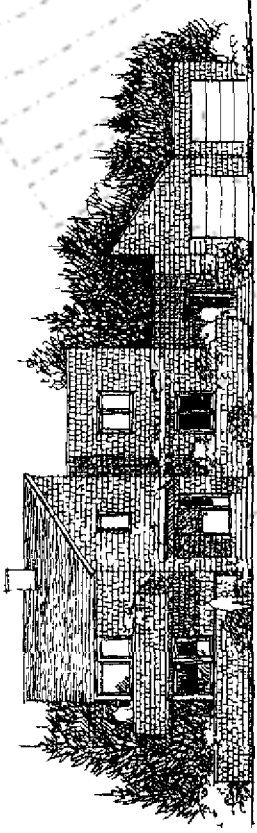
Reference;

A Field Guide to American Houses, Virginia & Lee McAlister, Alfred A Knopf, New York, 1995.

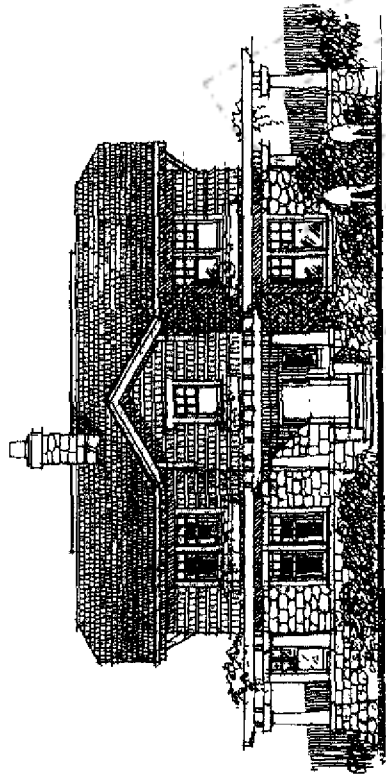
American House Styles; A Concise Guide, John Milnes Baker AIA, W.W. Norton & Co., New York, 1994.

Timberframe, Tedd Benson, ,The Taunton Press, Newtown, CT, 1999

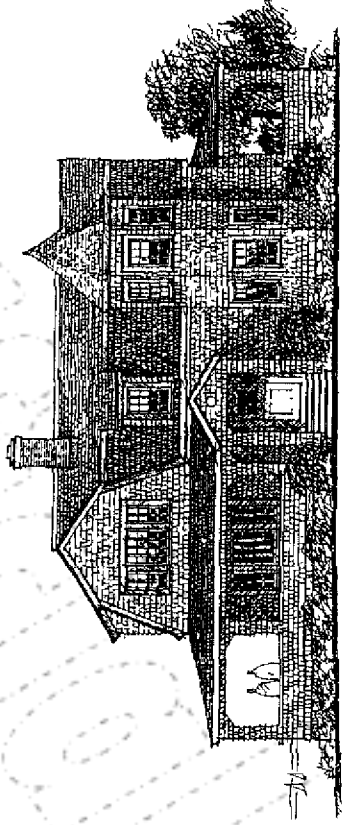
*Madrona Pointe West*  
Appendix A  
Architectural style examples



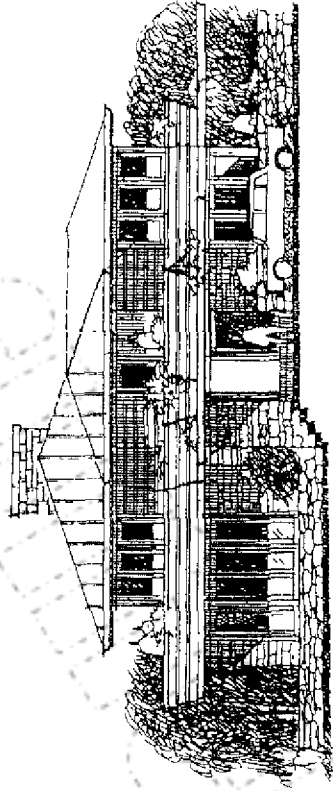
NEO-SHINGLE



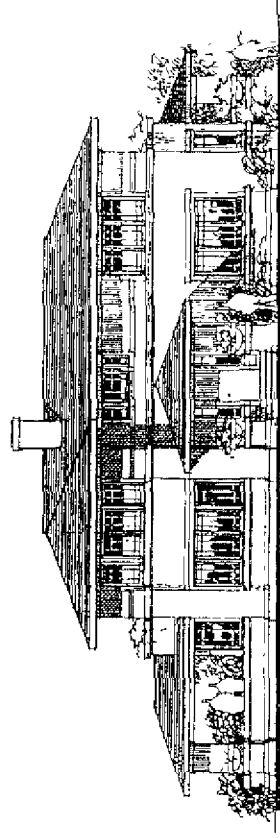
CRAFTSMAN



SHINGLE



WRIGHTIAN



PRAIRIE