

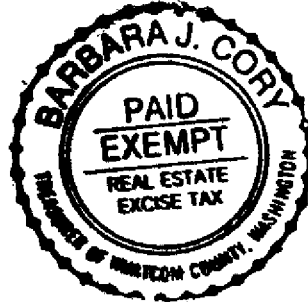


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Whatcom County, WA

Request of: SCHWARTZ FAMILY TRUST

AFTER RECORDING MAIL TO:  
LANGABEER, TULL & LEE, P.S.  
P.O. Box 1678  
Bellingham, Washington 98227



CH  
8/30/02

TITLE OF DOCUMENT:	DECLARATION OF COVENANTS (DR COV)
GRANTOR:	SCHWARTZ FAMILY TRUST
GRANTEE:	SCHWARTZ SUBDIVISION, PHASE 1
LEGAL DESCRIPTION:	LOT A, AMENDMENT TO THE AMENDED SCHWARTZ SHORT PLAT Additional legal description on Page 1 & 2 of document
ASSESSOR'S TAX PARCEL NO.:	390113 457061 0000

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS AND RESERVATIONS  
OF  
SCHWARTZ SUBDIVISION, PHASE 1**

THIS DECLARATION of Covenants, Conditions, Restrictions, Easements and Reservations for SCHWARTZ SUBDIVISION, PHASE 1, is made this 30<sup>th</sup> day of August, 2002, by ROGERS T. SCHWARTZ, Trustee of the SCHWARTZ FAMILY TRUST, hereinafter referred to as "Developer".

**RECITALS:**

A. Developer is the owner of the real property and improvements thereon legally described as:

LOT A OF THE AMENDMENT TO THE AMENDED  
SCHWARTZ SHORT PLAT AS FILED UNDER AUDITOR'S  
FILE NO. 950712128, VOLUME 32 OF SHORT PLATS,

PAGE 69, RECORDS OF WHATCOM COUNTY  
WASHINGTON. SITUATE IN WHATCOM COUNTY,  
WASHINGTON.

B. Developer has identified the real property described herein, which is the subject of this Declaration, as the Schwartz Subdivision, Phase 1. The name "Schwartz Subdivision" throughout this Declaration is intended to mean the Schwartz Subdivision, Phase 1.

C. The purpose of this Declaration is to provide an attractive residential subdivision, to preserve a harmonious and pleasant neighborhood atmosphere, to allow for aesthetically pleasing residence and landscaping design, and to maintain and promote the value of the lots in the subdivision. Therefore, the Developer desires to declare the Schwartz Subdivision, Phase 1, subject to the covenants, conditions, restrictions, easements, and reservations set forth in this Declaration.

D. This Declaration is limited to the real property legally described above, and the buildings and other improvements constructed and to be constructed thereon, all of which shall be known as the Schwartz Subdivision. In the event that the Developer subjects additional adjacent property to this Declaration as provided herein, all such properties shall collectively be known as the Schwartz Subdivision.

NOW, THEREFORE, to accomplish the foregoing purposes, the Developer hereby publishes and declares that the Schwartz Subdivision, Phase 1, shall be held, sold, conveyed, encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions, restrictions, easements, and reservations, all of which are for the purpose of enhancing and protecting the character, attractiveness, and desirability of the subdivision. These covenants, conditions, restrictions, easements, and reservations shall run with the land and shall be a burden upon and a benefit to the property therein owned by the Developer and any other person, firm, corporation, or entity of any kind whatsoever acquiring or owning an interest in the Schwartz Subdivision or any part thereof, and their lessees, guests, heirs, executors, personal representatives, successors, and assigns. Acceptance of an interest in any portion of the property comprising the Schwartz Subdivision shall be deemed acceptance of the terms and provisions of this Declaration.

## ARTICLE I DEVELOPMENT

**Section 1.1: Development.** This development, Schwartz Subdivision, Phase 1, consists of six (6) residential lots. The Developer contemplates development of Schwartz Subdivision, Phase 2, which would consist of seven (7) residential lots on property adjacent to this Schwartz Subdivision, Phase 1, development. The Developer reserves the right to include the Schwartz Subdivision, Phase 2, development as part of this Phase 1 development, or to separately develop Phase 2 subject to a separate and independent Declaration of covenants.

**Section 1.2: Consent to Additional Properties.** Each lot owner consents to the inclusion of additional properties within the Schwartz Subdivision as provided herein. Each lot owner appoints and constitutes the Developer as his attorney-in-fact to adopt and file amendments to this Declaration necessary to add such properties. No lot owners shall have any right in any adjacent property until it is subject to this Declaration.

**Section 1.3: No Requirements to Include Additional Properties.** Nothing contained in this Declaration shall be construed to require the Developer to include additional properties in the Schwartz Subdivision or to subject such properties to this Declaration.

## ARTICLE II EASEMENTS

**Section 2.1: Reservation of Easement.** There is reserved to Developer and his agents, successors and assigns, an easement over each and every lot within the Schwartz Subdivision for entry and access in a reasonable manner and at reasonable times and places for performance generally of all their rights and duties as provided in this Declaration.

**Section 2.2: General Easements.** Easements for drainage, curtain drains, sewers, water pipes and utilities, facilities and service (including but not limited to water supply, electricity, gas, telephone, television) are hereby reserved over, under, upon, in and through certain portions of lots, tracts or parcels as shown on the final plat map of the Schwartz Subdivision, in which to install, lay, construct, repair, renew, operate, maintain and inspect underground pipes, sewers, conduits, cables, wires and all necessary facilities and equipment for the purpose of serving said plat, together with the right to enter upon said easement areas, lots, tracts, parcels, roads

and walkways for or pertaining to the aforesaid. All utility systems shall be underground exclusively. This reservation of easement is for the benefit of the Developer and his successors in interest, City of Ferndale, Puget Sound Energy, natural gas, telephone and cablevision providers and others.

### **ARTICLE III UTILITIES AND DRAINAGE SYSTEMS**

**Section 3.1: Utility Systems; Right to Connect.** All utility systems shall be underground exclusively. There is reserved to each utility district or utility company the right to connect improvements upon all lots with utility service lines, for which service the owner shall pay the then prevailing price for such connections, equipment and meters as charged by such utility.

**Section 3.2: Storm Drainage Maintenance.** The City of Ferndale will maintain and repair the storm drainage detention pond within the Schwartz Subdivision.

### **ARTICLE IV COMMON AREA**

**Section 4.1: Common Area.** There is no Common Area within the Schwartz Subdivision. The detention pond and cul de sacs within the subdivision will be dedicated to the City of Ferndale upon recording of the final plat.

### **ARTICLE V BUILDING AND LANDSCAPING RESTRICTIONS AND STANDARDS**

**Section 5.1: Building and Construction Restrictions.** Mobile homes, modular homes and pre-manufactured homes are not allowed. All structures shall be of new construction (except used brick, siding, or similar decorative materials may be used), and construction thereon shall not be commenced until a building permit and any other applicable permits or approvals from the appropriate public agency or agencies are obtained. All buildings are subject to the following restrictions:

(a) Only one (1) single-family residence may be constructed or permitted to remain on a lot. Residential structures shall have a minimum of 1,600 square feet

of finished living space, not including garage. Carports or garages without doors are not permitted.

(b) All buildings constructed hereunder shall conform to the applicable building code(s) then in effect. Building setbacks, including front yard, side yard, back yard and corner lot setbacks shall satisfy the minimum setback requirements as determined by the City of Ferndale or such other governmental office having jurisdiction over building regulations and requirements.

(c) The exterior of any building constructed or placed on any lot hereunder shall be completed, including exterior finish, paint, and trim, within nine (9) months from the commencement of construction so as to present a finished appearance when said building is viewed from any point. Upon construction of a residence, each lot shall be fully and completely landscaped, meaning the entire portion of each lot except the area upon which the residence is constructed. Landscaping shall mean planting of lawn, flower beds, trees and ornamental shrubbery in an attractive manner commensurate with the surrounding lots. The planting of lawns, flower beds, trees and shrubbery shall be in accordance with good horticultural practices and the lawns, flower beds and shrubbery shall be kept and maintained in a neat and well-groomed condition. The front yard landscaping of the lot shall be fully completed and installed within forty-five (45) days of completion of the exterior construction of the residence, with the landscaping of the entire lot to be completed and installed within twelve (12) months of the commencement of construction of the residence. The building area should be kept fairly clean during the construction period, and all work shall be prosecuted diligently and continuously from commencement of construction until the structures are fully completed and painted. No owner shall reside on any lot except in a residential dwelling constructed or placed thereon that shall have not first received a certificate of occupancy or analogous certification from Whatcom County or any successor governmental agency with jurisdiction.

(d) Entrance driveways shall be constructed and completed no later than the date the single family dwelling constructed thereon receives a certificate of occupancy from Whatcom County or other governmental entity with jurisdiction. All driveways shall be concrete surfacing.

(e) No lines or wires for telephone, cable television, or electrical use shall be constructed, placed, or permitted to be placed upon any lot outside the building thereon unless the same be underground or conduit attached to the building.

(f) Rear and side yard boundary line fencing will be permitted to a maximum height from finished grade (on both sides of fence) of five (5) feet, constructed of wood or masonry.

(g) All outside lighting shall be of a directional type lighting and shall not have the effect of general illumination.

**Section 5.2: Building Height.** Maximum building height shall be determined by the City of Ferndale or such other governmental office having jurisdiction over building regulations and requirements.

## ARTICLE VI PROPERTY USE RESTRICTIONS

**Section 6.1: Business and Commercial Use of Property Prohibited.** All lots within the Schwartz Subdivision shall be used exclusively for permanent, single-family residences. No manufacturing enterprise or commercial activity of any kind shall be conducted or carried on upon any lot or within any unit. No goods, equipment, vehicles or materials or supplies used in connection with any trade, service or business shall be kept, parked, stored, dismantled or repaired outside on any lot or any street within the Schwartz Subdivision, nor shall anything be done on any lot which may be or may become an annoyance or nuisance to any other lot owner. No temporary structures, mobile homes, trailers, tents or shack shall be placed on any lot.

**Section 6.2: Nuisance Prohibited.** No noxious or offensive activity shall be carried on, in or upon any lot, nor shall anything be done therein which may be or become an annoyance or nuisance to other owners. No rubbish, debris or unsightly materials of any kind shall be placed or be permitted to accumulate on any portion of a lot, nor shall any odors or loud noises be allowed to emanate from any lot which are offensive or detrimental to any persons occupying any other lots located within the Schwartz Subdivision. No exterior speakers, horns, whistles, bells or other sound devices except security and fire alarm devices used exclusively for such purposes, and no plant, animal, device or other thing whose normal activity or existence is in any way noxious, dangerous, unsightly or unpleasant or the nature of which might significantly diminish the enjoyment of neighboring residents shall be permitted or maintained on any lot.

**Section 6.3: Lot Owners' Responsibilities.** Each lot owner covenants and agrees to maintain his respective lot(s) and improvements thereon in the same condition as a reasonably prudent homeowner would maintain his own home so that the entire real property will reflect a high pride of ownership.

**Section 6.4: Garbage and Debris.** All residences within the Schwartz Subdivision shall comply with Whatcom County Ordinance No. 90-96, which requires that all developments subscribe to solid waste and recycling collection. All garbage, rubbish, yard and vegetation debris or other waste shall be regularly removed from each lot by the owner to a licensed public or other suitable dump site outside the property. If not visible from any street or other lot and if not creating any objectionable odors, natural compost or waste materials are permitted if contained in suitable covered containers which shall be secured, fastened and protected from animals. All containers shall be kept in a clean and sanitary condition, and shall be screened from view from all other lots and all streets.

**Section 6.5. Surface Water Drainage.** The Schwartz Subdivision contains a specially designed surface water drainage system intended to protect the environment. It is incumbent on each owner to help protect the water quality. Owners shall not dispose of oils, solvents, cleaners and other polluting substances in storm drains. Owners shall not apply excessive amounts of lawn fertilizers or other chemicals to their lot(s).

**Section 6.6. Animals.** Dogs, cats and other conventional household pets may be kept on a lot, but not for commercial breeding or other commercial purposes. No other animals, livestock, poultry, or birds shall be kept or raised on any lot. Dogs shall not be allowed to run at large. No animal may be kept if it is a nuisance. When not confined to an owner's lot, animals within the plat must be accompanied by a responsible person and shall be registered, licensed and inoculated from time to time as required by law.

**Section 6.7. Recreational Vehicles and Equipment; Parking.** Travel trailers, utility trailers, campers, motor homes, boats and other recreational vehicles or equipment may not be kept, stored or parked in the area designated as the front yard, meaning the area adjacent to Captain's Court, and may only be parked and stored in an area in the rear or side yard of the residence screened from view. Motorcycles, motorbikes, all-terrain vehicles and other similar vehicles are

prohibited on any portion of the Schwartz Subdivision, except for properly muffled street legal vehicles on roads established for general vehicular purposes.

All automobiles shall be kept in an enclosed garage or parked off street on designated driveways. A designated driveway is the surfaced drive leading from the street to the garage or rear or side yard parking area and is clearly defined by concrete not exceeding twenty-four (24) feet in width or such width as may be allowed by the City of Ferndale building regulations and requirements. The parking and storage of inoperative vehicles, meaning any vehicle that is not presently operative or able to be operated because of mechanical defect or disrepair, on any portion of property within the Schwartz Subdivision is strictly prohibited. Keeping and storing an inoperative vehicle on the property means placing or causing to place an inoperative vehicle on the property or any portion of the property for a period of longer than fifteen (15) days. Servicing, repairing, restoring or otherwise working on any vehicle at any residence within the Schwartz Subdivision that is not done within an enclosed garage is prohibited.

**Section 6.8. Fires.** All fires shall be subject to all applicable governmental laws, ordinances, regulations and controls, including but not limited to permits, licenses and approvals issued by the City of Ferndale, Whatcom County or other appropriate governmental agencies. No outdoor fires shall be permitted, except barbecue facilities. Outdoor clearing/clean-up fires during or prior to construction require permit from governing governmental agency.

## **ARTICLE VII ENFORCEMENT**

**Section 7.1: Lot Owners' Authority to Enforce.** Enforcement of the covenants, conditions, easements and reservations herein may be necessary to have compliance of the same. Accordingly, if any lot owner in the subdivision or their heirs, successors and assigns, or any person or persons, firm or corporation deriving title from or through them, shall violate or attempt to violate any of the provisions of this Declaration relating to their lot, it shall be lawful for any person or persons owning any interest in the real property within the Schwartz Subdivision to prosecute and proceed through all remedies available at law or in equity against such person or persons violating any of the provisions of this Declaration, and either to prevent the violator from so doing or to recover damages for such violations or to seek compliance with this Declaration whether or not the violating person or persons occupying or having control of the lot is the owner or holds title to the lot in the subdivision.



**Section 7.2: Damages.** Each owner agrees that being in violation of the restrictions herein set forth may constitute an injury or damage to some or all of the other owners, which shall be deemed to be impossible to quantitatively measure. As a result, any or all of the other owners, in addition to all of the other remedies at law and at equity, will be entitled to a decree or other restraining or legally prohibiting any breach of any of the provisions of this Declaration and any amendments hereto, and any owner in breach of any such provisions hereby agrees that he/she will not plead in defense thereto that there would be an adequate remedy in damages.

**Section 7.3 Attorney Fees and Costs.** In any action to enforce any provisions contained in this Declaration and any amendments hereto, the prevailing party or parties in the action shall be awarded reasonable attorney fees and costs.

## **ARTICLE VIII GENERAL PROTECTIVE COVENANTS**

**Section 8.1: Access to Lots.** Access to Lots 1 thru 6 within Phase 1 of the Schwartz Subdivision shall be by way of Captain's Court off Captain's Way.

**Section 8.2: Compliance with Covenants, Conditions and Restrictions.** All construction and landscaping work carried out on any lot located within the Schwartz Subdivision must be in complete conformity and strict compliance with this Declaration.

**Section 8.3: Hazardous Chemicals.** Except as to the proper and conservative use and application of herbicides, pesticides and fungicides, no property owner shall dump, spill, dispose of or discharge any hazardous waste in any drains, drainage areas or sewer system, or otherwise dispose of said waste in any manner, including discharge in the ground water. "Hazardous waste" is defined in the State of Washington Model Toxic Control Act list of hazardous chemicals and includes but is not limited to chemicals, solvents, petroleum products, photographic chemicals.

**Section 8.4: Waiver.** The failure of the Developer or of any of his duly authorized agents, or any of the owners to insist in any one or more instances upon the strict performance of or compliance with this Declaration, or to exercise any right or option contained therein, or to serve notice or to institute any action or

summary proceedings, shall not be construed as a waiver or relinquishment of such right for the future, and such right to enforce any of the provisions of this Declaration shall continue and remain in full force and effect.

**Section 8.5: Liability.** Nothing contained in this Declaration shall be construed or implied as imposing on the Developer or his agents any liability to any party for any action or failure to act in regard to any provisions of this Declaration, and each lot owner expressly waives any claim for damages or compensation arising from breach of contract, negligence or otherwise, unless the Developer or his agent(s) have proceeded in bad faith or with malice.

Each owner covenants and agrees for himself and his successors that the Developer and his agent(s) shall not be liable for damages and injuries caused by windfall from trees, geologic hazards or deficiencies in the design or construction of the subdivision.

Any owner found to be in breach of any of the provisions of this Declaration will indemnify and save harmless any other owners of lots negatively affected from and against any and all reasonable losses, costs, claims and damages including attorneys' fees actually paid, arising as a result of any such breach or the enforcement of any of such provisions.

**Section 8.6: Grantee's Acceptance.** The grantee of any lot located within the Schwartz Subdivision by acceptance of a deed conveying title thereof, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent owner of such lot, shall accept such deed or contract upon and subject to each and all of the provisions contained in this Declaration, and by such acceptance shall for himself/herself, his/her heirs, personal representatives, successors and assigns, consent and agree to keep, observe, comply with and perform all of the provisions of this Declaration and any amendments hereto.

**Section 8.7: Protection of Holder of Mortgage or Deed of Trust.** No violation or breach of any provision contained in this Declaration and no action to enforce the same shall defeat, render invalid or impair in any way the lien of any mortgage or deed of trust held on any lot located within the Schwartz Subdivision, or the title or interest of the holder thereof, or the title acquired by any purchaser upon foreclosure of any such mortgage or deed of trust. Any such purchaser shall, however, acquire title to any such lot subject to the provisions of this Declaration and any amendments hereto.

**Section 8.8: No Waiver of Other Laws.** The provisions contained in this Declaration and any amendments hereto shall not relieve any owner of the requirement to observe the ordinances and other requirements of the City of Ferndale, all development agreements between the Developer and the City, and the obligations and liabilities imposed by statute or common law on the owners and occupants of the lots, all of which must be duly observed and complied with.

**Section 8.9: Failure to Enforce.** Failure to enforce any provision of this Declaration or any amendments hereto shall not operate as a waiver of any such provision or of any other provisions contained herein.

**Section 8.10: Amendments.** This Declaration of Covenants, Conditions, Restrictions, Easements and Reservations may be amended in whole or in part by filing with the Auditor's office a written amendment executed by the vested owners of record of not less than five (5) of the six (6) lots; provided that any such change or amendment shall have the same effect and apply to all six (6) of the lots in said Schwartz Subdivision, Phase 1, and shall not result in preference or benefit to one or several lots to the exclusion of the remaining lots.

**Section 8.11: Severability.** If any provision of this Declaration or any amendments hereto is determined to be void or unenforceable in whole or in part, it shall not be deemed to affect or impair the validity or enforceability of any other provision contained therein.

**Section 8.12: Time of Essence.** Time shall be of the essence of this Declaration.

**IN WITNESS WHEREOF,** Developer being the Declarant herein, has hereunto set his hand and seal the day and year first above written.

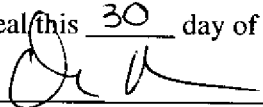
SCHWARTZ FAMILY TRUST

By Rogers T. Schwartz  
Rogers T. Schwartz, Trustee

STATE OF WASHINGTON )  
County of Whatcom ) ss.

On this day personally appeared before me ROGERS T. SCHWARTZ, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, as Trustee for the SCHWARTZ FAMILY TRUST, for the uses and purposes therein mentioned, and that he is authorized to execute the same on behalf of said trust.

GIVEN under my hand and official seal this 30 day of August, 2002.

  
\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at 4036 Wynn RD, Bellingham  
My commission expires: 5/7/06.

