

# Birch Run Homeowners Association

*c/o Snow's Management, Inc.*

*200 W. 34th Avenue, #966*

*Anchorage, Alaska 99503*

*Phone (907) 563-8333*

*Fax (907) 563-8313*

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## Attention

**Article IV USE RESTRICTIONS, Section 5. OUTSIDE INSTALLATIONS of the Declaration of Covenants, Conditions and Restrictions states “. . . No satellite dishes are allowed.”**

**This directly conflicts with the Federal Communications Commission ruling regarding dishes and antennas. Please see the following document.**

**Federal laws and rules take precedence over local, municipal and state laws and regulations.**

## FCC COMMISSION ADOPTS RULES ON USE OF SATELLITE DISHES

Start Date: November 20, 1998 Completion Date: November 20, 1998

By Federal Communications Commission, FCC Chairman Kennard  
Govt Report

**(Washington, District of Columbia)** This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).

Report No. CS 98-17 CABLE SERVICES ACTION November 20, 1998  
COMMISSION ADOPTS RULES ON USE OF SATELLITE DISHES AND OTHER OVER-THE-AIR  
RECEPTION DEVICES FOR RENTERS AND OTHERS WITH "EXCLUSIVE USE" AREAS

(CS Docket No. 96-83)

The Commission has adopted an Order (FCC 98-273) further implementing Section 207 of the Telecommunications Act of 1996 to promote consumer choice and competition in the video programming distribution market. The revised over-the-air reception devices rule extends the prohibition on restrictions that hamper consumer use of television antennas, small satellite dishes, and wireless cable antennas to include viewers who rent property and wish to install and use antennas in areas where they have exclusive use, such as balconies or patios. This order also preserves property rights and avoids practical problems by excluding common areas, such as the roof of a multi-dwelling unit building, from the rule.

Section 207 of the Telecommunications Act of 1996 directed the Commission to enact regulations to prohibit restrictions that impair a viewer's ability to receive video programming through devices designed for over-the-air reception of direct broadcast satellite ("DBS") service, multichannel multipoint distribution service ("MMDS" or "wireless cable"), or television broadcast signals. The Commission adopted the rule that currently applies to antenna restrictions on property within the exclusive use or control of an antenna user who has a direct or indirect ownership interest in the property. At that time, the Commission issued a Further Notice of Proposed Rulemaking seeking comment on whether Section 207 should be interpreted to apply also to rental property and common areas.

In response to the Further Notice, the Commission now amends the rule, within the bounds of its statutory authority, to give many renters a choice in video programming services. The rule prohibits restrictions that impair the use of dishes and antennas in rented apartments, homes, or other dwellings, and adjacent outside property such as balconies, patios, gardens or yards that are exclusively used by the renter.

With respect to common areas that are owned by a landlord, a community association or jointly by condominium owners, the Commission concludes that Section 207 does not authorize expansion of the rule to prohibit restrictions on installation and use of antennas in these areas, including the roof, exterior walls or other restricted access areas. The Commission concluded that Congress intended the Commission to eliminate "restrictions" on Section 207 devices but did not direct the Commission to impose affirmative duties on landlords or community associations to install Section 207 reception devices. In addition, the Commission concluded that the statute does not authorize the Commission to require property owners (e.g., landlords or homeowners' associations) to give up their property (e.g. roofs and common areas) to permit viewers to install Section 207 reception devices on these common or restricted access areas, which would have raised serious Constitutional concerns. The revisions adopted by the Commission also avoid the serious practical problems associated with extending the rule to common areas.

Action by the Commission, November 14, 1998, by Order (FCC 98-273). Chairman Kennard, Commissioners Ness, Powell and Tristani. Commissioner Furchtgott-Roth dissenting in part and issuing a statement. Chairman Kennard issuing a separate statement.

When Recorded Return To:  
Colony Builders, Inc.  
2340 Loren Circle  
Anchorage, AK 99516

This instrument is being recorded by TransAlaska  
Title Insurance Agency, Inc., as an accommodation  
only. It has not been examined as to its effect,  
if any, on the title of the estate herein.

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
BIRCH RUN SUBDIVISION**

C 96-250

THIS DECLARATION, is made on the seventeenth day of February, 1996, by William F. Taylor and Tamara D. Taylor, Colony Builders, Inc. (hereinafter referred to as "Declarant"), whose address is: 2340 Loren Circle, Anchorage AK 99516.

**PREAMBLE**

Declarant, being the owner of the real property more particularly described below, hereby declares that such real property shall, from and after date, be held, sold, conveyed, developed, improved, encumbered, leased, used, and occupied subject to the easements, restrictions, covenants and conditions set forth below, all of which are declared to be in furtherance of a plan for the subdivision, improvement and enhancing the value, desirability, and attractiveness of such property and every part thereof. All such easements, restrictions, covenants and conditions shall run with such acquiring any right, title, or interest in such property, or any part thereof, and shall bind and inure to the benefit of the heirs, assigns, and other successors in interest thereof.

**ARTICLE I**

**DESCRIPTION OF REAL PROPERTY**

The real property hereby made subject to this Declaration is described as follows:

Lots One (1) through Eleven (11) Block One (1), Lots One (1) through Ten (10) Block Two (2) of Birch Run Subdivision Phase I according to Plat No. 95-100, records of the Anchorage Recording District, Third Judicial District, State of Alaska.

**ARTICLE II**

**Definitions**

**Section 1. OWNER**

"Owner" shall mean and refer to the recorded owner, whether one or

more persons or entities, of a fee-simple title to any "Lot" which is a part of the "Properties", excluding those having such interest merely as security for the performance of an obligation. Owner shall not include Declarant except as herein otherwise specified, but shall include contract purchasers.

Section 2. PROPERTY

"Property" or "Properties" shall mean and refer to that certain real property hereinbefore described.

Section 3. LOTS

"Lots", with respect to an Owner, shall mean and refer to a parcel of land that is part of the Properties which have been conveyed to an Owner. "Lot", with respect to "Properties" not conveyed to an Owner. "Lot" includes the improvements constructed thereon.

Section 4. DECLARANT

"Declarant" shall mean and refer to the Declarant as identified above, and the successors and assigns thereof.

ARTICLE III

ARCHITECTURAL CONTROL

Section 1. PRIOR APPROVAL OF PLANS AND SPECIFICATION

No building, structure or improvement shall be erected, altered, placed, or permitted to remain on the Properties nor shall any exterior addition to or change of alteration to an existing structure located on the properties be made until the plans and specifications showing the nature, kind, height, materials, exterior color and surface and location of same shall have been submitted to and approved in writing by the Architectural Committee as to quality of workmanship and materials, harmony of exterior design with existing buildings and structures, and as to the location with respect to topography and finished grade elevation; nor shall any such building structure or improvement be permitted to remain on the properties not constructed in accordance with approved plans and specifications. Such plans and specifications will not be approved for engineering design and by approving such plans and specifications, neither the Architectural Committee nor the member thereof nor Declarant shall be deemed to assume liability or responsibility therefor or for any defect in the structure constructed from such plans and specifications.

Section 2.      ARCHITECTURAL CONTROL COMMITTEE

The Declarant shall initially appoint the Architectural Control Committee and it shall consist of not less than two (2) members. Declarant shall retain the right to appoint, augment or replace members of the Architectural Control Committee until such time as one hundred percent (100%) of the Lots within the Properties have been conveyed by Declarant to an Owner. Thereafter, two thirds of the Owners of record, shall have the power, through a duly recorded, written instrument, to change the membership of the committee and to withdraw from it or restore to it any of its powers and duties.

The initial Architectural Control Committee is composed of:

William F. Taylor III  
Tamara D. Taylor

Section 3.      PROCEDURE

The plans and specifications required to be submitted for approval hereunder shall be submitted to and at the address of the Committee appearing in a duly recorded instrument recorded in the Anchorage Recording District. The initial address of the Committee is as follows:

2340 Loren Circle  
Anchorage, Alaska 99516

In the event the Architectural Control Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the same have been duly submitted to it or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the requirements of this Article shall be deemed to have been fully complied with.

Section 4.      GENERAL PROVISIONS

(a) The Architectural Control Committee may establish reasonable rules in connection with the review of plans and specifications, including, without limitations, the number of sets to be submitted and payment of a fee. Unless such rules are complied with, such plans and specifications shall be deemed "not submitted". The Architectural Control Committee may from time to time establish different requirements and reasonable rules in connection with its review of plans and specifications by recording an amendment hereto duly executed by said Committee.

P.04

(b) The Architectural Control Committee shall have full and complete discretion with respect to approval and disapproval of plans and specifications.

(c) The Architectural Control Committee shall be obligated to disapprove plans and specifications which do not meet specific requirements for construction set forth elsewhere herein.

## ARTICLE IV

### USE RESTRICTIONS

#### Section 1. LAND USE

No Lot shall be used except for single family residential purposes. No buildings shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single-family dwelling.

#### Section 2. SINGLE FAMILY RESIDENCE

Lots shall be used exclusively for single-family residential purposes. As used herein, "single family" shall mean one or more persons living as a single housekeeping unit, as distinguished from a group occupying a rooming house, club, fraternity house or hotel. The only exception to the "single family" residence limitation set forth herein is that a lot owner may use a portion of his residence as a single rental unit provided that the rental area does not exceed Thirty Five Percent (35%) of the net livable area of the dwelling. Prior to such rental use, each lot owner must submit to the Architectural Control Committee the owner's plans for the rental area to insure that compliance with the space limitation provided herein is adhered to.

#### Section 3. NUISANCES

No noxious or offensive activities (including, but not limited to, the repair of automobiles) shall be carried on upon the Properties. No horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a residence and its contents, shall be placed or used in any such residence. No loud noises shall be permitted on the Properties, and the Board of Directors of the Association shall have the right to determine if any noise, or activity producing noise, constitutes a nuisance. In this regard, all occupants of Lots shall exercise extreme care to avoid making noise and to not use musical instruments, radios, television sets and amplifiers as to disturb other occupants. Each owner shall comply

with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the Properties.

#### Section 4. SIGNS

No signs, posters, displays or other advertising devices of any character shall be erected or maintained on, or shown or displayed to public view on any lot provided, however, that the restrictions of this section shall not apply to any sign or notice of customary and reasonable dimension which states the lot is for sale. This section shall not apply to any signs used by the declarant or the agents thereof in connection with the original construction and sale of Lots. The type, size and design of all signs to be used, including temporary construction, real estate "for sale", signs shall only be erected or posted in accordance with applicable ordinances and regulations.

#### Section 5. OUTSIDE INSTALLATIONS

No fences or basketball standards or fixed sports apparatus shall be attached to any residence or placed on any Lot without approval in accordance with Article III. No wiring for telephone or electrical purposes, nor machines, nor other equipment or appurtenances whatsoever shall be installed on the exterior of any residence (including, as example and not by way of limitation, protruding through walls, windows or roofs) without approval in accordance with Article III. Noncommercial television reception devices may not be installed on the exterior of a residence. No satellite dishes are allowed.

#### Section 6. PET REGULATIONS

No animals, livestock or poultry shall be kept on any Lot, except that domestic dogs, cats, fish and birds in inside bird cages may be kept as household pets provided they are not kept, bred or raised therein for commercial purposes or in unreasonable quantities. As used in this Declaration "unreasonable quantities" shall be deemed to limit the number of dogs, cats and birds, to two (2) each (including any pets owned by an apartment renter). Dogs and cats belonging to Owners, occupants or their licensees or invitees within the Property must be either kept within an enclosure, an enclosed balcony, or on a leash being held by a person capable of controlling the animal. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Board of Directors of the Association.

#### Section 7. BUSINESS OR COMMERCIAL ACTIVITY

No business or commercial activity shall be maintained or conducted

on any Lot, except that professional and administrative occupations may be carried on within residences on Lots so long as there exists no external evidence thereof.

Section 8.

TEMPORARY STRUCTURES

No temporary structure, boat, truck, trailer, camper or recreation vehicle of any kind shall be used as a living area while located on the Properties; however, trailers or temporary structures for use incidental to the initial construction of the improvements on the Properties may be maintained thereon but shall be removed within a reasonable time after completion of construction. No fuel shall be stored above ground.

Section 9.

TREES

No trees may be removed from the Lot, except those trees within ten feet (10') of the dwelling location reasonably required to be removed for construction and from those Lots or that area owned by Declarant. It is the intent of this provision that all Owners shall do their utmost to maintain the trees and the natural surroundings of their respective Lots.

Section 10.

WINDOWS AND FACADES

No garments, rugs or other objects shall be hung from the windows or facades of the improvements to the Lots, dusted, shaken nor beaten from or about upon such windows or facades. Only customary curtains and/or shades and/or draperies visible from the exterior of the improvements to a Lot shall be used. In this regard, and without limiting the foregoing, no newspaper, metal foil, sheets, blankets, etc., shall be used as window coverings.

Section 11.

MOTOR VEHICLES AND TRAILERS

No motor vehicle or trailer may be abandoned or allowed to remain on any Lot or any street within the Properties for more than forty-eight (48) hours if it is not in operating condition. All vehicles and trailers within the Properties must be duly licensed. From April 1 through and including November 30 of each year recreational vehicles may be so parked. Without limiting the foregoing, parking of recreational vehicles on a Lot or street within the Properties from November 30 through March 31 of each year is expressly prohibited, except a recreational vehicle may be stored, provided it is not visible from the street. "Recreational vehicles" shall, for the purpose of this section, include campers, motorhomes, snow machines, ATV's, boats and trailers. NO commercial vehicle larger than one-half (1/2) ton in gross capacity shall be permitted to remain on the Lot or



street within the Properties except as required for routine or emergency maintenance or for new construction, alteration or remodeling to an existing structure or for the purpose of moving in or out of home.

Section 12. FENCES

No fence shall be created, placed or maintained on any Lot within the Properties, except when constructed of cedar or similar-appearing wood and may not exceed five feet (5') in height from the back of the lot to the front portion of a dwelling. No fence may extend across the front property line. Plans for fencing must first be submitted to the Architectural Control Committee for approval pursuant to Article III hereof. No fence shall be created or placed on any lot between the front lot line or side street line and the front of the residence. The subdivision perimeter fence must be 72" in height.

Section 13. BUILDINGLOCATION

No building shall be constructed or maintained on any Lot nearer than twenty feet (20') to the front lot line thereof or nearer than twenty feet (20') to the back lot line of such Lot. No structure shall be constructed on any Lot nearer than five feet (5') to its interior or side lot line.

For the purpose of this section, eaves, steps and open porches shall not be considered as a part of the building. This shall not be construed to permit any portion of a structure on one Lot to encroach upon another Lot.

Section 14. LANDSCAPING

Each Owner of the Lot shall cause the same to be fully landscaped not later than thirteen (13) months after occupancy of the residence.

Section 15. MAILBOXES

No mail box or receptacle shall be erected, placed or maintained on any Lot within the Properties except after approval of the location, design and construction materials by the Architectural Control Committee in accordance with Article III. In no event shall any mail box or receptacle be constructed of shiny metal or otherwise out of harmony with improvements constructed on the Properties.

Section 16. CHIMNEYS

No chimney shall be erected, placed or maintained upon any residence constructed on a Lot within the Properties except masonry

chimneys or when framed in by wood in the case of metal chimneys. Design and materials for chimney construction must also be approved in accordance with Article III.

Section 17.

PERSONAL LIABILITY

No member of the Architectural Control Committee is personally liable for action or inaction while serving as a member of the Committee on Committee business, except for intentional misconduct or unlawful or fraudulent behavior.

ARTICLE V

General Provisions

Section 1.

TERMS

These covenants are to run with the land and shall be binding on all parties and persons claiming under them for a period of 25 years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. An instrument signed by the owners of a majority of the lots which is recorded will act to change said covenants in whole or in part. The purchase of any lot in this subdivision shall constitute an agreement on the part of such purchaser to be bound by these protective covenants in their entirety and to abide by the same.

Section 2.

ENFORCEMENT & PENALTY

Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate said covenants by the Architectural Control Committee, or any affected persons including any owner, either to restrain violation or to recover damages. Failure by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

No construction shall begin until the Architectural Control Committee has approved the proposed construction. A penalty of One Hundred Fifty Dollars (\$150.00) per day may be assessed for unapproved construction. Each penalty shall be adjusted upward by the amount of the Federal Consumer Price Index for Anchorage. Such adjustment shall take place annually on a date set by the Architectural Control Committee. These funds shall be kept in a separate account and used for the enforcement of these covenants.

Section 3.

SEVERABILITY

Invalidation of any one of these covenants by a judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

ARTICLE VI

BIRCH RUN SUBDIVISION HOMEOWNERS ASSOCIATION

Section 1.

MEMBERSHIP

Only owners of lots on which a residence has been completed, as evidenced by issuance of certificate of occupancy, shall be a member of the Association entitled to vote on Association business and elections, and required to pay any assessments levied by the Association. However, the Developer is entitled to receive notice of all Association meetings and activities and shall have access at any reasonable time to the books and records of the Association.

Membership of owners in the Association shall be appurtenant to and may not be separated from the fee simple ownership of any lot, an ownership of the lot shall be the sole qualification for membership. No more than one membership shall exist based upon ownership of a single lot.

Section 2.

ANNUAL ELECTIONS

Annual elections are required for the Board of Directors. The Board shall consist of three members. Two of the initial three board members will be John Brower and Vicki McCubbin. John Brower and Vicki McCubbin shall have the right to appoint the remaining board member to serve the initial term. Successive terms for Board members shall be by a simple majority election of eligible members to be held annually on the 1st day of October.

Section 3.

INITIAL DEPOSITS

An initial deposit of \$150 shall be collected by the Title Company closing a transaction for each and every initial fee simple transfer of ownership within the subdivision and a \$100 fee for every transfer of ownership that follows. The deposit shall be placed in an existing Association account by the Title Company for the sole purpose of funding future maintenance and beautification of the subdivision sign and road right of way or other such projects deemed desirable by the Board of Directors.

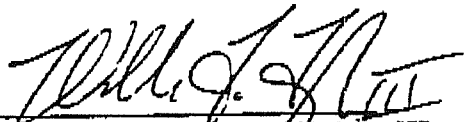
Section 4.

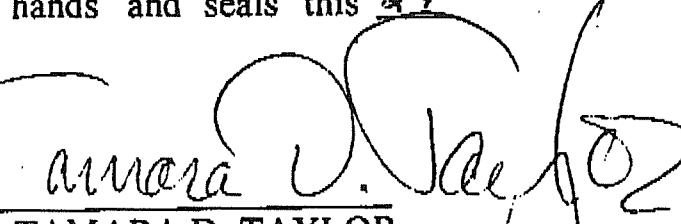
ASSESSMENTS

Each owner of a lot on which a residence has been completed covenants and agrees by acceptance of a deed to pay the Association periodic assessments, together with such interest thereon, reasonable attorney's fees, and costs of collection thereof. The assessments, together with interest thereon, reasonable attorney's fees and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the lot against which such assessment now is made. Each such assessment, together with such interest, costs and reasonable attorneys fees, shall be a personal obligation of the owner of such lot at the time when the assessment falls due. The personal obligation shall not pass to his successor in title unless expressly assumed by the successor.

ATTEST:

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned, in witness thereof have hereunto set our hands and seals this 24<sup>th</sup> day of September, 1996.

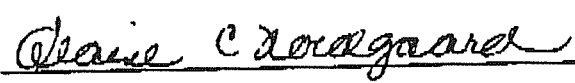
  
WILLIAM F. TAYLOR III  
President, Colony Builders Inc.

  
TAMARA D. TAYLOR  
Secretary, Colony Builders Inc.

STATE OF ALASKA     )  
                              ) ss:  
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 24<sup>th</sup> day of September, 1996 before me the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared WILLIAM F. TAYLOR III and TAMARA D. TAYLOR, known to me and to me known to be the individuals named in and who executed the above and foregoing instrument, and they acknowledge to me that they executed the same freely and voluntarily for the intents and purposes herein contained.

WITNESS my hand and official seal the day and year in this certificate first written.





NOTARY PUBLIC IN AND FOR THE STATE OF ALASKA

My Commission Expires: 5/23/99

This instrument is being recorded by TransAlaska  
Title Insurance Agency, Inc., as an accommodation  
only. It has not been examined as to its effect,  
if any, on the title of the estate herein.

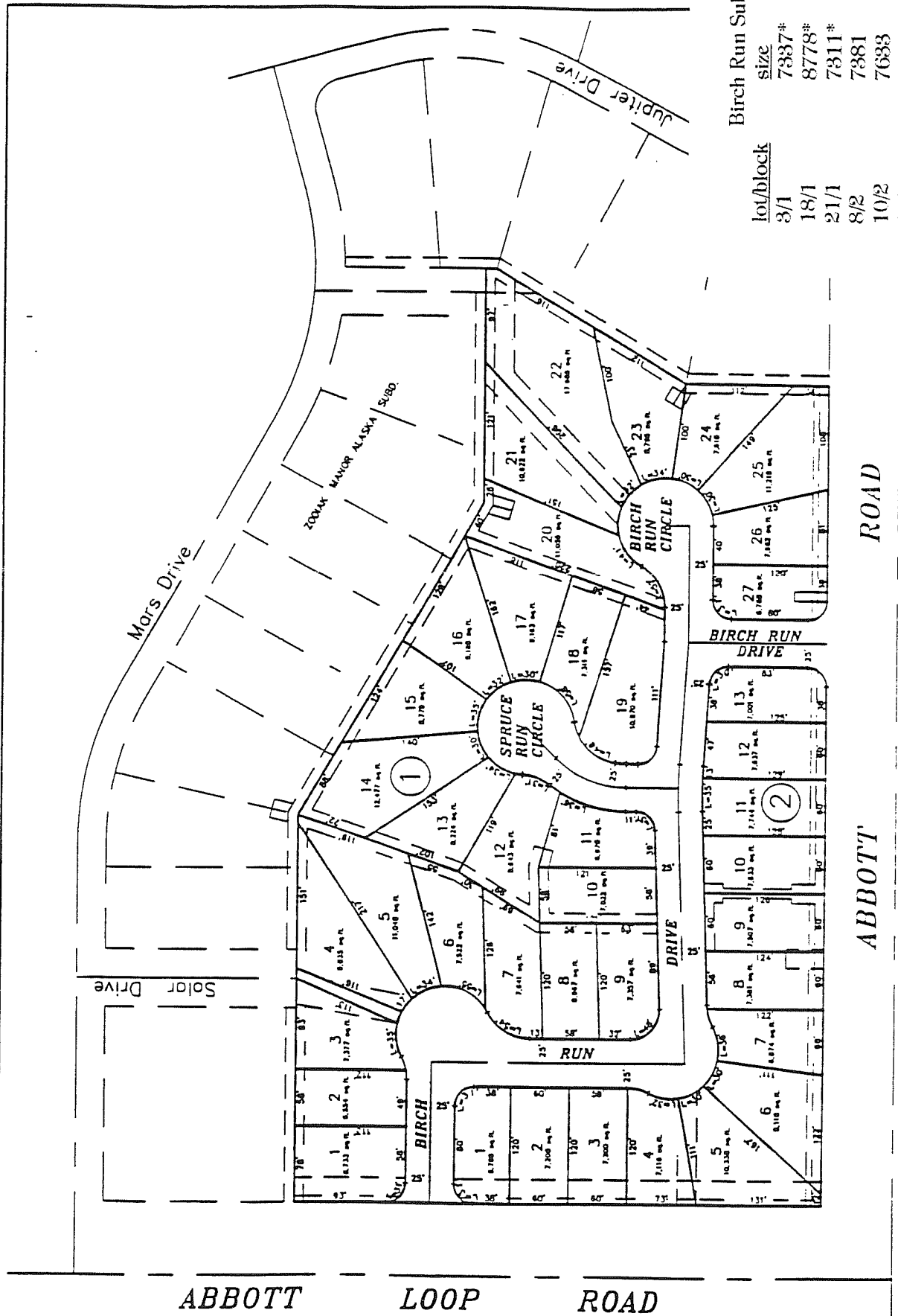
96-046833  
HSCC

ANCHORAGE REC.  
DISTRICT

REQUESTED BY TransAlaska  
Title

'96 SEP 25 AM 8 52

# Birch Run Subdivision



Birch Run Subdivision		
lot/block	size	price
3/1	7337*	\$62,000
18/1	8778*	\$62,000
21/1	7311*	\$62,000
8/2	7381	\$55,000
10/2	7633	\$55,000
11/2	7744	\$55,000
13/2	7001	\$55,000
27/1	Expanded Zinfandel	\$253,000
15/1	Expanded Bordeaux	\$319,900

**PROPOSED AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR BIRCH RUN SUBDIVISION**

*Current wording:*

**ARTICLE III**

**ARCHITECTURAL CONTROL**

**Section 2.     ARCHITECTURAL CONTROL COMMITTEE**

The Declarant shall initially appoint the Architectural Control Committee and it shall consist of not less than two (2) members. Declarant shall retain the right to appoint, augment or replace members of the Architectural Control Committee until such time as one hundred percent (100%) of the lots within the Properties have been conveyed by Declarant to an Owner. Thereafter, two thirds of the Owners of record, shall have the power, through a duly recorded, written instrument, to change the membership of the committee and to withdraw from it or restore to it any of its powers and duties.

The initial Architectural Control Committee is composed of:

William F. Taylor III  
Tamara D. Taylor

**Section 3.**

The plans and specifications required to be submitted for approval hereunder shall be submitted to and at the address of the Committee appearing in duly recorded instrument recorded in the Anchorage Recording District. The initial address of the Committee is as follows:

2340 Loren Circle  
Anchorage, Alaska 99516

In the event the Architectural Control Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the same have been duly submitted to it or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the requirements of this Article shall be deemed to have been fully complied with.

*Wording after proposed amendment:*

### ARTICLE III

#### ARCHITECTURAL CONTROL

##### Section 2. ARCHITECTURAL CONTROL COMMITTEE

The Board of Directors shall appoint the Architectural Control Committee members at its annual meeting. The committee shall consist of not less than five (5) members. At least three (3) of the members shall be owners and no more than two (2) of the members may represent the Declarant. The two (2) members which represent the Declarant shall hold this position at the pleasure of the Board of Directors and may be replaced at such time as 100% of the lots within the properties have been conveyed by Declarant to an owner.

##### Section 3. PROCEDURE

The plans and specifications required to be submitted for approval hereunder shall be submitted to the project manager of record, or if non, then to the committee at the following address:

Snow's Management, Inc.  
200 W. 34<sup>th</sup> Avenue, #966  
Anchorage, AK 99503

This amendment does not alter or change any other section or provision of the Declaration.



# Birch Run Homeowners Association

*c/o Snow's Management, Inc.  
200 W. 34th Avenue, #966  
Anchorage, Alaska 99503  
Phone (907) 563-8333  
Fax (907) 563-8313*

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## MEMORANDUM

TO: Homeowners

FROM: Board of Directors, Birch Run Homeowners Association

SUBJECT: Proposed Declaration Amendment

DATE: December 19, 2000

At this time, the homeowners of the Birch Run Homeowners Association do not have a voice on the Architectural Control Committee. The committee is made up of two people, Bill and Tammy Taylor of Colony Builders. In addition, the Taylors have the sole right to appoint, augment or replace members.

It has been proposed that the Declarations of Covenants, Conditions and Restrictions for the Association be amended to allow for representation by the Homeowners Association. Please see the enclosed document that shows the current wording of the Declarations and then shows the proposed amendment.

This amendment will be voted on during the Annual Homeowners meeting to be held January 24, 2001. Also enclosed is a ballot/proxy and notice for the annual meeting. Please plan to attend the meeting. If this is not possible, please return the ballot/proxy to Snow's Management, Inc.

If there are any questions or further information required, please contact Snow's Management, Inc.