

Return Address
Bryce H. Dille
Campbell, Dille & Barnett
PO Box 488
Puyallup, WA 98371

Document title(s) (or transactions contained therein):

1. Declaration of Covenants, Conditions, and Restrictions for Nisqually Estates - Div. 1 & 2, Phase I

Reference Number(s) of Documents assigned or released:
(on page _____ of documents(s))

Grantor(s) (Last name, first name, middle initial)

1. Kirk Haar, Harr Family Homes
- 2.
- 3.
- 4.

Grantee(s) (Last name, first name, middle initial)

1. Nisqually Estates - Division 1, Phase 1
2. Nisqually Estates - Division 2, Phase 1
- 3.
- 4.

Legal Description (abbreviated: i.e. lot, block, plat or section, township, range)

Plat of Nisqually Estates, Section 25, Township 17N, Range 1E.

Additional legal is on page ___ of document

Assessor's Property Tax Parcel/Account Number:

21725111301 & 21725111300



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Thurston Co, WA

After Recording Return to:
Bryce H. Dille
of Campbell, Dille & Barnett
P.O. Box 488
317 South Meridian
Puyallup, WA 98371

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
NISQUALLY ESTATES- DIVISION 1, PHASE 1
NISQUALLY-DIVISION 2, PHASE 1

Grantor: Harr Family Homes, Inc., a Washington Corporation

Grantee: Nisqually Estates-Division 1, Phase 1
Nisqually-Division 2, Phase 1

Legal Description (abbreviated): Lots 1 through 31, Nisqually Estates-Division 1, Phase 1 and Lots 73 through 103 of Nisqually Estates-Division 2, Phase 1, recorded under Thurston County Auditor's Recording Nos. 3206024, 3206025

Complete legal is on Page 2 of document.
Assessor's Parcel No.:

THIS DECLARATION is made this 21st day of November, 1998, by HARR FAMILY HOMES, INC., a Washington Corporation, (Declarant).

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Conditions and Restrictions Page 1
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I. BACKGROUND

1. Declarant is the owner of certain real property in Thurston County, Washington, described as Lots 1 through 31, inclusive of Nisqually Estates-Division 1, Phase 1 recorded under Thurston County Auditor's Recording No. 3206024, and Lots 73 through 103, inclusive of Nisqually Estates-Division 2, Phase 1, recorded under Thurston County Auditor's Recording No. 3206025.

2. Declarant is also the owner of certain real property situated in Thurston County, Washington described as a portion of the Northwest quarter of the Northeast quarter of Section 5, Township 17 N., Range 1 East of the W.M. which will be platted into lots and known as Nisqually Estates- Division 1, Phase 2 and Nisqually Estates-Division 2, Phase 2.

3. Declarant intends to create on the property described in Paragraph 1 above together with the other property which is described in Paragraph 2 above a residential community known as Nisqually Estates.

4. Declarant desires to preserve and enhance the property values, amenities, and the opportunities in the above described residential community and to provide for the health, safety, and welfare of residents, and to this end, desires to subject the welfare of residents, and to this end, desires to subject the property described in Paragraph 1 above, together with such additions as may be made to the property as set forth in Paragraph 2 which will be done by amendment to this declaration and furthermore subject to the property the covenants, restrictions, easements, charges, and liens set forth in this declaration, each and all of which are for the benefit of the property and each owner.

5. Declarant has incorporated the Nisqually Estates Homeowner's Association to provide for a means of meeting the purposes and intent set forth in this Declaration.

II. DECLARATION

1. Declarant declares that the property described in Article 1 Paragraph 1 above shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens set forth in this declaration, together with the property described in Article 1, Paragraph 2, above as will be subsequently added in the future by amendment to this Declaration.

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2. Further, Declarant delegate and assign to the NISQUALLY ESTATES HOMEOWNER'S ASSOCIATION, the power of maintaining, administering and enforcing the covenants and restrictions, collecting and disbursing the assessments and charges created in this Declaration, and promoting the health, safety, and welfare of the residents.

III. DEFINITIONS

1. "ACC" shall mean the Architectural Control Committee as described in this Declaration.

2. "Articles" shall mean the Articles of Incorporation of the Association as defined below.

3. "Association" shall mean the NISQUALLY ESTATES HOMEOWNER'S ASSOCIATION, a Washington nonprofit corporation, its successors and assigns.

4. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

5. "By-Laws" shall mean the By-Laws of the Association as they may from time to time be amended.

6. "Common Area" shall mean the real property and easements as described in this declaration.

7. "Declarant" shall mean HARR FAMILY HOMES, INC., a Washington Corporation, and its successors and assigns. If such successors or assigns should (1) acquire more than one lot from the Declarant for the purpose of development, and (2) be specifically assigned the rights and duties of Declarant by written instrument in recordable form. That at such time a Declarant named above is no longer the owner of any lot and such party shall no longer be considered a Declarant, they have the rights, duties, and obligations of a Declarant as set forth herein.

8. "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Reservations for NISQUALLY ESTATES HOMEOWNER'S ASSOCIATION, and any amendments thereto.



9. "Easement Areas" shall mean the real property described in the easement areas, which shall be used for the benefit of all residents.

10. "First Mortgagee" shall mean a lender who holds the first mortgage or deed of trust on a lot and who has notified the Association in writing of his holdings.

11. "Home" shall mean a structure located on a single family lot which is designed and intended for use and occupancy as a residence by a single family or which is intended for use in connection with such residence.

12. "Lots" shall mean Lots 1 through 31 inclusive of Nisqually Estates-Division 1, Phase 1 and Lots 73 through 103 of Nisqually Estates-Division 2, Phase 1, and also shall mean lots which shall be created in the future which are contained in Nisqually Estates-Division 1, Phase 2, and Nisqually Estates-Division 2, Phase 2.

13. "Member" shall mean every person or entity who holds membership in the Association.

14. "Mortgage" shall include a deed of trust or other security instrument.

15. "Mortgagee" shall mean the beneficial owner or the assignee of the beneficial owner or its designee, of an encumbrance on a lot created by a mortgage and also mean the vendor or assignee or designee of vendor of a real estate contract for the sale of a lot. The Mortgagee shall be deemed a separate Mortgagee for each lot on which it holds a Mortgage which constitutes a first lien on said lot for purposes of determining the percentage of first Mortgagees approving a proposed decision or course of action. Mortgagee shall have the same voting rights as the owners on any lot subject to such Mortgage.

16. "Owner" shall mean every person or entity, including Declarant, which is a record owner of the fee simple title to any lot, or if any lot is sold under real estate contract, the vendee or vendees under that contract; provided however, that the term "Owner" shall not include those having such interest merely as security for the performance of an obligation.

17. "Property" shall mean the real property described above.

18. "Structure" shall mean any building, fence, wall, pole, driveway, walkway, or the like.



**IV. PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS
THERE TO**

1. The Property. The real property which is subject to this Declaration is described in Article I.1. and which is described in Article 1.2 which will be added by amendment to this Declaration.

V. COMMON AND EASEMENT AREAS

1. Description of Common Area: The common areas shall include the easements as further described below together with the following tracts and each lot ownership shall have an undivided equal interest for tax purposes in all of the following described tracts:

Tracts A, C, G, H, and I are storm water retention facilities and shall be owned and maintained by all lot owners in common and each shall have an equal and undivided interest in the same and shall be maintained by the homeowner's association pursuant to a storm water facility's maintenance agreement to be entered into with the City of Yelm. An easement is hereby granted to the City of Yelm over and across the above referenced tracts for access and maintenance purposes for emergency or default.

2. Description of Easements.

A. The declarant has established a pedestrian easement and shown as Tract N. Said pedestrian easement shall be six (6) feet wide, signed, graveled, and fenced. The fence shall be six (6) feet in height of solid material and set back twenty (20) feet from the public right of way. The homeowner's association shall be responsible for the maintenance of said pedestrian easement and fence adjacent thereto.

B. The declarant has established for the benefit of all lots easements for drainage, utilities, landscaping, entrance and monument areas, and the construction and maintenance of fencing. The above described easements are reserved for the benefit of all lot owners and the Association for the purpose of installing, maintaining, and repairing any improvements or utilities constructed within said easement areas. All utility and service organizations including the City of Yelm and Thurston County, shall have the right enter upon the easement areas at all times for the purposes herein statement and shall, to the extent reasonable and practical, restore the easement areas following installation, maintenance or repair to their pre-work condition.



C. On each lot an easement is reserved over and across a five foot strip of land adjacent to the side boundary lines (except any street boundary lines) and a ten foot wide strip of land adjacent to the rear property lines. The easements on the strips of lands on the side boundary and back boundary of lots shall be limited to drainage and to utilities that benefit only to the lots within the plat and no utility lines may be put in those strips of land on the side and back of lots which benefit property other than the lots within the plat.

D. The Declarant does hereby reserve for the benefit of the Association an easement over all lots for the purpose of permitting the Association to perform its duties and requirements under these covenants.

3. Use of Common Areas. Each owner shall have the right to use the common areas in common with all other owners subject to this declaration, the by-laws, and any rules and regulations adopted by the Association as the following:

(a) The Association may totally ban or restrict the use of portions of the common area and easements for ordinary use would be dangerous, would unreasonably increase the Association costs, or be detrimental to the environment.

(b) The Association shall have the right to suspend the voting rights and right to use any recreational facilities on the common area by any owner for any period during which any assessment against said owner's lot remains unpaid for a period not to exceed 60 days, for any and each separate, infraction of the Association rules and regulations.

(c) If any portion of the property within the plat constitute wetlands buffer or wetlands area, those areas are subject to restrictions promulgated by the State of Washington and the County of Thurston and any other supplemental regulations established by the Association consistent with the above referenced governmental restrictions and regulations.

4. Owners' Easements of Enjoyment. Each Owner shall have the benefit of the "easements areas" and the "common areas" as defined above which shall be appurtenant and shall pass with the title to every lot subject to the following provisions:

(a) The right of the Association to adopt reasonable rules governing the use of the Easement Areas and the personal conduct of persons authorized to use said areas, and to establish appropriate penalties for the violation of those rules.



(b) The right of the Association to dedicate or transfer all or any part of the Easement Areas to any public agency, authority, or utility for the purpose for which such Easement Areas were constructed.

5. Delegation of Use. Any Owner may delegate his right of enjoyment to the Easement Areas and the Common Areas and facilities to the members of his family, his tenants, or his guest, subject to the limitations set forth above.

6. Association to Maintain. The Association shall maintain, repair, replace and improve the common areas including but not limited to Tracts A, C, G, H, and I, the pedestrian easement area designated and shown as Tract N. on the face of the plat including the fence adjacent thereto, street lights and lighting if any, which are the responsibility of the Association to maintain, all fencing constructed by the Declarant for the benefit of the residents, mailbox areas if any, constructed by the Declarant, all facilities and improvements situated within the common areas, utility charges and electricity for any street lighting to be maintained by the Association as well as irrigation charges for maintaining the landscaped areas, the storm water drainage system, and any other expenses approved by the Board of the Association which are for the benefit of all lot owners. The Association shall also maintain liability and casualty insurance in such amounts as may be determined by the Board of the Homeowner's Association and the cost of said insurance shall be paid from assessments as provided for herein. The Association shall also have the right to employ such managers or management companies as is necessary in order to assist the Association and discharge its duties and obligations under this agreement in administering the affairs of the Association. All of the above expenses shall be paid by the homeowner's association from the assessments collected from the lot owners as provided for herein.

7. A Delegation to Manager. The board of directors may delegate any of its managerial duties, powers or functions to any person, firm or corporation provided that any management agreement for the project shall be terminable by the Association for a cause upon thirty (30) days written notice, and the term of any such agreement may not exceed one (1) year renewable by agreement by the parties for successive one (1) year periods. The members of the board of directors shall not be liable for any omission or improper exercise by the Manager of any duty, power or functions so delegated by written instrument executed by a majority of the board of directors.



VI. HOMEOWNER'S ASSOCIATION

1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. When more than one person holds an interest in any Lot, all such persons shall be Members. Ownership of a Lot shall be the sole qualification for membership.

2. Voting. Each lot shall vest in its owners with one vote on all matters. No lot shall be entitled to more than one vote. Lots owned by a husband and wife, or jointly by more than one individual or entity, shall be entitled to only one vote per lot by the lot owners cumulatively and not individually. Matters involving the capital improvements of the common areas shall require an affirmative vote of sixty-six percent (66%). Matters involving view rights, amendments to this Declaration and incorporation of the Homeowner's Association shall require an affirmative vote of seventy-five percent (75%). All other matters shall require an affirmative vote of fifty-one percent (51%) unless otherwise stated elsewhere in this Declaration or amendments thereto.

3. Meetings. Subsequent to such time as the Declarants shall no longer have the right to appoint directors under Paragraph VI(12), the Association may schedule regular meetings at least once a year. Other special meetings may be called in accordance with the terms and provisions of the by-laws of the Association. Minutes shall be kept at such meetings which shall include a record of all votes taken.

4. Liability Insurance. The Association may maintain liability and/or hazard insurance covering the common areas and work performed by or on behalf of the Association.

5. Dues; Assessments. Assessments as provided for herein shall be on an annual or other periodic basis as determined by the board of directors of the Homeowner's Association.

6. Common Expenses. That the expenses which shall be considered expenses in common with all of the lot owners, are those set forth in Article V, Paragraph 6. Common expenses shall be inclusive of the cost of liability and casualty insurance whatever amount is reasonable and deemed appropriate. The responsibility for the common expenses shall be administered by the Association.



7. Lien for Failure to Pay. In the event any party fails to pay, within 30 days of receiving a bill for their portion of the expense, then the Association may file a lien, substantially in the form of a labor and material lien. The lien shall be a lien against the property of the non-paying party and forecloseable in the same manner as a labor and materials lien, without, however, the requirement to file suit within eight (8) months. The lien shall have perpetual existence until paid and released by a recorded lien release. The unpaid balance shall bear interest at the highest legal rate until paid and the non-paying party shall be liable for costs and attorneys fees expended in any collection action including but no limited to the foreclosure of the line. Sale or transfer of any lot shall not affect the assessments as to payments thereof which became due prior to such sale or transfer whether a lien is filed prior to the sale or not. No sale or transfer shall relieve such lot from liability for any assessment, dues or other charges thereafter becoming due or from the lien thereof. The word "mortgage" shall include a "deed of trust" or real estate contract. That notwithstanding any of the provisions set forth herein, in the event of any sale or transfer of any lot pursuant to or as the result of a foreclosure of a mortgage or deed of trust, or by deed or assignment in lieu of foreclosure, or any proceeding in lieu thereof, such possessor, its successor, and assigns shall not be liable for the share of the common expense or assessments made by the Association chargeable to such lot which became due prior to such possession. The unpaid share of common expenses or assessments shall be deemed to be a common expense collectible from all of the owners, including such possessor, his successors, and assigns.

8. Subordination of Lien. Any lien allowed or provided by this declaration shall be considered subordinate and inferior to any bona fide first mortgage or first position deed of trust (but not to a real estate contract) where the lender under such first mortgage or deed of trust is a bank, savings and loan, F.H.A., V.A., or other institutional lender. If required by such institutional lender, the holder of a lien provided for herein, whether the holder be the Declarants, the ACC, the Association, a lot owner, or otherwise, will execute a standard form subordination agreement to effect the purposes of this provision. This provision shall also apply to refinancing of an existing first position mortgage or deed of trust where the refinancing lender is an institutional lender as above described. This provision shall not apply to any sale of all or part of any lot where the lot owner, subject to an existing lien, carries the sale contract or deed of trust, or otherwise acts as lender to a purchase of the liened lot. Except as provided above, no lien allowed or provided by this Declaration shall be effected by a sale, transfer or refinance of the liened lot or lots.

9. Personal Liability. Each assessment, dues, or other charges, together with interest, costs, and reasonable attorney fees shall also be the personal obligation of the owner of the lot



at the time such assessment, dues, or other charge became due. The personal obligation of such owner shall not be relieved by sale or transfer of the lot, and shall not become the personal obligation of the owner's successors in interest unless expressly assumed by them. The new owner shall be personally liable for assessments, dues, or other charges which become due on or after the date of sale or transfer. Provided that, nothing in this section shall relieve the lot from liability for such dues, assessments, or other charges, or the lien therefore.

10. Rate of Assessment. Except as provided for herein, annual or regular and special assessments shall be at a uniform rate for all lots.

11. Directors. The Declarants shall act or appoint the board of directors until such time as 75% of the lots have constructed on them a residence and have been sold and conveyed to other than builders. After 75% of the lots have had residences constructed on them and said lots have been conveyed to other than builders, then the Declarants in accordance with the by-laws shall conduct by mail an election of a board of directors and shall then act in accordance and in connection with the terms and provisions of the Articles of Incorporation, By-Laws, and this Declaration.

12. Association Obligation. The Association shall be obligated to perform the maintenance and repair as more specifically set forth in Paragraph V (6), provided that if any work is required as a result of any negligent or intentional act or admission of any owner, or the owner's agent, family or tenants, then the cost of such work shall be paid for exclusively by such owner and shall become a part of the assessment levied against such owner's lot or lots.

13. Maintenance Contract. The Association may enter into contracts for the maintenance and repair of any area required to be maintained or repaired by the Association. Such contract shall be signed by the board of directors on behalf of the Association or by the Declarants acting as the board of directors so long as the Declarants is acting on the board of directors.

VII. OFFICERS

The Board of Directors shall appoint individuals to serve as President, Treasurer and Secretary. Each officer shall be a member of the Board. The term of each officer shall be one year. Officers may be elected to consecutive terms.



VIII. INCORPORATION

The Association shall be incorporated under the laws of the State of Washington and may apply for tax exempt status with the IRS. The Articles of Association and Bylaws shall not be contradictory to and shall supplement this Declaration.

IX. EXTRAORDINARY USE COSTS

In the event that one or more lot owners should by their use of the common areas cause it to be subjected to other than reasonable wear and tear or by their actions damage those common areas or any improvements located thereon or therein, then individual subjecting the common area to such use shall have the obligation to repair such damage upon demand by the Association and to restore such common area to the condition that existed prior to such use or action and all expenses therefore shall be paid by such individual.

X. ASSESSMENTS

1. Covenants for Maintenance Assessments.

(a) Declarants, subject to the provisions of this Declaration for each lot owned by it agrees and each owner of lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to agree to pay to the Association (i) annual or other regular assessments, and (ii) special assessments for capital improvements.

(b) The annual or other regular and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment is made. Such lien may be foreclosed by the Association in like manner as a Mortgage on real property.

(c) Each assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot assessed at the time the assessment fell due. The personal obligation shall not pass to the Owner's successors-in-interest unless expressly assumed by them. The new Owner shall be personally liable for assessments which become due on and after the date of sale or transfer.



2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property, including the improvement, repair and maintenance of the Common Areas and the services and facilities related to the use and enjoyment of said areas, for the payment of insurance premiums on the Common Areas, and for the maintenance of other areas as provided for in this Declaration.

3. Board to Fix Annual or Regular Assessment. The Board of Directors shall fix the regular or annual assessment at least thirty (30) days prior to the commencement of the annual or regular assessment period. Written notice of the annual or regular assessment shall be sent to every Owner. In the event the Board fails to fix an annual or regular assessment for any assessment period, then the assessment established for the annual or regular assessment for the prior year shall automatically be continued until such time as the Board acts. The annual or regular assessment established for the prior year shall automatically be continued until such time as the Board acts. The annual or regular assessments shall be sufficient to meet the obligations imposed by the Declaration and any supplementary declarations, and shall be sufficient to establish an adequate reserve fund for the maintenance, repair and replacement of those Common Areas which require such actions on a periodic basis. That in the event there is any increase in the annual or regular assessment of more than five percent (5%) of the annual or regular assessment for the prior assessment period, then it must be approved as provided for in Section 2, Article X of the Bylaws of the Association which are incorporated as herein as though fully set forth.

4. Special Assessments for Capital Improvements. In addition to the annual or regular assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of capital improvements upon the Common Area, including the necessary fixtures and personal property related thereto. That any special assessment for capital improvements must be approved in accordance with the provisions of Section 3 of Article X of the Bylaws of the Association which are incorporated herein as though fully set forth.

5. Rate of Assessment. Both annual or regular and special assessments shall be fixed at a uniform rate for all Lots.

6. Initiation Fee. The initiation fee which will be paid by each lot owner at the time of closing of each lot shall be \$250.00 which will be paid at time of closing and which amount



shall be paid directly to Declarants to partially reimburse Declarants for expenses associated with improvements installed by Declarants on behalf of the Association.

7. Initial Assessment. The initial assessment until changed by action of the Association shall be \$120.00 per year for each lot and will be paid at the time of closing of each lot which amount shall be paid to the Association in an amount equal to the prorated portion of the initial assessment against that lot for the balance of the calendar year. Commencing on the 1st of January of each year subsequent to the date of closing the sale of a lot from the Declarant, the purchaser and successors and assigns shall pay an annual assessment of \$120.00 per year which will be due and payable on or before the 15th of January of each year. In the event the expenses of the Association are in excess of the assessments collected, then the Declarant agrees to pay the difference to the Association as long as the Declarant is still the owner of any lot. However, the Declarant shall be entitled to be reimbursed the payment of any such difference from assessments as they are subsequently collected. Once the Declarant has sold or conveyed all lots owned by the Declarant, then the Declarant shall no longer be liable under the provisions of this paragraph. The Declarant is not liable for any annual assessment relative to any lot owned by the Declarant.

8. Effects of Nonpayment of Assessments; Remedies of Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and the Association may bring an action at law against the Owner obligated to pay the assessment, or may foreclose the lien against the Property, and in either event, interest, costs, and reasonable attorney's fees shall be added to the amount of such assessments. No Owner may waive or otherwise escape liability for annual or special assessments by nonuse of the Common Area or by abandonment of his Lot.

9. Subordination of Lien to Mortgages. The lien of the assessments provided for in this Declaration shall be subordinated to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, where the mortgagee or a Mortgage of record or other purchaser of a lot obtains possession of the Lot as the result of foreclosure of a Mortgage, or by deed or assignment in lieu of foreclosure, such possessor, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to such possession. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Owners, including such possessor, his successors and assigns.



10. Certificate. The Association shall upon demand furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified lot or dwelling unit have been paid. A reasonable charge may be made by the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment stated in the certificate to have been paid.

11. Exempt Property. The following property shall be exempt from the payment of annual and special assessments:

- (a) All portions of the properties dedicated to and accepted by a local public authority.
- (b) The common areas.
- (c) All lots and dwelling units owned by the Declarant until a lot has been sold and conveyed by the Declarant.

XI. MAINTENANCE AND USE

1. Business and Commercial Use. Except for builders' temporary sales offices, no lot shall be used for other than single family dwelling and no trade, craft, business, professional, commercial or manufacturing enterprise or business or commercial activity of any kind shall be conducted or carried on any lot or within any building located on the lot; nor shall any goods, materials, or supplies used in connection with any trade, service or business, wherever the same may be conducted, be kept or stored outside any building on any lot; nor shall any goods used for private purposes and not for trade or business be kept or stored outside any building on any lot which is visible from the street or any other lot. However, home occupation businesses may be conducted, subject to the approval by the board of directors of the Association home occupation businesses may be conducted, subject to the following regulations or any other regulations or zoning requirements of Thurston County or which may be imposed by the Board of Directors in granting approval:

- 1. It is carried on exclusively by a family member who resides in the residence constructed on a lot.
- 2. It has no outside storage, exterior indication, or outside activity.
- 3. It uses no heavy equipment, power tools, or power sources not common to a residence.

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4. It has no pick-up or delivery by commercial vehicles.
5. It does not have more than four persons per day coming to the subject property for goods or services.
6. It creates no noise, dust, glare, vibration, odor, smoke or other impact adverse to a residential area."

XII. ARCHITECTURAL CONTROL COMMITTEE

1. Appointment. An Architectural Control Committee shall consist of at least one (1) but not more than three (3) persons. The initial Architectural Control Committee shall consist of KIRK HARR. Any additional members may be appointed by the Declarant. Each member shall hold office until he or she resigns, is removed or until a successor has been appointed and qualified. Each Declarant shall have the authority to appoint the members of the ACC until all of the Lots owned by that Declarant have been sold and single family residences have been constructed thereon. Thereafter, the members of the ACC shall be appointed by the Board of Directors of the Association. The Board of Directors may only appoint as members of the ACC individuals who are also lot owners.

2. Duties. The ACC shall have the authority to review and act upon proposals and plans submitted and to perform other duties set forth in this Declaration. The members of the ACC may delegate their duties to any one member.

3. Adoption of Guidelines. The ACC shall have the authority to adopt and amend written guidelines to be applied in its review of plans and specifications in order to further the intents and purposes of this Declaration and any other covenants or restrictions covering the Properties. If such guidelines are adopted, they shall be available to all Members upon request.

4. Meeting Compensation. The ACC shall meet as necessary to properly perform its duties, and shall keep and maintain a record of all actions taken at the meetings or otherwise. Unless authorized by the Association, the members of the ACC shall not receive any compensation for their basic services. However, if time in excess of five (5) hours is required for the review and approval of any proposal, the Owner submitting the proposal shall pay a fee for the additional time based upon usual and customary architectural fees in the area. All members shall be entitled to reimbursement for reasonable expenses incurred in connection with the performance of ACC duties.

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5. Nonwaiver. Approval by the ACC of any plans, drawings or specifications shall not be a waiver of the right to withhold approval of any similar plan, drawing, specification, or matter submitted for approval.

6. Liability. Neither the ACC nor any of its members shall be liable to the Association or to any Owner for any damage, loss or prejudice resulting from any action taken in good faith on a matter submitted to the ACC for the approval or for failure to approve any matter submitted to the ACC. The ACC or its members may consult with the Association or any Owner with respect to any plans, drawings, or specifications, or any other proposal submitted to the ACC.

7. Plan Review Fees. The ACC may employ engineers, architects, and other professionals to review plans and take other actions as designated by the ACC and, therefore, the ACC may charge a fee to review plans in an amount not to exceed \$150 for each plan review.

XIII. ARCHITECTURAL AND LANDSCAPE CONTROL

1. Approval of Plans Required. None of the following actions may be taken until plans and specifications for the same have been approved in writing by the ACC.

(a) The construction of private road or driveways.

(b) The construction or erection of any building, fence, wall or other structure, including the installation, erection, or construction of any solar collection device.

(c) The remodeling, repainting, reconstruction, or alteration of any road, driveway or other structure.

Any such actions which have been approved shall only be taken in conformity with the plans and specifications actually approved by the ACC, and no changes in or deviations from the approved plans and specifications shall be made without the prior written approval of the ACC.

2. Procedure for Approval. Any person wishing to take any of the actions described above shall submit to the ACC two sets of plans and specifications which meet the following requirements:

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(a) Plans for the construction or modification of roads or driveways shall show the proposed location, course, width, grade and materials.

(b) Plans for the construction or modification of any building, fence, wall, or other structure shall be building elevation plans which, in addition to the details customarily shown on the Lot, the exterior color scheme, proposed outdoor lighting, proposed landscaping, and shall show and otherwise identify any special needs or conditions which may arise or result from the installation, erection, or construction of any solar collection device. At the request of the ACC, the person submitting such plans shall locate stakes on the Lot which indicate the corners of the proposed structure. The plans for the first structure to be located on lots shall include a landscaping plan, including a specification as to the proposed time for completion of the landscaping.

(c) Plans for the removal or planting of trees and plants shall show the location, type, and approximate size of the trees or plants to be added or removed.

(d) Plans for site surface water drainage.

Approval of such plans and specifications shall be evidenced by written endorsement on such plans and specifications, one copy of which shall be delivered to the Owner of the Lot upon which the proposed action is to be taken. The ACC shall not be responsible for any structural defects in such plans or specifications or in any building or structure erected according to such plans and specifications.

3. Criteria for Approval. Approval of plans and specifications may be withheld or conditioned if the proposed action is in variance with these covenants, other covenants covering the Properties, or design guidelines adopted by the ACC. Approval may also be withheld or conditioned if, in the opinion of the ACC, the proposed action will be detrimental to the community or to any other Owner, because of the grading and drainage plan, location of the improvement on the Lot, color scheme, finish design, proportions, size of home, shape, height, style, materials, outdoor lighting proposed, or landscaping plan, or impact on view rights or privacy.

4. Failure to Approve. In the event that the ACC fails to approve or disapprove an action within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the action has been commenced within ten (10) days after the



completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

5. Conformity with Approved Plans. It shall be the responsibility of the ACC to determine that actions have been completed in accordance with the plans as submitted and approved. Such determination must be made within 30 days of the completion of the action. If the ACC shall determine that the action does not comply with the plans and specifications as approved, it shall notify the Owner within the 30 day period, and the Owner, within such time as the ACC shall specify, but not less than 30 days, shall either remove or alter the improvement or take such other steps as the ACC shall designate. If no action by the ACC is taken within 30 days of the date of completion of the improvement, the action shall conclusively be deemed to be satisfactory to the ACC.

6. Exclusions. During the development period which is defined as the construction of the initial residences on the property, the Declarant shall have the right to waive the plans and specifications review for builders in NISQUALLY ESTATES. Any such waiver shall not exempt said builder from any of the standards or restrictions articulated in this Declaration and all structures and improvements shall meet all standards and restrictions contained in these Declarations.

7. Exterior Maintenance. Each owner shall have the obligation to maintain his lot and any building or improvements located on the property satisfactory to meet standards appropriate for a first class residential community. If the owner of any lot fails to maintain that lot, buildings, and any other improvements in conformity with these standards, the Association after approval of two-thirds of the board, shall have the right, through its agent contractee, contractors or employees, to enter upon the lot and to clean, repair, maintain and restore the lot and the exterior of buildings and other improvements. The cost of such exterior maintenance shall be added to and shall become part of the assessment to which said lot is subject.

XIV. PERMITTED AND PROHIBITED USES

1. Land Use and Building Type. All lots subject to these protective covenants shall be used only for residential purposes. No structures of any kind shall be erected or permitted to remain on any lot other than single family residences, garages, work shops, and structures normally accessory to such residences. No carports will be allowed and all garages must have doors. All dwellings shall be of a "stick built" variety. Mobile homes, manufactured housing,

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and modular homes are specifically not permitted. One two-car or three-car garages are permitted and they shall be incorporated in or made a part of the dwelling house and no detached garages shall be permitted except with express approval by the Architectural Control Committee.

2. Swimming Pools. Unless approved by the ACC in writing, swimming pools and hot tubs shall not be nearer than ten (10) feet to any Lot line and shall not project with their coping more than four (4) feet above the established grade.

3. Completion of Construction. The construction of any building on any lot, including painting and all exterior finish, shall be completed within five months of beginning of construction so as to present a finished appearance when viewed from any angle. The building area shall be kept in a reasonably clean and workman-like manner during construction. All lots shall be kept in a neat and orderly condition, free of brush, vines, weeds and debris. The grass thereon shall be cut and mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

4. Landscape Completion and Standards. The entire front yard, including up to the edge of the hard surface of the street fronting any lot, shall be landscaped in accordance with the provisions of this section. The landscaping shall be installed within thirty days after the occupancy of a residence on a lot. If incimate weather conditions prevent the timely installation of said landscaping improvements, the lot owner must make application to the ACC for an extension of time until weather conditions sufficiently improve. For corner lots, the "front yard" shall mean the frontage on both streets, such that both street frontages and yards must be landscaped. "Front yard" shall be defined as the lot area extending from the front property line back to a line measured parallel with the front property line which would coincide with the front wall of the main dwelling on the lot, exclusive of any garage projections.

The front yard landscaping will include all of the adjacent public street right-of-way along the lot frontage out to the edge of the hard surface of the public street. Each lot owner shall be responsible for installing and maintaining the landscaping within the adjacent right-of-way.

At least 75% percent of every front yard less driveway and walks shall be maintained as lawn area unless otherwise approved by the ACC.

Within 30 days after occupancy, all corner lots with visible backyard areas from adjacent street right-of-ways shall have landscaping completed on the entire lot area unless otherwise approved by the ACC.



Within 30 days after occupancy, all other rear yards not otherwise landscaped must be seeded in lawn.

5. Parking. Unless fully enclosed within an approved structure upon a lot, no recreational vehicle, commercial vehicle (except automobiles and pick-up trucks which are used by the lot owner in driving to or from place or operation of business), construction or like equipment, trailers, (utility, boat, camping, horse or otherwise), or disabled vehicle shall be allowed to be parked or stored on any lot, except as provided and approved by the Homeowner's Association. All parking of vehicles of any nature on any street or roadway is subject to the rules and regulations of the City of Yelm. No vehicles may be parked on any street or any roadway except on a temporary basis subject to such rules and regulations as may be adopted by the Homeowner's Association. With the exception of the vehicles and trailers prohibited above, vehicles may only be parked on driveways or on otherwise designated and approved parking areas on a temporary basis only. The Association shall adopt such reasonable rules and regulations as may be necessary to enforce these parking provisions.

6. Nuisances. No noxious or undesirable thing, or noxious or undesirable use shall be permitted or maintained upon any Lot or upon any other portion of the Properties. If the Board determines that a thing or use is undesirable or noxious, that determination shall be conclusive. Any motor vehicle (including motorcycles and go-carts) making repeated trips in and around the Property and roadway shall be automatically deemed a nuisance.

7. Excavation and Fill. Except with the permission of the ACC, or except as may be necessary in connection with the construction of any approved improvement, no excavation or fill shall be made nor shall any dirt be removed from any Lot herein.

8. Drainage. The owner of any lot shall not take any action which would interfere with surface water drainage across that lot either through natural drainage or by drainage easements. Any change of drainage, either through natural drainage areas or through drainage easements must be approved by the ACC. All drainage improvements must be completed prior to occupancy in accordance with the drainage plan submitted to the ACC.

9. Use During Construction. Except with the approval of the Board, no persons shall reside upon the premises of any Lot until such time as the improvements to be erected thereon in accordance with the plans and specifications approved by the Board have been completed.



10. Signs. No sign shall be erected or maintained on any lot except that not more than one "For Sale" or "For Rent" sign placed by the owner or by a licensed real estate agent, not exceeding 5 square feet may be temporarily displayed on any lot. Declarant shall also have the unrestricted right to place and maintain such other advertising signs as may be required by Declarant to promote the sale of any lots by Declarant, including but not limited to monument type signs at the entrance to the subdivision. That signs for model homes constructed by builders shall be approved by the ACC.

11. Animals. No animals or reptiles of any kind shall be kept on the any lot except that dogs, cats or other household pets may be kept on a lot subject to the rules and regulations adopted by the Association. All dogs must be kept on a hand held leash when outside and all other pets must be kept in yards unless accompanied by a lot owner. The design and location of any kennel shall be approved by the ACC. No animal may be kept, bred or maintained for any commercial purpose. Each lot owner shall be responsible for the picking up and the disposal of that pet owner's animal waste. All dogs must be kept so as to minimize excessive noise from barking, to be otherwise considered as a nuisance. The association, by appropriate rules and regulations may determine the number and kind of pets to be kept on any lot.

12. Garbage and Refuse. No garbage, refuse, rubbish, cuttings or debris of any kind shall be deposited on or left upon any Lot unless placed in an attractive container suitably located and screened from public view. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

13. Temporary Structure. No structure of a temporary or removable character, including but not limited to, a trailer, mobile home, basement, tent, shack, garage, barn or any other building shall be kept or used on any Lot at any time as a residence. This provision shall not be deemed to prevent the use of a construction shack or trailer for purposes of storage or security at any time during the initial period of construction.

14. Utility Lines; Radio and Television Antennas. No exposed or exterior radio or television transmission or receiving antennas or satellite dishes (except for small television receivers which have a diameter of less than 2 feet) shall be erected, placed or maintained on any part of such premises except as approved by the ACC prior to installation or construction. Any waiver of these restrictions shall not constitute a waiver as to other Lots or lines or antennas.



15. Tanks, Etc. No elevated tanks of any kind shall be erected, placed, or permitted on any part of such premises. Any tanks for use in connection with any residence constructed on such premises, including tanks for the storage of fuels, must be buried or walled sufficiently to conceal them from the view from neighboring Lots, roads, or streets. All clothes lines, garbage cans, equipment, coolers, wood piles, or storage piles shall be walled in or otherwise suitably screened to conceal them from the view of neighboring Lots, Common Areas, roads or streets. Plans for all enclosures of this nature must be approved by the ACC prior to construction.

16. Auto Repair. No major auto repair shall be permitted except within enclosed garages which are kept closed. The only repairs permitted on the balance of the Property are occasional casual repairs and maintenance activities such as tune-ups or oil changes.

17. Setbacks. No building shall be located on any lot near to the front, side, or back lot line than is permitted under the appropriate Thurston County setback requirements. For purposes of this covenant, eaves, steps and open porches shall not be considered a part of the building.

18. Roofs. The material on all roofs must be approved by the ACC and all roofs shall have a minimum slope of 4-12 (four feet of rise for each 12 feet of run). No flat roofs will be allowed on the front of the dwelling.

19. Exterior Finish. All exterior finishes on the front of houses shall be of bevel siding, shake or vertical panels, brick or stone. The entire residence must be painted or stained in colors approved by the ACC. All metal fireplace chimneys shall be either wood or stone rap.

20. Lighting. All exterior lighting which is visible from any road or any other dwelling home shall not be installed so as to adversely impact any adjacent dwelling. The ACC shall have the express authority to require changes if, in the opinion of the ACC after receiving a complaint, determines that said lighting adversely impacts another dwelling.

21. Driveways. That all driveways including any access to the rear yard of any residence shall be of a hard surface construction of either concrete or brick and shall be completed prior to final building inspection.

22. Fences. Fences, walls, or shrubs are permitted on the side and rear property lines subject to the approval of the ACC. Said fences, walls or shrubs in the front yard shall not be



higher than 42 inches and any side and back yard fencing or shrubs shall not exceed six feet in height. No fence, wall, hedge or shrub may obstruct corner inner section line of site within a triangular area formed by the street, property lines, and a line connecting them at points 25 feet from the inner section of streets. No barbwire, chainlink (except black chainlink fence no higher than four feet), corrugated fiberglass fences shall be erected on any lot.

23. Firearms. The use of firearms is expressly prohibited.

24. Dirt bikes and/or ATV. No unlicensed motor vehicles, including motorcycles, dirt bikes, motor scooters, ATVs etc., shall be permitted on any road within the plat, nor shall dirt bikes or ATVs be permitted to operate on any owner's lot, or on adjacent roads in an unsafe manner or in such a way to create a hazard or nuisance.

25. Damage Repair. All owners agree to repair immediately any damage to any utilities adjacent to their lot or lots, in the event any of the utilities are cracked, broken, or otherwise damaged as a result of dwelling construction activities, or other activities by owner, by persons acting for owner, or by persons in or around the property at the request or with the consent of the owner.

26. Building Materials. All homes constructed on each lot shall be built of new materials, with the exception of "decor" items such as used brick, weathered planking, and similar items. The ACC will determine if a used material is a "decor" item. In making this determination the ACC will consider whether the material harmonizes with the aesthetic character of the other residences within the subdivision and whether the material would add to the attractive development of the subdivision.

The exterior of all construction of any lot shall be designed, built, and maintained in such a manner as to blend in with the natural surroundings and landscaping within the subdivision. Exterior colors must be approved by the ACC. Exterior trim, fences, doors, railings, decks, eaves, gutters, and the exterior finish of garages and other accessory buildings shall be designed, built, and maintained to be compatible with the exterior of the structure they adjoin. Generally, colors shall be muted earth tones, grays, beiges, and similar shades.

27. Square Footage. Minimum square footage requirements:

(a) Single Story Residences. Single story residences shall have a minimum of 1,100 square feet of living space.

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(b) Two Story Residences. Two story residences shall contain a minimum of 1,100 square feet of total finished living space and 650 square feet of said living space must be located on one floor.

(c) No dwelling shall contain more than two stories in height.

(d) Garages and Unheated areas. Garages and unheated areas shall not be included in determining square footage.

28. Permits. No construction or exterior addition or change or alteration of any structure may be started on any portion of the properties without the owner first obtaining a building permit and other necessary permits from the proper local governmental authority and written approval of such permits from the ACC as well as a plan check approval as required by this Declaration.

29. Codes. All construction shall conform to the requirements of the State of Washington's rules and regulations for installing electric wires and equipment, and the uniform codes (building mechanical, plumbing), in force at the commencement of the construction, including the latest revisions thereof.

30. Entry for Inspection. Any agent, officer, or committee member, or Declarant, may at any reasonable predetermined hour upon 24 hours notice during construction or exterior remodeling, enter and inspect the structure to determine if there has been compliance with the provisions of this Declaration. The above recited individuals shall not be deemed guilty of trespass for such entry or inspection. There is created an easement over, upon, and across residential lots for the purpose of making and carrying out such inspections.

31. Authority to Adopt Additional Rules and Restrictions. The Association shall have the authority to adopt additional written rules and restrictions governing the use of the Properties, provided such rules and restrictions are consistent with the purposes of the Declaration, and to establish penalties for violation of those rules and restrictions. If rules and restrictions are adopted, they, along with the established penalties, shall be available to all Members upon request.



XV. INSURANCE REQUIREMENTS

The Association shall maintain if required any insurance or fidelity bond requirements established by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration, and Government National Mortgage Association, except to the extent such coverage is not available or has been waived in writing.

XVI. DAMAGE OR DESTRUCTION

1. In the event of damage or destruction to all or part of the Common Area, the insurance proceeds, if sufficient, shall be applied to repair, reconstruct or rebuild the Common Area in accordance with the original plans. Such repair, reconstruction or rebuilding shall be arranged for promptly by the Board of Directors.

2. If the insurance proceeds are insufficient to pay for the cost to repair the Easement Areas, the Board shall promptly, but in no event later than ninety (90) days after the date of damage or destruction, given notice to and conduct a special meeting of the Owners to review the proposed repairs, replacement and reconstruction, as well as the projected cost of such repairs, replacement or reconstruction. The Owners shall be deemed to have approved the proposed repairs, replacement, and reconstruction as proposed by the Board at that meeting, unless the Owners decide by an affirmative vote of fifty one percent (51%) of the total votes cast at such meeting (provided a quorum exists), to repair, replace, or reconstruct the premises in accordance with the original plan in a different manner than that proposed by the Board. In any case, however, use of hazard insurance proceeds for other than repair, replacement, or reconstruction of the Common Area in accordance with the original plans shall not be permitted without the prior written approval of at least sixty seven percent (67%) of the First Mortgagees (based on one vote for each first mortgage owned) or Owners (if there is not first mortgage on that Lot) of the Lots.

XVII. CONDEMNATION

In the event of a partial condemnation of the Easement Areas, the proceeds shall be used to restore the remaining Easement Area, and any balance remaining shall be distributed to the Association.

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In the event that the entire Common Area is taken or condemned, or sold, or otherwise disposed of in lieu of or in avoidance thereof, the condemnation award shall be distributed to the Association.

No proceeds received by the Association as the result of any condemnation shall be distributed to a Lot Owner or to any other party derogation of the rights of the First Mortgagee of any Lot.

XVIII. MORTGAGEES' PROTECTION

1. As used in this Declaration: (1) "mortgage" includes the beneficiary of a deed of trust, a secured party, or other holder of a security interest; (2) "foreclosure" includes a notice and sale proceeding pursuant to a deed of trust or sale on default under a security agreement; and (3) "institutional holder" means a mortgage which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

2. The prior written approval of at least 75% of the First Mortgagees (based on one vote for each first mortgage owned) of the individual Lots shall be required for any of the following:

(a) The abandonment or termination of the PUD status of the project, except for abandonment or termination, if any, provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

(b) Any material amendment to this Declaration or to the Articles of Incorporation or Bylaws of the Owners Association, including but not limited to, any amendment which would change the pro rata interest or obligation of any individual Owner for the purpose of levying assessments or charges or for allocating distributions of hazard insurance proceeds or condemnation awards.

(c) The effectuation of any decision by the Owners Association to terminate professional management and assume self-management (however, this shall not be deemed or construed to require professional management).

(d) Partitioning or subdividing any Lot.



(e) Any act or omission seeking to abandon, partition, subdivide, encumber, sell or transfer the Easement Areas; provided, however, that the granting of easements for public utilities or other public purposes consistent with the intended use of the Easement Areas shall not be deemed a transfer within the meaning of this clause.

(f) Any act or omission seeking to change, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of buildings and other improvements, the maintenance of common property walks or common fences and driveways, or to the upkeep of lawns and plants in the properties.

(g) Any act or omission whereby the Association fails to maintain fire and extended coverage on insurable properties common property on a current replacement cost basis in an amount not less than 100% of the insurable value (based on current replacement costs).

(h) Use of hazard insurance proceeds for losses to any properties common property for other than the repair, replacement or construction of such common property.

3. Each First Mortgagee (as well as each Owner) shall be entitled to timely written notice of:

(a) Any significant damage or destruction to the Easement Areas.

(b) Any condemnation or eminent domain proceeding effecting the Easement areas.

(c) Any default under this Declaration or the Article of Incorporation or Bylaws which gives rise to a cause of action against the Owner of a Lot subject to the mortgage of such holder or insurer, where the default has not been cured in thirty (30) days.

(d) Any proposed abandonment or termination of PUD status of this project.

(e) Any material amendment of this Declaration or to the Articles of Incorporation or Bylaws of the Association.

4. Each First Mortgagee shall be entitled, upon request, to:



(a) Inspect the books and records of the Association during normal business hours.

(b) Require the preparation of and, if preparation is required, receive an annual audited financial statement of the Association for the immediately preceding fiscal year, except that such statement need not be furnished earlier than ninety (90) days following the end of such fiscal year.

(c) Receive written notice of all meetings of the Owners Association and be permitted to designate a representative to attend all such meetings.

5. First Mortgagees of any lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Easement areas, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of policy, for such Easement Areas, and the First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

XIX. GENERAL PROVISIONS

1. Binding Effect. All present and future Owners or occupants of Lots shall be subject to and shall comply with the provisions of this Declaration, and the Bylaws and rules and regulations of the Association, as they may be amended from time to time, are accepted and ratified by such Owner or occupant, and all such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at the time any interest or estate in such Lot, as though such provisions were recited and stipulated at length in each and every deed and conveyance or lease thereof.

2. Enforcement by Court Action. The Association, the Declaration, the ACC, the Homeowner's Association, or any lot owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Should the Association or any Owner employ counsel to enforce any of the foregoing covenants, conditions, reservations, or restrictions, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the Owner found to be in violation of said condition, covenants, reservation, or restriction, or found to be delinquent in the payment of said lien or charge.

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3. Enforcement by Self Help. The Declarants, the ACC, the Association, or the duly appointed agent of either, may enter upon any lot, which entry shall not be deemed a trespass, and take whatever steps are necessary to correct a violation of the provisions of this Declaration. Provided, this provision shall not be construed as a permission to breach the peace.

4. Condition Precedent to Action. Prior to taking action either by court or by self help, written notice shall be given to the offending lot owner. Such notice shall specify the nature of the offense and shall also specify the action necessary to cure. Such action shall also provide a reasonable opportunity to cure which, except in the case of an emergency, shall not be less than 30 days.

5. Expenses of Action. The expenses of any corrective action or enforcement of this declaration, if not paid by the offending owner within thirty (30) days after written notice and billing, may be filed as a line upon such lot, enforceable as other liens herein.

6. Owner Objection. Should a lot owner object to the complaints of the Declarants, the Association or ACC in writing within a period of fifteen (15) days after the complaint is made and, further, should the parties not agree on property maintenance or other matters complained of, the matter shall be submitted to arbitration. The arbitration shall be binding upon the parties. If the parties cannot agree upon an arbitrator, each party shall choose one arbitrator and they, in turn, shall choose a third. The arbitration shall be conducted in accordance with the rules of arbitration under the laws of the State of Washington in existence at the time of any such arbitration.

7. Costs and Attorneys Fees. In the event of legal action, the prevailing party shall be entitled to recover actual costs and attorney fees. For the purposes of this declaration "legal action" shall include arbitration, law suit, trial, appeals, and any action, negotiations, demands, counseling or otherwise where the prevailing party has hired an attorney. It is the intent of this provision to reimburse the prevailing party for all reasonable attorney fees and actual costs incurred in defending or enforcing the provisions of this Declaration, or the owner's rights hereunder.

8. Failure to Enforce. No delay or omission on the part of the Declarants or the Owners of other Lots in exercising any rights, power, or remedy provided in this Declaration shall be construed as a waiver or acquiescence in any breach of the covenants, conditions, reservations, or restrictions set forth in the Declaration. No action shall be brought or



maintained by anyone whatsoever against the Declarants for or on account of its failure to bring any action for any breach of these covenants, conditions, reservations, or restrictions, or for imposing restrictions which may be unenforceable.

9. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

10. Interpretation. In interpreting this Declaration, the term "person" may include natural persons, partnerships, corporations, Associations, and personal representatives. The singular may also include the plural and the masculine may include the feminine, or vice versa, where the context so admits or requires. This Declaration shall be liberally construed in favor of the party seeking to enforce its provisions to effectuate the purpose of protecting and enhancing the value, marketability, and desirability of the Properties by providing a common plan for the development of NISQUALLY ESTATES.

11. Amendment by Court Action. The Homeowner's Association and/or any lot owner shall have the right to seek amendment by way of a civil suit wherein the basis for the amendment is either (a) governmental requirements; or (b) manifest unfairness due to substantially changed circumstances beyond the control of the lot owner seeking the amendment. In any such court action the court may exercise its equitable powers to grant such relief as is deemed appropriate.

12. Term. This Declaration shall be effective for an initial term of 30 years, and thereafter by automatic extension for successive periods of 10 years each, unless terminated, at the expiration of the initial term or any succeeding 10 year term by a termination agreement executed by the then owners of not less than 75% of the lots then subject to this Declaration. Any termination agreement must be in writing, signed by the approving owners, and must be recorded with the County Auditor.

13. Amendment by Lot Owners. After seventy-five percent (75%) of the lots have been sold to others than builders, this Declaration can be amended only by written consent of the owners of seventy-five percent (75%) of the lots. Provided, no amendment shall be effective which materially impairs the substantial rights of the lot owner as established herein unless the impacted lot owner consents in writing. Any such amendment must be in writing, signed by the approving lot owners and recorded with the Kitsap County Auditor. Until such time as all of the lots have been sold to others than builders, no amendment can be made with respect to



Declarants' right to appoint directors of the Association or to appoint members of the ACC or the Declarants' liability with respect to annual assessments.

14. Amendment by Declarants. Notwithstanding any other provision of this Declaration, this Declaration can be amended at any time by the Declarants prior to the time seventy-five percent (75%) of the lots have been sold to other than builders and that all lot owners agree to be bound by such amendments or amendments. Thereafter, this Declaration can be amended only as provided for herein.

15. Prior Approval By FHA/HUD. Regardless of whether or not seventy five percent (75%) of the lots have been sold to others than builders, in the event any loan with respect to any lot or building constructed thereon is insured through either the Federal Housing Administration or the Department of Veteran Affairs or any program sponsored by either such agency, then either the FHA or HUD whoever is the insuring agency must give written approval before any of the following actions can be approved by either the Declarants or the lot owners:

- A. Annexation of additional properties.
- B. Dedication of any properties.
- C. Amendment of this declaration. (Except that amendment of the Declaration adding the lots in Phase 2 of Nisqually Divisions 1 and 2 shall not require prior approval).

16. Notice. Any notice required hereunder shall be deemed effective when personally delivered or three days after mailing by certified and regular mail to the owner of public record at the time of such mailing to such owner's address as it appears on the Kitsap County Assessor's tax records and to the street address of the lot(s) herein. Notices to lenders shall be sent to the last address the lender has given to the Association. The Association is not required to provide notice of any matter to any lender who has not notified the Association in writing of such lender's desire to receive notice, and/or has not given the Association written notice of the lender's address for receipt of notices. The Association shall not undergo investigation outside of its own records into the name or location of any lender or lienholder.



IN WITNESS WHEREOF, the undersigned have caused this Declaration to be executed this 12th day of November, 1998.

HARR FAMILY HOMES, INC., a Washington Corporation

By: Kirk A. Harr
Kirk Harr, President

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this 13 day of November, 1998, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Kirk Harr, to me known to be the President, respectively, of HARR FAMILY HOMES, INC., a Washington Corporation, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument.

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

Pamela J. Karlson
Printed Name: Pamela J. Karlson
NOTARY PUBLIC in and for the State of
Washington, residing at Tacoma
My commission expires: 11-19-98



Declaration of Covenants,
Conditions and Restrictions Page 32
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Thurston Co, WA

After Recording Return to:
Bryce H. Dille
of Campbell, Dille & Barnett
P.O. Box 488
317 South Meridian
Puyallup, WA 98371

**FIRST AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR NISQUALLY ESTATES,
DIVISION 1, PHASES 1 AND 2, AND DIVISION 2, PHASES 1 AND 2**

Grantor: HART Family Homes, Inc., a Washington Corporation
Grantee: Nisqually Estates Homeowners Association
Reference No. of Documents to be Recorded: 3206024 and 3200625
Legal Description (abbreviated): Parcel B of the Boundary Line Adjustment No. BLA98-8203YL, recorded January 13, 1999, under Thurston County Auditor's File No. 3203716 and 3203725 in Thurston County, Washington.

Complete legal is on Page 4 of this document.
Assessor's Parcel No.: _____

This First Amendment to the Declaration of Covenants, Conditions and Restrictions for Nisqually Estates, Division 1, Phase 1, and Division 2, Phase 1, is made on this 19th day of October, 2000 by HART Family Homes, Inc., a Washington Corporation (hereinafter referred to as "Declarant").

Background

- A. Declarant owns certain real property in Thurston County on which it is developing the residential community of Nisqually Estates. Declarant has subjected portions of the property to the Declaration of Covenants, Conditions and Restrictions for Nisqually Estates Division 1, Phase 1 and Division 2, Phase 1, which was recorded under Thurston County Auditor's Recording Numbers 3206024 and 3206025. Pursuant to Article I, Section 4, the Declarant may unilaterally, subject to the provisions of the above referenced Declaration, and additional real property and therefore the Declarant now desires to subject Nisqually Estates Division 1, Phase 2, and Nisqually Estates Division 2, Phase 2, recorded concurrently with this First Amendment under Thurston County Auditor's Recording Numbers 3332087 and

First Amendment

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3332089 to the provisions of the Declaration of Covenants, Conditions and Restrictions for Nisqually Estates referred to above.

Declaration

1. Addition of Division 1, Phase 2, and Division 2, Phase 2. Declarant hereby declares that the property described in Exhibit "A" is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens, set forth in the Declaration of Covenants, Conditions and Restrictions for Nisqually Estates Division 1, Phase 1 and Division 2, Phase 1, recorded with the Thurston County Auditor under Recording Numbers 3206024 and 3206025.

2. That Article III, Definitions, and specifically paragraph 12 shall be amended to read as follows:

12. "Lots" shall mean Lots 1 through 31 inclusive of Nisqually Estates-Division 1, Phase 1, and Lots 73 through 103 of Nisqually Estates-Division 2, Phase 1, and Lots 32 through 60 which are contained in Nisqually Estates-Division 1, Phase 2, and Lots 61 through 72 and 104 through 120 inclusive of Nisqually Estates-Division 2, Phase 2.

3. That Article V, Common and Easement Areas, and specifically paragraph 1, shall be amended to read as follows:

1. Description of Common Area. The common areas shall include the easements as further described below together with the following tracts which shall be owned by the homeowners association and which tracts are as follows:

Tracts A, C, D, G, H, and I are storm water retention facilities and the tract "the Park" shall be used for park and open space purposes and all of the above referenced tracts shall be owned and maintained by the homeowners association and the Declarant does hereby convey and quit claim to the homeowners association all of the Declarant's right, title and interest in and to the above referenced tracts and that the homeowners association shall have the responsibility to maintain the same. The above referenced tracts that are storm water retention facilities shall be maintained by the homeowners association pursuant to a storm water facilities maintenance agreement to be entered into with the City of Yelm. An easement is hereby granted to the City of Yelm over and across all of the above referenced tracts for access and maintenance purposes for emergency or default.



4. That Article V, Common and Easement Areas, and specifically paragraph 6, shall be amended to add tract D and tract "the Park" to the common areas to be maintained and improved by the homeowners association.
5. That all other terms and conditions of the above referenced Declaration shall remain in full force and effect except as expressly amended and modified herein.

19th In Witness Whereof, the undersigned have caused this First Amendment to be executed this day of October, 2000.

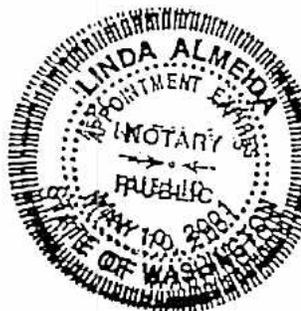
Harr Family Homes, Inc., a Washington Corporation

By: Kirk A. Harr
Kirk Harr, President

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this 5th day of JANUARY, 2001, 1998, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Kirk Harr, to me known to be the President, respectively, of HARR FAMILY HOMES, INC., a Washington Corporation, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument.

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



Linda Almeida
Printed Name: LINDA ALMEIDA
NOTARY PUBLIC in and for the State of Washington, residing at 2205 116th ST.
My commission expires: MAY 10, 2001



Exhibit "A"

Legal Description

Parcel B of the Boundary Line Adjustment No. BLA98-8203YL recorded January 13, 1999 under Auditor's File Nos. 3203716 and 32037256, in Thurston County, Washington, except that portion known as the plat of Nisqually Estates Division 1, Phase 1 recorded January 22, 1999 under Auditor's File No. 3206024 and except that portion known as the plat of Nisqually Estates Division 2, Phase 1 recorded January 22, 1999 under Auditor's File No. 3206025, records of Thurston County, Washington.

