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Skagit County Auditor

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AMENDMENT TO THE
DECLARATION
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE
PLAT OF NIELSEN PARK
RE: ORIGINAL RECORDING # 200301030078

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AMENDMENT TO THE
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE

PLAT OF NIELSEN PARK, BURLINGTON, WA.

THIS DECLARATION, made and entered into this 24th day of January, 2003, by John Ellis DBA Landmark Building & Development, hereinafter referred to as "Declarant".

WITNESSETH WHEREAS, Declarant is the owner of that certain real property, known as The Plat of Nielsen Park, , Filing Two, in the City of Burlington, County of Skagit, State of Washington, to be hereinafter referred to as "Opal Lane", which is described on Exhibit "A" attached hereto and incorporated herein by this reference.

NOW THEREFORE, Declarant hereby declares that all of the lots and parcels contained in the parcels described above shall be held, sold and conveyed subject to the following restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the above described properties and be binding on all parties having a right, title or interest in said properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I: DEFINITIONS

1. "Association" – the Homeowners' Association of Opal Lane, a Washington non-profit corporation, its successors and assigns.
2. "Board" – A three person board of directors elected by the Lot Owners in accordance with the Bylaws of the Association.
3. "Common Area" – all properties indicated such on a final plat, including the improvements thereon, owned by the Association for the purpose of drainage easement for the Development known as Opal Lane.
4. "Development Period" – that period of time from the date of recording of the Covenants, Conditions and Restrictions (CCR's) until (1) a date ten years subsequent to recording the CCR's, or (2) the thirtieth day after title has been transferred to one hundred percent of the Lots to be developed on the property to Owners entitled to vote or (3) the date on which Declarant chooses to permanently relinquish all of Declarant's authority under Article III by written notice to the Owners, whichever date first occurs.
5. "Lot" – any numbered plot of land shown on the recorded subdivision plat of the property together with all appurtenances, easements and improvements now or hereafter thereon.
6. "Member" – each Owner of a Lot that is subject to assessment. Membership in the Association shall be appurtenant to, and may not be separate from, ownership of a Lot.
7. "Owner" – the record owner, whether one or more persons or entities, of fee simple title to any Lot on which a dwelling unit has been built, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
8. "Plat" or "Amended Plat" – That real property described in Exhibit "A" attached hereto or as subsequently amended.



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ARTICLE II: PROPERTY RIGHTS IN COMMON AREAS

1. **Owners' Responsibility of Easement.** Subject to the provisions of Paragraph 2 of this Article, every Owner shall have equal responsibility in the care and maintenance of the Common Area (drainage easement). The only common area within Opal Lane is the drainage easement, (open space and detention pond area) which according to City requirements, must be maintained by the Homeowner's Association.
2. **Rights and extent of Owner's Easements.** Right of the Association, pursuant to its Articles and Bylaws, to grant or transfer all or any part of a Common Area to a public agency, authority or utility company for such purposes and under such conditions as may be agreed to by the Members, provided that such has been approved by the voting Members of the Association in accordance with its Articles and Bylaws.

ARTICLE III - MANAGEMENT RIGHTS OF DECLARANT

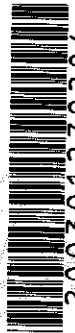
1. **Management by Declarant.** Until termination of the Development Period the Property shall be managed by the Declarant or an Association organized at the sole discretion of the Declarant. The Development Period shall be defined as the sale of all Lots planned for Opal Lane and other lands contiguous thereto now owned by Declarant, expiration of ten years or at the discretion of the Declarant.
2. **Notice to Owners.** The Declarant will give written notice of the date of termination of the Development Period to Owners of all Lots. Said notice shall specify the date, place and time when a meeting will be held and further specify that the purpose of the meeting is to officially form the Association and elect officers and directors. At least 50 percent of the Owners or their designated proxy in writing, who must be an Owner, must be present to constitute a quorum. If a quorum is not present, the Development Period shall nevertheless terminate on the date specified in the notice and it shall thereafter be the responsibility of the Owners to provide for operation of the Association.
3. **Temporary Board.** During the development Period, Declarant may at his sole discretion, and at such time as the Declarant deems appropriate, appoint three persons who do not have to be lot Owners as a temporary board. This temporary board shall have full authority, including all rights, responsibilities and duties to manage the Property under this Declaration, the Articles and Bylaws. After selecting a temporary board, the Declarant at his sole discretion, may at any time terminate the temporary board and resume his management authority under Article III or select a new temporary board. During the Development Period it will not be necessary to conduct the affairs of the Homeowners' Association in strict accordance with the provisions of the Bylaws, but only to adhere to the Bylaws if a temporary board is appointed.
4. **Administration of the Association.** Unless a temporary board is managing the property or until such time as a permanent Board is elected, Declarant shall have the power and authority to exercise all of the rights, duties and functions of the Board to generally carry out the provisions of the Declarations, including but not limited to enacting reasonable administrative rules, contracting for required services, obtaining property and liability insurance, establishing and collecting assessments, and expending all Association funds. Declarant shall have the authority to contract with a management agency at his sole discretion which shall have the same powers, duties and responsibilities as the Declarant.
5. **Acceptance of Management Authority.** The purpose of this management arrangement is to ensure that the Property will be adequately managed during the development period. Acceptance of an interest in a Lot evidences acceptance of this management arrangement.



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ARTICLE IV – BUILDING AND LAND USE RESTRICTIONS

1. **General Plan.** It is the intention of the Declarant to establish and impose restrictions for the improvement, use and occupancy of the Lots and other areas which will enhance the value, desirability and attractiveness of Opal Lane and serve to promote the sale thereof. All Lots shall be held and henceforth be sold, conveyed, used, improved, occupied and owned subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, including those contained elsewhere in this Declaration.
2. **Residential Use.** Lots shall be used exclusively for one private single-family residential structure only. No business or profession having employees shall be conducted on any Lot or in any structure on a Lot unless permitted by the municipal zoning regulations and approved by the Homeowners' Association. Notwithstanding the foregoing, Declarant may use Lots and residences erected thereon, or permit the use thereof, for show homes, sales offices, temporary storage of materials which are not offensive to adjacent lot owners and parking incidental to the aforesaid.
3. **Dwelling Restrictions.** No mobile homes, prefabricated or manufactured homes or modular homes shall be located on any Lot either permanently or temporarily.
4. **Garages and Outbuildings.** Each residence must have at least a two-car garage attached thereto. Outbuildings must be one story in height and designed and constructed to complement the single-family residence on the Lot and of similar materials, in compliance with setback regulations and not detrimental to surrounding Lots. Lots 1-8 are limited to storage buildings no larger than 120 sq. ft., per City regulations.
5. **Temporary Structures.** No structure of a temporary character, including but not limited to, a trailer, recreational vehicle, tent, shack, garage or other outbuilding shall be placed on a Lot as either a permanent or temporary residence. No residence being erected on a Lot shall be occupied in any manner at any time prior to its full completion, nor shall any residence when completed be occupied until it complies with all covenants and restrictions herein set forth.
6. **Building Materials.** It is the intent of this regulation to create visually appealing residences compatible with those on surrounding Lots in style, quality, color and durability. All homes shall be built of new materials with the exception of certain décor items such as used brick, weathered planking and similar type items which must be so noted on the construction drawings submitted. Siding shall be natural wood, cedar shingles, fiber cement (such as Hardiplank) or vinyl. Aluminum, plywood and pressed board types of exterior sidings (i.e. T1-11, board and batten) are prohibited. Exterior masonry is encouraged and stone (both natural and high-quality hand cast), brick and stucco are acceptable.
7. **Building Colors.** Siding and principal building exterior coverings shall be earth tones (such as grays and tans), creams, natural or shades of white. Exterior colors for siding, trim and masonry shall be designated on the construction drawings. Care shall be taken when selecting colors to insure visual compatibility with existing or other proposed dwellings.
8. **Roofs.** Flat roofs and shed type roofs are not permitted. The minimum pitch for roofs shall be 5 vertical to 12 horizontal (5:12). Roof materials may include cedar shakes, tile, standing seam metal and 30-year asphalt composition.



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9. Fireplaces. Wood burning stoves and fireplaces are not permitted. All fireplaces shall be natural gas fired.
10. Driveways and Walks. Both broomed and exposed aggregate finish concrete driveways are acceptable. No asphalt or rock driveways are permitted. Walks, not adjacent to streets, may be of other approved materials.
11. Completion of Construction. Residences, including exterior painting and landscaping (as required in Paragraph 12) shall be completed and ready for occupancy within 12 months from commencement of construction. The time for completion of additions, reconstruction and remodeling shall be agreed to at the time of review of construction drawings.
12. Landscaping. Each new home shall have lawn planted, shrubs adjacent to the house and at least one tree per lot prior to sale or occupancy.
Any existing trees on any of the developed lots within Opal Lane shall be preserved by each respective property Owner unless a hazard is identified by a Certified Arborist, in which case the City Planning Department shall be notified. The Homeowner's Association is responsible for maintaining the open space and detention pond area.
13. Grading. Final Lot grading shall match the natural contours of the area as closely as possible. All areas disturbed by construction activity shall be protected from erosion pursuant to local regulations, and problem areas shall be immediately reseeded with a grass which will control erosion, or otherwise protected, until final landscaping is complete. No increased runoff is permitted onto adjacent Lots of properties.
14. Utility Lines. All electric, television and telephone lines from the utility company service facilities to the residence and within the property to other structures shall be underground, except that a temporary overhead electric service during construction is permitted.
15. Antennae. All radio, television and other types of antennae shall be located inside a building or out of view from adjacent roads and nearby residences.
16. Signs. No advertising structures or signs of any type shall be placed on a Lot other than a name plate for the occupant, a street number, and one temporary "For Sale", "For Rent" or "Garage Sale" sign, not exceeding 7 square feet in area. Builders are permitted to place signs on a Lot during the construction and sale period for a new residence, but they must be removed immediately upon the sale of the property. These restrictions do not apply to the Declarant during the development period.
17. Animals/Pets. Household pets such as dogs, cats, fish and similar small animals may be kept so long as they are not kept for commercial purposes, create a continuing disturbance or become a nuisance. No more than two dogs and/or two cats may be kept for periods longer than 60 days. Animals shall be kept on a leash or other restraint when not confined to the property. Owners are required to properly house, maintain and clean up after their pets, and any complaints by other Lot owners shall be addressed by the Board will be final and failure to comply with the decision by the pet owner or complainant will be referred to the proper authorities.



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18. Fences. Fences as described herein shall be considered either of the decorative or privacy types. Privacy fences shall be a maximum of 72" in height, constructed of durable wood and may be solid or partially restrict the view. Galvanized chain-link fencing without metal or plastic inserts in the mesh are permitted along the rear of the yard only. Privacy fencing may be located in rear and/or side yards but must not extend beyond the main residential structure, and not closer than 20 feet to the street right-of-way. Corner lots must observe the 20-foot setback on both streets. From the 20-foot line to the street right-of-way, solid fences a maximum of three feet high, measured from the ground on which the fence stands, are permitted, and open rail fences and picket fences a maximum of 42" high, measured from the ground on which the fence stands, are permitted in which the rails and posts constitute not more than one-third of the fence area. No fencing shall completely enclose a front yard nor shall it impede access to utility controls, fire hydrants or meters. A permit from the ACC is required before constructing fences.
19. Annoying Light, Sounds or Odors. No light shall be emitted from any Lot which is unreasonably bright or causes offensive glare; no sound shall be emitted which is continuous or unreasonably loud; and no odor shall be emitted which is noxious or offensive to others.
20. Parking of Vehicles and Recreational Equipment. If recreational vehicles or recreational equipment are to be stored for more than 48 hours they must be parked behind the leading edge of the residence. Temporary parking of vehicles wholly within a driveway by an Owner or a guest is permitted. No type of vehicle shall be parked overnight in the street, including motorcycles.

ARTICLE V – HOMEOWNERS' ASSOCIATION

1. Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot, and shall not be assigned or conveyed in any way except by transfer of title for said Lot to another Owner. All Members shall have the rights and duties specified in this Declaration, the Articles and Bylaws of the Association.
2. Non-Profit Corporation. The association shall be a non-profit corporation under the laws of the State of Washington. The association will be incorporated upon or before termination of the Development Period or upon appointment of a Temporary Board of Directors.
3. Voting Rights. Owners, including the declarant, shall be entitled to one vote for each Lot owned. If more than one person or entity owns an interest in a Lot, the vote for that Lot shall be exercised as the owners decide, but in no event shall more than one vote be cast for a Lot nor shall any vote be divided. Voting rights of any Owner may be suspended as provided for in this Declaration, the Articles and the Bylaws of the Association.
4. Meetings. Meetings of the Association shall be conducted in accordance with the Bylaws of the Association. At least one meeting shall be held annually to set assessments and elect officers.



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5. **Notice and Quorum.** Upon formation of the Association, written notice of any meeting to take action affecting all Owners and for setting assessments shall be mailed first class to each Owner at least 30 days prior to the date set for holding the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast at least 60 percent of all eligible votes shall constitute a quorum. If the required quorum is not present, subsequent meetings may be called by the Board subject to the same notice requirements, and the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days after the date for the preceding meeting.

ARTICLE VI – ASSESSMENTS

1. **Creation of Lien and Personal Obligation.** Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments or charges which shall be established and collected in accordance with this Declaration. The assessments, together with interest, costs and attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which such assessment is made. The lien may be enforced by foreclosure on the defaulting Owner's Lot by the Association in like manner as a mortgage on real property. Each assessment, together with the interest, costs and reasonable attorney's fees incurred to collect such assessments; shall be the personal obligation of the Lot owner at the time the assessment fell due.
2. **Purpose of Assessments.** Assessments imposed by the Association shall be for the maintenance, upkeep, and repair of the Common Area (open space and detention pond area).
3. **Annual Assessment.** Beginning with the sale of the first Lot, the annual assessment shall be \$25 per Lot except that Lots owned by the Declarant will not be subject to the annual assessment until sold. Upon expiration of the Development Period, the Board of Directors may increase or decrease the amount of the annual assessment as required to maintain the detention pond in clean and reasonable condition. A copy of the previous year's expenditures, budget and justification for any increase or decrease shall be available at the office of the Association and shall be given to a Member upon request. The Association shall consider the need to establish adequate reserves for future repair and maintenance in the Common Area when establishing the annual assessment.
4. **Date of Commencement of Annual Assessments.** Annual assessments required herein shall commence on the sale of the first Lot with the assessment to cover one calendar year. Any Owner purchasing a Lot shall pay a pro rata amount based on the number of months remaining in the calendar year. If a Lot is sold before the 15th day of a month, that month shall be included in the proration. Following the Development Period, the Association will set the date for payment of the annual assessment and send a written notice of the amount and due date to each Member. The Association shall, upon request and for a reasonable charge, furnish a certificate signed by an officer of the Association giving the status of payment of the assessment for a specific Lot. Any special assessment levied during a calendar year must be paid by the buyer of a Lot if same has not been paid by the previous Owner.



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5. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within fifteen (15) days of the due date shall bear interest at the rate of 12 percent per annum and the Association may add a monthly late charge in an amount not exceeding 10 percent of the assessment as determined by the Association. Each Owner expressly vests in the Association the right and power to bring suit personally against such Owner for the collection of assessments as debts and to enforce lien rights of the Association by all methods available for the enforcement of such liens, including foreclosure. Such Owner hereby expressly grants to the Association the power of sale in connection with such liens. The Owner is responsible for payment of all late charges, collection costs and reasonable attorneys' fees incurred in collection of past due assessments or enforcing assessment liens. No Owner may waive or otherwise escape liability for assessments provided for herein by abandonment of this Lot. If any assessment remains unpaid for more than 30 days, the Owner's voting rights in the Association shall be suspended until the assessment(s) and any other charges connected therewith are paid.
6. Subordination of the Lien to First Mortgage. A lien for assessments, provided for in this Article, shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a foreclosure of a first mortgage or deed of trust, or any proceeding in lieu thereof, shall relieve such Lot from liability for any assessments thereafter becoming due or form the lien thereof.

ARTICLE VII – MANAGEMENT BY BOARD

1. Formation of the Board. Upon expiration of the Development Period, a meeting shall be held to set up the permanent Homeowners' Association. All administrative power and authority shall be vested in a Board of three directors to be elected from Members of the Association at the initial meeting. The Association may increase the number of directors by amendment of the Bylaws at its annual meeting. At the first meeting of the Board, bylaws shall be adopted. Copies will be made available to Owners upon request. Terms of the Board shall be defined in the Bylaws.
2. Powers of the Board. All powers of the Board shall be set forth in the Bylaws and must be exercised according to the Bylaws. The Board, for the benefit of the Owners and the Property, shall endorse the provisions of this Declaration and the Bylaws. In addition, the Board shall have the power and be responsible for the following by way of explanation but limitation:
- a) *Insurance* – Obtain necessary policies of general liability insurance.
 - b) *Maintenance* – Pay all costs associated with the improvement, upkeep and repair of the Common Area.
 - c) *Right to Contract* – Have the exclusive right to contract for all goods, services, maintenance and improvements to the Common Area.
 - d) *Declaration of Vacancies* – Declare a Board vacancy in the event that the Board member moves off the Property or is absent from three consecutive regular Board meetings.
 - e) *Financial Matters* – Open a bank account for the Association and designate signatories thereto. Pay for all services required to maintain the Common Area.



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ARTICLE VIII – GENERAL PROVISIONS

1. **Covenants Running with the Land.** These covenants shall run with the land and be binding on all parties and persons claiming under them for a period of twenty years from the date these covenants are recorded, after which time they shall be automatically extended for successive periods of ten years. However, should a legal instrument be signed by a majority of the owners of the Lots to change the covenants in whole or in part, this must be legally recorded with the office of the Skagit County auditor and will become effective upon filing.
2. **Amendment.** This Declaration may be amended during the Development Period by an instrument signed by the Declarant. After the Development Period, this Declaration may be amended if a majority of the Owners approve in accordance with the Bylaws. Provisions which expressly refer to the Declarant may not be amended without the prior written approval of the Declarant. All amendments must be recorded with the office of the Skagit County auditor and will become effective upon filing.
3. **Enforcement.** The Association, its Board, or any Owner shall have the right to enforce, by any legal proceeding, all restrictions, conditions covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure to insist on strict performance of any covenant, condition or restriction herein contained shall not waive the right to do so thereafter. In a legal action commenced to enforce the provisions of this Declaration, the prevailing party shall be entitled to recover reasonable legal costs.
4. **Successors and Assigns.** The covenants, restrictions and conditions stated in this Declaration shall run with the land and shall accordingly be binding on all successors and assigns.
5. **Severability.** Invalidation of any one or more of the covenants, restrictions or conditions of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

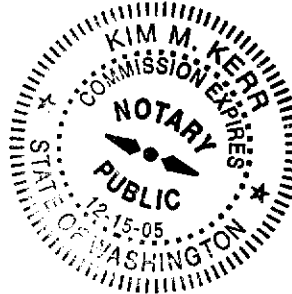
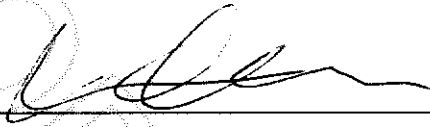


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IN WITNESS WHEREOF, the undersigned being the Declarant herein has hereunto set its hand and seal as of the date first herein set forth.

BY



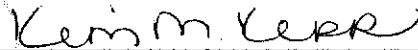
State of Washington)

) ss.

County of Skagit)

On this 27 day of Jan, 2003, before me personally appeared JOHN ELLIS that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said persons for the uses and purposes therein mentioned, and on oath stated they were authorized to execute this instrument.

In witness whereof, I have hereunto set my hand and official seal the day and year above written.



Notary Public in and for the State of
Washington, residing at mt. Vernon
My appointment expires 12/15/05



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