

DUPLICATE  
MAY 24 REC'D

INSTRUMENT OF AMENDMENT  
TO  
DECLARATION OF KINGSGATE PROTECTIVE COVENANTS

WHEREAS, the undersigned declarants desire to amend the Declaration of Kingsgate Protective Covenants (the Declaration) recorded in Book 1183 Page 915 of Deed Records of Washington County, Oregon:

WHEREAS, the undersigned declarants constitute a majority (as required by ARTICLE IV, GENERAL PROVISIONS, Paragraph (1) titled Term) of the platted lots on that certain property known as KINGSGATE described in and subject to the Declaration.

NOW, THEREFORE, the Declaration is hereby amended as follows:

Article 1, Residential Covenants, Paragraph (20) titled Exterior Materials shall be amended to read:

(20) Exterior Materials

Exterior materials must be approved for use by the Architectural Control Committee in accordance with the provisions of Article III. Roofing material must be cedar shingle, shake, tile; or manmade materials (such as fibre-cement, synthetic, or metal) designed to imitate cedar shingle, shake or tile, in dark earthtone colors only. Smooth painted metal will not be approved. The only composition fiberglass/asphalt shingle which will be approved is the Celotex brand "Presidential Shake" in "shadow gray" or "weathered wood" colors only. Siding material shall be of the cedar or redwood type. No plywood siding of any type will be approved. Windows must be aluminum bronze anodized or wood. Any other architectural features subject to control will be approved or disapproved upon submission of plans to the Architectural Control Committee. The existing structures on Lots 68 and 94 shall be exempt from this restriction.

	Date signed	Signature	Name	Address	Lot No.
1	2/23/95		Christopher H. Hordley	8253 S.W. Woody End	29
2	2/25/95		Dennis Moore	17419 SW Rivendell	10
3	2/25/95		THOMAS BOATE	17020 S.W. ARKENSANE	74
4	2/25/95		PATRICK W. CARROLL	8223 S.W. WILDERLAND	32
5	2/25/95		VICTORIA NORDEN	8264 SW WILDERLAND	28
6	2-25-95		C.D. SAYLOR	17104 SW BINDDALE	91
7	2-25-95		Dale MANN	8250 SW Woody End	19
8	2-25-95		GREGORY S. DOSTER	17171 SW ARKENSANE	40
9	2-25-95		Lois K. Phillips	17202 SW W. Thywidle	112
10	2-25-95		FRANÇOISE EISS	7881 SW Willowbottom	95

WHEREAS, NuPacific Company, an Oregon corporation (the Declarant) desires to amend the Declaration of Kingsgate Protective Covenants (the Declaration) recorded in Book 1183 Page 915 of Deed Records of Washington County, Oregon:

WHEREAS, Declarant is record owner of the majority of the platted lots on that certain property known as KINGSGATE described in and subject to the Declaration.

NOW, THEREFORE, the Declaration is hereby amended as follows:

Article I, Residential Covenants, Paragraph (19) titled Service Facilities shall be amended to read:

(19) Antennas and Service Facilities

All outside television and radio aerals and antennas are prohibited. No outdoor overhead wire or service drop for the distribution of electric energy or for telecommunication purposes nor any pole, tower or other structure supporting said outdoor overhead wires shall be erected, placed or maintained within Kingsgate. Clotheslines and other service facilities shall be screened so as not to be viewed from the street, Open Space or Commercial area.

Article IV, GENERAL PROVISIONS, Paragraph (2) titled Enforcement shall be amended to read:

- (2) Should any person violate or attempt to violate any of the provisions of these covenants, the Declarant, or any other person or persons owning any real property embraced within the plat, at its or their option, shall have full power and authority to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any of the said Covenants, either to prevent the doing of such or to recover damages sustained by reason of such violation. Failure by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 21st day of April, 1978.

NUPACIFIC COMPANY, an Oregon corporation  
(Declarant)

Edward P. Borst, Jr.  
Edward P. Borst, Jr., President

Candy Lamoreaux Wright  
Candy Lamoreaux Wright, Assistant Secretary

STATE OF OREGON }  
County of Multnomah } ss.

April 21, 1978

Personally appeared EDWARD P. BORST, JR., and CANDY LAMOREAUX WRIGHT, who being duly sworn, each for himself and not one for the other, did say that the former is the President and that the latter is the Assistant Secretary of NUPACIFIC COMPANY, an Oregon corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and each of them acknowledged said instrument to be its voluntary act and deed.

Before me:

After recording return to:  
NuPacific Company  
2611 S.W. Third Suite 303  
Portland, Oregon 97201

Notary Public for Oregon

Suzanne A. Nelson  
My commission expires: 6/22/80

Transamerica Title Insurance Co.

AL - 1537

DECLARATION OF  
-KINGSGATE PROTECTIVE COVENANTS-

This Declaration of Protective Covenants is applicable to KINGSGATE, a planned unit development, Lots 1 through 154 inclusive, but excluding Lot 156, which is designated as Open Space, and Lot 155 which is designated as Professional-Commerical property.

WHEREAS, NuPacific Company, an Oregon corporation, hereinafter referred to as Declarant, is owner in fee simple of certain real property located in the City of Durham, County of Washington, State of Oregon known as KINGSGATE, a duly recorded plat.

WHEREAS, the Declarant desires to declare of public record its intentions to create certain protective covenants and conditions to the ownership of said property.

NOW, THEREFORE, the Declarant does hereby certify and declare that the following reservations, conditions and covenants shall become and are hereby made a part of all conveyances of Lots 1 through 154 inclusive within the plat of KINGSGATE, recorded May 18, 1977, in Book 38 Page 49A, Instrument #13933, plat records of Washington County, Oregon, and that the following protective covenants and reservations shall by reference become a part of any such conveyances and shall apply thereto as fully and with the same effect as if set forth at large therein.

ARTICLE I  
RESIDENTIAL COVENANTS

(1) Land Use and Building Type

No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling not to exceed two and one-half stories in height and a private garage for not less than two cars. The foregoing provisions shall not exclude construction of a private greenhouse, storage unit, private swimming pool or a shelter or port for the protection of such swimming pool, or for the storage of a boat and/or camping trailer kept for personal use, provided the location of such structures is in conformity with the applicable municipal regulations, and is compatible in design and decoration with the residence constructed on such lot, and has been approved by the Architectural Control Committee.

The provisions of this section shall not be deemed to prohibit the right of any homebuilder to construct residences on any lot, to store construction materials and equipment on said lots in the normal course of construction, and to use a single family residence as a sales office or model home for purposes of sale in KINGSGATE.

(2) Dwelling Size

The ground floor area of a one story dwelling, exclusive of open porches and garages shall not be less than 1,700 square feet. In the case of a two story dwelling, the lower or ground floor living level shall be not less than 1,200 square feet. In the event of a multi level dwelling the area of the one story portion and the area of the upper level of the two story portion shall constitute a minimum of 1,400 square feet. A split entry or split foyer type home shall have a main floor area of not less than 1,600 square feet. A daylight basement home shall have a main floor area of not less than 1,400 square feet. The existing structures on Lots 68 and 94 shall be exempt from this restriction. The Architectural Control Committee upon application, may, at its discretion, waive any violation of this provision which it finds to have been inadvertent.

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(3) Building Setbacks

No building shall be located on any lot nearer than twenty-five (25) feet to the front lot line; nearer than twenty-five (25) feet to the rear lot line, or nearer than seven and one-half (7.5) feet to a side lot line. On corner lots the side yard shall be a minimum of ten (10) feet on the side abutting the street. The existing structures on Lots 68 and 94 shall be exempt from this restriction. The Architectural Control Committee, upon application, may, at its discretion, waive any violation of this restriction which it finds to have been inadvertent, provided the same would not constitute a violation of the City of Durham ordinances.

(4) Easements

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat, and over the front six (6) feet, the rear five (5) feet and side five (5) feet of each lot. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of water through drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot except for those improvements which a public authority or utility company is responsible.

(5) Tree Removal

No person shall cut a tree upon any lot or other property within KINGSGATE without first obtaining from the City of Durham a permit to do so.

(6) Business and Commercial Uses

No trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service, or business be kept or stored on any lot, excepting the right of any homebuilder and the Declarant to construct residences on any lot, to store construction equipment and materials on said lots in the normal course of said construction and to use any single family residence as a sales office or model home for purposes of sale in KINGSGATE.

(7) Offensive Activities

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done or placed upon any lot which interferes with or jeopardizes enjoyment of other lots or Open Space within KINGSGATE.

(8) Animals

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for commercial purposes and are reasonably controlled so as not to be a nuisance.

(9) Signs

No signs shall be erected or maintained on any lot (excluding KINGSGATE entry signs) except that not more than one "For Sale" or "For Rent" sign placed by the Owner, the Declarant or by a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches long, may be temporarily displayed on any lot. This restriction shall not prohibit the temporary placement of "political" signs on any lot by the Owner.

(10) Parking

Parking of boats, trailers, motorcycles, trucks, truckcampers and like equipment shall not be allowed on any part of the property nor on public streets adjacent thereto excepting only within the confines of an enclosed garage or screened area, the plans for which must have been reviewed and approved by the Architectural Control Committee prior to construction, and no portion of same may project beyond the screened area.

(11) Vehicles in Disrepair

No owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any lot or on the Open Space or on any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed to be in an "extreme state of disrepair" when its presence offends the occupants of the neighborhood.

(12) Rubbish and Trash

No lot or part of the Open Space shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view. Yard rakings and dirt resulting from landscaping work shall not be dumped onto streets, Open Space or on any lots.

(13) Temporary Structures

No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

(14) Exterior Lighting

Any exterior lighting which is visible from any street, any part of the Open Space or any other lot in KINGSGATE must be approved prior to installation by the Architectural Control Committee in accordance with the provisions of Article III.

(15) Structures in Open Space

No building, wall, fence, paving, landscaping or construction of any type shall be erected or maintained by any owner so as to trespass or encroach upon the Open Space. The Architectural Control Committee shall have authority to abate any such trespass or encroachment upon the Open Space at any time, by any reasonable means and with or without having to bring legal action.

(16) Completion of Construction

The construction of any building on any lot, including painting and all exterior finish, shall be completed within eight (8) months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the Architectural Control Committee.

(17) Landscape Completion

All front yard landscaping must be completed within six (6) months from the date of occupancy of the residence constructed thereon. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval by the Architectural Control Committee.

(18) Fences and Hedges

As defined in this section, "fencing" shall mean any barrier or wall other than natural living organic vegetation, including trees and shrubs. Plantings or site obscuring fences shall not exceed four feet (4) in height in the front yard or on side lot lines forward of the building line with the greatest setback on the lot or the adjoining residential lot. The maximum height of a site obscuring fence located on the remainder of the lot shall be six feet (6). Fences shall be well constructed of wood materials and shall not detract from the appearance of the dwelling house located upon the lot or building site or be offensive to the owners or occupants thereof or detract from the appearance of the dwelling houses located on

- (18) the adjacent lots or building sites. All fence plans must be submitted prior to construction commencement to the Architectural Control Committee. Cyclone fencing will not be approved.
- (19) Service Facilities  
Clothes lines and other service facilities shall be screened so as not to be viewed from the street, Open Space, or Commercial area.
- (20) Exterior Materials  
Exterior materials must be approved for use by the Architectural Control Committee in accordance with the provisions of Article III. Roofing material must be cedar shingle, shake, or tile. Siding material shall be of the cedar or redwood type. No plywood siding of any type will be approved. Windows must be aluminum bronze anodized or wood. Any other architectural features subject to control will be approved or disapproved upon submission of plans to the Architectural Control Committee. The existing structures on Lots 68 and 94 shall be exempt from this restriction.
- (21) Exterior Finish  
The exterior finish of all construction on any lot shall be designed, built, and maintained in such a manner as to blend in with the natural surroundings, existing structures, and landscaping within KINGSGATE. Exterior colors must be approved by the Architectural Control Committee in accordance with the provisions of Article III. Exterior colors must conform to accepted earth tone colors. The use of bright or hard stains or paint will not be approved. 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. The existing structures on Lots 68 and 94 shall be exempt from this restriction.

#### ARTICLE II

##### OPEN SPACE, COMMON ACCESS WAY

- 1) Lot 156 - Open Space  
Lot 156 has been deeded to the City of Durham and shall be used for park and recreation purposes by the owners of lots within KINGSGATE jointly with the public. Maintenance of the Open Space shall be the responsibility of the City of Durham upon acceptance of the deed by the City. Administration and regulation of this Open Space is delegated to the Durham City Council and cannot be amended as provided under Article IV; subsection (1) Term.
- 2) Common Access Way  
The driveway located between Lots 34 and 37 shall be a private driveway to provide access to and for the exclusive use of Lots 35 and 36. The owners of Lots 35 and 36 shall be responsible for the maintenance of such driveway, the cost of which shall be borne in equal portions by such owners. Each owner shall have a perpetual easement over the common access way for ingress and egress, and the benefits and burdens thereof, including maintenance, shall be appurtenant to and run with Lots 35 and 36.

#### ARTICLE III

##### ARCHITECTURAL CONTROL COMMITTEE

- ) Architectural Review  
No structure, including storage shelters, shall be commenced, erected, placed or

- (1) altered on any lot until the construction plans and specifications and a plat showing the nature, shape, heights, materials, colors, and proposed location of the structure have been submitted to and approved in writing by the Architectural Control Committee. It is the intention and purpose of this Covenant to assure quality of workmanship and materials, harmony of external design with the existing structures as to location with respect to topography, finish grade elevations, and to avoid plan repetition. The requirements of this section shall not apply to any structure erected prior to the date upon which this instrument is recorded, but shall apply to any alterations of such a structure. In all cases in which Architectural Control Committee consent is required by these Covenants, the following provisions shall apply:

**A Major Construction**

In the case of initial or substantial additional construction of a dwelling the owner shall prepare and submit to the Architectural Control Committee such plans and specifications for the proposed work as the Committee may require. Material required by the Committee may include, but not necessarily be limited to, the following:

- (1) A plot plan indicating location of all improvements.
- (2) Drawings showing elevations, exterior materials and exterior color scheme of all improvements.

The Architectural Control Committee shall render its decision with respect to the proposal within fifteen (15) days after it has received all materials required by it with respect thereto.

**B Minor Work**

In the case of minor additions or remodeling, change of existing exterior color scheme or exterior material, fence, greenhouse, or swimming pool construction or any other work not referred to in paragraph A above, the owner shall submit to the Architectural Control Committee such plans and specifications for the proposed work as the Committee determines to be necessary to enable it to evaluate the proposal. The Architectural Control Committee shall render its decision with respect to the proposal within fifteen (15) days after it has received all material required by it with respect thereto.

(2) **Architectural Control Committee Decision**

The Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds that the proposed work would be inappropriate for the particular lot or incompatible with the design standards that Declarant intends for KINGSGATE. Considerations such as siting, shape, size, color, design, height, impairment of the view from other lots within KINGSGATE or other effect on the enjoyment of other lots or Open Space, disturbance of existing terrain and vegetation, and any other factors which the Committee reasonably believes to be relevant, may be taken into account by the Committee in determining whether or not to consent to any proposed work.

(3) **Procedure**

In the event the Committee fails to render its approval or disapproval within thirty (30) working days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related Covenants shall be deemed to have been fully complied with.

(4) **Membership: Appointment and Removal**

The Architectural Control Committee, hereinafter referred to as Committee, shall consist of as many persons, but not less than five (5), as the Declarant may from time to time appoint. The initial members of the Committee shall include the following representation: Two persons appointed by the Declarant; the Declarant's consulting Engineer; the City of Durham Planning Director and Building Inspector. The Declarant shall keep on file at its principal office a list of names and addresses of the members of the Committee. A member of the Committee shall not be entitled to any compensation for services performed pursuant to these Covenants. The powers and duties of such Committee shall cease one year after completion of construction

- (4) of all the single family dwellings and the sale of said dwellings to the initial owner/occupant on all of the building sites within the property.
- (5) Liability  
Neither the Architectural Control Committee nor any member thereof shall be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member thereof, provided that the member has, in accordance with the actual knowledge possessed by him, acted in good faith.
- (6) Action  
Except as otherwise provided herein, any three members of the Architectural Control Committee shall have power to act on behalf of the Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. However, any action taken by the Committee must be approved by at least one representative from the City of Durham and one representative appointed by the Declarant. The Committee may render its decisions only by written instrument setting forth the action taken by the members consenting thereto.
- (7) Nonwaiver  
Consent by the Architectural Control Committee to any matter proposed to it and within its jurisdiction under these Covenants shall not be deemed to constitute a precedent or waiver impairing its rights to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.
- (8) Effective Period of Consent  
The Committee's consent to any proposed work shall automatically be revoked one year after issuance unless construction of the work has been commenced or the owner has applied for and received an extension of time from the Architectural Control Committee.

ARTICLE IV  
GENERAL PROVISIONS

- (1) Term  
These Covenants shall run with the land with respect to all property within KINGSGATE and shall be binding on all parties and all persons claiming under them until amended or revoked in the manner provided herein. These Protective Covenants can be terminated and revoked or amended only by duly recording an instrument which contains an agreement providing for termination and revocation or amendment, and which is signed by the owners of a majority of the platted lots.
- (2) Enforcement  
Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any Covenant either to restrain violation or to recover damages.
- (3) Severability  
Invalidation of any one of these Covenants by judgment or court order shall in no wise effect any of the other provisions which shall remain in full force and effect.
- (4) Limitation of Liability of Declarant  
Neither Declarant nor any officer or director thereof, shall be liable to any owner on account of any action or failure to act of Declarant in performing its duties or rights hereunder, provided that Declarant has, in accordance with actual knowledge possessed by it, acted in good faith.



IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 18 day of July, 1977.

NUPACIFIC COMPANY, an Oregon corporation  
(Declarant)

Edward P. Borst, Jr.  
Edward P. Borst, Jr., President

Candy Lamoreaux  
Candy Lamoreaux, Assistant Secretary

STATE OF OREGON)  
County of Multnomah) ss.

July 18, 1977

Personally appeared EDWARD P. BORST, JR., and CANDY LAMOREAUX, who being duly sworn, each for himself and not one for the other, did say that the former is the President and that the latter is the Assistant Secretary of NUPACIFIC COMPANY, an Oregon corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and each of them acknowledged said instrument to be its voluntary act and deed.

Before me:  
Notary Public for Oregon

Suzanne F. Nelson  
My commission expires: 6/22/80

After recording return to:  
NuPacific Company  
2611 S.W. Third, #303  
Portland, Oregon 97201

STATE OF OREGON  
County of Washington ss. 19

**INDEXED**  
I, Roger Thomssen, Director of Records and Elections and Ex-Officio Recorder of Concessions for said county, do hereby certify that the within instrument of writing was received and recorded in book of records No. 2 of said County.  
Witness my hand and seal this 19th day of July, 1977.  
ROGER THOMSEN, Director of Records & Elections

*21 cc  
TA  
Addendum added  
4-21-78  
see outside cover  
return - in copy*

BOOK **1183** PAGE **921**  
(7)

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