

RESTRICTIVE COVENANTS CONCERNING USE AND OCCUPANCY OF PLAT OF ROCKY POINT HEIGHTS, DIVISION NO. 1 & 2

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HENRY EDWIN SHAW, PATRICIA ANN SHAW, R.W. CHRISTIANSEN, and VESPER A. CHRISTIANSEN, the owners of those premises now know as the PLAT OF ROCKY POINT HEIGHTS, DIVISION NO. 1 & 2, as the same has been filed for record and accepted by the Board of County Commissioners of Island County, Washington, and recorded in Volume 10 of Plats, page 32, Island County Auditor's file No. 213529, in the office of the Island County Auditor, do hereby declare, establish and certify that the sale, use occupancy and resale of all lots and parcels therein shall be benefited, burdened and subject to the restrictions, limitations and conditions hereinafter set forth and after the date hereof, and shall constitute covenants to run with the land according to the law and shall be binding upon each buyer, lessee, or subsequent owner therein, and their heirs, personal representatives, grantees, successors in interest, or any other persons claiming under any one of them.

1. Purpose of Restrictions.

The purpose of the restrictions, conditions and limitations herein established and set forth shall be to prevent nuisances and provide for the lawful and orderly occupation and use of premises, to establish and maintain an attractive and desirable residential area, and to protect and enhance the value of the property for each site owner. Anything tending to reduce the attractiveness and value of the Plat for residential purposes will not be permitted except as expressly mentioned and stated herein.

2. Exclusive Residential Use.

Except as otherwise provided herein, each lot in Rocky Point Heights, Division No. 1 & 2 shall be use exclusively for residential purposes. Lease of rental of more than one building on any one lot shall constitute non-residential use.

3. Construction.

The following provisions shall govern and control the architectural and construction standards for the building on any Lot.

- (a) No building shall be erected, placed, altered or maintained, except on those lots or tracts hereinafter excluding from these restrictions, other than one detached single family dwelling, the habitable main floor are of which, exclusive of garage, carport, open entries and patios, shall not be less than 1200 square feet for a one-story building; A private garage or carport for not more than three (3) cars, servants' quarters, guest house or garden house, herein termed "accessory building" may be erected thereon if used as structures strictly accessory to such building.

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- (b) No such single family dwelling shall have more than one story above the ground which is not accessible from ground entrance, nor shall any such dwelling or accessory building be more than sixteen (16) feet in height, measured from its highest point on a line perpendicular to the highest point at which the natural contour of the ground comes in contact with such dwelling or accessory building.
- (c) All buildings erected, altered or placed on premises shall be of good and substantial construction and materials, having harmony of external design with existing structures and properly located with respect to topography and finish grade elevation. Mobile dwellings, modular dwellings, and prefabricated dwellings shall not be constructed on any lot or tract controlled by these covenants. No structure of any kind shall be erected using what is commonly known as "boxed" or "sheet metal" construction unless the outside walls and roof thereof are covered with stucco, brick, stone, weatherboard, veneer, or some other suitable siding or roofing material in keeping with the purpose of this provision. All buildings must be constructed upon a closed concrete or concrete block foundation. Chimney construction must conform to Section 3702, 1961 Edition of the Uniform Building Code, published by the International Conference of Building Officials.
- (d) No house trailers shall be permitted to be placed on premises except as provided during the period of construction.
- (e) No residential structure shall be erected or placed upon any lot having an area less than 7,200 square feet. No more than one residence shall be built on any one lot. No lot shall be divided or sub-divided in any manner, unless and upon condition that all constituent portions thereof become a part of the adjoining lots, and after such subdivision, all such lots, and such lots, and boundaries of which are re-arranged, shall be 7,200 square feet or more in size.

4. Building and Design Committee.

- (a) there shall be created a building and design committee which shall be responsible for reviewing the plans or all proposed new construction, additions, or modifications. Such committee shall be responsible to ascertain that the plans and subsequent construction meet the minimum building requirements set forth in this Declaration. The primary purpose of such committee shall be to assist property owners in achieving compliance with such building restrictions. Such committee shall allow the greatest possible latitude and flexibility in the design of homes to be built on the lots in the subdivision and shall not discourage new or innovative design concepts or ideas.
- (b) The building and design committee shall consist of no less than 3 nor more than 6 members to be selected annually by the Board of Directors of the Association, with the members to be chosen for varying terms so as to achieve staggered terms and continuity of membership of such committee.

- (c) Any property owner seeking to construct a new home or other appurtenant structure, or to add to or modify any portion of the exterior of any existing home, shall submit the plans to the building and design committee for review. A modification of the home exterior will include decks, hot tub, patios, pools, and similar alterations. Construction of new structures includes equipment and material housing, dog runs, gazebos, arbors associated with landscaping, and other similar construction.
- (d) No construction, change, modification or alteration for which plans are to be submitted to the Building and Design Committee pursuant to Paragraph (c) immediately above, shall commence until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Building and Design Committee considers necessary, appropriate, and relevant to maintain property values of nearby properties. In the event the Building and Design Committee fails to approve or disapprove such designs and location plan within days after such plans and specifications have been submitted to it, approval will not be required and full compliance with this section of the Declaration will be deemed to have occurred.
- (e) Without limiting the generality of the factors to be considered by the Building and Design Committee, the following restrictions shall apply:
1. Roof Slopes. The minimum roof slope allowable shall be 4 and 12. Dormers and intersecting gables maybe incorporated in the design. An "A" frame, domed roof or flat roof shall not be permitted.
  2. All roofing materials shall be limited to either cedar shakes, asphalt or cedar shingles. all roofing materials shall be approved by the Building and Design Committee.
  3. Heat pumps, propane tanks, solar devices, chimney flues, hot tub pumps, swimming pool pumps and filtration systems, satellite dishes, and similarly exposed mechanical equipment shall be aesthetically concealed from view on all sides and shall be shield in such a manner as to minimize noise and safety concerns.
  4. Siding shall be of wood, brick, stucco, or combinations thereof and, in the case of wood, shall be stained or painted in colors approved by the Building and Design Committee in writing.
- (f) In spite of the foregoing provision, the building and Design Committee shall have no affirmative obligation to be certain that all elements of the design comply with the restrictions contained in this Declaration, and no member of the Building and Design Committee shall have any liability, responsibility, or obligation, whatsoever, for any decision or lack thereof, in the carrying out of duties as a member of such committee. Such committee and its members shall have only an advisory function, and the sole responsibility for compliance with all of the terms of this Declaration shall rest with the homeowner. Each homeowner agrees to save, defend, and hold harmless the Building and Design committee and each of its members on account of any activities of the Building and Design Committee relating to such owner's property or buildings to be constructed on his or her property.
- (g) The Building and Design Committee, if it observes deviations from or lack of compliance with the provisions and this Declaration, shall report such deviations or lack of compliance to the Board of Directors of the Association for appropriate action.

4. Waste Disposal.

All toilets and lavatories shall be located indoors within the main dwelling or accessory buildings, as the case may be, and shall be connected to underground pipes leading to outside septic tanks in full compliance with all applicable statutes, codes, or ordinances. Approval of such installation shall be obtained from the Island County or State of Washington authority having jurisdiction thereof. At such time as a public or community sewage system may be installed, the owner, his successors, or assigns, shall connect the premises therewith.

5. Set Back.

To avoid crowding of buildings, unnecessary obstruction of views and in order to generally maintain a neat and orderly appearance throughout the plat, no dwelling or accessory building, including porches and overhangs of any roof, shall be closer than five (5) feet to any boundary of the building site, nor closer than twenty (20) feet from any dedicated public way, specifically exclusive however of access easements.

6. Construction Period - Occupancy.

The following provisions shall govern and control the period for the completion of construction and time of occupancy:

- (a) The construction of any building shall be prosecuted diligently and continuously from the commencement thereof. The finished exterior of such building must be completed within one (1) year from commencement of construction. The term "finished exterior" is defined to mean that state of completion of the exterior decoration and painting, varnishing or staining, etc., to the extent that the materials used naturally and normally lend themselves to finishing.
- (b) Placement of any building materials on the lot shall constitute commencement of construction.
- (c) No permanent building shall be occupied as a residence until the exterior thereof shall have been enclosed and substantially completed. Any temporary structure for the storage of tools and materials during the construction period must be removed immediately upon completion of construction. No other buildings, structures, or mobile home trailer of any kind shall be erected or maintained on any lot prior to the erection of the main dwelling house thereon, PROVIDED, that a mobile home trailer, permanent garage or guest house may be occupied as a temporary residence for not more than twelve (12) months during the time construction is actually in progress, if adequate provision for waste and sewage disposal is made. If occupied longer than three (3) months, such temporary residence shall be connected to a proper and adequate septic tank approved by health authorities.

7. Fuel Storage.

Any facility for storing oil, liquid gas, wood, or other fuel shall be (a) below ground, or (b) so constructed as to be an integral part of the main dwelling or accessory building, or (c) concealed from outside view.

8. Garbage and Refuse.

A closed sanitary container for the temporary storage of garbage and refuse, which shall be enclosed in a fly-proof ventilated box or sunken container, shall be maintained in connection with each dwelling. All garbage and refuse shall be regularly removed and disposed of away from the plat area. Outside incinerators are not permitted.

9. External Appearance - Landscaping.

The owner or other occupant of each building site upon which a dwelling has been constructed shall maintain the premises in a neat, clean and orderly condition. Upon completion of dwelling, that portion of the site not devoted to building, driveway, parking areas and walks shall be seeded and suitably planted. No planted hedge or fence shall be allowed to grow or be constructed to a height in excess of six (6) feet. All lots shall be kept reasonably free from noxious weeds and excessive growth of vegetation. The unreasonable impairment of view by excessive growth of vegetation shall not be permitted.

10. Trees.

The care and maintenance of trees on any lot or tract shall be the responsibility of the owner thereof. For the purpose of this paragraph, a contract purchaser of any lot or tract shall be considered the owner to the exclusion of the contract vendor.

11. Offensive Use of Property.

No Noxious, illegal or offensive use of land or building shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No goods, equipment, trucks, vehicles or other paraphernalia used or intended for use in connection with any business, service or trade shall be kept or stored in the open on any lot in the plat in quantities or in a manner which is unsightly or reasonably objectionable to the other owners of property in the vicinity and no sign, billboard or advertising device, save those used advertising the sale of property, shall be placed or maintained upon any lot or building within the plat.

12. Animals.

Cats and dogs or other household pets, not exceeding a total of four (4) in number (except for litters for a period of ninety (90) days shall be permitted but must be kept on the premises of the owner and may not be kept or maintained for any commercial purpose. No other animals, livestock, or poultry of any kind shall be permitted or maintained on any of said property at any time. Not more than one accessory building shall be permitted for use in housing such pets and any such building shall be located not less than thirty (30) feet from any place of human habitation other than the owners' home.

13. Enforcement.

- a. If any person shall violate or attempt to violate any of the covenants herein contained, it shall be lawful for any other person or persons owning or having an interest in any real property situated in Rocky Point Heights, Division No 1 & 2, including the Rocky Point Heights Community Club, to prosecute any proceedings at law or equity against the person or persons violating or attempting to violate any such covenants and either to prevent him or them from doing so or to recover damages arising from such violations or attempted violations.

- b.
  1. Notification of violations will be in the form of a certified letter to the owner of properties where violations exist.
  2. Require corrective action to be taken within thirty (30) days of receipt of notification.
  3. All costs incurred to enforce compliance will be the responsibility of the property owner in violation. This charge can become a lien against the property of said property owner until paid.

14. Relaxation or Departure.

The Board of Trustees of Rocky Point Heights Community Club, a non-profit corporation, shall have the jurisdiction, upon reasonable notice and request of any building site owner involved to permit relaxation or departure from the provisions set forth in Sections 3 (a), 3 (b), and 3 (e) pertaining to building size, height and building site area, Section 5 pertaining to set-back restrictions, and hedge or fence size restrictions as contained in Section 9, upon a showing that there shall be no injury or harm to ownership of other property owners within the plat, and that such relaxation or departure does not adversely affect the harmonious development of the entire plat. In case the Board of Trustees grant such relaxation or departure, they shall cause to be executed by the President and Secretary an instrument in writing duly acknowledged in the form required of deeds, which shall set forth the nature of the departure from the aforementioned restrictions, and the same shall be filed for record by the property owner concerned in the office of the Auditor of Island County, Washington. In the event any property owner feels aggrieved by the decisions of the Board of Trustees, he shall have the right to have submitted to arbitration, whereby the Board of Trustees shall appoint one arbitrator, the property owner involved protesting the determination of the Board of Trustees shall appoint another, and the two thus appointed shall appoint a third, and the three thus chosen shall proceed to arbitrate the matter, and the decision shall be binding on all parties. One-half the cost of arbitration shall be borne by the property owner protesting the Board of Trustees' decision, and the other half be borne by the person requesting departure or relaxation of the restriction .

15. Terms of Restrictions.

These covenants shall run with the land and shall be binding until January 1, 1988, at which time they shall automatically become extended for successive periods of ten (10) years each for a total additional period of twenty (20) years. After January 1, 1988, or at the end of the first additional ten (10) year period, these restrictions may be changed in whole or in part by the execution of an instrument in writing making such change, acknowledged in the manner required by law for deeds, executed by the owners of 75% of the lot owners in Rocky Point Heights, Divisions No 1 & 2 , upon which lots a dwelling shall have been erected and in existence at the time of such change.

16. Saving Clause.

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

17 Acceptance by Rocky Point Heights Community Club.

Rocky Point Heights Community Club, a Washington Corporation, agrees to accept the benefits and burdens described herein and the jurisdiction to act with respect to enforcement of these restrictive covenants and the relaxation or departure provisions set forth in Section 14.

IN WITNESS WHEREOF, HENRY EDWIN SHAW, PATRICIA ANN SHAW, R. W. CHRISTIANSEN and VESPER A. CHRISTIANSEN, and ROCKY POINT HEIGHTS COMMUNITY CLUB have caused this instrument to be executed by the proper officers, and the corporate seal of the ROCKY POINT HEIGHTS COMMUNITY CLUB hereinto, affixed, this 10 day of SEP, 1958