

DECLARATION OF RESTRICTIONS

This DECLARATION made this _____ day of June, 1955, by PELICAN POINT DEVELOPMENT, INC., (hereinafter referred to as "Declarant"),

WITNESSETH:

WHEREAS, Declarant is the owner of the real property hereinafter described in Article I hereof; and

WHEREAS, Declarant desires to subject said property to the following conditions, restrictions and charges for the benefit of said property and its present and subsequent owners; and

WHEREAS, the power to enforce certain of said conditions, restrictions, reservations and charges is to reside in PELICAN POINT COMMUNITY, INC., a nonprofit corporation (hereinafter referred to as the "Association"), whose members are Declarant and all future owners of record of building sites on said property:

Now, THEREFORE, PELICAN POINT DEVELOPMENT, INC., hereby declares that the property described in Article I hereof is and shall be held and conveyed upon and subject to the conditions, covenants, restrictions, reservations and charges hereinafter set forth:

ARTICLE I.

Property Subject to this Declaration.

The real property subject to this Declaration is situated in Grant County, Washington, and is more particularly described in Pelican Point Addition No. 1 as per Plat, which is incorporated herein by reference and made a part hereof.

ARTICLE II.

Definition of Terms.

Wherever used in this Declaration, the following terms shall have the following meanings:

2.01. "Dwelling House" and "outhouse" shall include both the main portion of such structures and all projections therefrom, such as bay, bow or oriel windows, exterior chimneys, covered porches or porticoes and the like, ~~including in the case of dwelling houses, garages incorporated in and forming~~ a part thereof; but shall not include the eaves of such structures, nor any uncovered porch, stoop or steps the balustrades or sides of which do not extend more than three (3) feet above the level of the first floor of such building.

2.02. "Lot" means one of the numbered parcels on the said plat of Pelican Point Addition No. 1.

2.03. "Building site" means either a lot as shown on said map, or a parcel consisting of a portion of any lot (other than a corner lot) or contiguous portions of any two or more contiguous lots (other than corner lots); provided, however, that such parcel, if composed of a portion of a lot or portions of two or more contiguous lots, shall have a principal frontage of not less than sixty (60) feet, and an area of at least nine thousand (9,000) square feet.

2.04. "Said property" means the property described in said Plat of Pelican Point Addition No. 1, unless the context and circumstances otherwise require.

2.05. "Setback" means the minimum distance between the dwelling house or other structure referred to and a given street or line.

2.06. "Street" means any street, highway or other thoroughfare shown on such map, whether designated thereon as street, avenue, boulevard, place, drive, road, terrace, way, lane, circle, or otherwise.

2.07. "Street frontage" means that portion of a lot or building site which borders on a street.

ARTICLE III.

Uses of Property.

3.01. No building site on said property shall be used for any purpose other than residence purposes.

3.02. Dogs and cats may be kept upon said real property, but not for commercial purposes or in unreasonable quantities. No farm animals or birds, game animals or birds, or other animals or birds may be kept or permitted, nor shall any stable, poultry house or yard, pigeon loft or house, or rabbit hutch or house be constructed or maintained.

3.03. Said property shall not, nor shall any part thereof, be used for the purpose of exploring for, taking therefrom, or producing therefrom, gas, oil, or other hydrocarbon substances.

3.04. No noxious or offensive trade or activity shall be carried on upon said property or any part thereof, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood.

ARTICLE IV.

Character and Size of Buildings.

4.01. No building may be erected or maintained on any building site on said property except one (1) single-family dwelling house not more than two (2) stories in height above the main floor level, designed for occupation by not more than one family, together with the outhouses herein-after permitted.

4.02. (a) Outhouses or garages (not more than one (1) story in height if appurtenant to a one-story dwelling house, and not more than two (2) stories in height if appurtenant to a two-story dwelling house) may be erected and maintained for the use of the owner or occupants of the building site upon which such outhouse or garage is located.

(b) Each outhouse and garage shall conform generally in architectural design and exterior materials and finish to the dwelling house to which it is appurtenant.

(c) A garage may be incorporated in and made a part of a dwelling house only with the written approval of the Association.

(d) No outhouse of any kind, or garage, shed or tent, or trailer used for living purposes, shall be erected or maintained on any

building site prior to the erection thereon of the principal structure permitted to be erected thereon by this Declaration.

4.03. No building, any part of which is designed for dwelling purposes, shall be in any manner occupied while in the course of original construction or until it complies with all requirements as to area and with all other conditions and restrictions applicable thereto. The construction of any building or structure shall be prosecuted with reasonable diligence continuously from the time of commencement until fully completed. Every property shall be constructed from new material, unless the use of other than new material therefor shall have received the written approval of the Association. No building constructed elsewhere shall be moved to or constructed on said property except with the written approval of the Association.

4.04. Each dwelling house erected on said property, or any part thereof, shall face or front the principal frontage of the building site upon which it is located, as such principal frontage is indicated on Pelican Point Addition No. 1 as per plat.

4.05. Each building erected or maintained on a building site shall have a full pitched roof at the ratio of not less than three inches (3") to twelve inches (12") run, except that an adequate built up type roof of less pitch may be used if the same receives prior approval by the Review Board.

4.06. No dwelling house more than one (1) story in height above the main floor level which shall have a smaller ground floor area (exclusive of porches, patios, basements, cellars, and any garage incorporated in and forming a part of the house) than one thousand (1,000) square feet shall be erected or maintained upon any building site, except that on Lots 14-78 as are shown on Plat of Pelican Point Addition No. 1 the minimum shall be 1,200 square feet; provided, however, that with the written consent of the Board of Trustees of the Association, the minimum ground floor area of any dwelling house may be reduced by not more than one hundred (100) square feet, if such reduction, in the opinion of the Board of Trustees of the Association, would not be detrimental to the appearance of such dwelling house.

4.07. The height of any building shall not exceed seventeen (17) feet above mean elevation of the lot, or, if the lot is lower than street level, fourteen (14) feet above street elevation.

4.08. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures or signs for the conduct of its business in connection with said property.

ARTICLE V.

Fences.

5.01. No fence or boundary wall located upon a building site shall have a height greater than six (6) feet above the finished graded surface of the ground upon which it is located.

5.02. No wall or fence whatsoever shall be erected or maintained within the setback area of any building site as to any street.

5.03. No hedge or hedgerow within the setback area of any dwelling house as to any street shall have a height greater than three (3) feet above the finished graded surface of the ground upon which such hedge or hedgerow is located.

ARTICLE VI.

Approval of Plans.

6.01. No building, fence, wall, pole or other structure shall be erected, constructed, altered or maintained upon any portion of said property, or of any property at any time within the jurisdiction of the Association, unless a complete set of plans and specifications therefor, including the exterior color scheme together with a block plan indicating the exact location on the building site, shall have been submitted to and approved in writing by the Association and a copy of such plans as finally approved deposited for permanent record with the Association. Such plans and specifications shall be submitted in writing for approval, over the signature of the owner of the building site or over the signature of his duly authorized agent, on a form satisfactory to the Association. The approval of said plans and specifications may be withheld by reason of the reasonable dissatisfaction of the Association with the grading plan, location of the structure on the building site, the color scheme, finish, architecture, height, appropriateness of the proposed structure, the materials used therein, or because of its reasonable dissatisfaction with any or all other matters or things which, in the reasonable judgment of the Association, would render the proposed structure inharmonious or out of keeping with the general plan of improvement of said property or with the other structures in the immediate vicinity.

6.02. The Association may, in its by-laws or otherwise, provide for the appointment of three (3) persons to constitute a Review Board, whose duties shall be to assist the Association in all matters referred to in this Article VI and to perform such other functions as the Association may assign to such Review Board from time to time.

6.03. The approval of the Association for use on any building site of any plans or specifications submitted for approval, as herein specified, shall not be deemed to be a waiver by the Association of its right to object to any of the features or elements embodied in such plans or specifications if and when the same features or elements are embodied in any subsequent plans and specifications submitted for approval as herein provided, for use on other building sites.

6.04. If after such plans and specifications have been approved, the building, fence, wall or other structure shall be altered, erected, or maintained upon the building site otherwise than as approved by the Association, such alteration, erection and maintenance shall make invalid the approval of the Association.

6.05. Any agent or officer of the Association may from time to time at any reasonable hour or hours enter and inspect any property subject to the jurisdiction of the Association as to its compliance with the provisions hereof; and the Association and/or any agent or officer thereof shall not thereby be deemed guilty of any manner of trespass for such entry or inspection. The Association may issue a certificate of completion and compliance as to any property so inspected and make and collect a fixed and uniform charge therefor.

6.06. The records of the Secretary of the Association shall be prima facie evidence as to all matters shown by such records; and the issuance of a certificate of completion and compliance by the Association showing that the plans and specifications for the improvements or other matters herein provided for or authorized have been approved, and that said improvements have been made in accordance therewith, or of a certificate as to any matters relating to the Association by the Secretary thereof, shall be prima facie evidence and shall fully justify and protect any title company or persons certifying, guaranteeing or insuring said title, or any lien thereon and/or any interest therein, and shall also fully protect any purchaser or encumbrancer in good faith and for value in acting thereon, as to all matters within the jurisdiction of the Association. In any event after the expiration of one (1) year from the date of

the issuance of a building permit by municipal or other governmental authority for any structure, work, improvement or alteration, said structure, work, improvement or alteration shall, in favor of purchasers and encumbrancers in good faith and for value, be deemed to be in compliance with all the provisions hereof, unless actual notice executed by the Association of such noncompletion and/or noncompliance shall appear of record in the office of the County Recorder of Grant County, Washington, or legal proceedings shall have been instituted to enforce completion and for compliance.

ARTICLE VII.

Setback and Location of Buildings.

7.01. Dwelling houses erected on said property shall have such setbacks from streets as are more particularly specified in Plat of Pelican Point Addition No. 1.

7.02. Uncovered porches, stoops or pergolas constituting a part of a dwelling house or outhouse may encroach not more than seven (7) feet into the setback area for dwelling houses as to any street if, but only if, such setback be not less than fifteen (15) feet.

7.03. Dwelling houses shall have a setback of not less than ten (10) feet from the rear lines of the building sites upon which they are respectively located.

7.04. Each dwelling house shall have a setback of not less than five (5) feet from each side line of the building site on which it is located, except that in the case of corner lots, the setbacks from the side lines along the streets shall be those indicated in Plat of Pelican Point Addition No. 1 and the map therein referred to. No portion of any dwelling house shall encroach on any such side line setback area, except that: (a) eaves, porte-cocheres, open pergolas, uncovered porches, stoops or steps the balustrades or sides of which do not extend more than three (3) feet above the level of the first floor of the dwelling house, may encroach on any such side line setback area; and (b) exterior chimneys may encroach for not more than twenty-six inches (26") into any such area.

ARTICLE VIII.

Exception, Community Clubhouse and Other Facilities for Community Use.

The restrictions herein shall not apply to any community clubhouse or other facilities on lots or building sites devoted to use by the members of the Association.

ARTICLE IX.

Signs.

No sign or other advertising device of any character shall be erected or maintained upon any part of said property, except that: (a) on any one lot or building site one sign, not larger than eighteen (18) by twenty-four (24) inches, advertising the property for sale or for rent, may be erected and maintained behind the setback area of such lot or building site as to any street; and (b) Declarant may erect and maintain on said property such signs and other advertising devices as it may deem necessary or proper in connection with the conduct of its operation for the development, improvement, subdivision and sale of said property.

ARTICLE X.

Easements, Rights of Way, Parks, Grades and Planting.

10.01. Said real property and the building sites included therein are subject to such easements and rights of way for erecting, constructing, maintaining and operating sewers, and water systems, and poles, wires and conduits for lighting, heating, power, telephone and any other method of conducting and performing any public or quasi-public utility service or function beneath the surface of the ground. Such easements and rights of way are more particularly set forth on the Plat of Pelican Point Addition No. 1.

10.02. Lot 149, as per Plat of Pelican Point Addition No. 1 shall be and is hereby restricted for use only as a community park and/or beach. The planting, care and maintenance of said lot shall be the duty of the Association, until such obligation shall be assumed by a municipal corporation of the State of Washington.

10.03. Declarant hereby expressly reserves the right to make any and all such cuts and fills on said property and on the building sites included therein, and to do such grading, as in its judgment may be necessary to grade streets and building sites designated or delineated upon any map of said property or any part thereof.

10.04. The Association shall have the right at all times to enter on or upon any lot or parcel of said property that is vacant and unplanted or untenanted by the owner thereof, after reasonable notice to the owner thereof, and to plant or replant, trim, cut back, remove, replace and/or maintain hedges, trees, shrubs or flowers on the area within twenty-five (25) feet of any front or rear side line thereof, and/or to keep cultivated and/or remove plants on said portions of any parcel, lot or building site of said property, and the Association, or any officer or agent thereof, shall not thereby be deemed guilty of any manner of trespass. When the owner of a parcel or lot so planted or maintained by the Association shall give written notice to the Association of his intention to improve the same within thirty (30) days, the Association may within said thirty (30) days, and thereafter until work on said improvements is commenced, transplant, remove, or dispose of any or all of the plantings, which may have been made by it.

ARTICLE XI.

All said property (except streets, parks or community beach properties now or hereafter established, open spaces and areas maintained as walkways, and land dedicated, taken or sold for public improvements or use) shall be subject to an annual charge or assessment per front foot as specified in Article VIII of the By Laws of the Association.

ARTICLE XII.

Construction of Conditions and Restrictions.

12.01. If, for any reason, it is uncertain which are front, side, or rear lines of any building site, or the restricted areas provided therefor, the Association shall in all cases (except where such lines and restricted areas have been determined herein or in the contracts and deeds of Declarant) determine what are to be deemed such lines and restricted areas, and the decision of the Association in respect thereto shall be final. Building sites situated on the real property described on Plat of Pelican Point Addition No. 1 shall be deemed to have their principal frontage on the streets respectively designated in said plat as the streets on which such sites have their principal frontage.

12.02. Declarant may, in any case, prior to sale, determine what are to be deemed such lines and restricted areas, and particularly describe them in the contracts and deeds covering the building sites as to which such determination is made by Declarant.

12.03. If the setback of any building or the width or principal frontage of any building site be difficult of determination by reason of its irregular shape or otherwise, or if the extent or location of the side line setbacks required for any building by Article VII of this Declaration be uncertain, the Association shall in all cases (except where the matter has been determined in the contracts and deeds of Declarant) determine what is to be deemed the principal frontage or the setback of such building or the width of such building site, or the extent and location of such side line setbacks, as the case may be, and the decision of the Association in respect thereof shall be final.

12.04. The setback of any building, or the width of any building site, or the location and extent of side line setbacks may, in any such case, be determined by the Declarant prior to sale and be particularly described in the contracts and deeds covering the lots or building sites as to which such determination is made by Declarant.

12.05. If two or more setback provisions of this Declaration as to the same street line and affecting the erection and maintenance of the same class of building are applicable to the same lot or building site, then the setback provision requiring the greater setback shall control.

12.06. Enforcement of the provisions of this Declaration shall be injunction or specific performance, wherever possible, damages for breach being desirable only if all other remedies fail.

ARTICLE XIII.

Scope and Duration of Conditions, Restrictions and Charges.

All of the conditions, restrictions and charges set forth in this Declaration are imposed upon said property for the direct benefit thereof and of the owners thereof as a part of a general plan of development, improvement, building, occupation and maintenance hereby adopted therefor by Declarant; and they shall run with the land and continue and be in full force and effect, except as hereinafter provided and subject to the provisions of Article XIV hereof, until January 1, 2001 (provided, however, that the prohibition of 3.03 hereof shall be perpetual), and shall, as then in force, be continued automatically and without further notice from that time for a period of twenty (20) years, and thereafter for successive periods of twenty (20) years each without limitation unless, within six (6) months prior to January 1, 2001, or within the six (6) months prior to the expiration of any successive twenty-year period thereafter, a written agreement executed by the then record owners of more than one-half in area of said property then subject to this Declaration, exclusive of streets, parks and open spaces, be placed on record in the office of the County Recorder of Grant County, by the terms of which agreement any of said conditions, restrictions, or charges, excepting the prohibitions of 3.03 hereof, are changed. In the event that any such written agreement of change or modification be duly executed and recorded, the original conditions, restrictions and changes as therein modified shall continue in force for successive periods of twenty years each unless and until further changed, modified or extinguished in the manner herein provided.

Said annual charges or assessments may nevertheless be terminated on January 1, 2001, or on the first day of any year thereafter, with the written

consent of the owners of record of at least two-thirds in area of said property then subject to said charges or assessments.

ARTICLE XIV.

Cancellation and Annulment of Conditions, Restrictions and Charges.

At any time after the first day of January, 2001, the owners of record of lots or building sites in the property then subject to this Declaration having an aggregate area equivalent to not less than sixty-five per cent (65%) of the total area of all such property, and who shall include in their number the owners of record of not less than seventy-five per cent (75%) in area of the building sites therein on which houses or other principal structures are then located, may cancel and annul, with respect to all such property, all or any of the conditions, restrictions and charges contained or provided for herein, excepting the prohibitions of 3.03 herein, by an instrument in writing, signed and acknowledged by said owners and recorded in the office of the Auditor of said County of Grant, Washington.

ARTICLE XV.

Violation of Conditions and Restrictions.

15.01. Violation of any of the conditions or restrictions herein contained shall give to Declarant and/or the Association the right to enter upon the property upon or as to which such violation exists, and to summarily abate and remove, at the expense of the owner thereof, any erection, object, or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and Declarant and/or the Association shall not thereby be deemed guilty of any manner of trespass for such entry, abatement, or removal.

15.02. The result of every act or omission whereby any condition or restriction herein contained is violated, in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by Declarant and/or by the Association. In any legal or equitable proceeding by Declarant or the Association, or both, for the enforcement, or to restrain a violation, of this Declaration or any provisions hereof, the losing party or parties shall pay the attorney's or attorneys' fees of the winning party or parties in such amount as may be fixed by the court in such proceeding. Such remedies shall be deemed cumulative and not exclusive. However, nothing contained in this Declaration or in any form of deed which may be used by Declarant or its successors or assigns in selling said real property, or any part thereof, shall be deemed to vest or reserve in Declarant or the Association any right of reversion for breach or violation of any one or more of the provisions hereof, and any such reversionary right is hereby expressly waived by Declarant.

ARTICLE XVI.

Right to Enforce.

The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by Declarant, the Association, or the owner or owners of any portion of said property, or their and each of their legal representatives, heirs, successors, and assigns; and failure by Declarant, or by the Association, or by any other property owner, or their legal representatives, heirs, successors or assigns, to enforce any of such conditions, restrictions or charges herein contained shall in no event be deemed a waiver of the right to do so hereafter.

ARTICLE XVII.

Assignment of Powers.

Any or all of the rights and powers and reservations of Declarant herein contained may be assigned to the Association or to any other corporation or association which is now organized or which may hereafter be organized and which will assume the duties of Declarant hereunder pertaining to the particular rights and powers and reservations assigned; and upon any such corporation or association evidencing its consent in writing to accept such assignment and assume such duties, it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein.

IN WITNESS WHEREOF, PELICAN POINT DEVELOPMENT, INC. a corporation, has caused its corporate name to be hereunto subscribed by its officers thereunto duly authorized and its corporate seal to be hereunto affixed, this day of June, 1955.

PELICAN POINT DEVELOPMENT, INC.,
a corporation,

BY

W. L. ...
President.

ATTEST

J. ...
Secretary.

Filed for Record

JUL 6 1955

Request of

C. A. Hawley
C. A. HAWLEY, County Auditor