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Island County Auditor File Number: 4152403  
Recorded: 10/27/2005, 3:18pm

## **Amended Covenants Dated 9-22-2005 for the Plats of Lagoon Point No. 2, 3 and 4**

Approved October 24, 2005 by the owners of record of a majority of the lots  
To become effective on the date of recording

**Grantor:** Lagoon Point Improvement Club

**Grantee:** The Public

**Abbreviated Legal Description:** Lots 1 through 59, Plat of Lagoon Point No. 2; Lots 1 through 36, Plat of Lagoon Point No. 3; Lots 1 through 78, Plat of Lagoon Point No. 4

### **DESCRIPTION:**

Parcel Nos. S7310-02-00001-0 through S7310-02-00059-0 of LAGOON POINT 2 as recorded in VOL. 11 of Plats, Page 11 under AFN 226208

Parcel Nos.: S7310-03-00001-0 through S7310-03-00036-0 of LAGOON POINT 3 as recorded in VOL. 11 of Plats, page 32 under AFN 234604

Parcel Nos.: S7310-04-00001-0 through S7310-04-00077-0 (Lots 77 & 78 comb 7/90) of LAGOON POINT 4 as recorded in VOL. 12 of Plats, page 23 under AFN 286184.

This document amends and replaces:

The Covenants for the Plat of Lagoon Point No. 2 imposed by instruments recorded November 19, 1969 under Auditor's File No. (AFN) 226209, amended by instruments recorded November 5, 1999 under AFN 99025787, July 7, 2000 under AFN 20012053 and July 13, 2005, under AFN 4140199;

The Covenants for the Plat of Lagoon Point No.3 imposed by instruments recorded September 24, 1970 under AFN 234697, amended by instruments recorded July 7, 2000 under AFN 20012052 and July 13, 2005, under AFN 4140200;

And the Covenants for the Plat of Lagoon Point No.4 imposed by instruments recorded July 14, 1975 under AFN 286183 and amended by instruments recorded July 13, 2005, under AFN 4140201;

Consolidating the three separate covenants into one covenant governing the previously described plats of Lagoon Point, Divisions 2, 3 and 4.

### **1. Applicability**

(a) The area covered by these covenants is the entire area described above, hereinafter referred to as the "plats". These covenants and restrictions are in addition to and subject to existing restrictions affecting plat of Lagoon Point recorded July 10, 1950, under Auditor's File No. 78936.

(b) The covenants, conditions, restrictions, liens, easements, enjoyment rights, and other provisions contained herein shall run with the land, and shall be binding upon all persons purchasing, leasing, subleasing, or otherwise occupying any portion of Lagoon Point division 2, 3 or 4, their heirs, executors, administrators, successors, grantees, and assigns. All instruments, granting or conveying any interest in any lot shall be subject to this Declaration.

## **2. Purpose**

The purpose of these covenants is to promote and maintain the appearance of the community and enhance and retain property values through reasonable restrictions, with freedom for innovation and the variety of architectural style.

## **3. Architectural Committee**

(a) An Architectural Committee, herein referred to as "The Committee", is now established to implement the Covenants herein contained. The Architectural Committee shall receive, review, and act on plans, specifications and plot plans submitted by property owners in Divisions 2, 3, and 4, for construction or alteration to their properties as described in Section 4 of these covenants, "Building Requirements and Restrictions". The Committee shall consist of three (3) members who are Division 2, 3 or 4 lot owners whose fees and assessments are not delinquent.

(b) Said Committee is presently composed of the following or their successors: Bert Pack, 3696 Steelhead Drive, Greenbank, Washington, Bob VonDrachek, 3747 Oceanside Drive, Greenbank, Washington and Bill Charbonneau, 748 Walnut Street, Edmonds, Washington 98020. A majority of the said Committee may designate representatives to act for it. The Committee may designate an alternate to act for a member during a temporary absence, provided all of the Committee members concur with the selection of said alternate.

(c) Upon approval of these covenants, the term of office for Committee members shall be three years, coincident with the terms of LPIC board members, one member being elected each year at the same time and in the same manner as election of LPIC board members. There shall be three Positions on the Committee. The Position 1 term will expire December 31, 2005 and every three years thereafter. The Position 2 term will expire December 31, 2006 and every three years thereafter. The Position 3 term will expire December 31, 2007 and every three years thereafter. Any eligible Division 2, 3 or 4 lot owner willing to run for the open position may be nominated for election to that position on the Committee. Voting for 2-3-4 Architectural Committee Members shall be by Division 2-3-4 Lot owners only, voting by mail and by lot, one vote per Division 2-3-4 Lot owned. The candidate with the most votes shall be elected. Until succeeded as previously described, in order of seniority, Position 1 shall be held by Bert Pack, Position 2 shall be held by Bob VonDrachek and Position 3 shall be held by Bill Charbonneau.

(d) In the event of a vacancy on the Committee for any reason, the remaining members may appoint a person to fill the vacant position until the next scheduled election. Prior to the next scheduled election, the community shall be notified in an appropriate manner of the vacancy. Any eligible Division 2, 3 or 4 lot owner willing to run for the vacant position may be nominated for election to that position on the Committee. The person elected shall serve for the remainder of the term for that position.

(e) At any time, the owners of record of a majority of the lots shall have the power through a duly recorded, written instrument to change the membership of the Committee, or to withdraw, or restore to it, any of its powers and duties.

(f) Neither the Committee nor any member thereof shall be liable to any owner, occupant, builder or developer for any damages, 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, in accordance with the actual knowledge possessed by the member, has not acted in bad faith. The Property owners are responsible for the satisfaction of building codes, governmental requirements and conformance with these covenants.

(g) Consent by the Committee to any matter proposed to it and within its jurisdiction under these covenants shall not be deemed to constitute a precedence or waiver impairing its rights to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

#### **4. Building Requirements & Restrictions**

(a) No lot shall be used except for residential purposes. No building other than one single-family residence with a garage or other permitted accessory building shall be erected or placed on any lot.

(b) No building shall be erected, placed or altered on any lot until construction plans with specifications and a plan showing location of structures have been approved by the Committee as to quality, workmanship, materials, and harmony of external design with existing structures. The connecting of any and all utilities, including underground power and telephone, shall be in a neat and orderly manner and installed according to all pertinent codes. Easements for installation and maintenance of utilities and for drainage facilities, are reserved over a 5' wide strip along each side lot line, or if shown on the Plat map, then as shown thereon.

(c) As provided for in the Restrictions of said Plats of Lagoon Point, Divisions 2, 3 and 4: "No permanent structure or building shall be constructed on any lot of this plat closer than 30.00 feet to the margin of any street or nearer than 15 feet to any side street line, if any." No building or portion thereof, including decks and porches, shall be located nearer than 5 feet to an interior lot line, except eaves may extend 12 inches into said setbacks. The same clearances shall be required for a garage or other permitted accessory building.

(d) The dwelling (not including chimneys or vents), shall be restricted to 19 feet in height, measured from the average contour of the topography of the lot, or the center of the adjacent roadway, or the Base Flood Elevation (BFE), at the discretion of the lot owner. All plans submitted to the Architectural Committee for approval shall show the BFE.

(e) All structures placed on any lot shall conform to the International Residential Building Code and all pertinent building codes as adopted by Island County.

(f) Construction of any building on any lot shall be completed within twelve months from the beginning of construction as to present a finished exterior appearance when viewed from any angle. In the event of undue hardship due to weather conditions or otherwise, this provision may be extended for a reasonable length of time following timely appeal by the owner and upon written approval from the Architectural Committee.

(g) Prior to the construction of the house: No building, tent, travel trailer, RV or motor home shall be maintained, erected or stored on any lot. A storage building, trailer or RV may be used for the shelter or housing of tools and equipment during the actual construction of said dwelling house. A trailer, RV or boat may be used by the property owner as temporary overnight accommodations during the actual construction of said dwelling.

(h) The restrictive covenants herein, which place certain restrictions concerning the placement of structures on the land, may be modified by the Committee when circumstances that are not common to the other lots in the plats would cause an undue hardship. The Committee shall be the sole Judge of the necessity for waiving the restrictive covenants. All decisions made by the Committee concerning variance to the Covenants shall be by majority decision of the Committee.

(i) The Committee's approval or disapproval as required in these covenants shall be in writing. In the event the Committee fails to approve or disapprove within thirty (30) days after the plans and specifications have been submitted to the Committee, approval shall be deemed to have been granted. If no action or suit to enjoin the construction, regarding failure to comply with the approved plans and specifications, has been commenced prior to the completion thereof, the related covenants shall be deemed to have been fully complied with.

#### **5. Activities**

No noxious or offensive activity shall be conducted on any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

## **6. Signs**

No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than 2 square feet and one sign of not more than 5 square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period. All signs shall be contained within the boundaries of the lot.

## **7. 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 any commercial purpose.

## **8. Boats**

Living aboard boats, on land or on the waters of the canals, will not be allowed. The disposal or discharge of trash, garbage, treated or non-treated sewage, oil, oily waste or any other solid or liquid pollutants into the canals or onto the surface of land is prohibited. The Laws and Regulations of the United States, including the Federal Refuse Act of 1899, the Federal Water Pollution Control Act and the U.S. Coast Guard Regulations for Marinas and Small Boat Harbors shall be adhered to.

## **9. Rental Use.**

(a) No vacant lot shall be rented, leased or used as storage for multiple items such as boats, boat trailers, cars, trucks, campers or commercial vehicles.

(b) Residences shall be used for single-family residential purposes only. However, nothing in these covenants shall prevent an owner from leasing or renting his/her residence, providing that no residence shall be rented or leased or sub-rented or subleased for less than a sixty (60) consecutive day period. i.e., no tenancies less than sixty (60) days.

(c) Any such arrangement shall be in writing and any tenant shall abide by and be subject to all provisions of these restrictive Covenants; any lease or rental agreement must specify that failure to abide by such provisions shall be a default under the lease or rental agreement. A copy of the rental/lease agreement for house and /or dock must be provided to the Architectural Committee upon request.

(d) It shall be the duty of lot owners renting moorage space to ensure that the moorage renter maintains current liability insurance for any boats such renter moors or operates on any of the waterways of the Plat of Lagoon Point, including all private canals and community waterways.

## **10. Vacant Lots**

No vacant lot shall be used as storage for multiple items such as boats, boat trailers, cars, trucks, campers or commercial vehicles. No lot shall be used or maintained as a dumping ground for rubbish. A travel trailer, RV or motor home may be used by the property owner as temporary overnight accommodations for recreational purposes, for periods not to exceed 14 days, after which said accommodation shall be removed. A boat trailer for transportation of a boat moored at a lot may be stored on that lot.

## **11. Prohibited Uses**

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon any or in any lot; nor shall oil wells, commercial tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for the use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

## **12. Sanitary Requirements**

(a) No individual sewage disposal system shall be permitted on any lot unless the system is designed, located and constructed in accordance with the requirements, standards and recommendations of Island County. No outhouses shall be permitted. No portable sanitary facilities will be permitted except those temporarily in place during construction of the residence.

(b) Garbage shall be kept in sanitary containers. All sanitary containers shall either be kept indoors or shall be screened in such a manner that they cannot be seen from the street, the beach or water, or from other lots.

### **13. Beach Access**

Certain beach access rights are hereby reserved for all lot owners in said Plats of Lagoon Point divisions 2, 3, and 4. Said beach access rights shall be for the purpose of surf casting below the 6-foot high tide line westerly of Lots 1 through 22 of the plat of Lagoon Point, Division 2, and such access shall be limited to walking access over a 10-foot easement area between Lots 10 and 11 as shown on the plat of Lagoon Point, Division 2.

### **14. Financial Obligations**

#### **(a) Lagoon Point Improvement Club**

Each lot owner is a member of Lagoon Point Improvement Club, Inc. (LPIC) and shall be governed by the Articles of incorporation, Bylaws and Rules and Regulations of LPIC, including any amendments or revisions thereof, which may be effected from time to time. Each lot owner shall pay when due, all fees, assessments, and charges, which may from time to time become payable to LPIC as provided for in LPIC Articles, Bylaws and Rules and Regulations.

#### **(b) Division 2-3-4 Special Waterway Fund**

The owner of each lot in said plats, hereinafter referred to as the "contributors", will also pay \$18 (eighteen dollars) per lot, per year into a special fund known as the Division 2-3-4 Special Waterway Fund. Changes to the payment into said fund shall be established by a majority vote of the contributors in the manner specified in 14(d). The amount paid by the contributors shall be collected by LPIC and held by LPIC for the contributors' use. Said Fund shall be separately administered and used for the maintenance of waterways developed as a part of said plats and related thereto, and may also be used for the waterway on Tract C adjoining said plats. LPIC shall faithfully and regularly make an accounting of said Fund to the contributors by delivering reports to the Committee. All expenditures from the Division 2-3-4 Special Waterway Fund (except taxes and bank charges) shall be approved by a majority vote of the contributors, voting by mail-in ballot initiated by Division 2, 3 and 4 lot owners, as specified in 14(d) below. Agreements may be made between the Committee and LPIC related to said Waterway Fund. In the event LPIC shall fail to adequately maintain said waterways or to account as provided, or ceases to exist, then the administration of said Fund shall be assumed by said Committee or as directed by said Committee.

#### **(c) Division 2-3-4 Operating Fund**

The owner of each lot in said plats will also pay into a Division 2-3-4 Operating Fund, to be collected by LPIC. The amount to be paid into this fund shall be established by a majority vote of the contributors, in the manner specified in 14(d). The Operating Fund shall be separately administered and used exclusively for administrative expenses required for the continued operation of the Architectural Committee, maintenance of the beach access easement specified in Section 13, the covenant review and amendment process and reimbursements to LPIC for administrative services provided exclusively for Division 2, 3, and 4 lot owners. Administrative expenses to be covered by the Operating Fund include, but are not limited to the costs of special mailings and ballots, rental of a place for lot owner meetings, office supplies, printing and duplicating expenses. In addition, said fund shall also cover secretarial, bookkeeping and legal services provided to Division 2, 3 and 4 by LPIC. The Initial Assessment of lot owners for the Operating Fund will be established by approval of an Operating Fund Budget, by a majority vote of the contributors, voting by mail-in ballot, as specified in 14(d). The Operating Fund Budget will outline the estimated annual administrative expenses by category and specify the initial assessment due date. Carry-over limits and procedures for distribution of excess carry-over of unexpended funds shall be specified in the budget. Second and subsequent year assessments may be adjusted based on prior year expenses, and subject to vote of approval of an annual Operating Fund budget by lot owners as described above. Assessments will be collected by LPIC, which shall keep a separate accounting of assessments paid and of administrative expenses paid from the Operating Fund. LPIC shall prepare an annual report of expenses paid from the operating fund, and provide a copy of the report to each lot owner in Division 2, 3, & 4. Authorization for payment of expenses from the fund shall be the responsibility of the Architectural Committee, which shall timely forward to LPIC information on expenses authorized for payment, by budget category.

(d) Voting

Voting specified in Section 14 shall be by mail-in ballot, one vote per lot owned. Approval shall require a majority affirmative vote of the contributors voting, with a minimum of 87 votes cast. Voting by ballot shall be initiated by the Committee or by written request to the Committee of not less than eight contributors. Ballots shall be mailed to the recorded address of each Division 2, 3 & 4 Lot Owner not less than 21 days nor more than 35 days from the specified due date.

**15. Enforcement**

(a) Enforcement of these covenants and restrictions shall be by proceedings at law or in equity, instituted by the Committee, against any person or persons violating or attempting to violate any covenants either to restrain violation or to recover damages.

(b) In the event of a suit or action to enforce any provision of this Declaration or to collect any money due hereunder or to foreclose a lien, the unsuccessful party in such suit or action shall pay to the prevailing party all costs including all actual attorneys' fees and costs, filing fee, court costs and any other expenses that the prevailing party has incurred in connection with the suit or action, in such amounts as the court may deem to be reasonable therein, and also including all costs, including all actual attorneys' fee and costs, filing fees, court costs and any other expenses incurred in connection with any appeal from the decision of a trial court or any intermediate appellate court. The venue of any action described above shall be Island County, Washington.

(c) In all instances wherein any individual takes exception with any action, or failure to take action, by the Architectural Committee or their duly authorized agent, the first level of appeal shall be to the Architectural committee, in writing.

**16. Non-Waiver**

Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other covenants, which shall remain in full force and effect.

**17. Amendments**

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until they are amended in writing, with signed approvals of the amendments by the owners of a majority (87 or more lots) of the 173 lots within the Plats of Lagoon Point No. 2, No. 3 and No. 4. Amendments to these covenants shall become effective when a written document setting forth the amendments and either of the following have been recorded with the Auditor of Island County, Washington:

- (a) The signed approvals by the owners of a majority of the lots adopting said amendments; or
- (b) A statement signed by the President and the Secretary of LPIC attesting that:
  - (1) The owners of a majority of the lots have signed approvals adopting said amendments, and
  - (2) Said approvals will be maintained in the LPIC archives.

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The undersigned officers and members of the Lagoon Point Improvement Club, Inc. (LPIC) hereby acknowledge that, to the best of our knowledge, these amendments to the Covenants of Lagoon Point Divisions 2, 3 & 4 were properly adopted by the owners of majority of the lots as shown on the attached list. The original ballots bearing the lot owners' signatures are on file with LPIC. The undersigned officers of LPIC take no position regarding the contents of the referenced covenants and amendments.

\_\_\_\_\_(signed)\_\_\_\_\_  
Linda Armstrong, LPIC President

Date 25 Oct, 2005

\_\_\_\_\_(signed)\_\_\_\_\_  
Aaron Lowin, LPIC Secretary

Date 26 Oct, 2005