

**FIRST AMENDMENT TO  
AMENDMENT AND RESTATEMENT OF COVENANTS  
OF  
WOODS BAY HOMESITES**

RECITALS:

1. On February 26, 1991, a majority of members of Woods Bay Homesites, a subdivision located in Lake County, Montana, recorded the "Amendment and Restatement of Covenants of Woods Bay Homesites", at Microfile No. 329009, Lake County records;

2. These covenants provide, in part, for the creation of a board of directors for the Homeowners Association which, in turn, would be responsible for review, revision and enforcement of covenants;

3. The board of directors has recommended and approved certain revisions and clarifications to the covenants; which revisions were voted on by members and affirmatively approved by more than 66% of the members entitled to vote.

**NOW THEREFORE** it is hereby stated, declared and imposed that the following amendments shall be effective, as of the date of the recording, upon the "Amendment and Restatement of Covenants of Woods Bay Homesites"; which affects property described as "Woods Bay Homesites" according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Lake County, Montana.

Covenant No. 1: No lot may be subdivided in any manner, and no lot shall be broken up by a sale of a portion thereof. This paragraph shall not prohibit joint or common ownership of any lot.

This covenant shall not be interpreted to mean that lots may not be consolidated. Provided an owner is current in all dues and assessments to the Association, an owner may consolidate any two or more lots which have common boundaries. Subsequent to consolidation, an owner will be assessed one assessment for each lot (or consolidated lot) owned. Once consolidated, no lot may be again subdivided.

Covenant No. 2: No lot may be used for any purpose other than residential, excepting Lots 17 and 18 of Block 5, Lot 2 of Block 9 and Lots 22 and 23 of Block 7; provided, however, that there shall not be built or maintained on any of the lots herein excepted from these restrictive covenants, any bar, tavern, or lounge where beer or intoxicating liquors are sold, public garage, service station, dry cleaning establishment, hatchery, kennels, or any other offensive, odor-yielding establishment.

Any residential dwelling may maintain a "cottage business", which is entirely

internal to a residence and which does not produce excessive parking or traffic and is otherwise invisible to the neighborhood. For such businesses, there shall be no signs, billboards or other form of advertising, except informational signs, road signs or other signs erected by the association.

No lot within Woods Bay Homesites may be used for a multiple family dwelling.

No lot shall be used for any purpose which produces excessive noise. Excessive noise is any noise which regularly or repeatedly is offensive to the homes immediately surrounding the noise source.

“Cottage business” shall have the following additional restrictions. Excluding the homeowner and homeowner’s immediate family, there shall be no more than one part-time or full-time employee. There shall be no outside storage of equipment, supplies or inventory. All business shall be conducted exclusively in the interior of the residence, garage or outbuilding.

Covenant No. 3: All construction or improvements on a lot, including accessory buildings or outbuildings shall be located at least fifteen feet from the property line that borders a roadway, and at least five feet from any adjoining property line. All setback measurements shall be measured from the closest part of the structure (eave, deck, carport, etc.) to the legal property boundary. Fences may be located on the property boundary.

Covenant No. 4: No two story buildings shall be erected on any lot other than:

- Block 1: All lots
- Block 2: Lots 3, 11
- Block 3: Lots 1, 2, 3, 4, 12, 13, 14, 15
- Block 4: Lots 1, 2, 3, 4, 5
- Block 5: Lots 2, 3, 4, 5, 6, 7, 8, 16, 17, 18, 19, 20, 21
- Block 6: Lots 1, 2, 3, 4
- Block 7: Lots 8, 9, 10, 11, 12
- Block 8: Lots 19, 20, 21

A two-story structure is defined as any habitable space above the ground floor, including, but not limited to a loft, den, or internal balcony. The main floor is not considered a loft. No structure shall exceed thirty-five feet in height, when measured from pre-existing natural ground contour, front elevation.

- (a) The intention of this covenant is to prevent the obstruction of another homeowners’ view.
- (b) Limitations as to the building height of a single story structure with attic will be dealt with on a case by case basis by the Architectural Review Committee with paragraph (a) being the primary consideration.

Covenant No. 5: No structure may be erected, placed or allowed to remain upon any individual lot except on single family dwelling house of not less than 900 sq. ft. finished ground floor living area. Ground floor living area is defined as that which is measured from the exterior of the ground floor. This does not include a second floor, basement, balcony, mezzanine, loft or any other self-contained area. Ground floor means a surface area, on a single plane, measured between exterior walls.

There may also be no more than two additional outbuildings, including, but not limited to a garage, shop, storage building or boat house. All structures shall comply with the following requirements:

a) The architectural design of all structures erected or placed on the property shall be similar to and compatible with that of other structures on the property.

b) The exterior of all structures erected or placed upon the property shall be completed in the same or similar materials, in grade, quality, appearance and color including paint, as all other structures on the property.

c) Each dwelling shall be fully completed externally, including siding and/or masonry, paint and roof, ground rough graded, soffits, fascia, trim, windows, steps, sidewalk installed and building debris removed within one year from the time construction starts on such building, in addition to the installation and completion of all plumbing fixtures and utilities.

d) No temporary building or partly finished building or structure, including basements, tents, mobile homes, camper trailers or truck-mounted campers shall be erected or placed upon the property or used as a dwelling house on the property. This prohibition is not intended to prevent the placement or storage on the property of recreational or camping vehicles or apparatus which are for use off the premises.

e) No preconstructed or old building, whether intended to be used in whole or in part as the main residential structure or as a garage or other outbuilding shall be moved upon any lot. A lot owner may apply for written approval and the architectural review committee may grant written approval for a variance for a preconstructed or older building to be used in whole or in part.

f) No galvanized metal siding or roofs shall be used on the exterior of permissible structures. Factory-painted metal roofing or siding is permissible, provided the color is nonreflective and provided the color and paint are maintained.

g) A residential, single-family dwelling is defined as a single building, containing one dwelling unit, containing facilities for cooking, living and sleeping and designed for permanent occupancy by one family.

Covenant No. 6: No basement without a superstructure, garage, barn or other out-buildings shall be used as a residence. The exterior of all buildings must be completed within one year from start of construction.

Covenant No. 7 - No trailer, camping trailer or recreational vehicle shall be allowed on any unimproved lot for more than one year from the commencement of construction of a permanent residence. After completion of construction, a property owner may store a trailer not exceeding 35 feet in length or a self-propelled recreational vehicle. Such recreational trailers and recreational vehicles may not be resided in, where such trailers or vehicles are being stored on a lot with a completed residence. No trailers or recreational vehicles may be used as a residence on any lot where there is not a permanently constructed, completed residence, except during construction for one year.

Covenant No. 8 - No house trailer, mobile home, doublewide or any other structure designed to be hauled or moved on wheels, shall be used for residential purposes. Existing doublewides on permanent foundations which are in place on the date of these amended covenants may continue to be utilized, but shall not be replaced. Existing trailers may continue to remain on the lots on which they have been placed if such trailers are in existence and in place on the date of these amended covenants.

Covenant No. 9 - No part of this property shall be used or maintained as a dumping or storage ground for rubbish, trash, garbage, old automobiles, automobile parts, lumber (except as shall be used for construction within the previously allotted one year). Any and all garbage or refuse shall be stored only in plastic or metal garbage cans which are in good, secure condition and have a firmly secured lid.

- a) Lots shall be kept clear of debris and free of noxious weeds, excessively long grass, deadfall and any other fire hazard. No lot shall be maintained in such a fashion as to constitute a public or private nuisance to a neighbor or to the neighborhood.
- b) Each owner of a lot on which there is a structure shall provide exterior maintenance upon such lot and structure to include painting and repairing the structure, maintaining the lawn and grounds to preclude weeds, underbrush and other unsightly growths, and not permitting refuse piles or other unsightly objects to accumulate or remain on the grounds. In the event any owner shall fail or neglect to provide such exterior maintenance, the Board shall notify such owners in writing, specifying the failure and demanding that it be remedied within thirty (30) days.

Covenant No. 10 - No noxious or offensive activities shall be carried on upon any lot, nor shall anything be done thereon which may become a nuisance to the neighborhood.

Covenant No. 11 - Lot owners may construct a closed fence not to exceed four and

one-half feet in height or an open or semi-open fence not to exceed six feet in height. Fences shall be constructed at or near property lines. The Homeowners' Association and the Woods Bay Homesites Water and Sewer District are exempt from this requirement. The architectural review committee may grant written variances to this covenant upon application.

Covenant No. 12 - All buildings shall be substantially constructed and shall, except in case of stone, cinder block or concrete block or natural logs, be stained or painted. No buildings shall be constructed of or be covered with canvas, cloth or sheet metal.

Covenant No. 13 - Easements across all lots are reserved for the construction and maintenance of water and sewer lines, electric transmission, telephone systems, natural gas and cable television lines.

Covenant No. 14 - No livestock or any other animals shall be kept or maintained on the property except domestic, household pets (such as dogs, cats), provided such pets are not a nuisance to neighbors, or the neighborhood. No animal may be kept on the property if it is dangerous, unmanageable or uncontrolled. All household pets SHOULD be restrained within a fence, or by direct control by leash, tether or other restraint. Pets or animals engaged in any annoying activity, such as excessive barking or noise-making, biting, harassing persons in the neighborhood, eating or disturbing garbage, destroying vegetation or any other obnoxious activity any owner or the Board may give the owner of such an animal thirty (30) days' notice to restrain such animal from activity. If such owner then fails to comply, any resident of the Homesites or the Board may resort to any legal means to remedy the nuisance activities caused by the animal including, but not limited to, having the animal picked up by law enforcement authority.

Covenant No. 15 - No individual or private wells or water systems shall be permitted or allowed upon any lot. Lakeshore lot owners may install and utilize an irrigation system, drawing water from Flathead Lake.

Covenant No. 16 - No automobiles shall be kept along any street or on any lot which are not in operating condition. Automobiles not registered nor licensed for the current year shall be stored out of public view.

Covenant No. 17 - Architectural Review Committee - The directors of the Homeowners' Association shall appoint an architectural review committee of at least three individuals. The architectural review committee shall be responsible for reviewing and approving all plans to all improvements which any owners in Woods Bay Homesites intend to construct on property located within Woods Bay Homesites. No construction may be commenced without written approval being given by the architectural review committee. The architectural review committee may, by appropriate injunction, obtain an order from the Lake County District Court stopping and enjoining any construction when such construction is inconsistent with any provision of these covenants or when such construction is under a plan or plans which have not been approved by the architectural

review committee.

The architectural review committee shall review and issue approval for all construction whose plans are consistent and in accordance with the covenants of Woods Bay Homesites. Lot owners desiring to construct an original residence, add an outbuilding, or substantially remodel the exterior of a dwelling by increasing or changing the exterior walls, shall first submit plans for such construction to the architectural review committee prior to commencement of construction.

An owner must submit two sets of plans which include a grade level floor plan (with dimensions), a plot plan (how the structure is situated on the lot, showing dimensions) and a copy of the septic permit. The Architectural Review Committee will retain a copy of all submitted plans and will return a date-stamped copy to the builder with approval or rejection attached. The review committee will rule on submitted plans within thirty (30) calendar days. The architectural review committee retains the authority to stop construction if construction is not in accordance with approved plans. If the architectural review committee disapproves of submitted plans, it shall state its reason or reasons for doing so. Any lot owner may resubmit an application for approval of its plan upon modification or correction of deficiencies. Alternately, a disapproval may be appealed to the directors of the Homeowners' Association, whose decision shall be final.

Covenant No. 18 - Homeowners' Association - Each lot owner in Woods Bay Homesites shall be a member of the Woods Bay Homeowners' Association. The directors are charged with all responsibilities of managing the business of the Homeowners' Association and of enforcing the covenants.

A. The Board has exclusive authority to fix and levy assessments upon members to cover the costs of Association expenses. The Board is specifically authorized and these covenants specifically require all Woods Bay Homesites owners to pay all assessments and homeowner's association fees levied against undeveloped property. The Board may hire personnel, pay its expenses and perform all other legal functions typically required of a community homeowner's association. The Board shall have all other authority and function under the provisions which may be provided in separate by-laws, which the Board may adopt and revise from time to time.

i) The Board is also responsible for the care of all jointly owned properties within the Woods Bay Homesites. That is, all common property held by the members of the Woods Bay Homesites Homeowners Association. The Board is also responsible for insuring said properties and for the instituting and revising of the rules governing the lake access.

B. Any covenant contained herein may be enforced by any individual lot owner by appropriate judicial action or by the Board of Directors. Any owner or the Board may seek an order from the court compelling an owner to do or perform any act required under these covenants. Any owner or the Board may obtain an injunction against any activity prohibited by these covenants. In any judicial action, the prevailing party shall

be entitled to their reasonable attorney's fees and costs of suit.

i) In the event the Board is compelled to remove garbage or refuse, mow, burn, or otherwise maintain any lot after an owner had refused to do so, the Association or Board may assess the noncompliant lot owner with all of the costs of such maintenance. No owner shall be liable for such costs unless the Board gives thirty (30) days' advance written notice to the owner of such violation and the required maintenance by certified mail, return receipt requested, postage prepaid, to the current tenant and owner of record of the offending lot or lots, with such notice being either personally delivered or mailed to such individual(s) at their last known, address or addresses of record with the Lake County Clerk and Records Office.

ii) In the event any lot owner fails to maintain their lot as required, is given the required thirty (30) days' notice and thereafter refuses to maintain the lot and is subsequently billed for the Board's costs in maintaining the lot, the Board may collect such costs of collection, including a reasonable attorney's fee. Alternatively, or in addition to such collection, the Board is authorized to file and record a lien against the offending lot owner's real property. Such lien shall describe the infraction, the costs in remedying or maintaining the property in compliance with the covenants. Such lien shall state that a true and correct copy of the lien shall have been mailed to the lot owner at their last known address or address of record with the Lake County Clerk and Records Office by certified mail, return receipt requested. If the offending lot owner refuses to pay the amount demanded in the lien, the Board may foreclose the lien in accordance with mortgage foreclosure laws of Montana.

Covenant No. 19 - In the event the Board assesses a fee for its activities and in the further event that such assessments are unpaid, the Board may follow the same lien filing procedure as set forth above. The Board of Directors, acting for the Association, or any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, covenants, conditions, reservations, liens, and charges now hereafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained in any one or more instances shall in no event be deemed a waiver of the right to do so thereafter.

Covenant No. 20: The restrictions contained herein shall be appurtenant to, shall run with the land and shall continue indefinitely. The Association may revise these covenants at any time as follows:

a) The Board or any owner through the Board may propose any revision, addition or deletion of a covenant. For any proposed change, the Board will give written notice of a proposed change to each member of the Association at least 30 days prior to the Association's regular annual meeting. The proposed changes may be summarized.

- b) The Association will provide each member in attendance or by proxy with a written ballot for each proposed change.
- c) The members will vote by secret written ballot or by proxy. The ballots will be counted by the Association's secretary and by at least one other individual appointed to assist the secretary.
- d) The results of the ballot(s) will be announced at those meetings, with the number of members voting in favor of the proposed change(s) and the number of members voting against the proposed change(s).
- e) If two-thirds of those members present vote in favor of a proposed change, then that change has passed and the covenants will be revised to reflect that change.
- f) The president and secretary shall give written certification, under oath, that these steps have been followed and that a change(s) have been approved.
- g) The change(s), together with the certification, shall be recorded with the Lake County Clerk and Recorder's office.
- h) The effective date of all changes shall be 30 days from the date they are recorded, or as specified within the proposed change.

This First Amendment to Amendment and Restatement of Covenants supersedes the Amendment and Restatement of Covenants recorded at micro-file 329009 and the earlier covenants originally filed by ROCKY BAR-O RANCH, recorded January 25, 1963, with the Lake County Clerk and Recorders Office, and the amendments to those covenants, recorded May 27, 1968.

DATED this \_\_\_\_\_ day of February, 1997.

WOODS BAY WATER USERS, INC.

\_\_\_\_\_  
LEONARD N. JAPPE, President

We, the undersigned officers, do hereby certify that the foregoing constitute the present covenants, as voted, amended and approved by the owners of Woods Bay Homesites.

ATTEST:

\_\_\_\_\_  
President



\_\_\_\_\_  
Secretary

STATE OF MONTANA )

:ss.

County of Flathead )

On this \_\_\_\_\_ day of February, 1997, before me, the undersigned, a notary public for the State of Montana, personally appeared Leonard N. Jappe and Grant Holle known to me to be the officers that executed this instrument on behalf of said Corporation and acknowledged to me that such Corporation executed the same

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written

\_\_\_\_\_  
Notary Public for the State of Montana  
Residing at Bigfork, Montana  
My commission expires: July 25, 1999