

BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

SANDY POINT IMPROVEMENT  
COMPANY,

Respondent.

DOCKET UW-121408

DECLARATION OF JOSEPH A.  
REHBERGER IN SUPPORT OF MOTION  
FOR SUMMARY DETERMINATION

I, Joseph A. Rehberger, hereby declare and state as follows:

1. I am the attorney of record for Respondent Sandy Point Improvement Company. I make this declaration based on my personal knowledge and on review of my firm's records and file in this matter. I am over the age of 18 and competent to testify herein.

2. Attached as Exhibit 1 is a copy of a plat map of Bolster's Sandy Point Tracts, together with a copy of Declarations of Protective Covenants and Restrictions for same dated September 13, 1957.

3. Attached as Exhibit 2 is a copy of a plat map of Bolster's Sandy Point Tracts No. 2, together with a copy of building restrictions, easements and reservations for same dated September 7, 1967 (titled "Covenants" in handwriting).

4. Attached as Exhibit 3 is a copy of a plat map of Bolster's Sandy Point Tracts No. 3, together with a copy of Declarations of Protective Covenants and Restrictions for same dated June 1, 1958.

5. Attached as Exhibit 4 is a copy of a plat map of Bolster's Sandy Point Tracts No. 4, together with a copy of Declaration of Protective Covenants and Restrictions for same dated February 6, 1963.

6. Attached as Exhibit 5 is a copy of a plat map of Sandy Point Garden Tracts, together with copies of a Dedication and Declarations of Protective Covenants and Restrictions for same dated September 13, 1957.

7. Attached as Exhibit 6 is a copy of a plat map of Sandy Point Shores No. 1, together with a copy of Declaration of Restrictions, Easements and Reservations for same dated August 1, 1966.

8. Attached as Exhibit 7 is a copy of a plat map of Sandy Point Shores No. 2, together with a copy of Amendment to Declaration of Restrictions, Easements & Reservations for same notarized on May 2, 1980, with attached initial Declaration of Restrictions, Easements & Reservations dated June 13, 1967.

9. Attached as Exhibit 8 is a copy of a plat map of Sandy Point Shores No. 3, together with a copy of Amendment to Declaration of Restrictions, Easements and Reservations for same dated April 9, 1980, with attached initial Declaration of Restrictions, Easements & Reservations dated August 17, 1967.

10. Attached as Exhibit 9 is a copy of a plat map of Sandy Point Shores No. 4, together with a copy of Declaration of Restrictions, Easements and Reservations for same dated May 20, 1968.

11. Attached as Exhibit 10 is a copy of a plat map of Sandy Point Heights, together with a copy of Declaration of Restrictions, Easements, and Reservations for same dated December 10, 1982.
12. Attached as Exhibit 11 is a copy of a plat map of Neptune Heights, together with a copy of Declaration of Restrictions, Easements and Reservations for same dated August 31, 1970, and amendments and corrections thereto.
13. Attached as Exhibit 12 is a copy of a plat map of Sandy Point Arm, together with a copy of Amendment and Restatement of Covenants, Restrictions and Easements for same dated August 14, 1990, and Declaration of Restrictions, Easements and Reservations dated May 3, 1971.
14. Attached as Exhibit 13 are copies of assessor's maps of the Sandy Point area (11 pages).
15. Attached as Exhibit 14 are copies of Articles of Incorporation of Sandy Point Improvement Co. filed with the Washington Secretary of State on April 22, 1965, together with Articles of Amendment and Articles of Reduction of Capital Stock filed October 31, 1966.
16. Attached as Exhibit 15 is a copy of a Sale Agreement between Sandy Point Co. (Seller) and R. E. Rogers, Stuart Rogers, and Robert R. Walker (Purchasers), dated April 8, 1965.
17. Attached as Exhibit 16 is a copy of an Amendment to Sale Agreement (*see* Exhibit 15), dated June 4, 1965.
18. Attached as Exhibit 17 is a copy of a Second Amendment to Sale Agreement (*see* Exhibits 15 and 16), dated April 29, 1966.
19. Attached as Exhibit 18 is a copy of an Assignment of Easement, from Sandy Point Co. as Grantee to R. E. Rogers, Stuart Rogers, and Robert R. Walker as Assignee, dated June 4, 1965.

20. Attached as Exhibit 19 is a copy of an Assignment Approval and Hold Harmless Agreement among R. D. Metcalf and Shirley M. Metcalf, and R. W. Walker, S. E. Rogers, and Stuart Rogers notarized May 28, 1965.

21. Attached as Exhibit 20 is a copy of an Assignment of Water Permit and Franchise between James F. Bolster as Assignor and R. E. Rogers, Stuart Rogers, and Robert R. Walker as Assignee, dated June 4, 1965.

22. Attached as Exhibit 21 is a copy of a Real Estate Contract between Sandy Point Co. as Seller and R. E. Walker and others as Purchaser recorded July 10, 1967.

23. Attached as Exhibit 22 is a copy of a Statutory Warranty Deed between Sandy Point Co. as Grantor and R. E. Rogers, Stuart E. Rogers, and Robert R. Walker dated April 4, 1967.

24. Attached as Exhibit 23 is a copy of a Notice to Public of Water System Connection and Continuation Charges concerning Sandy Point Improvement Company water service area dated March 9, 1984.

25. Attached as Exhibit 24 is a true and correct excerpted copy of UTC Staff's Response to Sandy Point Improvement Company's Second Set of Data Requests to WUTC, including UTC Staff's response to Data Request No. 12.

26. Attached as Exhibit 25 is a true and correct excerpted copy of UTC Staff's Response to Sandy Point Improvement Company's Second Set of Data Requests to WUTC, including UTC Staff's response to Data Request No. 16.

27. Attached as Exhibit 26 is a true and correct excerpted copy of UTC Staff's Response to Point Improvement Company's Second Set of Data Requests to WUTC, including UTC Staff's response to Data Request No. 25.

28. Attached as Exhibit 27 is a true and correct copy of memoranda dated September 6, 2012 and September 20, 2012, respectively, from Donald T. Trotter, Assistant

Attorney General to Gene Eckhardt, Assistant Director regarding Sandy Point Improvement Company produced by UTC Staff in response Sandy Point Improvement Company's Data Request No. 4.

29. Attached as Exhibit 28 is a true and correct excerpted copy of the May 26, 1999 Concise Explanatory Statement from UTC Docket No. UW-98-0082.

30. Attached as Exhibit 29 is a true and correct copy of the November 30, 1999 General Order No. R-467 from UTC Docket No. UW-98-0082.

31. Attached as Exhibit 30 is a true and correct copy of the November 22, 1999 Rulemaking Analysis from UTC Docket No. UW-98-0082.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 3<sup>rd</sup> day of May, 2013, at Olympia, Washington.

  
\_\_\_\_\_  
JOSEPH A. REHBERGER

# **EXHIBIT 1**



James F Bolster and  
Willis E Twiner and Hazel F Twiner, hs wf

843443  
Declarations of Protective  
Covenants and Restrictions  
Dtd Sep 13 1957  
Flid Sep 16 1957 9:38  
Vol 427 Pg 538

to

The Public

The undersigned, JAMES F BOLSTER, owner as hs sole and sepprop of the foll:

ALL of Bolster's Sandy Point Tracts, as per the map  
thereof, recorded in Book 8 of Plats, page 66, in  
the office of the Auditor's office of said County and  
State;

and WILLIS E TWINER and HAZEL F TWINER, hs wf, owners of the foll-desc prop:

The North 200 feet of Government Lot 4, Section 8, Township 38 North,  
Range 1 East of Willamette Meridian.

do hereby declare all of the ab-desc prop subj to the foll protective covs and restric-  
tions, to-wit:

- (1) During 99 years from Nineteen hundred fifty-seven, none of the prop herein conveyed shall be occupied by any commercial activity of any nature whatsoever. However, the rental or leasing of a sgl unit on a sgl lot shall not be construed as commercial activity. Boat rental or charter, cabin rental of more than 1 unit any shop, store, tavern, or any other type of busi, whether hereinbef spec enumerated or not, is prohibited.
- (2) Dur sd period the prop desc when in use shall be used solely for res purposes, but there may be erected thereon such other appurtenant bldgs, inc a garage, as may be nec thereto. There shall not be more than 1 res on ea lot.
- (3) Dur sd period no toilet or toilets shall be placed or maintained on the prop, exc such as are modern in character and discharge to a local septic tank in an efficient, sanitary manner and in accord with WC Health Dept regulation.
- (4) Garbage shall not be permitted to accumulate on sd prem in open containers, but shall be kept in containers equipped with tight flyproof lids or tops, and sd contain-ers shall be kept closed.
- (5) All exterior finishing of any bldg must be completed within 6 mos from the start of construction, with no tar paper or other unfinished part showing aft that time.
- (6) New Construction only shall be permitted on the prop and no used bldgs or fabricated components of used bldgs shall be placed or erected on the prop.
- (7) There is expressly reserved an easent over and across the prop herein desc for water pipes, light and power lines, and telephone lines, alg with the right to enter upon sd land for the purp of construction and maintenance of the utilities ab named. This easent, however, is lim spec to a strip of land 10 ft in width, and ejoining the road or roads abtg upon sd desc prop. It is hereby expressly stated that this easent shall not be construed as imposing upon the gtor, hs successors or assigns, any obliga to construct any such utilities ab named or thereaft maintain them.
- (8) Gtor, hs successors and assigns, expressly provide in perpetuity a tr of ground to be known as "SANDY POINT COMMUNITY RESERVE BLOCk" owned fractionally by all lot owners.



- (9) All county ordinances that ordinarily apply to properties outside Indian Reservation boundaries pertaining to sanitation and construction, are hereby contained in this cov and by this ref become a part hereof, irrespective of the prop loca within the bdrles of the Lummi Indian Reservation.
- (10) Should any part of these protective covs at any time become illegal or ineffectual due to the process of law or otherwise, it shall in no way affect the validity of the remaining covs which shall remain in full force and effect.
- (11) For and in consid of the fractionally deeded area, marked "COMMUN RESERVE BLOCK" to ea individual lot purchaser, sd purchasers do hereby agree and subscribe to an annual paymt for ea lot owned, an amt not to exceed \$10. and payb on Jan 1 of ea yr to the Sandy Point Commun Treas. This subscription shall become a lien upon the lot and draw 1% int ea mo until pd.
- (12) An elected group of lot owners to be known as "SANDY POINT COMMUN COUNCIL" shall have the responsibility of developing the "COMMUN RESERVE BLOCK" and shall establish the amt to be pd by ea lot owner as set forth in Paragraph (11) shall meet at least once ea yr in the mo of Jan and shall have full and complete power and authority as pertains to the developmt, maintenance, collections, policies, rules and regulations of the "COMMUN RESERVE BLOCK". The Council shall be composed of 7 lot owners, elected by means of 2 votes for ea lot, for a 2-yr term. The initial council shall be appointed by the Gtors and shall establish rules for their own governing and set the date for the annual election.
- (13) There shall be no further sub-division for ind ownership of less than 50 ft frontage and 7200 sq ft of area.
- (14) No bldg shall be erected or placed within 55 ft of the West bdry, nor within 5 ft of sideline bdrles.

Ea of these covs and restric shall run with any of sd lands heretofore dese and be binding upon the heirs, executors, admin, succ and assigns of all or any portion of sd heretofore dese prop, and the acceptance of a deed or any other instrumt of conveyance by any gtee for himself, hs heirs, executors, admin, successors and assigns, subjs sd gtee, hs heirs, executors, administrators, successors and assigns, to ea of sd restrictions and covenants

Willis E Twiner  
Hazel F Twiner

James F Bolster

Akd WCW Sep 13 1957 by James F Bolster bef N T Cooper, NP Seal

Akd WCW Sep 13 1957 by Willis E Twiner and Hazel F Twiner bef N T Cooper, NP Seal

# **EXHIBIT 2**



# BOLSTER'S SANDY POINT

## TRACT #2 COVENANTS

1058134.

WE THE UNDERSIGNED, the owners of Lots 54A thru 68A inclusive, Bolster's Sandy Point Tract #2, Whatcom County, Washington, has per map thereof, recorded in Book 8 of Plates, page 80, in Auditor's office of said county and state, who are desirous of the elimination of certain burdensome restrictions do hereby eliminate the protective covenants and restrictions contained in instruments filed in Volume 437 of Deeds, page 532, in the records of the Whatcom County Auditor. The undersigned desire to provide a plan for the development of such real property and for that purpose do hereby declare and establish the following restrictions, easements and reservations appurtenant:

### 1. Building Restrictions:

1) Except for portions of the real property as may be used for recreational purposes or common service facilities by Sandy Point Improvement Co., a Washington corporation, no lot in ~~the plot of Sandy Point Shore No. 1~~ <sup>property covered by these restrictions</sup> shall be used for any purpose other than for residential purposes, provided however, that a temporary real estate office may be maintained with the consent of the undersigned on any one of such lots.

2) No structure shall be erected, altered, placed or maintained on any lot unless it shall comply with these restrictions and the following:

(a) Each dwelling structure shall be of permanent construction, shall have not less than six hundred (600) square feet of enclosed area devoted to living purposes. No structure shall exceed 20 feet above the grade of the adjacent road.

(b) The exteriors of all structures on a lot shall be constructed of new materials.

(c) No structure shall be erected or placed within five (5) feet of the side boundary of a lot, twenty-five (25) feet of a street abutting a lot, or twenty-five (25) feet of the rear lot line from the street abutting the lot.

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do by the act of accepting a deed or entering into a contract of sale as vendee, jointly and severally agree that they and each of them shall pay to the corporation the charges assessed by vote of two thirds of the directors of the corporation against the shareholders of the corporation. In the event that such charges remain unpaid to the corporation for sixty (60) days after the due date, then the corporation may record a written notice with the auditor of Whatcom County, Washington, that it claims a lien against the lot of the shareholder who is so delinquent for the amount of each charges, interest at the rate of ten per cent (10%) per annum from the due date until paid and attorneys' fees incurred incident thereto. From and after recording such notice, such lot shall be subject to a lien to the corporation as security for such assessments and such lien may be foreclosed in the manner of a mortgage on real property and in such foreclosure action the corporation shall recover a reasonable sum as attorneys' fees therein and the reasonable and necessary costs of searching and abstracting the public records. Until changed by vote of two thirds of the directors of the corporation the charge herein referred to shall be Ten Dollars (\$10.00) per annum payable on or before June 30 of each year in advance commencing June 30, 1966.

IV. Easements and Reservations:

- 1) All oil, gas and mineral rights and the right to remove oil, gas and such minerals in the real property described in the above mentioned plat shall be reserved and excepted from the conveyance of any portion of the real property as though written therein, provided that the owners of such real property shall be compensated for any damage or injury to the surface and structures thereon that may be occasioned by any removal of such minerals.
- 2) The undersigned hereby reserves an easement over and across a strip of land ten (10) feet in width across each lot parallel with and adjacent to the roads abutting and along five feet of each other lot line shown on the plat for the purpose of constructing, repairing, reconstructing, improving

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and maintaining water pipes, light and power lines, telephone lines and other facilities for utilities including the right to enter upon such easement for such purposes.

V. Miscellaneous:

1) The covenants, restrictions, easements, rights, liens and encumbrances herein provided for shall be covenants running with the land and shall be binding upon the real property described in the above plat and any and all parts thereof, the parties in interest thereto and their heirs, assigns, personal representatives and successors in interest. Accepting an interest in and to any portion of such real property shall constitute an agreement by any such person, firm or corporation accepting such interest, that they and each of them shall be bound by and subject to the provisions hereof.

2) In the event that any provision hereof shall be declared invalid by any court of competent jurisdiction, no other provision hereof shall be affected thereby and the remaining provision shall remain in full force and effect. No waiver of a breach of any provision hereof shall constitute a waiver of a subsequent breach of the same provision or of any other provision.

3) The parties in interest in and to any part of the real property included in the above plat and Sandy Point Improvement Co. for the benefit of such owners and each of them shall have the right and authority to enforce the provisions hereof and in addition to any other remedy for damages or otherwise shall have the right to injunctive relief. Except for the enforcement of the lien to Sandy Point Improvement Co., the prevailing party in any action to enforce the provisions hereof shall recover a reasonable sum as attorneys' fees therein together with the reasonable cost of searching and abstracting the public record.

4) The provisions hereof may be amended, altered or terminated in whole or part by written instrument signed by sixty per cent (60%) of the owners in area of the real property in the above plat, exclusive of roads,

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and recorded with the auditor of Whatcom County, Washington. For the purpose of this paragraph the word "owner" shall mean any person, firm or corporation holding either fee title or a vendee's interest under a real estate contract as shown by the records of Whatcom County, Washington, to the exclusion of any lesser interest. Until so terminated these provisions shall remain in full force and effect.

DATED this 7th day of September, 1967.

*R. E. Rogers*

R. E. Rogers, individually and as executor of the estate of Priscilla M. Rogers, deceased.

*Robert R. Walker*

Robert R. Walker

Victoria B. Walker, Stuart Rogers and Judge Ann Rogers, Harold E. Isenhart and Gwen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson,

*Robert R. Walker*

Robert R. Walker, their attorney in fact.

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STATE OF WASHINGTON )  
COUNTY OF WHATCOM )

On this 8 day of Sept, 1967, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn personally appeared E. R. ROGERS, individually and as executor of the estate of Priscilla M. Rogers, deceased, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he signed and sealed the said instrument as his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

*Barry E. Darling*  
Notary Public in and for the state of Washington, residing at  
*Mountlake Terrace*

STATE OF WASHINGTON )  
COUNTY OF *Whatcom* )

On this 8 day of Sept, 1967, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared ROBERT R. WALKER, to me known to be the individual described in and who executed the foregoing instrument for himself and as attorney in fact of Victoria R. Walker, Stuart Rogers and Madge Ann Rogers, Harold E. Isenhart and Gwen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson, also therein described, and acknowledged to me that he signed and sealed the same as his voluntary act and deed and as the free and voluntary act and deed of the said Victoria R. Walker, Stuart Rogers and Madge Ann Rogers, Harold E. Isenhart and Gwen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson for the uses and purposes therein mentioned, and on oath stated that the power of attorney authorizing the execution of this instrument has not been revoked and that the said Victoria R. Walker, Stuart Rogers and Madge Ann Rogers, Harold E. Isenhart and Gwen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson are now living, and are not insane.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

*Barry E. Darling*  
Notary Public in and for the state of Washington, residing at  
*Mountlake Terrace*

RECEIVED FOR RECORD AT 3:54pm APR 2 1968  
AT THE OFFICE OF *Isenhart & Gulliford Co.*  
WELFA HANSEN, CO. AUDITOR WHATCOM CO. WASH.

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STATE OF WASHINGTON )  
COUNTY OF WHATCOM )

On this 8 day of Sept, 1967, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn personally appeared R. E. ROGERS, individually and as executor of the estate of Priscilla M. Rogers, deceased, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he signed and sealed the said instrument as his free and voluntary act and deed for the uses and purposes therein mentioned. WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

*Barry E. Darling*  
Notary Public in and for the state of Washington, residing at *Mountlake Terrace*

STATE OF WASHINGTON )  
COUNTY OF *Whatcom* )

On this 8 day of Sept, 1967, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared ROBERT R. WALKER, to me known to be the individual described in and who executed the foregoing instrument for himself and as attorney in fact of Victoria R. Walker, Stuart Rogers and Madge Ann Rogers, Harold E. Isenhart and Gwen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson, also therein described, and acknowledged to me that he signed and sealed the same as his voluntary act and deed and as the free and voluntary act and deed of the said Victoria R. Walker, Stuart Rogers and Madge Ann Rogers, Harold E. Isenhart and Gwen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson for the uses and purposes therein mentioned, and on oath stated that the power of attorney authorizing the execution of this instrument has not been revoked and that the said Victoria R. Walker, Stuart Rogers and Madge Ann Rogers, Harold E. Isenhart and Gwen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson are now living, and are not insane. WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

*Barry E. Darling*  
Notary public in and for the state of Washington, residing at *Mountlake Terrace*

APR 2 1967

RECEIVED FOR RECORD AT 3:54pm  
AT REQUEST OF Isenhart & Gullberg Co.  
WELLA HANSEN, CO. AUDITOR WHATCOM CO. WASH.

VOL 95.40E/19

**DECLARATIONS  
of  
PROTECTIVE COVENANTS AND RESTRICTIONS**

THE UNDERSIGNED, JAMES F. BOLSTER, owner as his sole and separate property of the following described property located in Whatcom County, Washington, to-wit:

Lots 54-A thru 68-A inclusive, "Bolster's Sandy Point Tracts No. 2" Whatcom County, Washington, as per the map thereof, recorded in Book 8 of Plats, page 80, in the Auditor's office of said county and state.

Lots 1-A thru Lots 53-A, inclusive, "Sandy Point Garden Tracts", Whatcom County, Washington, as per the map thereof, recorded in Book 8 of Plats, page 82, in the Auditor's office of said county and state.

does hereby declare all of the above described property subject to the following protective covenants and restrictions, to-wit:

(1). During 99 years from Nineteen Hundred Fifty-seven, none of the property herein conveyed shall be occupied by any commercial activity of any nature whatsoever. Building rental, any shop, store, tavern, or any other type of business, whether hereinbefore specifically enumerated or not, is prohibited.

(2). During said period the property described when in use shall be used solely for private purposes, but there may not be erected thereon, any building for residential purposes, but there may be erected thereon, such other appurtenant buildings, including a garage, boathouse, tool storage, or such other buildings that do not exceed twelve feet in overall elevation from the natural ground level. The intent of the elevation restriction, is to protect the view of waterfront lots.

(3). During said period, no toilet or toilets shall be placed or maintained on the property except such as are modern in character, and discharge to a local septic tank in an efficient, sanitary manner, and in accordance with Whatcom County Health Department regulations.

(4). Water from the community supply will be allowed only as supply permits, and may be discontinued at any time without notice.

(5). There is expressly reserved an easement over and across the property herein described for water pipes, light and power lines, and telephone lines and road purposes, along with the right to enter

Upon said land for the purpose of construction and maintenance of the utilities and accesses above named. This easement however, is limited specifically, to a strip of land ten feet in width along the Easterly boundary of said above described property. There shall be no construction by landowners on said above described strip of land, except as is necessary in the erection and maintenance of the utilities above named. It is hereby expressly stated that this easement shall not be construed as imposing upon the grantor, his successors or assigns, any obligation to construct any such utilities or accesses above named or thereafter maintain them.

(6). Garbage shall not be permitted to accumulate on said premises in open containers, but shall be kept in containers equipped with tight, flyproof lids or tops, and said containers shall be kept closed.

(7). All county ordinances that ordinarily apply to properties outside Indian Reservation boundaries pertaining to sanitation and construction, are hereby contained in this covenant and by this reference become a part hereof, irrespective of the property location within the boundaries of the Lummi Indian Reservation.

(8). Should any portion of these protective covenants at any time become illegal or ineffectual due to process of law or otherwise, it shall in no way affect the validity of the remaining covenants which shall remain in full force and effect.

(9). The property above described, is being platted by the owner, under the name of "Sandy Point Garden Tracts" and said property is being divided into lots and the lots are being sold to third parties. There shall be no further subdivision of the lots, after the original sale from owner.

Each of these covenants and restrictions shall run with any of said lands heretofore described and be binding upon the heirs, executors, administrators, successors and assigns of all or any portion of said heretofore described property, and the acceptance of a deed or any other instrument of conveyance by any grantee for himself, his heirs, executors, administrators, successors and assigns, subjects said grantee his heirs, executors, administrators, successors and assigns, to each of said restrictions and covenants.

DATED this 29th day of December, 1958.

*James F. Bolster*  
 \_\_\_\_\_  
 James F. Bolster

STATE OF WASHINGTON;  
 COUNTY OF WHATCOM, ss

On this day personally appeared before me, JAMES F. BOLSTER, to me known to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 31st day of December, 1958.

1958  
 1959



*James F. Bolster*  
 \_\_\_\_\_  
 NOTARY PUBLIC in and for the State of Washington, residing at Bellingham.

Received for record of \_\_\_\_\_  
 BELLINGHAM TITLE CO.  
 1959

**DECLARATIONS  
of  
PROTECTIVE COVENANTS AND RESTRICTIONS**

THE UNDERSIGNED, JAMES F. BOLSTER, owner as his sole and separate property of the following described property located in Whatcom County, Washington, to-wit:

Lots 54-A thru 68-A inclusive, "Bolster's Sandy Point Tracts No. 2" Whatcom County, Washington, as per the map thereof, recorded in Book 8 of Plats, page 80, in the Auditor's office of said county and state.

Lots 1-A thru Lots 53-A, inclusive, "Sandy Point Garden Tracts", Whatcom County, Washington, as per the map thereof, recorded in Book 8 of Plats, page 82, in the Auditor's office of said county and state.

does hereby declare all of the above described property subject to the following protective covenants and restrictions, to-wit:

(1) During 99 years from Nineteen Hundred Fifty-seven, none of the property herein conveyed shall be occupied by any commercial activity of any nature whatsoever. Building rental, any shop, store, tavern, or any other type of business, whether hereinbefore specifically enumerated or not, is prohibited.

(2) During said period the property described when in use shall be used solely for private purposes, but there may not be erected thereon, any building for residential purposes, but there may be erected thereon, such other appurtenant buildings, including a garage, boathouse, tool storage, or such other buildings that do not exceed twelve feet in overall elevation from the natural ground level. The intent of the elevation restriction, is to protect the view of waterfront lots.

(3) During said period, no toilet or toilets shall be placed or maintained on the property except such as are modern in character, and discharge to a local septic tank in an efficient, sanitary manner, and in accordance with Whatcom County Health Department regulations.

(4) Water from the community supply will be allowed only as supply permits, and may be discontinued at any time without notice.

(5) There is expressly reserved an easement over and across the property herein described for water pipes, light and power lines, and telephone lines and road purposes, along with the right to enter

upon said land for the purpose of construction and maintenance of the utilities and accesses above named. This covenant however, is limited specifically, to a strip of land ten feet in width along the Easterly boundary of said above described property. There shall be no construction by landowners on said above described strip of land, except as is necessary in the erection and maintenance of the utilities above named. It is hereby expressly stated that this covenant shall not be construed as imposing upon the grantor, his successors or assigns, any obligation to construct any such utilities or accesses above named or thereafter maintain them.

(6). Garbage shall not be permitted to accumulate on said premises in open containers, but shall be kept in containers equipped with tight, flyproof lids or tops, and said containers shall be kept closed.

(7). All county ordinances that ordinarily apply to properties outside Indian Reservation boundaries pertaining to sanitation and construction, are hereby contained in this covenant and by this reference become a part hereof, irrespective of the property location within the boundaries of the Lummi Indian Reservation.

(8). Should any portion of these protective covenants at any time become illegal or ineffectual due to process of law or otherwise, it shall in no way affect the validity of the remaining covenants which shall remain in full force and effect.

(9). The property above described, is being platted by the owner, under the name of "Sandy Point Garden Tracts" and said property is being divided into lots and the lots are being sold to third parties. There shall be no further subdivision of the lots, after the original sale from owner.

Each of these covenants and restrictions shall run with any of said lands heretofore described and be binding upon the heirs, executors, administrators, successors and assigns of all or any portion of said heretofore described property, and the acceptance of a deed or any other instrument of conveyance by any grantor for himself, his heirs, executors, administrators, successors and assigns, subjects said grantee his heirs, executors, administrators, successors and assigns, to each of said restrictions and covenants.

DATED this 29th day of December, 1958.

*James F. Bolster*  
James F. Bolster

STATE OF WASHINGTON  
COUNTY OF WHATCOM

On this day personally appeared before me, JAMES F. BOLSTER, to me known to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 30th day of December, 1958.

*T. Donald [Signature]*  
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham.

BELLINGHAM TITLE CO  
-2-

867692

DECLARATIONS  
OF  
PROTECTIVE COVENANTS AND RESTRICTIONS

VOL 437 PAGE 534

The undersigned, JAMES F. BOLSTER, owner as his sole and separate property of the following-described property located in Whatcom County, Washington, to-wit:

Lots 98 thru 112 inclusive "Bolster's Sandy Point Tracts No. 2" Whatcom County Washington, as per the map thereof, recorded in Book 8 of Plats, Page 80, in the Auditor's office of said county and state.

does hereby declare all of the above-described property subject to the following protective covenants and restrictions, to-wit:

(1) During 99 years from Nineteen hundred fifty-eight none of the property herein conveyed shall be occupied by any commercial activity of any nature whatsoever. However, the rental or leasing of a single unit on a single lot shall not be construed as commercial activity. Boat rental or charter, cabin rental of more than one unit, any shop, store, tavern, or any other type of business, whether hereinbefore specifically enumerated or not, is prohibited.

(2) During said period the property described when in use shall be used solely for residence purposes, but there may be erected thereon such other appurtenant buildings, including a garage, as may be necessary thereto. There shall not be more than one residence on each lot.

(3) During said period no toilet or toilets shall be placed or maintained on the property except such as are modern in character and discharge to a local septic tank in an efficient, sanitary manner and in accordance with Whatcom County Health Department Regulation.

(4) Garbage shall not be permitted to accumulate on said premises in open containers, but shall be kept in containers equipped with tight, flyproof lids or tops, and said containers shall be kept closed.

(5) All exterior finishing of any building must be completed within six months from the start of construction, with no tar paper or other unfinished portion showing after that time.

(6) New construction only shall be permitted on the property and no used buildings or fabricated components of used buildings shall be placed or erected on the property.

(7) There is expressly reserved an easement over and across the property herein described for water pipes, light and power lines, and telephone lines, along with the right to enter upon said land for the purpose of construction and maintenance of the utilities above named. This easement, however, is limited specifically to a strip of land ten feet in width and adjoining the road or roads abutting upon said described property. It is hereby expressly stated that this easement shall not be construed as imposing upon the grantor, his successors or assigns, any obligation to construct any such utilities above named or thereafter maintain them.

(8) Grantor, his successors and assigns, expressly provide in perpetuity a tract of ground to be known as "SANDY POINT COMMUNITY RESERVE BLOCK" owned fractionally by all lot owners.

(9) All county ordinances that ordinarily apply to properties inside Indian Reservation boundaries pertaining to sanitation and construction, are hereby contained in this covenant and by this reference become a part hereof, irrespective of the property location within the boundaries of the Lummi Indian Reservation.

(10) Should any portion of these protective covenants at any time become illegal or ineffectual due to process of law or otherwise, it shall in no way affect the validity of the remaining covenants which shall remain in full force and effect.

(11) For and in consideration of the fractionally deeded area, marked "COMMUNITY RESERVE BLOCK" to each individual purchaser, said purchasers do hereby agree and subscribe to an annual assessment for each lot owned, an amount not to exceed \$10.00 and payable on January 1st of each year to the Sandy Point Community Treasurer. This subscription shall be made in full immediately and draw 1% interest each month until paid.

(12) An elected group of lot owners known as "SANDY POINT COMMUNITY COUNCIL" shall have the responsibility of developing the "COMMUNITY RESERVE BLOCK" and shall establish the amount to be assessed on each lot owner as set forth in Paragraph (11), shall meet at least once each year in the month of January and shall have full and complete power and authority as pertaining to the development, maintenance, collections, policies, rules and regulations of the "COMMUNITY RESERVE BLOCK". The Council shall be composed of seven lot owners, elected by means of two votes for each lot, for a two-year term. The initial council shall be appointed by the Grantors and shall establish rules for their own governing and set the date for the annual election.

(13) There shall be no further subdivision for individual ownership of less than fifty (50) feet frontage and 7200 square feet of area.

(14) No building shall be erected or placed within twenty-five (25) feet of the North boundary, nor within five (5) feet of sideline boundaries.

Each of these covenants and restrictions shall run with any of said lands heretofore described and be binding upon the heirs, executors, administrators, successors and assigns, subjects said grantee, his heirs, executors, administrators, successors and assigns, to each of said restrictions and covenants.

Dated this 8th day of January, 1959.

*James F. Bolster*

STATE OF WASHINGTON )  
COUNTY OF WHATCOM )

On this day personally appeared before me James F. Bolster, to me known to be the individual named and who executed the foregoing instrument, and he acknowledged to me that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official this 8th day of January, 1959.

*J. Duond Helwick*  
Notary Public in and for the State of Washington, residing at Bellingham.

Received for record at 10:05 AM Jan 9-1959  
at request of BELLINGHAM TITLE CO.  
Wm D. Pratt Auditor Whatcom Co. Wash.

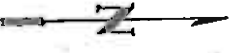


# **EXHIBIT 3**



*For Addition of*  
**BOLSTER'S SAND, POINT TRACTS NO. 3**  
 WHATCOM COUNTY, WASHINGTON

SCALE 1"=100'



**DEDICATION**

KNOW ALL MEN BY THESE PRESENTS THAT I, JAMES R. BOLSTER, OWNER IN FEU SIMPLE OF THE NEAL ESTATE IN THIS PLAT, DO HEREBY DECLARE AND ACKNOWLEDGE THIS PLAT OF BOLSTER'S SANDY POINT TRACTS NO. 3 AND DEDICATE TO THE PUBLIC USE FOREVER THE ROAD SHOWN THEREON; SPECIFICALLY RESERVING THE WATER RIGHTS AND WATER DISTRIBUTION SYSTEMS TO BE HEREAFTER ESTABLISHED SUBJECT TO THE APPROVAL OF THE BOARD OF COUNTY COMMISSIONERS OF WHATCOM COUNTY, WASHINGTON.

**ACKNOWLEDGEMENT**

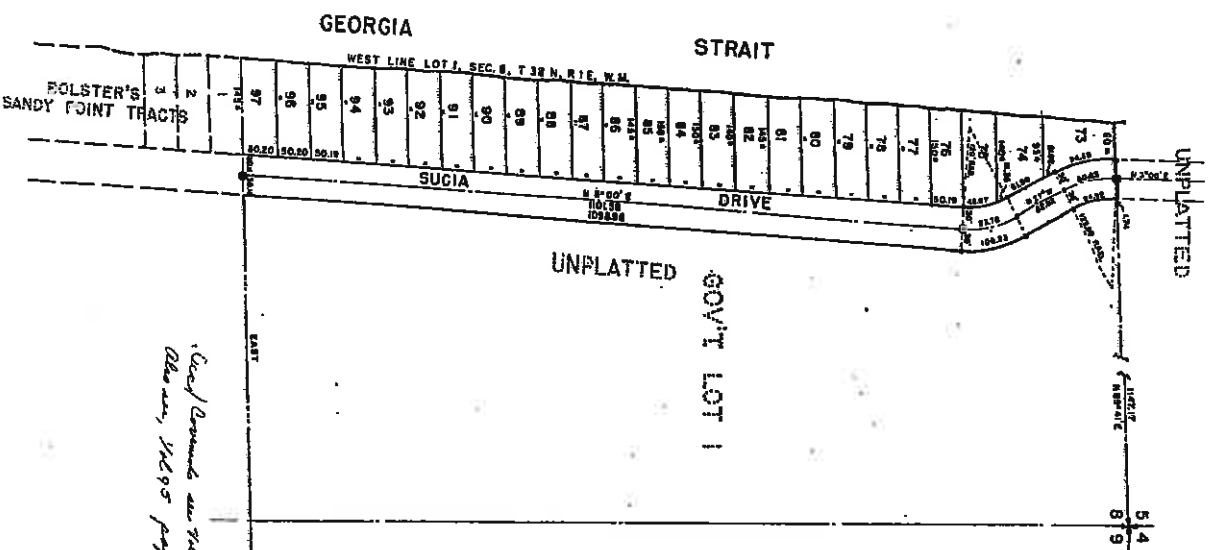
STATE OF WASHINGTON SS  
 COUNTY OF WHATCOM  
 ON THIS 30 DAY OF Dec AD. 1938,  
 BEFORE ME THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE SAID COUNTY AND STATE, PERSONALLY APPEARED JAMES R. BOLSTER, TO BE KNOWN TO BE THE INDIVIDUAL WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGED TO ME THAT HE SIGNED THE SAME FOR THE USES AND PURPOSES THEREIN SET FORTH.  
 IN WITNESS WHEREOF, I HAVE HERETO SET MY HAND AND AFFIRMED BY OFFICIAL SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN

*James R. Bolster*  
 NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON  
 RESIDING IN BELLINGHAM, WASHINGTON

**CERTIFICATE AND DESCRIPTION**

I, FRED W. MCELROY, DO HEREBY CERTIFY THAT THIS PLAT OF BOLSTER'S SANDY POINT TRACTS NO. 3, COVERS AND ENLARGES THAT PART OF GOV'T. LOT 1, SEC. 8, T. 32 N., R. 12 E., W.M., LYING WESTERLY OF A LINE BEGINNING AT A POINT ON THE NORTH LINE OF SAID GOV'T. LOT 1, 111.44 FEET, S 89° 47' W. OF THE NORTHEAST CORNER OF SAID GOV'T. LOT 1; TH. 5.3400' W. 174 FEET; TH. 4.327' ON E. 82.82 FEET; TH. ALONG A CURVE TO THE RIGHT, RADIUS 180 FEET, 108.85 FEET; TH. 5.5400' W. 108.85 FEET TO THE SOUTH LINE OF GOV'T. LOT 1 AND THE NORTHEAST CORNER OF BOLSTER'S SANDY POINT TRACTS.  
 THAT THIS PLAT IS BASED ON AN ACTUAL SURVEY MADE BY ME OF THE SAID SEC. 8; THAT LOT AND STREET DIMENSIONS ARE FULLY SHOWN AND THAT MONUMENTS HAVE BEEN PLACED AS SHOWN ON THE PLAT.

*Fred W. McElroy*  
 REGISTERED PROFESSIONAL ENGINEER



● INDICATES MONUMENT

APPROVED BY THE ENGINEER OF WHATCOM COUNTY, WASHINGTON,  
 THIS 30 DAY OF Dec AD. 1938  
*James R. Bolster*  
 COUNTY ENGINEER

EXAMINED AND APPROVED BY THE WHATCOM COUNTY PLANNING COMMISSION THIS 30 DAY OF Dec. 3, 1938 AD. 1938  
*John A. ...*  
 CHAIRMAN

I, MUGH W. GORTY, TREASURER OF WHATCOM COUNTY, WASHINGTON, DO HEREBY CERTIFY THAT ALL TAXES REQUIRED BY LAW TO BE PAID UPON THAT PORTION OF THE NEAL ESTATE ENLARGED WITHIN THIS PLAT AND ALL THE DELINQUENT ASSESSMENTS HAVE BEEN FULLY PAID AS SHOWN IN THE RECORDS OF MY OFFICE.  
*Mugh W. Gorty*  
 COUNTY TREASURER

APPROVED BY ORDER OF THE BOARD OF COUNTY COMMISSIONERS OF WHATCOM COUNTY, WASHINGTON, THIS 30 DAY OF Dec AD. 1938  
*...*  
 COUNTY COMMISSIONER

ATTEST: *...*  
 CLERK OF BOARD

STATE OF WASHINGTON SS  
 COUNTY OF WHATCOM  
 I HEREBY CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE AUDITOR OF WHATCOM COUNTY, WASHINGTON, AT THE REQUEST OF JAMES R. BOLSTER, ON THIS 31<sup>ST</sup> DAY OF DECEMBER, AD. 1938 AND THAT IT IS RECORDED IN BOOK 8 OF PLATS, ON PAGE 84 OF THE RECORDS OF SAID COUNTY.  
*Alford ...*  
 COUNTY AUDITOR  
 WHATCOM COUNTY, WASHINGTON

*Check Records on 712 1177 pages 533  
 Also on 11695 pages 712*

858610

DECLARATIONS  
of  
PROTECTIVE COVENANTS AND RESTRICTIONS

The undersigned, JAMES F. BOLST R, owner as his sole and separate property of the following-described property located in Whatcom County, Washington, to-wit:

The West 145 feet of Government Lot 1, also the West 245 feet of Government Lot 4 except the North 200 feet, all in Section 8 Township 38 North Range 1 East of W.M.

does hereby declare all of the above-described property subject to the following protective covenants and restrictions, to-wit:

(1) During 99 years from Nineteen hundred fifty-seven none of the property herein conveyed shall be occupied by any commercial activity of any nature whatsoever. However, the rental or leasing of a single unit on a single lot shall not be construed as commercial activity. Boat rental or charter, cabin rental of more than one unit, any shop, store, tavern, or any other type of business, whether hereinbefore specifically enumerated or not, is prohibited.

(2) During said period the property described when in use shall be used solely for residence purposes, but there may be erected thereon such other appurtenant buildings, including a garage, as may be necessary thereto. There shall not be more than one residence on each lot.

(3) During said period no toilet or toilets shall be placed or maintained on the property except such as are modern in character and discharge to a local septic tank in an efficient, sanitary manner and in accordance with Whatcom County Health Department regulation.

(4) Garbage shall not be permitted to accumulate on said premises in open containers, but shall be kept in containers equipped with tight, flyproof lids or tops, and said containers shall be kept closed.

(5) All exterior finishing of any building must be completed within six months from the start of construction, with no tar paper or other unfinished portion showing after that time.

(6) New construction only shall be permitted on the property and no used buildings or fabricated components of used buildings shall be placed or erected on the property.

(7) There is expressly reserved an easement over and across the property herein described for water pipes, light and power lines, and telephone lines, along with the right to enter upon said land for the purpose of construction and maintenance of the utilities above named. This easement, however, is limited specifically to a strip of land ten feet in width and adjoining the road or roads abutting upon said described property. It is hereby expressly stated that this easement shall not be construed as imposing upon the grantor, his successors or assigns, any obligation to construct any such utilities above named or thereafter maintain them.

(8) Grantor, his successors and assigns, expressly provide in perpetuity a tract of ground to be known as "SANDY POINT COMMUNITY RESERVE BLOCK" owned fractionally by all lot owners.

(9) All county ordinances that ordinarily apply to properties outside Indian Reservation boundaries pertaining to sanitation and construction, are hereby contained in this covenant and by this reference become a part hereof, irrespective of the property location within the boundaries of the Lummi Indian Reservation.

(10) Should any portion of these protective covenants at any time become illegal or ineffectual due to process of law or otherwise, it shall in no way affect the validity of the remaining covenants which shall remain in full force and effect.

(11) For and in consideration of the fractionally deeded area, marked "COMMUNITY RESERVE BLOCK" to each individual lot purchaser, said purchasers do hereby agree and subscribe to an annual payment for each lot owned, an amount not to exceed \$10.00 and payable on January 1st of each year to the Sandy Point Community Treasurer. This subscription shall be a lien upon the lot and draw 1% interest each month until paid.

(12) An elected group of lot owners to be known as "SANDY POINT COMMUNITY COUNCIL" shall have the responsibility of developing the "COMMUNITY RESERVE BLOCK" and shall establish the amount to be paid by each lot owner as set forth in Paragraph (11), shall meet at least once each year in the month of January and shall have full and complete power and authority as pertains to the development, maintenance, collections, policies, rules and regulations of the "COMMUNITY RESERVE BLOCK". The Council shall be composed of seven lot owners, elected by means of two votes for each lot, for a two-year term. The initial council shall be appointed by the Grantors and shall establish rules for their own governing and set the date for the annual election.

(13) There shall be no further subdivision for individual ownership of less than fifty (50) feet frontage and 7200 square feet of area.

(14) No building shall be erected or placed within fifty-five (55) feet of the West boundary, nor within five (5) feet of sideline boundaries.

Each of these covenants and restrictions shall run with any of said lands heretofore described and be binding upon the heirs, executors, administrators, successors and assigns of all or any portion of said heretofore described property, and the acceptance of a deed or any other instrument of conveyance by any grantee for himself, his heirs, executors, administrators, successors and assigns, subjects said grantee, his heirs, executors, administrators, successors and assigns, to each of said restrictions and covenants.

Dated this 1st day of June, 1958

*James H. Bolster*

# **EXHIBIT 4**



3345

DECLARATION OF PROTECTIVE  
COVENANTS AND RESTRICTIONS

THE UNDERSIGNED, BELLINGHAM MARINE, INC., a Washington corporation, owner of the following described property:

Lots C-12 through C-48 and Lots 113 through 118, Sandy Point Tracts No. 4, including a replat of the East 60 feet of Tract 105, Bolster's Sandy Point Tracts No. 2, as recorded in Volume 7 of Plats, page 38 records of Whatcom County Auditor, Whatcom County, Washington

DOES HEREBY DECLARE all of the above described property subject to the following protective covenants and restrictions, to-wit:

1. During 99 years from Nineteen Hundred Sixty-Two none of the property shall be occupied by any commercial activity of any nature whatsoever. However, the rental or leasing of a single unit on a single lot shall not be construed as commercial activity. Boat rental or charter, cabin rental of more than one unit, any shop, store, tavern, or any other type of business, whether hereinbefore specifically enumerated or not, is prohibited.
2. During said period the property described when in use shall be used solely for residence purposes, but there may be erected thereon such other appurtenant buildings, including a garage, as may be necessary thereto. There shall not be more than one residence on each lot.
3. During said period no toilet or toilets shall be placed or maintained on the property except such as are modern in character and discharge to a local septic tank in an efficient, sanitary manner and in accordance with Whatcom County Health Department regulations.
4. Garbage shall not be permitted to accumulate on said premises in open containers, but shall be kept in containers equipped with tight, flyproof lids or tops, and said containers shall be kept closed.
5. All exterior finishing of any building must be completed within six months from the start of construction, with no tar paper or other unfinished portion showing after that time.
6. New construction only shall be permitted on the property and no used buildings or fabricated components of used buildings shall be placed or erected on the property.
7. There is expressly reserved an easement over, under and across the property herein described for water pipe, light and power lines and telephone lines and drainage, along with the right to enter upon said land for the purpose of construction and maintenance of the utilities above named. This easement, however, is limited specifically to a strip of land five feet in width and adjoining the road or roads abutting upon said described property. It is hereby expressly stated that this easement shall not be construed as imposing upon the grantor, his successors or assigns, any obligation to construct any such utilities above named or thereafter maintain them.  
There is also expressly reserved the right to enter upon the Canal front 30-foot set back area for the purpose of maintaining the Canal.  
There is also expressly reserved the right to place and maintain a drain tile along lot boundaries for the purpose of draining the roads within the plat.



542153

8. Grantor, his successors and assigns, expressly provide in perpetuity a tract of ground to be known as "SANDY POINT COMMUNITY RESERVE BLOCK" owned fractionally by all lot owners.

9. All county ordinances that ordinarily apply to properties outside Indian Reservation boundaries pertaining to sanitation and construction, are hereby contained in this covenant and by this reference become a part hereof, irrespective of the property location within the boundaries of the Lummi Indian Reservation.

10. Should any portion of these protective covenants at any time become illegal or ineffectual due to process of law or otherwise, it shall in no way affect the validity of the remaining covenants which shall remain in full force and effect.

11. For and in consideration of the fractionally deeded area, marked "COMMUNITY RESERVE BLOCK" to each individual lot purchaser, said purchasers do hereby agree and subscribe to an annual payment for each lot owned, an amount not to exceed \$10.00 and payable on January 1st of each year to the Sandy Point Community Treasurer. This subscription shall become a lien upon the lot and draw 1% interest each month until paid.

12. An elected group of lot owners to be known as "SANDY POINT COUNCIL" shall have the responsibility of developing the "COMMUNITY RESERVE BLOCK" and shall establish the amount to be paid by each lot owner as set forth in paragraph (11), shall meet at least once each year in the month of January and shall have full and complete power and authority as pertains to the development, maintenance, collections, policies, rules and regulations of the "COMMUNITY RESERVE BLOCK". The Council shall be composed of seven lot owners, selected by means of two votes for each lot, for a two-year term. The initial council shall be appointed by the Grantors and shall establish rules for their own governing and set the date for the annual election.

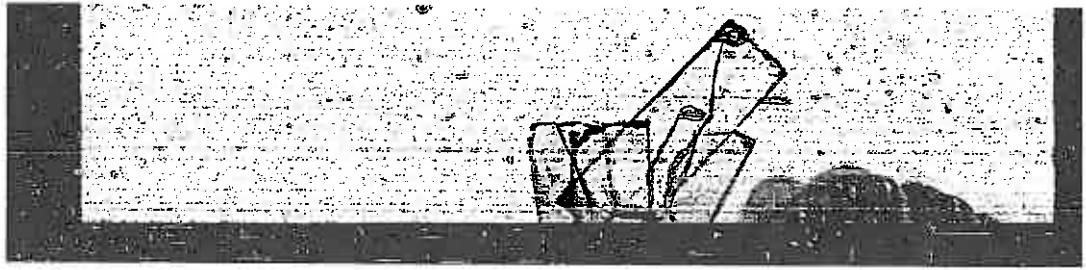
13. There shall be no further subdivision for individual ownership of less than fifty (50) feet frontage and 7200 square feet of area.

14. No building shall be erected or placed within 20 feet of any road, right of way, except that in connection with Lots C-16 and C-48, the side setback along Puffin Road, need be only 15 feet. No building shall be erected or placed within five feet of the side line boundary, nor within thirty feet of the frontage line, nor within 50 feet from the waterfront boundary measured from ordinary high tide for those lots fronting on the Gulf of Georgia.

15. Variances from the stated covenants concerning the type of buildings and the construction, may be granted by a Building Committee to be composed of three members, with one member to be selected by the Community Council heretofore referred to and two members to be selected by the grantor, its successors and assigns. The Building Committee shall also have the right to determine what type of structures, other than buildings, can be placed within the Canal Setback Area. That applications for the right to construct any other type of structure in this area must be submitted in writing to the Building Committee and approval given by the Building Committee.

Each of these covenants and restrictions shall run with any of said lands heretofore described and be binding upon the heirs, executors, administrators, successors and assigns of all or any portion of





642453

said heretofore described property and the acceptance of a deed or any other instrument of conveyance by any grantee for himself, his heirs, executors, administrators, successors and assigns; subjects said grantee, his heirs, executors, administrators, successors and assigns, to each of said restrictions and covenants.

DATED this 6 day of February, 1963.

BELLINGHAM MARINE, INC.

By [Signature] President

ATTEST:

[Signature]  
Secretary

STATE OF WASHINGTON

COUNTY OF WHATCOM

ON THIS DAY personally appeared before me D. C. WALKER and W. A. D. TOVILLAC, to me known to be the president and secretary, respectively, of BELLINGHAM MARINE, INC., the corporation that executed the above and foregoing instrument and acknowledged that said instrument is the free and voluntary act and deed of said corporation; that they are authorized to execute the same and that the seal affixed is the corporate seal of said corporation.

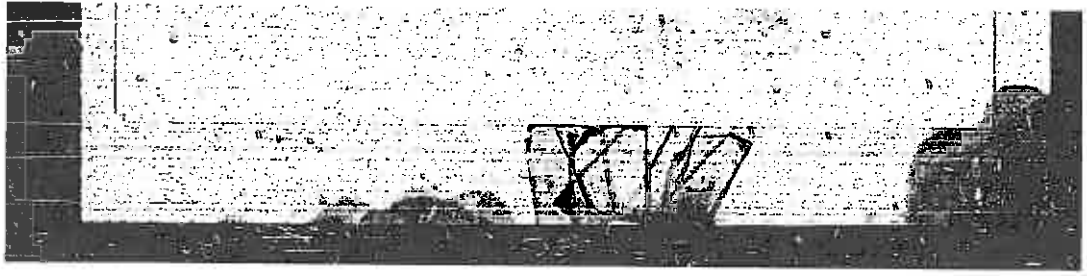
GIVEN under my hand and official seal this 6 day of February, 1963.



[Signature]  
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham.

Received for record at 10:27 AM FEB 6 1963  
at request of Dan Walker  
Whatcom Co., Wash.  
WELLA HANSEN, CO. AUDITOR

VOL 481 PAGE 154



# **EXHIBIT 5**

# SANDY POINT GARDEN TRACTS

## WHATCOM COUNTY, WASHINGTON

SCALE 1"=200'



INDICATES CONCRETE MONUMENT

### DEDICATION

BEFORE ALL MEN OF THESE PARTS: THAT I, JAMES B. BOLTON, CLERK IN THE OFFICE OF THE REAL ESTATE IN THIS PLAT, DO HEREBY CERTIFY AND APPROVE THIS PLAT OF SANDY POINT GARDEN TRACTS, SPECIFICALLY RESERVING THE WATER RIGHTS AND WATER DISTRIBUTION OF THE SANDY POINT GARDEN TRACTS TO THE APPLICANT, OR HIS SUCCESSORS, AND THE WATER RIGHTS AND WATER DISTRIBUTION OF THE SANDY POINT GARDEN TRACTS TO THE APPLICANT, OR HIS SUCCESSORS.

*James B. Bolton*  
 CLERK

### ACKNOWLEDGEMENT

STATE OF WASHINGTON SS  
 COUNTY OF WHATCOM SS  
 I, JAMES B. BOLTON, CLERK IN THE OFFICE OF THE REAL ESTATE IN THIS PLAT, DO HEREBY CERTIFY AND APPROVE THIS PLAT OF SANDY POINT GARDEN TRACTS, SPECIFICALLY RESERVING THE WATER RIGHTS AND WATER DISTRIBUTION OF THE SANDY POINT GARDEN TRACTS TO THE APPLICANT, OR HIS SUCCESSORS, AND THE WATER RIGHTS AND WATER DISTRIBUTION OF THE SANDY POINT GARDEN TRACTS TO THE APPLICANT, OR HIS SUCCESSORS.

*James B. Bolton*  
 CLERK

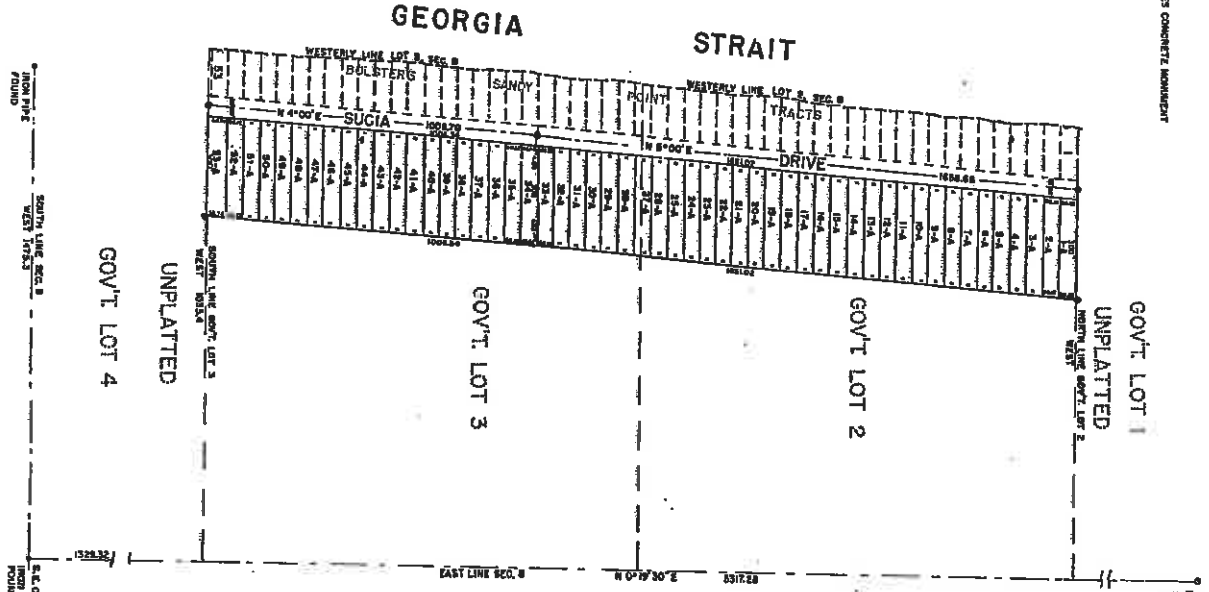
### CERTIFICATE AND DESCRIPTION

I, JAMES B. BOLTON, DO HEREBY CERTIFY THAT THIS PLAT OF SANDY POINT GARDEN TRACTS IS PLAT BY AND BASED ON AN ACTUAL SURVEY MADE BY ME OF GOVERNMENT LOTS 1 AND 2, SECTION 9, TOWNSHIP 28 NORTH, RANGE 12 WEST, AND THAT THE TRACT DIMENSIONS ARE FULLY SHOWN AND THAT THE TRACTS ARE SHOWN ON THE PLAT THAT THE AREA DIMENSIONS ARE DIMENSIONS OF THIS PLAT, THAT THE SOUTH LINE OF GOVT. LOT 3, 1034.00 FEET WEST AND 1034.00 FEET NORTH OF THE SOUTHWEST CORNER OF SAID BEIL S. 1/4, WEST, ALONG THE LINE OF GOVT. LOT 3, 300 FEET TO THE EASTERN LINE OF SUCIA DRIVE, EASTERN LINE OF SUCIA DRIVE, 1034.00 FEET; TH. N. 50°00' E, ALONG THE EASTERN LINE OF GOVT. LOT 3, 300 FEET; TH. S. 90°00' W, ALONG THE WESTERN LINE OF GOVT. LOT 3, 300 FEET; TH. S. 90°00' W, ALONG THE WESTERN LINE OF GOVT. LOT 3, 300 FEET; TH. S. 90°00' W, ALONG THE WESTERN LINE OF GOVT. LOT 3, 300 FEET.

*James B. Bolton*  
 RESIDENT PROFESSIONAL ENGINEER

STATE OF WASHINGTON SS  
 COUNTY OF WHATCOM SS  
 I HEREBY CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE CLERK OF WHATCOM COUNTY, WASHINGTON, AT THE REQUEST OF James B. Bolton ON THIS 21 DAY OF December, A.D. 1927, AND THAT IT IS RECORDED IN BOOK 8 OF PLATS, ON PAGE 82 OF THE RECORDS OF SAID COUNTY.

*James B. Bolton*  
 COUNTY CLERK  
 WHATCOM COUNTY, WASHINGTON



N.E. COR. SEC. 9  
 STAKE FOUND  
 REPLACED BY IRON PIPE

APPROVED BY THE ENGINEER OF WHATCOM COUNTY, WASHINGTON,  
 THIS 30 DAY OF December, A.D. 1927

*James B. Bolton*  
 COUNTY ENGINEER



EXAMINED AND APPROVED BY THE CLERK OF WHATCOM COUNTY, WASHINGTON,  
 COMMISSIONER THIS 30 DAY OF December, A.D. 1927

*James B. Bolton*  
 COUNTY CLERK

I, JAMES B. BOLTON, CLERK OF WHATCOM COUNTY, WASHINGTON, DO HEREBY CERTIFY THAT ALL TAXES DUE ON THIS PLAT BY AND FOR THE PLATTEE HAVE BEEN PAID AS SHOWN IN THE RECORDS OF THIS OFFICE.

*James B. Bolton*  
 COUNTY CLERK

APPROVED BY ORDER OF THE BOARD OF COUNTY COMMISSIONERS OF WHATCOM COUNTY, WASHINGTON, THIS 31 DAY OF December, A.D. 1927

ATTEST: *James B. Bolton*  
 CLERK OF BOARD

*James B. Bolton*  
 CHAIRMAN

SEC. 17

Plat

843018

of

Plat

Dtd

Bolster's Sandy Point Tracts  
Whatcom County, Washington

Fld Sept 6 1957 2:41

Vol 8 of plats, page 66

DEDICATION:

KAMBT: That I, JAMES F. BOLSTER, owner in fee simple of the re est in this plat, do hereby declare and ask this plat of BOLSTER'S SANDY POINT TRACTS and dedicate to the public use forever the roads shown thereon; specifically reserving the water rights and water distribution system to be hereinafter established subj to the approval of the What Co Engineer.

James F Bolster

Akd WCW Sep 5 1957 by James F Bolster, ind, bef F Derond DeWeese, NP Seal

CERTIFY AND DESCRIP

I, Fred W. McElmon, do hereby certify that this plat of BOLSTER'S SANDY POINT TRACTS is part of and based on an actual survey made by me of Gov-  
ernment Lots 2 and 3, Section 8, Township 38 North, Range 1 East, W.M., and that Lot and Street dimensions are fully shown and that monuments have been placed as shown on the plat that the area covered and embraced by this plat is as follows, to-wit:

228  
-  
map

That part of the said Gov't. Lots 2 and 3, lying West of the following described line: Beginning at a point on the South line of Gov't. Lot 3, 1327.86 feet west and 1329.3 feet North of the Southeast corner of Section 8; thence North 4° 00' East, 1006.34 feet; thence North 5° 00' East, 1661.02 feet, to the North line of Gov't. Lot 2.

Fred W McElmon  
Registered Professional Engineer

ENGINEER'S SEAL.

Approved by the Engineer of WCW, this Sep 6 1957.  
County  
Engineer's Seal

J T Lay, County Engineer

Examined and approved by the WC Planning Commission this Sep 6 1957

Patrick Irvin

I, BEULAH JOHNSON, Treas of WCW, do hereby certify that all taxes required by law to be pd upon that portion of the re est embraced within this plat and all the delinquent assessments have been fully pd as shown in the records of this office.

Co Treas Seal

Hugh M Cory, Dep Co Treas  
9-6-57

Approved by order of the Bd of Co Commiss of WCW this Sep 6 1957

Co Commiss Seal  
Attest: Elsie Lewis, Clk of Bd.

Harry Genser, Chairman

Sd plat consists of:

Tracts 1 to 53 and Reserve A on Tract 53

10  
B

James F Bolster and

Willis E Twiner and Hazel F Twiner, hs wf

to

The Public

843443

Declarations of Protective  
Covenants and Restrictions

Dtd Sep 13 1957

Fld Sep 16 1957 9:38

Vol 427 Pg 538

The undersigned, JAMES F BOLSTER, owner as hs sole and sepprop of the foll:

All of Bolster's Sandy Point Tracts, as per the map  
thereof, recorded in Book 8 of Plats, page 66, in  
the office of the Auditor's office of said County and  
State;

and WILLIS E TWINER and HAZEL F TWINER, hs wf, owners of the foll-desc prop:

The North 200 feet of Government Lot 4, Section 8, Township 38 North,  
Range 1 East of Willamette Meridian.

do hereby declare all of the ab-desc prop subj to the foll protective covs and restric-  
tions, to-wit:

- (1) During 99 years from Nineteen hundred fifty-seven, none of the prop herein conveyed shall be occupied by any commercial activity of any nature whatsoever. However, the rental or leasing of a sgl unit on a sgl lot shall not be construed as commercial activity. Boat rental or charter, cabin rental of more than 1 unit any shsp, store, tavern, or ~~any~~ other type of busi, whether hereinafter spec enumerated or not, is prohibited.
- (2) Dur sd period the prop desc when in use shall be used solely for res purposes, but there may be erected thereon such other appurtenant bldgs, inc a garage, as may be nec thereto. There shall not be more than 1 res on ea lot.
- (3) Dur sd period no toilet or toilets shall be placed or maintained on the prop, exc such as are modern in character and discharge to a local septic tank in an efficient, sanitary manner and in accord with WC Health Dept regulation.
- (4) Garbage shall not be permitted to accumulate on sd prem in open containers, but shall be kept in containers equipped with tight flyproof lids or tops, and sd contain-ers shall be kept closed.
- (5) All exterior finishing of any bldg must be completed within 6 mes from the start of construction, with no tar paper or other unfinished part showing aft that time.
- (6) New Construction only shall be permitted on the prop and no used bldgs or fabricated components of used bldgs shall be placed or erected on the prop.
- (7) There is expressly reserved an easent over and across the prop herein desc for water pipes, light and power lines, and telephone lines, alg with the right to enter upon sd land for the purp of construction and maintenance of the utilities ab named. This easent, however, is lim spec to a strip of land 10 ft in width, and gjoining the road or roads abtg upon sd desc prop. It is hereby expressly stated that this easent ~~shall~~ shall not be construed as imposing upon the gtor, his successors or assigns, any obliga to construct any such utilities ab named or thereaft maintain them.
- (8) Gtor, hs successors and assigns, expressly provide in perpetuity a tr of ground to be known as "SANDY POINT COMMUNITY RESERVE BLOCK" owned fractionally by all lot owners.

*Handwritten notes:*  
2  
13  
2  
no map



(9) All county ordinances that ordinarily apply to properties outside Indian Reservation boundaries pertaining to sanitation and construction, are hereby contained in this cov and by this ref become a part hereof, irrespective of the prop loca within the bdris of the Lummi Indian Reservation.

(10) Should any part of these protective covs at any time become illegal or ineffectual due to the process of law or otherwise, it shall in no way affect the validity of the remaining covs which shall remain in full force and effect.

(11) For and in consid of the fractionally deeded area, marked "COMMUN RESERVE BLOCK" to ea individual lot purchaser, sd purchasers do hereby agree and subscribe to an annual paymt for ea lot owned, an amt not to exceed \$10. and payb on Jan 1 of ea yr to the Sandy Point Commun Treas. This subscription shall become a lien upon the lot and draw 1% int ea mo until pd.

(12) An elected group of lot owners to be known as "SANDY POINT COMMUN COUNCIL" shall have the responsibility of developing the "COMMUN RESERVE BLOCK" and shall establish the amt to be pd by ea lot owner as set forth in Paragraph (11) shall meet at least once ea yr in the mo of Jan and shall have full and complete power and authority as pertains to the developmt, maintenance, collections, policies, rules and regulations of the "COMMUN RESERVE BLOCK". The Council shall be composed of 7 lot owners, elected by means of 2 votes for ea lot, for a 2-yr term. The initial council shall be appointed by the Gtors and shall establish rules for their own governing and set the date for the annual election.

(13) There shall be no further sub-division for ind ownership of less than 50 ft frontage and 7200 sq ft of area.

(14) No bldg shall be erected or placed within 55 ft of the West bdry, nor within 5 ft of sideline bdris.

Ea of these covs and restric shall run with any of sd lands heretofore desc and be binding upon the heirs, executors, admin, succ and assigns of all or any portion of sd heretofore desc prop, and the acceptance of a deed or any other instrumt of conveyance by any gtee for himself, hs heirs, executors, admin, successors and assigns, subjs sd gtee, hs heirs, executors, administrators, successors and assigns, to ea of sd restrictions and covenants

Willis E Twiner  
Hazel F Twiner

James F Bolster

Akd WCW Sep 13 1957 by James F Bolster bef N T Cooper, NP Seal

Akd WCW Sep 13 1957 by Willis E Twiner and Hazel F Twiner bef N T Cooper, NP Seal

**DECLARATION  
of  
PROTECTIVE COVENANTS AND RESTRICTIONS**

THE UNDERSIGNED, JAMES P. BOLSTER, owner as his sole and separate property of the following described property located in Whatcom County, Washington, to-wit:

Lots 54-A thru 68-A inclusive, "Bolster's Sandy Point Tracts No. 2" Whatcom County, Washington, as per the map thereof, recorded in Book 8 of Plats, page 80, in the Auditor's office of said county and state.

Lots 1-A thru Lots 53-A, inclusive, "Sandy Point Garden Tracts", Whatcom County, Washington, as per the map thereof, recorded in Book 8 of Plats, page 82, in the Auditor's office of said county and state.

does hereby declare all of the above described property subject to the following protective covenants and restrictions, to-wit:

(1). During 99 years from Nineteen Hundred Fifty-seven, none of the property herein conveyed shall be occupied by any commercial activity of any nature whatsoever. Building rental, any shop, store, tavern, or any other type of business, whether hereinbefore specifically enumerated or not, is prohibited.

(2). During said period the property described when in use shall be used solely for private purposes, but there may not be erected thereon, any building for residential purposes, but there may be erected thereon, such other appurtenant buildings, including a garage, boathouse, tool storage, or such other buildings that do not exceed twelve feet in overall elevation from the natural ground level. The intent of the elevation restriction, is to protect the view of waterfront lots.

(3). During said period, no toilet or toilets shall be placed or maintained on the property except such as are modern in character, and discharge to a local septic tank in an efficient, sanitary manner, and in accordance with Whatcom County Health Department regulations.

(4). Water from the community supply will be allowed only as supply permits, and may be discontinued at any time without notice.

(5). There is expressly reserved an easement over and across the property herein described for water pipes, light and power lines, and telephone lines and road purposes, along with the right to enter

upon said land for the purpose of construction and maintenance of the utilities and accesses above named. This easement however, is limited specifically, to a strip of land ten feet in width along the Easterly boundary of said above described property. There shall be no construction by landowners on said above described strip of land, except as is necessary in the erection and maintenance of the utilities above named. It is hereby expressly stated that this easement shall not be construed as imposing upon the grantor, his successors or assigns, any obligation to construct any such utilities or accesses above named or thereafter maintain them.

(5). Garbage shall not be permitted to accumulate on said premises in open containers, but shall be kept in containers equipped with tight, flyproof lids or tops, and said containers shall be kept closed.

(7). All county ordinances that ordinarily apply to properties outside Indian Reservation boundaries pertaining to sanitation and construction, are hereby contained in this covenant and by this reference become a part hereof, irrespective of the property location within the boundaries of the Lummi Indian Reservation.

(8). Should any portion of these protective covenants at any time become illegal or ineffectual due to process of law or otherwise, it shall in no way affect the validity of the remaining covenants which shall remain in full force and effect.

(9). The property above described, is being platted by the owner, under the name of "Sandy Point Garden Tracts" and said property is being divided into lots and the lots are being sold to third parties. There shall be no further subdivision of the lots, after the original sale from owner.

Each of these covenants and restrictions shall run with any of said lands heretofore described and be binding upon the heirs, executors, administrators, successors and assigns of all or any portion of said heretofore described property, and the acceptance of a deed or any other instrument of conveyance by any grantee for himself, his heirs, executors, administrators, successors and assigns, subjects said grantee his heirs, executors, administrators, successors and assigns, to each of said restrictions and covenants.


DATED this 29th day of December, 1958.

  
James F. Bolster

STATE OF WASHINGTON  
COUNTY OF WHATCOM : ss

On this day personally appeared before me, JAMES F. BOLSTER, to me known to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 29<sup>th</sup> day of December, 1958.

  
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham.

BELLINGHAM TITLE CO. -2-

# **EXHIBIT 6**

# SANDY POINT SHORES NO. 1

## SECTION 8, TWP 38 N, R. 1 E, W.M.

WHATCOM COUNTY, WASHINGTON

### ACKNOWLEDGMENT

STATE OF WASHINGTON  
COUNTY OF WHATCOM  
I, the undersigned, Clerk of the County, do hereby certify that the foregoing is a true and correct copy of the original as the same appears on file in my office. Witness my hand and the seal of the County at Whatcom, Washington, this 12th day of December, 1968.

*James C. Curren*  
Clerk of the County

Notary Public for the State of Washington  
Residing at, *Seattle*

### ACKNOWLEDGMENT

STATE OF WASHINGTON  
COUNTY OF WHATCOM  
I, the undersigned, Clerk of the County, do hereby certify that the foregoing is a true and correct copy of the original as the same appears on file in my office. Witness my hand and the seal of the County at Whatcom, Washington, this 12th day of December, 1968.

*James C. Curren*  
Clerk of the County

Notary Public for the State of Washington  
Residing at, *Seattle*

*See dedication of Restrictions to use of  
Volume 49 Records, Official records*

### EASEMENTS PROVISIONS

All easements herein reserved or designated in this plat are, to wit: and right of way and light, air and other easements and easements of access to and from the land shown on this plat and to and from the same, shall be in full force and effect from the date of recording of this plat. The easements herein reserved or designated in this plat shall be in full force and effect from the date of recording of this plat. The easements herein reserved or designated in this plat shall be in full force and effect from the date of recording of this plat.

### DESCRIPTION & LAND SURVEYORS CERTIFICATE

I, Roger Fisher, do hereby certify that the plat titled "Sandy Point Shores No. 1" shown on and signed by me is a true and correct copy of the original as the same appears on file in my office. Witness my hand and the seal of the County at Whatcom, Washington, this 12th day of December, 1968.

*James C. Curren*  
Clerk of the County

### DEDICATION

THE UNDERSIGNED, Roger Fisher, do hereby certify that the land shown on and signed by me is a true and correct copy of the original as the same appears on file in my office. Witness my hand and the seal of the County at Whatcom, Washington, this 12th day of December, 1968.

*James C. Curren*  
Clerk of the County

### TREASURER'S CERTIFICATE

I, *James C. Curren*, County Treasurer of Whatcom County, Washington, do hereby certify that the above described land has been received in full payment for the same and that the same is now the property of the State of Washington.

*James C. Curren*  
County Treasurer

### APPROVALS

**ENGINEER'S APPROVAL**  
Examined and approved by the Whatcom County Engineering Department *(Signature)*  
**PLANNING COMMISSION APPROVAL**  
Examined and approved by the Whatcom County Planning Commission *(Signature)*  
**COUNTY BOARD APPROVAL**  
Approved by the Board of Commissioners of Whatcom County, this 12th day of December, 1968.  
Attest:  
*(Signature)*  
Clerk of the Board

### RECORDING CERTIFICATE

I, *(Signature)*, County Clerk, do hereby certify that this plat was filed for record in the office of the Auditor of Whatcom County, Washington, on this 12th day of December, 1968, at 10:30 A.M., and that the same is now on file in my office.

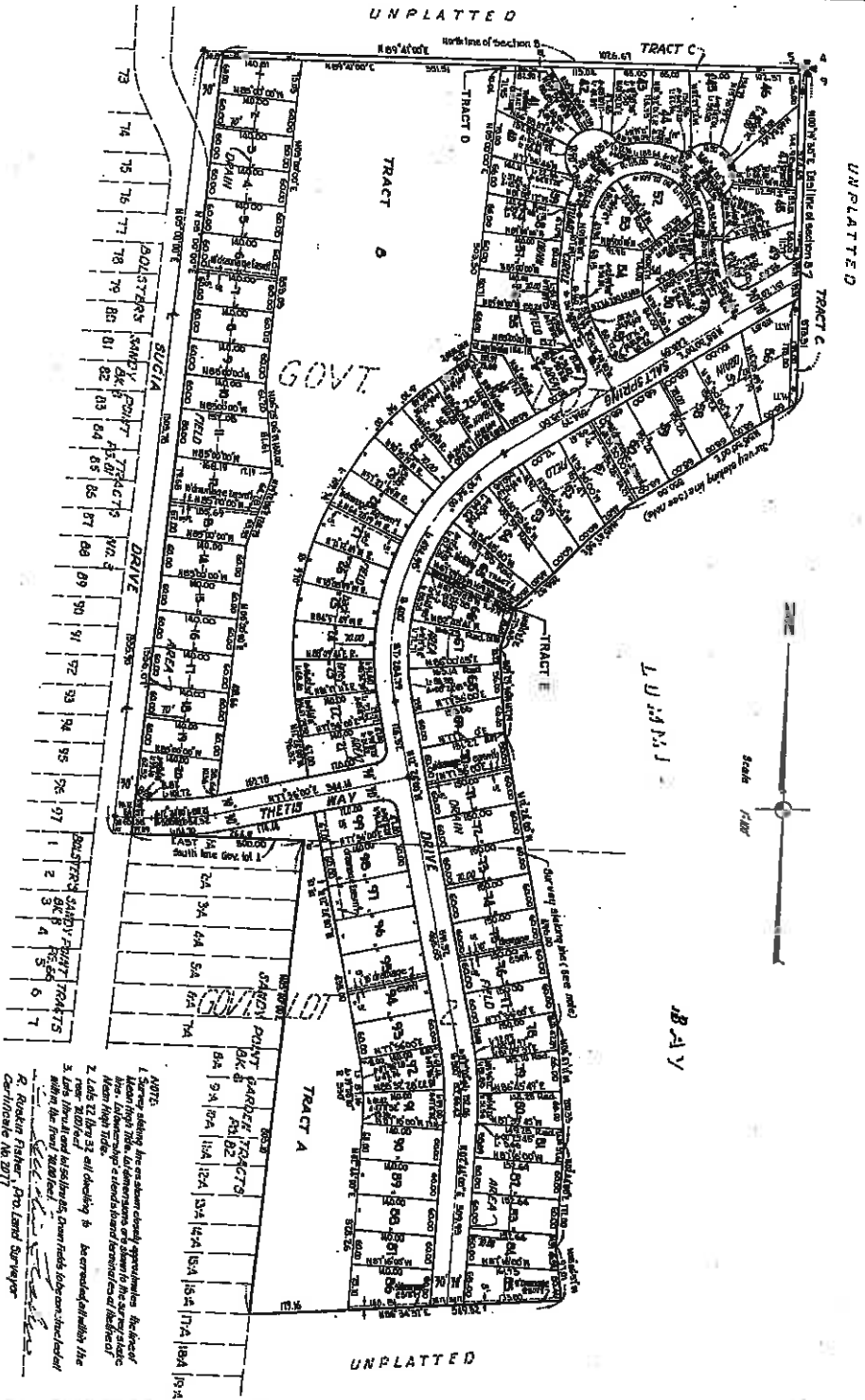
*(Signature)*  
Auditor of Whatcom County, Washington



# SANDY POINT SHORES NO. 1

## SECTION 8, TWP. 38 N., R. 1 E., W. M.

### WHATCOM COUNTY, WASHINGTON



NOTES:

1. Survey showing hereon is based on original survey lines. The first line is the line of section 8. All other lines are original or derived from original survey lines.
2. Lots 11 through 22 are shown to be unimproved.
3. Lots 1 through 10 are shown to be unimproved.

R. Rouse Fisher, Professional Surveyor  
Certificate No. 2777



SHEET 2 OF 2 SHEETS



1442200

DECLARATION OF RESTRICTIONS, EASEMENTS AND RESERVATIONS  
SANDY POINT SHORES NO. 1

THE UNDERSIGNED are owners of the real property situate in Whatcom County, Washington, included in the plat of Sandy Point Shores No. 1 as recorded in such county. They desire to provide for a plan of development of such real property as a part of an entire subdivision and for that purpose do hereby declare and establish the following restrictions, easements and reservations appurtenant:

I. Building Restrictions:

1) Except for portions of the real property as may be used for recreational purposes or common service facilities by Sandy Point Improvement Co., a Washington corporation, no lot in the plat of Sandy Point Shores No. 1 shall be used for any purpose other than for residential purposes, provided however, that a temporary real estate office may be maintained with the consent of the undersigned on any one of such lots.

2) No structure shall be erected, altered, placed or maintained on any lot unless it shall comply with these restrictions and the following:

(a) Each dwelling structure shall be of permanent construction, shall have not less than six hundred (600) square feet of enclosed area devoted to living purposes. No structure shall exceed <sup>30' / VW</sup> ~~14~~ feet above the grade of the adjacent road on Lots 56 to 85 inclusive and shall not exceed two (2) stories in height on any other lot in the plat.

(b) The exteriors of all structures on a lot shall be constructed of new materials.

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(c) No structure shall be erected or placed within five (5) feet of the side boundary of a lot, twenty-five (25) feet of a street abutting a lot, or twenty-five (25) feet of the rear lot line from the street abutting the lot. These setback requirements may be waived or modified by Sandy Point Improvement Co. in case of hardship involving lots of unusual configuration or lots abutted on more than one side by a street. In any event no dwelling shall be located easterly of the building setback line on lots 22 to 32 inclusive as shown on the plat.

(d) No facilities for sewage disposal shall be placed on a lot unless they are of modern design, enclosed within a dwelling structure on the lot and fully connected to a septic tank system of sewage disposal, or comparable modern facility, designed, located and constructed in accordance with the rules and regulations of the Whatcom County Health Department and any other governmental agencies having jurisdiction or are fully connected to a public sewer system.

(e) Prior to erecting or placing of any structure on a lot, the plans and specifications thereof shall be submitted to and approved by Sandy Point Improvement Co. as hereafter provided, and such structure shall conform to such plans and specifications. Any septic tank drainfield on lots 1 to 41 inclusive and lots 56 to 85 inclusive shall be located in the drain field area as shown on the plat.

3) The work of constructing, altering or repairing any structure on a lot shall be diligently prosecuted from its commencement until completion thereof, but in any event the exterior finished appearance shall be completed within six (6) months of commencement so that no tar paper or underlayment shall thereafter be exposed to view.

4) No temporary structure, trailer, tent, garage, basement



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or out-building shall be maintained on any lot for residential purposes.

5) No fence, wall or hedge along a lot line shall exceed forty-eight (48) inches in height, except that decorative screening as approved in writing by Sandy Point Improvement Co. prior to erection may be maintained on a lot.

II. Land Use Restrictions:

1) No garbage, refuse, rubbish, junk or cut growth shall be permitted to be deposited, left or accumulated on a lot unless in suitable containers which shall be kept in sanitary condition, regularly emptied and fully screened from view of the street and adjacent lots.

2) No animals shall be kept or permitted on the real property in the plat except for household pets which shall not unreasonably interfere with the use and enjoyment of any lot.

3) No goods, equipment, trucks, vehicles or paraphernalia used in or connected with any trade or business shall be kept or stored in the open on any lot. No commercial signs, including "For Sale" signs, shall be permitted on any lot or structure.

4) No noxious, or offensive activity shall be permitted on any lot nor shall anything be permitted that may be or become a nuisance or unreasonably interfere with the use and enjoyment of any part of the real property included in the plat.

5) All governmental regulations which are applicable to and regulate the use of real property outside of Indian Reservation boundaries within the jurisdiction of Whatcom County, Washington, shall be applicable to any part of the real property contained in the plat which may be within the boundaries of the Lummi Indian Reservation and the owners or users of such real property shall comply therewith.

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6) No boat powered by any internal combustion engine shall be permitted to be used or operated upon any lake now or hereafter created on Tract B. The use of such lake shall be subject to such reasonable rules and regulations as may hereafter be adopted by the directors of Sandy Point Improvement Co., a Washington corporation, for the use and enjoyment of its shareholders. Each lot owner abutting Tract B shall have the right to use such lake subject to such rules and regulations and may construct a dock facility not to extend more than ten feet in to Tract B from the lot line.

III. Sandy Point Improvement Co.:

1) Sandy Point Improvement Co., a Washington corporation, has been formed by the undersigned for the purpose of providing certain services and recreational facilities for the owners of property in the plat, for other properties in proximity thereto and for others. Any action to be taken pursuant hereto by Sandy Point Improvement Co. may be taken upon authorization of the board of directors. Each lot owner, including contract vendees, shall be entitled to one share of Class A stock of such corporation subject to the restrictions and provisions of the articles of incorporation established from time to time. Such share of stock shall be appurtenant to the title to and shall be transferable only as a part of the transfer of the title to the lot. Each shareholder shall be entitled to the use and enjoyment of the corporate facilities and services subject to the rules, regulations and charges as may now or hereafter be established by the corporation, which rules, regulations and charges shall apply equally to all shareholders who are owners of property in the plat. Nothing herein shall preclude the corporation from making its

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services and facilities available to others on such terms as it deems best. Each shareholder who is an owner of property in the plat shall abide with the rules and regulations of the corporation as may be adopted from time to time incident to the use of its facilities.

2) All plans and specifications required to be submitted to Sandy Point Improvement Co. shall be in writing, shall contain the name and address of the person submitting the same, the description of the property to which they relate, and shall set forth the following with respect to the proposed structure: the location of the structure on the property, the elevation of the structure with reference to the existing and finished lot grade, the general design, the interior layout, the exterior finish materials and color, and such other information as may be required to determine whether such structure conforms to these restrictions. The corporation may establish standards involving esthetic considerations of harmony of construction and color which it determines to be in the best interest of providing for an attractive development, which standards may include those pertaining to the height, configuration, design and appearance of fences, walls, screens out-buildings, pools and other structures appurtenant to the use of a dwelling. Plans and specifications shall be submitted by mail to the secretary of the corporation. Within thirty (30) days after receipt of such plans and specifications which in its opinion do not conform to these restrictions or its esthetic standards. In the event notice of disapproval is not mailed by the corporation to the address of the person submitting such plans and specifications within such thirty-day period, approval shall be deemed to have been given. The

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board of directors of the corporation may designate such person or persons as it deems advisable to act on its behalf to give such approval or disapproval.

3) In order to provide for maintenance and improvement of the various properties and facilities of Sandy Point Improvement Co., each grantee and vendee of a lot in the plat, their heirs, successors and assigns, shall and do by the act of accepting a deed or entering into a contract of sale as vendee, jointly and severally agree that they and each of them shall pay to the corporation the charges assessed by vote of two thirds of the directors of the corporation against the shareholders of the corporation. In the event that such charges remain unpaid to the corporation for sixty (60) days after the due date, then the corporation may record a written notice with the auditor of Whatcom County, Washington, that it claims a lien against the lot of the shareholder who is so delinquent for the amount of such charges, interest at the rate of ten per cent (10%) per annum from the due date until paid and attorneys' fees incurred incident thereto. From and after recording such notice, such lot shall be subject to a lien to the corporation as security for such assessments and such lien may be foreclosed in the manner of a mortgage on real property and in such foreclosure action the corporation shall recover a reasonable sum as attorneys' fees therein and the reasonable and necessary costs of searching and abstracting the public records. Until changed by vote of two thirds of the directors of the corporation the charge herein referred to shall be Ten Dollars (\$10.00) per annum payable on or before June 30 of each year in advance commencing June 30, 1966.

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IV. Easements and Reservations:

1) All oil, gas and mineral rights and the right to remove oil, gas and such minerals in the real property described in the above mentioned plat shall be reserved and excepted from the conveyance of any portion of the real property as though written therein, provided that the owners of such real property shall be compensated for any damage or injury to the surface and structures thereon that may be occasioned by any removal of such minerals.

2) The undersigned hereby reserve an easement over and across a strip of land ten (10) feet in width across each lot parallel with and adjacent to the roads abutting and along five feet of each other lot line shown on the plat for the purpose of constructing, repairing, reconstructing, improving and maintaining water pipes, light and power lines, telephone lines and other facilities for utilities including the right to enter upon such easement for such purposes.

V. Miscellaneous:

1) The covenants, restrictions, easements, rights, liens and encumbrances herein provided for shall be covenants running with the land and shall be binding upon the real property described in the above plat and any and all parts thereof, the parties in interest thereto and their heirs, assigns, personal representatives and successors in interest. Accepting an interest in and to any portion of such real property shall constitute an agreement by any such person, firm or corporation accepting such interest, that they and each of them shall be bound by and subject to the provisions hereof.

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2) In the event that any provision hereof shall be declared invalid by any court of competent jurisdiction, no other provision hereof shall be affected thereby and the remaining provisions shall remain in full force and effect. No waiver of a breach of any provision hereof shall constitute a waiver of a subsequent breach of the same provision or of any other provision.

3) The parties in interest in and to any part of the real property included in the above plat and Sandy Point Improvement Co. for the benefit of such owners and each of them shall have the right and authority to enforce the provisions hereof and in addition to any other remedy for damages or otherwise shall have the right to injunctive relief. Except for the enforcement of the lien to Sandy Point Improvement Co., the prevailing party in any action to enforce the provisions hereof shall recover a reasonable sum as attorneys' fees therein together with the reasonable cost of searching and abstracting the public record.

4) The provisions hereof may be amended, altered or terminated in whole or part by written instrument signed by sixty per cent (60%) of the owners in area of the real property in the above plat, exclusive of roads, and recorded with the auditor of Whatcom County, Washington. For the purpose of this paragraph the word "owner" shall mean any person, firm or corporation holding either fee title or a vendee's interest under a real estate contract as shown by the records of Whatcom County,

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Washington, to the exclusion of any lesser interest. Until so terminated these provisions shall remain in full force and effect.

DATED this 1st day of August, 1966.



SANDY POINT CO.

By [Signature]  
President

By [Signature]  
Secretary

[Signature]  
Robert R. Walker

[Signature] By [Signature]  
Victoria H. Walker

[Signature] By [Signature]  
R. E. Rogers individually and as executor of the estate of Priscilla M. Rogers, deceased.

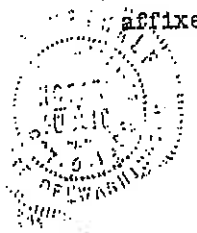
[Signature] By [Signature]  
Stuart E. Rogers

[Signature] By [Signature]  
Madge A. Rogers

STATE OF WASHINGTON }  
COUNTY OF } ss.

On this 1st day of August, 1966, before me personally appeared [Signature] and [Signature] me known to be the President and Secretary respectively of SANDY POINT CO. the corporation that executed the within and foregoing instrument, and acknowledged the same to be the free and voluntary act of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed thereto is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



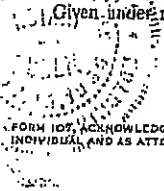
[Signature]  
Notary Public in and for the state of Washington, residing at

1012390

STATE OF WASHINGTON,  
County of WHATCOM

On this 1st day of August, 1966, before me personally appeared Robert R. Walker to me known to be the individual described in and who executed the foregoing instrument for him self and also as Attorney in fact for Victoria R. Walker and acknowledged that he signed and sealed the same as his free and voluntary act and deed for him self and also as The free and voluntary act and deed as Attorney in Fact for said principal for the uses and purposes therein mentioned, and on oath stated that the Power of Attorney authorizing the execution of this instrument has not been revoked and that the said principal is now living and is not insane.

GIVEN under my hand and official seal the day and year last above written.



Barry E. Darling  
Notary Public in and for the State of Washington,  
residing at Mount Lake Terrace  
Washington

FORM 107, ACKNOWLEDGMENT,  
INDIVIDUAL AND AS ATTORNEY IN FACT.

STATE OF WASHINGTON }  
COUNTY OF WHATCOM } SS.

I, the undersigned, a notary public in and for the state of Washington, hereby certify that on this 1 day of August, 1966, personally appeared before me R. E. ROGERS, individually and as executor of the estate of Priscilla M. Rogers, deceased, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

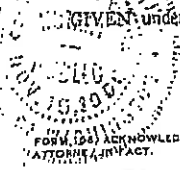
Barry E. Darling  
Notary Public in and for the state  
of Washington, residing at

STATE OF WASHINGTON }  
COUNTY OF WHATCOM } SS.

STATE OF WASHINGTON }  
County of whatcom } SS.

On this 1st day of August, 1966, before me personally appeared Robert R. Walker to me known to be the individual who executed the foregoing instrument as Attorney in Fact for Stuart E. Rogers and Madge A. Rogers and acknowledged that he signed the same as his free and voluntary act and deed as Attorney in Fact for said principal for the uses and purposes therein mentioned, and on oath stated that the Power of Attorney authorizing the execution of this instrument has not been revoked and that said principal is now living and is not insane.

GIVEN under my hand and official seal the day and year last above written.



Barry E. Darling  
Notary Public in and for the State of Washington,  
residing at Mount Lake Terrace,  
Washington

FORM 107, ACKNOWLEDGMENT,  
ATTORNEY IN FACT.

RECEIVED FOR RECORD AT 4:24 P M AUG 25 1966

AT REQUEST OF BELLINGHAM TITLE CO.

WELLA HANSEN, CO. AUDITOR WHATCOM CO. WASH.



# **EXHIBIT 7**



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11/2

AMENDMENT TO  
DECLARATION OF RESTRICTIONS, EASEMENTS & RESERVATIONS  
SANDY POINT SHORES NO. 2

The previously recorded Declaration of Restrictions, Easements & Reservations of Sandy Point Shores No. 2, Whatcom County Auditor's File No. 1028550, is hereby amended by deleting in its entirety Section 1, Paragraph (4) of said Declaration and replacing it with the following:

1. Building Restrictions:

- (4) No temporary structure, trailer, mobile home, modular home, tent, garage, basement or out-building shall be maintained on any lot for residential purposes.

All other sections of the previous Declaration of Restrictions, Easements & Reservations, Sandy Point Shores No. 2, are affirmed.

STATE OF WASHINGTON )  
                                  )ss.  
COUNTY OF WHATCOM )

BUD NORTH and MARLENE DAWSON, after being first duly sworn upon oath, depose and say:

That they are the President and Secretary respectively of SANDY POINT IMPROVEMENT COMPANY, a Washington corporation; that on or about the 1st of October, 1979, they caused to be mailed a proposed written amendment to the Declaration of Restrictions, Easements & Reservations to Sandy Point Shores No. 2 to all record owners of Division No. 2 lots; that by April 10, 1980, more than sixty (60%) percent of the owners responded affirmatively approving the amendments; that the ballots are in the possession of the Secretary of Sandy Point Improvement Company and that the lot owners who approved the changes in writing are as follows:

<u>NAME</u>	<u>LOT #</u>
Frank & Jean Proffitt	5
David & Elizabeth Soderlund	7
Adam & Delores White	8
Keith & Alice Kingsbury	9
Larry & Jeanette Larsen	10
Lloyd & Arnola Larsen	11
Ronald & Suzanne Larsen	12
Joseph & Patricia Pettelle	13
William North	14
Donald & Sarah Wrigley	15
LeRoy & Charlotte Hill	16
Donald & Darlene Currie	20
Ray & Ruth Thorsted	21
Earl Johnson, Jr. and Earl, Sr. & Jean Johnson	22
William and Regina McGinn	23
Anthony Charnish & L. Gail Gravelle	24
Mark & Dorothy Jarrett	27
William & Joyce Lehtinen	28
Thomas & Francis Trotto	29
Robert & Sally Rice	31
F. Melville & Louise Milby	32
Clayton & Velma McDonald	34
Karen Ingebretson	37

Photo-Negative = PO 8/16 - 8/17

RECORDED

William & JoAnn Marx	39
John Murphy	41--
Ray & Bernice Pottle, and Harvey & Dixie Pottle	42
Elizabeth Nemeth	43
M. Vincent & Agnes Pesce	47
Donald & Mina Hall	48
James McPherson	50
Sylvia Severyn	51
Sherry Fast	52
Sherry Fast	53

SANDY POINT IMPROVEMENT COMPANY,  
a Washington corporation:

*William C. Pottle*  
 \_\_\_\_\_  
 BUD NORTH  
 Its: President

*Marlene Dawson*  
 \_\_\_\_\_  
 MARLENE DAWSON  
 Its: Secretary

STATE OF WASHINGTON )  
 ) ss.  
 COUNTY OF WHATCOM )

On this 2 day of May, 1980, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared BUD NORTH and MARLENE DAWSON, to me known to be the President and Secretary, respectively, of SANDY POINT IMPROVEMENT COMPANY, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the statements herein are true and correct.

WITNESS my hand and official seal hereto affixed the day and year first above written.

*Lawrence R. August*  
 \_\_\_\_\_  
 Notary Public in and for the State of  
 Washington, residing at Bellingham.

ALBANY  
 08 MAY 1 5 AM '80  
 11-12-80



## DECLARATION OF RESTRICTIONS, EASEMENTS AND RESERVATIONS

## SANDY POINT SHORES NO. 2

THE UNDERSIGNED are owners of the real property situated in Whatcom County, Washington, included in the plat of Sandy Point Shores No. 2 as recorded in such county. They desire to provide for a plan of development of such real property as a part of an entire subdivision and for that purpose do hereby declare and establish the following restrictions, easements and reservations appurtenant:

I. Building Restrictions:

1) Except for portions of the real property as may be used for recreational purposes or common service facilities by Sandy Point Improvement Co., a Washington Corporation, no lot in the plat of Sandy Point Shores No. 2 shall be used for any purpose other than for residential purposes, provided however, that a temporary real estate office may be maintained with the consent of the undersigned on any one of such lots.

2) No structure shall be erected, altered, placed or maintained on any lot unless it shall comply with these restrictions and the following:

(a) Each dwelling structure shall be of permanent construction, shall have not less than six hundred (600) square feet of enclosed area devoted to living purposes. No structure shall exceed 20 feet above the grade of the adjacent road on any lot.

(b) The exteriors of all structures on a lot shall be constructed of new material.

(c) No structure shall be erected or placed within five (5) feet of the side boundary of a lot, twenty-five (25) feet of a street abutting a lot, or thirty-five (35) feet of the rear lot line from the street abutting the lot. These setback requirements may be waived or modified by Sandy Point Improvement Co. in case of hardship involving lots of unusual configuration or lots abutted on more than one side by a street.

(d) No facilities for sewage disposal shall be placed on a lot unless they are of modern design, enclosed within a dwelling structure on the lot and fully connected to a septic system of sewage disposal, or comparable modern facility, designed, located and constructed in accordance with the rules and regulations of the Whatcom County Health Department and any other governmental agencies having jurisdiction or are fully connected to a public sewer system.

(e) Prior to erecting or placing of any structure on a lot, the plans and specifications therefor shall be submitted to and approved by Sandy Point Improvement Co. as hereafter provided, and such structure shall conform to such plans and specifications. Septic tank drainfield on any lot shall be located in the drain field area as shown on the plat.

3) The work of constructing, altering or repairing any structure on a lot shall be diligently prosecuted from its commencement until completion thereof, but in any event the exterior finished appearance shall be completed within six (6) months of commencement so that no tar paper or underlayment shall thereafter be exposed to view.

4) No temporary structure, trailer, tent, garage, basement or out-building shall be maintained on any lot for residential purposes.

5) No fence, wall or hedge along a lot line shall exceed forty-eight (48) inches in height, except that decorative screening as approved in writing by Sandy Point Improvement Co. prior to erection may be maintained on a lot.

II. Land Use Restrictions:

1) No garbage, refuse, rubbish, junk or cut growth shall be permitted to be deposited, left or accumulated on a lot unless in suitable containers which shall be kept in sanitary condition, regularly emptied and fully screened from view of the street and adjacent lots.

2) No animals shall be kept or permitted on the real property in the plat except for household pets which shall not unreasonably interfere with the use and enjoyment of any lot.

3) No goods, equipment, trucks, vehicles or paraphernalia used in or connected with any trade or business shall be kept or stored in the open on any lot. No commercial signs, including "For Sale" signs, shall be permitted on any lot or structure.

4) No noxious, or offensive activity shall be permitted on any lot nor shall anything be permitted that may be or become a nuisance or unreasonably interfere with the use and enjoyment of any part of the real property included in the plat.

5) All governmental regulations which are applicable to and regulate the use of real property outside of Indian Reservation boundaries within the jurisdiction of Whatcom County, Washington, shall be applicable to any part of the real property contained in the plat which may be within the boundaries of the Lummi Indian Reservation and the owners or users of such real property shall comply therewith.

6) With reference to each lot which shall include any part of a dike constructed for the purpose of containing tidal waters, nothing shall be done or permitted on such lot which shall result in the weakening, damage or destruction, in whole or part, of such dike or the lowering of the elevation of the top of such dike below its originally constructed height, but in no event lower than elevation 14, MEAN LOWER LOW datum. WATER

III. Sandy Point Improvement Co.:

1) Sandy Point Improvement Co., a Washington corporation, has been formed by the undersigned for the purposes of providing certain services and recreational facilities for the owners of property in the plat, for other properties in proximity thereto and for others. Any action to be taken pursuant hereto by Sandy Point Improvement Co. may be taken upon authorization of the board of directors. Each lot owner, including contract vendees, shall be intitled to one share of Class A stock of such corporation subject to the restrictions and provisions of the articles of incorporation established from time to time. Such share of stock shall be appurtenant to the title to and shall be transferable only as a part of the transfer of the title to the lot. Each shareholder

shall be entitled to the use and enjoyment of the corporate facilities and services subject to the rules, regulations and charges as may now or hereafter be established by the corporation, which rules, regulations and charges shall apply equally to all shareholders who are owners of property in the plat. Nothing herein shall precluded the corporation from making its services and facilities available to others on such terms as it deems best. Each shareholder who is an owner of property in the plat shall abide with the rules and regulations of the corporation as may be adopted from time to time incident to the use of its facilities.

2) All plans and specifications required to be submitted to Sandy Point Improvement Co., shall be in writing, shall contain the names and address of the person submitting the same, the description of the property to which they relate, and shall set forth the following with respect to the proposed structure: the location of the structure on the property, the elevation of the structure with reference to the existing and finished lot grade, the general design, the interior layout, the exterior finish materials and color, and such other information as may be required to determine whether such structure conforms to these restrictions. The corporation may establish standards involving esthetic consideration of harmony of construction and color which it determines to be in the best interest of providing for an attractive development, which standards may include those pertaining to the height, configuration, design and appearance of fences, walls, screens, out-buildings, pools and other structures appurtenant to the use of the dwelling. Plans and specifications shall be submitted by mail to the secretary of the corporation. Within thirty (30) days after receipt of such plans and specifications which in its opinion do not conform to these restrictions or its esthetic standards. In the event notice of disapproval is not mailed by the corporation to the address of the person submitting such plans and specifications within such thirty (30) day period, approval shall be deemed to have been given. The board of directors of the corporation may designate such person or persons as it deems advisable to act on its behalf to give such approval or disapproval.

3) In order to provide for maintenance and improvement of the various properties and facilities of Sandy Point Improvement Co., each grantee and



vendee of a lot in the plat, their heirs, successors and assigns, shall and do by the act of accepting a deed or entering into a contract of sales as vendee, jointly and severally agree that they and each of them shall pay to the corporation the charges assessed by vote of two thirds of the directors of the corporation against the shareholders of the corporation. In the event that such charges remain unpaid to the corporation for sixty (60) days after the due date, then the corporation may record a written notice with the auditor of Whatcom County, Washington, that it claims a lien against the lot of the shareholder who is so delinquent for the amount of such charges, interest at the rate of ten per cent (10%) per annum from the due date until paid and attorney's fees incurred incident thereto. From and after recording such notice, such lot shall be subject to a lien to the corporation as security for such assessments and such lien may be foreclosed in the manner of a mortgage on real property and in such foreclosure action the corporation shall recover a reasonable sum as attorney's fees therein and the reasonable and necessary costs of searching and abstracting the public records. Until changed by vote of two thirds of the directors of the corporation the charge herein referred to shall be Ten Dollars (\$10.00) per annum payable on or before June 30 of each year in advance commencing June 30, 1967.

4) The various dikes and appurtenances thereto within the plat for the purpose of containing tidal waters shall constitute facilities of Sandy Point Improvement Co. and may be maintained and improved by the corporation for the benefit of the various properties in the plat. The corporation is hereby granted an easement and right of access to all such dikes within the plat for the purpose of inspecting, maintaining and improving such dikes or any part thereof, providing that the premises entered upon and damaged shall be restored to its condition existing prior to the entry as may be reasonably possible under the circumstances.

IV. Easements and Reservations:

1) All oil, gas and mineral rights and the right to remove oil, gas and such minerals in the real property described in the above mentioned plat shall be reserved and excepted from the conveyance of any portion of the real property as though written therein, provided that the owners of

such real property shall be compensated for any damage or injury to the surface and structures thereon that may be occasioned by any removal of such minerals.

2) The undersigned hereby reserve an easement over and across a strip of land ten (10) feet in width across each lot parallel with and adjacent to the roads abutting and along five (5) feet of each other lot line shown on the plat for the purpose of constructing, repairing, reconstructing, improving and maintaining waterpipes, light and power lines, telephone lines and other facilities for utilities including the right to enter upon such easement for such purposes.

V. Miscellaneous:

1) The covenants, restrictions, easements, rights, liens and encumbrances herein provided for shall be covenants running with the land and shall be binding upon the real property described in the above plat and any and all parts thereof, the parties in interest thereto and their heirs, assigns, personal representatives and successors in interest. Accepting an interest in and to any portion of such real property shall constitute an agreement by any such person, firm, corporation accepting such interest, that they and each of them shall be bound by and subject to the provisions hereof.

2) In the event that any provision hereof shall be declared invalid by any court of competent jurisdiction, no other provision hereof shall be affected thereby and the remaining provisions shall remain in full force and effect. No waiver of a breach of any provision hereof shall constitute a waiver of a subsequent breach of the same provision or of any other provision.

3) The parties in interest in and to any part of the real property included in the above plat and Sandy Point Improvement Co. for the benefit of such owners and each of them shall have the right and authority to enforce the provisions hereof and in addition to any other remedy for damages or otherwise shall have the right to injunctive relief. Except for the enforcement of the lien to Sandy Point Improvement Co., the prevailing party in any action to enforce the provisions hereof shall recover a

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reasonable sum as attorney's fees therein together with the reasonable cost of searching and abstracting the public record.

4) The provisions hereof may be amended, altered or terminated in whole or part by written instrument signed by sixty per cent (60%) of the owners in the area of the real property in the above plat, exclusive of roads, and recorded with the auditor of Whatcom County, Washington. For the purposes of this paragraph the word "owner" shall mean any person, firm, corporation holding either fee title or a vendee's interest under a real estate contract as shown by the records of Whatcom County, Washington, to the exclusion of any lesser interest. Until so terminated these provisions shall remain in full force and effect.

Dated this 13<sup>th</sup> day of June, 1967

*R. E. Rogers*

R. E. Rogers, individually and as executor of the estate of Priscilla M. Rogers, deceased.

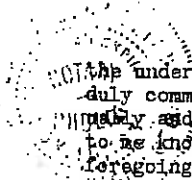
*Robert R. Walker*

Robert R. Walker

Victoria R. Walker, Stuart Rogers and Madge Ann Rogers, Harold E. Isenhart and Gwen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson

By *Robert R. Walker*  
Robert R. Walker, their attorney in fact.

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

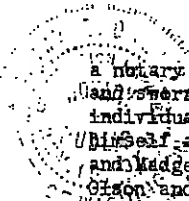


On this 13<sup>th</sup> day of June, 1967, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn personally appeared R. E. ROGERS, individually and as executor of the estate of Priscilla M. Rogers, deceased, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he signed and sealed the said instrument as his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Barry E. Darling  
Notary public in and for the  
state of Washington, residing  
at Musumlike Terrace, W.A.

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )



On this 13<sup>th</sup> day of June, 1967, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn personally appeared ROBERT R. WALKER, to me known to be the individual described in and who executed the foregoing instrument for himself and as attorney in fact of Victoria R. Walker, Stuart Rogers and Madge Ann Rogers, Harold E. Isenhart and Gwen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson, also therein described, and acknowledged to me that he signed and sealed the same as his voluntary act and deed and as the free and voluntary act and deed of the said Victoria R. Walker, Stuart Rogers and Madge Ann Rogers, Harold E. Isenhart and Gwen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson for the uses and purposes therein mentioned, and on oath stated that the power of attorney authorizing the execution of this instrument has not been revoked and that the said Victoria R. Walker, Stuart Rogers and Madge Ann Rogers, Harold E. Isenhart and Gwen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson are now living, and are not insane.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Barry E. Darling  
Notary public in and for the  
state of Washington, residing  
at Musumlike Terrace, W.A.

RECEIVED FOR RECORD AT 11:15 a.m. JUN 17 1967  
AT REQUEST OF H. E. Isenhart  
WELLA HANSEN, CO. AUDITOR WHATCOM CO. WASH.

# **EXHIBIT 8**



AMENDMENT TO  
DECLARATION OF RESTRICTIONS, EASEMENTS & RESERVATIONS  
SANDY POINT SHORES NO. 3

9/120 ✓

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The previously recorded Declaration of Restrictions, Easements & Reservations of Sandy Point Shores No. 3, Whatcom County Auditor's File No. 1032126, is hereby amended by deleting in its entirety Section 1, Paragraph (4) of said Declaration and replacing it with the following:

Irwin, 10... etc

1. Building Restrictions:

- (4) No temporary structure, trailer, mobile home, modular home, tent, garage, basement or out-building shall be maintained on any lot for residential purposes.

All other sections of the previous Declaration of Restrictions, Easements & Reservations, Sandy Point Shores No. 3, are affirmed.

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

CLAYTON McDONALD and MARLEME DAWSON, after being first duly sworn upon oath, depose and say:


That they are the President and Secretary respectively of SANDY POINT IMPROVEMENT COMPANY, a Washington corporation; that on or about the 1st of October, 1979, they caused to be mailed a proposed written amendment to the Declaration of Restrictions, Easements & Reservations to Sandy Point Shores No. 3 to all record owners of Division No. 3 lots; that by March 10, 1980, more than sixty (60%) percent of the owners responded affirmatively approving the amendments; that the ballots are in the possession of the Secretary of Sandy Point Improvement Company and that the lot owners who approved the changes in writing are as follows:

<u>NAME</u>	<u>LOT #</u>
Marjorie M. Irwin	1
Adam & Delores White	3
Clifford & Maxine Bromling	4
Robert & June Petrie	7
Martin & Cynthia Schoneker	9
Stephen & Judy Horner	10
Leonard & Pamela Fidgett	11 & 12
Edward & Kathryn Jackson	13
James McPherson	14
Howard & Bertha Sweeney	15
F. J. Whitcroft	16
Mr. & Mrs. R. J. Dykes	17
Richard & Phyllis Shideler	18
William & Mary Shimaski	19
Birrell Dinnetz and Annabell King	21
James & June Sweet	22
Phyllis Alexander	23
Gloria Turk	24
Robert R. Walker	25
Ian & Beryl Dobbin	27
Jerome & Sara Proland	28
Windsock Company	31
Harold & Jane Olson	32
Windsock Company	34

Arvard Belden	35
Robert & Sharon Roberts	37
Thomas & Karen Jones	39
Hideo & Kimiko Mori	40
Jerry & Carol Mulian	41
John & Alma Rubin	42
Richard & Mary Foege	43
Joseph & Katie Davis	44
Edwin & Mary Ewing	45
Robert R. Walker	47
Alfred & Luella Hahnel	48
Hugh & Kay McQueen	51
Windsock Company	52
Robert R. Walker	53
Robert R. Walker	54
Robert R. Walker	55
Richard & Joy Gutherie and Richard Sobjack	57
R.D. & Shirley Metcalf	58
John & Verone Woodward	59
Everett & Mary Jane Hoffman and Nicholas Supernenko	60
Vernon & Ellen Grandy	61
Ronald & Molly Weden	62
Chi-Tai & Hui-Chu Chu	64
J. H. Wiebe	66
Jon & Terry Allsop	67
Joseph & Katie L. Davis	68
Vere & Elsie Richards	70
Wilfred & Helen Olson	71
Richard & Marlene Dawson	72
Elmer & Ardis Wallin	73
John R. Haffner	75
Douglas & Joyce Anderson	76
Walter & Barbara James	77
Eugene Miller	78
James B. Chapman	79
Kenneth Rodal	80
George & Maxine Cook	81
David & Gisele Dunn	84
Lyle & Agneta Hauger	85
Peter & Patricia Ambrose	87
Patrick Boyd	88
Patrick Boyd	89

SANDY POINT IMPROVEMENT COMPANY,  
a Washington corporation:

  
CLAYTON McDONALD  
Its: President

  
MARLENE DAWSON  
Its: Secretary



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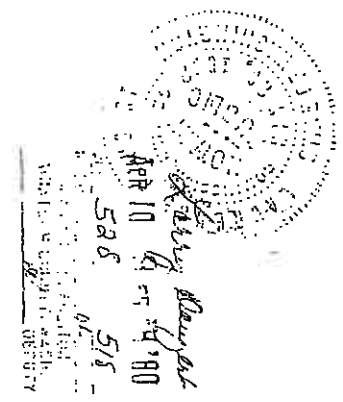
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

On this 9 day of April, 1980, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared CLAYTON McDONALD and MARLENE DAWSON, to me known to be the President and Secretary, respectively, of SANDY POINT IMPROVEMENT COMPANY, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the statements herein are true and correct.

WITNESS my hand and official seal hereto affixed the day and year first above written.

*Lawrence B. Buehler*  
Notary Public in and for the State of  
Washington, residing at Bellingham.

(SEAL)



## DECLARATION OF RESTRICTIONS, EASEMENTS AND RESERVATIONS

## SANDY POINT SHORES NO. 3

THE UNDERSIGNED are owners of the real property situated in Whatcom County, Washington, included in the plat of Sandy Point Shores No. 3 as recorded in such county. They desire to provide for a plan of development of such real property as a part of an entire subdivision and for that purpose do hereby declare and establish the following restrictions, easements and reservations appurtenant. These restrictions, easements, and reservations shall not apply to Tract C of Sandy Point Shores #3. Tract C of Sandy Point Shores #3 shall not be built on until it has been replatted with adjoining property.

1. Building Restrictions:

1) Except for portions of the real property as may be used for recreational purposes or common service facilities by Sandy Point Improvement Co., a Washington corporation, no lot in the plat of Sandy Point Shores No. 3 shall be used for any purpose other than for residential purposes, provided however, that a temporary real estate office may be maintained with the consent of the undersigned on any one of such lots.

2) No structure shall be erected, altered, placed or maintained on any lot unless it shall comply with these restrictions and the following:

(a) Each dwelling structure shall be of permanent construction, shall have not less than one thousand (1000) square feet of enclosed area devoted to living purposes.

(b) The exteriors of all structures on a lot shall be constructed of new material.

(c) No structure shall be erected or placed within five (5) feet of the side boundary of a lot, twenty-five (25) feet of a street abutting a lot, or thirty-five (35) feet of the rear lot line from the street abutting the lot. These setback requirements may be waived or modified by Sandy Point Improvement Co. in case of hardship involving lots of unusual configuration or lots abutted on more than one side by a street.

(d) No facilities for sewage disposal shall be placed on a lot unless they are of modern design, enclosed within a dwelling structure on the lot and fully connected to a septic system of sewage disposal or to a public sewer facility designed, located and constructed in accordance with the rules and regulations of the Whetson County Health Department and any other governmental agencies having jurisdiction or are fully connected to a public sewer system.

(e) Prior to erecting or placing of any structure on a lot or the interior of any office, boat houses, docks, the plans and specifications therefor shall be submitted to and approved by Sandy Point Improvement Co. as hereafter provided, and such structure shall conform to such plans and specifications. Septic tank drainfield shall be located in the front 70 feet of each lot.

3) The work of construction, altering or repairing any structure on a lot shall be diligently prosecuted from its commencement until completion thereof, but in any event the exterior finished appearance shall be completed within six (6) months of commencement so that no timber or underlayment shall thereafter be exposed to view.

(4) No temporary structure, trailer, tent, garage, basement or out-building shall be maintained on any lot for residential purposes.

5) No fence, wall or hedge along a lot line shall exceed forty-eight (48) feet in height, except that decorative screening as approved in writing by Sandy Point Improvement Co. prior to erection may be maintained on a lot.

#### II. Land Use Restrictions:

1) No garbage, refuse, rubbish, junk or cut growth shall be permitted to be deposited, left or accumulated on a lot unless in suitable containers which shall be kept in sanitary condition, regularly emptied and fully screened from view of the street and adjacent lots.

2) No animals shall be kept or permitted on the real property in the plot except for household pets which shall not unreasonably interfere with the use and enjoyment of any lot.

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3) No goods, equipment, trucks, vehicles or paraphernalia used in or connected with any trade or business shall be kept or stored in the open on any lot. No commercial signs, including "For Sale" signs, shall be permitted on any lot or structure.

4) No noxious, or offensive activity shall be permitted on any lot nor shall anything be permitted that may be or become a nuisance or unreasonably interfere with the use and enjoyment of any part of the real property included in the plat.

5) All governmental regulations which are applicable to and regulate the use of real property outside of Indian Reservation boundaries within the jurisdiction of Whatcom County, Washington, shall be applicable to any part of the real property contained in the plat which may be within the boundaries of the Lummi Indian Reservation and the owners or users of such real property shall comply therewith.

6) With reference to each lot which shall include any part of a dike constructed for the purpose of containing tidal waters, nothing shall be done or permitted on such lot which shall result in the weakening, damage or destruction, in whole or part, of such dike or the lowering of the elevation of the top of such dike below its originally constructed height, but in no event lower than elevation 14. mean lower low water datum.

III. Sandy Point Improvement Co.:

1) Sandy Point Improvement Co., a Washington corporation, has been formed by the undersigned for the purposes of providing certain services and recreational facilities for the owners of property in the plat, for other properties in proximity thereto and for others. Any action to be taken pursuant hereto by Sandy Point Improvement Co. may be taken upon authorization of the board of directors. Each lot owner, including contract vendees, shall be entitled to one share of Class A stock of such corporation subject to the restrictions and provisions of the articles of incorporation established from time to time. Such share of stock shall be appurtenant to the title to and shall be transferable only as a part of the transfer of the title to the lot. Each shareholder

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shall be entitled to the use and enjoyment of the corporate facilities and services subject to the rules, regulations and charges as may now or hereafter be established by the corporation, which rules, regulations and charges shall apply equally to all shareholders who are owners of property in the plat. Nothing herein shall preclude the corporation from making its services and facilities available to others on such terms as it deems best. Each shareholder who is an owner of property in the plat shall abide with the rules and regulations of the corporation as may be adopted from time to time incident to the use of its facilities.

2) All plans and specifications required to be submitted to Sandy Point Improvement Co., shall be in writing, shall contain the names and address of the person submitting the same. The description of the property to which they relate, and shall set forth the following with respect to the proposed structure: the location of the structure on the property, the elevation of the structure with reference to the existing and finished lot grade, the general design, the interior layout, the exterior finish materials and color, and such other information as may be required to determine whether such structure conforms to these restrictions. The corporation may establish standards involving esthetic consideration of harmony of construction and color which it determines to be in the best interest of providing for an attractive development, which standards may include those pertaining to the height, configuration, design and appearance of fences, walls, screens, out-buildings, pools and other structures appurtenant to the use of the dwelling. Plans and specifications shall be submitted by mail to the secretary of the corporation. Within thirty (30) days after receipt of such plans and specifications which in its opinion do not conform to these restrictions or its esthetic standards. In the event notice of disapproval is not mailed by the corporation to the address of the person submitting such plans and specifications within such thirty (30) day period, approval shall be deemed to have been given. The board of directors of the corporation may designate such person or persons as it deems advisable to act on its behalf to give such approval or disapproval.

3) In order to provide for maintenance and improvement of the various properties and facilities of Sandy Point Improvement Co., each grantee and vendee of a lot in the plat, their heirs, successors and assigns, shall and do by the act of accepting a deed or entering into a contract of sales as vendee, jointly and severally agree that they and each of them shall pay to the corporation the charges assessed by vote of two thirds of the directors of the corporation against the shareholders of the corporation. In the event that such charges remain unpaid to the corporation for sixty (60) days after the due date, then the corporation may record a written notice with the auditor of Whatcom County, Washington, that it claims a lien against the lot of the shareholder who is so delinquent for the amount of such charges, interest at the rate of ten per cent (10%) per annum from the due date until paid and attorney's fees incurred incident thereto. From and after recording such notice, such lot shall be subject to a lien to the corporation as security for such assessments and such lien may be foreclosed in the manner of a mortgage on real property and in such foreclosure action the corporation shall recover a reasonable sum as attorney's fees therein and the reasonable and necessary costs of searching and abstracting the public records. Until changed by vote of two thirds of the directors of the corporation the charge herein referred to shall be Ten Dollars (\$10.00) per annum payable on or before June 30 of each year in advance commencing June 30, 1968.

4) The various dikes and appurtenances thereto within the plat for the purpose of containing tidal waters shall constitute facilities of Sandy Point Improvement Co. and may be maintained and improved by the Corporation for the benefit of the various properties in the plat. The Corporation is hereby granted an easement and right of access to all such dikes within the plat for the purpose of inspecting, maintaining and improving such dikes or any part thereof, providing that the premises entered upon and damaged shall be restored to its condition existing prior to the entry as may be reasonably possible under the circumstances.

5) Tract A and Tract B shall constitute facilities of Sandy Point Improvement Company and may be maintained and improved by the corporation for the benefit of the various properties in the plat.

#### IV. Easements and Reservations:

1) All oil, gas and mineral rights and the right to remove oil, gas and such minerals in the real property described in the above mentioned

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plat shall be reserved and excepted from the conveyance of any portion of the real property as though written therein, provided that the owners of such real property shall be compensated for any damage or injury to the surface and structures thereon that may be occasioned by any removal of such minerals.

2) The undersigned hereby reserve an easement over and across a strip of land ten (10) feet in width across each lot parallel with and adjacent to the roads abutting and along five (5) feet of each other lot line shown on the plat for the purpose of constructing, repairing, reconstructing, increasing and maintaining water pipes, light and power lines, telephone lines and other facilities for utilities including the right to enter upon such easement for such purposes.

V. Miscellaneous:

1) The covenants, restrictions, easements, rights, liens and encumbrances herein provided for shall be covenants running with the land and shall be binding upon the real property described in the above plat and any and all parts thereof, the parties in interest thereto and their heirs, assigns, personal representatives and successors in interest. Accepting an interest in and to any portion of such real property shall constitute an agreement by any such person, firm, corporation accepting such interest, that they and each of them shall be bound by and subject to the provisions hereof.

2) In the event that any provision hereof shall be declared invalid by any court of competent jurisdiction, no other provision hereof shall be affected thereby and the remaining provisions shall remain in full force and effect. No waiver of a breach of any provision hereof shall constitute a waiver of a subsequent breach of the same provision or of any other provision.

3) The parties in interest in and to any part of the real property included in the above plat and Sandy Point Improvement Co. for the benefit of such owners and each of them shall have the right and authority to enforce the provisions hereof and in addition to any other remedy for dam-

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... or otherwise shall have the right to injunctive relief. Except for the enforcement of the lien to Sandy Point Improvement Co., the prevailing party in any action to enforce the provisions hereof shall recover a reasonable sum as attorney's fees therein together with the reasonable cost of searching and abstracting the public record.

4). The provisions hereof may be amended, altered or terminated in whole or part by written instrument signed by sixty per cent (60%) of the owners in the area of the real property in the above plat, exclusive of roads, and recorded with the auditor of Whatcom County, Washington. For the purposes of this paragraph the word "owner" shall mean any person, firm, corporation holding either fee title or a vendee's interest under a real estate contract as shown by the records of Whatcom County, Washington, to the exclusion of an lesser interest. Until so terminated these provisions shall remain in full force and effect.

Dated this 17<sup>th</sup> day of August, 1967

R. E. Rogers  
R. E. Rogers, Individually and  
or executor of the estate of  
Priscilla M. Rogers, deceased.

Robert R. Walker  
Robert R. Walker

Victoria R. Walker, Stuart Rogers  
and Madge Ann Rogers, Harold E.  
Isenhart and Gwen-lee Isenhart,  
Arnold Olson and Selma E. Olson,  
Donald S. Olson and Barbara L.  
Olson.

By Robert R. Walker  
Robert R. Walker, their  
attorney in fact.



STATE OF WASHINGTON )  
                                  )  
                                  )  
COUNTY OF WASHINGTON )

103212B

On this 17<sup>th</sup> day of AUGUST, 1967, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn personally appeared R. E. ROGERS, individually and as executor of the estate of Priscilla M. Rogers, deceased, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he signed and sealed the said instrument as his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Barry E. Darling  
Notary public in and for the  
state of Washington, residing  
at Mountlake Terrace

STATE OF WASHINGTON )  
                                  )  
                                  )  
COUNTY OF WASHINGTON )

On this 17<sup>th</sup> day of AUGUST, 1967, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared ROBERT R. WALKER, to me known to be the individual described in and who executed the foregoing instrument for himself and as attorney in fact of Victoria R. Walker, Stuart Rogers and Marge Ann Rogers, Harold E. Isenhart and Gwen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson, also therein described, and acknowledged to me that he signed and sealed the same as his voluntary act and deed and as the free and voluntary act and deed of the said Victoria R. Walker, Stuart Rogers and Marge Ann Rogers, Harold E. Isenhart and Gwen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson for the uses and purposes therein mentioned, and on oath stated that the power of attorney authorizing the execution of this instrument has not been revoked and that the said Victoria R. Walker, Stuart Rogers and Marge Ann Rogers, Harold E. Isenhart and Gwen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson are now living, and are not insane.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Barry E. Darling  
Notary public in and for the  
state of Washington, residing  
at Mountlake Terrace

RECORDED FOR RECORD AT 10 30 A.M. AUG 1967  
BY H. E. Isenhart  
WILLIAM HANFORD CO. AUDITOR WASHINGTON CO. WASH.

# **EXHIBIT 9**

# SANDY POINT SHORES NO. 4

SEC. 8 & 9, T38N1, R1E, W. M.  
WHATCOM COUNTY, WASHINGTON

### DESCRIPTION

1. LENA H. H. DANIEL, DO HEREDITARY CERTIFY THAT THE PLAT TITLED "SANDY POINT SHORES DIVISION NO. 4" IS SAID UPON AN ACTUAL SURVEY MADE IN ACCORDANCE WITH THE REQUIREMENTS OF STATE LAW, THAT ALL DISTANCES, CORNERS AND ANGLES ARE CORRECTLY SHOWN HEREON, THAT ALL REQUIREMENTS AND LOST CORNERS WERE MET ON THE RECORD AS DIRECTED BY THE COMMISSIONERS OF WHATCOM COUNTY. THAT ON THE RECORD AS DIRECTED, PORTIONS OF COVET LOTS 2, 3, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

*Wm. F. Bowling*  
PROFESSIONAL LAND SURVEYOR

### DEDICATION

KNOW ALL MEN BY THESE PRESENTS, THAT WE THE UNDERSIGNED, OWNERS IN FEEL SIMPLE OF THE LAND HERETO PLACED, HERETO DECLINE THE PLAN AND DEDICATE TO THE PUBLIC PURPOSE ALL RIGHTS AND CLAIMS AND THE RIGHT TO CONTINUE TO OWN SAID ROAD AND WAYS OVER AND ACROSS ANY LOT OR LOTS WHERE WATER RIGHT TAKE A NATURAL COURSE IN THE ORIGINAL, REASONABLE GRADING OF THE ROADS AND WAYS SHOWN HEREON, REASONABLE GRADING OF ROADS AND WAYS SHOWN, HERETO NO DRAINAGE OR EROSION OF SOIL SHALL BE CAUSED BY THE EROSION OF EARTH FROM THEM, EXCEPTING THEREFROM THE WAYS AND ROADS SHOWN HEREON, AND WE HEREBY WAIVER PROPER ROAD DRAINAGE, ANY ENCLOSURE OF DRAINAGE WATER IN CURBS OR DAMS OR MENTIONS THEREOF AFORESAYED ANY LOT AS MAY BE INDENTURED BY OR FOR THE OWNER OF ANY LOT, SHALL BE MADE BY AND AT THE EXPENSE OF SUCH OWNER, IN THE OFFICE OF THE WHATCOM COUNTY AUDITOR UNDER AUTHORITY FILE NO. 10332220.

*Wm. F. Bowling*  
PROFESSIONAL LAND SURVEYOR

*R.E. Rowland*  
RENE ROWLAND, A PERSONALLY APPEARED, AS ATTORNEY IN FACT FOR THE STATE OF WASHINGTON, HUSBAND OF ROSEMARY E. ROWLAND, DECEASED.

*Wm. F. Bowling*  
WILLIAM F. BOWLING, A PERSONALLY APPEARED, AS ATTORNEY IN FACT FOR THE STATE OF WASHINGTON, HUSBAND OF BILLY E. BOWLING, DECEASED.

**ACKNOWLEDGEMENT**

STATE OF WASHINGTON,  
COUNTY OF WHATCOM,  
I, *Wm. F. Bowling*, Notary Public in and for the County of Whatcom, Washington, do hereby certify that the foregoing is a correct and true copy of the instrument in and for the State of Washington, recorded in this office on this 14th day of August, 1988, and that the individuals described in and who executed the foregoing instrument and acknowledged to me that they signed the same as their free and voluntary act and deed for the uses and purposes therein mentioned, and that the power of attorney mentioned therein was not being revoked, and that the instrument was duly and lawfully executed in the presence of me and official seal, hereunto appended the day and year in this certificate first above written.

**ACKNOWLEDGEMENT**

STATE OF WASHINGTON,  
COUNTY OF WHATCOM,  
I, *Wm. F. Bowling*, Notary Public in and for the County of Whatcom, Washington, do hereby certify that the foregoing is a correct and true copy of the instrument in and for the State of Washington, recorded in this office on this 14th day of August, 1988, and that the individuals described in and who executed the foregoing instrument and acknowledged to me that they signed the same as their free and voluntary act and deed for the uses and purposes therein mentioned, and that the power of attorney mentioned therein was not being revoked, and that the instrument was duly and lawfully executed in the presence of me and official seal, hereunto appended the day and year in this certificate first above written.

### ENGINEER'S APPROVAL

EXAMINED AND APPROVED BY THE WHATCOM COUNTY ENGINEERING DEPARTMENT  
THIS 14th DAY OF August 1988.  
*Paul S. ...*  
ENGINEER, WHATCOM COUNTY, WASHINGTON

### PLANNING COMMISSION APPROVAL

EXAMINED AND APPROVED BY THE WHATCOM COUNTY PLANNING COMMISSION  
THIS 14th DAY OF August 1988.  
*...*  
CHIEF, WHATCOM COUNTY PLANNING COMMISSION

### COMMISSIONER'S APPROVAL

APPROVED BY ORDER OF THE BOARD OF WHATCOM COUNTY COMMISSIONERS  
OF WHATCOM COUNTY THIS 14th DAY OF August 1988.  
*...*  
ATTORNEY AT LAW  
CHIEF OF THE BOARD  
COUNTY, WHATCOM COUNTY, COMMISSIONERS

### TREASURER'S CERTIFICATE

I, HENRY CENTY, COUNTY TREASURER OF WHATCOM COUNTY, WASHINGTON, DO HEREBY CERTIFY THAT ALL TAXES REQUIRED BY LAW TO BE PAID UPON THAT PLAT AS RECORDED IN THIS OFFICE HAVE BEEN PAID IN FULL BY THE PERSONS IN MY OFFICE. WITNESS MY OFFICIAL SIGNATURE AND SEAL, THIS 14th DAY OF August, 1988.

*Henry Centy*  
TREASURER, WHATCOM COUNTY, WASHINGTON

### AUDITOR'S CERTIFICATE

I, HENRY CENTY, CERTIFY THAT THIS PLAT WAS FILED FOR RECORD AT THE OFFICE OF THE AUDITOR OF WHATCOM COUNTY, WASHINGTON, AT THE REQUEST OF *...*, REGISTERED AS ATTORNEY AT LAW, OF THE COUNTY OF WHATCOM, WASHINGTON, THIS 14th DAY OF August, 1988. WITNESS MY HAND AND OFFICIAL SEAL, HEREUNTO APPENDED THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

*Henry Centy*  
AUDITOR, WHATCOM COUNTY, WASHINGTON

### ACKNOWLEDGEMENT

STATE OF WASHINGTON,  
COUNTY OF WHATCOM,  
I, *Wm. F. Bowling*, Notary Public in and for the County of Whatcom, Washington, do hereby certify that the foregoing is a correct and true copy of the instrument in and for the State of Washington, recorded in this office on this 14th day of August, 1988, and that the individuals described in and who executed the foregoing instrument and acknowledged to me that they signed the same as their free and voluntary act and deed for the uses and purposes therein mentioned, and that the power of attorney mentioned therein was not being revoked, and that the instrument was duly and lawfully executed in the presence of me and official seal, hereunto appended the day and year in this certificate first above written.

*Wm. F. Bowling*  
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON  
WASHINGTON, RECORD AT 10332220

DECLARATION OF RESTRICTIONS, EASEMENTS AND RESERVATIONS

SANDY POINT SHORES NO. 4

THE UNDERSIGNED are owners of the real property situated in Whatcom County, Washington, included in the plat of Sandy Point Shores No.4 as recorded in such county. They desire to provide for a plan of development of such real property as a part of an entire subdivision and for that purpose do hereby declare and establish the following restrictions, easements and reservations appurtenant.

1. Building Restrictions:

- 1) Except for portions of the real property as may be used for recreational purposes or common service facilities by Sandy Point Improvement Co., a Washington corporation, no lot in the plat in Sandy Point Shores No.4 shall be used for any purpose other than for residential purposes, provided however, that a temporary real estate office may be maintained with the consent of the undersigned on any one of such lots.
- 2) No structure shall be erected, altered, placed or maintained on any lot unless it shall comply with these restrictions and the following:
  - (a) Each dwelling structure shall be of permanent construction, shall have not less than eight hundred (800) square feet of enclosed area devoted to living purposes.
  - (b) The exteriors of all structures on a lot shall be constructed of new material.
  - (c) No structure shall be erected or placed within five (5) feet of the side boundary of a lot, twenty-five (25) feet of a street abutting a lot, or thirty-five (35) feet of the rear lot line from the street abutting the lot. These setback requirements may be waived or modified by Sandy Point Improvement Co. in case of hardship involving lots of unusual configuration or lots abutted on more than one side by a street.
  - (d) No facilities for sewage disposal shall be placed on a lot unless they are of modern design, enclosed within a dwelling structure on the lot and fully connected to a septic system of sewage disposal, or comparable modern facility, designed, located and constructed in accordance with the rules and regulations of the Whatcom County Health Department and any other governmental agencies having jurisdiction or are fully connected to a public sewer system.
  - (e) Prior to erecting or placing of any structure on a lot or the placing of any piling, boat houses, docks, the plans and specifications therefor shall be submitted to and approved by Sandy Point Improvement Co. as hereafter provided, and such structure shall conform to such plans and specifications. Septic tank drainfield shall be located in the front 90 feet of each lot.

3) The work of constructing, altering or repairing any structure on a lot shall be diligently prosecuted from its commencement until completion thereof, but in any event the exterior finished appearance shall be completed within six (6) months of commencement so that no tar paper or underlayment shall thereafter be exposed to view.

- 4) No temporary structure, trailer, tent, garage, basement, or outbuilding shall be maintained on any lot for residential purposes.
- 5) No fence, wall or hedge along a lot line shall exceed forty-eight (48) inches in height, except that decorative screening as approved in writing by Sandy Point Improvement Co. prior to erection may be maintained on a lot.

II. Land Use Restrictions:

- 1) No garbage, refuse, rubbish, junk or cut growth shall be permitted to be deposited, left or accumulated on a lot unless in suitable containers which shall be kept in sanitary condition, regularly emptied and fully screened from view of the street and adjacent lots.
- 2) No animals shall be kept or permitted on the real property in the plat except for household pets which shall not unreasonably interfere with the use and enjoyment of any lot.
- 3) No goods, equipment, trucks, vehicles or paraphernalia used in or connected with any trade or business shall be kept or stored in the open on any lot. No commercial signs, including "For Sale" signs, shall be permitted on any lot or structure.
- 4) No noxious, or offensive activity shall be permitted on any lot nor shall anything be permitted that may be or become a nuisance or unreasonably interfere with the use and enjoyment of any part of the real property included in the plat.
- 5) All governmental regulations which are applicable to and regulate the use of real property outside of Indian Reservation boundaries within the jurisdiction of Whatcom County, Washington, shall be applicable to any part of the real property contained in the plat which may be within the boundaries of the Lummi Indian Reservation and the owners or users of such real property shall comply therewith.
- 6) With reference to each lot which shall include any part of a dike constructed for the purpose of containing tidal waters, nothing shall be done or permitted on such lots which shall result in the weakening, damage or destruction, in whole or part, of such dike or the lowering of the elevation of the top of such dike below its originally constructed height, but in no event lower than elevation 13, mean lower low water datum.

III. Sandy Point Improvement Co.:

- 1) Sandy Point Improvement Co., a Washington corporation, has been formed by the undersigned for the purposes of providing certain services and recreational facilities for the owners of property in the plat, for other properties in proximity thereto and for others. Any action to be taken pursuant hereto by Sandy Point Improvement Co. may be taken upon authorization of the board of directors. Each lot owner, including contract vendees, shall be entitled to one share of Class A Stock of such corporation subject to the restrictions and provisions of the articles of incorporation established from time to time. Such share of stock shall be appurtenant to the title to and shall be transferable only as a part of the transfer of the title to the lot. Each shareholder shall be entitled to the use and enjoyment of the corporate facilities and services subject to the rules, regulations, and charges as may now or hereafter be established by the corporation, which rules, regulations and charges shall apply equally to all shareholders who are owners of property in the plat. Nothing herein shall preclude

the corporation from making its services and facilities available to others on such terms as it deems best. Each shareholder who is an owner of property in the plat shall abide with the rules and regulations of the corporation as may be adopted from time to time incident to the use of its facilities.

- 2) All plans and specifications required to be submitted to Sandy Point Improvement Co., shall be in writing, shall contain the names and address of the person submitting the same, the description of the property to which they relate, and shall set forth the following with respect to the proposed structure: the location of the structure on the property, the elevation of the structure with reference to the existing and finished lot grade, the general design, the interior layout, the exterior finish materials and color, and such other information as may be required to determine whether such structure conforms to these restrictions. The corporation may establish standards involving esthetic consideration of harmony of construction and color which it determines to be in the best interest of providing for an attractive development, which standards may include those pertaining to the height, configuration, design and appearance of fences, walls, screens, out-building, pools and other appurtenant to the use of the dwelling. Plans and specifications shall be submitted by mail to the secretary of the corporation. Within thirty (30) days after receipt of such plans and specifications which in its opinion do not conform to these restrictions or its esthetic standards. In the event notice of disapproval is not mailed by the corporation to the address of the person submitting such plans and specifications within such thirty (30) day period, approval shall be deemed to have been given. The board of directors of the corporation may designate such person or persons as it deems advisable to act on its behalf to give such approval or disapproval.
- 3) In order to provide for maintenance and improvement of the various properties and facilities of Sandy Point Improvement Co., each grantee and vendee of a lot in the plat, their heirs, successors and assigns, shall and do by the act of accepting a deed or entering into a contract of sales as vendee, jointly and severally agree that they and each of them shall pay to the corporation the charges assessed by vote of two thirds of the directors of the corporation against the shareholders of the corporation. In the event that such charges remain unpaid to the corporation for sixty (60) days after the due date, then the corporation may record a written notice with the auditor of Whatcom County, Washington, that it claims a lien against the lot of the shareholder who is so delinquent for the amount of such charges, interest at the rate of ten per cent (10%) per annum from the due date until paid and attorney's fees incurred incident thereto. From and after recording such notice, such lot shall be subject to a lien to the corporation as security for such assessments and such lien may be foreclosed in the manner of a mortgage on real property and in such foreclosure action the corporation shall recover a reasonable sum as attorney's fees therein and the reasonable and necessary costs of searching and abstracting the public records. Until changed by vote of two thirds of the directors of the corporation the charge herein referred to shall be Ten Dollars (\$10.00) per annum payable on or before June 30th of each year in advance commencing June 30th, 1968.
- 4) The various dikes and appurtenances thereto within the plat for the purpose of containing tidal waters shall constitute facilities of Sandy Point Improvement Co. and may be maintained and improved by the Corporation for the benefit of the various properties in the plat. The Corporation is hereby granted an easement and right of access to all such dikes within the plat for the purpose of inspecting, maintaining and improving such dikes or any part thereof, providing that the premises entered upon and damaged shall be restored to its con-

dition existing prior to the entry as may be reasonably possible under the circumstances.

IV. Easements and Reservations:

- 1) All oil, gas and mineral rights and the right to remove oil, gas, and such minerals in the real property described in the above mentioned plat shall be reserved and excepted from the conveyance of any portion of the real property as though written therein, provided that the owners of such real property shall be compensated for any damage or injury to the surface and structures thereon that may be occasioned by the removal of such minerals.
- 2) The undersigned hereby reserve an easement over and across a strip of land ten (10) feet in width across each lot parallel with and adjacent to the roads abutting and along five (5) feet of each other lot line shown on the plat for the purpose of constructing, repairing, reconstructing, improving and maintaining water-pipes, light and power lines, telephone lines and other facilities for utilities including the right to enter upon such easement for such purposes.

V. Miscellaneous:

- 1) The covenants, restrictions, easements, rights, liens and encumbrances herein provided for shall be covenants running with the land and shall be binding upon the real property described in the above plat and any and all parts thereof, the parties in interest thereto and their heirs, assigns, personal representatives and successors in interest. Accepting an interest in and to any portion of such real property shall constitute an agreement by any such person, firm, corporation accepting such interest, that they and each of them shall be bound by and subject to the provisions hereof.
- 2) In the event that any provision hereof shall be declared invalid by any court of competent jurisdiction, no other provision hereof shall be affected thereby and the remaining provisions shall remain in full force and effect. No waiver of a breach of any provision hereof shall constitute a waiver of a subsequent breach of the same provision or of any other provision.
- 3) The parties in interest in and to any part of the real property included in the above plat and Sandy Point Improvement Co. for the benefit of such owners and each of them shall have the right and authority to enforce the provisions hereof and in addition to any other remedy for damages or otherwise shall have the right to injunctive relief. Except for the enforcement of the lien to Sandy Point Improvement Co., the prevailing party in any action to enforce the provisions hereof shall recover a reasonable sum as attorney's fees therein together with the reasonable cost of searching and abstracting the public record.
- 4) The provisions hereof may be amended, altered, or terminated in whole or part by written instrument signed by sixty percent (60%) of the owners in the area of the real property in the above plat, exclusive of roads, and recorded with the auditor of Whatcom County, Washington. For the purposes of this paragraph the word "owner" shall mean any person, firm, corporation holding either fee title or a vendee's interest under a real estate contract as shown by the records of Whatcom County, Washington, to the exclusion of an lesser interest. Until so terminated these provisions shall remain in full force and effect.





# **EXHIBIT 10**



ASMUNDSON, ATWOOD & EMMONS

ATTORNEYS AT LAW

T. B. ASMUNDSON  
R. F. ATWOOD  
L. DIANE EMMONS  
R. MARK ASMUNDSON

SUITE 5 BELLINGHAM LEGAL CENTER  
805 DUPONT STREET  
BELLINGHAM, WASHINGTON 98225

TELEPHONE  
AREA CODE 206  
733-3370

DAVID E. RHEA (1912-1978)

December 10, 1982

Sandy Point Heights Lot Owners

RE: Restrictions, Easements, and Reservations

Dear Lot Owner:

As you are undoubtedly aware, there has been quite a bit of activity taking place in the last couple of years dealing with the restrictive covenants governing Sandy Point Heights. In particular, the activity and discussion has dealt with the question of the use of travel trailers and other recreational type vehicles on the lots that are governed by these covenants.

Not only has there been activity and discussion, there has been a great deal of confusion concerning the current status of the restrictive covenants and consequently the appropriateness of using travel trailers or other recreational vehicles on the lots within Sandy Point Heights. The purpose of this letter is to clarify the current status of those covenants and restrictions as well as to set forth the proper uses of the Sandy Point Heights lots.

At the time that several of the lot owners circulated the Petition to amend the restrictive covenants, the then existing Board of Directors reviewed the petitions and came to the conclusion that the owners of 248 out of 389 lots had affirmatively voted to amend the restrictive covenants. The restrictive covenants may be amended by a vote of the owners representing 60% of the lots. Thus, the Board at that time concluded that the requisite vote had been obtained, thereby amending the restrictive covenants.

An Amendment to the Declaration of Restrictions, Easements and Reservations of the Plat of Sandy Point Heights was filed in the Auditor's office of Whatcom County on October 12, 1981. This amendment deleted the prohibition on use of trailers and recreational vehicles on the lots within Sandy Point Heights.

Sandy Point Heights Lot Owners  
RE: Restriction, Easements, etc.  
December 10, 1982  
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In February of 1982, the Board of Directors of Sandy Point Improvement Company recorded an instrument which purported to rescind the amendment which had been filed in October of 1981. This attempted rescission was declared invalid by an instrument recorded on September 9, 1982. The position of the present Board of Directors of Sandy Point Improvement Company, Inc. is that the Board had no power to rescind the amendment which had been filed and the purpose of recording the instrument in October, 1982, was only to set forth that the original amendment filed on October 12, 1981, was in full force and effect.

It is the opinion of the Board of Directors of Sandy Point Improvement Company, which opinion is concurred in by legal counsel for Sandy Point Improvement Company, that the covenants governing Sandy Point Heights no longer prohibit the use of travel trailers and recreational vehicles on Sandy Point Heights lots.

However, under the current County Zoning Ordinance governing Sandy Point Heights, travel trailers and recreational vehicles may not be used on that property. Therefore, the current situation is this: The covenants do not prohibit the use of travel trailers and recreational vehicles in Sandy Point Heights, but County Zoning Ordinance does. Until the Zoning Ordinance is changed as it applies to Sandy Point Heights, lot owners may not utilize their property in Sandy Point Heights for recreational vehicles or travel trailers. However, it is the Board's feeling that no individual lot owner will be able to legitimately bring an action against any other lot owner for such use of the property on the basis that the use is a violation of the restrictive covenants.

It is this Board's desire to deal fairly with all of the owners of property at Sandy Point Heights. Consequently, the Board will not choose sides with regard to this issue. It is a fact that the last word will be spoken concerning these covenants by a Court of law. Your Board of Directors desires to insure the continued enjoyment of the Sandy Point area by all


Sandy Point Heights Lot Owners  
RE: Restriction, Easements, etc.  
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of the owners and the Board hopes that the conflict that has surrounded this issue may soon come to an end.

Hopefully this explanation will clarify any questions which may exist regarding the current status of the covenants and restrictions governing Sandy Point Heights.

Very truly yours,

ASMUNDSON, ATWOOD & EMMONS

  
R. MARK ASMUNDSON  
Attorney for Board  
Sandy Point Improvement Company,  
Inc.

RMA/er

DECISION:

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the zoning conditional use application to place recreational vehicles on the following lots:

BLOCK 2:	Lots 7, 8, 9, 15, 16 and 17
BLOCK 3:	Lots 15, 16, 19, 20, 21, 23 and 24
BLOCK 4:	Lots 17, 18 and 19
BLOCK 5:	Lots 7, 8, and 9
BLOCK 6:	Lots 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 23, 27, 28, 29, 30, 32 and 33
BLOCK 7:	Lots 4, 5, 6, 7, 11, 12, 13, 26, 27, 28, 29 and 30
BLOCK 8:	Lots 1, 4, 5, 6, 7, 16, 21 and 22
BLOCK 9:	Lots 11, 12 and 15
BLOCK 10:	Lots 5, 6, 7, 12, 13, 14 and 15
BLOCK 13:	Lots 13, 14, and 21
BLOCK 14:	Lots 1, 2, 3, and 4
BLOCK 15:	Lots 8, 9, 10, 11, 12, 17, 31, 32, 33, 46, 47, 48, 49 and 50

This approval shall be subject to the following conditions:

1. Lots approved for recreational vehicle occupancy shall comply with all applicable local, state and federal regulations in effect during the period of occupancy.
2. Recreational vehicles shall not be occupied as a permanent residence nor shall they be installed on a permanent foundation on any lot. Seasonal occupancy is limited to one RV per lot and no more than 180 days during any twelve month period.
3. All RV's, whether stored or occupied, shall meet the minimum setbacks applicable to residential structures. Two parking spaces shall be provided onsite for each lot.
4. Water supply and sewage disposal facilities shall be in accordance with Health Department requirements.
5. All recreational vehicles shall be screened so they are not visible from off the site from either neighboring properties not approved for RV use or the roads in the subdivision. Existing trees and natural vegetation shall be maintained in all side and rear setback areas. This condition shall apply notwithstanding restrictive covenants that apply to the subdivision. If, in the case of any lot, it is not possible to screen the RV from off the site because of restrictive covenants, then an RV shall not be placed on that lot unless the restrictive covenants are waived or the owner of that lot is able to demonstrate to the satisfaction of the Hearing Examiner that such screening is not necessary.
6. Approved lots shall not be leased or rented out on a daily or overnight basis for recreational use.
7. Accessory structures shall be limited to storage, shop, garage, carport and/or similar personal use only and shall not exceed a total of 400 square feet in floor area per lot.
8. If there is an existing residence (including mobile home) on the property, this approval shall allow the owner of the property on which the residence is located to place an RV on the property as either a conditional use subject to the above stated conditions or an accessory use subject to Section 2.24.295.103 of the Whatcom County Interim Zoning Ordinance. This decision shall not allow any lot to be occupied by more than one RV or by any RV for more than 180 days.

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DECLARATION REGARDING AMENDMENT OF DECLARATION  
OF  
RESTRICTIONS, EASEMENTS AND RESERVATIONS  
SANDY POINT HEIGHTS

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WHEREAS, an<sup>f</sup> amendment to the Declaration of Restrictions, Easements and Reservations of the Plat of Sandy Point Heights as filed under Whatcom County Auditor's File No. 1050011, on the 9th day of October, 1981, was filed in the Auditor's office of Whatcom County on October 12, 1981, said Amendment bearing Auditor's File No. 1402474, and

WHEREAS, the Board of Directors of Sandy Point Improvement Company, by recorded instrument, attempted to rescind the said Amendment to the Declaration of Restrictions, Easements and Reservations of Sandy Point Heights by an instrument recorded February 26, 1982, bearing Auditor's File No. 1412661, and

WHEREAS, it appears that the Board of Directors of Sandy Point Improvement Company is without power and authority to amend or rescind amendments to the Declaration of Restrictions, Easements and Reservations originally filed concerning Sandy Point Heights, now therefore,

Pursuant to the authorization of the Board of Directors of Sandy Point Improvement Company, Inc., the President and Secretary hereby file this Declaration nullifying the attempted rescission of amendment filed on February 26, 1982, and bearing Auditor's File No. 1412661.

The purpose of this Declaration is to clarify that by the terms of the original Declaration of Restrictions, Easements and Reservations governing Sandy Point Heights, the Board of Directors of Sandy Point Improvement Company, Inc. may not unilaterally determine the restrictions, easements and reservations concerning Sandy Point Heights, and therefore,

1427545

the attempted rescision of amendment bearing Auditor's File No. 1412661 was ineffective, and is hereby further formally rescinded.

The President and Secretary of Sandy Point Improvement Company have been further authorized by the majority of the Board of Directors of Sandy Point Improvement Company to record this document with the Auditor of Whatcom County, State of Washington.

DATED this 8th day of September, 1982.

SANDY POINT IMPROVEMENT COMPANY

BY: Eugene W. Williams  
PRESIDENT

BY: Conrad R. Frazier  
SECRETARY

STATE OF WASHINGTON )  
COUNTY OF WHATCOM ) ss

ON THIS 8th day of September, 1982, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Eugene W. Williams and Conrad R. Frazier to me known to be the President and Secretary of Sandy Point Improvement Company who executed the foregoing instrument, and acknowledged to me that they signed this said instrument as the free and voluntary act and deed of Sandy Point Improvement Company and on oath stated that they were authorized to execute said instrument.

In witness whereof, I hereunto set my hand and affix my official seal the day and year first above written.

R. Mark Hunt  
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham.

SEP 9 8 37 AM '82  
NOTARY PUBLIC  
JOAN GREEN  
WHATCOM COUNTY, WASH.  
DEPUTY



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RESCISSION OF AMENDMENT TO DECLARATION OF RESTRICTIONS,  
EASEMENTS AND RESERVATIONS

SANDY POINT HEIGHTS

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THAT CERTAIN Amendment to Declaration of Restrictions, Easements and Reservations, Sandy Point Heights, filed under Whatcom County Auditors File No. 1402474, in Volume 623, Page 301 under date of October 12, 1981 in the Auditors Office, Whatcom County, State of Washington, is HEREBY RESCINDED AND IS TO BE CONSIDERED NULL AND VOID.

The President and Secretary of the Sandy Point Improvement Company have been authorized, pursuant to a motion approved by the majority of the Board of Directors of the Sandy Point Improvement Company, attending a meeting held Friday, February 12th, 1981, to sign this Rescission of Amendment alluded to above and file same with the Auditor of Whatcom County, State of Washington.

Dated this 20th day of February, 1982.

1412661

SANDY POINT IMPROVEMENT COMPANY

BY Norman James Burrell  
President

BY John Steve Slaney  
Secretary

FEB 25 4 29 PM '82  
642  
NOTARY PUBLIC  
JOHN STEVE SLANEY  
WHATCOM COUNTY, WASH.  
DEPUTY

STATE OF WASHINGTON }  
COUNTY OF WHATCOM } S.S.

On this 20th day of February, 1982, before me personally appeared  
Norman James Burrell and John Steve Slaney

to me known to be the President and Secretary of Sandy Point Improvement Company that executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of Sandy Point Improvement Company, and on oath stated that they were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

John Steve Slaney  
NOTARY PUBLIC in and for the State of Washington,  
residing at Daming VOL. 642 PAGE 554

22246

AMENDMENT TO DECLARATION OF RESTRICTIONS, EASEMENTS AND RESERVATIONS  
SANDY POINT HEIGHTS

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The Declaration of Restrictions, Easements and Reservations Sandy Point Heights, was filed under Whatcom County Auditor's File No. 1050011 <sup>1-~~part~~</sup> on the 9th day of October, 1981. Those declarations, restrictions, easements and reservations are hereby amended as follows:

1. Notwithstanding any of the other provisions of this Declaration, recreational vehicles may be occupied as a temporary or permanent residence with the following exceptions:

- a) Recreational vehicles, if properly connected to sanitary facilities in compliance with the Whatcom County Health Regulations, may be temporarily occupied for recreational purposes not to exceed 120 days per year.
- b) During the period of constructing a permanent residence occupancy shall not exceed a one year period.

2. Recreational vehicles may be stored on owners property.

3. All of the sections of the previous Declaration of Restrictions, Easements and Reservations Sandy Point Heights are hereby affirmed.

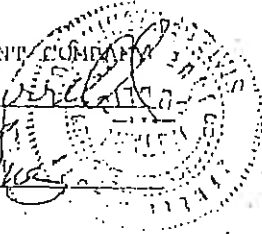
The President and Secretary of the Sandy Point Improvement Company have been authorized, pursuant to Resolution by the Board of Directors of the Sandy Point Improvement Company, to sign this Amendment and file it with the Auditor of Whatcom County, Washington.

FBI 2031

SANDY POINT IMPROVEMENT COMPANY

By Norman J. Russell  
President

John Steve Spivey  
Secretary

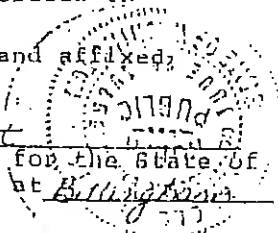


STATE OF WASHINGTON) ss.  
COUNTY OF WHATCOM)

On this 9th day of October, 1981, before me personally appeared John Steve Spivey, to me known to be the President of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath states that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Orville McJutt  
NOTARY PUBLIC in and for the State of  
Washington, residing at Bellingham



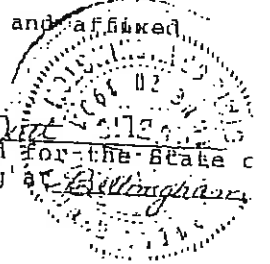
STATE OF WASHINGTON) ss.  
COUNTY OF WHATCOM)

*President  
y/m.*

On this 9th day of October, 1981, before me personally appeared Norman J. Russell, to me known to be the Secretary of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath states that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Janell McNeil  
NOTARY PUBLIC in and for the State of  
Washington, residing at Bellingham



*Barbara Chestham*  
REC-11  
OCT 12 2 25 PM '81  
VOL. 22 PAGE 201  
REGISTERED AUDITOR  
JULY 2000 WASH.  
WHATCOM COUNTY, DEPUTY

*Return  
Barbara Chestham  
3699 North Red River Road  
Ferdale, WA*

DECLARATION OF RESTRICTIONS, EASEMENTS AND RESERVATIONS

SANDY POINT HEIGHTS

THE UNDERSIGNED are owners of the real property situated in Whatcom County, Washington, included in the plat of Sandy Point Heights as recorded in such county. They desire to provide for a plan of development of such real property as a part of an entire subdivision and for that purpose do hereby declare and establish the following restrictions, easements, and reservations appurtenant:

1. Building Restrictions:

1) Except for portions of the real property as may be used for recreational purposes or common service facilities by Sandy Point Improvement Company, a Washington Corporation, no lot in the plat of Sandy Point Heights shall be used for any purpose other than for residential purposes, provided however, that a temporary real estate office may be maintained with the consent of the undersigned on any one of such lots.

2) No structure shall be erected, altered, placed or maintained on any lot unless it shall comply with these restrictions and the following:

(a) Each dwelling structure shall be of permanent construction, shall have not less than six hundred (600) square feet of enclosed area devoted to living purposes in Blocks 1, 2, 5, 6, 7, and 9. Each dwelling structure shall be of permanent construction, shall have not less than eight hundred (800) square feet of enclosed area devoted to living purposes in Blocks 3, 4, 8, 10, 11, and 12. No structure shall exceed 12 feet above the grade of the adjacent road on any lot in Block 4.

(b) The exteriors of all structures on a lot shall be constructed of new material.

(c) No structure shall be erected or placed within five (5) feet of the side boundary of a lot, twenty-five (25) feet of a street abutting a lot, or thirty-five (35) feet of the rear lot line from the street abutting the lot. These setback requirements may be waived or modified by Sandy Point Improvement Company in case of hardship involving lots of unusual configuration or lots abutted on more than one side by a street.

(d) No facilities for sewage disposal shall be placed on a lot unless they are of modern design, enclosed within a dwelling structure on the lot and fully connected to a septic system of sewage disposal, or comparable modern facility, designed, located and constructed in accordance with the rules and regulations of the Whatcom County Health Department and any other governmental agencies having jurisdiction or are fully connected to a public sewer system.

(e) Prior to erecting or placing of any structure on a lot, the plans and specifications therefor shall be submitted to and approved by Sandy Point Improvement Company, as hereafter provided, and such structure shall conform to such plans and specifications. Septic tank drainfield on any lot in Block 4 shall be located in the front 120 feet of each lot.

3) The work of constructing, altering or repairing any structure on a lot shall be diligently prosecuted from its commencement until completion thereof, but in any event the exterior finished appearance shall be completed within six (6) months of commencement so that no tar paper or underlayment shall thereafter be exposed to view.

4) No temporary structure, trailer, tent, garage, basement or outbuilding shall be maintained on any lot for residential purposes, except that Blocks 13, 14, and 15 may maintain a mobile home for residential purposes.

5) No fence, wall or hedge along a lot line shall exceed forty-eight (48) inches in height, except that decorative screening as approved in writing by Sandy Point Improvement Co. prior to erection may be maintained on a lot.

#### II. Land Use Restrictions:

1) No garbage, refuse, rubbish, junk or cut growth shall be permitted to be deposited, left or accumulated on a lot unless in suitable containers which shall be kept in sanitary condition, regularly emptied and fully screened from view of the street and adjacent lots.

2) No animals shall be kept or permitted on the real property in the plat except for household pets which shall not unreasonably interfere with the use and enjoyment of any lot.

3) No goods, equipment, trucks, vehicles or paraphernalia in or connected with any trade or business shall be kept or stored in the open on any lot. No commercial signs, including "For Sale" signs, shall be permitted on any lot or structure.

4) No noxious, or offensive activity shall be permitted on any lot nor shall anything be permitted that may be or become a nuisance or unreasonably interfere with the use and enjoyment of any part of the real property included in the plat.

5) All governmental regulations which are applicable to and regulate the use of real property outside of Indian Reservation boundaries within the jurisdiction of Whatcom County, Washington, shall be applicable to any part of the real property contained in the plat which may be within the boundaries of the Lummi Indian Reservation and the owners or users of such real property shall comply therewith.

111. Sandy Point Improvement Co:

1) Sandy Point Improvement Co., a Washington corporation, has been formed by certain individuals in the past for the purposes of providing certain services and recreational facilities for the owners of property in the plat, for other properties in proximity thereto and for others. Any action to be taken pursuant hereto by Sandy Point Improvement Co. may be taken upon authorization of the board of directors. Each lot owner, including contract vendees, shall be entitled to one share of Class A stock of such corporation subject to the restrictions and provisions of the articles of incorporation established from time to time. Such share of stock shall be appurtenant to the title and shall be transferable only as a part of the transfer of the title to the lot. Each shareholder shall be entitled to the use and enjoyment of the corporate facilities and services subject to the rules, regulations and charges as may now or hereafter be established by the corporation, which rules, regulations and charges shall apply equally to all shareholders who are owners of property in the plat. Nothing herein shall preclude the corporation from making its services and facilities available to others on such terms as it deems best. Each shareholder who is an owner of property in the plat shall abide with the rules and regulations of the corporation as may be adopted from time to time incident to the use of its facilities.

2) All plans and specifications required to be submitted to Sandy Point Improvement Company shall be in writing, shall contain the names and address of the person submitting the same, the description of the property to which they relate, and shall set forth the following with respect to the proposed structure: the location of the structure on the property, the elevation of the structure with reference to the existing and finished lot grade, the general design, the interior layout, the exterior finish materials and color, and such other information as may be required to determine whether such structure conforms to these restrictions. The corporation may establish standards involving esthetic consideration of harmony of construction and color which it determines to be in the best interest of providing for an attractive development, which standards may include those pertaining to the height, configuration, design, and appearance of fences, walls, screens, out-buildings, pools and other structures appurtenant to the use of the dwelling. Plans and specifications shall be submitted by mail to the secretary of the corporation. Within thirty (30) days after receipt of such plans and specifications which in its opinion do not conform to these restrictions or its esthetic standards. In the event notice of disapproval is not mailed by the corporation to the address of the person submitting such plans and specifications within such thirty (30) day period, approval shall be deemed to have been given. The board of directors of the corporation may designate such person or persons as it deems advisable to act on its behalf to give such approval or disapproval.

3) In order to provide for maintenance and improvement of the various properties and facilities of Sandy Point Improvement Co., each grantee and vendee of a lot in the plat, their heirs, successors and assigns, shall and do by the act of accepting a deed or entering into a contract of sales as vendee, jointly and severally agree that they and each of them shall pay to the corporation the charges assessed by vote of two-thirds of the directors of the corporation against the shareholders of the corporation. In the event that such charges remain unpaid to the corporation for sixty (60) days after the due date, then the corporation may record a written notice with the auditor of Whatcom County, Washington, that it claims a lien against the lot of the shareholder who is so delinquent for the amount of such charges, interest

at the rate of ten per cent (10%) per annum from the due date until paid and attorney's fees incurred incident thereto. From and after recording such notice, such lot shall be subject to a lien to the corporation as security for such assessments and such lien may be foreclosed in the manner of a mortgage on real property and in such foreclosure action the corporation shall recover a reasonable sum as attorney's fees therein and the reasonable and necessary costs of searching and abstracting the public records. Until changed by vote of two-thirds of the directors of the corporation the charge herein referred to shall be Ten Dollars (\$10.00) per annum payable on or before June 30 of each year in advance commencing June 30, 1969.

4) A community recreation area will be provided by owners and shall constitute facilities of Sandy Point Improvement Co. and may be maintained and improved by the corporation for benefit of various properties in the plat. This community recreation area will contain more than five (5) acres and will be improved by owners by July 1, 1970, with a club house, swimming pool, and small golf course.

IV. Easements and Reservations:

1) All oil, gas and mineral rights and the right to remove oil, gas and such minerals in the real property described in the above mentioned plat shall be reserved and excepted from the conveyance of any portion of the real property as though written therein, provided that the owners of such real property shall be compensated for any damage or injury to the surface and structures thereon that may be occasioned by any removal of such minerals.

2) The undersigned hereby reserve an easement over and across a strip of land ten (10) feet in width across each lot parallel with and adjacent to the roads abutting and along five (5) feet of each other lot line shown on the plat for the purpose of constructing, repairing, reconstructing, improving and maintaining waterpipes, light and power lines, telephone lines and other facilities for utilities including the right to enter upon such easement for such purposes.

3) The undersigned hereby reserve an easement over and across a strip of land ten (10) feet in width across each rear lot line of the following lots: Lots 7-28, Blk. 2; Lots 1-9, Blk. 1, and Lots 24-41, Blk. 15. The undersigned hereby reserve an easement over and across a strip of land ten (10) feet in width on the West 10 feet of Lot 1, Blk. 2; the North 10 feet of Lot 1, Blk. 15; the East 10 feet of Lot 52, Blk. 15; and the East 10 feet of Lots 21 and 22, Blk. 12. The purpose of this easement is for constructing, improving and maintaining a hiking and bridal trail.

V. Miscellaneous:

1) The covenants, restrictions, easements, rights, liens and encumbrances herein provided for shall be covenants running with the land and shall be binding upon the real property described in the above plat and any and all parts thereof, the parties in interest thereto and their heirs, assigns, personal representatives and successors in interest. Accepting an interest in and to any portion of such real property shall constitute an agreement by any such person, firm, corporation accepting such interest, that they and each of them shall be bound by and subject to the provisions hereof.



2) In the event that any provision hereof shall be declared invalid by any court of competent jurisdiction, no other provision hereof shall be affected thereby and the remaining provisions shall remain in full force and effect. No waiver of a breach of any provision hereof shall constitute a waiver of a subsequent breach of the same provision or of any other provision.

3) The parties in interest in and to any part of the real property included in the above plat and Sandy Point Improvement Co. for the benefit of such owners and each of them shall have the right and authority to enforce the provisions hereof and in addition to any other remedy for damages or otherwise shall have the right to injunctive relief. Except for the enforcement of the lien to Sandy Point Improvement Co., the prevailing party in any action to enforce the provisions hereof shall recover a reasonable sum as attorney's fees therein together with the reasonable cost of searching and abstracting the public record.

4) The provisions hereof may be amended, altered or terminated in whole or part by written instrument signed by sixty per cent (60%) of the owners in the area of the real property in the above plat, exclusive of roads, and recorded with the auditor of Whatcom County, Washington. For the purposes of this paragraph the word "owner" shall mean any person, firm, corporation holding either fee title or a vendee's interest under a real estate contract as shown by the records of Whatcom County, Washington, to the exclusion of any lesser interest. Until so terminated these provisions shall remain in full force and effect.

Dated this 21st day of August, 1968

\_\_\_\_\_  
John R. Bertoglio

*David E. Rhea*  
\_\_\_\_\_  
David E. Rhea  
individually and as attorneys in  
fact of Fayette Bertoglio, T. R.  
Carter, Wilma C. Carter, Marie E.  
Rhea, Galen Bentley, Ada M. Bentley,  
Clayton E. Rogers & Lila O. Rogers

*Robert D. Walker*  
\_\_\_\_\_  
Robert D. Walker, individually and  
as attorney in fact of Victoria R.  
Walker, Barry Darling, Mary Lou  
Darling, R. E. Rogers, Gladys Deputy  
Rogers, Harold E. Isenhart & Gwen-  
lee Isenhart

STATE OF WASHINGTON )  
                          ) ss.  
COUNTY OF WHATCOM )

On this 26<sup>th</sup> day of August, 1968, before me, the undersigned, a notary public in and for the State of Washington, personally appeared John B. Bertoglio and David Rhea, to me known to be the individuals described in and who executed the forgoing instrument for themselves and as attorney in fact for Fayette Bertoglio, T. R. Carter and Wilma C. Carter, Marie E. Rhea, Galen Bentley and Ada M. Bentley, Clayton E. Rogers and Lila O. Rogers, also described and acknowledged to me that they signed the same as their voluntary act and deed and as the free and voluntary act and deed of said Fayette Bertoglio, T. R. Carter and Wilma C. Carter, Marie E. Rhea, Galen Bentley and Ada M. Bentley, Clayton E. Rogers and Lila O. Rogers and on oath stated that the power of attorney authorizing the execution of this instrument has not been revoked and that said Fayette Bertoglio, T. R. Carter and Wilma C. Carter, Marie E. Rhea, Galen Bentley and Ada M. Bentley, Clayton E. Rogers and Lila O. Rogers are now living and are not insane.

WITNESS my hand and official seal hereto affixed the day and year in this certificate first above written.

John B. Bertoglio  
Notary public in and for the State  
of Washington, residing at  
Seattle, Wash.

STATE OF WASHINGTON )  
                          ) ss.  
COUNTY OF WHATCOM )

On this 26 day of August, 1968, before me, the undersigned, a notary public in and for the State of Washington, personally appeared Robert R. Walker, to me known to be the individual described in and who executed the forgoing instrument for himself and as attorney in fact for Victoria R. Walker, Barry Darling and Mary Lou Darling, R. E. Rogers and Gladys Deputy Rogers, Harold E. Isenhart and Gwen-Lee Isenhart, also described and acknowledged to me that he signed the same as his voluntary act and deed and as the free and voluntary act and deed of the said Victoria R. Walker, Barry Darling and Mary Lou Darling, R. E. Rogers and Gladys Deputy Rogers, Harold E. Isenhart and Gwen-Lee Isenhart and on oath stated that the power of attorney authorizing the execution of this instrument has not been revoked and that said Victoria R. Walker, Barry Darling and Mary Lou Darling, R. E. Rogers and Gladys Deputy Rogers, Harold E. Isenhart and Gwen-Lee Isenhart are now living and are not insane.

WITNESS my hand and official seal hereto affixed the day and year in this certificate first above written.

Robert R. Walker  
Notary public in and for the State  
of Washington, residing at  
Seattle, Wash.

SANDY POINT HEIGHTS

**PLANNING & DEVELOPMENT  
SERVICES  
CONDITIONAL USE PERMITS**

**ADDRESS NO.**

S.P.H.'s Rv Subdivision

Pam & Gary DeLong

**PERMIT NO.**

Cu

Cg 54-85

Steve Ginning

APPLICATION PROCESSING TRACK

Land Use Permits

Date Filed 8/16/85  
 Applicant Rain + Gary Duling, et al.

File # CU 54-85

DISTRIBUTION (\*)

Agency	PL	ED	*	Agency	PL	ED
County-				State-		
* Executive				DOT (101) (WEST IA)		
* Council				DOG		
* Engineering - Jurico	*			DNR		
* Planning - Triam	*			DOF		
* Parks - Milliken				DOG		
* Prosecutor - Lewis				DSIS		
* Fire Marshal				Attorney General		
* Assessor - DeHaan				OFF of Arch/Hist Pres		
* Sheriff - Gill				Labor & Industries		
* Hearing Examiner				Energy Office		
* Fire District 17				PATROL		
* Water District				DO Lic/Regul Est Div		
School Dist				NW Parks/Rec Comm		
Council of Governments				Ag Extension-McConnell		
City of Bellingham			*	SEA - Gillies		
City of			*	Puget Power		
* Health Dept - Brainard			*	Telephone		
NSAPA - Hallman				Natural Gas		
* Lumal Fisheries - McKay				BPA		

SEPA Review: ( ) Exempt (  ) DNS ( ) DS 8/27/85 By JW  
 Site Inspection 4/1/85 Staff Report 9/23/85 By (K.L.)  
 Recommendation: 10-2-85  
 Hearing Date: 7/24/85 Decision 1/1 ( ) Appro ( ) Den  
 Appeal ( ) 1/1 Building Permit # \_\_\_\_\_  
 COMMENTS \_\_\_\_\_

Occupancy Inspection 1/1 By \_\_\_\_\_  
 Compliance With Conditions \_\_\_\_\_

Approved For Occupancy 1/1 By \_\_\_\_\_

WHATCOM COUNTY HEARING EXAMINER

RE: ZONING CONDITIONAL ) File No. 54-85  
USE PERMIT APPLICATION )  
of Gary Duling et. al. ) FINDINGS OF FACT,  
 ) CONCLUSIONS AND  
 ) DECISION

SUMMARY OF PROPOSAL AND DECISION

Proposal: To create "recreational vehicle subdivisions" on certain lots within the plat of Sandy Point Heights.

Decision: Approval in part, denial in part

FINDINGS OF FACT

BACKGROUND INFORMATION

Applicant: Gary Duling, and other property owners within the Sandy Point Heights Plat.

Applicant's Address: 5745 Northwest Drive  
Ferndale, WA (Gary Duling)

Property Address: Varies

Property Location: Various locations within the Sandy Point Heights Plat.

Legal Description: All of the following lots within the Plat of Sandy Point Heights, which is located in Sections 3, 4, 9, and 10, T 38 N, R 1 E, W.M.:

- Block 1: Lots 3, 4, 6, 7, 9 and 12
- Block 2: Lots 7, 8, 9, 12, 15, 16, 17, 20, 22, 23 and 27
- Block 3: Lots 12, 15, 16, 19, 20, 21, 23, and 24
- Block 4: Lots 4, 9, 17, 18, 19,
- Block 5: Lots 7, 8, and 9
- Block 6: Lots 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16,  
17, 19, 20, 23, 27, 28, 29, 30, 32, and 33
- Block 7: Lots 4, 5, 6, 7, 11, 12, 13, 15, 17, 18, 21, 26, 27,  
28, 29 and 30
- Block 8: Lots 1, 4, 5, 6, 7, 12, 11, 14, 16, 21, and 22

FINDINGS OF FACT (continued)

Block 9: Lots 1, 11, 12, and 13  
Block 10: Lots 5, 6, 12, 14, 15, 17 and 20  
Block 13: Lots 3, 4, 13, 14, 18, 21, 23, 24, and 27  
Block 14: Lots 1, 2, 3, 4, 7, 8, and 16  
Block 15: Lots 1, 6, 8, 9, 10, 11, 12, 17, 31, 32, 33, 38, 42,  
46, 47, 48, 49 and 50

Zoning: Seasonal Recreation Residential (SRR)

Comprehensive Plan Designation: Rural

Site Description: The "site" is comprised of a large number of lots in the Sandy Point Heights Subdivision. These lots average about 7,800 square feet in size. Several of them are developed with single family residences, including mobile homes. Several more are partially developed with some improvements and appear to be set up for RV's. The remainder are undeveloped. The west central portion of Sandy Point Heights, where most of the lots proposed for RV use are located, is heavily wooded. In most other areas the lots contain some trees or large bushes. The most significant exception to this is the area between Sinclair Drive and the bluff (Block 4). Generally, the entire area of Sandy Point Heights Subdivision slopes down to the southeast and Lummi Bay, dropping about 135 feet over a distance of 3/8 of a mile (7% slope).

Surrounding Conditions: Sandy Point Heights Subdivision is located within the Lummi Indian Reservation. It is bounded on the north, east and west by wooded, undeveloped land. There are several homes further north of the subdivision along Lake Terrell Road. To the south is Lummi Bay.

Services:

Access: New and existing driveways will serve all the lots.

Water: Sandy Point Improvement Company

Sewage Disposal: Lummi Sewer

Fire Protection: Whatcom County Fire Protection District No. 17

PROCEDURAL INFORMATION

Authorizing Ordinances:

WHATCOM COUNTY INTERIM ZONING ORDINANCE

FINDINGS OF FACT (continued)

Section 2.24.660

Section 2.24.770

SEPA Review: A Determination of Environmental Nonsignificance was issued on August 27, 1985.

Hearing Notices: Mailed - September 13, 1985

Hearing Date: September 26, 1985, and October 31, 1985

Hearing Testimony:

1. Ken Wilcox, Land Use Technician  
Bureau of Buildings & Code Administration  
401 Grand Ave.  
Bellingham, WA
2. Gary Duling  
5745 Northwest Drive  
Ferndale, WA
3. Rod Grove  
5343 Northwest Road  
Bellingham, WA
4. Patricia Franz  
1880 Marine Drive  
Mariateta, WA 98268
5. Jack Pritchert  
2141 SW 122 Pl.  
Seattle, WA
6. Eileen Rick  
1407 West North  
Bellingham, WA
7. Jenelle McNutt  
6292 Lawrence Road  
Everson, WA 98247
8. Willy Williams  
3407 Plymouth Dr.  
Bellingham, WA
9. Roy Pottle  
5747 Northwest Dr.  
Bellingham, WA

FINDINGS OF FACT (continued)

10. Mark Russell  
Lummi Indian Business Council  
2616 Kwina  
Bellingham, WA
11. Bob Tull  
222 Grand Ave.  
Bellingham, WA
12. Ms. Crisp  
4167 Portal Dr.  
Ferndale, WA
13. Jerry Nixon  
Bureau of Buildings & Code Administration  
401 Grand Ave.  
Bellingham, WA
14. Donovan Kehrer, Deputy Administrator  
Bureau of Buildings & Code Administration  
401 Grand Ave.  
Bellingham, WA
15. Bill Trimm, Director  
Planning Department  
401 Grand Ave.  
Bellingham, WA
16. Pam Duling  
5745 Northwest Drive  
Ferndale, WA

Exhibits:

- 1 Conditional Use Permit Application
- 2 Affidavit of Mailing
- 3 Determination of Environmental Nonsignificance
- 4 Bureau of Buildings & Code Administration Staff Report
- 5 Engineering Bureau Report
- 6 Sheriff's Department Report
- 7 Health Department Report



FINDINGS OF FACT (continued)

- 8 Recreational Vehicle Subdivision, Chapter 2.24.296
- 9 Declaration of Restrictions, Easements and Reservations  
Sandy Point Heights
- 10 List of lot owners participating in conditional use appli-  
cation
- 11 Correspondence between Mr. & Mrs. Gary Duling and Bureau  
of Buildings & Code Administration regarding petitions
- 12 Letter of authorization signed by participating property  
owners
- 13 Petitions
- 14 Review Map
- 15 Aerial Photo
- 16 Letter in support of application from Mr. R.W. Harry
- 17 Letter in support of application from A.E. & F.E. Baroni
- 18 Letter in opposition to application from C.P. Maybergs
- 19 Letter from Alwin H. Schneider, regarding inclusion of his  
property in application
- 20 Letter in opposition to application from scott wallace,  
with attached letters from additional property owners in  
objection to application
- 21 Photographs
- 21a Photograph showing approximate location of Mr. Scott  
Wallace's residence
- 22 Map showing lots owned by signors of petition, and  
non-signors
- 23 Map showing lot owned by Rod Grove
- 24 Letter from Lummi Indian Business Council
- 25 Corrected Map of Block 4
- 26 Letter from R. Mark Asmundson, dated October 1, 1985

FINDINGS OF FACT (continued)

- 27 Response to Hearing Examiner's questions regarding SRR zoning district from Bureau of Buildings & Code Administration
- 28 Response to Hearing Examiner's questions regarding SRR zoning from Planning Department
- 29 Letter to applicant and agencies from Hearing Examiner regarding issues to be considered at rescheduled hearing
- 30 Response to Hearing Examiner's questions regarding SRR zoning from applicant

FINDINGS, ANALYSIS AND CONCLUSIONS

To be approved, the proposed use must comply with all of the requirements set forth for conditional uses in Section 2.24.660 of the Whatcom County Interim Zoning Ordinance. A copy of this Section is attached to this decision, marked as Exhibit "A", and, by this reference, incorporated herein. The Hearing Examiner has reviewed the proposed use and the evidence of record with regard to this Section and makes the following findings and conclusions:

1. The proposed use may be permitted as a conditional use in the zoning district in which the property is located and will comply with all of the use standards set forth for the use in the district.

The property is located in the SRR zoning district. Recreational vehicles may be allowed as conditional uses on individual lots within single-family residential subdivisions in this zoning district pursuant to Section 2.24.295.153 of the Whatcom County Interim Zoning Ordinance. A copy of this Section is attached to this decision, marked as Exhibit "B", and, by this reference incorporated herein. It requires the Hearing Examiner to make the following threshold findings:

A. That, if RV's are to be placed in an existing subdivision, more than 50% of the lot owners in the subdivision have signed a petition in favor of the conditional use application requesting such placement; and,

B. That all of the lots being considered for conditional use approval are part of a group of at least three contiguous lots.

In addition, it requires the Hearing Examiner to find that RV's will be separated from existing residences and residential areas or

## FINDINGS OF FACT (continued)

that adequate protection from the adverse effects that might be associated with an RV will otherwise be afforded such residences and residential areas. Each of these requirements is discussed below.

### Petition Requirement

To initiate a conditional use permit request pursuant to Section 2.24.295.153 an applicant must submit a petition to the Hearing Examiner in support of the request containing the signatures of more than 50% of the lot owners of the lots within the subdivision in which the RV's are proposed to be located. The subdivision in which the RV's are proposed to be located (Sandy Point Heights) contains 389 lots. 202 lot owners representing 202 lots, or 52% of all the lots in the subdivision, have signed a petition expressing support for the request. (See Exhibit #13.) In addition, the application includes 15 lots not represented on the petition.

### Contiguous Lot Requirement

Section 2.24.295.153 states that recreational vehicles may be allowed in an existing subdivision in groups of lots "containing three or more contiguous lots that are intended to be occupied by recreational vehicles." This phrase presents two problems of interpretation. The first is, what is the meaning of "contiguous" as it is used in this Section. The second is, what is the meaning or purpose of the phrase "intended to be occupied by recreational vehicles".

The zoning ordinance does not define contiguous; thus, it must be assumed that the commonly accepted meaning of the word is intended. There are several dictionary definitions of the word. They are discussed in the Bureau of Buildings & Code Staff Report (Exhibit #4). Though the definitions include "adjacent or near to", "in actual contact", and "touching along a line or point", the generally preferred and, according to Webster's New International Dictionary, Second Edition, Unabridged, proper definition is "[to] touch along a considerable part or the whole of one side". This decision assumes that the intended definition of the word is the proper and preferred one. Using this definition, Section 2.24.295.153 is interpreted to require that each lot is in a group of at least three lots and shares most of a common boundary with at least one of the other lots in the group. Applying this requirement, the following lots included in the application must be removed from consideration:

- Block 1: All lots
- Block 2: Lots 12, 20, 22, 23 and 27
- Block 3: Lot 12
- Block 4: Lots 4, and 9
- Block 6: Lots 19 and 20

FINDINGS OF FACT (continued)

Block 7: Lots 15, 17, 18 and 21  
Block 8: Lots 12, 11 and 14  
Block 9: Lot 1  
Block 10: Lots 1, 12, 17 and 20  
Block 11: All lots  
Block 12: All lots  
Block 13: Lots 3, 4, 18, 23, 24, and 27  
Block 14: Lots 7, 8 and 16  
Block 15: Lots 1, 16, 38 and 42

The Zoning Ordinance also fails to define the meaning or purpose of the phrase "intended to be occupied by recreational vehicles". Though general rules of interpretation indicate that terms or phrases in ordinances should not be held to be superfluous, the Hearing Examiner can reach no other reasonable conclusion in this case. Section .295.153 does not preclude any lots, including lots already occupied by single-family residences, that are a part of a group of three or more contiguous lots from being considered for conditional use approval. One must assume, therefore, that, if a lot is included in an application to allow RV's on a number of lots in a subdivision, there is some intention to place an RV on that lot or to have that lot occupied by an RV. Otherwise, there would be no reason to include it with the application. Also, there is really no reasonable way to determine if a lot is "intended to be occupied by a recreational vehicle" other than the inclusion of the lot in the application.

Separation Requirement

Section .295.153 assumes that recreational vehicles are not compatible with single-family residences or residential areas. It requires an applicant to submit a map which "delineates a harmonious geographic area which can be developed for RV purposes while protecting against incompatible impacts to existing conventional built subdivisions". This language implies that RV's should be spatially separated from areas developed predominately with single-family residences. Many of the lots proposed for RV development are located in areas spatially separated from areas developed significantly with single-family residences. Many are not; however, they may still be approved for RV use.

Though Section .295.153 implies that RV's should be spatially separated from single-family residences, it does not require such separation. Spatially separating different types of uses is consistent with conventional (Euclidian) planning practices, which assume that such uses will or, at least, are likely to adversely affect each other. It is a widely used and accepted practice. There are, however, other methods available to provide the same protection to neighboring properties that spatial separation intends. A widely

FINDINGS OF FACT (continued)

employed method is to visually separate uses on adjacent parcels is to use either landscaping (vegetation) or fencing for screening. On many of the lots, existing vegetation is adequate to provide such screening. On those lots where it is not, this decision will require screening to be put in place. Conditions of approval will also require compliance with applicable Health Department and Fire District requirements. RV's will be required to comply with the same bulk and dimensional and other zoning ordinance requirements with which conventional residences must comply.

Opponents to the application have argued that locating an RV adjacent to an existing residence will harm property values, per se. No evidence was introduced in support of this argument and the Hearing Examiner is not aware of any. So long as all of the potentially adverse impacts associated with RV's can be internalized or controlled by imposing conditions on their placement and use, there is no reason to believe that RV's will reduce the values of neighboring properties.

Section 2.24.295.654 sets forth standards applicable to recreational vehicle subdivisions. Many of these standards will be met because the RV's will be located in an existing subdivision that already complies with these standards. The remaining conditions will be met because they will be made conditions of approval of this decision. There are no standards that cannot be met.

2. The proposed use will be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan and zoning regulations.

The Comprehensive Plan designation for the property is Suburban (1970 Comprehensive Plan). The policies for the Suburban Plan designation are very broadly stated and are applicable to the proposed RV's in only a very general sense. The RV's will be located in an existing subdivision. It is assumed that this subdivision complies with applicable Plan policies. None of the policies prohibit the proposed use.

The zoning designation for the property is Seasonal Recreational Residential. The purpose of this zoning district is to "provide land areas which, through natural and locational attributes, are intended for occasional or seasonal use of dwellings and other facilities to be used on a recreational oriented basis". The proposed RV's are intended to be used for just such a purpose.

3. The proposed use will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the area.

FINDINGS OF FACT (continued)

Present restrictive covenants for Sandy Point Heights allow the use of individual properties for recreational vehicles under certain circumstances. Evidence of record indicates that, despite previous restrictive covenants against the use of recreational vehicles, the individual lots within the subdivision have been historically used for RV use. So, the use of RV's in Sandy Point Heights is consistent with both the historic use of the property and with present restrictive covenants. The historic use of the property and the existing restrictive covenants are indicative of the existing and intended character of the subdivision. As is discussed above, conditions of approval will be imposed upon the placement and use of RV's in the subdivision to ensure that existing single-family residences are protected from any potential adverse impacts associated with RV use.

4. The proposed use will not be hazardous or disturbing to existing or future neighboring uses.

This has been discussed above with regard to the separation requirement of Section 2.24.295.153. In summary, the Hearing Examiner found that the use of individual lots for recreational vehicles in the Sandy Point Heights Subdivision would not be hazardous or disturbing to existing or future neighboring uses so long as appropriate conditions were imposed on their placement and use.

5. The proposed use will be served adequately by essential public facilities.

The County Sheriff and the water and fire districts in the area were contacted and asked to comment upon the proposed use. The County Sheriff stated that it does not anticipate any problems arising out of the proposed use. Neither the Fire District nor the Water District commented on the proposed use. It is assumed, therefore, that neither of them have any objections to the proposed use and will be able to adequately serve it. During the course of the hearing on this application, the Lummi Business Council indicated that their rules would require all of the RV's to hook up to the sewer system. The Council did not give any indication that the sewer system would be inadequate to handle all of the proposed RV's. Also, the Hearing Examiner assumes that services in the area are adequate to handle the existing subdivision. The proposed use will not result in any additional lots being created. The RV's will not put any greater demand on facilities or services than would single family residences.

6. The proposed use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.

FINDINGS OF FACT (continued)

As is indicated above, all of the proposed recreational vehicles will be placed on lots within an existing subdivision. No new lots will be created. It is assumed that existing services are adequate to serve existing lots. If it is necessary to hook up to the sewer or water system in the area the applicant will be required to do so and to pay for such hook ups.

6. The proposed use will not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare, or odors.

The applicants are seeking approval to use existing lots in an existing subdivision for recreational vehicles. Only one recreational vehicle will be allowed on each lot. They will be allowed to remain on those lots for a period of no more than 180 days during any one calendar year. Because of these limitations, there is no reason to believe that the use of the lots for RV purposes will create any more noise, traffic, smoke, fumes, glare or odors than the use for conventional residences or mobile homes.

7. The vehicular approaches to the property will not interfere with traffic on surrounding public streets.

The lot on which the RV's will be located will be served by either existing or new driveways that meet the construction requirements of the County. Again, there will be no greater impact on traffic in the area than there would be if the lots were used for single-family residences.

8. The proposed use will not result in the destruction, loss, or damage of any natural, scenic, or historic feature of major importance.

There is no evidence in the record that there are any such features in the area. The Hearing Examiner is not aware of any. The parcels along the bluff have a very nice territorial view of Lummi Bay. There will be no interference with this view.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the zoning conditional use application to place recreational vehicles on the following lots:

Block 2: Lots 7, 8, 9, 15, 16, and 17  
Block 3: Lots 15, 16, 19, 20, 21, 23 and 24

DECISION (continued)

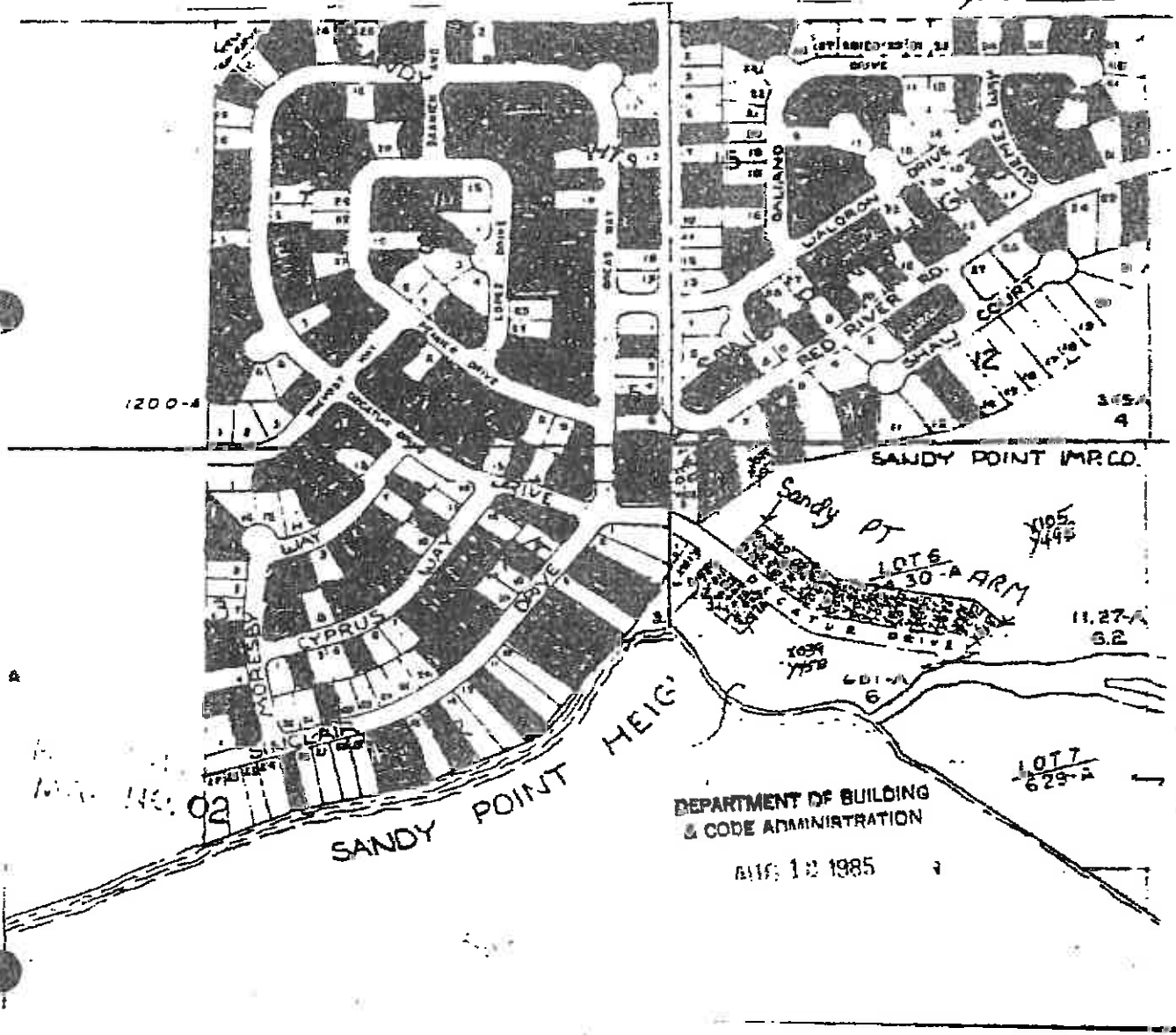
Block 4: Lots 17, 18 and 19  
Block 5: Lots 7, 8, and 9  
Block 6: Lots 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15,  
16, 17, 23, 27, 28, 29, 30, 32, and 33  
Block 7: Lots 4, 5, 6, 7, 11, 12, 13, 26, 27, 28, 29, and 30  
Block 8: Lots 1, 4, 5, 6, 7, 16, 21, and 22  
Block 9: Lots 11, 12, and 13  
Block 10: Lots 5, 6, 14, and 15  
Block 13: Lots 13, 14, and 21  
Block 14: Lots 1, 2, 3, and 4  
Block 15: Lots 8, 9, 10, 11, 12, 17, 31, 32, 33, 46, 47, 48,  
49 and 50

This approval shall be subject to the following conditions:

1. Lots approved for recreational vehicle occupancy shall comply with all applicable local, state and federal regulations in effect during the period of occupancy.
2. Recreational vehicles shall not be occupied as a permanent residence nor shall they be installed on a permanent foundation on any lot. Seasonal occupancy is limited to one RV per lot and no more than 180 days during any twelve month period.
3. All RV's, whether stored or occupied, shall meet the minimum setbacks applicable to residential structures. Two parking spaces shall be provided onsite for each lot.
4. Water supply and sewage disposal facilities shall be in accordance with Health Department requirements.
5. All recreational vehicles shall be screened so they are not visible from off the site from either neighboring properties not approved for RV use or the roads in the subdivision. Existing trees and natural vegetation shall be maintained in all side and rear setback areas. This condition shall apply notwithstanding restrictive covenants that apply to the subdivision. If, in the case of any lot, it is not possible to screen the RV from off the site because of restrictive covenants, then an RV shall not be placed on that lot unless the restrictive covenants are waived or the owner of that lot is able to demonstrate to the satisfaction of the Hearing Examiner that such screening is not necessary.
6. Approved lots shall not be leased or rented out on a daily or overnight basis for recreational use.
7. Accessory structures shall be limited to storage, shop, garage,



Approx. location of RU lots.



DECISION (continued)

carport and/or similar personal use only and shall not exceed a total of 400 square feet in floor area per lot.

8. If there is an existing residence (including mobile home) on the property, this approval shall allow the owner of the property on which the residence is located to place an RV on the property as either a conditional use subject to the above stated conditions or an accessory use subject to Section 2.24.295.103 of the Whatcom County Interim Zoning Ordinance. This decision shall not allow any lot to be occupied by more than one RV or by any RV for more than 180 days.

NOTICE OF ADMINISTRATIVE APPEAL PROCEDURES  
FROM FINAL DECISIONS OF  
THE WHATCOM COUNTY HEARING EXAMINER'S OFFICE

The action of the Hearing Examiner, on all matters coming before him shall be final and conclusive unless within ten (10) calendar days after the date upon which the Hearing Examiner has made his order, requirement, decision, or determination, an appeal in writing is made to the Whatcom County Council. Such an appeal may be taken only by the original applicant, an opponent of record in the case, or other County department.

To perfect a right of appeal to the Whatcom County Council, the appellant must, within the ten (10) day appeal period:

- File a written Notice of Appeal with, and pay all required filing fees to the Whatcom County Bureau of Buildings & Code Administration offices located at 401 Grand Avenue, Bellingham, Washington.

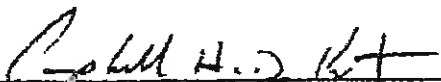
Applications for such appeals may be obtained from the Whatcom County Bureau of Buildings & Code Administration offices.

More detailed information regarding and pertaining to requisite appeal procedures is contained in the WHATCOM COUNTY INTERIM ZONING ORDINANCE at 2.24.770 HEARING EXAMINER, SECTION .740-.860, and the OFFICIAL WHATCOM COUNTY ZONING ORDINANCE, at CHAPTER 20.92 HEARING EXAMINER, SECTION 20.92.600-20.92.830. Copies of these documents are available (for either purchase or review) at the Whatcom County Bureau of Buildings & Code Administration offices.

Any further questions regarding these administrative appeal procedures should be directed to:

Clerk of the Whatcom County Council  
2nd Floor, Whatcom County Courthouse  
311 Grand Avenue  
Bellingham, Washington 98225  
(206) 676-6690

DATED this 21st day of November, 1985.

  
\_\_\_\_\_  
Campbell H.D. Kintz, Hearing Examiner

# **EXHIBIT 11**



DECLARATION OF RESTRICTIONS, EASEMENTS AND RESERVATIONS  
NEPTUNE HEIGHTS

THE UNDERSIGNED are owners of the real property situated in Whatcom County, Washington, included in the plat of Neptune Heights as recorded in such county. They desire to provide for a plan of development of such real property as a part of an entire subdivision and for that purpose do hereby declare and establish the following restrictions, easements, and reservations appurtenant:

1. Building Restrictions:

1) Except for portions of the real property as may be used for recreational purposes or common service facilities by Sandy Point Improvement Company, a Washington Corporation, no lot in the plat of Neptune Heights shall be used for any purpose other than for residential purposes, provided however, that a temporary real estate office may be maintained with the consent of the undersigned on any one of more such lots.

2) No structure shall be erected, altered, placed or maintained on any lot unless it shall comply with these restrictions and the following:

(a) Each dwelling structure shall be of permanent construction, shall have not less than six hundred (600) square feet of enclosed area devoted to living purposes in Lots 30 thru 47 and Lots 71 thru 84. Each dwelling structure shall be of permanent construction, shall have not less than eight hundred (800) square feet of enclosed area devoted to living purposes in Lots 48 thru 70 and Lots 1 thru 29. No structure shall exceed 12 feet above the grade of the original ground level on Lots 1 thru 25.

(b) The exteriors of all structures on a lot shall be constructed of new material.

(c) No structure shall be erected or placed within five (5) feet of the side boundary of a lot, twenty-five (25) feet of a street abutting a lot, or thirty-five (35) feet of the rear lot line from the street abutting the lot. These setback requirements may be waived or modified by Sandy Point Improvement Company in case of hardship involving lots of unusual configuration

or lots abutted on more than one side by a street.

(d) No facilities for sewage disposal shall be placed on a lot unless they are of modern design, enclosed within a dwelling structure on the lot and fully connected to a septic system of sewage disposal, or comparable modern facility, designed, located and constructed in accordance with the rules and regulations of the Whatcom County Health Department and any other governmental agencies having jurisdiction or are fully connected to a public sewer system.

(e) Prior to erecting or placing of any structure on a lot, the plans and specifications therefor shall be submitted to and approved by Sandy Point Improvement Company, as hereafter provided, and such structure shall conform to such plans and specifications.

3) The work of constructing, altering or repairing any structure on a lot shall be diligently prosecuted from its commencement until completion thereof, but in any event the exterior finished appearance shall be completed within six (6) months of commencement so that no tar paper or underlayment shall thereafter be exposed to view.

4) No temporary structure, trailer, tent, garage, basement or outbuilding shall be maintained on any lot for residential purposes, except that Lots 30 thru 47 and Lots 71 thru 84 may maintain a mobile home for residential purposes.

5) No fence, wall or hedge along a lot line shall exceed forty-eight (48) inches in height, except that decorative screening as approved in writing by Sandy Point Improvement Company prior to erection may be maintained on a lot.

## II. Land Use Restrictions:

1) No garbage, refuse, rubbish, junk or cut growth shall be permitted to be deposited, left or accumulated on a lot unless in suitable containers which shall be kept in sanitary condition, regularly emptied and fully screened from view of the street and adjacent lots.

2) No animals shall be kept or permitted on the real property in the plat except for household pets which shall not unreasonably interfere with the use and enjoyment of any lot.

3) No goods, equipment; trucks, vehicles or paraphernalia used in or connected with any trade or business shall be kept or stored in the open on any lot. No commercial signs, including "For Sale" signs, shall be permitted on any lot or structure.

4) No noxious, or offensive activity shall be permitted on any lot nor shall anything be permitted that may be or become a nuisance or unreasonably interfere with the use and enjoyment of any part of the real property included in the plat.

5) All governmental regulations which are applicable to and regulate the use of real property outside of Indian Reservation boundaries within the jurisdiction of Whatcom County, Washington, shall be applicable to any part of the real property contained in the plat which may be within the boundaries of the Lummi Indian Reservation and the owners or users of such real property shall comply therewith.

### III. Sandy Point Improvement Company:

1) Sandy Point Improvement Company, a Washington Corporation, has been formed by certain individuals in the past for the purposes of providing certain services and recreational facilities for the owners of property in the plat, for other properties in proximity thereto and for others. Any action to be taken pursuant hereto by Sandy Point Improvement Company may be taken upon authorization of the board of directors. Each lot owner, including contract vendees, shall be entitled to one share of Class A Stock of such corporation subject to the restrictions and provisions of the articles of incorporation established from time to time. Such share of stock shall be appurtenant to the title to and shall be transferable only as a part of the transfer of the title to the lot. Each shareholder shall be entitled to the use and enjoyment of the corporation facilities and services subject to the rules, regulations and charges as may now or hereafter be established by the corporation; which rules, regulations and charges shall apply equally to all shareholders who are owners of property in the plat. Nothing herein shall precluded the corporation from making its services and facilities available to others on such terms as it deems best. Each share-



holder who is an owner of property in the plat shall abide with the rules and regulations of the corporation as may be adopted from time to time incident to the use of its facilities.

2) All plans and specifications required to be submitted to Sandy Point Improvement Company shall be in writing, shall contain the names and address of the person submitting the same; the description of the property to which they relate, and shall set forth the following with respect to the proposed structure: the location of the structure on the property, the elevation of the structure with reference to the existing and finished lot grade, the general design, the interior layout, the exterior finish materials and color, and such other information as may be required to determine whether such structure conforms to these restrictions. The corporation may establish standards involving esthetic consideration of harmony of construction and color which it determines to be in the best interest of providing for an attractive development, which standards may include those pertaining to the height, configuration, design, and appearance of fences, walls, screens, outbuildings, pools and other structures appurtenant to the use of the dwelling. Plans and specifications shall be submitted by mail to the secretary of the corporation. Within thirty (30) days after receipt of such plans and specifications which in its opinion do not conform to these restrictions or its esthetic standards. In the event notice of disapproval is not mailed by the corporation to the address of the person submitting such plans and specifications within such thirty (30) day period; approval shall be deemed to have been given. The board of directors of the corporation may designate such person or persons as it deems advisable to act on its behalf to give such approval or disapproval.

3) In order to provide for maintenance and improvement of the various properties and facilities of Sandy Point Improvement Company, each grantee and vendee of a lot in the plat, their heirs, successors and assigns, shall and do by the act of accepting a deed or entering into a contract of sales as vendee, jointly and severally agree that they and each of them shall pay to the corporation the charges assessed by vote of two-thirds of the directors of the corporation against the shareholders of the corporation. In the event

that such charges remain unpaid to the corporation for sixty (60) days after the due date, then the corporation may record a written notice with the auditor of Whatcom County; Washington; that it claims a lien against the lot of the shareholder who is so delinquent for the amount of such charges, interest at the rate of twelve percent (12%) per annum from the due date until paid and attorney's fees incurred incident thereto. From and after recording such notice, such lot shall be subject to a lien to the corporation as security for such assessments and such lien may be foreclosed in the manner of a mortgage on real property and in such foreclosure action the corporation shall recover a reasonable sum as attorney's fees therein and the reasonable and necessary costs of searching and abstracting the public records. Until changed by vote of two-thirds of the directors of the corporation the charge herein referred to shall be Ten Dollars (\$10.00) per annum payable on or before June 30 of each year in advance commencing June 30, 1971.

#### IV. Easements and Reservations:

1) All oil, gas and mineral rights and the right to remove oil, gas and such minerals in the real property described in the above mentioned plat shall be reserved and excepted from the conveyance of any portion of the real property as though written therein, provided that the owners of such real property shall be compensated for any damage or injury to the surface and structures thereon that may be occasioned by any removal of such minerals.

2) The undersigned hereby reserve an easement over and across a strip of land ten (10) feet in width across each lot parallel with and adjacent to the roads abutting and along five (5) feet of each other lot line shown on the plat for the purpose of constructing, repairing, reconstructing, improving and maintaining waterpipes, light and power lines, telephone lines and other facilities for utilities including the right to enter upon such easement for such purposes.

#### V. Miscellaneous:

1) The covenants, restrictions, easements, rights, liens and encumbrances herein provided for shall be covenants running with the land and shall be binding upon the real property described in the above plat and any and all

parts thereof, the parties in interest thereto and their heirs, assigns, personal representatives and successors in interest. Accepting an interest in and to any portion of such real property shall constitute an agreement by any such person, firm, corporation accepting such interest, that they and each of them shall be bound by and subject to the provisions hereof.

2) In the event that any provision hereof shall be declared invalid by any court of competent jurisdiction, no other provision hereof shall be affected thereby and the remaining provisions shall remain in full force and effect. No waiver of a breach of any provision hereof shall constitute a waiver of a subsequent breach of the same provision or of any other provision.

3) The parties in interest in and to any part of the real property included in the above plat and Sandy Point Improvement Company for the benefit of such owners and each of them shall have the right and authority to enforce the provisions hereof and in addition to any other remedy for damages or otherwise shall have the right to injunctive relief. Except for the enforcement of the lien to Sandy Point Improvement Company, the prevailing party in any action to enforce the provisions hereof shall recover a reasonable sum as attorney's fees therein together with the reasonable cost of searching and abstracting the public record.

4) The provisions hereof may be amended, altered or terminated in whole or part by written instrument signed by sixty percent (60%) of the owners in the area of the real property in the above plat, exclusive of roads, and recorded with the auditor of Whatcom County, Washington. For the purposes of this paragraph the word "owner" shall mean any person, firm, corporation holding either fee title or a vendee's interest under a real estate contract as shown by the records of Whatcom County, Washington, to the exclusion of any lesser interest. Until so terminated these provisions shall remain in full force and effect.

DATED this 31st day of August, 1970.

BELLINGHAM NATIONAL BANK

s/ K. E. Lindstrom      V.P.

s/ E. J. Johnson      Cashier



DECLARATION OF AMENDMENT OF RESTRICTIONS, EASEMENTS AND  
RESERVATIONS OF THE PLAT OF NEPTUNE HEIGHTS

THE SANDY POINT IMPROVEMENT COMPANY by and through its authorized officer hereby declares that the Declaration of restrictions, easements and reservations of Neptune Heights shall be amended as set forth herein.

WHEREAS the Plat of Neptune Heights, a subdivision located in Section 4, Township 38 North, Range 1 East of W.M., Whatcom County, Washington, is affected by a "Declaration of Restrictions, Easements and Reservations" recorded under Whatcom County Auditor's file number 1081327 and;

WHEREAS Article V(4) thereof provides that the said restrictions, easements and reservations may be amended, altered or terminated in whole or part by a written instrument signed by sixty percent (60%) of the owners in the area of real property of the above Plat, exclusive of roads; and

WHEREAS the Sandy Point Improvement Company operates as a community association which has certain authority in the Plat of Neptune Heights, and whereas the Board of Directors of Sandy Point Improvement Company has received signed petitions from property owners representing at least sixty percent (60%) of the owners in the area of the real property of the Plat of Neptune Heights, which petitions are on file with the Sandy Point Improvement Company and which petitions

seek to amend Section I(4) of the Declaration of Restrictions, Easements and Reservations filed under Auditor's file number 1081327; and

WHEREAS the said Board of Directors has reviewed said petitions and concluded that the amendment of the restrictions, easements and reservations has been properly accomplished,

NOW THEREFORE, IT IS HEREBY DECLARED that the following amendment to the Declaration of restrictions, easements and reservations has been adopted, to wit:

Article I(4) is amended as follows:

"I. Building Restrictions:

...

4) No temporary structure, trailer, tent, garage, basement or outbuilding shall be maintained on any lot for residential purposes, with the exception that mobile homes which comply with the below referenced conditions may be placed on any lot within the Plat. The following conditions shall apply to mobile homes, for which approval for placement on lots within the Plat is sought:

- a) The mobile home must be newly constructed.
- b) The mobile home must contain a gross living area of One Thousand (1,000) square feet or more.
- c) The mobile home must be constructed with wood or vinyl siding and must be constructed with a composition roof.
- d) The mobile home must meet and comply with all current building codes and regulations".

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File No: 980725002

The remaining provisions of the Declaration of restrictions, easements and reservations of the Plat of Neptune Heights shall remain unaffected except as the same may be directly impacted by the amendment contained herein.

DATED this 13<sup>th</sup> day of July, 1990.




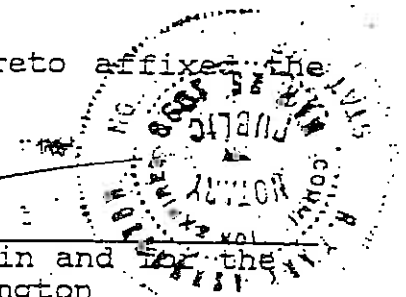
SANDY POINT IMPROVEMENT COMPANY  
by ROY POTTLE, President

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

On this 13<sup>th</sup> day of July, 1990, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared ROY POTTLE, to me known to be the President of SANDY POINT IMPROVEMENT COMPANY, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed, the day and year first above written.

  
Notary Public in and for the  
State of Washington  
Residing at Bellingham



WHATCOM COUNTY  
BELLINGHAM, WA  
07/25/90 08:56 AM  
REQUEST OF: /FCP  
Shirley Forslof, AUDITOR  
BY: BS, DEPUTY  
\$9.00 AM/RC

Vol: 159 Page: 1547  
File No: 988725002

DECLARATION OF AMENDMENT TO DECLARATION OF RESTRICTIONS,  
EASEMENTS AND RESERVATIONS OF THE PLAT OF NEPTUNE HEIGHTS,  
AS RECORDED UNDER WHATCOM COUNTY AUDITOR'S  
FILE NUMBER 1081327, AND AMENDED UNDER WHATCOM COUNTY  
AUDITOR'S FILE NUMBERS 1081557 AND 1082325

THE UNDERSIGNED duly elected officers of the Sandy Point Improvement Company hereby file this Amendment to the Declaration of Restrictions, Easements and Reservations of the Plat of Neptune Heights and in support of said Amendment do declare as follows:

1. The undersigned are the duly elected officers of the Sandy Point Improvement Company.
2. The Sandy Point Improvement Company acts as the home owners' association for the Plat of Neptune Heights.
3. According to the restrictions, easements and reservations of record of the Plat of Neptune Heights, as amended, the said restrictions, easements and reservations may be amended by a petition signed by property owners representing Sixty percent (60%) in area or more of the Plat of Neptune Heights.
4. The Sandy Point Improvement Company Board of Directors has received petitions from property owners representing Sixty percent (60%) or more of the Plat of Neptune Heights wherein the petition calls for the amendment of the Declaration of Restrictions, Easements and Reservations of the Plat of Neptune Heights to the effect of termination of Paragraph I.1, I.2, I.3, I.4 and I.5 of the




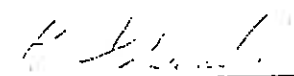
said Declaration of Restrictions, Easements and Reservations recorded under Whatcom County Auditor's File number 1081327.

5. The originals of the said petitions are on file with the Secretary of the Sandy Point Improvement Company, and shall be retained by her in the permanent records of Sandy Point Improvement Company.

6. According to the restrictive covenants of the Plat of Neptune Heights, the amendments herein shall be effective upon the recording of this Declaration of Amendment.

DATED this 8<sup>th</sup> day of February, 1991.

  
\_\_\_\_\_  
SANDY POINT IMPROVEMENT COMPANY  
By ROY POTTLE, President

  
\_\_\_\_\_  
SANDY POINT IMPROVEMENT COMPANY  
By I. Slaneff, Secretary

STATE OF WASHINGTON            )  
                                          ) ss.  
COUNTY OF WHATCOM         )

On this 8<sup>th</sup> day of February, 1991, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared ROY POTTLE and I. Slaneff, to me known to be the President and Secretary, respectively, of SANDY POINT IMPROVEMENT COMPANY, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

Commodore Cook

Notary Public in and for the State of Washington

Residing at ~~Bellingham~~ Deming

My Commission Expires: 3/15/94



NOTARY PUBLIC STATE OF WASHINGTON  
COMMISSION EXPIRES 3/15/94

## RESTRICTIVE COVENANT

THE GRANTORS herein are the owners of the following described real property, situate in Whatcom County, State of Washington, to wit:

Lot 46, Plat of Neptune Heights, according to the Plat thereof, recorded in the Auditor's office of Whatcom County, Washington.

The Grantee herein, SANDY POINT IMPROVEMENT COMPANY, owns and operates two (2) wells and a water works supplying water for public use, located upon the following described real property situate in Whatcom County, Washington, to wit:

As described on Exhibits "A" and "B" attached hereto and by this reference incorporated herein, which wells and water works are proximate to the land of the Grantors and said Grantee is required to keep the water supplied from said wells free from impurities which might be injurious to the public health.

It is the purpose of these grants and covenants to prevent certain practices hereinafter enumerated in the use of said Grantors' land which might contaminate said water supply.

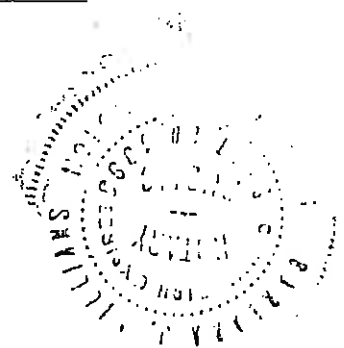
NOW, THEREFORE, in consideration of One Dollar (\$1.00) in hand paid and other good and valuable consideration received by said Grantors, the Grantors agree and covenant with the Grantee, its successors and assigns, said covenants to run with the land for the benefit of the land of the Grantee, that the said Grantors, their heirs, successors and assigns, will not construct, maintain, or suffer to be constructed or maintained upon the said land of the Grantors and within one hundred (100) feet of the wells of the Grantee, so long as the same is operated to furnish water for public consumption, any potential source of contamination, such as cesspools, sewers, privies, septic tanks, drain fields, manure piles, garbage of any kind or description, barns, chicken houses, rabbit hutches, pig pens or other enclosures or structures for the keeping or maintenance of fowls or animals, or storage of liquid or dry chemicals, herbicides, or insecticides.



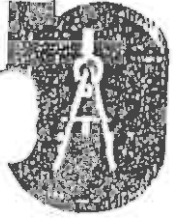
GIVEN under my hand and official seal this 4th day of September, 1992.

*John P. Wilcox*

Notary Public in and for the  
~~Province of~~ State of Washington  
Residing at Bellingham



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File No: 920915163



## RONALD T. JEPSON & ASSOCIATES

Consulting Engineers • Land Surveyors • Project Management & Development

September 25, 1991

Well Protective Covenants  
Sandy Point Heights

Well A  
Legal Description

Commencing at the northeast corner of TRACT B within the plat of "NEPTUNE HEIGHTS" as recorded in Volume 10 of plats, page 119, records of the Whatcom County Auditor; thence southerly along the east line of said TRACT B, 83 feet; thence westerly at right angles to said easterly line, 105 feet the center point of an existing well.  
From which a protective easement radiates with a radius of 100 feet.

Situate in Whatcom County, Washington.

/sf

Exhibit "A"

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File No: 920915163

**DECLARATION OF AMENDMENT TO DECLARATION OF RESTRICTIONS,  
EASEMENTS AND RESERVATIONS OF THE PLAT OF NEPTUNE HEIGHTS,  
AS RECORDED UNDER WHATCOM COUNTY AUDITOR'S  
FILE NUMBER 1081327, AND AMENDED UNDER WHATCOM COUNTY  
AUDITOR'S FILE NUMBERS 1081557 AND 1082325**

THE UNDERSIGNED duly elected officers of the Sandy Point Improvement Company hereby file this Amendment to the Declaration of Restrictions, Easements and Reservations of the Plat of Neptune Heights and in support of said Amendment do declare as follows:

1. The undersigned are the duly elected officers of the Sandy Point Improvement Company.
2. The Sandy Point Improvement Company acts as the home owners' association for the Plat of Neptune Heights.
3. According to the restrictions, easements and reservations of record of the Plat of Neptune Heights, as amended, the said restrictions, easements and reservations may be amended by a petition signed by property owners representing Sixty percent (60%) in area or more of the Plat of Neptune Heights.
4. The Sandy Point Improvement Company Board of Directors has received petitions from property owners representing Sixty percent (60%) or more of the Plat of Neptune Heights wherein the petition calls for the amendment of the Declaration of Restrictions, Easements and Reservations of the Plat of Neptune Heights to the effect of termination of Paragraph I.1, I.2, I.3, I.4 and I.5 of the

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File No: 910305157

said Declaration of Restrictions, Easements and Reservations recorded under Whatcom County Auditor's File number 1081327.

5. The originals of the said petitions are on file with the Secretary of the Sandy Point Improvement Company, and shall be retained by her in the permanent records of Sandy Point Improvement Company.

6. According to the restrictive covenants of the Flat of Neptune Heights, the amendments herein shall be effective upon the recording of this Declaration of Amendment.

DATED this 8<sup>th</sup> day of February, 1991.

  
\_\_\_\_\_  
SANDY POINT IMPROVEMENT COMPANY  
By ROY POTTLE, President

  
\_\_\_\_\_  
SANDY POINT IMPROVEMENT COMPANY  
By I. S. Saneff, Secretary

STATE OF WASHINGTON            )  
                                          ) ss.  
COUNTY OF WHATCOM         )

On this 8<sup>th</sup> day of February, 1991, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared ROY POTTLE and I. S. Saneff, to me known to be the President and Secretary, respectively, of SANDY POINT IMPROVEMENT COMPANY, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Vol: 184 Page: 1827  
File No: 910305157



WITNESS my hand and official seal hereto affixed the day and year first above written.

Carroll Cook  
Notary Public in and for the  
State of Washington  
Residing at Bellingham <sup>Deming</sup>  
My Commission Expires: 3/5/94



WHATCOM COUNTY  
BELLINGHAM, WA  
03/05/91 4:30 PM  
REQUEST OF: /FCP  
Shirley Forslof, AUDITOR  
BY: RAW, DEPUTY  
\$9.00 AM/RC

Vol: 184 Page: 1828  
File No: 910305157

DECLARATION OF AMENDMENT OF RESTRICTIONS, EASEMENTS AND  
RESERVATIONS OF THE PLAT OF NEPTUNE HEIGHTS

THE SANDY POINT IMPROVEMENT COMPANY by and through its authorized officer hereby declares that the Declaration of restrictions, easements and reservations of Neptune Heights shall be amended as set forth herein.

WHEREAS the Plat of Neptune Heights, a subdivision located in Section 4, Township 38 North, Range 1 East of W.M., Whatcom County, Washington, is affected by a "Declaration of Restrictions, Easements and Reservations" recorded under Whatcom County Auditor's file number 1081327 and;

WHEREAS Article V(4) thereof provides that the said restrictions, easements and reservations may be amended, altered or terminated in whole or part by a written instrument signed by sixty percent (60%) of the owners in the area of real property of the above Plat, exclusive of roads; and

WHEREAS the Sandy Point Improvement Company operates as a community association which has certain authority in the Plat of Neptune Heights, and whereas the Board of Directors of Sandy Point Improvement Company has received signed petitions from property owners representing at least sixty percent (60%) of the owners in the area of the real property of the Plat of Neptune Heights, which petitions are on file with the Sandy Point Improvement Company and which petitions

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File No: 900725002

seek to amend Section I(4) of the Declaration of Restrictions, Easements and Reservations filed under Auditor's file number 1081327; and

WHEREAS the said Board of Directors has reviewed said petitions and concluded that the amendment of the restrictions, easements and reservations has been properly accomplished,

NOW THEREFORE, IT IS HEREBY DECLARED that the following amendment to the Declaration of restrictions, easements and reservations has been adopted, to wit:

Article I(4) is amended as follows:

"I. Building Restrictions:

...


4) No temporary structure, trailer, tent, garage, basement or outbuilding shall be maintained on any lot for residential purposes, with the exception that mobile homes which comply with the below referenced conditions may be placed on any lot within the Plat. The following conditions shall apply to mobile homes, for which approval for placement on lots within the Plat is sought:

- a) The mobile home must be newly constructed.
- b) The mobile home must contain a gross living area of One Thousand (1,000) square feet or more.
- c) The mobile home must be constructed with wood or vinyl siding and must be constructed with a composition roof.
- d) The mobile home must meet and comply with all current building codes and regulations".

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File No: 900725002

The remaining provisions of the Declaration of restrictions, easements and reservations of the Plat of Neptune Heights shall remain unaffected except as the same may be directly impacted by the amendment contained herein.


DATED this 13<sup>th</sup> day of July, 1990.

  
\_\_\_\_\_  
SANDY POINT IMPROVEMENT COMPANY  
by ROY POTTLE, President

STATE OF WASHINGTON )  
COUNTY OF WHATCOM ) ss.

On this 13<sup>th</sup> day of July, 1990, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared ROY POTTLE, to me known to be the President of SANDY POINT IMPROVEMENT COMPANY, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

  
\_\_\_\_\_  
Notary Public in and for the  
State of Washington  
Residing at Bellingham

WHATCOM COUNTY  
BELLINGHAM, WA  
07/25/90 08:56 AM  
REQUEST OF: /FCP  
Shirley Forslof, AUDITOR  
BY: BS, DEPUTY  
\$9.00 AM/RC

Vol: 159 Page: 1547  
File No: 900725002

1182324

AMENDMENT TO 00730

DECLARATION OF RESTRICTIONS, EASEMENTS AND RESERVATIONS  
NEPTUNE HEIGHTS

The following section should be revised to read:

1. Building Restrictions:

2) No structure shall be erected, altered, placed or maintained on any lot unless it shall comply with these restrictions and the following:

(a) Each dwelling structure shall be of permanent construction, shall have not less than six hundred (600) square feet of enclosed area devoted to living purposes in Lots 30 thru 47 and Lots 71 thru 84. Each dwelling structure shall be of permanent construction, shall have not less than eight hundred (800) square feet of enclosed area devoted to living purposes in Lots 48 thru 70 and Lots 1 thru 29. No structure shall exceed 12 feet above the grade of the original ground level on Lots 1 thru 25.

(d) (Referring to Lot 44 should be omitted)

4) No temporary structure, trailer, tent, garage, basement or outbuilding shall be maintained on any lot for residential purposes, except that Lots 30 thru 47 and Lots 71 thru 84 may maintain a mobile home for residential purposes.

DATED this 18th Day of September, 1970.



BELLINGHAM NATIONAL BANK

*[Signature]*  
*[Signature]*  
*[Signature]*

ROBERT R. WALKER

*[Signature]*

VICTORIA WALKER

*[Signature]*

H. E. ISENHART

*[Signature]*

OWEN-LEE ISENHART

Vol. 124 Pg. 1  
VOL 123 PAGE 000

1088271

STATE OF WASHINGTON )  
                                  ) ss.  
COUNTY OF WHATCOM )

On this 18th day of September, A.D., 1970, before me the undersigned, a notary public in and for the state of Washington, personally appeared H. E. ISENHART and GWEN-LEE ISENHART, ROBERT R. WALKER, and VICTORIA WALKER to me known to be the individuals described in and who executed the foregoing instrument and that they signed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.



*Elizabeth M. Bonard*  
Notary public in and for the State  
of Washington residing at:  
*Bellingham*, Washington

STATE OF WASHINGTON )  
                                  ) ss.  
COUNTY OF WHATCOM )

On the 18th day of September, A.D., 1970, before me the undersigned, a notary public in and for the State of Washington, personally appeared *R. J. Hoffman, V.P.* and *E. J. Johnson, Cashier* of the Bellingham National Bank, a Washington Corporation, to me known to be the individuals described in and who executed the foregoing instrument and that they are duly authorized to sign the same as their free and voluntary act and deed for the uses and purposes therein mentioned.



*Frank H. Wilkey*  
Notary public in and for the State  
of Washington residing at:  
*Bellingham*, Washington

RECEIVED FOR RECORD AT *3:12 PM* SEP 18 1970  
AT REQUEST OF *Barbara J. Gustafson*  
WELLA HANSEN, CO. AUDITOR, WHATCOM CO., WASH

1058134

Plat of Lots 544 thru 588, inclusive, in Block 1, Sandy Point Tract #2, Whatcom County, Washington.

WE THE UNDERSIGNED, the owners of Lots 544 thru 588 inclusive, hereby declare and establish the following restrictions:

Boleter's Sandy Point Tract #2, Whatcom County, Washington, has per map thereof, recorded in Book 8 of Plats, page 80, in Auditor's office of said county and state, who are desirous of the elimination of certain burdensome restrictions do hereby eliminate the protective covenants and restrictions contained in instruments filed in Volume 437 of Deeds, page 532, in the records of the Whatcom County Auditor. The undersigned desire to provide a plan for the development of such real property and for that purpose do hereby declare and establish the following restrictions, covenants and reservations appurtenant:

1. **Building Restrictions:**

(1) Except for portions of the real property as may be used for recreational purposes or common service facilities by Sandy Point Improvement Co., a Washington corporation, no lot in the plat of Sandy Point Tract #2 shall be used for any purpose other than for residential purposes, provided however, that a temporary real estate office may be maintained with the consent of the undersigned on any one of such lots.

(2) No structure shall be erected, altered, placed or maintained on any lot unless it shall comply with these restrictions and the following:

(a) Each dwelling structure shall be of permanent construction, shall have not less than six hundred (600) square feet of enclosed area devoted to living purposes. No structure shall exceed 20 feet above the grade of the adjacent road.

(b) The exteriors of all structures on a lot shall be constructed of new exterior materials.

(c) No structure shall be erected or placed within five (5) feet to the side boundary of a lot, twenty-five (25) feet of a street abutting a lot, or twenty-five (25) feet of the rear lot line from the street abutting the lot.

1056134

These setback requirements may be waived or modified by Sandy Point Improvement Co. in case of hardship involving lots of unusual configuration or lots abutting on more than one side by a street.

(d) No facilities for sewage disposal shall be placed on a lot unless they are of modern design, enclosed within a dwelling structure on the lot and fully connected to a septic tank system of sewage disposal or comparable modern facility, designed, located and constructed in accordance with the rules and regulations of the Whatcom County Health Department and any other governmental agencies having jurisdiction or are fully connected to a public sewer system.

(e) Prior to erecting or placing of any structure on a lot, the plans and specifications therefor shall be submitted to and approved by Sandy Point Improvement Co. as hereafter provided, and such structure shall conform to such plans and specifications.

3) The work of constructing, altering or repairing any structure on a lot shall be diligently prosecuted from its commencement until completion thereof; but in any event the exterior finished appearance shall be completed within six (6) months of commencement so that no tar paper or underlayment shall thereafter be exposed to view.

4) No temporary structure, trailer, tent, garage, basement or outbuilding shall be maintained on any lot for residential purposes.

5) No fence, wall or hedge along a lot line shall exceed forty-eight (48) inches in height, except that decorative screening as approved in writing by Sandy Point Improvement Co. prior to erection may be maintained on a lot.

**II. Land Use Restrictions**

1) No garbage, refuse, rubbish, junk, cut growth shall be permitted to be deposited, left or accumulated on a lot unless in suitable containers which shall be kept in sanitary condition, regularly emptied and fully screened from view of the street and adjacent lots.

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1058134

2) No animals shall be kept or permitted on the real property in the plat except for household pets which shall not unreasonably interfere with the use and enjoyment of any lot.

3) No goods, equipment, trucks, vehicles or paraphernalia used in or connected with any trade or business shall be kept or stored in the open on any lot. No commercial signs, including "For Sale" signs, shall be permitted on any lot or structure.

4) No noxious or offensive activity shall be permitted on any lot and nor shall anything be permitted that may be or become a nuisance or unreasonably interfere with the use and enjoyment of any part of the real property included in the plat.

5) All governmental regulations which are applicable to and regulate the use of real property outside of Indian Reservation boundaries within the jurisdiction of Whatcom County, Washington, shall be applicable to any part of the real property contained in the plat which may be within the boundaries of the Lummi Indian Reservation and the owners or users of such real property shall comply therewith.

III. Sandy Point Improvement Co.

1) Sandy Point Improvement Co., a Washington corporation, has been formed by the undersigned for the purpose of providing certain services and recreational facilities for the owners of property in the plat, for other properties in proximity thereto and for others. Any action to be taken pursuant hereto by Sandy Point Improvement Co. may be taken upon authorization of the board of directors. Each lot owner, including contract vendee, shall be entitled to one share of Class A stock of such corporation subject to the restrictions and provisions of the articles of incorporation established from time to time. Such share of stock shall be appurtenant to the title to and shall be transferable only as a part of the transfer of the title to the lot. Each shareholder shall be entitled to the use and enjoyment of the corporate facilities and services subject to the rules, regulations and charges as may now or hereafter be established by the corporation, which rules, regulations and charges shall apply equally to all shareholders who are owners of property in the plat. Nothing herein shall preclude the corporation from

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making its services and facilities available to others on such terms as it deems best. Each shareholder who is an owner of property in the plat shall abide by the rules and regulations of the corporation as may be adopted from time to time incident to the use of its facilities.

27. All plans and specifications required to be submitted to Sandy Point Improvement Co. shall be in writing, shall contain the name and address of the person submitting the same, the description of the property to which they relate, and shall set forth the following with respect to the proposed structure: the location of the structure on the property, the elevation of the structure with reference to the existing and finished lot grade, the general design, the interior layout, the exterior finish materials and colors, and such other information as may be required to determine whether such structure conforms to these restrictions. The corporation may establish standards involving aesthetic considerations of harmony of construction and color which it determines to be in the best interest of providing for an attractive development, which standards may include those pertaining to the height, configuration, design and appearance of fences, walls, screens, out-buildings, pools and other structures appurtenant to the use of a dwelling. Plans and specifications shall be submitted by mail to the secretary of the corporation. Within thirty (30) days after receipt of such plans and specifications which in its opinion do not conform to these restrictions or its aesthetic standards, in the event notice of disapproval is not mailed by the corporation to the address of the person submitting such plans and specifications within such thirty-day period, approval shall be deemed to have been given. The board of directors of the corporation may designate such person or persons as it deems advisable to act on its behalf to give such approval or disapproval.

28. In order to provide for maintenance and improvement of the various properties and facilities of Sandy Point Improvement Co., each owner and assignee of a lot in the plat, their heirs, successors and assigns, shall and

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do, by the act of accepting a deed or entering into a contract of sale as vendors, jointly and severally agree that they and each of them shall pay to the corporation the charges assessed by vote of two thirds of the directors of the corporation against the shareholders of the corporation. In the event that such charges remain unpaid to the corporation for sixty (60) days after the due date, then the corporation may record a written notice with the auditor of Whatcom County, Washington, that it claims a lien against the lot of the shareholder who is so delinquent for the amount of such charges, interest at the rate of ten per cent (10%) per annum from the due date until paid and attorneys' fees incurred incident thereto. From and after recording such notice, such lot shall be subject to a lien to the corporation as security for such assessments and such lien may be foreclosed in the manner of a mortgage on real property and in such foreclosure action the corporation shall recover a reasonable sum as attorneys' fees by therein and the reasonable and necessary costs of searching and abstracting the public records. Until changed by vote of two thirds of the directors of the corporation the charge herein referred to shall be Ten Dollars (\$10.00) per annum payable on or before June 30 of each year in advance commencing June 30, 1966.

**IV. Easements and Reservations:**

(1) All oil, gas and mineral rights and the right to remove oil, gas and such minerals in the real property described in the above mentioned plat shall be reserved and excepted from the conveyance of any portion of the real property as though written therein, provided that the owners of such real property shall be compensated for any damage or injury to the surface and structures thereon that may be occasioned by any removal of such minerals.

(2) The undersigned hereby reserves an easement over and across a strip of land ten (10) feet in width across each lot parallel with and adjacent to the roads abutting and along five feet of each other lotline shown on the plat for the purpose of constructing, repairing, reconstructing, improving

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and maintaining water pipes, light and power lines, telephone lines and other facilities for utilities including the right to enter upon such easement for such purposes.

**V. Miscellaneous**

1) The covenants, restrictions, easements, rights, liens and encumbrances herein provided for shall be covenants running with the land and shall be binding upon the real property described in the above plat and any and all parts thereof, the parties in interest thereto and their heirs, assigns, personal representatives and successors in interest. Accepting an interest in and to any portion of such real property shall constitute an agreement by any such person, firm or corporation accepting such interest, that they and each of them shall be bound by and subject to the provisions hereof.

2) In the event that any provision hereof shall be declared invalid by any court of competent jurisdiction, no other provision hereof shall be affected thereby and the remaining provision shall remain in full force and effect. No waiver of a breach of any provision hereof shall constitute a waiver of a subsequent breach of the same provision or of any other provision.

3) The parties in interest in and to any part of the real property included in the above plat and Sandy Point Improvement Co., for the benefit of such owners and each of them shall have the right and authority to enforce the provisions hereof and in addition to any other remedy for damages or otherwise shall have the right to injunctive relief. Except for the enforcement of the lien to Sandy Point Improvement Co., the prevailing party in any action to enforce the provisions hereof shall recover a reasonable sum as attorneys' fees therein together with the reasonable cost of searching and abstracting the public record.

4) The provisions hereof may be amended, altered or terminated in whole or part by written instrument signed by sixty per cent (60%) of the owners in area of the real property in the above plat, exclusive of roads.

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and recorded with the auditor of Whatcom County, Washington. For the purpose of this paragraph the word "owner" shall mean any person, firm or corporation holding either the title or a vendee's interest under a real estate contract as shown by the records of Whatcom County, Washington, to the exclusion of any other person, firm or corporation, until so terminated these provisions shall remain in full force and effect.

DATED this 7th day of September, 1967, the said parties have hereunto set their hands and seals at the County of Whatcom, State of Washington.

*R. E. Rogers*

R. E. Rogers, individually and as executor of the estate of Primitia R. Rogers, deceased.

*Robert A. Walker*

Robert A. Walker

Victoria R. Walker, Stuart Rogers and Midge Ann Rogers, Harold E. Lemmer and Owen Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson.

*Robert A. Walker*

Robert A. Walker, their attorney at law, in and for the County of Whatcom, State of Washington, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of Whatcom, State of Washington.

Notary Public for the State of Washington

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STATE OF WASHINGTON  
COUNTY OF WASHINGTON

On this 2<sup>nd</sup> day of Sept, 1967, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn personally appeared R. E. ROGERS, individually and as executor of the estate of Priscilla N. Rogers, deceased, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he signed and sealed the said instrument as his free and voluntary act and deed for the uses and purposes therein mentioned. WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

*Barry E. Hartman*  
Notary Public in and for the state of Washington, residing at  
Mountlake Terrace

STATE OF WASHINGTON  
COUNTY OF WASHINGTON

On this 2<sup>nd</sup> day of Sept, 1967, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn personally appeared ROBERT K. WALKER, to me known to be the individual described in and who executed the foregoing instrument for himself and as attorney in fact of Victoria K. Walker, Stuart Rogers and Madge Ann Rogers, Harold E. Isenhart and Owen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson, also therein described, and acknowledged to me that he signed and sealed the same as his voluntary act and deed and as the free and voluntary act and deed of the said Victoria K. Walker, Stuart Rogers and Madge Ann Rogers, Harold E. Isenhart and Owen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson for the uses and purposes therein mentioned, and on oath stated that the power of attorney authorizing the execution of this instrument has not been revoked and that the said Victoria K. Walker, Stuart Rogers and Madge Ann Rogers, Harold E. Isenhart and Owen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara L. Olson are now living, and are not insane. WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

*Barry E. Hartman*  
Notary public in and for the state of Washington, residing at the lot  
Mountlake Terrace

RECEIVED FOR RECORD AT 2:30 PM  
AT REQUEST OF *Wells-Hansen Co.*  
WELLS-HANSEN CO., AUDITOR WASHINGTON CO., WASH.

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*FOR CORRECTION OF A.F. # 1081327*  
DECLARATION OF RESTRICTIONS, EASEMENTS AND RESERVATIONS

NEPTUNE HEIGHTS

THE UNDERSIGNED are owners of the real property situated in Whatcom County, Washington, included in the plat of Neptune Heights as recorded in such county. They desire to provide for a plan of development of such real property as a part of an entire subdivision and for that purpose do hereby declare and establish the following restrictions, easements, and reservations appurtenant:

1. Building Restrictions:

1) Except for portions of the real property as may be used for recreational purposes or common service facilities by Sandy Point Improvement Company, a Washington Corporation, no lot in the plat of Neptune Heights shall be used for any purpose other than for residential purposes, provided however, that a temporary real estate office may be maintained with the consent of the undersigned on any one or more of such lots.

2) No structure shall be erected, altered, placed or maintained on any lot unless it shall comply with these restrictions and the following:

(a) Each dwelling structure shall be of permanent construction, shall have not less than six hundred (600) square feet of enclosed area devoted to living purposes in Lots 30 thru 47 and Lots 71 thru 84. Each dwelling structure shall be of permanent construction, shall have not less than eight hundred (800) square feet of enclosed area devoted to living purposes above the grade of the original ground level on Lots 1 thru 24.

(b) The exteriors of all structures on a lot shall be constructed of new material.

(c) No structure shall be erected or placed within five (5) feet of the side boundary of a lot, twenty-five (25) feet of a street abutting a lot, or thirty-five (35) feet of the rear lot line from the street abutting the lot. These setback requirements may be waived or modified by Sandy Point Improvement Company in case of hardship involving lots of unusual configuration or lots abutted on more than one side by a street.

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(d) No facilities for sewage disposal shall be placed on a lot unless they are of modern design, enclosed within a dwelling structure on the lot and fully connected to a septic system of sewage disposal, or comparable modern facility, designed, located and constructed in accordance with the rules and regulations of the Whatcom County Health Department and any other governmental agencies having jurisdiction or are fully connected to a public sewer system.

(e) Prior to erecting or placing of any structure on a lot, the plans and specifications therefor shall be submitted to and approved by Sandy Point Improvement Company, as hereafter provided, and such structure shall conform to such plans and specifications.

3) The work of constructing, altering or repairing any structure on a lot shall be diligently prosecuted from its commencement until completion thereof, but in any event the exterior finished appearance shall be completed within six(6) months of commencement so that no tar paper or underlayment shall thereafter be exposed to view.

4) No temporary structure, trailer, tent, garage, basement or outbuilding shall be maintained on any lot for residential purposes, except that Lots 30 thru 46 and Lots 70 thru 83 may maintain a mobile home for residential purposes.

5) No fence, wall or hedge along a lot line shall exceed forty-eight (48) inches in height, except that decorative screening as approved in writing by Sandy Point Improvement Company prior to erection may be maintained on a lot.

II. Land Use Restrictions:

1) No garbage, refuse, rubbish, junk or cut growth shall be permitted to be deposited, left or accumulated on a lot unless in suitable containers which shall be kept in sanitary condition, regularly emptied and fully screened from view of the street and adjacent lots.

2) No animals shall be kept or permitted on the real property in the plat except for household pets which shall not unreasonably interfere with the use and enjoyment of any lot.

3) No goods, equipment, trucks, vehicles or paraphernalia used in or connected with any trade or business shall be kept or stored in the open on any lot. No commercial signs, including "For Sale" signs, shall be permitted on any lot or structure.



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4) No noxious, or offensive activity shall be permitted on any lot nor shall anything be permitted that may be or become a nuisance or unreasonably interfere with the use and enjoyment of any part of the real property included in the plat.

5) All governmental regulations which are applicable to and regulate the use of real property outside of Indian Reservation boundaries within the jurisdiction of Whatcom County, Washington, shall be applicable to any part of the real property contained in the plat which may be within the boundaries of the Lummi Indian Reservation and the owners or users of such real property shall comply therewith.

III. Sandy Point Improvement Company:

1) Sandy Point Improvement Company, a Washington Corporation, has been formed by certain individuals in the past for the purposes of providing certain services and recreational facilities for the owners of property in the plat, for other properties in proximity thereto and for others. Any action to be taken pursuant hereto by Sandy Point Improvement Company may be taken upon authorization of the board of directors. Each lot owner, including contract vendees, shall be entitled to one share of Class A Stock of such corporation subject to the restrictions and provisions of the articles of incorporation established from time to time. Such share of stock shall be appurtenant to the title to and shall be transferable only as a part of the transfer of the title to the lot. Each shareholder shall be entitled to the use and enjoyment of the corporation facilities and services subject to the rules, regulations and charges as may now or hereafter be established by the corporation, which rules, regulations and charges shall apply equally to all shareholders who are owners of property in the plat. Nothing herein shall preclude the corporation from making its services and facilities available to others on such terms as it deems best. Each shareholder who is an owner of property in the plat shall abide with the rules and regulations of the corporation as may be adopted from time to time incident to the use of its facilities.

2) All plans and specifications required to be submitted to Sandy Point Improvement Company shall be in writing, shall contain the names and address of the person submitting the same, the description of the property to which

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they relate, and shall set forth the following with respect to the proposed structure: the location of the structure on the property, the elevation of the structure with reference to the existing and finished lot grade, the general design, the interior layout, the exterior finish materials and color, and such other information as may be required to determine whether such structure conforms to these restrictions. The corporation may establish standards involving esthetic consideration of harmony of construction and color which it determines to be in the best interest of providing for an attractive development, which standards may include those pertaining to the height, configuration, design, and appearance of fences, walls, screens, out-buildings, pools and other structures appurtenant to the use of the dwelling. Plans and specifications shall be submitted by mail to the secretary of the corporation. Within thirty (30) days after receipt of such plans and specifications which in its opinion do not conform to these restrictions or its esthetic standards. In the event notice of disapproval is not mailed by the corporation to the address of the person submitting such plans and specifications within such thirty (30) day period, approval shall be deemed to have been given. The board of directors of the corporation may designate such person or persons as it deems advisable to act on its behalf to give such approval or disapproval.

3) In order to provide for maintenance and improvement of the various properties and facilities of Sandy Point Improvement Company, each grantee and vendee of a lot in the plat, their heirs, successors and assigns, shall and do by the act of accepting a deed or entering into a contract of sales as vendee, jointly and severally agree that they and each of them shall pay to the corporation the charges assessed by vote of two-thirds of the directors of the corporation against the shareholders of the corporation. In the event that such charges remain unpaid to the corporation for sixty (60) days after the due date, then the corporation may record a written notice with the auditor of Whatcom County, Washington, that it claims a lien against the lot of the shareholder who is so delinquent for the amount of such charges, interest at the rate of twelve percent (12%) per annum from the due date until paid and attorney's fees incurred incident thereto. From and after recording such notice, such lot shall be subject to a lien to the corporation as security

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for such assessments and such lien may be foreclosed in the manner of a mortgage on real property and in such foreclosure action the corporation shall recover a reasonable sum as attorney's fees therein and the reasonable and necessary costs of searching and abstracting the public records. Until changed by vote of two-thirds of the directors of the corporation the charge herein referred to shall be Ten Dollars (\$10.00) per annum payable on or before June 30 of each year in advance commencing June 30, 1971.

IV. Easements and Reservations:

1) All oil, gas and mineral rights and the right to remove oil, gas and such minerals in the real property described in the above mentioned plat shall be reserved and excepted from the conveyance of any portion of the real property as though written therein, provided that the owners of such real property shall be compensated for any damage or injury to the surface and structures thereon that may be occasioned by any removal of such minerals.

2) The undersigned hereby reserve an easement over and across a strip of land ten (10) feet in width across each lot parallel with and adjacent to the roads abutting and along five (5) feet of each other lot line shown on the plat for the purpose of constructing, repairing, reconstructing, improving and maintaining waterpipes, light and power lines, telephone lines and other facilities for utilities including the right to enter upon such easement for such purposes.

V. Miscellaneous:

1) The covenants, restrictions, easements, rights, liens and encumbrances herein provided for shall be covenants running with the land and shall be binding upon the real property described in the above plat and any and all parts thereof, the parties in interest thereto and their heirs, assigns, personal representatives and successors in interest. Accepting an interest in and to any portion of such real property shall constitute an agreement by any such person, firm, corporation accepting such interest, that they and each of them shall be bound by and subject to the provisions hereof.

2) In the event that any provision hereof shall be declared invalid by any court of competent jurisdiction, no other provision hereof shall be affected

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thereby and the remaining provisions shall remain in full force and effect. No waiver of a breach of any provision hereof shall constitute a waiver of a subsequent breach of the same provision or of any other provision.

3) The parties in interest in and to any part of the real property included in the above plat and Sandy Point Improvement Company for the benefit of such owners and each of them shall have the right and authority to enforce the provisions hereof and in addition to any other remedy for damages or otherwise shall have the right to injunctive relief. Except for the enforcement of the lien to Sandy Point Improvement Company, the prevailing party in any action to enforce the provisions hereof shall recover a reasonable sum as attorney's fees therein together with the reasonable cost of searching and abstracting the public record.

4) The provisions hereof may be amended, altered or terminated in whole or part by written instrument signed by sixty percent (60%) of the owners in the area of the real property in the above plat, exclusive of roads, and recorded with the auditor of Whatcom County, Washington. For the purposes of this paragraph the word "owner" shall mean any person, firm, corporation holding either fee title or a vendee's interest under a real estate contract as shown by the records of Whatcom County, Washington, to the exclusion of any lesser interest. Until so terminated these provisions shall remain in full force and effect.

DATED this 31st day of August, 1970.



BELLINGHAM NATIONAL BANK

R. E. Isenhart

E. J. Johnson

Robert R. Walker

ROBERT R. WALKER

Victoria Walker

VICTORIA WALKER

H. E. Isenhart

H. E. ISENHART

Gwen-Lee Isenhart

GWEN-LEE ISENHART

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STATE OF WASHINGTON )  
                          ) ss.  
COUNTY OF WHATCOM )

On this 31st day of August, A.D., 1970, before me the undersigned, a notary public in and for the state of Washington, personally appeared H. E. ISENHART and GWEN-LEE ISENHART, ROBERT R. WALKER, and VICTORIA WALKER to me known to be the individuals described in and who executed the foregoing instrument and that they signed the same as their free and voluntary act and deed for the uses and purposes therein mentioned:



Charlotte M. Brown  
Notary public in and for the State of  
Washington residing at  
Bellingham, Washington

STATE OF WASHINGTON )  
                          ) ss.  
COUNTY OF WHATCOM )

On the 31st day of August, A.D., 1970, before me the undersigned, a notary public in and for the State of Washington, personally appeared H. E. ISENHART and Gwen-Lee ISENHART of the Bellingham National Bank, a Washington Corporation, to me known to be the individuals described in and who executed the foregoing instrument and that they are duly authorized to sign the same as their free and voluntary act and deed for the uses and purposes therein mentioned.



Jeanette E. Palmer  
Notary public in and for the State  
of Washington residing at  
Bellingham, Washington

RECEIVED FOR RECORD AT 1:40 PM SEP 2 1970  
AT REQUEST OF Bank of America  
WELLA HANSEN, CO. AUDITOR WHATCOM CO. WASH.



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DECLARATION OF RESTRICTIONS, EASEMENTS AND RESERVATIONS  
NEPTUNE HEIGHTS

THE UNDERSIGNED are owners of the real property situated in Whatcom County, Washington, included in the plat of Neptune Heights as recorded in such county. They desire to provide for a plan of development of such real property as a part of an entire subdivision and for that purpose do hereby declare and establish the following restrictions, easements, and reservations appurtenant:

1. Building Restrictions:

1) Except for portions of the real property as may be used for recreational purposes or common service facilities by Sandy Point Improvement Company, a Washington Corporation, no lot in the plat of Neptune Heights shall be used for any purpose other than for residential purposes, provided however, that a temporary real estate office may be maintained with the consent of the undersigned on any one or more of such lots.

2) No structure shall be erected, altered, placed or maintained on any lot unless it shall comply with these restrictions and the following:

(a) Each dwelling structure shall be of permanent construction, shall have not less than six hundred (600) square feet of enclosed area devoted to living purposes in Lots 30 thru 46 and Lots 70 thru 83. Each dwelling structure shall be of permanent construction, shall have not less than eight hundred (800) square feet of enclosed area devoted to living purposes in Lots 47 thru 69 and Lots 1 thru 29. No structure shall exceed 12 feet above the grade of the original ground level on Lots 1 thru 29.

(b) The exteriors of all structures on a lot shall be constructed of new material.

(c) No structure shall be erected or placed within five (5) feet of the side boundary of a lot, twenty-five (25) feet of a street abutting a lot, or thirty-five (35) feet of the rear lot line from the street abutting the lot. These setback requirements may be waived or modified by Sandy Point Improvement Company in case of hardship involving lots of unusual configuration or lots abutted on more than one side by a street.

(d) Lot 44 will be used for future well site reserves.

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(d) No facilities for sewage disposal shall be placed on a lot unless they are of modern design, enclosed within a dwelling structure on the lot and fully connected to a septic system of sewage disposal, or comparable modern facility, designed, located and constructed in accordance with the rules and regulations of the Whatcom County Health Department and any other governmental agencies having jurisdiction or are fully connected to a public sewer system.

(e) Prior to erecting or placing of any structure on a lot, the plans and specifications therefor shall be submitted to and approved by Sandy Point Improvement Company, as hereafter provided, and such structure shall conform to such plans and specifications.

3) The work of constructing, altering or repairing any structure on a lot shall be diligently prosecuted from its commencement until completion thereof, but in any event the exterior finished appearance shall be completed within six(6) months of commencement so that no tar paper or underlayment shall thereafter be exposed to view.

4) No temporary structure, trailer, tent, garage, basement or outbuilding shall be maintained on any lot for residential purposes, except that Lots 30 thru 46 and Lots 70 thru 83 may maintain a mobile home for residential purposes.

5) No fence, wall or hedge along a lot line shall exceed forty-eight (48) inches in height, except that decorative screening as approved in writing by Sandy Point Improvement Company prior to erection may be maintained on a lot.

VI. Land Use Restrictions:

1) No garbage, refuse, rubbish, junk or cut growth shall be permitted to be deposited, left or accumulated on a lot unless in suitable containers which shall be kept in sanitary condition, regularly emptied and fully screened from view of the street and adjacent lots.

2) No animals shall be kept or permitted on the real property in the plat except for household pets which shall not unreasonably interfere with the use and enjoyment of any lot.

3) No goods, equipment, trucks, vehicles or paraphernalia used in or connected with any trade or business shall be kept or stored in the open on any lot. No commercial signs, including "For Sale" signs, shall be permitted on any lot or structure.



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4) No noxious, or offensive activity shall be permitted on any lot nor shall anything be permitted that may be or become a nuisance or unreasonably interfere with the use and enjoyment of any part of the real property included in the plat.

5) All governmental regulations which are applicable to and regulate the use of real property outside of Indian Reservation boundaries within the jurisdiction of Whatcom County, Washington, shall be applicable to any part of the real property contained in the plat which may be within the boundaries of the Lummi Indian Reservation and the owners or users of such real property shall comply therewith.

III. Sandy Point Improvement Company:

1) Sandy Point Improvement Company, a Washington Corporation, has been formed by certain individuals in the past for the purposes of providing certain services and recreational facilities for the owners of property in the plat, for other properties in proximity thereto and for others. Any action to be taken pursuant hereto by Sandy Point Improvement Company may be taken upon authorization of the board of directors. Each lot owner, including contract vendees, shall be entitled to one share of Class A Stock of such corporation subject to the restrictions and provisions of the articles of incorporation established from time to time. Such share of stock shall be appurtenant to the title to and shall be transferable only as a part of the transfer of the title to the lot. Each shareholder shall be entitled to the use and enjoyment of the corporation facilities and services subject to the rules, regulations and charges as may now or hereafter be established by the corporation, which rules, regulations and charges shall apply equally to all shareholders who are owners of property in the plat. Nothing herein shall preclude the corporation from making its services and facilities available to others on such terms as it deems best. Each shareholder who is an owner of property in the plat shall abide with the rules and regulations of the corporation as may be adopted from time to time incident to the use of its facilities.

2) All plans and specifications required to be submitted to Sandy Point Improvement Company shall be in writing, shall contain the names and address of the person submitting the same, the description of the property to which

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they relate, and shall set forth the following with respect to the proposed structure: the location of the structure on the property, the elevation of the structure with reference to the existing and finished lot grade, the general design, the interior layout, the exterior finish materials and color, and such other information as may be required to determine whether such structure conforms to these restrictions. The corporation may establish standards involving esthetic consideration of harmony of construction and color which it determines to be in the best interest of providing for an attractive development, which standards may include those pertaining to the height, configuration, design, and appearance of fences, walls, screens, out-buildings, pools and other structures appurtenant to the use of the dwelling. Plans and specifications shall be submitted by mail to the secretary of the corporation. Within thirty (30) days after receipt of such plans and specifications which in its opinion do not conform to these restrictions or its esthetic standards. In the event notice of disapproval is not mailed by the corporation to the address of the person submitting such plans and specifications within such thirty (30) day period, approval shall be deemed to have been given. The board of directors of the corporation may designate such person or persons as it deems advisable to act on its behalf to give such approval or disapproval.

3) In order to provide for maintenance and improvement of the various properties and facilities of Sandy Point Improvement Company, each grantee and vendee of a lot in the plat, their heirs, successors and assigns, shall and do by the act of accepting a deed or entering into a contract of sales as vendee, jointly and severally agree that they and each of them shall pay to the corporation the charges assessed by vote of two-thirds of the directors of the corporation against the shareholders of the corporation. In the event that such charges remain unpaid to the corporation for sixty (60) days after the due date, then the corporation may record a written notice with the auditor of Whatcom County, Washington, that it claims a lien against the lot of the shareholder who is so delinquent for the amount of such charges, interest at the rate of twelve percent (12%) per annum from the due date until paid and attorney's fees incurred incident thereto. From and after recording such notice, such lot shall be subject to a lien to the corporation as security.

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for such assessments and such lien may be foreclosed in the manner of a mortgage on real property and in such foreclosure action the corporation shall recover a reasonable sum as attorney's fees therein and the reasonable and necessary costs of searching and abstracting the public records. Until changed by vote of two-thirds of the directors of the corporation the charge herein referred to shall be Ten Dollars (\$10.00) per annum payable on or before June 30 of each year in advance commencing June 30, 1970.

IV. Easements and Reservations:

1) All oil, gas and mineral rights and the right to remove oil, gas and such minerals in the real property described in the above mentioned plat shall be reserved and excepted from the conveyance of any portion of the real property as though written therein, provided that the owners of such real property shall be compensated for any damage or injury to the surface and structures thereon that may be occasioned by any removal of such minerals.

2) The undersigned hereby reserve an easement over and across a strip of land ten (10) feet in width across each lot parallel with and adjacent to the roads abutting and along five (5) feet of each other lot line shown on the plat for the purpose of constructing, repairing, reconstructing, improving and maintaining waterpipes, light and power lines, telephone lines and other facilities for utilities including the right to enter upon such easement for such purposes.

V. Miscellaneous:

1) The covenants, restrictions, easements, rights, liens and encumbrances herein provided for shall be covenants running with the land and shall be binding upon the real property described in the above plat and any and all parts thereof, the parties in interest thereto and their heirs, assigns, personal representatives and successors in interest. Accepting an interest in and to any portion of such real property shall constitute an agreement by any such person, firm, corporation accepting such interest, that they and each of them shall be bound by and subject to the provisions hereof.

2) In the event that any provision hereof shall be declared invalid by any court of competent jurisdiction, no other provision hereof shall be affected

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thereby and the remaining provisions shall remain in full force and effect. No waiver of a breach of any provision hereof shall constitute a waiver of a subsequent breach of the same provision or of any other provision.

3) The parties in interest in and to any part of the real property included in the above plat and Sandy Point Improvement Company for the benefit of such owners and each of them shall have the right and authority to enforce the provisions hereof and in addition to any other remedy for damages or otherwise shall have the right to injunctive relief. Except for the enforcement of the lien to Sandy Point Improvement Company, the prevailing party in any action to enforce the provisions hereof shall recover a reasonable sum as attorney's fees therein together with the reasonable cost of searching and abstracting the public record.

4) The provisions hereof may be amended, altered or terminated in whole or part by written instrument signed by sixty percent (60%) of the owners in the area of the real property in the above plat, exclusive of roads, and recorded with the auditor of Whatcom County, Washington. For the purposes of this paragraph the word "owner" shall mean any person, firm, corporation holding either fee title or a vendee's interest under a real estate contract as shown by the records of Whatcom County, Washington, to the exclusion of any lesser interest. Until so terminated these provisions shall remain in full force and effect.

DATED This 24th day of August, 1970.

\_\_\_\_\_  
R. D. METCALF

\_\_\_\_\_  
SHIRLEY METCALF

BELLINGHAM NATIONAL BANK

*R. E. [unclear] W.*

*E. J. [unclear] Y. P. Cashier*

*Robert R. Walker*

ROBERT R. WALKER

*Victoria Walker*

VICTORIA WALKER

*H. E. Isenhart*

H. E. ISENHART

*Gwen-Lee Isenhart*

GWEN-LEE ISENHART

VOL 122 PAGE 807





# **EXHIBIT 12**







AMENDMENT and RESTATEMENT  
of  
COVENANTS, RESTRICTIONS and EASEMENTS  
pertaining to

SANDY POINT ARM and SANDY POINT ARM SHORT PLAT

This agreement was made and entered into at Bellingham,  
Washington on August 14, 1990 by and between:

Sandy Point Heights Co., a Washington Limited  
Partnership with its principle place of business at 300  
Harbor Building, 100 Second Avenue South, Edmonds,  
Washington 98020

and

Ronald S. Peterson and Karen L. Peterson, husband and  
wife, residing at 3639 Galiano, Ferndale, Washington  
98248 (hereinafter referred to as "PETERSONS")

and

Sandy Point Improvement Company, a Washington  
corporation with its principle office on  
Decatur Drive (Post Office Box 1418)  
Ferndale, Washington 98248

WHATCOM COUNTY  
BELLINGHAM, WA  
08/16/90 12:48 PM  
REQUEST OF: SANDY POI  
Shirley Forslof, AUDITOR  
BY: MRT, DEPUTY  
\$23.00 D/RC

Vol: 152 Page: 1650  
File No: 900816069

W I T N E S S E T H

RECITALS.

A. The undersigned parties to this agreement,  
collectively, are the owners of:

Lots 2 to 15 (both inclusive) of Sandy Point Arm,  
according to the Plat thereof recorded in Book 11  
of Plats, page 62, as amended by adjustment to lots 13,  
14, and 15 according to the Plat thereof recorded in  
Book 21 of Plats, page 89, Records of Whatcom  
County, Washington

and

Lots 1 to 4 (both inclusive), of Sandy Point Arm Short Plat (SS22-90) according to short plat thereof recorded in Book 21 of Plats, page 90, Records of Whatcom County, Washington.

The PETERSONS being the owners of Lot 9 and Sandy Point Improvement Company being the owner of Lot 12 of Sandy Point Arm, and Sandy Point Heights Co. being the owner of Lots 2 to 8 (both inclusive), Lots 10 and 11, and Lots 13 to 15 (both inclusive) of Sandy Point Arm and Lots 1 to 4 (both inclusive) of Sandy Point Arm Short Plat.

B. Restrictions, Easements and Reservations pertaining to Sandy Point Arm were recorded on the 3rd day of May, 1971, under Auditor's Receiving Number 1098770 in Volume 144 at pages 868 to 874 (both inclusive) Records of Whatcom County, Washington.

C. The parties desire to amend and restate said 1971 Restrictions, Easements and Reservations and to extend the coverage of said restrictions, easements and reservations to Sandy Point Short Plat.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, said Restrictions, Easements and Reservations referred to in recital B above are amended, restated and superseded as set out below and said AMENDED and RESTATED COVENANTS, RESTRICTIONS and EASEMENTS set out below, will attach and pertain to all lots in both the Sandy Point Arm plat and the

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Sandy Point Arm Short Plat plat referred to in recital A above (which two plats are hereinafter sometimes referred to as the "PLATS").

1. BUILDING RESTRICTIONS

1.1 RESIDENTIAL USE Except for such portions of the real property as may be used for recreational purposes or common service facilities by Sandy Point Improvement Company, a Washington Non-profit Corporation, no lot shall be used for any purpose other than for single family residential purposes, provided, however, that a temporary real estate office may be maintained with the consent of the undersigned on any one of such lots.

1.2 DESIGN STANDARDS No structure shall be erected, altered, placed or maintained on any lot unless it shall comply with both (a) the specific restrictions of the local county and municipal land use regulations, and (b) the following:

1.2.1 Each dwelling structure shall be of permanent construction and shall have not less than twelve hundred (1200) square feet of enclosed area devoted to living purposes.

1.2.2 The exteriors of all structures on a lot shall be constructed of new material.

1.2.3 Specific restrictions on height of structures, height of main floor, setbacks and sideyards as required by county, state and municipal land use regulations shall be

observed at all times, including but not limited to those of the Shoreline Management Program and Whatcom County Division of Building and Codes.

1.2.4 No trailer, mobile home, modular home, prefabricated home, basement, temporary structure, or outbuilding other than a garage shall be maintained on any lot for any purpose at any time.

1.2.5 No fence, wall or hedge shall exceed forty-eight (48) inches in height. Provided however that privacy screens not exceeding 72 inches may be erected within that area of a lot upon which it would be permissible to build a house or deck.

1.2.6 Exterior lighting shall be directed downward, shall be shielded and shall not produce offensive glare in any direction.

1.2.7 No radio, television or other antennas of any kind or nature, or device for the receipt or transmission of radio, microwave or other similar signals shall be placed or maintained upon any lot, except VHF and CB antennas.

1.2.8 No portion of any lot shall be used as a drying or hanging area for laundry of any kind. All such facilities shall be provided within the buildings to be constructed on each lot.

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1.3 PLAN APPROVAL Prior to the erection or placement of any structure, fence or privacy screen on a lot, the plans and specifications therefor shall be submitted to and approved by Sandy Point Improvement Company, as hereafter provided, and such structure shall conform to such plans and specifications.

1.4 CONSTRUCTION AND COMPLETION REQUIREMENTS The work of constructing, altering or repairing any structure on a lot shall be diligently prosecuted from its commencement until completion thereof, but in any event the exterior finished appearance shall be completed within six (6) months of commencement so that no tar paper or underlayment shall thereafter be exposed to view. The building site shall, by that time, be brought to an orderly and neat appearing condition with all debris removed and all ditches, etc., backfilled and graded.

## 2. LAND USE RESTRICTIONS

2.1 GARBAGE AND REFUSE No garbage, refuse, rubbish, junk or cut growth shall be permitted to be deposited, left or accumulated on a lot unless in suitable containers which shall be kept in sanitary condition, regularly emptied and fully screened from view of the street and adjacent lots.

2.2 ANIMALS No animals shall be kept or permitted on the real property in the plat except three (3) or fewer commonly accepted household pets. No pet will be allowed to run free away from its owner's lot, or unreasonably interfere with the use and

enjoyment of any lot. No animals shall be kept, bred or raised on any lot for commercial purposes.

2.3 TRADE OR BUSINESS No goods, equipment, trucks, vehicles or paraphernalia in or connected with any trade or business shall be kept or stored in the open on any lot.

2.4 NUISANCE No noxious or offensive activity shall be permitted on any lot, nor shall anything be permitted that may be or become a nuisance or unreasonably interfere with the use and enjoyment of any part of the real property included in the PLATS.

2.5 SIGNS No sign of any kind shall be permitted except:

2.5.1 Street numbers and name of the residents.

2.5.2 Signs used by the developer in connection with the development and sale of lots for a period of 18 months following the recording of these Amended and Restated Covenants, Restrictions and Easements.

2.5.3 Signs required by legal proceedings.

2.5.4 Traffic control signs.

2.5.5 One "For Sale" or "For Rent" sign which complies with the sign regulations of Sandy Point Improvement Company.

2.6 GOVERNMENT REGULATIONS All Whatcom County governmental regulations which are applicable to and regulate the use of real property outside of Indian Reservation boundaries shall be applicable to all the real property contained in the PLATS, including that which may be within the boundaries of the Lummi

Indian Reservation and the owners or users of such real property shall comply therewith.

2.7 NO OBSTRUCTIONS TO DRAINAGE No fence, improvement or other obstruction that would interrupt normal drainage of the land within any area in the PLATS, including the drainage ditches along Decatur Drive, shall be erected, constructed or maintained within the PLATS.

2.8 RENTAL OF LOTS An owner who leases or otherwise grants occupancy rights to a lot to any person shall be responsible for compliance by the occupant with the provisions of this RESTATED declaration of COVENANTS, RESTRICTIONS, and EASEMENTS and shall be jointly and severally responsible for any violations by the occupant.

3. SANDY POINT IMPROVEMENT COMPANY

3.1 CLASS A STOCK Sandy Point Improvement Company, a Washington Corporation, was formed for the purposes of providing services and recreational facilities to the owners of property in the PLATS and other property in proximity thereto.

With each lot purchased from Sandy Point Heights Co., the purchaser, including contract vendees, shall receive one share of Class A stock of such corporation. That stock shall be subject to the restrictions and provisions of the corporation's Articles of Incorporation, By Laws, rules and regulations as they may be amended from time to time.

Such share of stock shall be appurtenant to the title of the

lot, shall be transferable only as a part of the transfer of the title to the lot, and, in the event of any judicial sale of the lot, shall pass with the lot title.

Each shareholder shall be entitled to the benefits and privileges incident to stock ownership subject to the payment of such dues and user fees as may now or hereafter be established by the Sandy Point Improvement Company. The rules, regulations and charges shall apply equally to all shareholders who are owners of property in the PLATS.

3.2 PLAN SUBMITTAL All plans and specifications submitted to Sandy Point Improvement Company as required by section 1.3 above shall be submitted in writing and shall contain the name and address of the person submitting same and the description of the property to which they relate. Said plans and specifications shall set forth the following with respect to the proposed structure: the location of the structure on the property, the elevation of the structure with reference to the existing and finished lot grade, the general design, the exterior finish materials, and such other information as may be required to determine whether such structure conforms to these restrictions.

Plans and specifications shall be submitted by mail to the secretary of Sandy Point Improvement Company. If such plans and specifications, in its opinion, do not conform to these restrictions or the esthetic standards, the corporation shall notify the person submitting them, by mail, within thirty (30) days after



receipt of the proposal. In the event notice of disapproval is not mailed to the address of the person submitting such plans and specifications within such thirty (30) day period, approval shall be deemed to have been given.

The Board of Directors of Sandy Point Improvement Company may designate such person or persons as it deems advisable to act on its behalf to evaluate plans and specifications for approval or disapproval.

3.3 NOTICE OF WATER SYSTEM CONNECTION AND CONTINUATION CHARGES Notice is hereby given that all properties within the subdivisions described in Recital A above receive water service from the Sandy Point Improvement Company, and service may be denied any lot if a statement for prior water or connection charge is unpaid.

Prior to transfer of ownership, inquiries should be made of the Sandy Point Improvement Company concerning charges which must be paid or conditions which must be met before water service will be started or continued.

Failure to inquire of Sandy Point Improvement Company concerning such charges or conditions and failure to satisfy same prior to transfer of ownership may result in the transferee being responsible for any such charges prior to receiving water service.

3.3. ANNUAL CHARGES In order to provide for maintenance and improvement of the various properties and facilities of Sandy

Point Improvement Company, each grantee and vendee of a lot in the PLATS, their heirs, successors and assigns, shall, and by the act of accepting a deed or entering into a contract of sale as vendee, do jointly and severally agree that they and each of them shall pay to the Sandy Point Improvement Company the charges assessed pursuant to its Articles, By-Laws and rules and regulations against the shareholders of the corporation. In the event that such charges remain unpaid to the corporation for sixty (60) days after the due date, then the corporation may record a written notice with the auditor of Whatcom County, Washington, that it claims a lien against the lot of the shareholder who is so delinquent for the amount of such charges, interest at the rate of twelve per cent (12%) per annum from the due date until paid and attorney's fees incurred incident thereto. From and after recording such notice, such lot shall be subject to a lien to the corporation as security for such assessments and such lien may be foreclosed in the manner of a mortgage on real property and in such foreclosure action the corporation shall recover a reasonable sum as attorney's fees therein and the reasonable and necessary costs of searching and abstracting the public records.

#### 4. EASEMENTS

##### 4.1 EASEMENTS

4.1.1 The undersigned hereby reserve and create for the benefit of the utilities supplying services to the

owners and contract vendees of the lots in the PLATS described in RECITAL A above, an easement upon, across, over and under a strip of land five (5) feet in width adjacent to the roads abutting each lot for the purpose of constructing, replacing, repairing, maintaining and operating all utilities (whether public or private), including but not limited to water, sewer, gas, telephone, electricity, cable (including without limitation television cable), and communication lines and systems.

4.1.2 To establish a walking path along the beach, the undersigned hereby reserve and create for the benefit of the owners of record and contract vendees of the lots in the PLATS described in RECITAL A above, an easement upon, across and over a strip of land six (6) feet in width adjacent to the waterside lot lines of lots 13, 14, 15, and the waterside lot lines of short plat lots 1, 2, 3 and 4 for the exclusive use of the owners of the lots in both Sandy Point Arm Short Plat and Sandy Point Arm except Sandy Point Improvement Company, the owner of lot 12. Said easement shall be used only for walking purposes.

## 5. MISCELLANEOUS

5.1 The covenants, restrictions, easements, and rights created herein shall be covenants running with the land and shall be binding upon the real property described in the PLATS referred to in RECITAL A above, and the parties in interest thereto, and

their heirs, assigns, personal representatives and successors in interest. The acceptance of an interest in and to any portion of such real property shall constitute an agreement by any such person, firm, or corporation accepting such interest, that they and each of them shall be bound by and subject to the provisions hereof.

5.2 In the event that any provision hereof shall be declared invalid by any court of competent jurisdiction, no other provision hereof shall be affected thereby and the remaining provisions shall remain in full force and effect. No waiver of a breach of any provision hereof shall constitute a waiver of a subsequent breach of the same provision or of any other provision.

5.3 The parties in interest in and to any part of the real property included in the PLATS and Sandy Point Improvement Company, for the benefit of such owners and each of them, shall have the right and authority to enforce the provisions hereof and in addition to any other remedy for damages or otherwise shall have the right to injunctive relief. The prevailing party in any action to enforce the provisions hereof shall recover a reasonable sum as attorney's fees therein together with the reasonable cost of searching and abstracting the public record.

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5.4 The provisions hereof may be amended, altered or terminated in whole or part by written instrument signed by the owners of record of 12 of the 18 lots in the two PLATS described in RECITAL A above. For the purposes of this paragraph the word "owner" shall mean any person, firm, or corporation of record as holding the fee title or a vendee's interest under a real estate contract as shown by the records of Whatcom County, Washington, to the exclusion of any lesser interest.

Until so terminated these provisions shall remain in full force and effect.

5.5 Section and subsection titles or captions contained herein are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this instrument or the intent of any of the provisions hereof.

5.6 Unless some other meaning and intent is apparent from the context, the plural shall include the singular and vice versa, the masculine, feminine and neuter words shall be used interchangeably.

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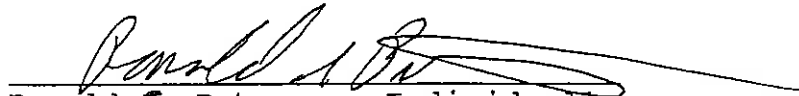
DATED this 14th day of August, 1990.

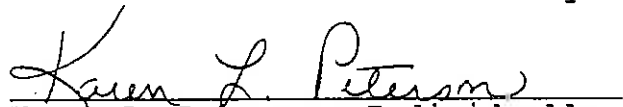
SANDY POINT HEIGHTS CO.

By: 

John D. Cadigan, as President  
of Rio Petrol Inc., the  
General Partner in Sandy Point  
Heights Co., a Limited  
Partnership

THE PETERSONS

  
Ronald J. Peterson, Individually  
and in behalf of his Community

  
Karen L. Peterson, Individually  
and in behalf of her Community

SANDY POINT IMPROVEMENT COMPANY

By: 

(President)

STATE OF WASHINGTON )  
COUNTY OF Snohomish ) ss:

On this 14th day of August 1990 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared JOHN CADIGAN, to me known to be the President of Rio Petrol, Inc., General Partner in Sandy Point Heights Co., the Limited Partnership that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

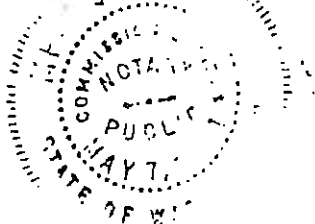
Susan M. H...  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at Synnwood  
commission expires 2/25/92

A circular notary seal for Susan M. H... of Snohomish County, Washington. The seal contains the text "STATE OF WASHINGTON", "SNOHOMISH COUNTY", and "SUSAN M. H...".

STATE OF WASHINGTON )  
COUNTY OF Okanagan ) ss:

On this 14th day of August 1990 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared ~~Ronald J. Peterson~~ and Karen L. Peterson, husband and wife, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged to me that they signed and sealed the said instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Margaret G. Mark  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at Bellingham. My  
commission expires May 7, 1991

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared JOHN CADIGAN, to me known to be the President of Rio Petrol, Inc., General Partner in Sandy Point Heights Co., the Limited Partnership that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

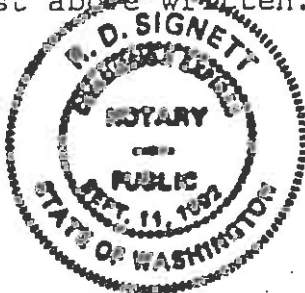
WITNESS my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at \_\_\_\_\_ My  
commission expires \_\_\_\_\_.

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On this 14 day of August 1990, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Ronald S. Peterson and Karen L. Peterson, husband and wife, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged to me that <sup>he</sup> they signed and sealed the said instrument as <sup>his</sup> their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above written.



R. D. Signett  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at Ferndale My  
commission expires 9-11-92.

AMENDMENT AND RESTATEMENT  
SANDY POINT ARM  
Page 15 (DES813901r)

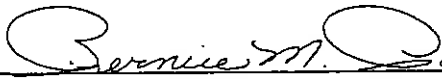
Vol: 162 Page: 1665  
File No: 90081665

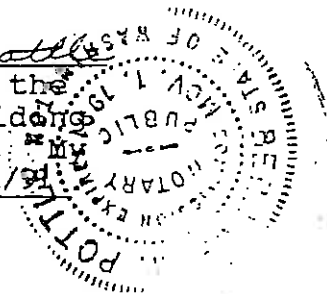


STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF Whatcom )

On this 14th day of August, 1990 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Roy Pottle to me known to be the President of Sandy Point Improvement Company, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at Ferndale  
commission expires 11/1/91



S H O R T  
P L A T

WHATCOM COUNTY  
BELLINGHAM, WA  
08/16/90 12:56 PM  
REQUEST OF: SANDY POI  
Shirley Forslof, AUDITOR  
BY: MRT, DEPUTY  
\$38.00 SPLAT  
Vol: 21 Page: 89  
File No: 900816070

NAME OF SHORT PLAT Sandy Point Arm Adj L 13-15

DECLARANTS:

Sandy Point Heights

Res Petrol Inc

SECTION 10 TOWNSHIP 38 RANGE 1E

S H O R T  
P L A T

WHATCOM COUNTY  
BELLINGHAM, WA  
08/16/90 12:58 PM  
REQUEST OF: SANDY POI  
Shirley Forslof, AUDITOR  
BY: MRT, DEPUTY  
\$38.00 SPLAT

Vol: 21 Page: 90  
File No: 900816071

NAME OF SHORT PLAT Sandy Point Arm S/Plat

DECLARANTS:

Sandy Point Heights Co  
Res Patrol Inc

SECTION 10 TOWNSHIP 38 RANGE 1E

DECLARATION OF RESTRICTIONS, EASEMENTS AND RESERVATIONS

SANDY POINT ARM

THE UNDERSIGNED are owners of the real property situated in Whatcom County, Washington, included in the plat of Sandy Point Arm as recorded in such county. They desire to provide for a plan of development of such real property as a part of an entire subdivision and for that purpose do hereby declare and establish the following restrictions, easements, and reservations appurtenant:

I. Building Restrictions:

1) Except for portions of the real property as may be used for recreational purposes or common service facilities by Sandy Point Improvement Company, a Washington Corporation, no lot in the plat of Sandy Point Arm shall be used for any purpose other than for residential purposes, provided however, that a temporary real estate office may be maintained with the consent of the undersigned on any one of such lots.

2) No structure shall be erected, altered, placed or maintained on any lot unless it shall comply with these restrictions and the following:

(a) Each dwelling structure shall be of permanent construction, shall have not less than eight hundred (800) square feet of enclosed area devoted to living purposes. No structure shall exceed 16 feet above the grade of the adjacent road on any of lots 13 thru 15.

(b) The exteriors of all structures on a lot shall be constructed of new material.

(c) No structure shall be erected or placed within five (5) feet of the side boundary of a lot, twenty-five (25) feet of a street abutting a lot, or thirty-five (35) feet of the rear lot line from the street abutting the lot. These setback requirements may be waived or modified by Sandy Point Improvement Company in case of hardship involving lots of unusual configuration or lots abutting on more than one side by a street.

(d) No facilities for sewage disposal shall be placed on a lot unless they are of modern design, enclosed within a dwelling structure on the lot and fully connected to a septic system of sewage disposal, or comparable modern facility, designed, located and constructed in accordance with the rules and regulations of the Whatcom County Health Department and any other governmental agencies having jurisdiction or are fully connected to a public sewer system.

(e) Prior to erecting or placing of any structure on a lot, the plans and specifications therefor shall be submitted to and approved by Sandy Point Improvement Company, as hereafter provided, and such structure shall conform to such plans and specifications.

3) The work of constructing, altering or repairing any structure on a lot shall be diligently prosecuted from its commencement until completion thereof, but in any event the exterior finished appearance shall be completed within six (6) months of commencement so that no tar paper or underlayment shall thereafter be exposed to view.

4) No temporary structure, trailer, tent, garage, basement or outbuilding shall be maintained on any lot for residential purposes.

5) No fence, wall or hedge along a lot line shall exceed forty-eight (48) inches in height, except that decorative screening as approved in writing by Sandy Point Improvement Co. prior to erection, may be maintained on a lot.

## II. Land Use Restrictions:

1) No garbage, refuse, rubbish, junk or cut growth shall be permitted to be deposited, left or accumulated on a lot unless in suitable containers which shall be kept in sanitary condition, regularly emptied and fully screened from view of the street and adjacent lots.

2) No animals shall be kept or permitted on the real property in the plat except for household pets which shall not unreasonably interfere with the use and enjoyment of any lot.

3) No goods, equipment, trucks, vehicles or paraphernalia in or connected with any trade or business shall be kept or stored in the open on any lot. No commercial signs, including "For Sale" signs, shall be permitted on any lot or structure.

4) No noxious, or offensive activity shall be permitted on any lot nor shall anything be permitted that may be or become a nuisance or unreasonably interfere with the use and enjoyment of any part of the real property included in the plat.

5) All governmental regulations which are applicable to and regulate the use of real property outside of Indian Reservation boundaries within the jurisdiction of Whatcom County, Washington, shall be applicable to any part of the real property contained in the plat which may be within the boundaries of the Lummi Indian Reservation and the owners or users of such real property shall comply therewith.

III. Sandy Point Improvement Co.:

1) Sandy Point Improvement Co., a Washington Corporation, has been formed by certain individuals in the past for the purposes of providing certain services and recreational facilities for the owners of property in the plat, for other properties in proximity thereto and for others. Any action to be taken pursuant hereto by Sandy Point Improvement Co. may be taken upon authorization of the board of directors. Each lot owner, including contract vendees, shall be entitled to one share of Class A stock of such corporation subject to the restrictions and provisions of the articles of incorporation established from time to time. Such share of stock shall be appurtenant to the title and shall be transferable only as a part of the transfer of the title to the lot. Each shareholder shall be entitled to the use and enjoyment of the corporate facilities and services subject to the rules, regulations and charges as may now or hereafter be established by the corporation, which rules, regulations and charges shall apply equally to all shareholders who are owners of property in the plat. Nothing herein shall preclude the corporation from making its services and facilities available to others on such terms as it deems best. Each shareholder who is an owner of property in the plat shall abide with the rules and regulations of the corporation as may be adopted from time to time incident to the use of its facilities.

2) All plans and specifications required to be submitted to Sandy Point Improvement Company shall be in writing, shall contain the names and address of the person submitting same, the description of the property to which they relate, and shall set forth the following with respect to the proposed structure: the location of the structure on the property, the elevation of the structure with reference to the existing and finished lot grade, the general design, the interior layout, the exterior finish materials and color, and such other information as may be required to determine whether such structure conforms to these restrictions. The corporation may establish standards involving esthetic consideration of harmony of construction and color which it determines to be in the best interest of providing for an attractive development, which standards may include those pertaining to the height, configuration, design and appearance of fences, walls, screens, out-buildings, pools and other structures appurtenant to the use of the dwelling. Plans and specifications shall be submitted by mail to the secretary of the corporation. Within thirty (30) days after receipt of such plans and specifications which in its opinion do not conform to these restrictions or its esthetic standards. In the event notice of disapproval is not mailed by the corporation to the address of the person submitting such plans and specifications within such thirty (30) day period, approval shall be deemed to have been given. The board of directors of the corporation may designate such person or persons as it deems advisable to act on its behalf to give such approval or disapproval.

3) In order to provide for maintenance and improvement of the various properties and facilities of Sandy Point Improvement Co., each grantee and vendee of a lot in the plat, their heirs, successors

and assigns, shall and do by the act of accepting a deed or entering into a contract of sales as vendee, jointly and severally agree that they and each of them shall pay to the corporation the charges assessed by vote of two-thirds of the directors of the corporation against the shareholders of the corporation. In the event that such charges remain unpaid to the corporation for sixty (60) days after the due date, then the corporation may record a written notice with the auditor of Whatcom County, Washington, that it claims a lien against the lot of the shareholder who is so delinquent for the amount of such charges, interest at the rate of ten per cent (10%) per annum from the due date until paid and attorney's fees incurred incident thereto. From and after recording such notice, such lot shall be subject to a lien to the corporation as security for such assessments and such lien may be foreclosed in the manner of a mortgage on real property and in such foreclosure action the corporation shall recover a reasonable sum as attorney's fees therein and the reasonable and necessary costs of searching and abstracting the public records. Until changed by vote of two-thirds of the directors of the corporation the charge herein referred to shall be Ten Dollars (\$10.00) per annum payable on or before June 30 of each year in advance commencing June 30, 1972.

4) A community recreation area will be provided by owners and shall constitute facilities of Sandy Point Improvement Co. and may be maintained and improved by the corporation for benefit of various properties in the plat. This community recreation area will contain more than five (5) acres and will consist of club house, swimming pool and golf course.

#### IV. Easements and Reservations:

1) All oil, gas and mineral rights and the right to remove oil, gas and such minerals in the real property described in the above mentioned plat shall be reserved and excepted from the conveyance of any portion of the real property as though written therein, provided that the owners of such real property shall be compensated for any damage or injury to the surface and structures thereon that may be occasioned by any removal of such minerals.

2) The undersigned hereby reserve an easement over and across a strip of land ten (10) feet in width across each lot parallel with and adjacent to the roads abutting and along five (5) feet of each other lot line shown on the plat for the purpose of constructing, repairing, reconstructing, improving and maintaining waterpipes, light and power lines, telephone lines and other facilities for utilities including the right to enter upon such easement for such purposes.

#### V. Miscellaneous:

1) The covenants, restrictions, easements, rights, liens and encumbrances herein provided for shall be covenants running with the land and shall be binding upon the real property described in the above plat and any and all parts thereof, the parties in interest thereto and their heirs, assigns, personal representatives and successors in interest. Accepting an interest in and to a portion of such

real property shall constitute an agreement by and such person, firm, corporation accepting such interest, that they and each of them shall be bound by and subject to the provisions hereof.

(2) In the event that any provision hereof shall be declared invalid by any court of competent jurisdiction, no other provision hereof shall be affected thereby and the remaining provisions shall remain in full force and effect. no waiver of a breach of any provision hereof shall constitute a waiver of a subsequent breach of the same provision or of any other provision.

(3) The parties in interest in and to any part of the real property included in the above plat and Sandy Point Improvement Co. for the benefit of such owners and each of them shall have the right and authority to enforce the provisions hereof and in addition to any other remedy for damages or other wise shall have the right to injunctive relief. Except for the enforcement of the lien to Sandy Point Improvement Co., the prevailing party in any action to enforce the provisions hereof shall recover a reasonable sum as attorney's fees therein together with the reasonable cost of searching and abstracting the public record.

(4) The provisions hereof may be amended, altered or terminated in whole or part by written instrument signed by sixty per cent (60%) of the owners in the area of the real property in the above plat, exclusive of roads, and recorded with the auditor of Whatcom County, Washington. For the purposes of this paragraph the word "owner" shall mean any person, firm, corporation holding either fee title or a vendee's interest under a real estate contract as shown by the records of Whatcom County, Washington, to the exclusion of any lesser interest. Until so terminated these provisions shall remain in full force and effect.

Dated this 3rd day of May 1971  
Recorded; July 29, 1971  
AF# 1098770





APP

173482  
FILE NO.

DOMESTIC

UNITED STATES OF AMERICA  
THE STATE OF WASHINGTON  
Department Of State

I, H. EDUARD KRAMER, SECRETARY OF STATE  
OF THE STATE OF WASHINGTON AND CUSTODIAN  
OF THE SEAL OF SAID STATE, DO HEREBY CERTIFY  
THAT:

 **ARTICLES OF INCORPORATION**   
OF THE DOMESTIC CORPORATION

SANDY POINT IMPROVEMENT CO.

OF Bellingham, Washington, WAS, ON THE DATE OF  
April 22, 1965 AT 10:30 O'CLOCK A.M. FILED FOR RECORD IN  
THIS OFFICE AND REMAINS ON FILE HEREIN.

Filed at request of \_\_\_\_\_  
Garvin, Ashley & Foster  
Attorneys at Law  
1725 Exchange Building  
Seattle, Washington 98104

IN TESTIMONY WHEREOF, I  
HAVE HEREUNTO SET MY  
HAND AND AFFIXED HERETO  
THE SEAL OF THE STATE  
OF WASHINGTON, DONE AT  
THE CAPITOL, AT OLYMPIA  
ON THIS THE DATE OF

Filing and recording fee \$ 50.00

License to June 30, 1965 \$ 30.00

Excess pages @ 25¢ \$ \_\_\_\_\_

April 22, 1965

Microfilmed, Roll No. 1084

Page 352-359

H. EDUARD KRAMER  
SECRETARY OF STATE

173482

*Please  
return*

**APPROVED**  
AS TO FORM AND FILED

APR 22 1965

A. LUDLOW KRAMER  
SECRETARY OF STATE

BY *Mavis Oddy*  
ASSISTANT SUPERVISOR OF CORPORATIONS

ARTICLES OF INCORPORATION  
OF  
SANDY POINT IMPROVEMENT CO.

PETER V. GULICK, DAVID W. SANDELL and JANICE HAMILTON,  
each and all of whom are over twenty-one years of age and  
citizens of the United States, do hereby associate themselves  
for the purpose of forming a corporation under the Uniform  
Business Corporation Act of the state of Washington and for  
that purpose do hereby adopt and certify, in triplicate, the  
following as their articles of incorporation:

ARTICLE I

The name of the corporation shall be SANDY POINT  
IMPROVEMENT CO.

ARTICLE II

Its purposes, objects and powers are:

First: To develop and improve real property for the  
benefit of the owners and occupants thereof, particularly Sandy  
Point, a parcel of land situated near Bellingham.

Second: To operate a water distribution system, includ-  
ing water rights, easements, wells, pipes and other property  
necessary for such system.

Third: To acquire, lease, hold and dispose of real  
property and tidelands.

Fourth: To own, develop and operate real and personal

property for the general benefit of property owners.

Fifth: To buy, sell, pledge, negotiate, endorse, guarantee, secure or deal generally in bonds, evidences of indebtedness and commercial paper of all types including but not being limited to promissory notes, sales contracts, conditional sale contracts, chattel and real mortgages, trade and bank acceptances, trust receipts, bills of exchange, checks, assignments, leases and warehouse receipts.

Sixth: To acquire, hold, mortgage, pledge, dispose of, buy or otherwise acquire, stocks, bonds or other securities, good will or rights of any firm or corporation having for its objectives or some of them any of the objectives of these articles.

Seventh: To apply for, acquire, hold, use, sell or assign letters patent, inventions, processes, trademarks and trade names.

Eighth: To enter into a partnership or joint venture with any person, partnership or corporation for the accomplishment of the corporate purposes of this corporation.

Ninth: To borrow money and to buy, hold and sell shares of stock, bonds and other evidences of indebtedness of this corporation, and to conduct any business, trade, manufacturing or commercial pursuit, and to exercise every power and authority granted or conferred by the Uniform Business Corporation Act of the state of Washington, and to do and perform any and all things necessary, proper or convenient

for the carrying out or accomplishment of the objects and purposes herein specified.

#### ARTICLE III

The corporate existence shall be perpetual.

#### ARTICLE IV

The location and post office address of the registered office of the corporation in this state shall be (c/o Dick Metcalf, Certified Public Accountant,) Prospect Mall, Bellingham, Washington, 98225.

#### ARTICLE V

The capital stock of the corporation shall be Fifty Thousand Dollars (\$50,000.00), consisting of 5,000 shares of the par value of Ten Dollars (\$10.00) each. The transfer of any share of the capital stock of the corporation shall be subject to any restrictions contained in the corporate bylaws or by agreement between shareholders.

#### ARTICLE VI

The corporation shall begin business with a paid-in capital of Five Hundred Dollars (\$500.00).

#### ARTICLE VII

The affairs of this corporation shall be managed by a board of from three to seven directors. The first directors, their names and post office addresses are:

<u>Name</u>	<u>Address</u>
R. E. Rogers	Rm. 26, 518 First Avenue North Seattle, Washington 98109
Stuart E. Rogers	Rm. 26, 518 First Avenue North Seattle, Washington 98109
Robert R. Walker	The Highlands Seattle, Washington 98177

These directors shall serve until the first meeting of shareholders and incorporators and until their successors are elected and qualified.

#### ARTICLE VIII

The names and post office addresses of the incorporators and the number of shares subscribed by each are:

<u>Name</u>	<u>Address</u>	<u>No. of Shares</u>
Peter V. Gulick	1725 Exchange Building Seattle, Washington 98104	1
David W. Sandell	1725 Exchange Building Seattle, Washington 98104	1
Janice Hamilton	1725 Exchange Building Seattle, Washington 98104	1

#### ARTICLE IX

A director or officer of this corporation shall not be disqualified by his office from dealing or contracting with this corporation as a vendor, purchaser, creditor or debtor or otherwise. The fact that any director or officer, or any firm of which any director or officer is a shareholder, director or officer, is in any way interested in any transaction or contract of this corporation shall not make such transaction or contract

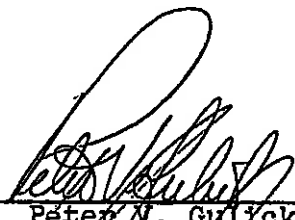
void or voidable, or require such director or officer to account to this corporation for any profits therefrom, provided that such transaction or contract is or shall be authorized, ratified or approved either (i) by vote of a majority or a quorum of the board of directors or (ii) by the written consent or general resolution approving the acts of the directors and officers at a shareholders' meeting, of the holders of record of a majority in number of all the outstanding shares of capital stock of this corporation entitled to vote. Nothing herein contained shall create any liability in the events above described or prevent the authorization, ratification or approval of such transactions or contracts in any other manner.

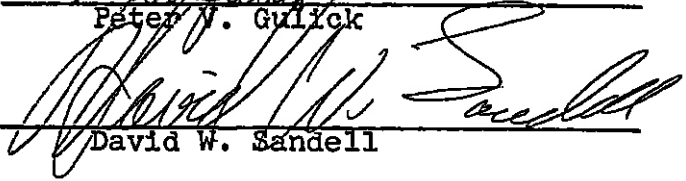
#### ARTICLE X


Any person against whom a claim or liability is asserted, or who is made a party to any action, suit or proceeding by reason of the fact that he, his testator or intestate, is or was a director, officer or employee of this corporation, or of any corporation which he served as such at the request of this corporation, shall be indemnified and reimbursed by this corporation for payment of any such claim or liability, costs or expenses, including attorney's fees, actually and necessarily incurred by him in connection with such claim or liability, or the defense of such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in any such action, suit or proceeding that such officer, director or employee is liable for gross negligence or misconduct in the

performance of his duties. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such director, officer or employee may be entitled.

IN WITNESS WHEREOF the incorporators have hereunto set their hands, in triplicate, this 12<sup>th</sup> day of April, 1965

  
\_\_\_\_\_  
Peter N. Guilick

  
\_\_\_\_\_  
David W. Sandell

  
\_\_\_\_\_  
Janice Hamilton





# **EXHIBIT 13**

TOWNSHIP

38

RANGE

1E

SECTION

08

01

MAP NO.

01

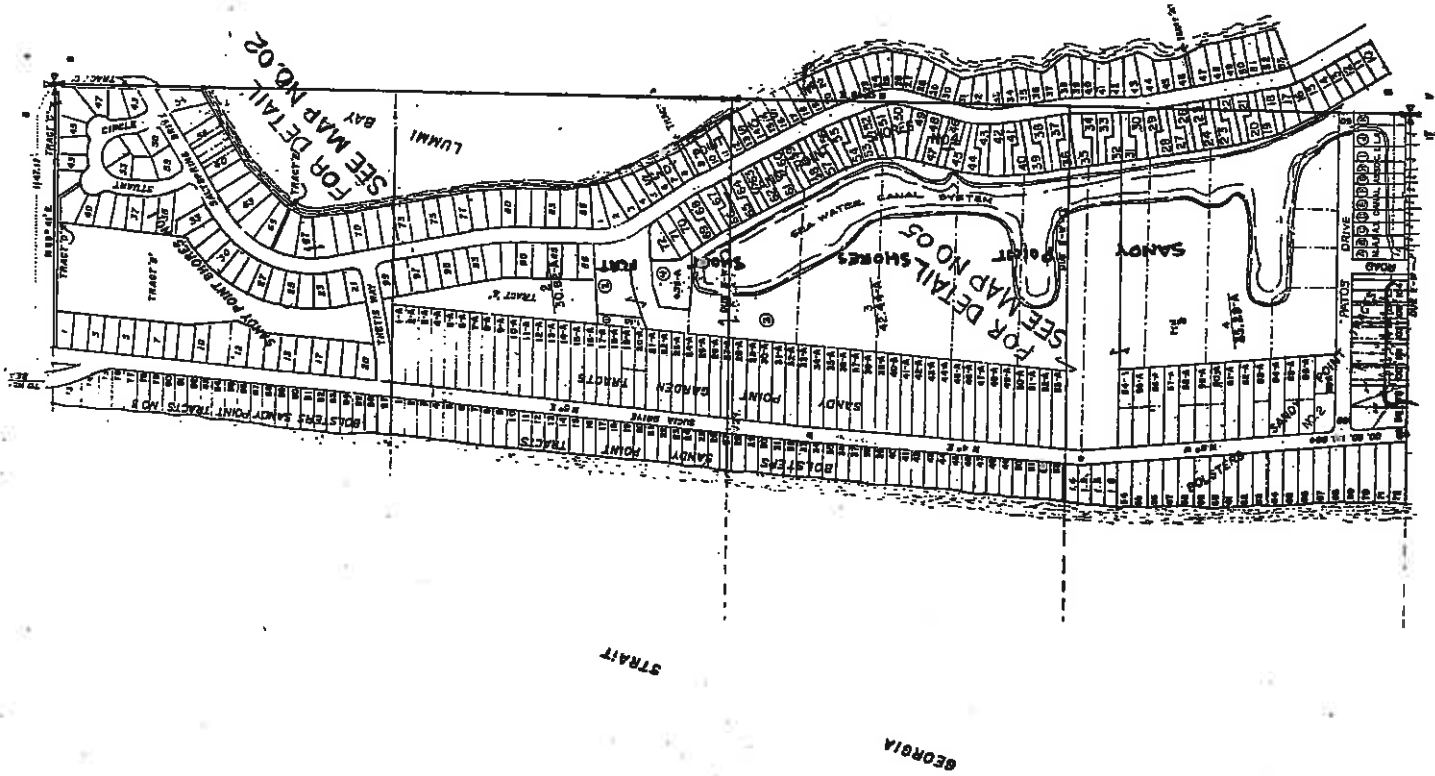
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1" = 400'

DATE

2/17/59

JAN 28 2008



TOWNSHIP  
38

RANGE  
1E

SECTION  
08

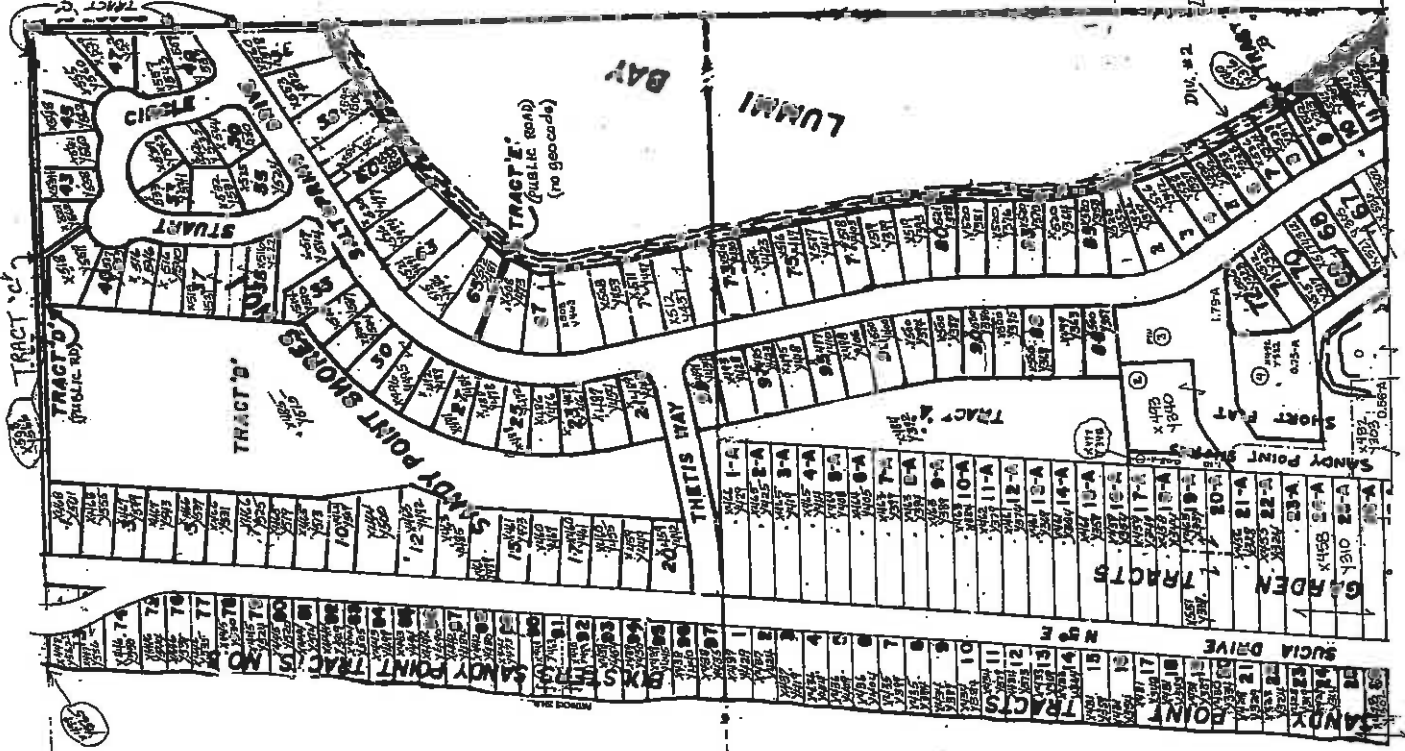
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02

SCALE  
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DATE  
2/12/89

RENTAL AGREEMENT  
MAY 01 2012

THIS MAP IS FOR  
ASSURANCE BY  
ASSURANCE BY  
AND NOT GUARANTEE  
MEASUREMENTS



STRAIT

TOWNSHIP

38

RANGE

1E

SECTION

08

MAP NO.

05

SCALE

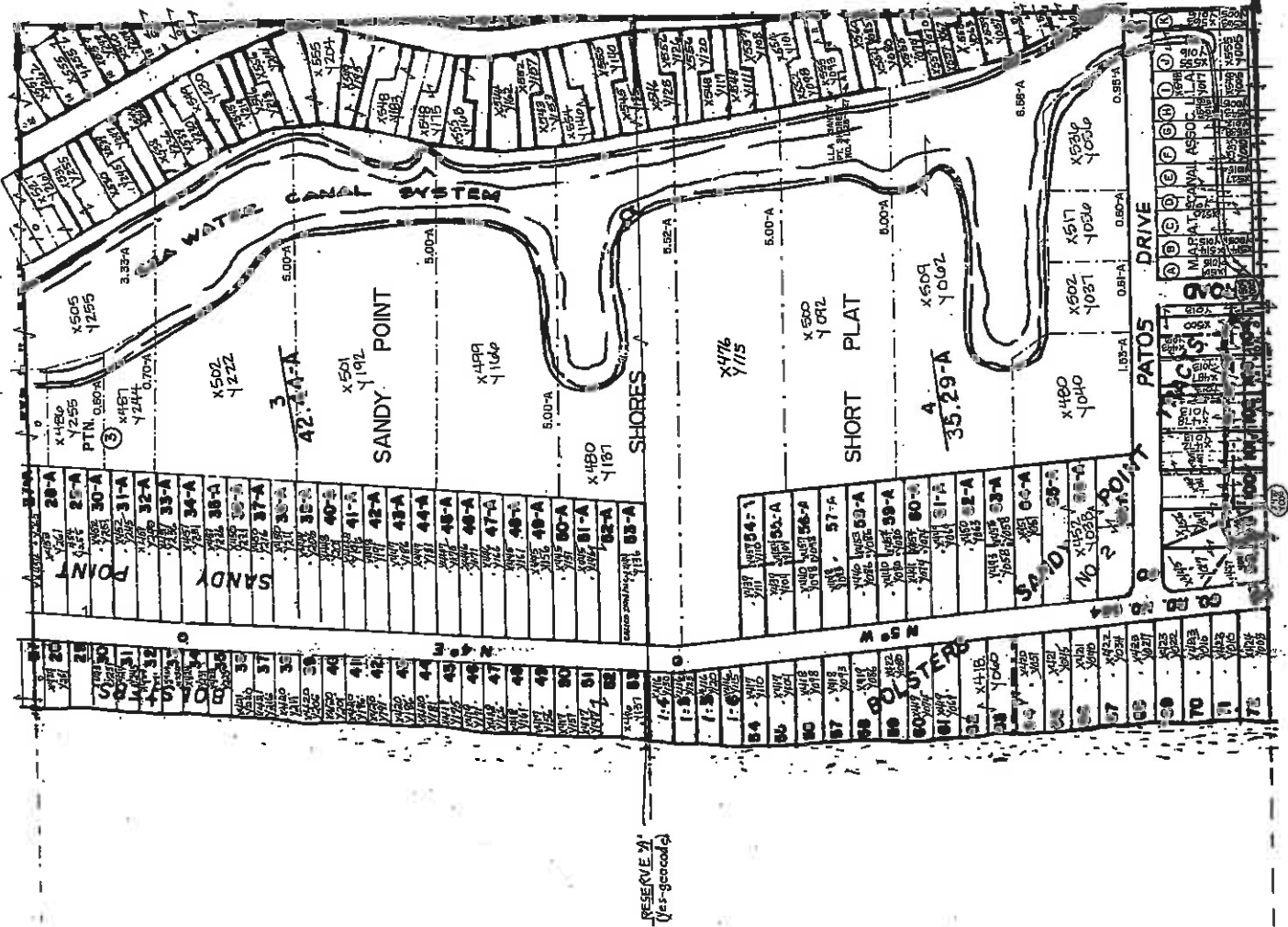
1" = 200'

DATE

2/17/59

OCT 25 2011

THIS MAP IS FOR ASSURANCE IN ACCORDANCE WITH THE PROVISIONS OF THE ACT AND NOT GUARANTEED MEASUREMENTS



GEORGIA

# LUMMI

TOWNSHIP

38

RANGE

1E

SECTION

09

MAP NO.

04

SCALE

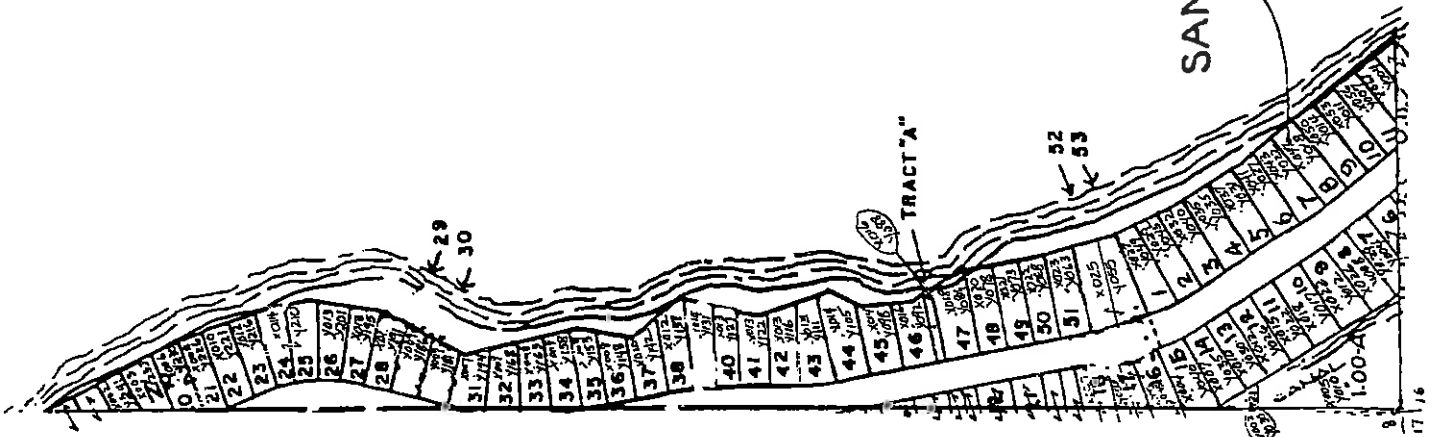
1"=200'

DATE

9/18/64

DEC 06 2005

THIS MAP IS FOR  
PROPERTY LOCATION  
AND NOT EASEMENTS  
OR ACCURATE  
BOUNDARIES



SANDY POINT SHORES  
No 3

TRACT "A"

52  
53

29  
30

17.16

TOWNSHIP

38

RANGE

1E

SECTION

16

MAP NO.

03

SCALE

1"=200'

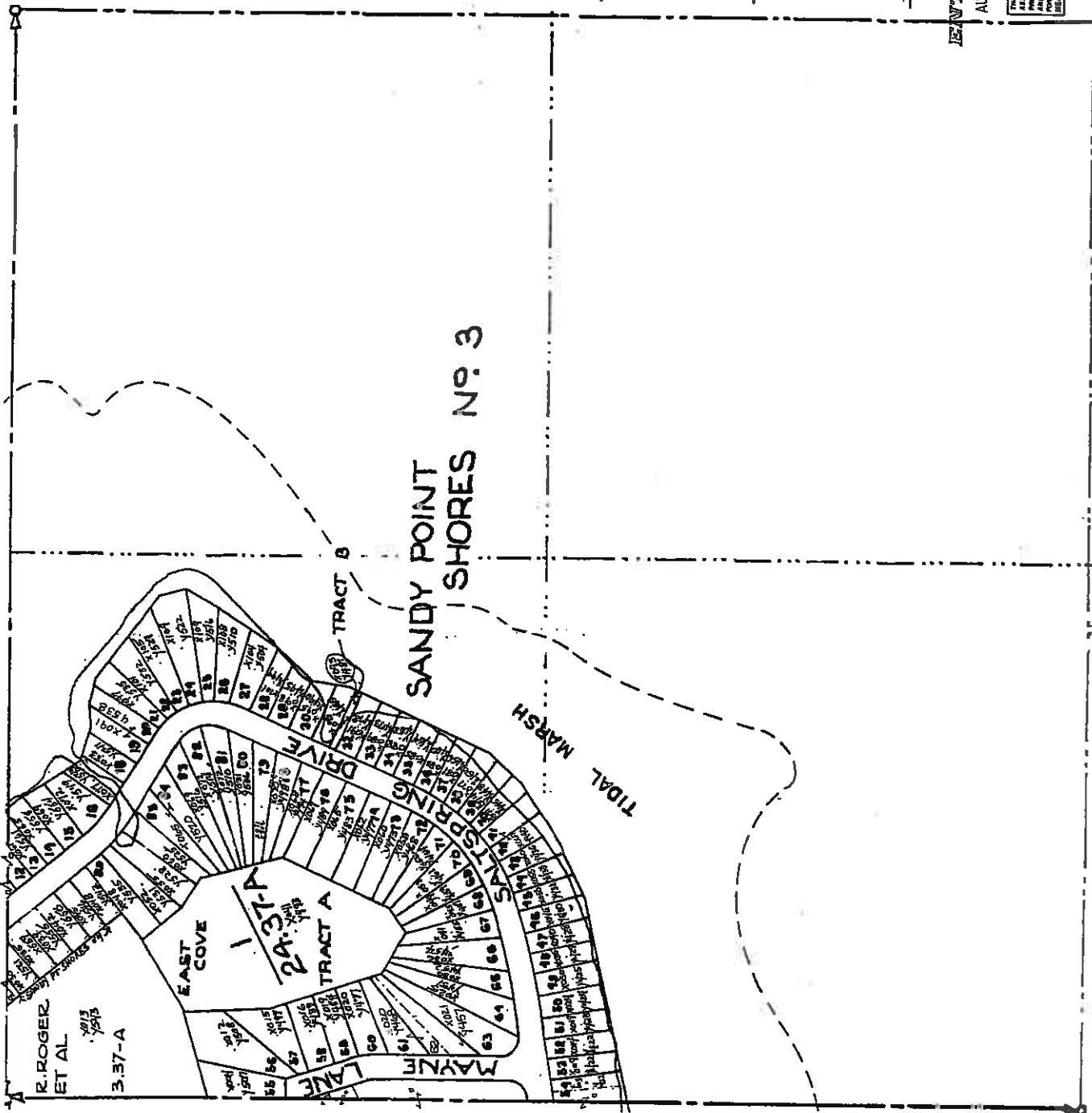
DATE

10/27/55

ENTERED

AUG 13 2012

THIS MAP IS FOR ASSISTANCE IN PROPERTY LOCATION AND IS NOT GUARANTEED FOR ACCURACY OR MEASUREMENTS



TOWNSHIP

38

RANGE

1E

SECTION

16

MAP NO.

01

SCALE

1:2,400'

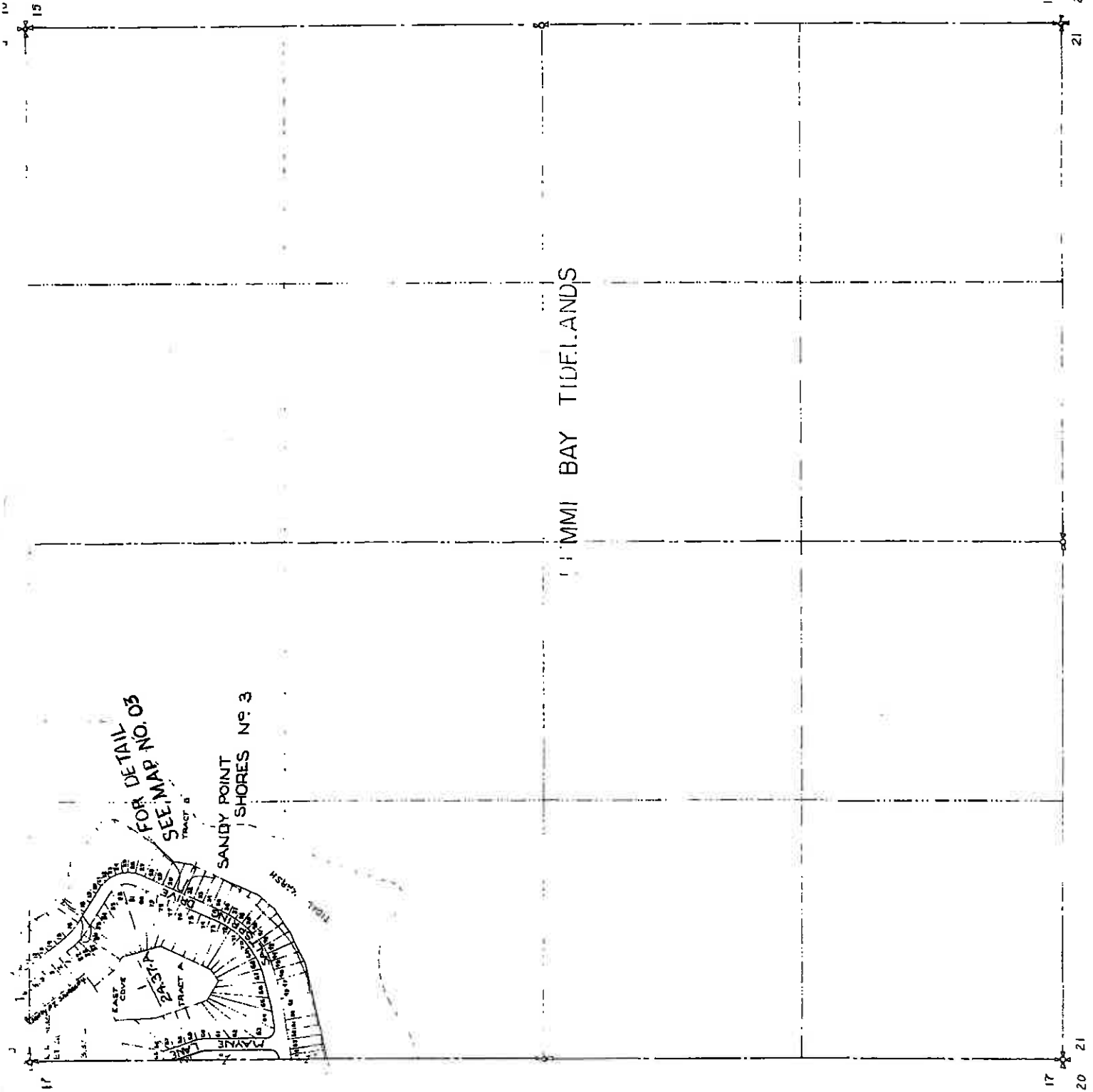
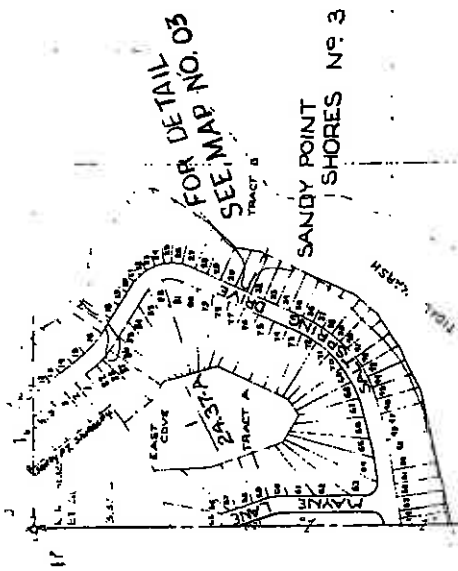
DATE

10/27/66

MINAMI BAY TIDEFLANDS

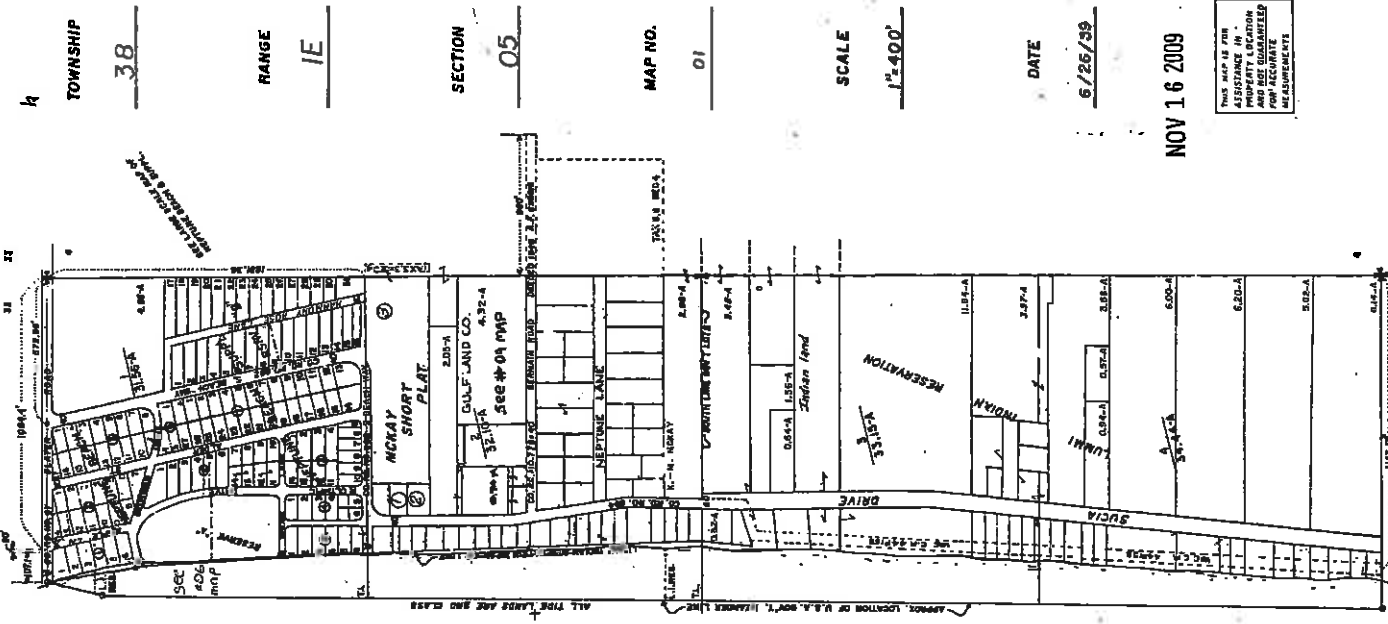
FOR DETAIL  
SEE MAP NO. 03

SANDY POINT  
SHORES No. 3



17 20 21 22

14 15 22



TOWNSHIP

38

RANGE

1E

SECTION

05

MAP NO.

01

SCALE

1"=400'

DATE

6/26/39

NOV 16 2009

THIS MAP IS FOR ASSISTANCE IN PROPERTY LOCATION AND NOT GUARANTEED BY THE STATE OF OREGON.

GULF OF GEORGIA

See #105 map

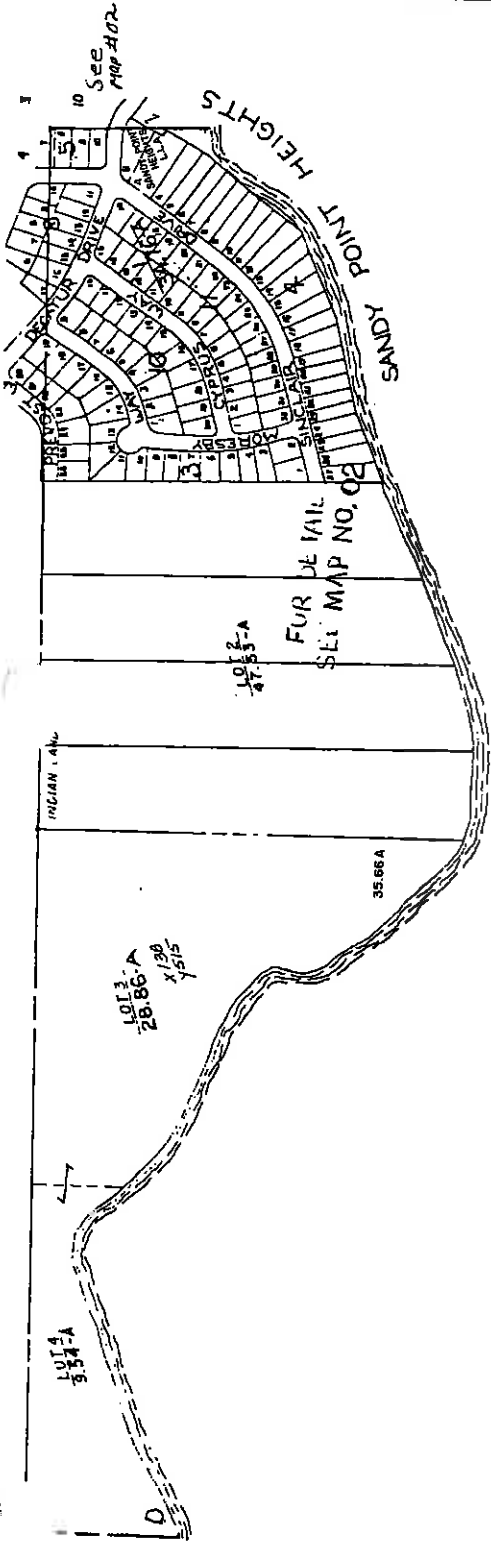
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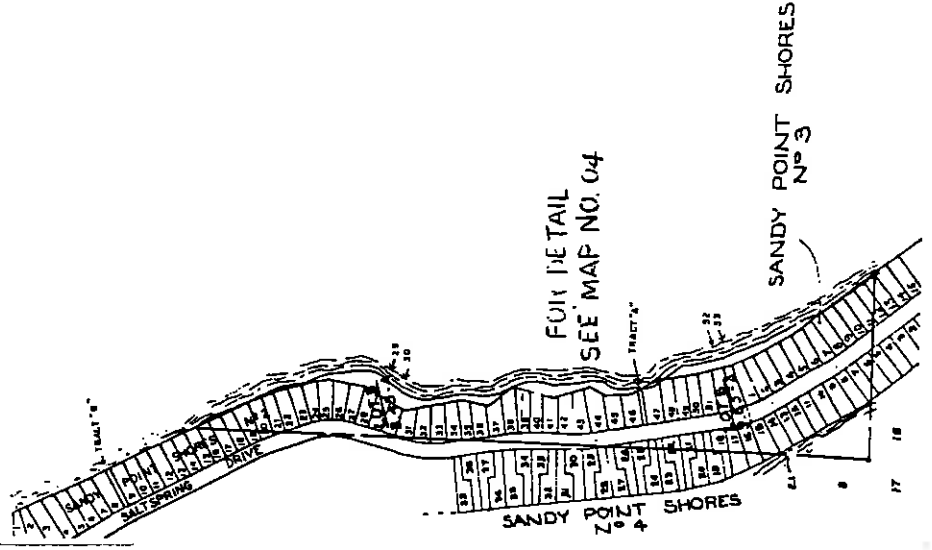
Sec 400 map







LUMMI BAY



TOWNSHIP

38

RANGE

1E

SECTION

09

MAP NO.

01

SCALE

1" = 400'

DATE

9/18/64

DEC 06 2005

THIS MAP IS FOR  
REFERENCE IN  
CONNECTION WITH  
AND NOT CONSIDERED  
FOR ACCURATE  
MEASUREMENTS

DATE 12/28/62

SCALE 1" = 200'

NE 1/4 SECTION 17

TOWNSHIP 38

RANGE 1 EAST

TOWNSHIP 38

RANGE 1E

SECTION 17

MAP NO. 02

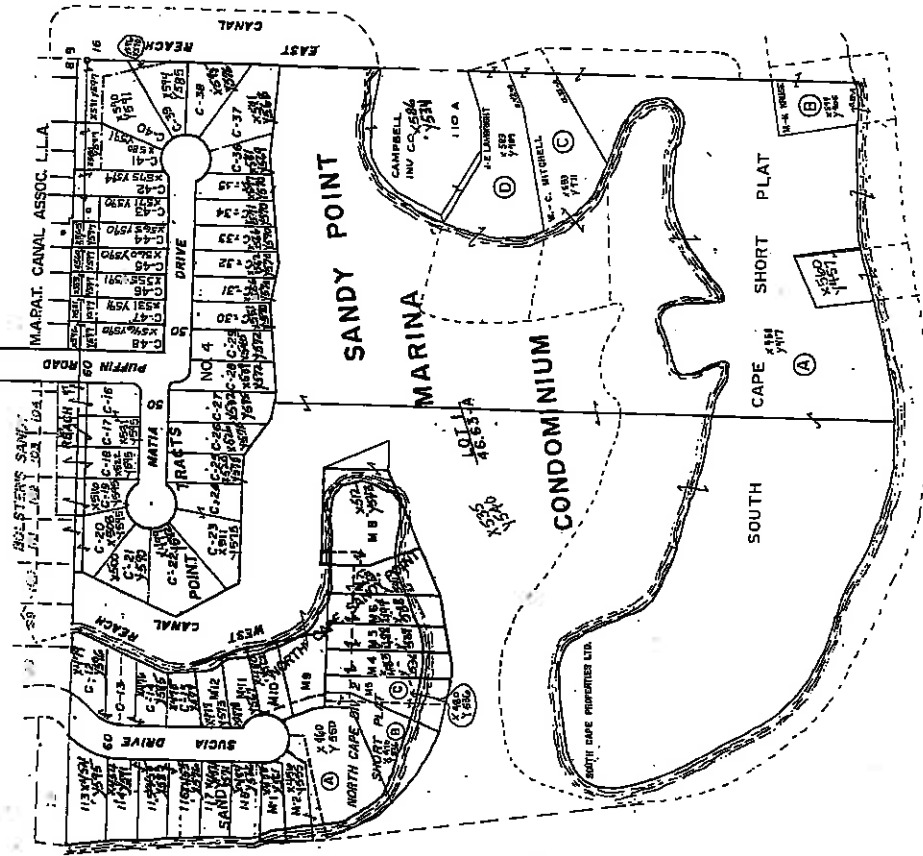
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DATE

12/28/62

AUG. 0 6 2009

THIS MAP IS FOR ASSISTANCE IN PROPERTY LOCATION FOR RECORD PURPOSES ONLY. SEE THE ORIGINAL RECORD FOR DETAILS.



LUMMI BAY

TOWNSHIP

38

RANGE

1E

SECTION

17

MAP No.

01

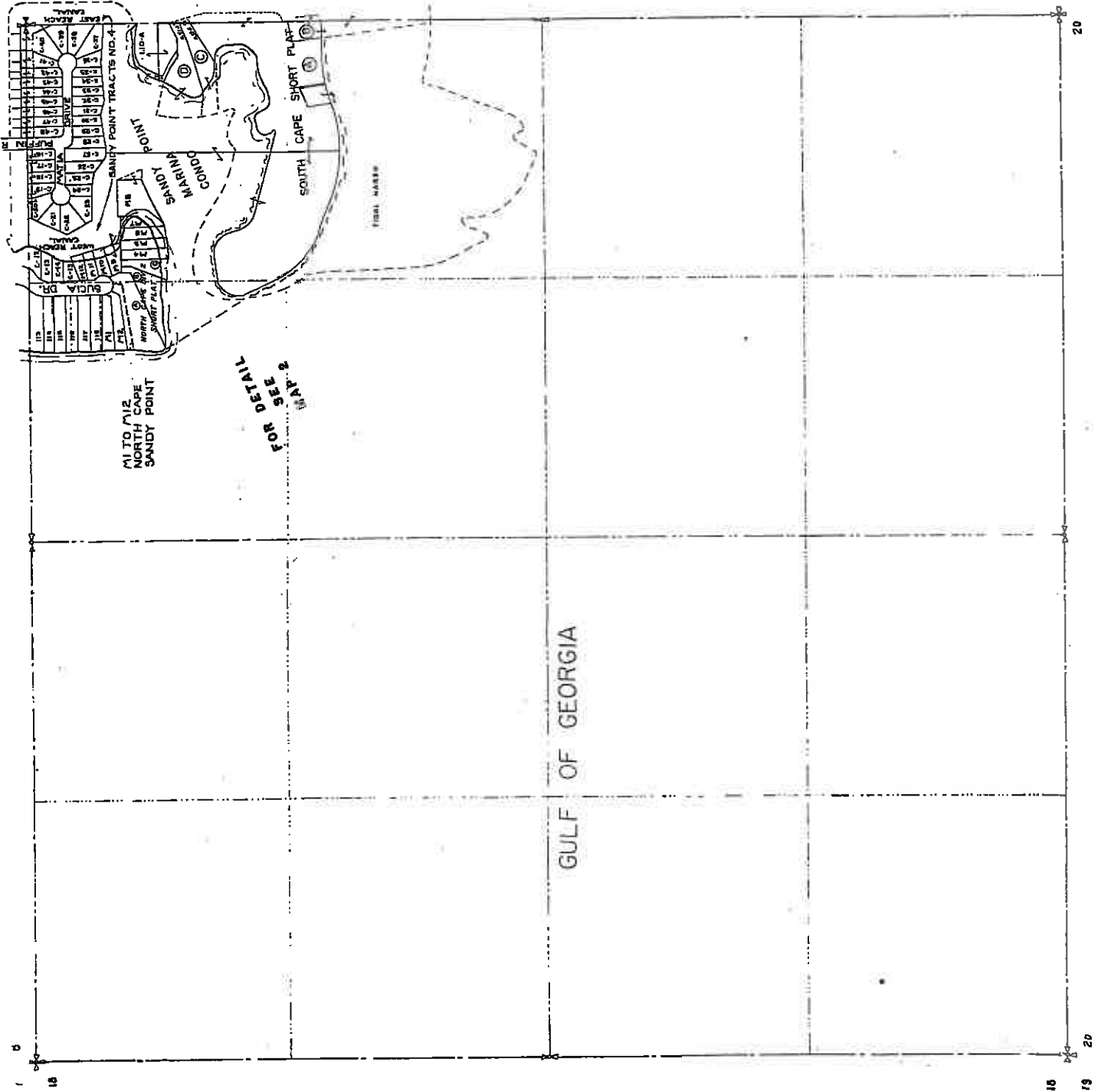
SCALE

1" = 400'

DATE

10/31/66

JUN 27 2007



15  
20 21

18  
19 20

# **EXHIBIT 14**



APP

173482

FILE NO.

DOMESTIC

# UNITED STATES OF AMERICA THE STATE OF WASHINGTON

## Department of State

I, **H. LUDLOW KRAMER**, SECRETARY OF STATE OF THE STATE OF WASHINGTON AND CUSTODIAN OF THE SEAL OF SAID STATE, DO HEREBY CERTIFY THAT:

### ARTICLES OF INCORPORATION OF THE DOMESTIC CORPORATION

SANDY POINT IMPROVEMENT CO.

OF Bellingham, Washington, WAS, ON THE DATE OF April 22, 1965 AT 10:30 O'CLOCK A.M. FILED FOR RECORD IN THIS OFFICE AND REMAINS ON FILE HEREIN.

Filed at request of \_\_\_\_\_  
Garvin, Ashley & Foster  
Attorneys at Law  
1725 Exchange Building  
Seattle, Washington 98104

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED HERETO THE SEAL OF THE STATE OF WASHINGTON, DONE AT THE CAPITOL, AT OLYMPIA ON THIS THE DATE OF

Filing and recording fee \$ 50.00

License to June 30, 1965 \$ 30.00

Excess pages. @ 25¢ \$ \_\_\_\_\_

April 22, 1965

Microfilmed, Roll No. 1084

Page 352-359

**H. LUDLOW KRAMER**,  
SECRETARY OF STATE

173482

*Please  
return*

**APPROVED**  
AS TO FORM AND FILED

APR 22 1965

A. LUDLOW KRAMER  
SECRETARY OF STATE  
BY *Mare Odey*  
ASSISTANT SUPERVISOR OF CORPORATIONS

ARTICLES OF INCORPORATION  
OF  
SANDY POINT IMPROVEMENT CO.

PETER V. GULICK, DAVID W. SANDELL and JANICE HAMILTON,  
each and all of whom are over twenty-one years of age and  
citizens of the United States, do hereby associate themselves  
for the purpose of forming a corporation under the Uniform  
Business Corporation Act of the state of Washington and for  
that purpose do hereby adopt and certify, in triplicate, the  
following as their articles of incorporation:

ARTICLE I

The name of the corporation shall be SANDY POINT  
IMPROVEMENT CO.

ARTICLE II

Its purposes, objects and powers are:

First: To develop and improve real property for the  
benefit of the owners and occupants thereof, particularly Sandy  
Point, a parcel of land situated near Bellingham.

Second: To operate a water distribution system, includ-  
ing water rights, easements, wells, pipes and other property  
necessary for such system.

Third: To acquire, lease, hold and dispose of real  
property and tidelands.

Fourth: To own, develop and operate real and personal

property for the general benefit of property owners.

Fifth: To buy, sell, pledge, negotiate, endorse, guarantee, secure or deal generally in bonds, evidences of indebtedness and commercial paper of all types including but not being limited to promissory notes, sales contracts, conditional sale contracts, chattel and real mortgages, trade and bank acceptances, trust receipts, bills of exchange, checks, assignments, leases and warehouse receipts.

Sixth: To acquire, hold, mortgage, pledge, dispose of, buy or otherwise acquire, stocks, bonds or other securities, good will or rights of any firm or corporation having for its objectives or some of them any of the objectives of these articles.

Seventh: To apply for, acquire, hold, use, sell or assign letters patent, inventions, processes, trademarks and trade names.

Eighth: To enter into a partnership or joint venture with any person, partnership or corporation for the accomplishment of the corporate purposes of this corporation.

Ninth: To borrow money and to buy, hold and sell shares of stock, bonds and other evidences of indebtedness of this corporation, and to conduct any business, trade, manufacturing or commercial pursuit, and to exercise every power and authority granted or conferred by the Uniform Business Corporation Act of the state of Washington, and to do and perform any and all things necessary, proper or convenient



for the carrying out or accomplishment of the objects and purposes herein specified.

#### ARTICLE III

The corporate existence shall be perpetual.

#### ARTICLE IV

The location and post office address of the registered office of the corporation in this state shall be (c/o Dick Metcalf, Certified Public Accountant,) Prospect Mall, Bellingham, Washington, 98225.

#### ARTICLE V

The capital stock of the corporation shall be Fifty Thousand Dollars (\$50,000.00), consisting of 5,000 shares of the par value of Ten Dollars (\$10.00) each. The transfer of any share of the capital stock of the corporation shall be subject to any restrictions contained in the corporate bylaws or by agreement between shareholders.

#### ARTICLE VI

The corporation shall begin business with a paid-in capital of Five Hundred Dollars (\$500.00).

#### ARTICLE VII

The affairs of this corporation shall be managed by a board of from three to seven directors. The first directors, their names and post office addresses are:

<u>Name</u>	<u>Address</u>
R. E. Rogers	Rm. 26, 518 First Avenue North Seattle, Washington 98109
Stuart E. Rogers	Rm. 26, 518 First Avenue North Seattle, Washington 98109
Robert R. Walker	The Highlands Seattle, Washington 98177

These directors shall serve until the first meeting of shareholders and incorporators and until their successors are elected and qualified.

#### ARTICLE VIII

The names and post office addresses of the incorporators and the number of shares subscribed by each are:

<u>Name</u>	<u>Address</u>	<u>No. of Shares</u>
Peter V. Gulick	1725 Exchange Building Seattle, Washington 98104	1
David W. Sandell	1725 Exchange Building Seattle, Washington 98104	1
Janice Hamilton	1725 Exchange Building Seattle, Washington 98104	1

#### ARTICLE IX

A director or officer of this corporation shall not be disqualified by his office from dealing or contracting with this corporation as a vendor, purchaser, creditor or debtor or otherwise. The fact that any director or officer, or any firm of which any director or officer is a shareholder, director or officer, is in any way interested in any transaction or contract of this corporation shall not make such transaction or contract

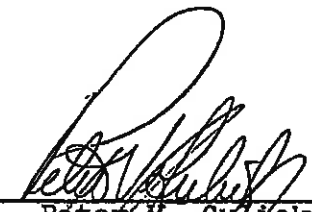
void or voidable, or require such director or officer to account to this corporation for any profits therefrom, provided that such transaction or contract is or shall be authorized, ratified or approved either (i) by vote of a majority or a quorum of the board of directors or (ii) by the written consent or general resolution approving the acts of the directors and officers at a shareholders' meeting, of the holders of record of a majority in number of all the outstanding shares of capital stock of this corporation entitled to vote. Nothing herein contained shall create any liability in the events above described or prevent the authorization, ratification or approval of such transactions or contracts in any other manner.

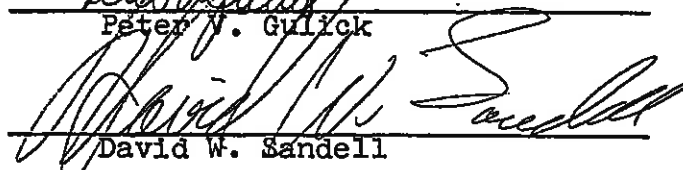
#### ARTICLE X


Any person against whom a claim or liability is asserted, or who is made a party to any action, suit or proceeding by reason of the fact that he, his testator or intestate, is or was a director, officer or employee of this corporation, or of any corporation which he served as such at the request of this corporation, shall be indemnified and reimbursed by this corporation for payment of any such claim or liability, costs or expenses, including attorney's fees, actually and necessarily incurred by him in connection with such claim or liability, or the defense of such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in any such action, suit or proceeding that such officer, director or employee is liable for gross negligence or misconduct in the

performance of his duties. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such director, officer or employee may be entitled.

IN WITNESS WHEREOF the incorporators have hereunto set their hands, in triplicate, this 12th day of April, 1965

  
\_\_\_\_\_  
Peter V. Gulick

  
\_\_\_\_\_  
David W. Sandell

  
\_\_\_\_\_  
Janice Hamilton



ARTICLES OF INCORPORATION  
OF  
SANDY POINT IMPROVEMENT CO.

(This document is an assemblage of the original Articles with all Amendments incorporated herein.)

ARTICLE I

The name of the corporation shall be SANDY POINT IMPROVEMENT CO.

ARTICLE II

Its purposes, objects and powers are:

FIRST: To acquire, hold, develop, improve, operate and maintain real property and interests and rights therein in order to provide services and facilities for the use and enjoyment of its shareholders as the owners and residents of real property in and about the area known as Sandy Point in Whatcom County, Washington; to acquire, construct, hold, maintain, operate, reconstruct and improve water and sewer systems for such area and its shareholders, including water rights, easements, wells, tanks, pumps, pipelines, treatment plants, filter plants, and any other property or property interest that may be incident thereto; to acquire, lease, hold, improve, develop and dispose of real property interests including tidelands, for recreational facilities for its shareholders as such owners and residents; to undertake the construction, maintenance, repair, operation, improvement, reconstruction and disposal of a system of surface water drains, conduits, systems and apparatus for such area; and generally to acquire, hold, develop, improve, maintain, construct, reconstruct and operate real property, improvements thereon and personal property for such other purposes as may be in the best interest of its shareholders and the area.

SECOND: To do and perform such things as may be necessary or convenient to accomplish the foregoing purposes, regardless of whether such activities may result in profit or gain to the corporation.

THIRD: To acquire, hold, mortgage, pledge, dispose of, buy, or otherwise acquire stocks, bonds, or other

securities, goodwill or rights of any firm or corporation having for its objectives, or some of them, any of the objectives of this corporation; to apply for, acquire, hold, use, sell or assign letters patent, franchises, and permits; to enter into a partnership or joint venture with any person, partnership or corporation for the accomplishment of the corporate purposes of this corporation; to borrow money and to buy, hold and sell shares of stock, bonds and other evidences of indebtedness of this corporation, and to conduct any business, pursuit or activity and to exercise every power and authority granted or conferred by the Uniform Business Corporation Act of the State of Washington, and to do or perform any and all things necessary, proper or convenient for the carrying out or accomplishment of the objects and purposes herein specified.

AMENDMENT: This Article completely rewritten by First Amendment of October 31, 1966; the Article completely rewritten by Second Amendment July 3, 1968.

#### ARTICLE III

The corporate existence shall be perpetual.

#### ARTICLE IV

The location and post office address of the registered office of the corporation in this state shall be c/o Dick Metcalf, Certified Public Accountant, Prospect Mall, Bellingham, Washington 98225.

#### ARTICLE V

The total capital stock of this corporation shall be Four Thousand One Hundred Dollars (\$4,100.00) divided into the following classes of stock:

1. Class A Stock: There shall be one thousand (1,000) shares of Class A Stock of a par value of One Dollar (\$1.00) a share. By accepting a share of the Class A stock the shareholder thereof agrees to make an annual capital contribution to the corporation in an amount to be determined by the vote of two-thirds of the corporate directors for the purpose of providing funds to maintain the properties and facilities of the corporation; provided, however, that the amount of such capital contribution shall not exceed the sum of One Hundred Thirty-five Dollars (\$135.00) for each share of Class A Stock during any fiscal year of the corporation unless previously approved by a vote of fifty-one percent (51%) of the holders of Class A Stock present at any meeting of shareholders called for the purpose of authorizing such increased amount. Class A Stock shall

have one vote for each share of stock on any matter presented to the shareholders but shall not be transferable except as incident to the sale or other transfer of real property in the area of Sandy Point to which real property such share shall be appurtenant as may be determined by the corporation in accordance with its bylaws at the time of original issue thereof. The holder of a share of Class A Stock shall be entitled to use and enjoy the facilities and services of the corporation subject to such regulations for the use thereof as the directors may establish from time to time, and any reasonable charge which the directors may impose for goods and services furnished by the corporation, including charges for water, to its shareholders. Non-payment of this annual contribution may result in a lien being filed against the shareholder's property.

AMENDMENTS: This Article completely rewritten by First Amendment October 31, 1966; paragraph 1 above originally fixed maximum capital contribution at \$10.00 was first amended to raise the maximum to \$50.00 although there is no formal amendment filed and the date is unknown; the \$50.00 maximum was increased to \$75.00 by Amendment November 14, 1974; the \$75.00 maximum was increased to \$100.00 by Amendment October 29, 1978.

The November 14, 1974 Amendment also struck the following language: "and any reasonable charge which the Directors may impose for goods and services furnished by the Corporation, including charges for water, to its shareholders" and added in its place the following language: "The above annual contribution shall include the annual charge for water supplied by the Corporation to its shareholders. Non-payment of this annual contribution may result in a lien being filed against the shareholder's property."

Prior to the 1966 Amendment the capital contribution provision was treated separately and the Article as written authorized additional "reasonable charges which the Directors may impose for goods and services furnished by the Corporation, including charges for water, to its shareholders." The 1966 Amendment strikes this language and provides that "the above annual contribution shall include the annual charge for water supplied by the Corporation to its shareholders." This limits the shareholder payment to the Corporation to \$100.00 per year including the "annual" charge for water.

The October 31, 1966 Amendment which rewrote Article V also required that any change in the annual capital contribution amount be approved by a vote of 60% of the shareholders of Class A stock: this 60% super majority requirement was reduced to a percentage of 51% in the November 14, 1974 Amendment.



This Article was again amended by shareholder vote at the annual meeting held September 26, 1987. This amendment increased the capital contribution limit to \$135.00 per year, struck the language of the second to the last sentence of the Class A Stock paragraph and reinstated the language that sentence had replaced.

87' Amend  
to 1981  
\* Added  
provision  
Affecting  
Class A  
Stock  
\* Gross  
Service

Over the years the net change to Article V as it now reads amounted to an increase in the capital contribution limit from \$10.00 to \$135.00 and the addition of the last sentence permitting the corporation to lien property if the annual contribution is not paid.

2. Class B Stock: There shall be Three Thousand (3000) shares of Class B Stock of a par value of One Dollar (\$1.00) a share. No shareholder of such Class B stock shall be required to make any capital contributions to the Corporation by virtue of holding such stock, which shall be fully transferable at the discretion of the holder thereof and shall have one vote for each share on any matter presented to the shareholders.

3. Class C Stock: There shall be One Thousand shares of Class C Stock of a par value of Ten Cents (\$.10) a share. The holders of such Class C Stock shall have no vote upon matters presented at any meeting of shareholders and shall not participate in any dividend of the corporation or in any distribution on liquidation of the corporation. Such share shall solely represent the right of the holder thereof to have water service provided by the corporation to real property owned by the shareholder in the area of Sandy Point to which real property such share shall be appurtenant as may be determined by the corporation in accordance with its bylaws at the time of original issue thereof, provided that such shareholder shall comply with the regulations pertaining to the use of such water and shall pay the water user's charge for water as may be established by the directors. No shareholder of Class C Stock shall be required to make any capital contributions to the corporation by virtue of holding such stock. Such stock shall not be transferable except as incident to the sale or other transfer of the real property to which it is appurtenant in the Sandy Point area.

In all other respects, except as stated above, the various classes of stock shall be equal. No shareholder shall have any pre-emptive right with respect to shares of this corporation. Each shareholder of this corporation hereby agrees to the provisions hereof.

AMENDMENT: The entire Article V rewritten in its entirety by Amendment of October 31, 1966.

Paragraph 1 of Article V has been amended on at least three occasions since 1966, see note following paragraph I. Paragraphs 2 and 3 of Article V have not been amended since being incorporated by the October 31, 1966 Amendment.

#### ARTICLE VI

The corporation shall begin business with a paid-in capital of Five Hundred Dollars (\$500.00).

#### ARTICLE VII

The affairs of this corporation shall be managed by a board of from three of seven directors. The first directors, their names and post office addresses are:

<u>Name</u>	<u>Address</u>
R. E. Rogers	Rm. 26, 518 First Avenue North Seattle, Washington 98109
Stuart E. Rogers	Rm. 26, 518 First Avenue North Seattle, Washington 98109
Robert E. Walker	The Highlands Seattle, Washington 98177

These directors shall serve until the first meeting of shareholders and incorporators and until their successors are elected and qualified.

No director of this corporation shall be liable on account of any claim of mismanagement of the corporate affairs made on the ground that this corporation shall fail to realize a profit on account of its activities, it being expected that the activities of this corporation shall require annual assessments against its shareholders as herein elsewhere provided for.

AMENDMENT: This Article amended October 31, 1966, by adding the last paragraph.

#### ARTICLE VIII

The names and post office addresses of the incorporators and the number of shares subscribed by each are:

<u>Name</u>	<u>Address</u>	<u>No. of Shares</u>
Peter V. Gulick	1725 Exchange Building Seattle, Washington 98104	1
David W. Sandell	1725 Exchange Building Seattle, Washington 98104	1
Janice Hamilton	1725 Exchange Building Seattle, Washington 98104	

#### ARTICLE IX

A director or officer of this corporation shall not be disqualified by his office from dealing or contracting with this corporation as a vendor, purchaser, creditor or debtor or otherwise. The fact that any director or officer, or any firm of which any director or officer is a shareholder, director or officer, is in any way interested in any transaction or contract of this corporation shall not make such transaction or contract void or voidable, or require such director or officer to account to this corporation for any profits therefrom, provided that such transaction or contract is or shall be authorized, ratified or approved either (i) by vote of a majority or a quorum of the board of directors or (ii) by the written consent or general resolution approving the acts of the directors and officers at a shareholders' meeting, of the holders of record of a majority in number of all the outstanding shares of capital stock of this corporation entitled to vote. Nothing herein contained shall create any liability in the events above described or prevent the authorization, ratification or approval of such transactions or contracts in any other manner.

#### ARTICLE X

Any person against whom a claim or liability is asserted, or who is made a party to any action, suit or proceeding by reason of the fact that he, his testator or intestate, is or was a director, officer or employee of this corporation, or of any corporation which he served as such at the request of this corporation, shall be indemnified and reimbursed by this corporation for payment of

any such claim or liability, costs or expenses, including attorney's fees, actually and necessarily incurred by him in connection with such claim or liability, or the defense of such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in any such action, suit or proceeding that such officer, director or employee is liable for gross negligence or misconduct in the performance of his duties. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such director, officer or employee may be entitled.

rec'd from Attorney,  
Rosellini 6/25/03  
is agent in 93 (either  
Kmundson or Rosellini)  
could have rec'd doc.  
then forwarded - Do NOT  
owe

FILED  
STATE OF WASHINGTON  
AUG 20 1993  
RALPH MUNRO  
SECRETARY OF STATE

ARTICLES OF AMENDMENT  
FOR

SANDY POINT IMPROVEMENT CO.

I

The name of the corporation is SANDY POINT IMPROVEMENT CO.

II

Article V, paragraph 1, Class A Stock, is amended to increase the annual capital contribution, the second to the last sentence is modified and the paragraph now reads as follows:

1. Class A Stock: There shall be one thousand (1,000) shares of Class A Stock of a par value of One Dollar (\$1.00) a share. By accepting a share of the Class A stock the shareholder thereof agrees to make an annual capital contribution to the corporation in an amount to be determined y the vota of two-thirds of the corporate directors for the purpose of providing funds to maintain the properties and facilities of the corporation; provided, however, that the amount of such capital contribution shall not exceed the sum of One Hundred Thirty-five Dollars (\$135.00) for each share of Class A Stock during any fiscal year of the corporation unless previously approved by a vote of fifty-one percent (51%) of the holders of Class A Stock present at any meeting of shareholders called for the purpose of authorizing such increased amount. Class A Stock shall have one vote for each share of stock on any matter presented to the shareholders but shall not be transferable except as incident to the sale or other transfer of real property in the area of Sandy Point to which real property such share shall be appurtenant as may be determined by the corporation in accordance with its bylaws at the time of original issue thereof. The holder of a share of Class A Stock shall be entitled to use and enjoy the facilities and services of the corporation subject to such regulations for the use thereof as the directors may establish from time to time, and any reasonable charge which the directors may impose for goods and services furnished by the corporation, including charges for water, to its shareholders. Non-payment of this annual contribution may result in a lien being filed against the shareholder's property.

III

This Amendment was adopted by vote of the shareholders on September 26, 1987.

IV

This Amendment was duly approved by the shareholders in accordance with the provisions of RCW 23B.10.030, 23B.10.040 and prior sections RCW 23A.16.020 and 23A.16.030.

DATED this 10th day of June, 1993.

SANDY POINT IMPROVEMENT CO.

By Roy Pottle  
President

By Ted Slaneff  
Secretary

STATE OF WASHINGTON )  
                                  ) ss  
COUNTY OF WHATCOM )

On this 10th day of June, 1993, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Roy Pottle and Ted Slaneff, to me known to be the President and Secretary respectively, of Sandy Point Improvement Co., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

Jennifer Clark  
NOTARY PUBLIC in and for the State of  
Washington, residing at Bellingham  
Deming

181969  
FILE NUMBER



DOMESTIC

STATE OF WASHINGTON | DEPARTMENT OF STATE

I, A. LUDLOW KRAMER, Secretary of State of the State of Washington and custodian of its seal, hereby certify that

AMENDED  
ARTICLES OF INCORPORATION

of SANDY POINT IMPROVEMENT CO.  
a domestic corporation of Bellingham, Washington,  
(Amending purposes, amending Article VII and reducing capital to \$4,100.00)

were filed for record in this office at 8:00 o'clock A. M., on this date, and I further certify that such Articles remain on file in this office.

Filed at request of Garvin, Ashley & Foster  
1725 Exchange Bldg.  
Seattle, Washington 98104

Filing and recording fee \$ 10.00  
License to June 30, 19      \$       
Excess pages @ 25¢ \$     

In witness whereof I have signed and have affixed the seal of the State of Washington to this certificate at Olympia, the State Capitol, October 31, 1966

Microfilmed, Roll No.     

Page 155-160

A. LUDLOW KRAMER  
SECRETARY OF STATE

ARTICLES OF AMENDMENT AND ARTICLES  
OF REDUCTION OF CAPITAL STOCK -

**A P P R O V E D**  
AS TO FORM AND FILED.

SANDY POINT IMPROVEMENT CO.

OCT 31 1966

STATE OF WASHINGTON }  
COUNTY OF KING } ss.

A. LUDLOW KRAMER  
SECRETARY OF STATE  
BY \_\_\_\_\_  
SUPERVISOR OF CORPORATIONS

R. E. ROGERS and ROBERT R. WALKER, each being first  
duly sworn on oath depose and say:

They are the president and assistant secretary res-  
pectively of Sandy Point Improvement Co. and that at a  
special meeting of shareholders held on July 28, 1966, duly  
convened according to its bylaws at which the holders of more  
than two-thirds of all of the shares of this corporation entit-  
led to vote and which was called for the purpose of amending  
the articles of incorporation of this corporation, the following  
resolution was unanimously adopted:

"BE IT RESOLVED that Article II of the  
Articles of Incorporation of Sandy Point  
Improvement Co. be and it hereby is amended  
to read as follows:

ARTICLE II

Its purposes, objects and powers are:

FIRST: To acquire, hold, develop, improve,  
operate and maintain real property and interests  
and rights therein in order to provide services  
and facilities for the use and enjoyment of its  
shareholders as the owners and residents of  
real property in and about the area known as  
Sandy Point in Whatcom County, Washington; to  
acquire, construct, hold, maintain, operate,  
reconstruct and improve a water distribution  
system for such area and its shareholders, in-  
cluding water rights, easements, wells, tanks,



pumps, pipes and any other property or property interest that may be incident thereto; to acquire, lease, hold, improve, develop and dispose of real property interests including tidelands, for recreational facilities for its shareholders as such owners and residents; to undertake the construction, maintenance, repair, operation, improvement, reconstruction and disposal of a system of surface water drains, conduits, systems and apparatus for such area; and generally to acquire, hold, develop, improve, maintain, construct, reconstruct and operate real property, improvements thereon and personal property for such other purposes as may be in the best interest of its shareholders and the area.

SECOND: To do and perform such things as may be necessary or convenient to accomplish the foregoing purposes, regardless of whether such activities may result in profit or gain to the corporation.

THIRD: To acquire, hold, mortgage, pledge, dispose of, buy, or otherwise acquire stocks, bonds, or other securities, goodwill or rights of any firm or corporation having for its objectives, or some of them, any of the objectives of this corporation; to apply for, acquire, hold, use, sell or assign letters patent, franchises, and permits; to enter into a partnership or joint venture with any person, partnership or corporation for the accomplishment of the corporate purposes of this corporation; to borrow money and to buy, hold and sell shares of stock, bonds and other evidences of indebtedness of this corporation, and to conduct any business, pursuit or activity and to exercise every power and authority granted or conferred by the Uniform Business Corporation Act of the State of Washington, and to do or perform any and all things necessary, proper or convenient for the carrying out or accomplishment of the objects and purposes herein specified."

BE IT FURTHER RESOLVED that Article V of the Articles of Incorporation of Sandy Point Improvement Co. be and it hereby is amended to read as follows:

## ARTICLE V

The total capital stock of this corporation shall be Four Thousand One Hundred Dollars (\$4,100.00) divided into the following classes of stock:

1. Class A Stock: There shall be one thousand (1,000) shares of Class A Stock of a par value of One Dollar (\$1.00) a share. By accepting a share of the Class A stock the shareholder thereof agrees to make an annual capital contribution to the corporation in an amount to be determined by the vote of two-thirds of the corporate directors for the purpose of providing funds to maintain the properties and facilities of the corporation; provided, however, that the amount of such capital contribution shall not exceed the sum of Ten Dollars (\$10.00) for each share of Class A Stock during any fiscal year of the corporation unless previously approved by a vote of sixty per cent (60%) of the holders of Class A Stock present at any meeting of shareholders called for the purpose of authorizing such increased amount. Class A Stock shall have one vote for each share of stock on any matter presented to the shareholders but shall not be transferable except as incident to the sale or other transfer of real property in the area of Sandy Point to which real property such share shall be appurtenant as may be determined by the corporation in accordance with its bylaws at the time of original issue thereof. The holder of a share of Class A Stock shall be entitled to use and enjoy the facilities and services of the corporation subject to such regulations for the use thereof as the directors may establish from time to time, and any reasonable charge which the directors may impose for goods and services furnished by the corporation, including charges for water, to its shareholders.

2. Class B Stock: There shall be Three Thousand (3000) shares of Class B Stock of a par value of One Dollar (\$1.00) a share. No shareholder of such Class B stock shall be required to make any capital contributions to the Corporation by virtue of holding such stock; which shall be fully transferable at the discretion of the holder thereof and shall have one vote for each share on any matter presented to the shareholders.

3. Class C. Stock: There shall be One Thousand shares of Class C Stock of a par value of Ten Cents (\$.10) a share. The holders of such Class C Stock shall have no vote upon matters presented at any meeting of shareholders and shall not participate in any dividend of the corporation or in any distribution on liquidation of the corporation. Such share shall solely represent the right of the holder thereof to have water service provided by the corporation to real property owned by the shareholder in the area of Sandy Point to which real property such share shall be appurtenant as may be determined by the corporation in accordance with its bylaws at the time of original issue thereof, provided that such shareholder shall comply with the regulations pertaining to the use of such water and shall pay the water user's charge for water as may be established by the directors. No shareholder of Class C Stock shall be required to make any capital contributions to the corporation by virtue of holding such stock. Such stock shall not be transferable except as incident to the sale or other transfer of the real property to which it is appurtenant in the Sandy Point area.

In all other respects, except as stated above, the various classes of stock shall be equal. No shareholder shall have any preemptive right with respect to shares of this corporation. Each shareholder of this corporation hereby agrees to the provisions hereof."

"BE IT FURTHER RESOLVED that Article VII of the Articles of Incorporation of Sandy Point Improvement Co. shall be and hereby is amended by adding the following provision to the end of such Article:

No director of this corporation shall be liable on account of any claim of mismanagement of the corporate affairs made on the ground that this corporation shall fail to realize a profit on account of its activities, it being expected that the activities of this corporation shall require annual assessments against its shareholders as herein elsewhere provided for."

The financial condition of the corporation and the proposed reduction will not reduce the fair value of the

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assets of the corporation to an amount less than the total amount its debts and liabilities plus the amount of its capital stock as so reduced.

The total number of shares, including those previously authorized, which the corporation will thenceforth be authorized to have is as stated above.

P. E. Rogers  
President

Subscribed and sworn to before me this 21<sup>st</sup> day of <sup>October</sup> ~~August~~, 1966.

Florence A. B. B. B.  
Notary Public in and for the state  
of Washington, residing at Seattle.

# **EXHIBIT 15**

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SALE AGREEMENT

SANDY POINT CO., a Washington corporation (herein called Seller), owns all of the real property and improvements situated in Whatcom County, Washington, herein called Property and Option Land, both of which are more fully described on Exhibits A and B, respectively, hereto attached and by this reference made a part hereof as if fully set forth. R. E. ROGERS, STUART ROGERS and ROBERT R. WALKER, and their assigns (herein called Purchaser), desire to purchase Property as an investment.

(1) Purchase Price. Seller sells to Purchaser and Purchaser purchases from Seller, Property for a purchase price of Seventy-two Thousand Five Hundred Dollars (\$72,500.00), payable \$5,000.00 down, receipt of which is acknowledged, and Purchaser agrees to furnish financing in the amount of \$40,000.00, said \$40,000.00 to be available to Seller coincident with the closing day of this sale, but not later than June 1, 1965.

This contract shall bear interest at a rate of  $\frac{3}{8}\%$  higher than the financing which provides the \$40,000.00, but in no event shall that interest be less than 6% on the Seller's remaining equity of \$27,500.00. The \$40,000.00 financing, together with Seller's remaining equity of \$27,500.00, shall be amortized concurrently and in 10 equal annual installments plus interest as heretofore mentioned, with the first annual payment due one (1) year from the date hereof and subsequent annual payments on each anniversary date thereafter.

(2) Deed Releases. Seller and/or assignee required by the terms hereof will, if this contract be not in default,

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S.E.R.  
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RZW  
S.E.R.

release to Purchaser free and clear of any lien or encumbrances, parcels of Property selected by Purchaser at the rate of \$10.00 for each foot of waterfront property and \$3.00 for each hundred square feet of uplands property. That said stipulated consideration for the deed releases will be applied by Seller on the next installment or installments due.

All principal payments subsequent to the down payment shall be consideration for deed releases as may be requested by Purchaser.

Purchaser agrees to make adequate provision in the financing agreement which raises the \$40,000.00 for the concurrent deed release by the assignee.

Except for payment for deed releases, nothing in this paragraph shall constitute a waiver of Purchaser's obligation to pay the 10 annual installments heretofore referred to in Paragraph (1).

When Property has been platted, Seller will execute and place in escrow with The Bellingham National Bank, Bellingham, Washington, as escrow agent, release or fulfillment deeds properly executed and acknowledged covering all such property so that upon payment by Purchaser for account of Seller, deeds can be immediately released. Purchaser agrees to pay any and all charges of the Bellingham National Bank in connection with its position as escrow agent.

(3) Platting and Development of Property. Purchaser intends to hold Property as an investment. Nevertheless, if conditions change and Purchaser determines to plat, subdivide or develop Property, Seller will join in and at Purchaser's request, execute any plats or subdivisions of Property, dedication of parts of Property streets, request for vacation of any existing streets, application to any governmental agency incident to construction or use of waterways,

L.E.R.  
WRW  
P  
9.23

canals or bridges, and any other instruments that Purchaser deems necessary to complete the development and improvement of Property. All such improvements or instruments shall be at the sole cost and expense of Purchaser and without liability whatsoever on the part of Seller.

(4) Water System. Seller conveys and sets over to Purchaser the entire water system servicing Property, including but not being limited to the wells, pipes, meters, equipment, lease for the wells, easements, rights of way, water rights, engineering studies, permits or contracts with customers and accounts receivable. Purchaser will provide water to present users of the system and all owners of property in Sandy Point Tracts, Bolster's Sandy Point Tracts, Sandy Point Garden Tracts, the property described in paragraph (5) hereof, and the Twinner property, upon the same terms and conditions as provided to any owners or occupants of Property. If this agreement is forfeited, then Purchaser will reconvey the entire system to Seller. Any major change in ownership or policy of the water system must have prior written approval of Seller during the term of this agreement. Such approval may not be unreasonably withheld. J-13 710 S. S.R. P.P.W. S.E.R.

(5) Option to Purchase. Seller Grants to Purchaser the option to purchase the property herein called "Option Land," and described in Exhibit B hereto attached and by this reference made a part hereof, for the sum of \$100,000.00 any time within a period of 270 days from the date hereof. 927 710 S.S.R. P.P.W. S.E.R.

Purchaser can extend its option for eleven (11) additional terms of 90-day periods by paying Seller \$1,000.00 on or before the first day of each 90-day period. This option may be exercised any time during its term as extended by paying to Seller \$10,000.00, and executing a real estate contract in the form as suggested by Washington Title Insurance Company Form L-37.

S.E.R.  
P.P.W.  
P.P.W.  
S.E.R.



requiring payment of the principal in monthly installments over a period of 10 years with interest at the rate of 6% on the unpaid balance. Seller will release parcels of Option Land on the same terms and conditions as set forth in Paragraph (2) hereof, the rate for said release being, however, \$30.00 for each foot of waterfront property on the outside or natural waterfront beach of Option Land, and \$15.00 for each foot of waterfront property on the inside or dredged waterfront property. Seller will also join in platting and development of Option Land in accordance with the terms of Paragraph (3) hereof. During the term of this option Seller will cease any further development of Option Land, including dredging, removal of gravel or sand, and will not sell, assign or encumber Option Land or any part thereof; all such improvements or instruments shall be at the sole cost and expense of Purchaser and without liability whatever on the part of Seller. Purchaser acknowledges that Seller has an outstanding contract with Bellingham Builders Supply, Inc., to remove gravel from Option Land, and Purchaser agrees to accept this property if it exercises the option, subject to, with all the benefits and rights of the contract with Bellingham Builders Supply, Inc.

(6) Additional Property. Upon closing, Seller will deliver to Purchaser all surveys, engineering studies, photographs, licenses, sales literature, lists of prospective land purchasers, agreements, or leases incident to sale of gravel or sand, dredging studies or agreements, any rights in community clubs, and all files or other information Seller may have incident to Property. Purchaser agrees to provide reasonable access to Bellingham Marine, Inc., and assigns to its properties at the Southwest Point of Sandy Point for maintenance,

S.S.E.  
P.P.W.  
R.R.H.  
G.S.P.

development, road construction and utilities.

Purchaser acknowledges that Seller has committed itself to provide 5 acres to the Sandy Point Community Club, for the purpose of recreational development. In that regard Purchaser also agrees to assume this obligation and they will make said 5 acres available in an area or areas satisfactory to both Purchaser and the Sandy Point Community Club, it being understood that at least a portion of this acreage must be within the present location of the Tennis Court.

Purchaser further agrees to cooperate with Bellingham Marine, Inc., in connection with the joint use of the Gulf Waterway Entrance, including a responsibility to share equally with Bellingham Marine, Inc., the cost of leasing, maintenance and protection of this entrance. Purchaser further agrees to be subject to the terms of a lease from the Lummi Indians.

Seller agrees to provide a non-exclusive easement permitting Purchaser and their assigns to enter upon and use the Waterways of the main basin shown on Exhibit B and similar rights will be afforded to Bellingham Marine, Inc., and its assigns.

(7) Closing. Closing shall be as of June 1, 1965. Seller will immediately apply for and obtain a title policy, showing Seller to be the owner of Property and Option Land free and clear of encumbrances except those shown on Exhibits A and B. If the policy is approved by Purchaser and Seller, this agreement shall be placed of record forthwith and earnest money in the sum of \$5,000.00 delivered to Seller, with the \$40,000.00 heretofore referred to, to be paid on or before closing. Taxes for the current year shall be prorated as of the date of such closing and Purchaser shall be immediately

S.E.R.  
D.W.M.  
R.W.K.  
J.W.B.

entitled to possession of Property.

(8) Obligations of Purchaser. Purchaser will pay before delinquency (a) all taxes and assessments that may become a lien on Property, and (b) all payments due on any mortgage, contract, or other encumbrance assumed by Purchaser, and (c) payments called for in Paragraph (6) above. If any part or all of Property is condemned for any purpose, that portion of the condemnation award remaining after payment of reasonable expenses shall be paid to Seller as payment of the next installments due under this contract.

(9) Miscellaneous.

Upon payment in full of the purchase price and interest, if Seller has not already done so, Seller will execute and deliver to Purchaser a statutory warranty deed conveying all of Property to Purchaser.

Time is of the essence of this contract.

If Purchaser fails to perform any agreement, Seller may declare all of Purchaser's rights hereunder terminated and thereupon all payments made by Purchaser and all improvements placed upon Property shall be forfeited to Seller as liquidated damages and Seller shall have the right to reenter and take possession of Property.

No waiver by Seller of any default on the part of Purchaser shall be construed as a waiver of any subsequent default.

If any suit is brought by Seller to enforce any of the terms of this agreement, then the prevailing party shall recover a reasonable sum as attorneys fees and all costs and expenses in connection with such suit.

LSG  
R  
SAB



STATE OF WASHINGTON )

COUNTY OF WHATCOM )

ss.

On this 5<sup>th</sup> day of April, 1965, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared

James F. B. Carter and Ann T. L. Carter

to me known to be the president and secretary, respectively, of SANDY POINT CO., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

*H. D. Daulton*

Notary public in and for the state of Washington, residing at Excelsior.

S.E.C.  
R.C.  
R.C.  
J.S.

EXHIBIT A

Property and ~~Option Property~~ <sup>Option Property</sup> which consist of the following parcels, situated in Township 38 North, Range 1 E.W.M., Whatcom County, Washington, less roads, all of which are outlined in green on the plat plan attached:

- 1 Government Lots 1, 2, 3 and 4 in Section 8, LESS
  - (i) 1-A to 4-A, 6-A to 9-A, 11-A, 16-A, 25-A, 27-A, 29-A to 33-A, 35-A and 36-A, 45-A, 47-A to 49-A, 51-A to 53-A, of Sandy Point Garden Tracts.
  - (ii) South 50 feet of Lot 73, and Lots 74 to 97 of Bolster's Sandy Point Tracts No. 3.
  - (iii) Lots 1 to 66, 68 to 71, 98 to 112 inclusive of Bolster's Sandy Point Tracts No. 1, and No. 2. <sup>Bolster's Sandy Point Tracts</sup>
- 2 That portion of Lot 6 in Section 9 lying north of the north line of Patos Drive if Patos Drive were extended through Section 9 in the same direction as it is now platted in Lot 4 Section 8. <sup>U.S.R.</sup>
- 3 Lots 67 and 72 of Bolster's Sandy Point Tracts. <sup>included above</sup>
- 4 All except the south 50 feet of Lot 73 of Bolster's Sandy Point Tracts No. 3.
- 5 Lots 54-A to 68-A of Sandy Point Tracts No. 2.
- 6 Lots 5-A, 10-A, 12-A to 15-A, 17-A to 24-A, 26-A, 28-A, 34-A, 37-A to 44-A and 46-A, and 50-A in Sandy Point Garden Tracts.
- 7 200-foot non-exclusive easement over the waterway shown on Option Land described in Exhibit B to connect such waterway with the proposed waterway on Property.

All easements, rights of way, licenses and permits appurtenant to or for the benefit of Property and the water system described in the foregoing agreement.

Easement to dredge and maintain canal across that portion of Option Land in Government Lot 6, Section 9, as marked in red on Exhibit A is granted upon closing, and as marked <sup>portion of Gov't Lot 1 in Section 16.</sup>

S.S.R.

*[Handwritten initials]*

S.S.R.

*[Handwritten initials]*

Exhibit A (continued)

SUBJECT TO:

Electric pole distribution line, and appurtenances, as revealed by Transfer & Conveyance dated January 12, 1957, filed January 16, 1957, as Auditor's File No. 830522, Records of Whatcom County, Washington, made by Richard C. Finkbonner to Puget Sound Power & Light Company, a Massachusetts corporation.

Reservations contained in deed dated June 4, 1957, filed August 2, 1957, as Auditor's File No. 841341, Records of Whatcom County, Washington, made by Richard C. Finkbonner and Lucy Altina Finkbonner, his wife, to James F. Bolster.

~~ALSO SUBJECT TO ANY RES.~~

*With report will be initialed & returned by Purchaser to Seller within one week of its receipt*

*Rdn JAB  
P/S/L  
S.E.R.*

*S.E.R.  
P/S/L  
JAB*

EXHIBIT B

Option Land which consists of the following parcels situated in Township 38 North, Range 1 E.W.M., Whatcom County, Washington, all of which are outlined in green on the plat, plan attached:

- 1 Government Lot 1 in Section 16.
- 2 That portion of Government Lot 6 in Section 9 lying south of the north boundary of Patos Drive if Patos Drive were extended through Section 9 in the same direction as it is now platted in Government Lot 4, Section 8.

S.E.R.  
R.W.  
J.B.  
12/10/21  
Paul

S.E.R.  
R.W.  
Paul



# **EXHIBIT 16**

6/8/65  
988367

AMENDMENT TO SALE AGREEMENT

By Sale Agreement of date April 8, 1965, SANDY POINT CO. (therein and herein called Seller) agreed to sell certain real property and improvements situated in Whatcom County, Washington (therein and herein called Property and Option Land) to R. E. ROGERS, STUART ROGERS and ROBERT R. WALKER (therein and herein called Purchaser).

Seller and Purchaser desire to amend the Sale Agreement, and therefore AGREE:

(1) Paragraph (1) entitled "Purchase Price," is amended to read:

"(1) Purchase Price. Seller sells to Purchaser and Purchaser purchases from Seller, Property for a purchase price of Seventy-two Thousand Five Hundred Dollars (\$72,500.00), payable \$5,000.00 down, receipt of which is acknowledged, and Purchaser agrees to make financing available in the amount of \$45,000.00, said \$45,000.00 to be available to Seller coincident with the closing day of this sale, but not later than June 4, 1965.

50,000<sup>100</sup>

This contract shall bear interest at a rate of six percent (6%) per annum. The contract balance of \$67,500.00 shall be paid —

(a) interest only on the total sum due from date of closing until June 1, 1970 at the rate of six percent (6%) per annum, payable quarterly, and

June 4, 73  
1st Payment

(b) in five (5) equal annual installments, plus interest, beginning June 1, 1970 and on each anniversary date thereafter, and continuing until the balance has been paid in full. All payments shall be applied first to pay the financing of \$45,000.00.

Purchaser may pay the balance due at any time except that not more than twenty-nine percent (29%) of the purchase price can be paid on or before October 1, 1965."

(2) The first sentence of Paragraph (7) entitled

"Closing," is amended to read:

"(7) Closing. Closing shall be as of June 4, 1965."

(3) In all other respects the Sale Agreement of date April 8, 1965, is hereby ratified and confirmed.

DATED this 4th day of June, 1965.

SANDY POINT CO.,

By *W. A. H. [Signature]*  
President

By *Thomas D. [Signature]*  
Secretary

SELLER

*R. E. Rogers*  
R. E. Rogers

*Stuart Rogers*  
Stuart Rogers

*Robert R. Walker*  
Robert R. Walker

PURCHASER

STATE OF WASHINGTON )

ss.

COUNTY OF WHATCOM

On this 4<sup>th</sup> day of June, 1965, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared

John F. [Signature] and Clare J. [Signature] to me known to be the president and secretary, respectively, of SANDY POINT CO., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

[Signature]  
Notary public in and for the state  
of Washington, residing at [Signature]

STATE OF WASHINGTON )

ss.

COUNTY OF KING

"On this 4<sup>th</sup> day of June, 1965, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn personally appeared R. E. ROGERS, STUART ROGERS and ROBERT R. WALKER, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged to me that they signed and sealed the said instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

[Signature]  
Notary public in and for the state  
of Washington, residing at Seattle.

[Signature]

# **EXHIBIT 17**

SECOND AMENDMENT TO SALE AGREEMENT

By Sale Agreement of date April 8, 1965, Sandy Point Co., a Washington corporation (therein and herein called Seller), sold to R. E. Rogers, Stuart Rogers and Robert R. Walker (therein and herein called Purchaser) certain property situated in Township 38 North, Range 1 E.W.M., Whatcom County, Washington, which Sale Agreement was recorded with the Auditor of Whatcom County, Washington on June 9, 1965 under Auditor's File No. 988366 in Volume 29 pages 130 through 142. The Sale Agreement was amended by Amendment to Sale Agreement of date June 4, 1965 between the same parties, which latter Agreement was recorded in the office of the Auditor of Whatcom County, Washington on June 8, 1965 under Auditor's File No. 988367. A legal description of the aforementioned property and a complete plot plan with the property outlined in green were attached to the Sale Agreement and marked Exhibit "A".

Through mutual mistake, a small portion of the property included on the plot plan was omitted from the written legal description, and access to property retained by Seller but optioned to Purchaser was also overlooked. Seller and Purchaser desire to amend the Sale Agreement, and therefore agree that:

(1) The legal description on Exhibit "A" to the Sale Agreement is amended to add to it the following described property:

Government Lot 5 in Section 9, Township 38 North, Range 1, E.W.M., Whatcom County, Washington.

(2) If Purchaser develops...

(2) If Purchaser undertakes development of its land in such a manner as to cut off Option Land from the nearest existing road and utility access they shall first provide at Purchaser's expense comparable road and utility access to a point not more distant, nor more expensive to extend to serve Option land, than now exists.

*JAB & R. Walker*

(3) In all other respects the Sale Agreement of date April 8, 1965, and Amendment to Sale Agreement of date June 4, 1965, are hereby ratified and confirmed.

DATED this 29 day of April, 1966.

R. E. Rogers  
R. E. Rogers

Stuart Rogers  
Stuart Rogers

Robert R. Walker  
Robert R. Walker

SANDY POINT CO.,

By Joe Stahl  
President

By Gene O. ...  
Secretary



# **EXHIBIT 18**



Rec 4/8/65  
988370

ASSIGNMENT OF EASEMENT

By Easement of date December 1, 1962, recorded in the office of the Auditor of Whatcom County, Washington in Volume 480 of deeds page 494 under Auditor's No. 941543, R. D. METCALF and SHIRLEY M. METCALF (therein and herein called Grantors), granted an easement for ground water production and storage purposes to SANDY POINT CO. (therein and herein called Grantee) over the following described property:

A tract of land situated in the Southeast Quarter of said Southwest Quarter of the Northwest Quarter of Section 4, Township 38 North, Range 1 East of W.M., Whatcom County, Washington, described as follows:

Beginning at the southeast corner of said southwest quarter of northwest quarter; thence west 660 feet; thence north 530 feet to the true point of beginning of this description; thence east 100 feet; thence north 100 feet; thence west 100 feet; thence south 100 feet to the true point of beginning.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Grantee hereby assigns, sets over and conveys all of its interest in and to the aforementioned easement to R. E. ROGERS, STUART ROGERS and ROBERT R. WALKER (herein called Assignee).

SUBJECT TO the terms of the Sale Agreement of date April 8, 1965 as amended June 4, 1965  
DATED this 4th day of June, 1965.

SANDY POINT CO.,

By [Signature]  
President

By [Signature]  
Secretary

GRANTEE

STATE OF WASHINGTON )  
COUNTY OF Wahkiakum BB.

On this 4<sup>th</sup> day of June, 1965, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared Dorset Palston and Clara T. Lovelace to me known to be the president and secretary, respectively, of SANDY POINT CO., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

[Signature]

Notary public in and for the state of Washington, residing at [Signature]

#####

# **EXHIBIT 19**

Recorded  
6/8/65  
Auditor's File # 988 365

ASSIGNMENT APPROVAL AND HOLD HARMLESS AGREEMENT

Whereas, R. D. Metcalf and Shirley M. Metcalf have granted to Sandy Point Co. an easement for water development dated Dec. 1, 1962 on a portion of the Southwest quarter of the Northwest quarter of Section 4, Township 38 North Range 1 East of W.M. and recorded under Whatcom County Auditor's file No. 941543, Vol. 480, Page 494; on December 27, 1962, in accordance with the terms of said EASEMENT, the grantors hereby consent to its assignment to R. W. Walker, R. E. Rogers and Stuart Rogers and subsequent assignment by them at some future date to some form of user ownership such as a water association.

Assignees hereby agree to hold R. D. Metcalf and Shirley M. Metcalf, their heirs and assigns, harmless from any and all liability, both public and private, that might arise in connection with the easement and this assignment. Assignees further agree to pay any increased tax assessment that may be levied on the improvements thereon.

R. D. Metcalf  
R. D. Metcalf

Shirley M. Metcalf  
Shirley M. Metcalf

R. W. Walker  
R. W. Walker

S. E. Rogers  
S. E. Rogers

Stuart Rogers  
Stuart Rogers

Acknowledgment

STATE OF WASHINGTON

County of

I, the undersigned, a notary public in and for the state of Washington, hereby certify that on this 28<sup>th</sup> day of May 1965 personally appeared before me R. D. Metcalf, Shirley M. Metcalf, R. W. Walker, S. E. Rogers and Stuart Rogers, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 28<sup>th</sup> day of May 1965

Notary Public in and for the State of Washington  
residing at Grant

# **EXHIBIT 20**

Rec 6/8/65  
988 369

ASSIGNMENT OF WATER PERMIT AND FRANCHISE

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, JAMES F. BOLSTER and \_\_\_\_\_ BOLSTER, his wife (herein called Assignor), hereby assign, transfer, set over and convey to R. E. ROGERS, STUART ROGERS and ROBERT R. WALKER (herein called Assignee), all of Assignor's right, title and interest in and to —

(1) Permit No. 5301, issued by the Department of Conservation of the State of Washington, date of priority March 31, 1960, wherein James F. Bolster is named Permittee, covering three (3) wells located in the SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 4, Township 38 North, Range 1 E.W.M., with quantity and purpose of use 45 g.p.m., 54 acre-feet per year for community domestic supply, place of use Community of Sandy Point.

*1500' ...  
11 ...  
7/2/65  
10/8/65  
11/6/66  
4/8/66*

(2) Franchise of date April 12, 1960 whereby the Board of County Commissioners of Whatcom County, Washington grant unto James F. Bolster a franchise to lay, construct, maintain and repair water pipelines and water mains and all necessary laterals on, along, across, under and over the following roads situate in Whatcom County, Washington, to-wit:

*in deed 4/8/66*

From a point on the south side of the Germain Road Number 778, approximately 1300 feet east of the intersection of the Germain Road Number 778, with the Neptune Road No. 779, thence westerly along the southerly side of said Germain Road Number 778 to its intersection with the Neptune Road, thence southerly on the easterly side of Neptune Road, a distance of approximately 1000 feet, thence under the Neptune Road to the westerly side thereof, thence south along the westerly side of Neptune Road Number 779 and Sucia Drive to Sandy Point.  
SUBJECT TO the terms of the Sale Agreement of date April 8, 1965, as amended June 4, 1965.  
DATED this 4th day of June, 1965.

*James Bolster*  
\_\_\_\_\_  
James F. Bolster  
*JF*  
\_\_\_\_\_  
Bolster



# **EXHIBIT 21**



1038007



REAL ESTATE CONTRACT

1030207

1000

THIS AGREEMENT, made and entered into this 1st JULY 1967, by and between...

between SANDY POINT CO., a Washington corporation, hereinafter called the "seller," and R. E. ROGERS, as his separate estate, ROBERT E. WALKER and VICTORIA E. WALKER, his wife, STUART E. ROGERS and MADGE A. ROGERS, his wife, HAROLD E. ISENHART and GREN-LEE ISENHART, his wife, ARNOLD OLSON and SELMA E. OLSON, his wife, and DONALD S. OLSON and BARBARA L. OLSON, his wife, hereinafter called the "purchaser,"

WITNESSETH: That the seller agrees to sell to the purchaser and the purchaser agrees to purchase of the seller the following described real estate, with the appurtenances, situate in the County of Whatcom State of Washington, to-wit:

Government Lot 1, Section 16, Township 38 North, Range 1 East of W.N., LESS roads, situate in Whatcom County, Washington, ALSO that portion of Government Lot 6, Section 9, Township 38 North, Range 1 East of W.N., lying South of the North boundary of Patos Drive if Patos Drive were extended through Section 9 in the same direction as it is now platted in Government Lot 4, Section 8, LESS roads, situate in Whatcom County, Washington, all of which is more fully described in that certain Sale Agreement of date April 8, 1965 recorded under Auditor's file No. 988366 on June 9, 1965 in volume 29, pages 130 through 145 and more particularly pages 140 and 141, records of Whatcom County, Washington. TOGETHER WITH all easements, rights of way, licenses and permits appertenant to or for the benefit of the above described property.

SUBJECT TO: (1) Rights, if any, of Bellingham Builders Supply, Inc. to remove gravel from the above described property in accordance with a contract with Sandy Point Co. (2) Electric pole distribution line, and appurtenances, as revealed by transfer and conveyance dated January 12, 1957, filed January 16, 1957, as Auditor's file No. 310322, records of Whatcom County, Washington, made by Richard C. Finkbonner to Puget Sound Power & Light Company a Massachusetts corporation. (3) Reservations contained in deed dated June 4, 1957, filed August 2, 1957, as Auditor's file No. 841341, records of Whatcom County, Washington, made by Richard C. Finkbonner and Lucy Altina Finkbonner, his wife to James F. Bolster.

The terms and conditions of this contract are as follows: The purchase price is One Hundred Thousand and no/100 Dollars (\$100,000.00), which Ten Thousand and no/100 Dollars (\$10,000.00) has been paid, the receipt whereof is hereby acknowledged, and the balance of said purchase price shall be paid as follows: 120 equal monthly installments of \$104 each, including interest at the rate of 7 1/2 percent per annum on the unpaid balance, beginning on the 1st day of August, 1967, and the 1st day of and every month thereafter until the entire principal together with interest due has been paid in full.

The purchaser is entitled to take possession of said premises on 1967. The purchaser agrees to pay before delinquency all taxes and assessments that may be levied on said premises. The purchaser assumes all hazards of damage to or destruction of any improvements now on said land or hereafter to be made thereon, and of the taking of said premises or any part thereof for public use. The purchaser agrees, until full payment of the said purchase price, to keep all buildings on said described premises insured to the full insurable value thereof against loss or damage by fire in some company acceptable to the seller for the seller's benefit as interest may appear and to pay all premiums therefor and to deliver all policies and receipts thereof to the seller.

If the purchaser shall fail to make any payment heretofore provided by the purchaser to be made, the seller may make such payment and any amount so paid by the seller, together with interest thereon from date of payment, shall be repaid at the rate of ten (10) per cent per annum, shall be repayable by the purchaser on demand, and the purchaser shall be liable to any other right the seller might have by reason of such default.

The purchaser agrees that full inspection of said described premises has been made and that neither the seller nor the purchaser shall be held to any covenant respecting the condition of any improvements on said premises nor to any covenant for alterations, improvements or repairs, unless the covenant or agreement relied on be in writing and

SIGNATURE & ACKNOWLEDGMENT

1030207

1030207

The seller has procured or agrees, within ten days from date hereof, to procure from Washington Title Insurance Company a purchaser's policy of title insurance, insuring the purchaser in the full amount of the sold purchase price against loss or damage by reason of defect in the title of the seller in the said described premises or by reason of prior liens and encumbrances by the purchaser under this agreement.

The seller agrees, on full payment of said purchase price in manner hereinbefore specified, to state, execute, and deliver to the purchaser a good and sufficient statutory warranty deed of said described premises.

Time is of the essence of this contract. In case the purchaser shall fail to make any payment of the said purchase price promptly at the time the same shall fall due as hereinbefore specified, or promptly to perform any covenant or agreement aforesaid, the seller may elect to declare forfeiture and cancellation of this contract and upon such election being made all rights of the purchaser hereunder shall cease and terminate and any payments theretofore made hereunder by the purchaser shall be retained by the seller in liquidation of all damages sustained by reason of such failure. Service of all demands, notices or other papers with respect to such declaration of forfeiture and cancellation may be made by registered mail at the following address, to-wit:

R. E. Rogers, 10 Harrison Street, Seattle, Washington 98109; or Robert R. Walker, P.O. Box 7443, Bitter Lake Station, Seattle, Washington 98133.

or at such other address as the purchaser will indicate in writing to the seller. Or the seller may elect to bring action, or actions, on any installment overdue or on any payment, or payments, made by the seller and repayable by the purchaser, it being stipulated that the covenant to pay intermediate installments or to pay items repayable by the purchaser, are independent of the covenant to make a deed and that every such action is an action arising on contract for the recovery of money only, so if the promise to pay had been expressed in a different instrument, and that no such action shall constitute an election not to proceed otherwise as to any subsequent default, and no waiver by the seller of any default on the part of the purchaser shall be construed as a waiver of any subsequent default.

In any suit or action to enforce any covenant of this contract or to collect any installment payment or any charge owing thereon, the purchaser agrees to pay a reasonable sum as attorney's fees and all costs and expenses in connection with such suit, and also the reasonable cost of searching records, which sums shall be included in any judgment or decree entered in such suit.

IN WITNESS WHEREOF, the parties hereto have executed this instrument in duplicate the day and year first herein written.

SANDY POINT CO.

*James Bolster*  
James Bolster, President  
*W. A. Lovelace*  
W. A. Lovelace, Secretary

*R. E. Rogers*  
R. E. Rogers  
*Robert R. Walker*  
Robert R. Walker

Victoria R. Walker, Stuart E. Rogers and Madge A. Rogers, Harold E. Isenhart and Gwen-Lee Isenhart, Arnold Olson and Selma E. Olson, Donald S. Olson and Barbara Olson

By *Robert R. Walker*  
Robert R. Walker, their Attorney in Fact.

STATE OF WASHINGTON )  
COUNTY OF KING ) ss.

On this 10th day of July, 1967, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn per-  
sonally by JAMES V. BOLSTER and W. A. LOVELACE, to me known to be the President and Secretary, respectively, of SANDY POINT CO., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

*Ray E. Perkins*  
Notary public in and for the state of Washington, residing at 1030207

1030207

Real Estate Contract

FROM

TO

RECORDED  
BELLINGHAM TITLE CO.

1967 JUL 10 PM 4:00

VOL. \_\_\_\_\_ PAGE \_\_\_\_\_  
REQUEST OF \_\_\_\_\_  
WILLIAM HANSEN, CLERK  
KING COUNTY, WASH.  
WILLIAM HANSEN, DEPUTY

WASHINGTON  
TITLE INSURANCE  
COMPANY

SEATTLE WASHINGTON

*William Hansen*  
William Hansen, Clerk  
*John K. Anderson*  
John K. Anderson, Deputy

and The Statement to

1030207

1030207

# **EXHIBIT 22**

STATUTORY WARRANTY DEED

-----  
THE GRANTOR, SANDY POINT CO., a Washington corporation, for and in consideration of Ten Dollars and other valuable consideration in hand paid, conveys and warrants to R. E. ROGERS, STUART E. ROGERS and ROBERT R. WALKER, the following described real estate, situated in the County of Whatcom, State of Washington:

PARCEL A: Government Lots 1, 2, 3 and 4, all in Section 8, Township 38 north, Range 1 East of W.M., EXCEPTING THEREFROM those portions included within the plats of "Bolsters Sandy Point Tracts No.3"; "Sandy Point Garden Tracts"; "Plat of Bolster's Sandy Point Tracts"; "Bolsters Sandy Point Tracts No. 2"; and further EXCEPTING THEREFROM the North 200 feet of Government Lot 4, LESS roads, situate in Whatcom County, Washington.  
ALSO Government Lot 5, and that portion of Government Lot 6, Section 9, Township 38 North, Range 1 East of W.M., lying North of the North line of Patos Drive if Patos Drive were extended through Section 9 in the same direction as it is now platted in Government Lot 4, Section 8, LESS roads, situate in Whatcom County, Washington.

PARCEL B: All of "Sandy Point Garden Tracts," Whatcom County, Washington, as per the map thereof, recorded in Book 8 of Plats, page 82, in the Auditor's office of said county and state, EXCEPTING THEREFROM the following lots or tracts: 1-A to 4-A; 6-A to 9-A; 11-A; 16-A; 25-A; 27-A; 29-A to 33-A; 35-A; 36-A; 45-A; 47-A to 49-A; 51-A to 53-A.  
ALSO Lot 73, EXCEPT the South 50 feet thereof, "Bolster's Sandy Point Tracts No. 3," Whatcom County, Washington, as per the map thereof, recorded in Book 8 of Plats, page 81, in the Auditor's office of said county and state.  
ALSO Lot 72, "Bolster's Sandy Point Tracts No.2," Whatcom County, Washington, as per the map thereof, recorded in Book 8 of Plats, page 80, in the Auditor's office of said county and state.  
ALSO Lots 54-A to 68-A, inclusive, "Bolster's Sandy Point Tracts No. 2," Whatcom County, Washington, as per the map thereof, recorded in Book 8 of Plats, page 80, in the Auditor's office of said county and state.  
EXCEPT Lot 17; the easterly 51 feet of Lot 58; Lot 59 except the northeasterly 34 feet thereof; Lot 60 and Lot 81, in Sandy Point Shores No. 1.

TOGETHER WITH the following easements:

(1) A 200-foot non-exclusive easement over the waterway included in the following described property to connect such waterway with the proposed waterway on the above described property, which waterway is shown on Exhibit B hereto attached: Government Lot 1, in Section 16; that portion of Government Lot 6, in Section 9, lying south of the north boundary of Patos Drive if Patos Drive were extended through Section 9 in the same direction as it is now platted in Government Lot 4, Section 8, in Township 38 North, Range 1 E.W.M., Whatcom County, Washington.

- (2) All easements, rights of way, licenses and permits appurtenant to or for the benefit of the above described property and the water system thereon.
- (3) Easement to dredge and maintain canal across that portion of Government Lot 6, Section 9, as marked in red on Exhibit A hereto attached, and as marked a portion of Government Lot 1 in Section 16.

SUBJECT TO:

- (1) Electric pole distribution line, and appurtenances, as revealed by Transfer & Conveyance dated January 12, 1957, filed January 16, 1957, as Auditor's File No. 830522, records of Whatcom County, Washington, made by Richard C. Finkbonner to Puget Sound Power & Light Company, a Massachusetts corporation.
- (2) Reservations contained in deed dated June 4, 1957, filed August 2, 1957, as Auditor's File No. 841341, records of Whatcom County, Washington, made by Richard C. Finkbonner and Lucy Altina Finkbonner, his wife, to James F. Bolster.

This deed is given in fulfillment of that certain sale agreement between the parties hereto, dated April 8, 1965, recorded June 8, 1965, under Auditor's File No. 988366 in Volume 29, page 130, amendment to sale agreement, dated June 4, 1965, recorded June 8, 1965 under Auditor's File No. 988367 in Volume 29, page 145, and second amendment to sale agreement dated April 29, 1966, recorded May 17, 1966, under Auditor's File No. 1007150, in Volume 45 page 132, records of the Auditor of Whatcom County, Washington, and conditioned for the conveyance of the above described property, and the covenants of warranty herein contained shall not apply to any title, interest or encumbrance arising by, through or under the purchaser in said agreement, and shall not apply to any taxes, assessments or other charges levied, assessed or becoming due subsequent to the date of said agreement.

This deed is subject to grantee's obligation to provide at grantee's expense, comparable roads and utility access to what has been described as option land, all as provided for in paragraph 2, page 1 of the second amendment to sales agreement dated April 29, 1966, which has been heretofore referred to.

IN WITNESS WHEREOF said corporation has caused this instrument to be executed by its proper officers and its corporate seal to be hereunto affixed this 4<sup>th</sup> day of April, 1967.

SANDY POINT CO.,

BY James F. Bolster, President

BY Una D. Lovelace, Secretary



# **EXHIBIT 23**

RECORDED  
4TH COVER PROCESS  
1580041 Aug 6 11 48 AM '81

NOTICE TO PUBLIC OF WATER SYSTEM CONNECTION  
AND CONTINUATION CHARGES

NOTICE IS HEREBY GIVEN that all properties within the subdivisions described on Exhibit A receive water service from the Sandy Point Improvement Company.

Prior to transfer of ownership, inquiries should be made of the Sandy Point Improvement Company concerning charges or conditions for implementation or continuation of such water service

Inquiry may be made at the offices of Sandy Point Improvement Company, P.O. Box 1418, Ferndale, Washington 98248.

Failure to inquire of Sandy Point Improvement Company concerning such charges or conditions and failure to satisfy same prior to transfer of ownership may result in the transferee being responsible for any such charges prior to receiving water service.

DATED this 9th day of March, 1984.

SANDY POINT IMPROVEMENT COMPANY  
BY: Roy Pottle  
ROY POTTLE, President

STATE OF WASHINGTON )  
COUNTY OF WHATCOM )

On this 9th day of March, 1984, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared ROY POTTLE, to me known to be the President of SANDY POINT IMPROVEMENT COMPANY, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.  
R. Mark [Signature]  
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham.

1580041

AS Mandator et al  
205 Dupont St  
Bremmer



158004!

EXHIBIT A

Properties affected by this notice:

- ✓ Bolster's Sandy Point Tracts No. 1 according to the Plat thereof recorded in the Auditor's Office of Whatcom County, Whatcom County, Washington.
- ✓ Bolster's Sandy Point Tracts No. 2 according to the Plat thereof recorded in the Auditor's Office of Whatcom County, Whatcom County, Washington.
- ✓ Bolster's Sandy Point Tracts No. 3 according to the Plat thereof recorded in the Auditor's Office of Whatcom County, Whatcom County, Washington.
- ✓ Bolster's Sandy Point Tracts No. 4 according to the Plat thereof recorded in the Auditor's Office of Whatcom County, Whatcom County, Washington.
- ✓ Plat of North Cape Sandy Point filed in Volume 9 of Plats, pages 122 and 123, Records of Whatcom County Auditor's Office, Whatcom County, Washington.
- ✓ North Cape Division 2 Short Plat found in Volume 11 of Plats, page 73, Records of Whatcom County Auditor's Office, Whatcom County, Washington.
- ✓ Sandy Point Garden Tracts according to the Plat thereof recorded in the Auditor's Office of Whatcom County, Washington.
- ✓ Sea Ranch Condominium, a condominium according to the Declaration thereof filed with the Auditor's Office of Whatcom County, Washington.

# **EXHIBIT 24**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF  
RESPONSE TO DATA REQUEST

DATE PREPARED: March 6, 2013  
DOCKET: UW-121408  
REQUESTER: Sandy Point

WITNESS: Undetermined  
RESPONDER: Jim Ward  
Lynda Holloway  
Rayne Pearson  
Donald T. Trotter

**SANDY POINT DATA REQUEST NO. 12:**

Do you contend that Sandy Point is “providing water service to the public for hire” as described in your answer to Data Request No. 11? If your answer or any part thereof is in the affirmative, please set forth in detail each and every fact, and every statutory or regulatory provision or common law doctrine, upon which you base your contention.

**RESPONSE:**

Commission Staff objects to this data request to the extent it calls for production of statutes, regulatory provisions or common law doctrine, because these are legal matters, not facts. The Commission has made a limited waiver of this objection and the attorney-client privilege as it relates to the memos produced in Staff’s supplemental response to Sandy Point Improvement Company’s Data Request 4, and we therefore refer you to that response.

Commission Staff contends that Sandy Point Improvement Company is a corporation controlling, operating or managing a water system for hire in this state, and provides such service to the public, as those terms are used in RCW 80.04.010(30). Commission Staff understands that WAC 480-110-255 is an interpretive rule and cannot create exemption where none exist by law.

For the basis for Staff’s contention, see Commission Staff’s response to Sandy Point Improvement Company’s Data Requests 8, 9 and 10.

# **EXHIBIT 25**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF  
RESPONSE TO DATA REQUEST

DATE PREPARED:	March 6, 2013	WITNESS:	Undetermined
DOCKET:	UW-121408	RESPONDER:	Jim Ward
REQUESTER:	Sandy Point		Lynda Holloway
			Rayne Pearson
			Donald T. Trotter

**SANDY POINT DATA REQUEST NO. 16:**

Do you contend that Sandy Point is not eligible for the exemption identified in WAC 480-110-255(1)(f) for “homeowner associations, cooperatives and mutual corporations or similar entities”? If your answer or any part thereof is in the affirmative, please set forth in detail each and every fact, and every statutory or regulatory provision or common law doctrine, upon which you base your contention.

**RESPONSE:**

Commission Staff objects to this data request to the extent it calls for production of statutes, regulatory provisions or common law doctrine, because these are legal matters, not facts. The Commission has made a limited waiver of this objection and the attorney-client privilege as it relates to the memos produced in Staff’s supplemental response to Sandy Point Improvement Company’s Data Request 4, and we therefore refer you to that response.

Commission Staff contends that Sandy Point Improvement Company is a corporation controlling, operating or managing a water system for hire in this state, as those terms are used in RCW 80.04.010(30), and provides such service to the public. (See Staff’s Response to Sandy Point Improvement Company Data Requests 8, 9 and 10). Commission Staff understands that WAC 480-110-255 is an interpretive rule and cannot create exemption where none exist by law.

Commission Staff contends that Sandy Point Improvement Company is not exempt from Commission regulation under the decisions of the state supreme court in the *Inland Empire* and *Nob Hill* cases. These cases are discussed in detail in the memos produced in Staff’s supplemental response to Sandy Point Improvement Company’s Data Request 4. The Commission has made a limited waiver of the attorney-client privilege as it relates to these memos.

For additional facts forming the basis for Staff’s contention, see Commission Staff’s response to Sandy Point Improvement Company’s Data Requests 8, 9 and 10.

In addition, Staff contends Sandy Point Improvement Company is neither a homeowner association, a cooperative nor a mutual corporation. The company is not organized as a homeowner association, a cooperative or a mutual corporation. See the Sandy Point Improvement Company Articles of Incorporation produced in response to Staff Data Request 12. In particular, the Articles of Incorporation (Article V3) states that Class C shareholders:

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF  
RESPONSE TO DATA REQUEST

DATE PREPARED:	March 6, 2013	WITNESS:	Undetermined
DOCKET:	UW-121408	RESPONDER:	Jim Ward
REQUESTER:	Sandy Point		Lynda Holloway Rayne Pearson Donald T. Trotter

may only vote for the election of the Board of Directors and on water service matters that are presented by the Board of Directors for a vote of the shareholders at any annual or special meeting called for that purpose. The holders of Class C stock shall have no vote on other matters presented at any meeting of the shareholders and shall not participate in any dividend of the corporation or in any distribution on liquidation of the corporation. Such share shall solely represent the right of the holder thereof to have water service provided by the corporation to real property owned by the shareholder in the vicinity of Sandy Point to which property such share shall be appurtenant.

And, in a letter to shareholders dated March 2010, the president of Sandy Point Improvement Company stated: "The Class C shareholder has no ownership interest in Sandy Point Improvement Company or its assets ..." He also stated: "SPIC is not a 'Homeowners Association' as defined by RCW 64.38 and is not governed by or subject to the provisions of that statute." He also stated: "SPIC is a for profit corporation. It was organized under the laws of the state of Washington in April of 1965. It now and always has been a for profit corporation in good standing." In addition, in a February 28, 2010, letter to the Sandy Point Improvement Company Board, Sandy Point Improvement Company's Vice President stated that Sandy Point Improvement Company is "emphatically not" a homeowners association.

Commission Staff contends Sandy Point Improvement Company is not "similar" to a homeowner association, cooperative or mutual corporation because while all shareholders have a vote, not all shareholders have a financial interest in the financial returns of the company, and not all shareholders have an ownership interest in the company or its assets. The details are discussed above. Related facts and reasons are stated in the memos provided in Staff's supplemental response to Sandy Point Improvement Company's Data Request 4. The Commission has made a limited waiver of the attorney-client privilege as it relates to these memos.

# **EXHIBIT 26**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF  
RESPONSE TO DATA REQUEST

DATE PREPARED: March 6, 2013  
DOCKET: UW-121408  
REQUESTER: Sandy Point

WITNESS: Undetermined  
RESPONDER: Jim Ward  
Lynda Holloway  
Rayne Pearson  
Donald T. Trotter

**SANDY POINT DATA REQUEST NO. 25:**

Do you contend that Sandy Point has provided a dividend of the corporation to any class of shareholder, individual shareholder, or any other person or entity for the dates 1965 through the date of your answer? If your answer or any part thereof is in the affirmative, please set forth in detail each and every fact upon which you base your contention.

**RESPONSE:**

Commission Staff does not contend that Sandy Point either has or has not provided a dividend of the corporation to any class of shareholder, individual shareholder, or any other person or entity for the dates 1965 through the date of this answer.



# **EXHIBIT 27**



Bob Ferguson

## ATTORNEY GENERAL OF WASHINGTON

Utilities and Transportation Division

1400 S Evergreen Park Drive SW • PO Box 40128 • Olympia WA 98504-0128 • (360) 664-1183

February 21, 2013

Joseph A. Rehberger  
Cascadia Law Group PLLC  
606 Columbia St. NW, Suite 212  
Olympia, WA 98501

RE: *WUTC v. Sandy Point Improvement Company*  
Docket UW-121408

Dear Mr. Rehberger:

Attached is a supplement to Commission Staff's response to Sandy Point Improvement Company's Data Request 4 to Staff. We have stricken through the privilege designation on the documents to avoid later confusion as to the status of the documents.

Sincerely,

DONALD T. TROTTER  
Assistant Attorney General

DTT:klg

Enclosures

cc: Stephen Lockwood

ATTACHMENT I



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

Utilities and Transportation Division

1400 S Evergreen Park Drive SW • PO Box 40128 • Olympia, WA 98504-0128 • (360) 664-1183

MEMORANDUM

~~Attorney work product~~  
~~Attorney-client privilege~~

DATE: September 6, 2012

TO: Gene Eckhardt, Assistant Director  
Water and Transportation

FROM: Donald T. Trotter, Assistant Attorney General  
Utilities & Transportation Division *DT*

SUBJECT: Sandy Point Improvement Company

You asked me whether there is a sufficient basis for Commission Staff to recommend the Commission initiate a classification proceeding pursuant to RCW 80.04.015, to determine whether Sandy Point Improvement Company (Sandy Point) is a water utility subject to Commission regulation under RCW 80.28, et al. For the reasons stated below, there is a sufficient basis for Staff to make that recommendation.

Facts

Sandy Point is a for-profit corporation that operates a water system near Ferndale, Washington. In addition to its water operations, Sandy Point operates recreational facilities: a club house, swimming pool and golf course.<sup>1</sup>

<sup>1</sup> I also considered the non-water related operations of Sandy Point. However, I understand that Sandy Point accounts for its water operations separately from its other endeavors. Absent further information indicating that water revenues are used to subsidize non-water activities, the existence of non-water operations does not change the outcome of the analysis.

Sandy Point's water customers generate average annual gross revenues per customer as follows<sup>2</sup>:

Class A shareholder/customers	\$336.49
Class C shareholders/customers	\$376.53
46 non-shareholders/customers	\$451.73
All customers	\$347.15

Sandy Point has 1148 shares of stock outstanding, in three classes; with 899 shareholders and 944 water customers:

	<u>Shares</u>	<u>Shareholders</u>	<u>Water Customers</u>
Class A stock	779	779	779
Class B stock	250	1	0 <sup>3</sup>
Class C stock	119	119	119
Non-shareholders:	—	—	46
TOTALS:	1148	899	944

Each share has one vote. Thus, each Class A and C shareholder has one share and one vote, and the single Class B shareholder has 250 shares and 250 votes. Sandy Point's Class A shareholders have the right to membership in the club house, golf course and pool. The Class C shareholders do not. Each Class A and C share is appurtenant to the real property in the Sandy Point area that is owned by the shareholder. The Class A and C shares cannot be transferred except in the sale of that real property.<sup>4</sup>

Sandy Point's Articles of Incorporation state that Class C shareholders:

may only vote for the election of the Board of Directors and on water service matters that are presented by the Board of Directors for a vote of the shareholders at any annual or special meeting called for that purpose. The holders of Class C stock shall have no vote on other matters presented at any meeting of the shareholders and shall not participate in any dividend of the corporation or in any distribution on liquidation of the corporation. Such share shall solely represent the right of the holder thereof to have water service provided by the corporation to real property owned by the shareholder in the vicinity of Sandy Point to which property such share shall be appurtenant ...<sup>5</sup>

<sup>2</sup> Sandy Point's response to Staff Data Request 2. As I understand it, Staff has reviewed these figures and considers them reliable. WAC 490-110-255(3) sets forth the formula for calculating annual average revenues per customer.

<sup>3</sup> The Class B shareholder is not a Sandy Point water customer.

<sup>4</sup> Sandy Point Articles of Incorporation (dated December 29, 2011), Article V, Sections 1 and 3, respectively.

<sup>5</sup> *Id.*, Article V, Section 3. There appears to have been some dispute whether the Class C vote language quoted here was a legitimate change to the Articles of Incorporation. However, Staff has reviewed the minutes of a special shareholder meeting on May 19, 2012, which indicate a vote was taken and those voting rights were approved. In addition, Mr. Rehberger, counsel for Sandy Point, confirmed that we have the current version of the Sandy Point Articles of Incorporation. We therefore will assume the language in Article V, Section 3 of the Articles of Incorporation (quoted above and at the bottom of page 1 of this memo) accurately reflects the nature of the Class C voting rights.

For Class A and B shareholders, the Articles of Incorporation contain no such restrictions against dividends or distributions of assets upon liquidation.

We understand the Class B shareholder is a developer, though it is not clear what interest the 250 shares represent. According to the Articles of Incorporation, each Class B share "shall be fully transferable at the discretion of the holder thereof..."<sup>6</sup> Thus, unlike the Class A and C shares, the Class B shares are not tied to specific parcels of real estate.

#### Issue and Brief Answer

Issue: Is Sandy Point, or any parts thereof, exempt from UTC regulation as a water company?

Brief Answer:

1. Subject to Conclusion 4 below, Sandy Point is not subject to UTC regulation as a water company to the extent it serves the 46 non-shareholder customers as a group, standing alone.
2. Sandy Point likely is subject to UTC jurisdiction as a water company to the extent it serves the 119 Class C shareholders/customers as a group, standing alone.
3. Sandy Point may or may not be subject to UTC jurisdiction as a water company to the extent it serves the 779 Class A shareholders/customers as a group, standing alone, depending on the legal impact of the single Class B non-customer shareholder, who has 250 votes.
4. If Sandy Point is ineligible for the entity exemption regarding its Class A or Class C shareholders/customers, then Sandy Point would also be subject to UTC regulation as to the 46 non-shareholder customers.

#### Analysis

##### 1. *Applicable Law: Statutes, Rules and Judicial Precedent*

The UTC regulates water companies under RCW 80.28. Under the statutory definitions, as pertinent here, "water company" "includes every corporation ... controlling, operating, or managing any water system for hire within this state." RCW 80.04.010(30)(a). However, a company meeting this definition is not necessarily subject to UTC jurisdiction, because there are two exemptions potentially applicable here.

The first exemption I call the "statutory exemption". The statutory exemption is found in RCW 80.04.010(30)(b), which excludes from the definition of "water company" any water system meeting both of the following conditions: 1) the company serves 99 or fewer

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<sup>6</sup> *Id.* Article V, Section 2.

customers; and 2) the company's average annual gross revenue per customer is \$557 or less.<sup>7</sup>

The second exemption I call the "entity exemption". The entity exemption applies to companies that meet the literal definition of "water company" in the statutes, but do not have the indicia of a public service company, i.e., they do not hold themselves out to serve the public. This exemption may arise from RCW 80.04.010(23), which classifies each water company as a "public service company". In any event, this exemption is recognized by the courts of this state.

There are three court cases from Washington that provide guidance on this entity exemption. The first case is *State ex rel. Adky v. Department of Public Works*, 158 Wash. 462 (1930), which involved The Fruitdale-on-the-Sound Water Company (Fruitdale Company). The Fruitdale Company was a for-profit corporation that operated a water utility serving customers on property located within a plat called "Fruitdale-on-the-Sound". Fruitdale Company also served customers on property outside, but in the vicinity of, that plat.

The court ruled that the Fruitdale Company was a water company subject to regulation by the UTC's predecessor agency. The court rejected the Fruitdale Company's claim that it was not a public utility because each customer it served had a separate, private contract with the company. The court reasoned that the Fruitdale Company fell within the statutory definition of "water company", and it could not alter that status by private contract. 158 Wash. at 466.

The second case is *Inland Empire Rural Electrification, Inc. v. Department of Public Service*, 199 Wash. 527 (1939). That case involved Inland Empire Rural Electrification, Inc. (Inland Empire), a non-profit mutual corporation that operated electrical facilities to provide electricity to its members only. The court noted that while Inland Empire met the literal definition of "electrical company" in the statutes of the UTC's predecessor agency, that did not make Inland Empire a "public service corporation" subject to state regulation. 199 Wash. at 535. The court identified the applicable legal test as follows:

A corporation becomes a public service corporation subject to regulation by [the UTC's predecessor agency] only when, and to the extent that, its business is dedicated or devoted to public use. The test to be applied is whether or not the corporation holds itself out, expressly or impliedly, to supply its service or product for use either by the public as a class or that portion of it that can be served by the utility; or whether, on the contrary, it merely offers to serve only particular customers of its own selection.

*Id.* at 537 (citations omitted). The court emphasized that "[w]hat it does is the important thing, not what it, or the state, says that it is." *Id.* at 538.

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<sup>7</sup> The version of WAC 480-110-255(1)(b) in effect on the date of this memo increased the annual revenue per customer exemption maximum from the initial \$300 level in the statute to \$471, per the authorization in RCW 80.04.010(30)(b). The Commission recently approved a rule amendment that increases the exemption level for average annual gross revenue per customer to \$557 or less. That rule change is effective September 9, 2012. I will use the \$557 figure in my analysis, but the analysis would not be different had I used the \$471 figure.

The court went on to conclude that Inland Empire was not a public service company subject to state regulation because it was not "engaged in business for profit for itself at the expense of a consuming public that has no voice in the management of its affairs and no interest in the financial returns", and thus its customers did not require protection of the public service laws. *Id.* at 539. The court emphasized that Inland Empire served only its members, at cost, and any surplus funds were returned to those members ratably each year. *Id.* at 540<sup>8</sup>. The court specifically noted the "complete identity of interest between the corporate agency supplying the service and the persons who are being served. It is a league of individuals associated together in corporate form for the sole purpose of producing and procuring for themselves a needed service at cost." *Id.*

Note that the legal test enunciated by the court in *Inland Empire* qualified the application of the public service laws "to the extent" that the company dedicated its property to public use. This means, for example, that had Inland Empire served non-members, it would be a regulated water company, but only "to the extent" it served those non-members. This is consistent with the court's underlying rationale that non-member customers need the protection of the public service laws.

The third court case from this state on this subject is *West Valley Land Company, Inc. v. Nob Hill Water Association*, 107 Wn.2d 359 (1986). This case involved the Nob Hill Water Association (Nob Hill); a non-profit cooperative that provided water service only to its members, at cost. The court observed that while Nob Hill met the literal definition of "water company" in RCW 80.04.010, that did not end the inquiry. The court quoted and applied the legal test stated in the *Inland Empire* case, which is set forth in the block-indent above.

In applying the legal test from *Inland Empire*, the court emphasized that Nob Hill "did not conduct its operations for gain to itself, or for the profit of investing stockholders, but functions entirely on a cooperative basis." 107 Wn.2d at 367. Nob Hill served only its shareholder members, all of which "have a 'voice' in the management of its affairs." 107 Wn.2d at 368. The court contrasted Nob Hill with a corporation "engaged in business for itself at the expense of a consuming public which has no voice in the management of its affairs and no interest in its financial returns." 107 Wn.2d at 368.

At the same time, the court noted that some water users did not literally have a vote because they were served via a landlord or condominium association that was the water customer and co-op member. However, these tenants "receive the same benefit as other members and are not charged an additional amount for their water nor are they treated differently as a class." *Id.* at 369. Because the tenants had the same interest as their landlord or condominium association, they could not be "exploited". The court said "[e]quality of representation is not required by *Inland Empire*; all that is requisite is a voice in the cooperative". *Id.*<sup>9</sup>

<sup>8</sup> The court did not explain what it meant by "ratably".

<sup>9</sup> Because the facts are sketchy, it is not clear why the *Nob Hill* court deemed the tenants to be an important consideration, because the landlord was Nob Hill's water customer. If the court was concerned about the plight of the tenants regarding water service, it should have analyzed whether the landlord was a public service company vis a vis the tenants, because as between the two, the landlord was the water provider.

The court also noted that, unlike Inland Empire, Nob Hill retained its net income rather than paying it out ratably to its shareholders. However, the court did not find this distinction meaningful, because "a reasonable retention of profits for future liquidity and working capital is permissible". *Id.*

The UTC has codified the entity exemption in WAC 480-110-255(2)(e), which exempts from UTC regulation "homeowner associations, cooperatives and mutual corporations, or similar entities that provide service only to their owners or members". The rules go on to state that this exemption does not apply to the extent such entities serve more than 99 non-owners or non-members, or the average annual gross revenue related to those non-owners or non-members exceed \$557 per customer. WAC 480-110-255(2)(f), as amended (see footnote 4). I conclude that these rules reasonably implement the statute and the principles of the court decisions I located and discussed above, and should be applied in light of that statute and those decisions.

## 2. Applying the Law to the Facts

As a starting point, there is no question Sandy Point meets the statutory definition of "water company" because Sandy Point literally is a "corporation ... controlling, operating, or managing any water system for hire within this state." RCW 80.04.010(30)(a).

However, Sandy Point may be eligible for the statutory exemption or the entity exemption I discuss above. Also, because the *Inland Empire* court adopted a legal test to determine "the extent" to which a company would be subject to UTC regulation, I analyze these exemptions with regard to the separate various customer/shareholder groups Sandy Point serves.

### *The 46 Non-Shareholder Customers.*

Sandy Point's 46 non-shareholder customers are not members, owners or shareholders of Sandy Point. Therefore, they must be analyzed under the statutory exemption, because the entity exemption does not apply to them.

These 46 non-shareholder water customers qualify for the customer number part of the statutory exemption (i.e., 46 is within the 99 customer number exemption maximum), and, because they have average annual gross revenues per customer of \$451.73, they also qualify for the average annual gross revenue per customer part of the statutory exemption (i.e., \$451.73 is within the \$557 average annual gross revenue per customer exemption maximum). Therefore, Sandy Point is not subject to UTC jurisdiction as a water company to the extent Sandy Point provides water service to those 46 non-shareholder customers.

However, it is important to point out that if it turns out that Sandy Point is not eligible for the entity exemption for its Class A or Class C shareholders/customers, then Sandy Point would be subject to UTC jurisdiction to the extent it serves the 46 non-shareholder customers, because in that circumstance, Sandy Point would then exceed the statutory customer number exemption maximum of 99 customers.



*The Class A Shareholders/Customers.*

The next issue is whether Sandy Point is eligible for the entity exemption to the extent it serves the Class A shareholders/customers.

Sandy Point is a for-profit corporation, like the company the court found to be subject to regulation in *Adky*, and unlike the companies the court found not subject to regulation in *Inland Empire* and *Nob Hill*. If the court intended all profit-seeking corporations to be ineligible for the entity exemption, Sandy Point would be subject to UTC regulation because it would exceed the maximum customer number exemption of 99 customers<sup>10</sup>.

However, as I described in the "Facts" section above, each of Sandy Point's 779 Class A shareholders/customers have one vote and, apparently, have a right to any dividends Sandy Point may declare, plus a claim to any assets remaining when Sandy Point dissolves. These facts likely render inapplicable the court's concern about for-profit corporations "engaged in business for profit for itself at the expense of a consuming public that has no voice in the management of its affairs and no interest in the financial returns".<sup>11</sup> Therefore, I tentatively conclude Sandy Point is not subject to UTC regulation to the extent it serves the Class A shareholders/customers.

The reason this conclusion is "tentative" is because of the impact the Class B shareholder has on the analysis. Recall that the Class B shareholder is not a water customer, yet holds 250 shares, and thus has 250 votes. With regard to voting rights, the *Nob Hill* court stated that "all that is requisite is a voice", and Sandy Point's Class A shareholders/customers literally have "a voice" (i.e., they have a vote). However, the court made that statement in the context of shareholders/customers with one vote each, with any non-voting water users having an identity of interest with those shareholders/customers.

Here, by contrast, the 250 vote Class B block is not held by a Sandy Point water customer, and 250 shares in one shareholder diminishes substantially the "one customer, one vote" situation that applied in *Inland Empire* and *Nob Hill*. Moreover, we are lacking information regarding whether the 250 shares represent a proportionate interest in Sandy Point's operations, or whether the Class B shareholder has an identity of interest with the Class A and C shareholders.

In this regard, I considered a recent decision by the Utah supreme court,<sup>12</sup> *Bear Hollow Restoration, LLC v. Public Service Commission of Utah*, 274 P.3d 956 (2012), in which the court affirmed the Utah commission's determination that a non-profit mutual water company was not subject to regulation as a public service company. The crux of the case was the fact that two shareholders formed a partnership that held more than 50 percent of all outstanding shares. The court acknowledged that the partnership "exerts considerable influence over [the water cooperative's] affairs". 274 P.3d at 959. However, the court concluded that

<sup>10</sup> Because Sandy Point would exceed the customer number exemption maximum, the annual gross revenue per customer threshold becomes irrelevant.

<sup>11</sup> *Inland Empire*, 199 Wash. at 539.

<sup>12</sup> This case was referred to me by counsel for Sandy Point.

partnership's interests "are aligned with those of other shareholders to provide adequate service at affordable rates", and the partnership was voting "only its proportionate interest". 274 P.3d at 963.<sup>13</sup>

It is not clear at present whether Sandy Point's Class B shareholder's interests are aligned with other ratepayers and that the Class B shares represent a "proportionate interest" in Sandy Point's operations. Absent more, the facts do not clearly exempt Sandy Point from UTC jurisdiction to the extent it serves the Class A shareholders/customers.

#### *The Class C Shareholders/Customers.*

Sandy Point's Class C shareholders/customers stand in a position similar to the Class A shareholders/customers, but there is an important difference. Under the Sandy Point Articles of Incorporation<sup>14</sup>, the Class C shareholders/customers are denied participation in any dividend the corporation may declare and any distribution on corporate dissolution. As the Articles summarize, the Class C shares "solely represent the right of the holder thereof to have water service provided by [Sandy Point]." The Class A shareholders/customers are not subject to these limitations.

Recall again the *Inland Empire* court's concern about companies "engaged in business for profit for itself at the expense of a consuming public that has no voice in the management of its affairs and no interest in the financial returns" (emphasis added). 199 Wash. at 539. The *Nob Hill* court reiterated this point. 107 Wn.2d at 368. Even assuming the Class C shareholders/customers have a sufficient "voice"<sup>15</sup>, it is apparent they have no legal interest in Sandy Point's "financial returns". Therefore, the entity exemption likely does not apply to the extent Sandy Point serves the Class C customers.

I conclude that even assuming the Class C shareholders'/customers' vote constituted a sufficient "voice" under *Inland Empire*, Sandy Point likely is subject to UTC jurisdiction as a water company to the extent it serves the Class C shareholders/customers, because the entity exemption does not apply, and the Class C shareholders/customers are 119 in number, which exceeds the statutory customer number exemption maximum of 99 customers.

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<sup>13</sup> The Utah court does not explicitly follow the test articulated in *Inland Empire*. In Utah, the analysis evaluates, among other things, whether the entity at issue has "monopolistic incentives" or presents a risk of "monopolistic coercion". 274 P.3d at 962 and 963. In the *Bear Hollow* case, the court noted that for a cooperative, such concerns typically are not at issue because if rates are too low, the consumer-members must either "accept curtailed service or contribute to the cooperative to improve service. On the other hand, if rates are too high, the collected surplus is returned to the consumer-members pro rata." *Id.* at 962-63, citing *Garkane Power Co. v. Public Service Commission*, 100 P.2d 571 (1940). The court also referred to the consumer-members "power to elect other directors and demand certain changes." *Id.* at 963, quoting *Garkane*, 100 P.2d at 573.

Sandy Point does not simulate this situation because the Class C shareholders cannot share in a surplus. Under the Sandy Point Articles of Incorporation provisions discussed earlier, Class C shareholders are not entitled to a dividend or any share of the funds that remain upon dissolution of the corporation.

<sup>14</sup> I quoted the pertinent language in the Facts section above.

<sup>15</sup> The same issue I raised for Class A shareholders/customers regarding the impact of the Class B shareholders' 250 shares applies to the Class C shareholders/customers. See my discussion of Class A shareholders/customers in this regard.

ATTACHMENT J

MEMORANDUM

~~Attorney work product~~  
~~Attorney-client privilege~~

DATE: September 20, 2012

TO: Gene Eckhardt, Assistant Director  
Water and Transportation

FROM: Donald T. Trotter, Assistant Attorney General  
Utilities & Transportation Division

SUBJECT: Sandy Point Improvement Company

I am sending this memo to supplement my September 6, 2012, memo regarding Sandy Point Improvement Co., Inc. (Sandy Point). Since I wrote that memo, I received a phone call from Mr. Rehberger, attorney for Sandy Point, who informed me the corporation has redeemed the Class B shares, or soon would redeem those shares.

The absence of Class B shares does not change my legal conclusion, because the primary issue I have identified is that the Class C shareholders have no right or claim to the earnings of Sandy Point's water operations, or to Sandy Point's water property upon dissolution of the corporation.<sup>1</sup>

As I explained, having such a right or claim was a key basis for the court's conclusion in the *Inland Empire* and *Nob Hill* cases that the owners/customers of a cooperative did not need the protection of the public service laws, and hence the cooperatives in those cases were not subject to UTC regulation.<sup>2</sup>

However, the absence of Class B shares changes some of the discussion in my September 6, 2012, memo, because I had expressed uncertainty whether the 250 Class B shares were proportional to the underlying interest of the shareholder, and whether that shareholder's

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<sup>1</sup> September 6, 2012, memo at 4-6 and at 8.

<sup>2</sup> *Id.*

interests were the same as the other shareholders, who are Sandy Point water customers. I noted that how those issues were resolved could help determine whether the other shareholders had a sufficient "voice" in the affairs of the water utility. As I explained, this "voice" element is another factor considered by the court in both *Inland Empire* and *Nob Hill*.<sup>3</sup> However, if Sandy Point redeemed the Class B shares, that issue is no longer relevant.

In sum, while my earlier discussion requires clarification due to updated information regarding the status of the Class B shares, my conclusion is unchanged: there are sufficient facts to support a UTC Staff recommendation that the UTC initiate a classification proceeding for Sandy Point.<sup>4</sup>

DTT:klg

# **EXHIBIT 28**

# CONCISE EXPLANATORY STATEMENT

Agenda Date: May 26, 1999  
Item Number: 2E

**Docket:** UW-980082  
Rulemaking for Investor Owned Water Companies

Staff: Danny Kermode, Revenue Requirements Specialist 

Gene Eckhardt, Assistant Director Water and Transportation  
Layne Demas, Revenue Requirements Specialist  
Fred Ottavelli, Program Consultant  
Penny Hansen, Public Involvement Coordinator  
Diana Otto, Consumer Program Specialist  
Mary Tennyson, Sr. Assistant Attorney General  
Bob Wallis, Review Judge  
Dennis Moss, Review Judge  
Jennifer Watsek, Rules Coordinator

## Recommendation:

Direct the Secretary to file a Notice of Proposed Rulemaking (CR-102) in Docket UW-980082 with the Office of the Code Reviser along with the Small Business Economic Impact Statement (SBEIS), in order to revise Chapter 480-110 WAC and a portion of Chapter 480-09 WAC.

## Background/Process:

On February 13, 1998, the Commission filed a preproposal statement of inquiry (CR-101) with the office of the Code Reviser to initiate a review of the rules governing water companies in Chapter 480-110 of the Washington Administrative Code (WAC). This review is in compliance with the Governor's Executive Order 97-02 which requires agencies to review their rules for clarity, intent and statutory authority, need, effectiveness and efficiency, coordination, cost and fairness.

The rulemaking process has consisted of soliciting written comments from all interested persons and holding five stakeholder meetings. These meetings were held on April 16, 1998, June 30, 1998, September 15, 1998, October 6, 1998 and April 21, 1999. The meetings were attended by industry members including representatives of both regulated and non-regulated water companies, a representative from the Washington Investor Owned Water Companies Association, and company owners. Also, water customers along with industry attorneys and consultants also attended and participated.



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In addition to the stakeholder meetings, subcommittees were formed on several issues. Staff met with representatives of water companies to work on defining service area and determining the use of facilities charges. Another subcommittee worked with the Department of Health (DOH) on the scope of rules relating to water quality and water quality refunds.

A Small Business Economic Impact Statement was prepared to determine the costs of compliance along with cost mitigation opportunities. Cost mitigation opportunities were identified and some of the proposed rules were modified to take advantage of those opportunities without loss of effectiveness of the rule. An example would be the requirement to provide a complete general ledger at the time of filing. Stakeholders expressed their concern that this was burdensome and would cause additional costs. The requirement was removed from rule.

Copies of all meeting notices mailed by the Commission, discussion drafts, written comments and all materials upon which staff has relied in this rulemaking process are included in the rulemaking file, which is located in the Commission's record management section.

Written comments on this Notice of Proposed Rulemaking may be submitted to the Commission Secretary by June 25, 1999. Written comments should be addressed to Carole Washburn, Executive Secretary. The proposed public hearing on adoption will be Wednesday July 14, 1999.

#### **Changes to existing rules.**

The current rulemaking eliminates rules that are no longer needed such as the rule that requires submission of sample copies of each contract form currently used by the company. The rulemaking adds rules that were policies and writes the rules in clear and concise language as directed by the Governor's Executive Order 97-02. In addition rules that overlap have been combined, for example 12 rules relating to water meters were combined into just two rules.

#### **Proposed New rules:**

Staff proposes the following changes to Chapter 480-110 WAC:

(1) Update the glossary, WAC 480-110-245, by removing words or terms that are not needed or no longer used and adding words or terms to provide clarification of their usage within the proposed rules.

(2) Provide a clear statement of the determination of jurisdiction by the Commission. *WAC 480-110-255-Jurisdiction* of the proposed rules gives clear and understandable guidance to those seeking to understand the Commission's position.

This proposed rule codifies interpretive statement UW-930006. The interpretive statement said the Commission would not include certain revenues in calculating average annual revenue per customer. This rule implements current practice, and includes examples of how the Commission calculates average annual revenue per customer to determine if a water company is jurisdictional

(3) Increase the regulatory revenue threshold required before a water company becomes jurisdictional. RCW 80.04.010 allows the Commission to increase the average annual gross revenue per customer figure which is one of the criteria used to determine WUTC jurisdiction. These proposed rules increase the threshold to \$429 annual revenue per customer from the current \$418 level. The increased threshold recognizes the affects of inflation from the time the threshold was previously adjusted to now. The \$429 was computed using an implicit price deflator from the Department of Commerce, Bureau of Economic Analysis.

(4) Addition of rules that clarify the Commission's requirement regarding adopted tariffs verses initial tariffs. *WAC 480-110-295* of the proposed rules requires initial tariffs be reviewed by the water section staff to ensure the proposed rates are fair, just, reasonable, and sufficient. The rule also gives clear guidance for tariffs that have been adopted by currently regulated companies.

(5) Expand customer notice requirements for tariff filings. This has been a requirement imposed on companies in recent years, but has not been codified in rule form. Proposed rule *WAC 480-110-425* clarifies when advance customer notification is required and what basic information needs to be included.

(6) Adding minimum filing requirements for water company tariff filings to *Chapter 480-09 WAC*. The rules in *Chapter 480-09 WAC* specify what must be filed in support of a tariff filing. However these rules do not currently apply to water companies. This proposed rule defines what staff believes is appropriate to support water company tariff filings, while recognizing requirements for larger non-water companies are not appropriate.

(7) adding a rule, *WAC 480-110-395*, that determines when a water company may be required to refund charges as a result of inferior water quality, and how to calculate the amount of the refund. Staff met with the Department of Health (DOH) and asked them to help define substandard water which is the basis for refunds. The rule limits the



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circumstances in which the Commission will order refunds to acute violations of primary contaminants in excess of maximum contaminant level (MCL) that are not addressed by the company.

**Rule Clarifications:**

The rulemaking team worked with DOH to determine which parts of rule *WAC 480-110-365-Service Responsibility* overlapped with DOH's rules. Those areas already addressed in DOH rules were eliminated as redundant and appropriate references to DOH rules were added.

The proposed rules clarify water company responsibility for complaints and disputes, service responsibilities, in addition to requiring understandable water bills. These rules also address non conventional financing methods. These methods have been used by the Commission and companies to help fund capital projects and emergency repair by companies that do not have access to conventional capital markets. *WAC 480-110-455 Water company funding mechanisms* puts into rule both the surcharge allowed by RCW 80.28.022 and codifies other methods that have been used successfully in the past.

Staff recommends that the Secretary be directed to file a Notice of Proposed Rulemaking (CR-102) along with the Small Business Economic Impact Statement (SBEIS), in Docket UW-980082 with the Office of the Code Reviser, in order to revise *Chapter 480-110 WAC- Water Companies* and *Chapter 480-09 WAC- Procedure*.

Attachment

# **EXHIBIT 29**



New section WAC 480-110-255 increases the threshold for regulatory jurisdiction over water companies to reflect the effects of inflation pursuant to specific statutory authority in RCW 80.04.010. It also codifies commission interpretive statement UW-930006 regarding the calculation of revenue for jurisdictional purposes.

New section WAC 480-110-275 increases the revenue thresholds that are used to classify water companies. The change follows the classifications used by National Association of Regulatory Utility Commissioners (NARUC).

Section WAC 480-110-285 clarifies language regarding transfers of property, affiliated interest arrangements, and securities issuances by regulated water companies, and conforms the language to recent changes in law.

New section WAC 480-110-295 addresses adopted and initial tariffs. The proposed rule clarifies Commission requirements when adopting the tariff of an acquired company and when filing an initial tariff of a newly regulated company.

WAC 480-110-305, access to premises, modifies the prior WAC 480-110-091 only to clarify the language.

WAC 480-110-315, availability of information, modifies prior requirements to allow regulated companies to maintain an "Electronic Office" rather than a physical office. The section is also revised for clarity.

Section WAC 480-110-325, Applications for service, is a revision of the prior rule to create greater clarity. It also adds to the information that water companies must provide to applicants for service when they apply and when the company denies an application for service.

Section WAC 480-110-335, establishment of credit and deposits: this section is revised for clarity and also eliminates an alternative to deposit that was available under the prior rule.

Section WAC 480-110-345 carries forward the topic of prior WAC 480-110-056, Refusal of Service. It is revised for clarity and to allow a company to refuse to serve a location that it is outside the company's service area.

WAC 480-110-355, the rule governing discontinuance of service, removes telephone calls as options for advising a customer of pending disconnection and adds a process by which a customer may ask to postpone disconnection if a medical emergency exists.

WAC 480-110-365, Service responsibilities, is amended to coordinate water company responsibilities to the Commission with statutes and regulations governing the Department of Health.

WAC 480-110-375, Form of bills, is amended to require companies to provide additional information to consumers on water bills to insure consumer awareness and understanding of their water charges. The rule also mandates proration for metered service.

WAC 480-110-385 provides revisions to clarify water company responsibility for complaints and disputes.

WAC 480-110-395, water quality refunds, follows RCW 80.04.110(5) and defines when the Commission may order refunds when a company delivers substandard water.

WAC 480-110-405, meter accuracy and water pressure, combines four prior sections WAC 480-110-111, WAC 480-110-141, Accuracy of meters; Refund for inaccurate metering; WAC 480-110-146, Dispute as to accuracy of meters; and WAC 480-110-151, Complaint meter test; into one section and revises provisions for clarity. An amendment also adds water pressure testing requirements.

WAC 480-110-415, Meters, clarifies the prior WAC 480-110-121, defining water company rights and responsibilities and customer rights and responsibilities relative to water meters.

WAC 480-110-425, Customer notice requirements, codifies requirements for notifying customers of proposed rate increases, new charges, changes in terms or conditions of service, and changes in ownership or company control.

WAC 480-110-435, Extension contracts, imposes applicable contract provisions of WAC 480-80-335 on extension contracts in addition to revising the section for clarity.

WAC 480-110-445, Service connections, clarifies what a service connection is, when a company may impose a service connection charge and when it may not.

WAC 480-110-455, Water company funding mechanisms, clearly identifies non-traditional methods of financing, specifies when they may be used, and directs the related regulatory methodologies.

WAC 480-110-465, Political information and political education activities, clarifies that expenses of funding political information and education are not allowable for ratemaking purposes.

WAC 480-110-475, Reports of accidents, revises the prior WAC 480-110-171 for clarity.

WAC 480-110-485, Retention and preservation of records and reports, updates and clarifies the former WAC 480-110-176.

WAC 480-110-495, Maps, removes the requirement that a company must include a map of its current service area in its filed tariff. The company now must maintain a current map of each of its water systems, and provide it to the Commission within five days of a Commission request.

New WAC 480-09-337 lists information that a company must file when it seeks a general rate increase.

REFERENCE TO AFFECTED RULES: The Commission repeals and adopts the following sections of the Washington Administrative Code:

Prior Section (repealed)	Subject	Now codified in (new section)	And in
480-110-011	Application of rules	480-110-205	—
480-110-016	Savings clause	480-110-225	—
480-110-018	Definition of control	480-110-235	—
480-110-021	Glossary	480-110-245	—
480-110-023	Average customer revenue jurisdictional threshold	480-110-255 Jurisdiction	—
480-110-026	Tariffs	480-110-265 Tariffs	480-110-495 Maps
480-110-028	Fire flow requirements	Repealed	—

Prior Section (repealed)	Subject	Now codified in (new section)	And in
480-110-031	Accounting	480-110-275 Accounting and reporting requirements, and regulatory fees	—
480-110-032	Accounting - Political information and political education activities	480-110-465	—
480-110-036	Finance - Securities, affiliated interests, transfer of property	480-110-285 Securities, affiliated interests, transfer of property	—
480-110-041	Availability of information	480-110-315	—
480-110-046	Application for service	480-110-325	—
480-110-051	Deposits	480-110-335 Establishment of credit and deposits	—
480-110-056	Refusal of service	480-110-345	—
480-110-061	Contract for service	Repealed	—
480-110-066	Distribution extensions - service installations - service connections	480-110-435 Extension contracts	480-110-445 Service connections and customer service lines
480-110-071	Discontinuance of service	480-110-355	—
480-110-076	Service responsibilities	480-110-365	—

Prior Section (repealed)	Subject	Now codified in (new section)	And in
480-110-081	Service connections	480-110-445 Service connections and customer service lines	
480-110-086	Meter Location	480-110-445 Service connections and customer service lines	—
480-110-091	Access to premises	480-110-305	—
480-110-096	Complaints and disputes	480-110-385 Water company responsibility for complaints and disputes	—
480-110-101	Form of bills	480-110-375	—
480-110-111	Refund for inaccurate metering	480-110-405 Meter accuracy and water pressure complaints	—
480-110-116	Responsibility for delinquent accounts	480-110-345 Refusal of service	—
480-110-121	Meter charges and installation	480-110-415 Meters	—
480-110-126	Meter readings	480-110-415 Meters	—
480-110-131	Identification of meters	Repealed	—
480-110-136	Initial accuracy of meters	Repealed	—



Prior Section (repealed)	Subject	Now codified in (new section)	And in
480-110-141	Accuracy of meters	480-110-405 Meter accuracy and water pressure complaints	—
480-110-146	Dispute as to accuracy of meters	480-110-405 Meter accuracy and water pressure complaints	—
480-110-151	Complaint meter test	480-110-405 Meter accuracy and water pressure complaints	—
480-110-156	Statement of test procedures	Repealed	—
480-110-161	Frequency of periodic tests	Repealed	—
480-110-166	Meter history records	Repealed	—
480-110-171	Reports of accidents	480-110-475	—
480-110-176	Filing of records and reports and the preservation of records	480-110-485	—

New Section (adopted)	Subject
480-110-215	Exemption from rules
480-110-295	Adopted and initial tariffs
480-110-395	Water quality refunds
480-110-425	Water company customer notice

New Section (adopted)	Subject
480-110-455	Water company funding mechanisms
480-09-337	Filing requirements -- General rate increases water companies

**PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The Commission filed a Preproposal Statement of Inquiry (CR-101) on February 13, 1998, at WSR # 98-05-056.

**ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT:** The statement advised interested persons that the Commission was considering entering a rulemaking to review all provisions required for water regulation, especially (but not limited to) the provisions of chapter 480-110 WAC. The Commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by providing notice to all Commission regulated water utilities, public utility attorneys, state granges, legislators, and consumers who had previously shown interest in water matters.

The Commission held stakeholder meetings on April 16 and June 30, 1998. It convened stakeholder meetings on September 15 and October 6, 1998 and on April 21, 1999 to address discussion drafts of proposed rules. The Commission also convened meetings to address the definition of service area, water quality refunds, and service connections.

**NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on December 11, 1998 at WSR #98-24 -123. The Commission scheduled this matter for oral comment and adoption on Wednesday, January 27, 1999.

At the time and place set in the notice, the Commission convened the rule adoption hearing and continued it on the record until March 10, 1999. During the March 10, 1999 hearing session, the Commission determined not to adopt the proposed rules but to sponsor further discussion and to prepare a Small Business Economic Impact Statement before proceeding further.

The Commission filed a supplemental notice of Proposed Rulemaking (CR-102) on June 2, 1999 at WSR #99-12 -112. The Commission scheduled the rulemaking for hearing on Wednesday, July 28, 1999. The Notice provided interested

persons the opportunity to submit written comments to the Commission by July 14, 1999.

**MEETINGS OR WORKSHOPS; COMMENTS:** The Commission received oral and written comments after the issuances of the original and supplemental CR-102 from the following:

- Five individual consumers
- Washington Department of Health
- American Water Resources
- Harbor Water Co.
- H&R Waterworks, Inc.
- Meadows Water System
- Oak Park Water Company
- Rainier View Water Company
- South Sound Water Co.
- Sunshine Acres Water System
- Washington Water Supply
- Investor Owned Water Utilities Association of Washington
- Sunshine Acres Property Owners Association
- George Andre Fields, Esq., for Conrad Hunt and Kum Ho et. al.
- Richard A. Finnigan, Esq., for Rainier View Water Company

Based on comments received, the Commission in several instances adopted clarifying language that did not change the intention or ultimate effect of the proposed rules. The Commission received comments from some consumers regarding proposed WAC 480-110-255(1)(c)(vii), which addresses Commission jurisdiction over mobile-home parks, apartments, and office complexes that use master meters and rebill their tenants for water use. These commenters were all opposed to the proposed rule and requested the Commission assert jurisdiction over any landlord rebilling for water usage. In response to these comments, the Commission will issue a new CR-102, under the current CR-101 in this rulemaking, addressing the issue of the rebilling of master meters to tenants.

The Staff prepared two charts summarizing all comments submitted to the original and supplemental CR-102, and staff's response to those comments. Many of the comments received after the original CR-102 but before the supplemental CR-102 were more general in nature and allowed the staff and commenters the opportunity to resolve many of the issues discussed. The Commission adopts the Staff summaries as its own and deems them to be elements of its Concise Explanatory Statement.

**RULEMAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice, at a rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting on July 28, 1999 before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner William R. Gillis. The Commission heard oral comments from Danny Kermode and

Gene Eckhardt representing Commission Staff; Richard A. Finnigan representing Rainer Water Company; and Drew Noble representing Oak Park Water Co.

Industry commenters indicated general support for the proposed rules, however Mr. Finnigan and Mr. Noble stated concerns regarding draft WAC 480-110-445, service connections and customer service lines. In addition, Mr. Finnigan restated concerns that were provided in his written comments. The Commission continued the hearing on the record until August 11, 1999 to allow industry and Staff time to discuss the language of the service connections rule.

The Commission reconvened the continued rulemaking hearing on August 11, 1999. Commissioner Richard Hemstad, and Commissioner William R. Gillis heard oral comments from Danny Kernode and Gene Eckhardt representing Commission Staff. Mr. John R. Poppe representing Washington Water Supply, Inc. offered comments regarding his concerns about the rulemaking process but in general supported the proposed rules. Mr. Noble again addressed the Commission only to clarify the need for WAC 480-110-445. No other persons testified.

#### **SUGGESTIONS FOR CHANGE THAT HAVE NOT BEEN INCORPORATED INTO THE ADOPTED RULES:**

The Commission believes the adopted rules represent a good balance between consumer protection and regulatory requirements and appreciates all participants' efforts toward consensus. However, in some areas the Commission considered participants suggestions, but rejected them. Those were the following:

- **WAC 480-110-295 Adopted and Initial Tariffs - Statutory Authority Issues**

Rainer View Water Co. commented that the rule's application of tariff requirements to the acquisition of non-regulated systems is inconsistent with statute. The Commission disagrees. The Commission has held that it is within the Commission's power to direct an acquiring company to file a tariff that reflects rates charged by the acquired company prior to acquisition. See the Fifth Supplemental Order dated November 24, 1998 in Docket UW-980076, WUTC vs. American Water Resources, Inc., at pages 39-41.

- **WAC 480-110-295 Adopted and Initial Tariffs - Other Issues**

Mr. Finnigan discussed the wording in Section 480-110-295(3)(a) that states that an initial tariff must be filed in a standard format that the Commission will provide upon request. He acknowledges that there may be a standard tariff format, but is concerned that companies should not be told that they must use only the sample tariff. The Commission has no intention of prescribing tariff language. The rule

mandates only format, companies may use any language they deem appropriate subject to Commission review at the time of filing.

Mr. Finnigan discussed the requirement of WAC 480-110-295(3)(d), which requires companies filing new or revised tariffs to supply supporting financial data justifying the proposed rates. Mr. Finnigan contended that the burden imposed by this rule on very small water companies is unduly onerous, and he suggested that WAC 480-110-295(3)(d) be deleted. The Commission rejects the suggestion. The rule merely requires the company to support proposed rates that they wish to charge their customers. Basic financial information is essential to determining the propriety of proposed rates and it is uniquely and exclusively in the possession of the company. Requiring its production is not "unduly onerous."

Mr. Finnigan also asserts that this section is contrary to the statutory scheme of the State of Washington by requiring cost support to be filed with any initial tariff. The Commission rejects this position. The statute does not define initial tariff nor does the statute prohibit the requirement for financial data to be filed with any initial tariff. The filing of financial data is necessary to insure rates being charged are fair, just, and reasonable.

- **WAC 480-110-365 Service Responsibilities - New Facilities Costs**

Mr. Finnigan voiced concern that WAC 480-110-365(1) would allow customers to force the company to bear an unreasonable share of the costs of upgrades that are required to serve new customers. The Commission believes that the provisions of WAC 480-110-365(1)(b) protect the company since any sharing of costs must be provided in tariff or approved contract.

- **WAC 480-110-365 Service Responsibilities - Interruptions of Service**

The Washington State Department of Health (DOH) had three comments regarding WAC 480-110-365(8). First, DOH asked that the rules clarify the meanings of the term "all reasonable efforts" and "minimum of delay." The Commission feels that no further clarification is needed, and that the terms are to be understood as they are in common usage. The DOH also recommended that the rule "specifically indicate what steps a company might take in advance to avoid interruptions." The Commission feels that it would be beyond the purpose of this rule to cite steps to avoid interruptions. Finally, DOH recommended that the rule include provisions for standby power. The question of standby power relates to the company's requirement to provide "adequate service" and in general should be addressed at the company level and not by rule.

- **WAC 480-110-365 Service Responsibilities - Litigation Disclaimer**

Mr. Finnigan suggested that WAC 480-110-365 be amended to include the following paragraph:

(10) Limitation - The standards and obligations for water companies established in this rule are not intended to establish a standard of care or duty for purposes of tort or other litigation.

The courts establish a duty of care based on evidence and arguments presented to them. The determination of judicial standards is beyond the Commission's jurisdiction. It would be no more proper to disavow setting a judicial standard than it would to purport to establish such a standard. Any rule attempting to set a judicial standard would likely be held non-controlling. In addition, the Commission believes that the suggested wording would weaken the rule as a whole. The Commission therefore rejects the suggestion.

- **WAC 480-110-405 Meter accuracy and water pressure complaints.**

American Water Resources voiced the concern that WAC 480-110-690's requirement that meter tests be performed within ten days of the complaint may at certain times be "impossible." The company suggests that the Commission include a variance provision to allow for "permissible variances from [the] 10 day requirement. The Commission believes the requirement is reasonable and also notes that WAC 480-110-215(2) provides for waivers. Therefore, a provision for variance of this rule is not needed.

- **WAC 480-110-415 Meters - Installation of Consumer Requested Meters**

WAC 480-110-415(2)(c) allows water customers who pay a flat rate to obtain the installation of a meter, if the company has tariffed metered rates. Mr. Finnigan commented that there may be instances in which a customer's request for a meter would be prohibitively expensive. He suggested that the wording in the rule be modified so that the company must only honor a customer's request "Where it is reasonable to install such a meter."

The rule WAC 480-110-215 already provides that the company may be excused from the obligation to install a meter when it demonstrates that the installation is not consistent with the public interest – that is, if the financing and resources needed to comply with the request would be detrimental to the normal operations of the

company. The suggested language would have the effect of shifting the burden of demonstrating reasonableness to the customer. Economic hardship is a possible means to demonstrate eligibility for an exemption. The Company, however, possesses nearly all of the information essential to demonstrating that a particular installation is inconsistent with the rule's purpose. Shifting the burden of demonstration to others is not consistent with the public interest. The Commission therefore declines to adopt the suggested language.

- **WAC 480-110-425 Customer Notice Requirements - Potential Customers .**

Some commenters felt that the requirement to inform all customers, as defined in WAC 480-110-245, of proposed tariff changes is burdensome and would cause "a nightmare of record keeping." Under the current rules, companies must only notify current customers of proposed rate changes. The Commission believes that notification of all customers is essential to consumer protection. All customers includes both current customers and consumers who have been given a letter from the water company agreeing to provide service. The rule requires no record keeping of the water company beyond keeping a list of consumers to whom it has committed to provide service. Such consumers have nearly the same interest as current customers in proposed tariffs. The benefits of notice thus outweigh the small associated costs.

- **WAC 480-110-435 Extension Contracts**

The Department of Health (DOH) suggested adding the requirement that extension contracts be consistent with the company's water system plan (WSP). The Commission's focus in this rule is the economic aspect of a proposed extension. To expand it to include a company's WSP would expand the rule outside of its intended scope. The DOH already has the power to deny approval of any extension not in compliance with the company's WSP through the DOH normal review process. The rule is not intended to affect DOH regulation at all.

**COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission adopts and repeals the attached provisions in chapter 480-110 WAC governing investor owned water companies, and adopts WAC 480-09-337 governing procedure for seeking a general increase in water rates.

**CHANGES FROM PROPOSAL:** The Commission adopted the proposal with the following changes (other than minor, non-substantive changes) from the text noticed at WSR #99-12-112.

- **WAC 480-110-245 Glossary.**

In the definition of "Standby charge," the Commission added the further explanation, not changing the substance of the definition, that the term is equivalent to a "system-readiness fee" charged by unregulated companies and that such a charge is not authorized for regulated water companies.

• **WAC 480-110-255 Jurisdiction.**

In response to comments received from consumers, the Commission removed subsection (1)(c)(vii) from the rules to be adopted. The provision would have excluded mobile-home parks, apartments, and office complexes that provide master meters and rebill tenants for water use under certain conditions. The comments STET the Commission that additional study is required to show that such a provision would operate in the public interest.

• **WAC 480-110-285 Securities, affiliated interests, transfer of property.** In subsection (3), language is added to make the section's meaning very clear.

• **WAC 480-110-325 Application for service.** In subsection (1), language is added to make it very clear that a company must receive a written application before it may provide initial service to a location.

• **WAC 480-110-365 (9) Notice of service interruptions -** Adds a new section (e) requiring a company to notify the Washington Department of Health of service interruptions, to assure sufficient monitoring of health conditions.

• **WAC 480-110-425(4) Water company customer notice requirements.**

Deletes the proposed requirement that a company notice disclose the percentage of a proposed increase, since percentage figures may, at times, be misleading depending on the base number used. For example, sometimes large dollar increases will show only a small percentage increase because the charge is already high. Modifies the language in the required company notification, for ease in customer understanding and to help assure that consumer responses are properly identified.

• **WAC 480-110-445 Service connections and customer service lines.** In subsection (1), revises the language of provisions relating to service connections for increased clarity and public understanding.

• **WAC 480-110-455 Water company funding mechanisms.** Revised language clarifies the uses to which surcharge funding may be put and adds the Department of Ecology as an agency whose directives may be met through surcharges.



The effect of the rules remains essentially unchanged from the language originally noticed in the CR-102 published on June 4, 1999 at WSR 99-12-112.

**STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** In reviewing the entire record, the Commission determines that WAC 480-110-011 through 480-110-176 are repealed and WAC 480-110-205 through 495 and WAC 480-09-337 are adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

## ORDER

### THE COMMISSION ORDERS:

1. WAC 480-110-205 through 495 and WAC 480-09-337 are adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).

2. This order and the rule set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

3. The Commission adopts the Commission Staff memoranda, presented when the Commission considered filing a Preproposal Statement of Inquiry, when it considered filing the formal notice of proposed rulemaking, and when it considered adoption of this proposal, in conjunction with the text of this order, as its Concise Explanatory Statement of the reasons for adoption and for rejection of proposed changes, as required by RCW 34.05.025.

DATED at Olympia, Washington, this 30<sup>th</sup> day of November, 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

  
MARILYN SHOWALTER, Chair

  
WILLIAM R. GILLIS, Commissioner

# **EXHIBIT 30**

# Rulemaking Analysis

## CONSIDERATIONS REGARDING AGENCY DECISIONS DURING THE RULEMAKING PROCESS<sup>1</sup>

Docket number UW-980082

Date: November 22, 1999

Staff lead Danny P. Kermode

Division/Section Utilities Water Division

Exempt manager authorizing this review: Dixie Linnenbrink

Approved for Rulemaking Proceeding: (mgr's Init/date) Dixie 11-30-99

Subject of rule Water Regulation for Investor Owned Water Companies

Rule title: Governors Executive Order 97-02 - Review of Water Rules

Expected schedule  Firm  Target  Expected

CR 101 public meeting 2/11/98

CR 102 public meeting 06/02/99

Adoption hearing 08/11/99

Filing with code reviser (effective 30 days later): 11/30/99

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<sup>1</sup>*NOTE: Most of the information in this form is required to be contained in the agency's rulemaking file or in one or more of the rulemaking notices (CR-101 and CR-102) for permanent rules. The information is encouraged (in one case required) for emergency rules. Some of the information called for in this form may not be available when the topic of a rule is first discussed. That information is generally required no later than the time a CR-102 is filed. Please provide all information now available, indicate when other information will be available, and update the information as it becomes available. This form can be made available on a shared drive and then printed at the conclusion of a proceeding for inclusion in the file.*

RWD

**1. What persons or industries will be affected by this proposal? What agency rulemaking lists identify such persons? Who are significant interests not on these lists?**

(a) These proposed rules will affect only those companies that fall under WUTC jurisdiction. Currently, the WUTC regulates approximately 70 water companies of the 481 companies reporting under SIC 4941 or 14.6% of the total reported industry.

(b) The commission maintains a list of the regulated water companies and a list of interested parties whom have identified themselves by requesting copies of all rulemaking notices, communications, rulemaking documents, or have requested to be kept on the list.

(c) All parties with significant interests have been included in either of the above lists.

**2. Why is this rulemaking being proposed?**

The Governor's Executive Order 97-02 requires all agencies to review their rules that have a significant effects on businesses, labor, consumers, and the environment. The Commission has determined that the current rules need to be:

- retained but rewritten, or
- amended,
- repealed, or
- supplemented with new provisions.

**The following information is required for a statement to be included in the rulemaking file no later than the CR-102 filing date; it must be updated based on additional information received by the agency during the rule making process.**

**3. What is the objective of this rule?**

The objective of the water rulemaking review is to assure that the current water company rules of the Commission:

- Comply with statutes that authorize them
- Are not obsolete or already duplicated in other rules
- Are providing the results that they were originally intended to achieve
- Are written and organized in a clear and concise manner
- Are readily understood by those that the rule applies to
- Are adequate for the Commission to discharge its obligation to regulate in the public interest.

**4. Would changes to other rules or statutes achieve the same objective?**

No.

5. **What are the anticipated environmental and financial consequences of adopting and not adopting the proposal, recognizing the difficulty of quantifying some consequences?**  
A. **Environmental consequences.**  
None known.  
B. **Financial consequences.**  
See the Small Business Economic Impact Statement (SBEIS) dated May 26, 1999.

6. **Why is this a reasonable, cost-effective manner to achieve the regulatory objective, in light of available alternatives including no rulemaking?**

When considering the many objectives and results expected from this rulemaking, including the clarification of Commission policies and consumer rights, alternatives such as industry or public information campaigns would be vastly more expensive. The rulemaking also provides for the codification of current policy and clarification of the current rules which are objectives that can only be achieved through a rulemaking.

7. **Will the proposed changes overlap or conflict with local, state, or federal law or the rules of this or any other state or federal agency?**  
No.

**How will the proposal be coordinated with other governments?**

The Washington State Department of Health has been actively involved in this rulemaking. No other agency has jurisdiction.

***Is an Agency Rules Coordinating Committee needed under EO 93-06?***

No. As part of the process the Commission conducted an outreach to government agencies.  
1. State Agencies - Washington State Department of Health.

8. (a) **Could alternative forms of regulation achieve the same goals?**  
No, fulfilling the Commission's obligation to implement statutes involving water regulation requires the implementation of standards and processes that can only be achieved by rule.

(b) **Does the proposed rule include performance standards? Could performance standards be used in lieu of behavior standards or manner of compliance?**  
Yes, many of the proposed rules have embedded in them performance standards that must be met by the company. An example of a performance standard is the requirement, in WAC 480-110-325 application for service that the company inform the applicant within ten days of the company's intention to provide service or deny service. The performance standards have been placed in the rules that allow for their use.

9. **Is this proposal made only to comply with federal law? No If so, does it contain significant differences from comparable federal rules or standards, or does it propose differences in application to public and private entities? N/A If so, provide a written analysis explaining the differences, evaluating their consequences, and stating the**

reasons for adopting the rule as drafted as opposed to a rule consistent with federal regulation. N/A

**Is a CR-101 required? Yes**

[See, RCW 34.05.010(3)(c) --exemptions for emergency rules; Internal rules not submitting an outsider to sanctions; rules merely adopting or incorporating federal laws or rules or Washington law or rules; rules whose content is required by statute; rules setting fees that are explicitly and specifically dictated by statute; and rules that adopt, amend or repeal practices or procedures for agency hearings or a process for applying to an agency for a license or permit]. NOTE: to assure constituent involvement and support it may often be better to file a CR-101 and engage in prerulemaking discussions even if not required.

**The following information is required for a statement to be included in the preproposal notice (CR-101):**

10. **What is the specific statutory authority for the rule?**  
RCW 80.01.040 and RCW 80.04.160
11. **List specific reasons why the rule is needed:**  
See item 2 above.
12. **What are the goals of the proposal? Why are rules on the topic needed and what might they accomplish?**  
See item 3 above.
13. (a) **What process will be used for developing the rule?**  
( ) Negotiated rulemaking ( ) Pilot rulemaking  
(X) Agency study, consisting of [*check as many as apply*]:  
    (X) Workshops and dialogue (X) Public meetings  
    (X) Written comment ( ) Other \_\_\_\_\_  
( ) Other \_\_\_\_\_
- (b) **What is the process by which interested persons can participate in developing the rule? NOTE: If the selected process fails to provide an opportunity for interested persons to "participate" in the rulemaking process prior to publication in the CR-102, the agency must place a written justification for failing to do so in the rulemaking file. "Participate" means the opportunity to do more than the statutory minimum of offering written and oral comments. State the justification here and in your staff support memorandum for the request for Commissioner authorization to file the CR-102**

Interested persons participated in developing the rule through dialogue occurring in a series of meetings, workshops and public comment opportunities. The first meeting was public forum, intended to gather as much information as possible from the regulated public service companies and any other interested persons. Notice of the public forum was sent to all regulated companies and interested parties.

**Preliminary Small Business Economic Impact Statement (SBEIS) analysis:**

17. **What industry is (industries are) affected by the proposal (4-digit Standard Industrial Classification[s]):**  
Water Supply SIC 4941
18. **What elements of the rule may impose a cost on business?**  
See SBEIS prepared May 26, 1999.
19. **What are the costs of compliance?**  
See SBEIS prepared May 26, 1999.
20. **Are the costs more than minor [that is, tiny].** Yes. See SBEIS prepared May 26, 1999.

***NOTE: If an SBEIS is required, special notice requirements exist under RCW 19.85.070. The agency must either notify affected small businesses and trade associations of the proposed rulemaking or notify media likely to serve such small businesses of the proposal.***

**RCW 19.85.040 and .030 state steps that the agency must take in preparing and using an SBEIS. Loosely paraphrased, they include: Obtain detailed information from businesses regarding the impact of the proposed rule on costs and revenues; Conduct a detailed economic analysis to determine the economic impact on small and large businesses and develop cost ratios.**

- 20a **Does the rule impose a proportionately higher economic burden on small business?**  
No.  
***If so, the agency should modify the proposal to mitigate the impact on small business.***

***Confer with your ALS adviser and the assistant attorney general if an SBEIS is needed to define the scope of the statement and the process by which you will accomplish it.***

## **SEPA Requirements:**

21. Consult SEPA rules to determine whether the proposed action is exempt from SEPA. With minor exceptions, *programs* administered by the agency in 1978 are exempt. If the proposal is not exempt, prepare a SEPA checklist and, as needed, an environmental impact statement.  
N/A

## **POST-ADOPTION Requirements:**

- 22. List the commenters at the adoption meeting, state the suggestions they made, identify those that were rejected by the Commission, and state the Commission's reasons for rejecting the suggestions.**  
Refer to the final adoption order for the discussion of commenters and the reasons for rejection of suggestions.
  
- 23. List any changes that were made in the text of the rule between filing the CR-102 and adopting the rule, and state the Commission's reasons for making those changes.**  
Refer to the final adoption order for the discussion of changes to the proposed rules as filed with the CR-102 and the final adopted rules.