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Dec 13, 2001 at 10:00

Recording Requested by and
When Recorded Mail to:

STEPHEN A. MOSER, Trustee
The 1993 Stephen A. Moser
Revocable Trust UAD 10/28/93
1836 Central Avenue, Suite A
McKinleyville, CA 95519

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE SAND POINTE SUBDIVISION IN MCKINLEYVILLE, CALIFORNIA**

Declarant is the owner of property in the County of Humboldt, State of California, known as SAND POINTE SUBDIVISION particularly described as Lots 1 through 37, as shown on Tract Map No. 533 (Sand Pointe Subdivision), filed December 13, 2001 in Book 23 of Maps, Pages 6, 7, 8, 9, Humboldt County Records.

Declarant has established a master plan, set forth in this Declaration (the "plan"), for the subdivision, improvement and development of the Property, and desires to achieve harmonious and uniform development of the Property in accordance with the plan.

In furtherance of this intent, Declarant hereby declares that all of the Property is and shall continue to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, reservations, rights and easements set forth in the Declaration, as this Declaration may be amended from time to time, all of which are declared and agreed to be in furtherance of a general plan established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Property. All covenants and restrictions set forth in this Declaration shall constitute covenants running with the land and enforceable equitable servitudes upon the Property, and shall be binding on and for the benefit of all of the Property and all parties having or acquiring any right, title, or interest in all or any part of the Property, including the heirs, executors, administrators, and assigns of these parties and all subsequent owners and lessees of all or any part of any Lot in the Development.

ARTICLE I. DEFINITIONS

1.1 Committee: "Committee" means the Architectural Control Committee created pursuant to Article II of this Declaration.

1.2 Articles: "Articles" means the Articles of Association of Sand Pointe Owners' Association and any amendments to those Articles adopted by the Association. Until such time as Articles of Association are adopted by the Association, the provisions of Article IV of this Declaration shall govern the Association.

1.3 Association: "Association" means the Sand Pointe Owners' Association, its successors and assigns created pursuant to Article IV of this Declaration.

1.4 Board: "Board" means the Board of Directors of the Association.

1.5 Bylaws: "Bylaws" means such Bylaws of the Association and amendments to those Bylaws that are or shall be adopted by the Board. Until such Bylaws are adopted by the Board, the provisions of Article IV and V of this Declaration shall govern the Board and Association.

1.6 County: "County" means the County of Humboldt in the State of California, which is the county in which the Property is located.

1.7 Curtilage Area: "Curtilage Area" means the area within a Lot in which the owner may make improvements (house, garage, deck, fencing, planting, driveway) as permitted and approved under the provisions of this Declaration.

1.8 Declarant: "Declarant" means and refers to Stephen A. Moser, Trustee of the 1993 Stephen A. Moser Revocable Trust under agreement dated October 28, 1993, and his successor(s) and assign(s) if such successor(s) or (assign(s) shall acquire more than one undeveloped Lot from the Declarant for the purpose of development, and Declarant has expressly transferred or assigned to such successor(s) or assign(s) his rights and duties as Declarant to a portion or all of the project.

1.9 Declaration: "Declaration" means this Declaration of Covenants, Conditions and Restrictions, together with any amendments or additions thereof or thereto.

1.10 Development: "Development" means the Property and all improvements on the Property.

1.11 Driveway: "Driveway" shall mean that portion of the Curtilage Area used for access between the public road and the remaining area of the curtilage.

1.12 Dwelling: "Dwelling" means any permanent improvement suitable for human occupancy constructed on the Property.

1.13 Exclusive Use Area. "Exclusive Use Area" means those areas of a Lot or Parcel lying outside of the Curtilage Area of such Lot or Parcel. Exclusive Use Areas are nevertheless subject to an easement to the Association to landscape and/or maintain such areas, as set forth in Article IV of this Declaration, but are not subject to use by other than the owner of the Lot or parcel upon which such area is located.

1.14 Governing Instruments: "Governing Instruments" means this Declaration, any Articles and Bylaws of the Association, and any Rules and Regulations of the Development as set forth in this Declaration or as may later be adopted by the Association.

1.15 Improvements: "Improvements" means any building, addition, wall, fence, paving, landscaping, remodeling, or exterior redecoration.

1.16 Lot: "Lot" means and refers to any parcel shown on the recorded subdivision map for the Property.

1.17 Manager: "Manager" means any person or entity appointed by the Board to manage the Development. Until such appointment, Declarant shall be the Manager.

1.18 Member: "Member" means every person or entity entitled to membership in the Association as provided in this Declaration.

1.19 Mortgage: "Mortgage" means any security device encumbering all or a portion of a Lot or Lots, and shall include deeds of trust, mortgages, and other consensual liens.

1.20 Mortgagee: "Mortgagee" means and includes a beneficiary or holder of a deed of trust as well as of a mortgage.

1.21 Mortgagor: "Mortgagor" means a person or entity who mortgages his, her, or its property to another, and shall include the trustor of a deed of trust. The word "trustor" shall be synonymous with the term "Mortgagor."

1.22 Native Landscape Area: "Native Landscape Area" shall mean the area within the external boundaries of a Lot, but outside the Curtilage Area upon such Lot, in which the owner shall not usually be allowed to make any improvements.

1.23 Open Space Easement Area: "Open Space Easement Area" shall mean that area on Lots 1 through 17 lying west of the 100-foot setback line as shown on the final subdivision map.

1.24 Owner: "Owner" means the record holder or holders of fee title to a Lot, including Declarant, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities who hold an interest in a Lot merely as security for performance of an obligation.

1.25 Person: "Person" means a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

1.26 Property: "Property" means the real property described in the recitals, or any lot or parcel included therein.

1.27 Rules and Regulations: "Rules and Regulations" means any Rules and Regulations for Sand Pointe Subdivision regulating the use of the Properties as adopted by the Association pursuant to Section 4.2.3. of this Declaration. Until such time as Rules and Regulations are adopted by the Association, the provisions of this Declaration shall constitute the Rules and Regulations for Sand Pointe Subdivision.

1.28 Subdivision Map: "Subdivision Map" shall mean the recorded map described in the recitals.

ARTICLE II. ARCHITECTURAL AND DESIGN APPROVAL

2.1 Creation. There is hereby created an Architectural Control Committee to function as described in this Article II.

2.2 Purpose. The purpose of the Architectural Control Committee ("Committee") will be to control structural exterior and landscaping architecture and design on Lots on the Property. The Committee shall enforce restrictions by review of plans and specifications for proposed improvements submitted for approval and by the inspection of actual construction to assure conformance with the plans and specifications as approved. The purpose of the Committee is to protect the Owners as a whole against nonconforming designs or construction of less than absolute first quality. Exceptions to any of the architectural restrictions or other requirements contained in this Declaration may be made by the Committee at any time after proper written application to the Committee.

2.3 Membership, Organization and Term.

2.3.1 The Committee shall consist of three persons.

2.3.2 Declarant shall appoint all the original Members of the Committee and all replacements until 90% of all Lots have been sold.

2.3.3 Other than Members appointed by the Declarant as provided in subsection 2.3.2, at such time as 90% of all Lots subject to this Declaration have been sold, Members of the Committee shall be elected to the Committee by a vote of the Owners, including Declarant, as vacancies occur. Each Owner, including Declarant, shall be entitled to one vote per Lot, and said vote shall be cast by mail or in person at or prior to any meeting called for the purpose of electing a new Committee Member. Said elections shall be duly noticed by the Committee notifying each Owner of the date of the election and the purpose of the election and the person or persons nominated by the Committee to fill any such vacancy on said Committee. The Committee shall give a 30 day notice to each Owner and said notice shall be deemed given by the Committee by

depositing said notice in the mail, postage prepaid and addressed to the Owner's residence with the appropriate ballot that is preaddressed to the Committee.

2.3.4 Each Committee Member, other than those to be appointed by Declarant shall serve for a period of 3 years from appointment or election unless earlier terminated as provided below. Any Committee Member appointed by Declarant may be removed by Declarant at any time. Any elected Member may be removed by a vote of 75% of the Owners. In all other cases Members shall serve until resignation, incapacity, death, or expiration of term.

2.3.5 By majority vote, the Committee may delegate any function of the Committee to one or more of its Members. This power of delegation shall not relieve a Member of his obligations or duties as a Member.

2.4 Design and Review Applications. Any construction, reconstruction, refinish or alteration of any part of the exterior of any improvement, driveway or planting upon any Lot is absolutely prohibited until the Owner of such Lot first obtains the approval therefor from the Committee and otherwise complies with all of the provisions of this Declaration. It is expressly understood that any and all construction, reconstruction, refinish or alteration of or creation of any improvements must be first approved by the Committee. **Committee decisions are subjective and shall be in the sole discretion of the Committee.** The Committee may remove any improvement constructed, reconstructed, refinished, altered or maintained in violation of this section and the Owner thereof shall reimburse the Committee for all expenses incurred in connection therewith.

2.5 Application. Any Owner proposing to construct, reconstruct, refinish, or alter any part of the exterior of or any improvement on or within the Owner's Lot, or to perform any work which under this Declaration requires the prior approval of the Committee shall apply to the Committee for approval in the following manner:

2.5.1 Submission of Preliminary Plans. Prior to construction, reconstruction, refinishing, or alteration of any part of the exterior of any improvement, the Owner shall submit to the Committee one set of the following architectural drawings for the proposed work: (1) a site survey, drawn to scale of not less than one inch equals twenty feet, showing the exact locations of major topographical features (including but not limited to

trees, geological features, and one foot contours), and location of proposed improvements (including but not limited to structures, paving, landscaping, fences and lights); (2) floor plan and exterior elevations of all sides of all structures, drawn to scale of not less than 1/8 inch equals one foot; the elevations shall list and define all materials, finishes and colors; (3) and the Committee may, in its sole discretion, additionally require section drawings, drawn to scale, of any improvements including but not limited to structures, parking areas and driveways, and (4) such additional drawings or information for clarification as may be requested.

2.5.2 Submission of Final Plans and Specifications. Upon approval of the preliminary plans, one set of the final plans and specifications shall be submitted to the Committee for its final approval. Such plans and specifications shall describe in detail the floor plan arrangement, elevations, relationships of location and siting of proposed improvements on neighboring sites; structural features, use of material, elevation heights and dimension, site placement, fences, grading, drainage plans, exterior colors, landscape and patio plans, and such other data as may be required by the Committee to fully illustrate the intended design, construction, overall appearance and use. Physical samples of exterior materials and color may be required for approval. Before giving any such final approval, the Committee may require that said plans and specifications comply with any requirements that the Committee may impose as to structural features, types of building materials used, exterior colors, building details and as to any other characteristics or features not otherwise expressly covered by the provisions of this Declaration. Final approval by the Committee shall not relieve the Owner from complying with any requirements of any public authority having jurisdiction and shall not constitute any representation or guarantee by the Committee or any Member of the Committee or Declarant as to the structural sufficiency of any construction. However, every Owner must obtain final written approval by the Committee prior to the submission of the plans and specifications to any public authority whose approval also must be obtained. Approval by the Committee of any plans or specifications shall not be deemed to be a waiver by the Committee of its right to object to any of the features or elements embodied in such plans and specifications if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for any other building site or sites, or later submissions with respect to the site for which originally proposed.

2.5.3 Inspections and Conformance to Plans. During and after completion of construction, any Member of the Committee or any agent of the Committee may from time to time, at reasonable times and upon reasonable notice, enter onto and inspect any Lot and improvements thereto subject to this Declaration for compliance with approved submissions. Any deviations from or nonconformity with approved submissions shall be set forth in a notice of noncompliance issued by the Committee and shall be corrected prior to final acceptance as set forth in subsection 2.5.8 below. The Committee or any agent or officer thereof acting in good faith shall not be deemed guilty of or liable for any manner of trespass for such entry or inspection.

2.5.4 Form of Approval. All approvals by the Committee shall be in writing and may be conditioned upon the submission by the Owner or the Owner's architect or contractor, or both, if any, of such additional information, plans and specifications as the Committee shall deem appropriate for the purpose of ensuring that the construction of the proposed improvements shall be in accordance with the approved plans. However, plans, drawings and specifications which have neither been approved nor rejected within 60 days from the date of submission of all information required by this Declaration or requested by the Committee shall be deemed approved. One set of plans as finally approved shall be retained and maintained by the Committee as a permanent record. All decisions of the Committee are final

2.5.5 Proceeding With Work. Upon receipt of approval from the Committee, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations pursuant to said approval, said commencement to be in all cases with one year from the date of such approval. If the Owner fails to comply with this subsection, any approval given pursuant to subsection 2.5.4 above shall be deemed revoked unless the Committee, upon written request of the Owner made prior to the expiration of said one year period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Committee that there has been no change in the circumstances upon which the original approval was granted.

2.5.6 Failure to Complete Work. The Owner shall complete the construction, reconstruction, refinishing or alteration of any such improvement within one year after commencement thereof, except for so long as such completion is rendered

impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other forces beyond the control of Owner. If the Owner fails to comply with this subsection, the Committee shall proceed in accordance with subsection 2.5.7 below as if the failure to complete the improvement were a noncompliance with approved plans.

2.5.7 Noncompliance. Notwithstanding a failure to give notice of deviation or nonconformity under subsection 2.5.3 during construction, if the Committee finds that the construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance within 30 days of receipt of a notice of completion from the Owner, specifying particulars of noncompliance, and shall require the Owner to remedy such noncompliance. If the Owner fails to remedy such noncompliance upon the expiration of 30 days from the date of such notification, the Committee shall set a date on which a hearing before the Committee shall be held regarding the alleged noncompliance. The hearing date shall not be more than 30 nor less than 15 days after notice of the expiration of the 30 day period required by the Committee to remedy the noncompliance. Notice of the hearing date shall be given at least 10 days in advance thereof by the Committee to the Owner.

At the hearing, the Owner, the Committee, and in the Committee's discretion, any other interested person may present information relevant to the question of the alleged noncompliance. After considering all such information, the Committee shall determine whether noncompliance exists and if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Committee shall require the Owner to remedy or remove the noncomplying improvement within a period of not more than 45 days from the date of its ruling.

If the Owner does not comply with the Committee ruling within such period or within any extension of such period as the Committee in its discretion may grant, the Committee, at its option, may either remove the noncomplying improvement or remedy the noncompliance and the Owner shall reimburse the Committee for all expenses incurred in connection therewith upon demand. In addition, this Declaration shall be deemed to vest the Committee with the right to bring a proceeding in equity to enforce the provisions hereof or the decision of the Committee.

If for any reason the Committee fails to notify the Owner of any noncompliance within 30 days after receipt of said notice of completion from the Owner, the Committee shall be deemed to have given final acceptance of the improvements in accordance with said approved plans.

2.5.8 Final Acceptance. Subject to Section 2.5.7 above, the Committee shall issue a written final acceptance or nonacceptance of the improvement within 30 days after the Owner submits the notice of completion. No Owner shall commence using the structure or structures on the Lot until such final acceptance from the Committee.

2.5.9 Liability. Neither the Committee nor any Member thereof shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of: (1) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (2) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (3) the development of any Lot within the Property, whether or not the facts upon which the Committee relied are correct, provided however that such Member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing, the Committee, or any Member thereof, may, but is not required to, consult with or hear the view of any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Committee.

2.5.10 Waiver. The approval by the Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for proposal.

2.5.11 Governmental Requirements. The application to, and review and approval by the Committee of any proposals, plans or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit or planning process rule, or any other governmental requirements, the responsibility for which shall lie solely with the Owner. Likewise, compliance with any building permit process rule or other governmental requirements shall not be deemed compliance with the provisions of this

Declaration or any Rule or Regulation adopted pursuant to this Declaration or action of the Committee which impose a different rule or requirement.

2.6 Meetings. The Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of a majority of the Members shall constitute an act by the Committee. The Committee shall maintain a record of all actions taken by it at such meeting or otherwise.

2.7 Action Without Meeting/Telephonic Meetings. Members of the Committee may participate in a meeting through use of conference telephone or similar communications equipment, so long as all Members participating in such meeting can hear one another. Participation in a meeting pursuant to this subdivision constitutes presence in person at such meeting.

ARTICLE III. ARCHITECTURAL RESTRICTION

3.1 Preservation of Environmental Values. The Committee shall consider all construction pursuant to a design scheme, which will preserve the natural ambience, environment and ecology of the Property for the benefit of all Owners. Except to the extent reasonably necessary for the construction, reconstruction or alteration of any improvement, an Owner shall be prohibited from engaging in any excavation or fill, any change in the natural or existing drainage for surface or subsurface waters or from removing or destroying any major vegetation. The Committee may restore a Lot which has been so altered without its approval to its state existing immediately prior to such activity. The costs and expenses in making restoration, or related to such restoration, including but not limited to attorney fees, consultant fees, and engineering fees shall be the legal liability of the Owner of such Lot, which the Owner covenants to pay as is provided in Section 7.1, in addition to regular and special assessments otherwise imposed.

3.2 General Principles and Requirements. **Review and approval, disapproval or modification by the Architectural Control Committee is a subjective process.** Section 3.3 *et seq.* and Article VIII set forth minimum standards, compliance with which does not give rise to automatic approval by the Committee. Likewise, the Committee may approve features of a project which do not comply with the minimum standards if the Committee determines that such deviation is consistent with the intent of this Declaration. **In all cases, construction and materials must be of first quality and all improvements**

must demonstrate architectural interest and curb appeal in the judgment of the Committee.

3.3 On Site Construction.

3.3.1 Location on Lots. The landscaping and location of the improvements on Curtilage Areas of the Lots shall be situated so as to create an aesthetically pleasing overall appearance with respect to the adjacent properties and from curbside. Placement of any and all improvements are subject to the approval of the Committee.

3.3.2 Fences. Fencing is an integral part of the visual aesthetics of the Property and will be scrutinized closely by the Committee. The maximum length of fencing will be limited to 50% of the perimeter of the main Curtilage Area (exclusive of the driveway). Continuous runs of fencing that tend to visually box in the residence should be avoided. No more than 30 feet of continuous fencing will be allowed without a significant visual break either in alignment or variation in height of at least 2 feet and an introduction of landscaping nodes. Approval of the erection or placement of any fence shall require that (a) the maximum height shall not exceed 72 inches; (b) the fence shall be designed to be an extension of the house and constructed of the same material and with the same color and finish as the house. Variations may be allowed subject to the approval of the Committee. There shall be no fencing along the east side of the Hammond Trail between Murray Road and the Northern extension of the property, but, rather, a landscape barrier composed of low-growing, natural vegetation which shall be no higher than 3 feet at maturity. Fencing shall be erected along the 100-foot bluff top setback line that shall be at least 3 feet in height, and shall be of open-style construction.

3.3.3 Landscaping. Plantings within and outside the Curtilage Area on all Lots require the approval of the Committee prior to planting. A detailed, scaled landscape and planting plan must be submitted for review and approval. Such a plan shall show a plan view of the site to be landscaped at an identifiable scale, include floor plans of buildings, location of any fences, hard surfaces, lawns, outbuildings, exact location of plants shown at mature size, scientific and common names and container sizes to be used. Owners are allowed to mow but not irrigate or fertilize the area outside the Curtilage Area. Permanent landscaping shall be installed around said Dwelling within one year after the start of construction of the Dwelling. Landscaping shall be maintained in a neat and orderly

condition at all times after installation so as to present a pleasing appearance to other Owners and occupants of Lots, and from curbside.

3.3.3.1 Planting Heights. Trees and shrubs planted by the Owner within a Curtilage Area shall be deemed improvements and they shall be subject to the same height restrictions as other improvements on the Lot. No planting shall occur along or around the driveway unless approved by the Committee. Whenever side yard building setbacks are 10 feet, Owners may place plants up to a maximum height of 6 feet at maturity between the main Curtilage Area and the side property line. Plantings in all other areas are to be installed by the Association with Committee approval. All plantings must have Committee approval.

3.3.3.2 Plant Removal. An Owner must obtain Committee approval prior to removal or destruction of any tree or shrub. Destruction includes significant damage to the root system or other parts of the plant by any means, or removal of more than 1/3 of the live wood or alteration of the natural form of the plant. Approval is required for the removal or destruction of trees or shrubs planted as a part of the Committee approved plans. Committee approval is required for the removal, destruction or alteration of any vegetation in Native Landscaped Open Space Areas.

3.3.4 Roofs. Roof lines are to be as simple as possible and must be approved by the Committee. Overly complex roof lines are to be avoided. Roof coverings are to be 40-year minimum composition shingles either black or dark gray in color. Built up dark gray or black tar and gravel roofs with a one-inch pea gravel ballast may be allowed on carports with the approval of the Committee.

3.3.5 Windows; Windows must be either wood, fixed glass with wood stops or vinyl. Only exterior grids or a combination of interior and exterior grids are allowed.

3.3.6. Doors. Exterior doors including garage doors are a strong element of the design and aesthetics of the residence and will be examined closely by the Committee. Attention should be given to avoid vacuufomed or artificially patterned front doors and any poor quality, typical subdivision style garage doors. Garage doors must be without windows, plain, avoiding attention and preferably made of similar material as the

siding. Every effort should be made to avoid featuring garage doors as a primary visual element when you approach the residence.

3.3.7 Exterior Siding. All exterior siding shall be of quality material and workmanship and shall be either natural wood, wood shingles, stucco, non-textured horizontal lap Hardipanel with a smooth surface, Hardipanel shingles or 4 foot by 8 foot wood grain Hardipanel with natural wood batts. In no case shall plywood or T-111 siding or material of similar quality be allowed.

3.3.8 Chimneys. Chimney chases shall be of the same material as the siding.

3.3.9 Storage Facilities. All wood storage, equipment storage or similar storage facilities shall be either installed or constructed within the exterior walls of the residence structure or be screened from the view of other Lots by a fence or other means approved by the Committee.

3.3.10 Driveways. Driveways shall be excavated within the Curtilage Area only and shall be constructed of gravel or blacktop only (no concrete).

3.3.11 Height Limits. All structures on Lots 1 - 8, 13, 22 - 29 and 34 - 37 shall be limited to 23 feet in height. All structures on other Lots are limited to 35 feet in height.

3.3.12 Utility Lines. Above-ground power and telephone lines from the two westernmost poles along Murray Road shall be placed underground, and the poles removed. Any new utility lines required for the subdivision shall be placed underground.

3.3.13 Street, Roads and Public Parking Areas. All streets and roads within the residential Lots shall be available for public use. No locked gates or fences prohibiting public access into the subdivision shall be permitted. Perimeter fences shall be of open-style construction.

3.3.14 Type and Character of Design. All residences on Lots shall be single family structures. Exterior design of all the improvements on Lots shall be compatible to

the overall atmosphere of the Property, and approval thereof shall be subjective and in the sole discretion of the Committee.

3.3.15 Colors. All exterior colors, textures and materials including roofs must be set forth in the plans and specifications and approved in writing by the Committee prior to construction. Color samples shall be submitted with plans demonstrating where the colors will be used upon the finished dwelling. All exterior colors and stains shall be chosen from a palette of colors and stains supplied by the Committee. Slight variations may be allowed subject to Committee approval. There shall be a sheen level on the finish coating of the dwelling no greater than lo-lustre. Semi-gloss sheen levels will only be allowed on trim, such as windows, doors, fascia and shutters. The corner boards of the dwelling and the downspouts shall be painted or stained the body color. The gutters shall be painted the color of the fascia board. Garage doors shall be painted or stained the body color. Fences shall be stained or painted to the same specifications as the dwelling. Natural wood shingles can be stained an approved color or be allowed to gray and age naturally. All components of the roof, including metal and skylights, shall be painted to match the roof color. High contrast, accent trim colors shall be limited to 60 square feet on the dwelling and only be used on defining architectural elements such as doors and shutters. In general, the body and trim colors selected for the dwelling should be complimentary to each other and not of a major contrast. Monochromatic color schemes are preferable.

3.3.16 Residence Size Requirements. No residence shall be erected on any of the Lots unless the total floor area of the main structure, exclusive of open porches, garages, outbuildings, patios, exterior stairways and landings, is more than 1,500 square feet and less than 5,000 square feet. No residence on any Lot shall have more than 2-1/2 stories.

3.3.17 New Materials and New Structures Only. No secondhand materials shall be used in construction of any improvements without the prior written approval of the Committee.

3.3.18 Licensed Contractor. All structures shall be constructed by contractors licensed under the laws of the State of California. If, after proper application by an Owner, the Committee has assured itself that the Owner can and will build

acceptable improvements, the Owner shall be permitted to self construct improvements on the Owner's Lot.

3.3.19 Temporary Structures. No construction shack, material storage shed, or other structure of a temporary or moveable nature, shall be placed on a Lot without written permission of the Committee, and no such structures shall remain on the property after the notice of completion is filed.

3.4 Alterations, Additions, Remodeling, Redecoration of Exterior Portions of Structures. No alteration of exterior design or color of any structure, including additions, shall be made without the prior written approval of the Committee. Materials used for any such approved alterations must harmonize with and complement the original improvements, and such alterations must be approved by the Committee in writing prior to such alteration under the procedures described in Article II hereof to the extent other requirements and procedures are deemed applicable by the Committee. No approval is required to repaint or restrain any improvement in the same color scheme as previously used and approved.

ARTICLE IV. ASSOCIATION

4.1 Organization. The Association is or shall be organized under the name "Sand Pointe Owners Association" as a non-profit, unincorporated association organized under the laws of the State of California.

4.2 Purposes, Powers and Authority. The Association shall have all of the powers conferred upon non-profit, unincorporated associations organized under California law, subject to any limitations set forth in this Declaration or in the Articles of Organization and Bylaws of the Association should they be adopted. The Association may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it by this Declaration or the other governing instruments. Its powers shall include, but are not limited to the following, which shall be exercised by its Board of Directors, unless otherwise provided:

4.2.1 To manage, operate and maintain the landscaping and fencing along Murray Road and the entrance; to manage, operate and maintain the perimeter fencing;

to manage, operate and maintain the Open Space Easement Area, Native Landscape Area, and any drainage facilities or roadways required to be privately maintained; to plant and maintain shrubs, trees, etc. within the Open Space Easement Area and the Native Landscape Area; to take such action as the Association shall deem appropriate to protect and preserve the character and integrity of the Property.

4.2.2 The Association shall have the power to establish, fix, levy, collect and enforce the payment of assessments against the Owners in accordance with the procedures set forth in this Declaration.

4.2.3 The Association shall have the power to adopt reasonable Rules and Regulations governing the Property in conformity with the general purposes of this Declaration. These Rules and Regulations may include but are not limited to: (i) reasonable restrictions on use by the Owners and their family, guests, employees, tenants and invitees, and; (ii) rules of conduct. A copy of the current Rules and Regulations, if any, shall be given to each Owner and each Owner shall execute a written receipt therefor. If any provision of the Rules and Regulations (should they be adopted) conflict with any provision of this Declaration, the provisions of this Declaration shall prevail.

4.2.4 The Association shall have the right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, in matters pertaining to the following:

- (i) Enforcement of this Declaration, and of the Articles, Bylaws, Rules and Regulations, should any be adopted.
- (ii) Damage to Native Landscape Areas and/or any other Lots or other interests which the Association is obligated to maintain or repair.
- (iii) Damage that arises out of or is related to subparagraphs (i) and (ii) above.

The Association shall enforce payment of assessments in accordance with the provisions of Article IV of this Declaration.

4.2.5 In addition to the general power of enforcement described above, the Association may discipline its Owners for violation of any of the provisions of this Declaration, or of Rules and Regulations (should they be adopted) by suspending the violator's voting rights, or by imposing monetary penalties, or both, subject to the following limitations:

- (i) The accused Owner shall be given reasonable notice and an opportunity to be heard with regard to the alleged violation in accordance with the provisions of the California Corporations Code Section 7341 and Civil Code Section 1363(b).
- (ii) Any suspension of an Owner's Association privileges shall not exceed 60 days for each violation.
- (iii) If the Association imposes a monetary penalty, the Board shall distribute to each Owner, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations. No monetary penalty imposed for these purposes shall exceed \$150.00 for each violation.

4.2.6 The Association, acting through the Board, shall have the power to delegate its authority, duties, and responsibilities to its officers, employees, committees, or agents, including a professional management agent. The term of any agreement with a manager or the Declarant for the furnishing of maintenance, repair, and related services shall not exceed one year, renewable by agreement of the parties for successive one-year periods. Such an agreement shall be terminable by either party (i) for cause on 30 days' written notice, and (ii) without cause or the payment of a termination fee on 90 days' written notice.

4.2.7 The Association's agents or employees shall have the right to enter any Lot, Native Landscape Area, Open Space Easement Area, or unfenced Curtilage Area when necessary in connection with any maintenance, landscaping, or construction work for which the Association is responsible. Entry within a fenced Curtilage Area shall be made only upon notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable.

4.3 Membership. Every Owner upon becoming an Owner shall automatically become a Member of the Association. Ownership of a Lot is the sole qualification for Membership. Each Member shall have the right to the privileges and obligations set forth in the Governing Instruments. Membership shall automatically cease when the Owner no longer holds an ownership interest in the Lot. All Memberships shall be appurtenant to the Lot conveyed and cannot be transferred, assigned, conveyed, hypothecated, pledged or alienated except as part of a transfer of the Owner's entire ownership interest, and then only to the transferee. Any transfer of the Owner's title to his or her Lot shall automatically transfer the appurtenant Membership to the transferee.

4.4 Voting Rights. All voting rights of the Owners shall be subject to the following restrictions, limitations, and requirements:

4.4.1 Except as provided in this Article, on each matter submitted to a vote of the Owners, each Owner shall be entitled to cast one vote for each Lot owned.

4.4.2 Fractional votes shall not be allowed. Where there is more than one record Owner of a Lot ("co-owners"), all of the co-owners shall be Members, but only one of them shall be entitled to cast the single vote attributable to the Lot. Co-owners should designate in writing one of their number to vote. If no such designation is made or if it is revoked, the co-owners shall decide among themselves, by majority vote, how that Lot's vote is to be cast. Unless the Association receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for the Lot on a particular matter if a majority of the co-owners present in person or by proxy cannot agree on a vote.

4.4.3 Where any provision of this Declaration, or of Articles or Bylaws (should they be adopted), requires the approval of a specified percentage of the voting power of the Association, that approval may be given by vote or written consent of Owners.

4.4.4 The record date or dates for the purpose of determining the Owners entitled to vote at any meeting of Members shall be the date or adjourned date of the meeting at which the vote is to be taken.

4.4.5 In the event there should be any delinquent payment of any dues or other assessments by a Member, the voting rights of such Member shall be suspended until said delinquency is paid in full.

4.5 Transfer and Initiation Fee. There shall be an initial Transfer and Initiation Membership Fee of \$100.00 per Lot, due and payable at the time of transfer of ownership from Declarant and upon every subsequent transfer of ownership of a Lot or ownership interest in a Lot.

ARTICLE V. BOARD OF DIRECTORS; MEMBERS, MEETINGS

5.1 Board of Directors. The affairs of the Association shall be governed by a three-person Board of Directors selected by the Members. The following provisions shall apply to the Board of Directors.

5.1.1 Election. Directors shall be elected at a meeting of the Members held annually on the first Monday in December. The first such meeting shall be held on December 4, 2001. If Declarant is the only Member, Declarant may appoint the initial Members of the Board of Directors by signing a written certificate setting forth their names and addresses.

5.1.2 Term of Office. Directors so elected or appointed shall serve for a term of one year, or shall continue to serve until a successor is elected or appointed.

5.1.3. Vacancies. A vacancy on the Board of Directors shall exist when a Member dies, resigns, fails to attend three consecutive meetings, or at the expiration of that Director's term. Any vacancy among the Board of Director may be filled by appointment by the remaining Members of the Board, even if there is only one Director remaining. A vacancy shall also exist upon removal of a Director by a majority vote of the Owners at a meeting called for that purpose upon not less than thirty days' written notice.

5.1.4 Meetings. The Board of Directors shall meet at least semi-annually at such times and places as the Board shall determine. The presence of two Board Members at such meeting shall constitute a quorum. On all matters requiring a vote by the

Directors, a majority vote of a quorum of the Directors shall control. Meetings may be adjourned to a stated time and place whether or not a quorum is present.

5.1.5 Notice. Written notice of all meetings of the Directors, including adjourned meetings, shall be given each Director at least five days in advance, provided that any Director may waive the necessity of written notice by signing a written Waiver of Notice which may be effective with respect to a given meeting, or with respect to all meetings. In the latter case, such Director shall be given not less than 24 hours telephonic notice of any meeting.

5.1.6 Board Action Without Meeting/Telephonic Meetings. Members of the Board of Directors may participate in a meeting through use of conference telephone or similar communications equipment, so long as all parties participating in such meeting can hear one another. Participation in a meeting pursuant to this subdivision constitutes presence in person at such meeting.

5.2 Annual Meeting of Members. The Members of the Association shall hold an annual meeting on the first Monday of December of each year at a place specified by the Board of Directors which shall be in Humboldt County, California. Special meetings of the Members may be called by the Board of Directors, or shall be called by the Board of Directors upon receipt of a written request signed by ten or more Members. Written notice of all Member meetings shall be mailed to each Member at least 15 days in advance of any such meeting.

5.2.1 Member Voting. All matters requiring the vote of the Members shall require a majority vote of those present in person or by proxy, at a meeting at which a quorum (51% of the Members) is present.

5.2.2 Member Action Without Meeting/Telephonic Meetings. Members may participate in a meeting through use of conference telephone or similar communications equipment, so long as all parties participating in such meeting can hear one another. Participation in a meeting pursuant to this subdivision constitutes presence in person at such meeting.

5.2.3 Election; Other Matters. At the annual meeting of the Members, the Board of Directors shall be elected, and such other matters acted upon which are not the province of the Board of Directors. Roberts Rules of Order shall apply to meetings of Members.

ARTICLE VI. DISSOLUTION

6.1 The Association may not dissolve without the approval of the County of Humboldt or its successor or assigns for so long as the maintenance of a governing body such as the Association is required by the County of Humboldt. Otherwise, the Association may dissolve by a vote of 75% of the Members.

ARTICLE VII. ASSESSMENTS AND COLLECTION PROCEDURES

7.1 Covenant to Pay. Declarant covenants and agrees for each Lot owned by it in the Development, and each Member by acceptance of the deed to the Owner's Lot is deemed to covenant and agree, to pay to the Association the regular and special assessments levied pursuant to the provisions of this Declaration. A regular or special assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall be a debt of the Owner of the Lot at the time the assessment or other sums are levied. The Owner may not waive or otherwise escape liability for these assessments by abandonment or transfer of the Owner's Lot.

7.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the operation, replacement, improvement, and maintenance of the Property, and to discharge any other obligations of the Association under this Declaration. All assessment payments shall be deposited into a maintenance fund to be used for the foregoing purposes.

7.3 Assessment Period. The fiscal year for the Association shall be a calendar year, unless the Board decides otherwise. The regular assessment period shall commence on January 1, and terminate on December 31 of each year; provided, however, that the first regular assessment period for all Lots in the Development shall commence on the first day of the month following the conveyance of a Lot in the Development and shall terminate on December 31 of that year

7.4 Regular Assessments. Within 60 days prior to the beginning of each fiscal year of the Association, the Board shall estimate the net charges to be paid during that year, including a reasonable provision for contingencies and replacements, with adjustments made for any expected income and surplus from a prior year's fund. The estimated cash requirement shall be assessed to each Owner according to the ratio of the number of Lots owned by the Owner assessed to the total number of Lots in the Development subject to assessment. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Board in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment. Declarant shall pay its full prorated share of the regular assessments on any unsold Lots subject to regular assessments.

7.5 Limitations on Assessments. The Board shall comply with the following requirements governing the imposition and amounts of assessments:

7.5.1 For any fiscal year, the Board may impose a regular assessment per Lot that is as much as 20% greater than the regular assessment for the preceding fiscal year provided:

- (i) The Board has distributed a pro forma operating budget for the current fiscal year.
- (ii) The increase is approved by the Members constituting a majority of the Members at a meeting or in an election of the Association.

7.5.2 The Board may impose, for any fiscal year, a regular assessment per Lot that is more than 20% greater than the regular assessment for the preceding fiscal year or may levy special assessments that in the aggregate exceed 5% of the budgeted gross

expenses of the Association for that fiscal year, provided the increase or levy is approved by Members constituting a majority of the Members of the Association by a majority vote at a meeting of the Association.

7.5.3 The Board may, without complying with the foregoing requirements, make an assessment increase that is necessary for an emergency situation. An emergency is an extraordinary expense that is:

- (i) Required by a court order.
- (ii) Necessary to repair or maintain the Property or any part of it for which the Association is responsible when a threat to personal safety in the Property is discovered.
- (iii) Necessary to repair or maintain the Property or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget pursuant to Section 7.5.1.

7.5.4 The Board shall notify the Owners in writing of any increase in the amount of a regular or special assessment. The Board shall provide this notice by first-class mail not less than 30 or more than 60 days prior to the due date of the increased assessment.

7.6 Late Charges. Late charges may be levied by the Association against an Owner for the delinquent payment of regular or special assessments. An assessment is delinquent 15 days after its due date. If an assessment is delinquent the Association may recover all of the following from the Owner.

7.6.1 Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney fees, and reasonable compensation for Board Members and staff time expended in making collection.

7.6.2 A late charge not exceeding 10% of the delinquent assessment or \$10.00, whichever is greater.

7.6.3 Interest on the foregoing sums, at an annual percentage rate of 12% commencing 30 days after the assessment becomes due.

No late charge may be imposed more than once for the delinquency of the same payment. However, the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments.

7.7 Enforcement of Assessments and Late Charges. Before the Association can file legal action to collect a past due debt for a regular or special assessment, the Association must notify the Owner by certified mail of the Association's fee and penalty procedures, and provide the Owner with an itemized statement of the charges owed. The statement must include:

7.7.1 The principal amount owed.

7.7.2 The amount of any late charges and the method used to calculate those charges.

7.7.3 The amount of any attorney fees incurred and estimated to be incurred by the Association in attempting to collect the debt.

7.7.4 The Association's collection practices, including the Association's right to the reasonable costs of collection.

Any partial payments made toward the debt will first be applied to the principal owed, and only after the principal owed is paid in full will such payments be applied to interest or collection expenses.

7.7.5 Any such claim may be enforced in any manner permitted by law. Any lien imposed upon a Lot and its Owner shall not be perfected by means of a nonjudicial foreclosure, as such nonjudicial foreclosure is referenced by Section 1367 of the California Civil Code.

7.8 Statement Regarding Assessments. Not more frequently than twice each year, the Association shall provide any Owner, upon written request, with a statement specifying

(1) the amounts of the Association's current regular and special assessments and fees, and (2) the amounts of any delinquent assessments and related late charges, interest, and costs owed by the Owner's Lot.

**ARTICLE VIII. GENERAL INFORMATION,
USES, PROHIBITIONS AND REQUIREMENTS**

8.1 Use of Lots. Lots shall not be used for any purpose other than (1) single family residence; provided, however, that Lots and dwelling units owned by Declarant or his nominees may be used as models, sales office, construction offices and maintenance yards for the purpose of marketing the Dwellings and the Properties until all of the Lots are sold by the Declarant.

8.2 Animals. No animals of any kind shall be raised, bred, or kept on any Lot, except that dogs or cats in a reasonable number may be kept in residences or in enclosed yards. In no instance shall animals be kept to be bred or maintained for any commercial purpose. All dogs shall be kept on leashes while away from the Owner's Lot. Cats owned by residents in and visitors to the Property shall not be permitted to roam freely outside of their Owners' yards under any circumstances. In addition, Owners and visitors shall not provide food for free-roaming domesticated or feral cats. Any pet deemed a nuisance by the Committee shall be removed from the premises.

8.3 Garages and Vehicles. Each Owner shall keep his garage in a neat and orderly condition with all storage areas enclosed. Boats, trailers or recreational vehicles shall be kept and stored inside of a closed garage or stored away from the Property and away from Murray Road. The building in which these items are to be stored must be an aesthetically attractive extension of the main structure or sheltered from view. Vehicles being used in the construction or repair of any of the improvements on the Property may be parked in driveways for periods reasonably necessary to complete the construction or repair. Each Lot shall contain parking space within the Cartilage area for at least two automobiles by one of the following means: (1) a garage either attached to or detached from the main structure; (2) a carport enclosed on not less than two sides, either attached directly to the main structure of the residence or connected by a roof or major fence; (3) an exterior parking area enclosed on not less than two sides by a fence at least five feet in height.

8.4 Antennas. No exterior radio, television or other antenna or dish or similar structure exceeding six feet in height above ground level shall be erected or maintained on any Lot or Dwelling, and in no instance shall it be visible from the street or any adjoining property.

8.5 Reflective Materials. No reflective finishes (other than glass or surfaces of hardware) shall be used on exterior surfaces including but not limited to the exterior surfaces of any of the following: siding, roofs, all projections above roofs, retaining walls, doors, trim, fences, pipes or miscellaneous equipment.

8.6 Exterior Lighting. There shall be no exterior lighting of any sort either installed or maintained, the light source of which is visible from a neighboring property. On all parcels, all exterior lights, including any lights attached to the outside of the houses, shall be low-wattage, non-reflective, and have a directional cast downward so as not to shine beyond the limits of the parcel. There shall be no night street lighting permitted.

8.7 Concrete Block. Exposed concrete block of any kind is not allowed.

8.8 Accessories. No mailboxes, newspaper tubes, receiving tubes, portable basket ball hoops or anything similar is allowed on any Lot. All address markers must be approved by the Committee.

8.9 Limitations on Commercial Activities. No business of any kind whatsoever shall be established or conducted on or from any of the Lots, unless approved by the Committee, except for the business of Declarant or any licensed contractor, in completing the construction of residences on the Property and of disposing of the same by sale, lease or otherwise.

8.10 Offensive Activities. No noxious or offensive activity shall be carried on, nor shall anything be done which may be or become a nuisance, or cause unreasonable embarrassment, disturbance or annoyance to the other Owners in the enjoyment of their Lots. Without limiting the above, no Owner shall permit noise, including but not limited to the barking of dogs, which would unreasonably disturb another Owner's quiet enjoyment of his Lot.

8.11 Trash. All garbage and trash shall be kept in covered containers, enclosed in a fenced area and collected at least weekly. Except on the scheduled day for collection, such containers shall be located so as not to be visible from neighboring property or streets. No portion of any Lot shall be used for the storage of building materials or other materials other than in connection with approved construction.

8.12 Clotheslines. Outside clothes drying facilities are prohibited.

8.13 Signs. No sign of any kind shall be displayed to the public view on or from any Lot without the approval of the Committee, except such signs as may be used by Declarant in connection with the development of the Property and sale of Lots, name and street address signs not larger than 18 inches by 8 inches, located on the residence only, and one sign per Lot of not more than three square feet indicating that a Dwelling is for sale or lease. All street address monuments must be similar, will be provided by the Declarant, and shall be maintained by the Association.

8.14 No Subdivision. No Lots shall be further divided.

8.15 No Structural Changes by Owner. An Owner shall not make any structural changes to his or her Dwelling or do any improvements on his Lot without the prior written approval of the Committee.

8.16 Maintenance of Lots. It shall be the duty of each Owner, at its sole cost and expense, to maintain, repair and replace all improvements located on the Owner's Lot. Improvement shall be deemed to include, but without limitation, the Owner's dwelling, landscaping, fences and yard areas on that Owner's Lot. Upon the failure of said Owner to maintain or repair improvements, the Committee shall have the right, but not the duty, to make such repairs or to perform such maintenance or repair, and the cost of such repairs or maintenance shall be collected from the Owner in the same manner as an authorized and approved special assessment.

8.17 Soils, Stability and Erosion. For all parcels along the western margin of the Property, the following will apply:

8.17.1 No grading shall occur in the "high" or "moderate" bluff slope failure hazard areas.

8.17.2 The roots of the vegetation growing in the "high" and "moderate" bluff slope failure hazard areas shall be protected from disturbance. Vegetation removal on the bluff face shall not occur as part of this project, for any reason.

8.17.3 Runoff on the project site shall not be concentrated in a manner which would cause it to be directed onto the "high" or "moderate" bluff slope failure hazard areas. Runoff which might be concentrated to flow over the bluff edge and down the bluff face shall not occur.

8.18. Air Quality (PM10) and Fireplaces.

8.18.1 Water shall be applied to disturbed land surfaces during construction, at a frequency high enough to maintain soil cohesion and to reduce blowing dust to the extent practicable.

8.18.2 Construction waste or debris, and vegetation waste, shall not be burned except on "permissive burn days" designated by the North Coast Unified Air Quality Management District.

8.18.3 Wood burning appliances (such as stoves) installed on this site shall meet EPA and/or State of California requirements for particulate emissions. "Wood burning appliance" means any fireplace, or wood fired heater that burns wood, pelleted wood or any other nongaseous or non-liquid fuels, or any similar device burning any solid fuel used for aesthetic or space-heating purposes, and which has a heat input less than one million British Thermal Units per hour.

8.19 Geologists' Design Recommendations. The consulting geologists' recommendations for foundation design and grading in preparation for project roadways, buildings, and other components shall be implemented as part of any grading and building permits issued by the County or Committee for this project.

8.20 Onsite Detention Swales. Onsite detention swales shall be included in the project design, in order to reduce the percentage of incident rainfall running off the site, to increase infiltration, to trap sediments, and to provide for biological treatment of biological and some chemical wastes resulting from project site occupancy.

8.21 Construction Noise Restrictions. Construction activities may be conducted from 7:00 a.m. to 5:00 p.m., weekdays. Construction personnel shall conduct their work activities in a manner, which minimizes noise generation. Notify neighbors adjacent to the parts of the project site subject to heavy equipment use prior to initiating such use.

8.22 Fees and Costs. In any action or proceeding to enforce the provisions of this Declaration, or to collect any sum due, or in an action seeking damages for breach of its provisions, the prevailing party shall be entitled to recover the fees of its attorney. Whether or not an action or proceeding is filed, the Committee shall be entitled to recover from an Owner all costs (including, but not limited to attorney fees) incurred by the Committee in attempting to enforce the provisions of this Declaration, together with reasonable compensation for time spent by a Committee Member or Members. Compensation for Committee Members' time so expended shall be deemed reasonable if at the same rate as would be charged the Association by its attorneys.

ARTICLE IX. MORTGAGE PROTECTION

9.1 The lien of any judgment arising from a breach of any provision of this Declaration upon any Lot shall be subordinate to any pre-existing mortgage that encumbers any portion of the Property or any Lot, made in good faith and for value. No amendment to these restrictions shall affect the rights of a pre-existing mortgagee under a recorded mortgage who does not join in the execution thereof. No breach of any of the foregoing covenants and restrictions shall cause any forfeiture of title or reversion, or destroy any rights of re-entry whatsoever, but violation of any one or more of these covenants or restrictions may be enjoined or abated by the Declarant, Declarant's successors and assigns, or the Committee, by action of any court of competent jurisdiction, and damages may also be awarded against such violations provided, however, any such violation shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to said property or any part thereof, but said covenants and

restrictions shall be binding upon and effective against any Owner of said Property or portion thereof, whose title is acquired by foreclosure, trustee sale or otherwise.

ARTICLE X. MISCELLANEOUS

10.1 Severability of Declarant Provisions. If any provisions of the Declaration are held to be invalid or unlawful by final judgment of a court of competent jurisdiction, such invalidity or illegality shall not affect the validity of any other provisions.

10.2 Singular Includes Plural. The singular shall include the plural, and the masculine includes the feminine whenever the context so requires.

ARTICLE XI. TERM AND AMENDMENT OF DECLARATION

11.1 Term of the CC&R's. These restrictions, covenants and conditions have a term of 30 years from the date this document is recorded. After 30 years the term shall be automatically extended for successive periods of 10 years, unless an instrument signed by 75% of the then Owners of the Lots has been recorded, agreeing to change said term. Such modification shall be effective upon its recordation in the office of the Humboldt County Recorder.

11.2 Amendment Procedure. This Declaration may be amended only by the vote or written assent of at least 75% of the Owners of Lots. Any amendment to this Declaration must be recorded and becomes effective when recorded in the office of the County Recorder.

ARTICLE XII. TERMINATION OF ANY RESPONSIBILITY OF DECLARANT

12.1 If Declarant conveys all of its right, title and interest in the Property to any other person or entity, Declarant shall be relieved of the performance of any further duty or obligation to perform all such duties and obligations of the Declarant.

IN WITNESS WHEREOF, the undersigned being the Declarant herein has hereunto set his hand this 10th day of December, 2001.



Stephen A. Moser, Trustee
The 1993 Stephen A. Moser
Revocable Trust UAD 10/28/93

ACKNOWLEDGMENT OF NOTARY PUBLIC

State of California)
) ss.
County of Humboldt)

On Dec. 10, 2001, before me, the undersigned notary public, personally appeared STEPHEN A. MOSER, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his **authorized capacity**, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

