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DECLARATION  
OF  
COVENANTS, CONDITIONS,  
RESTRICTIONS AND RESERVATIONS  
FOR  
HIGHPOINT ESTATES

|                                         |                                                                                                                                 |
|-----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| TITLE OF DOCUMENT:                      | DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS FOR HIGHPOINT ESTATES                                       |
| DECLARANT/GRANTOR/<br>GRANTEE:          | GB EMERALD, L.L.C., A WASHINGTON LIMITED LIABILITY COMPANY; AND<br>SITA ENTERPRISES LLC, A WASHINGTON LIMITED LIABILITY COMPANY |
| ABBREVIATED<br>LEGAL DESCRIPTION:       | S ½ of SE ¼ of NE ¼, SEC. 22, T34N, R4E;<br>N ½ of SE ¼ of NE ¼, SEC. 22, T34N, R4E                                             |
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ARTICLE I

1 INITIAL MATTERS – PURPOSES OF COVENANTS.

1.1 Name and Type of the Community and its Association.

The name of the Community is Highpoint Estates. The Community is a Plat Community, as defined in the Governing Law and is subject to the Governing Law. The Community's Association, described with greater particularity in section 7.1, is a Washington Nonprofit Miscellaneous and Mutual Corporation known as Highpoint Estates Community Association.

1.2 Identification of Declarant and Property Subject to Covenants.

1.2.1 Identification of Declarant. The Declarant is GB Emerald, L.L.C., and SITA Enterprises LLC, Washington limited liability companies.

1.3 Reference to Plat Map and Legal Description of Property Included in Community.

1.3.1 Reference to Plat Map. The Declarant has recorded with the Auditor of Skagit County, Washington the Highpoint Estates Plat. The Highpoint Estates Plat is recorded under Skagit County Auditor's File No. 202402140068, records of Skagit County, Washington.

1.3.2 Legal Description of Real Property Included in the Community. The real property included within the Community consists of the following and is defined as the "Property" below:

**P126391**

THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., EXCEPT THE WET 638.12 FEET (AS MEASURED PERPENDICULAR TO THE WEST LINE): EXCEPT THE MOUNT VERNON-BIGLAKE COUNTY ROAD RUNNING ALONG THE SOUTH LINE THEREOF, AND ALSO EXCEPT THE EAST 150 FEET OF THE SOUTH 300 FEET OF THE REMAINDER.

**P27513**

THE EAST 393.93 FEET (AS MEASURED PERPENDICULAR TO AND PARALLEL WITH THE EAST LINE) OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.

1.4 Purposes of the Plat and the Covenants.

1.4.1 General Purpose of Plat. The Plat has the legal effect of creating the Lots, Common Elements and other interests in real property included in this Community. The Plat also contains covenants and conditions relating to ownership of the Lots and maintenance of the Common Elements of the Community.

1.4.2 Covenants are Legally Binding – Common Plan of Development. This Declaration states covenants, conditions, restrictions and reservations intended by the Declarant to effect a common plan for the development of the real property within the Community mutually beneficial to all of the Lots within the Community, consistent with the covenants and conditions of the Plat. This Declaration containing covenants, conditions, restrictions, reservations and plan, are binding upon all the Plat and upon each such Lot created therein as a parcel of realty and upon its Owners and their heirs, personal representatives, family members and other Occupants, guests, invitees, tenants, licensees, successors and assigns, through all successive transfers of a Lot or of any other part of the Property, irrespective of whether specifically referred to in deeds, contracts or security instruments, and regardless of any subsequent forfeitures, foreclosures, or sales of Lots under security instruments, or of any forfeitures, foreclosures, or sales instituted for nonpayment of government tax, levy or assessment of any kind.

1.4.3 Specific Purpose – Governance of Community for Benefit of Lot Owners. The specific purpose of this Declaration is to develop and maintain an effective governance structure for the Community, consistent with the terms of the Governing Law, to facilitate the perpetual existence of the Community so that goods and services essential to the Upkeep of Common Elements and to the well-being of the Occupants of the Community may be assured. The Community shall be governed in perpetuity by the Association described below in this Declaration.

ARTICLE II

2. DEFINITIONS.

Capitalized words in this Declaration shall have the meaning given to them in this Article II. The definitions set forth in the Governing Law shall be used for any words not defined herein.

2.1 “Allocated Interest” means the Common Expense liability and votes in the Association allocated to each Lot pursuant to RCW 64.90.235 and section 5.3.

2.2 “Annual Budget” means the budget adopted by the Board and ratified by the owners



pursuant to section 10.1.

- 2.3 “ARC” or “Architectural Review Coordinator” or “Architectural Review Committee” means the coordinator or committee formed pursuant to section 4.6 and 9.2 of this Declaration.
- 2.4 “Association” or “Lot Owners' Association” means the property owners association that is described in Article VII of this Declaration.
- 2.5 “Board” means the board of directors of the Association.
- 2.6 “Common Elements” means real property interests reserved by the Declarant in the Declaration and the Plat for the benefit of or owned by the Association and Lot Owners.
- 2.7 “Community” means all Lots created by the Plat, along with all the improvements constructed therein, and all other institutions and things serving the Lot Owners.
- 2.8 “Declarant” means GB Emerald, L.L.C. and Sita Enterprises LLC, Washington limited liability companies or any Person specifically defined at RCW 64.90.010(17).
- 2.9 “Declaration” means this document and any amendments to this document.
- 2.10 “Design Guidelines” means the standards, if any, developed by the Board of Directors or a Committee pursuant to Section 9.2, and any standards established by the Declarant.
- 2.11 “Development Plan” means the formal plan of development of the Community approved by the municipality with jurisdiction, described in greater detail in Article III hereof. The term also includes any amendments thereto approved by such municipality.
- 2.12 “Dwelling” or “Dwelling Unit” means an improved portion of a Lot designed for separate ownership or occupancy and intended to serve as a personal residence and shall include buildings that contain multiple Dwellings.
- 2.13 “Eligible Mortgagee” means the holder of a mortgage on a Lot that has filed with the Secretary of the Association a written request that it be given copies of notices of any action by the Association that requires the consent of mortgagees. The term "Eligible Mortgagee" also includes the "servicer" of a mortgage that has been acquired by a secondary mortgage market entity such as the Federal National Mortgage Association ("FNMA" or "Fannie Mae") or the Federal Home Loan Mortgage Corporation ("FHLMC" or "Freddie Mac") or the like.

- 2.14 “Governing Law” means the Washington Uniform Common Interest Ownership Act (Chapter 64.90 RCW), and if retroactively applicable to the Community, any successor statutes.
- 2.15 “Lot” means lots 1 through 49 of the Plat; “Lot” is intended to be coextensive with the term “Unit” as defined in the Governing Law, unless the context clearly evidences a different intent.
- 2.16 “Lot Owner” or “Owner” means the Declarant or any other Person who owns a Lot but does not include a Person who has an interest in a Lot solely as security for an obligation. “Lot Owner” means the vendee and not the vendor of a Lot under a real estate contract.
- 2.17 “Manager” or “Managing Agent” shall mean a natural person or business entity regularly engaged in the business of managing the Community.
- 2.18 “Map” means the Plat map defined in section 1.3.1 and any amendments thereto.
- 2.19 “Mortgage” means a mortgage, deed of trust or real estate contract.
- 2.20 “Notice” means a notice provided under the provisions of RCW 64.90.515.
- 2.21 “Occupant” means a natural Person lawfully occupying any portion of any Lot; the term includes without limitation Lot Owners, and family members, employees and tenants of Lot Owners.
- 2.22 “Plat” means the Highpoint Estates Plat more specifically defined in section 1.3. and any amendments thereof. The term Plat includes all terms and conditions of plat approval given by agencies with jurisdiction.
- 2.23 “Reserve” or “Reserves,” when used as a noun, means money on deposit in a reserve fund or reserve account, which terms are synonymous, established pursuant to RCW 64.90.535.
- 2.24 “Residential Purposes” means use for dwelling and human habitation, and for reasonable social, recreational or other uses normally incident to such purposes.
- 2.25 “Section” means a section or subsection of this Declaration.
- 2.26 “Upkeep” means any care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction that is necessary to maintain Lots and Dwellings in a decent, safe and sanitary condition, in keeping with standards established in the Governing Documents.

ARTICLE III

3. DESCRIPTION OF DEVELOPMENT PLAN, DEVELOPMENT RIGHTS, AND SPECIAL DECLARANT RIGHTS.

3.1 Development Plan.

3.1.1 Description of Conditions of Approval of Community. The Plat was approved, and infrastructure was constructed in accordance with certain conditions of approval (“Development Plan”) approved by the City of Mount Vernon, Washington under file number PLAN19-0042.

3.1.2 Continued Consistency with Development Plan Required. All further use and development of the Community shall be consistent with the Governing Law, the Development Plan, and with any other City land use and platting requirements applicable to the Plat.

3.2 Community Attributes. The Community consists of forty-nine (49) Lots designed for Residential Purposes, eight (8) tracts (this includes two lots, Lot 42 and 43 that are also classified as tracts), as described with greater particularity in this Declaration.

3.3 Development Rights.

3.3.1 Description. Pursuant to RCW 64.90.225(1)(g), the Declarant reserves Development Rights that are personal to the Declarant and may be exercised, or not exercised, at the sole discretion of the Declarant. These include the right to:

- (a) add real estate or improvements to Community;
- (b) create Lots, Common Elements, or Limited Common Elements within the Community;
- (c) subdivide or combine Lots or convert Lots into Common Elements;
- (d) reallocate Limited Common Elements with respect to Lots that have not been conveyed by the Declarant.

3.3.2 Time Limits and Other Limitations on Development Rights. The Declarant may exercise Development Rights for a period of fifteen (15) years after the date of recording of this Declaration.

3.3.3 Sequence of Exercise of Rights. The Development Rights described in subsection 3.3.1 may be exercised, at any time, at different times and in any order, without further assurances or limitation of any sort, either in all or in any portion of the Community subject to such rights.

3.4 Special Declarant Rights.

3.4.1 General Reservation of Special Declarant Rights. Pursuant to RCW 64.90.225(1)(g), the Declarant has reserved the following Special Declarant Rights for the purpose of furthering and completing the development of the Community:

- (a) to complete any improvements indicated on the Map or described in the Declaration or described in the Public Offering Statement pursuant to RCW 64.90.610(1)(h);
- (b) to exercise any Development Right reserved under section 3.3;
- (c) to maintain sales offices, management offices, signs advertising the Community, and model Dwellings;
- (d) to use the Common Element Easements for the purpose of making improvements within the Community or serving the Community;
- (e) merge or consolidate the Community with another Community of the same form of Ownership;
- (f) appoint or remove any officer or Board member of the Association or to veto or approve a proposed action of any Board or Association pursuant to RCW 64.90.415(1);
- (g) control any construction design review or aesthetic standards committee or process;
- (h) attend meeting of the Unit Owners, except during an executive session, the Board; and
- (i) have access to the records of the Association to the same extent as a Lot Owner.

3.4.2 Time Limits on the Exercise of Special Declarant Rights. Except as otherwise provided in the Governing Law, Special Declarant Rights shall terminate fifteen (15) years from the date of recording of this Declaration.

ARTICLE IV

4. LOTS AND DWELLINGS.

- 4.1 Number and Location of Lots. The Community consists of forty-nine (49) platted Lots. The locations and dimensions of the Lots are shown on the Map.
- 4.2 Initial Construction of Improvements Within Lots. Improvements will be constructed within the Lots, subject to Plat conditions and applicable City ordinances.

#### 4.3 Subdivision and Combination of Lots.

4.3.1 Subdivision of Lots Prohibited. Subdivision of Lots is prohibited in this Community, except (a) when occurring through an exercise of Development Rights, or (b) when the Lot Owner of any Lot that has been previously combined with another Lot, or that has had its common boundary adjusted with another, later desires to cause such adjustment to be reversed with the consent of the Lot Owner(s) of any other Lot(s) affected thereby, in the manner provided in the Governing Law and applicable subdivision ordinance.

4.3.2 Combination of Lots. Two or more Lots may be combined into a lesser number of Lots by the Declarant based on Development Rights or upon application to the Association by the Lot Owners of those Lots and upon approval by the Board pursuant to this section 4.3, followed by approval by the City of Mount Vernon. The application to the Board must include plans showing the relocated boundaries, a reallocation of the Allocated Interests of the Lots being combined among the Lots resulting from the combination, and such other information as the Board may require. Unless the Board determines, after receipt of all required information, that the reallocations are unreasonable or that the proposed boundary relocation does not comply with the Declaration, RCW 64.90.265 and other provisions of law, the Board shall approve the application, subject to approval by the City of Mount Vernon. Following receipt of approval by the City, the Board shall prepare any amendments to the Declaration and Map required under the requirements of section 4.3.3.

4.3.3 Amendments to Declaration. The Declaration may be amended pursuant to RCW 64.90.285.

4.3.4 Costs to be Assessed to Affected Lot Owners. All costs, including reasonable attorneys' fees, incurred in preparing and recording amendments to the Declaration shall be paid to the Association by the Lot Owners of the affected Lots prior to recordation of the required amendments to the Declaration.

4.3.5 Payment of Other Fees or Charges. The Association may require payment to the Association of a one-time fee or charge, or continuing fees or charges, payable by the Lot Owners on whose behalf the boundaries are relocated, if reasonably necessary to protect the interests of the Association and its other Members.

- 4.4 Upkeep of Lots and Dwellings.
- 4.4.1 Lot Owners' General Responsibility. Each Lot Owner shall have the right and the duty to keep the Dwelling and its equipment, appliances, and fixtures contained therein in good order, condition and repair and shall do all interior redecorating at any time necessary to maintain the good appearance and condition of the Dwelling. Each Lot Owner shall also be responsible for the Upkeep of decks and any and all other exterior portions of the Dwelling not maintained by the Association, along with individual heating, ventilating or air-conditioning equipment, wherever located, installed for the sole and exclusive use of the Lot, and of any hot tub or other structure, device or equipment lying outside the Dwelling but lying within the Lot. This section shall not be construed as permitting any interference with or damage to the structural integrity of either the Common Elements or of any other Lot(s), nor shall it be construed to limit the powers or obligations of the Association hereunder. All costs for fulfilling the requirements of this section shall be paid by the Lot Owner.
- 4.4.2 Upkeep by Association. If Upkeep to portions of a Lot for which the Lot Owner is responsible, is reasonably necessary, in the opinion of the Board, to protect the Common Elements or to preserve the appearance and value of the Community, and the Lot Owner of said Lot has failed or refused to perform said maintenance or repair as required by section 4.4.1, within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board to the Lot Owner, the Association may, but is not obligated, to perform such Upkeep, provided no breach of the peace is likely to ensue. The costs of such Upkeep shall constitute a specially allocated assessment against such Lot, pursuant to section 10.5.
- 4.4.3 Association's Responsibility. The Association shall have primary responsibility to provide Upkeep of the Common Elements.
- 4.5 Damaged Improvements. If a Dwelling or other major improvement located upon a Lot is damaged or destroyed, the Lot Owner thereof shall restore the site either (i) by repairing or reconstructing such building or improvement or (ii) by clearing away the debris and restoring the site to an acceptable condition compatible with the remainder of the Community. Unless the Board permits a longer time period, such work must be commenced within four months after the casualty and be substantially completed within twelve months after the casualty. The four-month period may be extended for a reasonable period thereafter in the event that repairs or reconstruction have not commenced because of factors beyond the control of the Lot Owner, provided that the Lot Owner has exercised and does thereafter continue to exercise due diligence in an effort to commence required work.

#### 4.6 Architectural and Design Review.

4.6.1. Design Guidelines. Design for improvements constructed within the Lots within this Community shall be consistent with the theme of the Community established by the Declarant. All construction must be approved in writing in advance by the Architectural Review Coordinator (“ARC”), as provided in Sections 4.6.2 and 9.2 below.

4.6.2. Design Review. To preserve a harmonious architectural and aesthetic appearance of improvements constructed within the Community, no new construction or improvements of any nature whatsoever shall be constructed or placed on any Lot by any person other than the Declarant or its successors and/or affiliate(s) until detailed plans depicting all such improvements have been reviewed and approved by the ARC. Two copies of such plans, specifications and related data must be submitted to the ARC, along with a Design Review fee of up to \$300.00. Upon approval, one set of plans shall be retained among the permanent records of the Association and one copy shall be returned to the Lot Owner, appropriately marked. The builder and/or Lot Owner are encouraged to submit plans to the ARC at the earliest possible date.

4.6.3. Time for Approval – No Construction Prior to Approval. The ARC shall approve or disapprove plans, specifications and details within the time described in section 9.2 hereof. No construction activity by other Persons other than the Declarant or its successors and/or affiliate(s) may commence prior to such approval.

#### 4.7. Construction on Lots.

4.7.1. No Deviation from Plans – Noncompliance Deemed a Nuisance. Any person obtaining approval of the ARC shall not deviate materially from the approved plans and specifications without the prior written consent of the ARC. Such person shall notify the ARC when the alterations or improvements are complete. Approval of any particular plans and specifications or design does not waive the right of the ARC to disapprove such plans and specifications, or any elements or features thereof, if such plans and specifications are subsequently submitted for use in any other instance or by any other person. Any addition, alteration or improvement upon any Lot existing in violation of the Governing Documents shall constitute a nuisance and shall be removed or altered to conform to the Governing Documents by the Lot’s Owner within thirty days after delivery of notice of the violation to the Lot Owner by the ARC at the Lot Owner’s expense.

- 4.7.2. Governmental Permits. Approval by the Declarant or the ARC shall not relieve a Lot Owner from the obligation to obtain any required governmental permits. The Lot Owner shall deliver all approvals and permits required by law to the ARC prior to the commencement of any construction requiring such approval or permit. If any application to any governmental authority for a permit to make any such structural addition, alteration or improvement to any Lot or improvement located on any Lot requires execution by the Association, and provided consent has been given by the ARC, then the application shall be executed on behalf of the Association, without incurring any liability on the part of the Association to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having a claim for personal injury or property damage arising therefrom.
- 4.7.3. Timing of Construction. Any person obtaining approval of the ARC for construction of improvements on a Lot shall commence construction or alteration in accordance with plans and specifications approved within six (6) months after the date of approval and shall substantially complete any construction or alteration within six (6) months after start of excavation/construction, or within such other period as specified in the approval. Construction shall not be deemed to be completed until the improvement is finished, the Lot has been cleaned of construction debris and the Lot has been landscaped. Notwithstanding the foregoing, the ARC's approval may provide for a different period during which to commence or complete construction. If any such person does not commence work within six months after approval, or such other time period determined by the ARC, then approval shall lapse.
- 4.7.4. No Permanent Construction within Easements. No permanent building, deck, fencing or other structure shall be constructed within the easements on the Lots depicted on the Plat unless approved by the ARC.

#### ARTICLE V

### 5. COMMON ELEMENTS, LIMITED COMMON ELEMENTS AND LANDSCAPING.

- 5.1 Description of Common Elements. The Common Elements of the Community to be maintained, repaired, and ultimately replaced by the Association consist of the following which are shown on the attached Exhibit "A":
- 5.1.1 Tract A, specifically, landscaping and fencing around the stormwater pond located thereon;
- 5.1.2 Tracts B, E, F, G, and H including landscaping, pavement, fencing and



sidewalks (if any);

- 5.1.3 Tract C and the landscaping and trail contained therein;
- 5.1.4 Tract D, specifically, landscaping, and fencing around the stormwater pond located thereon;
- 5.1.5 Native Growth Protection Area and subdivision signs located in Tracts B and H;
- 5.1.6 Maintenance and protection of the Native Growth Protection Area and its associated split rail fence within Tract B;
- 5.1.7 All easements for the benefit of the Association as set forth in Section XVI below;
- 5.1.8 Street trees planted within the City right of way;
- 5.1.9 Fencing around the perimeter of the Community and sidewalks located throughout the Community; and
- 5.1.10 The gate, bollards, and fire lane painting/signage located within Tract G.

Any amendments to this Declaration that would amend, delete, modify, or otherwise affect any provision required by this section shall require the prior written approval of the Development Services Director and the City Attorney.

5.2 Partition, Conveyance, or Encumbrance.

- 5.2.1 Generally No Sale or Encumbrance. The Common Elements of the Community shall not be abandoned by act or omission, and no Lot Owner or other person may bring any action that impairs the rights of the Community in the Common Elements.
- 5.2.2 Conveyance or Encumbrance by Association. The Common Elements may not be extinguished, modified or otherwise impaired by the Board. The easement rights that make up the Common Elements may not be extinguished, amended or compromised by the Board, except by amendment to this Declaration.

5.3 Allocated Interest in Common Elements – Election by Declarant. In this Community, the Declarant has opted NOT to allocate an undivided interest in the Common Elements to each Lot in the Community.

- 5.4 Maintenance, Repair and Replacement. The Association is generally responsible for maintenance, repair and replacement of the Common Elements, as more particularly described in Article VI of this Declaration.
- 5.5 No Interference with Common Elements. No Person shall obstruct any of the Common Elements nor shall any Person place or cause or permit anything to be placed or stored on or in any of the Common Elements without the approval of the Board. No improvements within the Common Elements shall be damaged, altered, constructed in, or removed from the Common Elements except with the prior written consent of the Board.
- 5.6 Limited Common Elements. The Community does not, at the present time, have any Limited Common Elements.
- 5.7 Landscaping. Landscaping within the front yards of each Lot shall be the responsibility of the Association.
- 5.8 Tracts E and F. Tracts E and F (which are Lots 43 and 42 respectively) are future development tracts. Once the City of Mount Vernon has approved these lots for development, the Association shall be relieved of its obligations to maintain them as set forth in section 5.1.2 above.

#### ARTICLE VI

#### 6. SPECIAL UPKEEP AND MAINTENANCE PROVISIONS.

- 6.1 Association's Special Maintenance Responsibilities. The following Common Elements that may periodically require significant Upkeep by the Association include the following:
- 6.1.2 Fencing Around Stormwater Pond. The Association shall maintain the fencing and landscaping around the stormwater ponds located within Tracts A and D.
- 6.1.3 Trail within Tract C. There exists within Tract C a private trail that may require periodic maintenance. The Association shall be responsible for all Upkeep and maintenance of said trail.
- 6.1.4 Private Roads. The Association shall maintain the private roads serving lots 2 through 7, tract A, and Lots 30-31 as set forth in section 16.1.3 below.

## ARTICLE VII

### 7. LOT OWNERS ASSOCIATION.

7.1 Name and Form of Association. The name of the Association shall be “Highpoint Estates Community Association.” The Association has been incorporated by the Declarant, as a non-profit corporation under the laws of the State of Washington and pursuant to Chapter 24.06 RCW. The rights and duties of the members and of the Association shall be governed by the provisions of the Governing Law and of this Declaration. The Association shall remain organized as a nonprofit corporation. In case of any conflict between Chapter 24.06 RCW, the Nonprofit Miscellaneous and Mutual Corporations Act, and the Governing Law, the Governing Law shall control.

### 7.2 Powers and Duties of Association.

7.2.1 Duties and Responsibility of Association. The purposes for which the Association was formed are to maintain, repair, replace and manage the Common Elements of the Community, to provide necessary insurance coverage, and to enforce provisions of the Governing Documents, so as to protect the safety and well-being of Occupants of the Community and preserve the long-term value of the Lots and other real property within the Community, for the benefit of the Lot Owners. The Board shall consistently adopt Budgets for the Association for operations and Reserves that are reasonably calculated to assure that these essential purposes are realized each year of its existence, on into the indefinite future.

7.2.2 Statutory Powers Exercised by Board of Directors. Except for rights of Lot Owners explicitly reserved in the Governing Law or as elsewhere provided in the Governing Documents, the Board shall have the exclusive right and power to govern the Association and shall have all powers available to community associations under the Governing Law in order to do so, except as otherwise expressly provided herein.

7.2.3 Power to Borrow and/or Assign Future Income. Without limiting the foregoing, the Association also shall have the power to borrow and/or assign its right to future income (including the right to collect and receive Assessments), provided that each assignment of Assessments must comply with RCW 64.90.405(4).

7.3 Membership in Association. Membership in the Association is automatically associated with and appurtenant to the ownership of a Lot in the Community under the Governing Law. Except in the case of a termination of the Community, the membership of the Association at all times consists exclusively of all Lot Owners.

7.4 Voting.

7.4.1 Voting Process. The manner of voting shall be as prescribed in the initial Bylaws of the Association.

7.4.2 Allocated Interests for Voting. The Declarant has allocated to each Lot in the Community an equal vote in the Association that is known as the Lot's Allocated Interest for voting, or "vote." This includes one vote each to Lot 42 and Lot 43.

7.5 Bylaws of Association - Consistent with RCW 64.90.410. Initial Bylaws for the administration of the Association and for other purposes not inconsistent with this Declaration have been or will be prepared by the Declarant. The initial Bylaws are subject to the approval of the initial Board.

ARTICLE VIII

8. MANAGEMENT OF THE ASSOCIATION.

8.1 Management by Declarant – Period of Declarant Control.

8.1.1 General Provisions for Declarant Control. Pursuant to RCW 64.90.415 and sections 3.4 and 3.6, the Declarant has reserved Declarant Control. Declarant Control shall terminate as provided in RCW 64.90.415.

8.2 Authority of the Board.

8.2.1 General Authority. The Board shall have the powers and be responsible for the duties described in RCW 64.90.405.

8.2.2 Liens or Encumbrances. The Board may also pay any amount necessary to discharge any lien or encumbrance that is claimed to constitute a lien against Common Elements or any portion thereof in violation of RCW 64.90.490(1). Where one or more Lot Owners are responsible for the existence of such lien, they shall be jointly and severally found to have committed willful misconduct or gross negligence and thus liable for the cost of discharging it, and any costs and expenses incurred by the Board by reason of such lien or liens shall constitute specially allocated assessments against the Lots responsible, to the extent of their responsibility.

8.2.3 No Business Authority Nothing herein contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all of the Lot Owners or any of them.

8.3 Right of Entry - Allocation of Responsibility for Damage to Lot upon Entry.

8.3.1 Right of Entry - Notice Generally Required. The Board and its agents, contractors or employees may enter any Lot when necessary in connection with any maintenance, repair, landscaping or construction for which the Board is responsible, or in the event of a *bona fide* emergency. Except in the case of an emergency, reasonable advance Notice shall be given to the Lot Owner and, if applicable, to any lawful tenant in the Lot. Such entry shall be made with as little inconvenience to the Lot Owner and/or Occupant as practicable.

8.3.2 Allocation of Responsibility for Damage to Lot upon Entry. Any damage caused by such entry shall be repaired by the Association out of the Common Expense fund if the entry was due to an emergency (unless the emergency was caused by the Lot Owner or a lawful Occupant of the Lot entered, in which case the cost shall constitute a specially allocated assessment against the Lot entered) or for the purpose of Upkeep to Common Elements where the repairs were undertaken by or under the direction or authority of the Board. If the Upkeep was necessitated by conditions within the Lot or performed at the request of its Lot Owner or its lawful Occupants, the costs thereof shall constitute a specially allocated assessment against such Lot.

8.4 Board as Attorney in Fact. Each Lot Owner, by the act of becoming an Lot Owner of a Lot, shall be deemed to have irrevocably appointed the Board as his or her attorney-in-fact, with full power of substitution, to take such actions as are reasonably necessary to perform the duties of the Association and Board hereunder, including, but not limited to, the duties to maintain, repair and improve the Property, to deal with a Lot upon damage or destruction, to grant licenses and easements, and to secure and distribute condemnation awards and/or insurance proceeds.

8.5 Board's Authority Exclusive - Lot Owners May Not Direct Association Agents/Employees. The Board's authority with respect to the Common Elements and responsibilities as stated in Article V is exclusive. No Person shall attempt to engage or direct any employee, contractor or agent of the Association or its Manager on any private business of such Person, or to otherwise direct, supervise or in any manner attempt to assert control over such Person during the hours that such Person is working on behalf of the Association.

ARTICLE IX

9. PERMITTED AND PROHIBITED USES

9.1 Permitted and Prohibited Uses.

- 9.1.1 Residential Use. Dwellings constructed within Lots in this Community shall be used primarily for Residential Purposes and for common social, recreational or other reasonable uses normally incident to such purposes. Portions of a Dwelling may also be used for a professional office, provided that such use is consistent with all applicable laws, ordinances and regulations of any governmental authority with jurisdiction, and so long as such use does not generate any appreciable levels of client or customer traffic, bulk shipping or receiving, or create noise, odors, vibration or other unreasonable disturbance to other lawful Occupants of the Community.
- 9.1.2 Commercial Uses Restricted. There shall be no commercial uses permitted within Lots, except as permitted in section 9.1.1.
- 9.1.3 Animals. The maintenance, keeping, boarding and/or raising of animals, livestock, poultry, or reptiles of any kind, regardless of number, shall be and is prohibited within any Lot or upon the Common Elements, except that the keeping of small birds, aquarium fish, well-behaved dogs and/or cats and other well-behaved domestic animals that do not normally leave the Lot is permitted, subject to Rules adopted by the Board of Directors. No roosters are allowed within the Community. The owner of any animal maintained within the Community shall exercise appropriate control over the animal, and shall clean up after such animal and shall not permit deposits of fecal matter, urinary residue or foodstuffs from or for such animal to remain anywhere within the Common Elements, but shall properly dispose of all such waste material in a safe and sanitary fashion. Any Person who keeps or maintains any animal upon any portion of the Community shall be deemed to have indemnified and agreed to hold the Association, each Lot Owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such animal within the Community. All animals shall be registered and inoculated as required by law. The Board of Directors may establish reasonable fees not to exceed the additional costs incurred by the Association resulting from the presence of such animals. The Board may at any time require the removal of any animal that it finds is or has become an unreasonable source of annoyance, and may exercise this authority for specific animals even though other animals are permitted to remain.
- 9.1.4 Restrictions on the Leasing or Short-term Occupancy of Lots. Any lease agreement shall provide that the terms of the lease shall be subject in all respects to the provisions of the Governing Documents and bylaws, and that any failure by the lessee to comply with such provisions shall be a default under the lease, entitling the Association to enforce such provisions as a party to the lease. All leases shall be in writing, and the Association is entitled to receive a copy of any lease agreement from the Lot Owner or the

tenant, and the Association is entitled to receive contact information for every tenant. A lease, as defined herein, shall include month-to-month rentals. Transient occupancy under any form of rental or license agreement for periods of less than 30 days is not permitted. Subleasing less than all of a residence is not permitted.

- 9.1.5 Noise. No Person shall cause any unreasonably loud noise anywhere in the Community.
- 9.1.6 Offensive or Illegal Activity. No noxious, offensive, smelly or illegal activity shall be carried on in any Lot or the Common Elements, nor shall anything be done therein that is or may become an unreasonable source of annoyance (a nuisance) to other Lot Owners or other lawful Occupants of the Community.
- 9.1.7 Hazardous Substances. A Person shall maintain or store on or in the Community only such property and materials which may be legally possessed by such Person. No Person shall improperly store within or release from a Lot or into the Common Elements any petroleum distillates, liquid or aromatic hydrocarbons, medical wastes or infectious biological agents, acids, caustics, carcinogens, mutagens, heavy metals, or any other inflammable, toxic, explosive, radioactive, or other type of substance which may be hazardous to either the Community or to the public health or safety, or the health or safety of any lawful occupants of the Community.
- 9.1.8 Accessory or Temporary Structures. No structure of a temporary character, nor any trailer, tent, shack, barn, pen, kennel, run, stable, outdoor clothes line, shed or other accessory buildings shall be erected, used or maintained on any Lot absent the written consent of the Board, which may promulgate Rules governing such matters. Temporary structures, as reasonably necessary, may be erected in connection with construction activities associated with the original construction of Dwellings within the Community, for such periods of time as may be reasonable for such purposes.
- 9.1.9 Effect on Insurance. Nothing shall be done or maintained in any Lot or in the Common Elements that will increase the rate of insurance on the Common Elements or Lots without the prior written consent of the Board. No Lot Owner or Occupant shall permit anything to be done or maintained in his or her Lot or in the Common Elements that will result in the cancellation of any policy of insurance maintained by the Association.
- 9.1.10 Prohibition Against Dumping. The dumping of solvents, oil, concrete or concrete residue, or water that is heavily laden with sediments, is expressly prohibited anywhere in the Community.

9.1.11 Timesharing. Timesharing is not permitted on this Property and no Lot may be conveyed or held pursuant to any timeshare plan.

9.2 Architectural Control.

9.2.1. General Authority of Declarant and Board of Directors. To assure the health, safety and enjoyment of persons lawfully using any portion of this Community, and to promote visual harmony within the Community, the Architectural Review Coordinator (“ARC”) shall have the power to enforce architectural control over the improvements constructed within the Community on all Lots. Initially, as provided in section 4.6, 4.7 hereof and section 9.2.2 below, the Declarant shall constitute or designate the ARC to perform such architectural control, and may regulate the external design, signage, appearance, construction, use and Upkeep of the Property in accordance with Design Guidelines adopted for this purpose. To ensure consistency of architectural design during the process of development, the Declarant shall retain such rights during the entire period of development. However, the Declarant also reserves the right, in a Record provided to the Board at an earlier date, to permit the Board of Directors to promulgate or modify Design Guidelines for the Community and to perform architectural control, in whole or in part, as permitted in this Declaration, PROVIDED that construction and development activities on a Lot conducted by the Declarant or its Affiliates after such early transfer of architectural control to the Association shall not be affected by any such new or modified Design Guidelines or be subject to architectural review by the Association. The Board of Directors shall have the power to impose reasonable application fees to evaluate any additions or changes to a Dwelling proposed by a Lot Owner; such fees shall constitute a specially allocated assessment against the affected Lot Owner.

9.2.2. Authority to Perform or Delegate Functions of ARC. The Declarant or its designees shall initially serve as the ARC for the Association. After the Declarant has ceased performing architectural control as described above, the Board of Directors may directly perform the activities of the ARC, or the Board may designate an individual to be the ARC, or it may establish an Architectural Review Committee (also to be known as the “ARC”), to coordinate compliance with the Design Guidelines of the Community, and perform such additional functions as may be delegated to it in the Bylaws or in a resolution of the Board adopted for such purpose.

9.2.3. Time for Approval – No Construction Prior to Approval. The ARC shall approve or disapprove plans, specifications and details within six weeks of receipt thereof. Upon a failure to respond within such period, then the plans shall be deemed approved. No construction activity may commence prior



to such approval. By regulation, the Board may establish more specific time-frames for the granting of approval following the termination of the Declarant Control Period.

- 9.2.4. Status of Design Guidelines. Design Guidelines approved by the Declarant or by the Board of Directors shall be enforceable as if set forth in full herein as covenants.
- 9.2.5. Authority to Grant Variances. The ARC shall have the authority, either by act or omission, to waive enforcement of or grant variances from any written Design Guidelines without a specific finding that enforcement of such guidelines would impose an unfair burden on such Lot Owner, but describing the variance and the reasons therefor in a written instrument which shall be part of the records of the Association. ARC precedent shall be deemed useful, but not conclusively binding. Upon such written approval of any specific variance or exception from the requirements of the Design Guidelines, all development conforming to such variance or exception shall be deemed lawful.
- 9.2.6. No Liability for Architectural Review. Neither the Declarant nor the Association nor any permitted designee shall be liable to any party for any good faith action or failure to act under the provisions of this Declaration, with respect to elements of architectural control or as to scenic views, or otherwise.

#### ARTICLE X

### 10. COMMON EXPENSES AND ASSESSMENTS.

- 10.1 Annual Budget for the Association. At such time as may be deemed necessary or desirable by the Board, but not more than 30 days prior to a meeting called for such purpose, the Board shall prepare an Annual Budget that shall estimate the Common Expenses. Specially Allocated Expenses assessable under section 9.5 shall be budgeted as necessary in such fashion that they will be properly apportioned and assessed against only the affected Lots. All budgets shall be adopted pursuant to RCW 64.90.525.
- 10.2 Working Capital Fund. To facilitate project approval by institutional lenders, upon closing of conveyances of each Lot to a Purchaser, the Association may assess and collect a working capital contribution for such Lot, in such amount or amounts as may be determined by the Declarant. Such payments do not constitute advance payments of regular Assessments and working capital contributions may not be used to defray expenses that are the obligation of the Declarant. When unsold Lots are sold, the Declarant may use funds collected

at closing to reimburse itself for funds it may have paid the Association for such unsold Lots' shares of the working capital fund.

10.3 Assessments against Lots.

10.3.1 Liability of Lots. Assessments for Common Expenses must be made at least annually based on a budget adopted in the manner described in section 10.1.

10.3.2 Assessments in Proportion to Common Expense Liability. All Common Expenses must be assessed against all the Lots in accordance with their allocated Common Expense upon conveyance of the first Lot to a Purchaser, subject to the right of the Declarant to delay commencement of certain Common Expenses under section 10.4 below.

10.3.3 Special Assessments. The Board has the power of special assessments for any purpose the Board deems necessary to fulfill the Association's purpose. Special assessments may be allocated to some, but not all of the Lots, if the special assessment is caused by the act or omission of the Lot Owner of a particular Lot or if the purpose of the special assessment is to benefit some but not all of the Lot Owners. The Board at any time may propose a special assessment pursuant to RCW 64.90.525(3).

10.3.4 Payable in Installments. Unless otherwise determined by the Board, the annual Assessment against each Lot for its proportionate share of the Common Expenses shall be payable in twelve (12) equal, monthly installments, and each installment shall be payable in advance by the first day of the month.

10.3.5 Transfer Fees on Resales. A New Lot Owners Fee equal to three (3) months' worth of the annual assessment against the Lot shall continue to be due and owing to the Association upon the transfer of title of a Lot upon its resale to a subsequent purchaser ("Resale New Lot Owners Fee"). The Resale New Lot Owners Fee shall be collected at the closing of a Lot's resale in addition to any outstanding assessment obligations affecting the Lot, to fund the Association's reserves so as to enhance the Association's ability to maintain, repair, replace, manage and improve the Common Elements, for the common benefit of all the Lot Owners.

10.3.6 Initial Budget. The initial budget and resulting assessments are attached hereto as Exhibit "B." The expenses noted on Exhibit "B" are estimates only and are subject to change pursuant to the procedures set forth in this section 10. Additionally, the Declarant reserves the right to delay commencement of Assessments as set forth in section 10.4 below.

- 10.4 Option of Declarant to Pay Some or All Expenses of Association. Pursuant to RCW 64.90.480(1)(b), the Declarant may cause the Association to delay commencement of Assessments for some or all Common Expenses or Specially Allocated Expenses, in which event the Declarant must pay to the Association all of the Common Expenses or Specially Allocated Expenses that have been delayed. If the Declarant intends to exercise its statutory option to cause the Association to delay the payment of Assessments, the Declarant shall so state in the Public Offering Statement for the Community, and therein shall specify the timing and other conditions associated with the Declarant's obligation to fulfill its obligation to the Association to pay the Assessments so deferred.
- 10.5 Specially Allocated Assessments. The Association has the authority to impose Specially Allocated Assessments for Specially Allocated Expenses. These specially allocated assessments are not subject to inclusion in the Association's Annual Budget but they shall be passed in the same manner as the Annual Budget as stated in section 10.1.
- 10.6 Association Accounts. The Association must keep all funds of the Association in the name of the Association with a Qualified Financial Institution and the fund shall be managed and held consistent with the requirements of RCW 64.90.475 and 64.90.530.
- 10.7 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of reserves must either be paid annually to the Lot Owners in proportion to their Common Expense liabilities or credited to them to reduce their future Common Expense Assessments, at the Board's discretion.
- 10.8 Lot Owners Personally Liable for Common Expenses.
- 10.8.1 Suit Against Lot Owner Authorized. Suit to recover a personal judgment for any delinquent Assessment is maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.
- 10.8.2. Association's Failure to Adopt Budget Does Not Release Lot Owners. The failure or delay of the Board to adopt the Annual Budget for any year shall not constitute a waiver or release in any manner of a Lot Owner's share of an Assessment, and in the absence of an Annual Budget or adjusted Annual Budget, each Lot Owner shall continue to pay (with or without Notice) a monthly Assessment at the rate established for the preceding fiscal year until an Assessment is made under a current Annual Budget or adjusted Annual Budget and Notice thereof has been sent to the Lot Owner.
- 10.8.3 Late Fees Authorized. The Association may from time to time establish

reasonable late charges pursuant to RCW 64.90.485(18).

10.8.4 No Waiver or Exemption of Liability for Assessments. No Lot Owner may exempt himself or herself from liability with respect to any portion of the Common Expenses for any reason, including without limitation a waiver of the enjoyment of the right to use any of the Common Elements or by leasing, rental or abandonment of his or her Lot or otherwise.

10.9 Lien for Assessments and Power of Sale. Each and every Lot Owner of any Lot in the Community, by virtue of his or her acquisition by any means of title to such Lot, shall take such title subject to the Association's lien for Assessments. Pursuant to RCW 64.90.485(13)(b), the Declarant as "Grantor" does hereby grant, bargain, sell and convey to Chicago Title Company as "Trustee" in trust WITH POWER OF SALE, the Lots and all other real property in the Community which property is not used principally for agricultural purposes, together with all tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any manner appertaining, and the rents, issues and profits thereof, to secure the obligations of the Lot Owners to the Association, as "Beneficiary," for the payment of any Assessments lawfully levied under this Declaration. Each and every Lot Owner shall be deemed for all purposes, as of the time of his or her acquisition of title to any Lot in the Community, to have joined as an additional "Grantor" in the conveyance in trust above described, and to have at that time granted, bargained, sold and conveyed his or her Lot, to such Trustee, to secure all obligations imposed by this Declaration on such Lot Owner to pay Assessments to the Association. The Power of Sale provided and granted herein shall be operative in the case of a default in the obligation to pay Assessments; upon default by such Lot Owner in the payment of any indebtedness secured hereby, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In such event and upon written request of Beneficiary, the Trustee shall sell the Lot as trust property, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Any Person except Trustee may bid at Trustee's sale. The Trustee shall apply the proceeds of the sale as follows: (1) to the expenses of sale, including a reasonable trustee's fee and attorney's fee; (2) to the obligations secured by this Declaration; (3) the surplus, if any, shall be distributed to the Persons entitled thereto.

10.10 Automatic Perfection and Priority of Liens. Recording of this Declaration constitutes record notice and perfection of the Association's statutory lien. Further notice or recordation of any claim of lien for Assessments is not required but is not prohibited. The Board may thus record a Notice of Claim of Lien for delinquent Assessments in the real property records of any county in which the Community is located. Assessment lien priority shall be governed by RCW 64.90.485.

10.11 Rent Payable to Association Upon Default of Lot Owner. (a) If a Lot is rented or leased by its Lot Owner, and if the Lot Owner becomes delinquent in the payment of Assessments for more than 90 days, the Association may collect the delinquent amount from the tenant, who shall pay over to the Association so much of the rent for such Lot as is required to pay such delinquency, plus interest, attorneys' fees and other costs of collection. In order to avail itself of the remedy contained in this section, the Association shall first send a Notice jointly to the Lot Owner and the tenant by First Class U.S. Mail, advising both parties [i] of the Lot Owner's delinquency in Assessments, [ii] of the tenant's obligations under this section of the Declaration, and [iii] notifying both parties that if such delinquency is not cured within ten (10) days of mailing, the tenant must commence paying rent to the Association until the delinquency has been cured. The tenant shall not have the right to question payment to the Association, and such payment shall discharge both the tenant's duty to pay rent to the Lot Owner and the Lot Owner's obligation to pay Assessments, *pro tanto*. The Association shall not resort to this remedy where a receiver has been appointed and is collecting such rents. (b) **Every Lot Owner, by virtue of taking title to a Lot in this Community and subsequently renting the Lot, shall be deemed for all purpose to have consented in advance to the Association giving the Notice described in this section to an Lot Owners' tenant. No additional consent or authorization from any Lot Owner shall be required in advance of the Association providing such a Notice.**

10.12 Remedies Cumulative. The remedies provided herein are cumulative and the Board may pursue them concurrently, along with any other remedies that may be available under the law although not expressed herein. Suit to recover a personal judgment for any delinquent Assessment is maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

#### ARTICLE XI

### 11. INSURANCE, DESTRUCTION, RESTORATION & DISTRIBUTION.

#### 11.1 Authority, General Provisions, Name of Insured.

11.1.1 General Provisions. Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Board shall obtain and maintain for the Association insurance as required under the Governing Law. Levels of coverage and deductibles from coverage shall be determined annually by the Board with assistance from the agent of the insurance company or companies affording such coverage.

11.1.2 Name of Insured – Certain Insuring Arrangements Prohibited. The name of the insured under each required policy shall be stated as follows: “Highpoint Estates Community Association.” The Association must be the first named insured under each policy. Having the Association named as an “additional insured” or “additional named insured” in a pooled insurance program or agreement maintained by a Managing Agent or other third party, which provides coverage to unrelated projects, does NOT satisfy this requirement.

11.1.3. Lot Owners and Tenants Responsible for Acquiring their Own Insurance. Because of the limitations in coverage afforded under the Association’s policy, Lot Owners and tenants must acquire their own insurance coverage in order to be protected.

11.1.4. Miscellaneous Coverage. The Board may obtain coverage for earthquake and/or flood damage, and other forms of coverage reasonably available in the insurance marketplace that may appear necessary or desirable from time to time.

11.2 Lot Owners’ and Tenants’ Policies.

11.2.1 Lot Owners to acquire their own Insurance. Each Lot Owner shall obtain, at such Lot Owner’s expense, an insurance policy, to insure against loss or damage to the Townhome and other improvements on the Lot, and to personal property used in or incidental to the occupancy of the Lot. Such coverage should afford protection against:

(a) loss or damage by fire, vandalism, malicious mischief, windstorm, and other hazards covered by the standard “broad form” and/or “special” extended coverage endorsements or their equivalent, and such other perils customarily covered by insurance for Townhomes in similar projects.

(b) liability for death, personal injury and property damage arising from the use, ownership or maintenance of any part of the Lot, additional living expense, loss of rent, vandalism or malicious mischief, theft, personal liability, loss assessment coverage, and the like.

11.2.2 Tenants must acquire their own Insurance. Tenants may be held liable to the Association under circumstances described in detail in section 12.4 hereof, and to other third parties under general principles of law. As a result, any tenant must obtain an HO-4 insurance policy, or equivalent, to protect the tenant from liability for death, personal injury and property damage arising from the use, occupancy or maintenance of any part of the Lot, along with loss to personal property, additional living expense, vandalism or malicious mischief, theft and the like.

11.2.3 Board has no Obligation to Monitor Lot Owners' or Tenants' Insurance. The Board of Directors is not obligated to monitor the existence or nonexistence of any insurance required under this section 10.2; such responsibility, and the risks to the Lot Owner or tenant arising from a failure to have proper insurance are to be borne solely by the Lot Owner or tenant. A Lot Owner or tenant who fails to maintain such insurance shall be deemed to have made an election to self-insure for the risks described in section 10.2 and for any other risks for which coverage is readily available under HO-6 or HO-4 policies.

11.3 Reconstruction Following Casualty Loss.

11.3.1 Duty to Reconstruct. Any portion of the Community for which insurance is required under this subsection and for which the Board of Directors has the responsibility of repair that is damaged or destroyed shall be repaired or replaced as required by RCW 64.90.470(8).

11.3.2 Manner of Reconstruction. If destroyed or damaged property is to be reconstructed or repaired, the reconstruction or repair thereof shall be accomplished as nearly as practicable to the character of the building or improvement existing immediately prior to such casualty. Any reconstruction or repair shall be done in accordance with then prevailing Building Code requirements and may be done with contemporary building materials and achieved by utilizing updated construction systems and technology.

ARTICLE XII

12. CONDEMNATION.

Provisions dealing with the effect of condemnation proceedings affecting this Community appear in RCW 64.90.030 and are otherwise not set forth herein.

ARTICLE XIII

13. COMPLIANCE WITH LAW AND COVENANTS.

13.1 Compliance by Lot Owners and Occupants. Each Lot Owner, tenant or other Occupant of a Lot shall comply strictly with the provisions of the Governing Law, the Governing Documents and Bylaws. All remedies provided to the Association in this Article may be enforced against any tenant or other Occupant of a Lot.

13.2 Liability for Conduct Causing Common Expense.

- 13.2.1 Liability for Negligence. Any expense of the Association caused by the negligence or intentional misconduct of any Lot Owner or that Lot Owner's tenant, guest, invitee or Occupant may be assessed against the Lot Owner's Lot after notice and an opportunity to be heard, to the extent of the Association's deductible and any expenses not covered under an insurance policy issued to the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of any Lot or its appurtenances. Expenses incurred by the Association may be assessed against a Lot as a specially allocated assessment.
- 13.2.2 Hearing to Determine Owner's Liability. An Owner whose conduct appears to justify imposition of a specially allocated assessment pursuant to Subsections 13.2.1 shall be first provided with Notice of the Board's intentions and an opportunity to be heard, in the manner provided in the bylaws for hearings regarding the imposition of sanctions against an Owner.
- 13.3 Enforcement by Association. The Board shall have primary responsibility for maintaining and enforcing compliance with the covenants, conditions and restrictions contained in the Governing Documents and bylaws.
- 13.4 Tenants and Other Occupants Subject to Rights and Responsibilities of Lot Owners.
- 13.4.1 General Principles. Any Tenant or other Occupant of a Lot shall be deemed to be bound by all portions of the Governing Documents and bylaws that are binding upon the Lot Owner. All rights, remedies and procedures available to the Association when dealing with Lot Owners under the Governing Documents and Bylaws shall be available to the Association when dealing with any tenant or other Occupant of a Lot Owner.
- 13.5 Board's Discretion Regarding Enforcement. The Board may determine whether to take enforcement action by exercising the Association's power to impose sanctions or commencing an action for a violation of the Governing Documents, including whether to compromise any claim for unpaid Assessments or other claim made by or against it.

#### ARTICLE XIV

#### 14. LIMITATION OF LIABILITY.

##### 14.1 Liability of Directors and Officers - Indemnification.



- 14.1.1 Liability of Directors and Officers. In the performance of their duties, Officers and Board members must exercise the degree of care and loyalty to the Association required of an officer or director of a corporation organized and are subject to the conflict of interest rules governing directors and officers, under chapter 24.06 RCW.
- 14.1.2 Indemnification of Directors and Officers. The Association shall indemnify and hold harmless each of the Directors and Officers from and against all contractual liability to others arising out of contracts made by the Board or Officers on behalf of the Association or the Lot Owners unless such contract was made in bad faith or contrary to the provisions of the Governing Documents or bylaws. The Directors and Officers shall not be personally liable for contracts made by them on behalf of the Association. The Association shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that (s)he is or was a Director or Officer of the Association, against amounts paid in settlement incurred by him or her in connection with such action, suit or proceeding if (s)he acted in good faith and in a manner (s)he reasonably believed to be in, or not opposed to, the best interests of the Community or the Association, to the fullest extent authorized by RCW 23B.08.510, .520, .530, and .570, and any amendments thereto.

#### ARTICLE XV

### 15. MORTGAGEE PROTECTION.

- 15.1 Rights Available Only to Eligible Mortgagees. With respect to any action requiring the consent of a specified number or percentage of mortgagees, the consent of only Eligible Mortgagees holding a first lien security interest need be obtained and the percentage must be based upon the votes attributable to Lots with respect to which Eligible Mortgagees have an interest.
- 15.2 Implied Approval by Mortgagee. The failure of an Eligible Mortgagee to respond within sixty (60) days to a written request from the Association delivered by certified or registered mail to such Eligible Mortgagee, "return receipt requested," seeking approval of [i] an amendment to the Community Declaration or the articles of incorporation or bylaws of the Association, or [ii] any other proposed action of the Association as to which the approval of Eligible Mortgagees is required, shall constitute an implied approval by such Eligible Mortgagee of such amendment or other action.
- 15.3 Rights of Secured Lenders – Specific Provisions.

15.3.1 Lenders Entitled to Notice of Certain Actions. The Association shall give prompt written Notice to each Eligible Mortgagee of, and each Lot Owner hereby consents to, and authorizes the giving of Notice of:

(a) Any condemnation loss or any casualty loss that affects a material portion of the Community or any Lot in which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgagee;

(b) Any delinquency in the payment of Common Expense Assessments owed by a Lot Owner whose Lot is subject to a first mortgage held, insured, or guaranteed, by such Eligible Mortgagee;

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action that would require the consent of a specified percentage of Eligible Mortgagees as specified in section 15.4 (in which case, Notice shall be provided by certified or registered mail, "return receipt requested"); and

(e) Any judgment rendered against the Association in excess of \$5,000.00 that is not covered by insurance.

15.4 Notice and Consent Required for Certain Actions.

15.4.1 Documents Changes. Notwithstanding any lower requirement permitted by this Declaration or the Governing Law, no amendment of any material provision of the Governing Documents by the Association described in this section, the effect of which in the opinion of the Board would have a material adverse effect on lenders, may be effective without Notice to all Eligible Mortgagees, and the approval by Lot Owners of Lots to which at least 67% (or any greater Lot Owner vote required in this Declaration or the Governing Law) of the votes in the Association are allocated, and approval in writing by Eligible Mortgagees who represent at least 67% (or any greater Eligible Mortgagee approval required by this Declaration) of the votes attributable to Lots with respect to which Eligible Mortgagees have an interest.

15.4.2 Specific Actions. Notwithstanding any lower requirement permitted by this Declaration or the Governing Law, the Association may not take any action that, in the opinion of the Board, would have a material adverse effect on lenders, without Notice to all Eligible Mortgagees, approval by Owners of Lots to which at least 67% (or the indicated

percentage, if different) of the votes in the Association are allocated, and approval in writing by Eligible Mortgagees who represent at least 67% (or the percentage indicated below, if different,) of the votes attributable to Lots with respect to which Eligible Mortgagees have an interest; the following (other than those taken pursuant to rights reserved by the Declarant as Development Rights) could be viewed as holding the potential for a material adverse effect on lenders:

(a) Any action to abandon or terminate the legal status of the Community for reasons other than substantial destruction or condemnation, as to which a sixty-seven percent (67%) Eligible Mortgagee approval is required.

(b) Abandon, partition, subdivide, encumber, sell, transfer or convey the Common Elements or any portion thereof, as to which the approval of Lot Owners to which at least eighty percent (80%) of the votes in the Association are allocated is required. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Association will not be deemed a transfer within the meaning of this clause.

(c) The assignment of the future income of the Association, including its right to receive Common Expense Assessments.

(d) The restoration or repair of the Property after hazard damage, as to which the approval of Lot Owners to which at least eighty percent (80%) of the votes in the Association are allocated is required, or after a partial condemnation, in a manner other than specified in the Governing Documents.

(e) The merger of the Community with any other common interest community.

#### ARTICLE XVI

### 16. EASEMENTS.

#### 16.1 Easements for Lots, Lot Owners and Association Functions.

16.1.1 Easements for Association Functions. There is hereby granted to the Association, or its duly authorized agents, contractors and representatives, such easements as are necessary to perform the duties and obligations of the Association as are set forth in the Governing Documents and Bylaws.

16.1.2 Utility Easements. Non-exclusive easements for utilities (including drainage, sewers, water pipes, utility facilities and services, water supply, electricity, gas, telephone, communications and television) are hereby reserved over, under, upon, in and through all roadways, alleyways, private lanes, walkways, and over, under, upon, in and through those certain portions of Lots in which they are and/or shall be installed, laid, constructed, repaired and renewed, operated, maintained and inspected. This reservation of easements is for the benefit of the Declarant and its successors or assigns, as well as granted for the benefit of the Association, City of Mount Vernon, Puget Sound Energy, Cascade Natural Gas Company, Verizon, Comcast, and any other purveyors of such services as herein before described, as well as any of their successors in interest. To the extent there is a utilities conflict, the City of Mount Vernon shall have priority.

16.1.3 Shared Access Easement. There are several shared driveway/access points within the Community. These areas are depicted on the Map, are private roads and are as follows:

16.1.3.1 Lots 2, 3, and 4. A vehicular and pedestrian access easement is reserved, declared and created in favor of Lots 2, 3, and 4 over and across a portion of Lot 2, Lot 3, Lot 4, and Tract A. This easement is shown on the Plat as "Summit Lane". The driveway located within the easement area shall be maintained, repaired, and replaced by the Association, the cost of which shall be apportioned to the benefitted Owners via a specially allocated assessment. Provided, if the necessary maintenance/repairs are caused by an individual Owner, that Owner shall be responsible for such costs to repair or restore the driveway to its original condition.

16.1.3.2 Lots 5, 6, and 7. A vehicular and pedestrian access easement is reserved, declared and created in favor of Lots 5, 6, and 7. This easement is located over and across a portion of Lots 2, 3, 4, 5, 6, and 7 as shown on the Plat as "Pinnacle Lane." The driveway located within the easement area shall be maintained, repaired, and replaced by the Association, the cost of which shall be apportioned to the benefitted Owners via a specially allocated assessment. Provided, if the necessary maintenance/repairs are caused by an individual Owner, that Owner shall be responsible for such costs to repair

or restore the driveway to its original condition.

16.1.3.3 Lots 30 and 31. A vehicular and pedestrian access easement is reserved, declared and created in favor of Lots 30 and 31. This easement is located over and across a portion of Lots 30 and 31 as shown on the Plat as "RECIPROCAL ACCESS & UTILITY EASEMENT." The driveway located within the easement area shall be maintained, repaired and replaced by the Association, the cost of which shall be apportioned equally amongst the Owners of Lot 30 and 31 via a specially allocated assessment. Provided, if the necessary maintenance/repairs are caused by an individual Owner, that Owner shall be responsible for such costs to repair or restore the driveway to its original condition.

16.2 Easement for Emergency Access. A non-exclusive perpetual easement is hereby granted on, over, under and across the Common Elements to all police, fire, ambulance and other rescue personnel for the lawful performance of their functions during *bona fide* emergencies.

16.3 Easements for Declarant. The Declarant, pursuant to the Governing Law, hereby reserves easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or for exercising Special Declarant Rights, whether arising under the Governing Law or reserved in this Declaration. Without limiting the generality of the foregoing, such easements include the following:

16.3.1 General Reservation of Easements. Declarant hereby reserves non-exclusive easements for ingress, egress and utilities over and across all Common Elements.

16.3.2 Specific Rights. The easements reserved under this section 16.3 shall entitle the Declarant and its affiliates, successors, devisees and transferees, for the development to tie into water, sewer, storm sewer, electrical, gas, telephone or other utility conduits, lines, pipes, culverts or other facilities of any nature or description whatsoever, and to travel over and connect with roadways, driveways, walkways, open areas or utility systems developed and employed in any completed phases of the Community. The Declarant also reserves the right to grant easements to public utility companies and to convey to such companies utility lines, pipes, wires, ducts, conduits and/or other facilities in furtherance of such grants.

16.3.3 Liability for Costs and Restoration. Declarant shall bear the cost of tie-ins to such utilities and roads and shall not connect with such utilities in a manner that impairs or significantly reduces the quality of the utility service to any part of the Community; provided, that if said tie-ins cause an increase in the cost of delivering affected utility services to any part of the Community, that cost shall be borne by the Declarant. Declarant shall properly clean up and restore any Common Elements excessively worn or damaged through exercise of any of the easement rights reserved herein.

16.4 Easements Shown on Plat. The easements shown on the Map are for the benefit of the Lot Owners and Occupants of Lots, for utility providers, and for the City of Mount Vernon as noted on the Map. These easements are non-exclusive easements and are subject to Rules established by the Association.

#### ARTICLE XVII

#### 17. AMENDMENT OF DECLARATION, PLAT AND PLANS.

##### 17.1 Procedure for Amendment of Declaration.

Amendments to the Declaration are governed by RCW 64.90.285.

##### 17.2 Lender Requirements.

All Lot Owners covenant and agree for themselves, their heirs, successors and assigns to vote in favor of and implement any amendment to this Declaration that may be necessary to satisfy the requirements of the Federal National Mortgage Association, Federal Housing Administration and Housing and Urban Development in order to qualify the Community for financing through those federal agencies. By this agreement, Lot Owners authorize the Board to adopt and record the necessary amendments and agree that any amendment made pursuant to this section, satisfies the requirements of RCW 64.90.285.

#### ARTICLE XVIII

#### 18. TERMINATION OF COMMUNITY.

The Lot Owners may elect to terminate the legal status of the property only in accordance with the provisions of RCW 64.90.290, with the requisite approval of such Mortgagees and other lienholders as may be required by law, or by Article XV hereof, provided that the City must also consent to such action before it may become effective.

ARTICLE XIX

19. MISCELLANEOUS.

- 19.1 Notice. Notice shall be given as required under RCW 64.90.515.
- 19.2 Severability. All provisions of the Governing Documents, and Organizational Documents are severable. If any provision of a governing document, or its application to any Person or circumstances, is held invalid, the remainder of the governing document, Organizational Document or application to other Persons or circumstances is not affected.
- 19.3 No Right of First Refusal. There is no right of first refusal in the Association limiting or restricting the right of any Lot Owner to sell, transfer or convey his or her Lot.
- 19.4 No Discrimination. The Association shall not discriminate on the basis of race, color, religion, national origin, familial status, handicap or other protected class. The Association shall make reasonable accommodations in its policies and procedures and permit reasonable modifications of premises where necessary or appropriate to comply with law.
- 19.5 Obligation of Good Faith. Every duty governed under this Declaration or the Governing Law imposes an obligation of good faith in its performance or enforcement.
- 19.6 Effective Date. This Declaration shall take effect upon recording.

-----*Signature Page Follows*-----

DATED this 27 day of December, 2023.

Declarant:

SITA ENTERPRISES, LLC

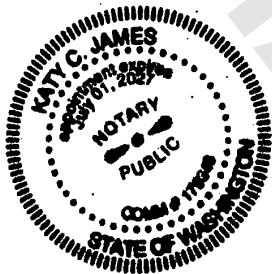
GB EMERALD, L.L.C.

[Signature]  
HARJIT K. CHEEMA, Member

[Signature]  
GURPREET S. CHEEMA, Member

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Whatcom )

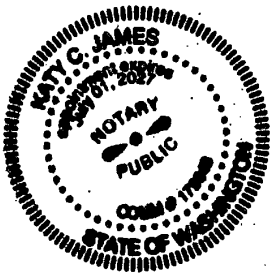
I hereby certify that I know of have satisfactory evidence that Harjit K. Cheema is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the authorized member of Sita Enterprises, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



[Signature]  
PRINTED NAME: Katy C. James  
NOTARY PUBLIC for the State of Washington  
residing in Bellingham  
My Commission expires 7-1-2027

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Whatcom )

I hereby certify that I know of have satisfactory evidence that Gurpreet S. Cheema is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the authorized member of GB Emerald, L.L.C. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



[Signature]  
PRINTED NAME: Katy C. James  
NOTARY PUBLIC for the State of Washington  
residing in Bellingham  
My Commission expires 7-1-2027

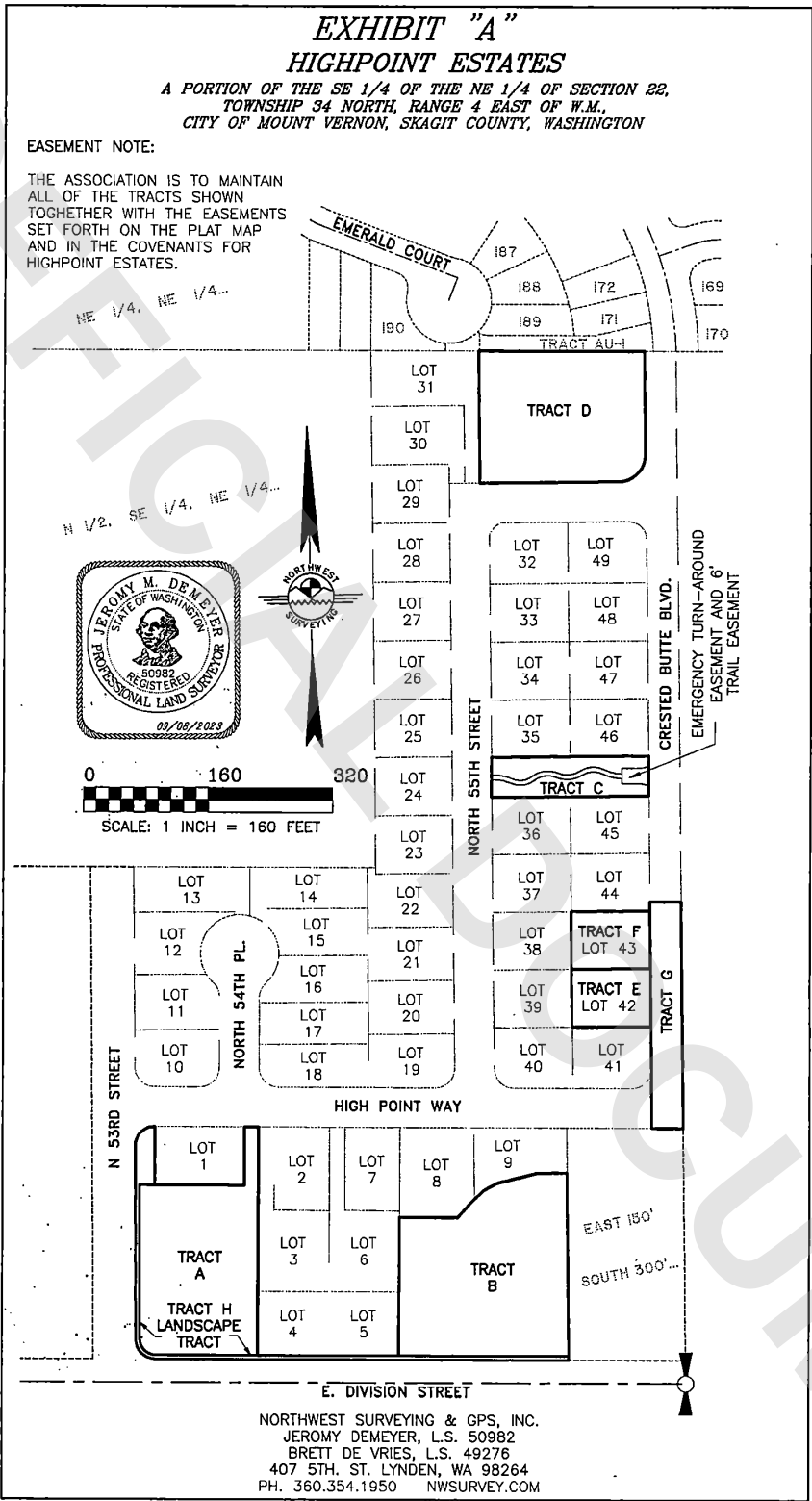


### EXHIBIT "A" HIGHPOINT ESTATES

A PORTION OF THE SE 1/4 OF THE NE 1/4 OF SECTION 22,  
TOWNSHIP 34 NORTH, RANGE 4 EAST OF W.M.,  
CITY OF MOUNT VERNON, SKAGIT COUNTY, WASHINGTON

**EASEMENT NOTE:**

THE ASSOCIATION IS TO MAINTAIN ALL OF THE TRACTS SHOWN TOGETHER WITH THE EASEMENTS SET FORTH ON THE PLAT MAP AND IN THE COVENANTS FOR HIGHPOINT ESTATES.



NORTHWEST SURVEYING & GPS, INC.  
JEROMY DEMEYER, L.S. 50982  
BRETT DE VRIES, L.S. 49276  
407 5TH. ST. LYNDEN, WA 98264  
PH. 360.354.1950 NWSURVEY.COM

**EXHIBIT "B"**  
**HIGHPOINT ESTATES COMMUNITY ASSOCIATION**

**YEAR: 2024**      **Estimated Assessments for Common Expenses (Including Reserves)**

**\* Projected Income: None as the Declarant has delayed imposition of assessments\***

**COMMON EXPENSES**

| <b>Administrative</b>                               |              | <b>Totals</b>       |
|-----------------------------------------------------|--------------|---------------------|
| Legal & Accounting                                  | \$ 1,000.00  | <b>\$ 1,000.00</b>  |
|                                                     |              |                     |
| <b>HOA Insurance Policies</b>                       |              |                     |
| Package Policy<br>(Directors & Officers, Liability) | \$ 3,000.00  | <b>\$ 3,000.00</b>  |
|                                                     |              |                     |
| <b>Regular Maintenance &amp; Expenses</b>           |              |                     |
| Common Area Landscape Maintenance                   | \$ 1,500.00  | <b>\$ 4,500.00</b>  |
| Tract A                                             | \$ 500.00    |                     |
| Tract B                                             | \$ 500.00    |                     |
| Tract C                                             | \$ 500.00    |                     |
| Tract D                                             | \$ 500.00    |                     |
| Tract G                                             | \$ 500.00    |                     |
| Tract H                                             | \$ 500.00    |                     |
|                                                     |              |                     |
| <b>Annual Maintenance</b>                           |              |                     |
| Stormwater Facilities                               | \$ 12,500.00 | <b>\$ 12,500.00</b> |
|                                                     |              |                     |
| <b>TOTAL COMMON EXPENSES</b>                        |              | <b>\$ 21,000.00</b> |

**CAPITAL RESERVES**

|                                                    |                     |
|----------------------------------------------------|---------------------|
| <b>Replacement &amp; Maintenance Reserve*</b>      | <b>\$ 12,250.00</b> |
| <b>TOTAL ANNUAL COMMON EXPENSES &amp; RESERVES</b> |                     |
|                                                    | <b>\$ 33,250.00</b> |

\* The Replacement & Maintenance Reserve Annual Contribution is intended to cover:

- Maintenance, repair and eventual replacement of the black powder coated chain link fence, split rail fence, decorative cedar fence, and the open rail fence;
- Eventual replacement of the NGPA signs;
- The replanting of the portion of the 1,570 trees, shrubs and groundcover that will be required because some of these trees, shrubs, and groundcover will die every year;
- Private access for lots 2, 3, 4, 5, 6, and 7; and
- The gate, bollards, and fire lane painting/signage within Tract G.

**Lot Assessments**

Per Lot – 2%

**Monthly**

\$ 56.55

x 12 months

**Annual**

\$ 678.60