

BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

SANDY POINT IMPROVEMENT  
COMPANY,

Respondent.

DOCKET UW-121408

DECLARATION OF JACK SMITH IN  
SUPPORT OF MOTION FOR SUMMARY  
DETERMINATION

I, Jack Smith, hereby declare and state as follows:

1. I am a current board member and director of the Sandy Point Improvement Company ("Sandy Point" or the "Company"), and I have held this position since September 2012. I make this declaration based on my personal knowledge and on review of Sandy Point's records and files in this matter. I am over the age of 18 and competent to testify herein.

2. Sandy Point is overseen by a seven (7) member Board of Directors (the "Board"). Any Class A or Class C shareholder is eligible for election to the Board, and all Company shareholders are eligible to vote for the Board. The Board is entirely volunteer and unpaid, except for waiving of one annual dues assessment.

3. Upon review of the Company's records and documents, upon information and belief, the Class C shares were created following and pursuant to a requirement in the original Sale Agreement dated April 8, 1965 of certain undeveloped land (land now described as Sandy Point Shores), selling the property to R. Rogers, S. Rogers, and R. Walker, the original incorporators of Sandy Point Improvement Co., who organized and incorporated the Company immediately following the purchase. The Sale Agreement stipulates that the purchasers, Sandy Point Improvement Co., will continue to provide water to the owners of real property in the existing tracts (Sandy Point Tracts, Bolster's Sandy Point Tracts, Sandy Point Garden Tracts, and other property) "upon the same terms and conditions as provided to any owners or occupants of the [purchased] Property." It appears these properties were issued and accepted Class C shares in Sandy Point, as reflected in amendments to Sandy Point's Articles of Incorporation, as amended as of October 31, 1966. Both Class A and Class C shares were established as appurtenant to real property located within the Sandy Point area. The historic articles specifically provided that "[i]n all other respects, except as stated above the various classes of stock shall be equal. No shareholder shall have any pre-emptive right with respect to shares of this corporation. Each shareholder of this corporation hereby agrees to the provisions hereof." (Copies of the historic articles are included in Exhibit 14 to the Declaration of Joseph A. Rehberger.) There is no record of any intent to amend or remove this provision.

4. Both Class A shareholders and Class C shareholders have served on the Board of Directors. Both Class A shareholders and Class C shareholders have served as president of the Board of Directors; the Board's current president is a Class A shareholder and a Class C shareholder served as president last year.

5. Owners of both Class A and Class C shares are actively involved in Sandy Point Improvement Co., serve on the Board of Directors, serve on committees, and are otherwise involved in projects and events organized by Sandy Point.

6. Class C shares have also had the option of converting to Class A shares. This conversion is open from time-to-time, and according to Company records, between approximately 1986 and present, approximately 50 Class C shareholders have elected to convert their shares to Class A shares.

7. Attached hereto as Exhibit 1 is a copy of the Amended and Restated Articles of Incorporation of Sandy Point Improvement Co., filed with the Washington Secretary of State on February 13, 2012.

8. Attached hereto as Exhibit 2 is a copy of the Restated Bylaws of Sandy Point Improvement Co.

9. As provided in the Company's Articles, one of the Company's principal purposes is "to acquire, construct, hold, maintain, operate, reconstruct and improve water and sewer systems for such area and its shareholders, including water rights, easements, wells, tanks, pumps, pipelines, treatment plants, filter plants and any other property or property interest that may be incident thereto."

10. The Board's duties include, generally, managing the business and affairs of the Company and, specifically, among other things, managing the business and affairs of water service the Company provides to its shareholder members, establishing service policies for the water service, and setting and establishing rates and charges for water service.

11. Shareholders in the Company have a voice in the operations of the Company through the voting rights provided in the Articles, including voting rights for election of a Board of Directors from the shareholder members and voting rights on matters put to the vote of the shareholders, including water service matters. The Articles on file with the Secretary of State provide that owners of both Class A and Class C stock shall have "one vote for each share of stock" for "election of the Board of Directors and on water service matters presented by the Board of Directors for a vote of the shareholders." (Exhibit 1). The Company's Restated

Bylaws provide that only present shareholders in the Company may serve on the Board, with owners of both Class A and Class C shares qualified to serve. (Exhibit 2). Company records reflect that Class C voting rights were initially proposed and sought to be confirmed in 2006 in response to communications and following a meeting with the Washington Utilities and Transportation Commission staff. Attached hereto as Exhibit 3 is a copy of the official proposal for Articles of Incorporation Amendments dated September 2006. After procedural problems were brought to light, this amendment was then represented for confirmation and approval at a special shareholders meeting in May 2012. The Amended and Restated Articles of Incorporation of Sandy Point Improvement Co., filed with the Washington Secretary of State on February 13, 2012 (attached as Exhibit 1), are the active Articles on file with the State of Washington Secretary of State's Office.

12. In addition to serving on the Board, I am also the holder of a Class A share of stock, said stock being appurtenant to real property located within Sandy Point area. I have owned this property since 1995. While I have served on the Board, and since 1995 for such time as I have been a shareholder in Sandy Point, the Company has never issued a dividend. To the best of my knowledge and belief, and upon review of the Company records and documents, the Company has never issued a dividend to the Class A shareholders as a class, or any dividend whatsoever.

13. On April 16, 2013, in an open session at the Board's regular meeting for the month of April the Board took up the issue of its characterization and obligations as a homeowners association under Washington law. A motion was made as follows:

Move that the Sandy Point Improvement Company move forward as a Homeowners' Association and take the necessary steps to comply with the provisions of the Homeowners Association Act (RCW 64.38).

That motion was made and seconded. The Board of Directors unanimously voted (7 ayes;

0 nays) to pass and approve the motion as presented. The Board has not yet prepared or approved the official minutes from the April 16, 2013.

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

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

  
\_\_\_\_\_  
JACK SMITH

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DECLARATION OF FAXED/  
ELECTRONIC DOCUMENT

Pursuant to the provisions of GR 17, I declare as follows:

1. I am the party who received the foregoing facsimile/electronic transmission for filing.

2. My address is 606 Columbia St. NW, Suite 212, Olympia, Washington 98501.

3. My phone number is (360) 786-5057.

4. The facsimile number/email where I received the document is (360) 786-1835 and/or [jrehberger@cascadialaw.com](mailto:jrehberger@cascadialaw.com).

5. I have examined the foregoing document, determined that it consists of seven (7) pages, including this Declaration page, and excluding exhibits, and that it is complete and legible.

6. I certify under penalty of perjury under the laws of the State of Washington that the above is true and correct.

DATED: May 3, 2013, at Olympia, Washington.

Signature: 

Print Name: Joseph A. Rehberger

# **EXHIBIT 1**



FILED  
SECRETARY OF STATE  
SAM REED  
FEBRUARY 13, 2012  
STATE OF WASHINGTON

AMENDED AND RESTATED

ARTICLES OF INCORPORATION

OF

SANDY POINT IMPROVEMENT CO.

The purpose of this amendment to the Articles of Incorporation is to add amendment(s) adopted by the shareholders at the 2011 annual meeting and to restate the Articles to incorporate numerous amendments made by the shareholders over the years into this amendment.

**ARTICLE I**

The name of the corporation shall be Sandy Point Improvement Co.

**ARTICLE II**

Its purposes, objects and powers are:

**FIRST:** To acquire, hold, develop, improve, operate and maintain real property and interests and rights therein in order to provide services and facilities for the use and enjoyment of its shareholders as the owners and residents of real property in and about the area known as Sandy Point in Whatcom County, Washington; to acquire, construct, hold, maintain, operate, reconstruct and improve water and sewer systems for such area and its shareholders, including water rights, easements, wells, tanks, pumps, pipelines, treatment plants, filter plants and any other property or property interest that may be incident thereto; to acquire lease, hold, improve, develop and dispose of real property interests including tidelands, for recreational facilities for its shareholders, as such owners and residents; to undertake the construction, maintenance, repair, operation, improvement, reconstruction and disposal of a system of surface water drains, conduits, systems and apparatus for such area; and generally to acquire, hold, develop, improve, maintain, construct, and operate real property for such other purposes as may in the best interests of its shareholders and the area.

**SECOND:** To do and perform such things as may be necessary or convenient to accomplish the foregoing purposes, regardless of whether such activities may result in profit or gain to the corporation.

**THIRD:** To acquire, hold, mortgage, pledge, dispose of, buy, or otherwise acquire stocks, bonds, or other securities, goodwill or rights of any firm or corporation; having for its objectives, or some of them, any of the objectives of this corporation; to apply for, acquire, hold, use, sell or assign letters of patent, franchises, and permits; to enter into a partnership or joint venture with any person, partnership or corporation for the accomplishment of the corporate purposes of this corporation; to borrow money and to buy, hold and sell shares of stock, bonds and other evidence of indebtedness of this corporation, and to conduct any business, pursuit or activity and to exercise every power and authority granted or conferred by the Uniform Business Corporation Act of the State of Washington, and to do or perform any and all things necessary, proper or convenient for the carrying out or accomplishment of the objects and purposes herein specified.

### **ARTICLE III**

The corporation is to have perpetual existence.

### **ARTICLE IV**

The principal office and place of business of the corporation shall be located at 4460 Decatur Drive, Ferndale, Washington 98248 or at such other place as may be authorized by the Board of Directors or proper authorities.

### **ARTICLE V**

The total capital stock of the corporation shall be Four Thousand One Hundred Dollars (\$4,100.00) divided into the following classes of stock:

1. **Class A Stock:** There shall be one thousand (1000) shares of Class A stock of a par value of One Dollar (\$1.00) a share. By accepting a share of Class A stock the shareholder thereof agrees to make an annual capital contribution in an amount to be determined the vote of two-thirds of the corporate directors for the purpose of providing funds to maintain the properties and facilities of the corporation; provided, however, that the amount of such capital contribution shall not exceed the sum of One Hundred Thirty Five Dollars (\$135.00) for each share of Class A stock during any fiscal year of the corporation unless previously approved by a vote of fifty one per cent (51%) of the holders of Class A stock present at any meeting of shareholders called for the purpose of authorizing such increased amount. Class A stock shall have one vote for each share of stock on any matter presented to the

shareholders but shall not be transferable except as incident to the sale or other transfer of real property in the area of Sandy Point to which real property such share shall be appurtenant as may be determined by the corporation in accordance with its bylaws at the time of the original issuance thereof. The holder of a Class A stock shall be entitled to use and enjoy the facilities and services of the corporation subject to such regulations for the use thereof as the directors may establish from time to time, any reasonable charge which the directors may impose for goods and services furnished by the corporation, including charges for water, to its shareholders. Non-payment of this annual contribution may result in a lien being filed against the shareholder's property.

2. **Class B Stock:** There shall be Three Thousand (3000) shares of Class B stock of a par value of One Dollar (\$1.00) a share. No shareholder of such Class B stock shall be required to make any capital contributions to the corporation by virtue of holding such stock, which shall be fully transferable at the discretion of the holder thereof and shall have one vote for each share on any matter presented to the shareholders.

3. **Class C Stock:** There shall be One Thousand Shares of Class C Stock of a par value of Ten Cents (\$0.10) a share. The holders of Class C Stock shall have one vote for each share of stock, provided however, the Class C shareholders may only vote for the election of the Board of Directors and on water service matters that are presented by the Board of Directors for a vote of the shareholders at any annual or special meeting called for that purpose. The holders of Class C stock shall have no vote on other matters presented at any meeting of the shareholders and shall not participate in any dividend of the corporation or in any distribution on liquidation of the corporation. Such share shall solely represent the right of the holder thereof to have water service provided by the corporation to real property owned by the shareholder in the area of Sandy Point to which real property such share shall be appurtenant as may be determined by the corporation in accordance with its bylaws at the time of original issue thereof, provided that such shareholder shall comply with the regulations pertaining to the use of such water and shall pay the water users charge for water as may be established by the directors. No shareholder of Class C Stock shall be required to make any capital contribution by virtue of holding such stock. Such stock shall not be transferable except as to the sale or other transfer of the real property to which it is appurtenant in the Sandy Point Area.

## ARTICLE VI

The corporation shall begin business with a paid-in capital of Five Hundred Dollars (\$500.00).

## ARTICLE VII

The affairs of this corporation shall be managed by a board of from three to seven directors. The first directors, their names and post office addresses are:

Name	Address
R.E. Rogers	Rm. 26, 518 First Avenue North Seattle, Washington 98109
Stuart E. Rogers	Rm. 26, 518 First Avenue North Seattle, Washington 98109
Robert E. Walker	The Highlands Seattle, Washington 98177

These directors shall serve until the first meeting of shareholders and incorporators and until their successors are elected and qualified:

No director of this corporation shall be liable on account of mismanagement of the corporate affairs made on the ground that this corporation shall fail to realize a profit on account of its activities, it being expected that the activities of this corporation shall require annual assessments against its shareholders as herein elsewhere provided for.

## ARTICLE VIII

The names and post office addresses of the incorporators and the number of shares subscribed by each are:

Name	Address	No. of Shares
Peter V. Gulick	1725 Exchange Building Seattle, Washington 98104	1
David W. Sandell	1725 Exchange Building Seattle, Washington 98104	1
Janice Hamilton	1725 Exchange Building Seattle, Washington 98104	1

## ARTICLE IX

A director or officer of this corporation shall not be disqualified by his office from

dealing or contracting with this corporation as a vendor, purchaser, creditor or debtor or otherwise. The fact that any director or officer, or any firm of which any director or officer is a shareholder, director or officer, is in any way interested in any transaction or contract of this corporation shall not make such transaction or contract void or voidable, or require such director or officer to account to this corporation for any profits there from, provided that such transaction or contract is or shall be authorized, ratified or approved either (i) by a vote of a majority or a quorum of the board of directors or (ii) by the written consent or general resolution approving the acts of the directors and officers at a shareholder meeting, of the holders of record of a majority in number of all the outstanding shares of capital stock of this corporation entitled to vote. Nothing herein contained shall create any liability in the events above described or prevent the authorization, ratification or approval of such transactions or contracts in any other manner.

#### ARTICLE X

Any person against whom a claim or liability is asserted, or who is made a party to any action, suit or proceeding by reason of the fact that he, his testator or intestate, is or was a director, officer or employee of this corporation, or of any corporation which he served as such at the request of this corporation, shall be indemnified and reimbursed by this corporation for payment of any such claim or liability, costs or expenses, including attorney's fees, actually and necessarily incurred by him in connection with such claim or liability, or the defense of such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in any action, suit or proceeding that such officer, director or employee is liable for gross negligence or misconduct in the performance of his duties. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such director, officer or employee may be entitled.

This document is hereby executed under penalties of perjury, and is, to the best of my knowledge, true and correct.

DATED this 10<sup>th</sup> day of February, 2012.

  
\_\_\_\_\_  
James Kolbo, President

  
\_\_\_\_\_  
Marlene Dawson, Secretary

**CERTIFICATE OF OFFICER  
OF  
SANDY POINT IMPROVEMENT CO.**

James Kolbo, President of Sandy Point Improvement Co., does hereby certify the following:

1. Sandy Point Improvement Co. (SPIC) is filing along herewith "AMENDED AND RESTATED ARTICLES OF INCORPORATION.

2. There is only one amendment included in this filing:


(a) Article IV was amended to change the address and principal place of business of SPIC to 4460 Decatur Drive, Ferndale, WA 98248 and now reads as follows:

"The principal office and place of business of the corporation shall be located at 4460 Decatur Drive, Ferndale, WA 98248 or at such other place as may be authorized by the Board of Directors or proper authorities."

(b) This amendment was approved by the shareholders at the Annual meeting of shareholders held on October 15, 2011 in accordance with the provisions of RCW 23B.10.030 and RCW 23B.10.040.

3 The remainder of the document incorporates all of the various prior amendments to the Articles of Incorporation filed over the years into this amended and restated document.

DATED this 1<sup>st</sup> day of February, 2012.



James Kolbo, President  
Sandy Point Improvement Co.

# **EXHIBIT 2**

**RESTATED  
BYLAWS**

**OF**

**SANDY POINT IMPROVEMENT CO.**

**ARTICLE I - OFFICE**

The principal office and place of business of the corporation in the State of Washington shall be located at 4460 Decatur Drive, Ferndale, Washington 98248. The corporation shall have such other offices as the board of directors may designate or as the business of the corporation may require from time to time.

**ARTICLE II - SHAREHOLDERS**

**Section 1. ANNUAL MEETING**

The annual meeting of the shareholders shall be held on the last Saturday of September of each year at a time and place to be designated in the Notice of Annual Meeting sent to each shareholder for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the state of Washington, then such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting of the shareholders or at any adjournment thereof, the board of directors shall cause the election to be held at a special meeting of the shareholders as soon thereafter as conveniently may be.

**Section 2. SPECIAL MEETINGS**

Special meetings of the shareholders, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the president or by the board of directors, and shall be called by the secretary at the written request of any director or holders of not less than one-fifth of all of the outstanding shares of the corporation entitled to vote.



### **Section 3. PLACE OF MEETING**

The annual meeting or special meetings of the shareholders may be held at the principal office of the corporation or at such other place, within or without the state of Washington as the board of directors may from time to time designate. A waiver of notice signed by all shareholders entitled to vote at a meeting may designate any place for holding such meeting. If no designation is made for any annual or special meeting of the shareholders, the place of meeting shall be the principal office of the corporation.

### **Section 4. NOTICE OF MEETINGS**

Written or printed notice stating the place, day and hour of the meeting of shareholders and, in case of a special meeting of shareholders, the purpose or purposes for which the meeting is called, shall be given to each shareholder entitled to vote at such meeting, at least ten days and not more than thirty-five days before the meeting, either personally or by mail, by the secretary or by the person or persons authorized to call shareholders' meetings. If such written notice is placed in the United States mail, postage pre-paid, and addressed to a shareholder at his last known post office address, notice shall be deemed to have been given him. Notice of any shareholders' meeting may be waived in writing by any shareholder at any time.

### **Section 5. CLOSING OF TRANSFER BOOKS OR FIXING OF RECORD DATE**

For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other purpose, the board of directors of the corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed in any case fifty days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock transfer books, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than fifty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action requiring such determination of shareholders is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date of such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof except where the determination has been made through the closing of the stock transfer books and the stated period of closing has expired.

## **Section 6. VOTING LISTS**

The officer or agent having charge of the stock transfer books for shares of the corporation shall make, at least ten days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof arranged in alphabetical order, with the address of and the number of shares held by each, which list for a period of ten days prior to such meeting shall be kept on file at the registered office of the corporation and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original stock transfer book shall be prima facie evidence as to who are the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders.

## **Section 7. QUORUM**

Thirty-four percent (34%) of the outstanding shares of the corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. The shareholders present at a duly organized meeting may continue to transact business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum. If less than a quorum attends a meeting, a majority of those present may adjourn the meeting to such time and place as they may determine, without further notice, except that any meeting at which directors are to be elected shall be adjourned only from day to day until such directors have been elected.

At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified, and in the case of any adjourned meeting called for the election of directors, those who attend the second of such adjourned meetings, although less than a quorum, shall nevertheless constitute a quorum for the purpose of electing directors.

## **Section 8. PROXIES**

Every shareholder shall have the right to cast his/her vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney in fact. Such proxy shall be filed with the secretary of the corporation before or at the time of the meeting. No unrevoked proxy unless coupled with an interest shall be valid after eleven months from the date of its execution unless some other definite period of validity is expressly provided therein. No proxy may be effectively revoked until notice in writing of such revocation has been given to the secretary of the corporation.

## **Section 9. VOTING OF SHARES**

Every shareholder of record shall have the right at every shareholders' meeting to one vote for every share outstanding in his name on the corporate books. In the election of directors, every shareholder of record shall have the right to multiply the number of votes to which he may be entitled by the number of directors to be elected, and he may cast all such votes for one candidate or he may distribute them among any two or more candidates.

## **Section 10. VOTING OF SHARES BY CERTAIN HOLDERS**

Shares standing in the name of another corporation may be voted by its president or by proxy appointed by him unless some other person, by resolution of its board of directors, shall be appointed to vote such shares, in which such person shall be entitled to vote upon production of a certified copy of such resolution.

Shares held by an administrator, executor, guardian or conservator may be voted by him either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

Where shares are held by three or more fiduciaries, the will of the majority of such fiduciaries shall control the manner of voting or giving of a proxy, unless the instrument or order appointing such fiduciaries otherwise directs.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

Shares of the corporation's own stock belonging to it or held by it in a fiduciary capacity, shall not be voted, directly or indirectly, at any meeting, and shall not be counted in determining the total number of outstanding shares entitled to vote at any given time.

## **Section 11. INFORMAL ACTION BY SHAREHOLDERS**

Any action required to be taken at a meeting of the shareholders, or any other action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all the shareholders entitled to vote with respect to the subject matter thereof.

## **ARTICLE III - BOARD OF DIRECTORS**

### **Section 1. GENERAL POWERS**

The business and affairs of the corporation shall be managed by its board of directors

### **Section 2. NUMBER, TENURE AND QUALIFICATIONS**

The number of directors of the corporation shall not be less than three or more than seven, and until otherwise determined by the shareholders the number shall be three. Each director shall hold office until the next annual meeting of the shareholders and until his successor shall have been elected and qualified. Directors must be Class A, Class B, or Class C Shareholders of Sandy Point Improvement Company, Inc. (See Note 3 for current composition.)

### **Section 3. REGULAR MEETINGS**

A regular meeting of the board of directors shall be held without other notice than this bylaw, immediately after and at the same place as the annual meeting of shareholders. The board of directors may provide by resolution the time and place, either within or without the state of Washington, for the holding of additional regular meetings without other notice than such resolution.

### **Section 4. SPECIAL MEETINGS**

Special meetings of the board of directors may be called by or at the request of the president or any two directors. The person or persons authorized to call special meetings of the board of directors may fix any place, either within or without the state of Washington, as the place for holding any such special meeting of the directors called by them.

### **Section 5. NOTICE**

Written notice of a special meeting of the board of directors shall be given at least seven days prior to the date set for such meeting by the person authorized to call such meeting or the secretary of the corporation either by personal delivery to each director or by mail addressed to the business address of each director or by telegram. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, so addressed to the director. If notice is given by telegram, such notice shall be deemed to be given when the telegram is delivered to the telegraph company for transmission. If no place for such meeting is designated in the notice thereof, such meeting shall be held at the principal office of the corporation. Any director may waive notice of any meeting at any time. The attendance of a director at a meeting of the board of directors shall constitute a waiver of notice of such meeting except

where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully convened. The business to be transacted at, or the purpose of, any regular or special meeting of the board of directors, as well as the time and place thereof, shall be specified in the notice or waiver of notice of such meeting.

#### **Section 6. QUORUM**

A majority of the number of directors fixed by these bylaws or the shareholders shall constitute a quorum for the transaction of any business at any meeting of directors. If less than such majority shall attend a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice, and a quorum present at such adjourned meeting may transact business.

#### **Section 7. MANNER OF ACTING**

The act of the majority of the directors present at a meeting or adjourned meeting at which a quorum is present shall be the act of the board of directors. By a resolution passed by a majority of all the directors of the corporation two or more of the directors may be designated to constitute an executive committee who, to the extent provided in such resolution, shall have and exercise the authority of the board of directors in the management of the business of the corporation.

#### **Section 8. REMOVAL**

At a special meeting of the shareholders called for that purpose, the entire board of directors or any individual director may be removed from office by a vote of the shareholders holding two-thirds of the outstanding shares entitled to vote at an election of directors. Unless the entire board of directors be removed, no individual director shall be removed in the case of a sufficient number of shares are cast against the resolution for his removal, which, if cumulatively voted at an election of the full board, would be sufficient to elect one or more directors. If the board of directors or any one or more directors is so removed, new directors may be elected at this same meeting.

#### **Section 9. VACANCIES**

Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though there is less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled because of an increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of shareholders called for that purpose.

**Section 10. COMPENSATION**

By resolution of the board of directors, the directors may be paid their expenses, if any, of attendance at any meeting of the board of directors, and may be paid a fixed sum for attendance at each meeting of the board of directors or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

**Section 11. PRESUMPTION OF ASSENT**

A director of the corporation who is present at a meeting of the board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

**ARTICLE IV - OFFICERS**

**Section 1. NUMBER**

The officers of the corporation shall be a president (who must also be a director), one or more vice presidents (the number thereof to be determined by the board of directors), a secretary, and a treasurer, each of whom shall be elected by the board of directors. Such other officers and assistant officers, including a chairman of the board, as may be deemed necessary or appropriate may be elected or appointed by the board of directors. Any two or more offices may be held by the same person except the offices of president and secretary.

**Section 2. ELECTION AND TERM OF OFFICE**

The officers of the corporation to be elected by the board of directors shall be elected annually by the board of directors at the first meeting of the directors held after each annual meeting of the shareholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until his successor shall have been duly elected or qualified or until his death or until he shall resign or shall be removed in the manner hereinafter provided.

### **Section 3. REMOVAL**

Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

### **Section 4. VACANCIES**

A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the board of directors for the unexpired portion of the term.

### **Section 5. CHAIRMAN OF THE BOARD**

The chairman of the board, if there be such an office, shall, if present, preside at all meetings of the board of directors, and exercise and perform such other powers and duties as may be from time to time assigned to him by the board of directors.

### **Section 6. PRESIDENT**

The president shall be the principal executive officer of the corporation and, subject to the control of the directors, shall in general supervise and control all the business and affairs of the corporation. He shall when present preside at all meetings of the shareholders and in the absence of the chairman of the board, or if none, at all meetings of the board of directors. He may sign, with the secretary or any other proper officer of the corporation thereunto authorized by the board of directors, certificates for shares of the corporation, any deeds, mortgages, bonds, contracts, or other instruments which the board of directors has authorized to be executed, except in cases where signing and execution thereof shall be expressly delegated by the board of directors or by these bylaws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board of directors from time to time.

### **Section 7. THE VICE PRESIDENTS**

In the absence of the president or in the event of his death, inability or refusal to act, the vice president (or in the event there shall be more than one vice president, the vice presidents in the order designated at the time of their election, or in the absence of any designation then in the order of their election) shall perform the duties of the president, and when so acting shall have all the powers of and be subject to all the restrictions upon the president; and shall perform such other duties as from time to time may be assigned to him by the president or by the board of directors.

**Section 8. THE SECRETARY**

The secretary shall: (a) keep the minutes of the shareholders' and of board of directors' meetings in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the corporation and see that the seal of the corporation is affixed to all documents the execution of which on behalf of the corporation under its seal is duly authorized; (d) keep a register of the post office address of each shareholder; (e) sign with the president, or a vice president, certificates for shares of the corporation, the issuance of which shall have been authorized by resolution of the board of directors; (f) have general charge of the stock transfer books of the corporation; and (g) in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the president or by the board of directors.

**Section 9. THE TREASURER**

If required by the board of directors, the treasurer shall give a bond for the faithful discharge of his duties, in such sum and with such surety or sureties as the board of directors shall determine. He shall: (a) have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article V of these bylaws; and (b) in general perform all of the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the president or the board of directors.

**Section 10. ASSISTANT SECRETARIES AND ASSISTANT TREASURERS**

The assistant treasurers shall respectively, if required by the board of directors, give bonds for the faithful performance of their duties in such sums and with such sureties as the board of directors shall determine. The assistant secretaries and assistant treasurers in general shall perform such duties as shall be assigned to them by the secretary or the treasurer or by the president or the board of directors.

**Section 11. SALARIES**

The salaries of the officers shall be fixed from time to time by the board of directors and no officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the corporation.



## **ARTICLE V - CONTRACTS, LOANS, CHECKS, DEPOSITS**

### **Section 1. CONTRACTS**

The board of directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

A director of the corporation shall not be disqualified by his office from dealing or contracting with the corporation either as a vendor, purchaser or otherwise. The fact that any director or officer, or any firm of which any director or officer of the corporation is a shareholder, officer or director, is in any way interested in any transaction or contract of the corporation shall not make such transaction or contract void or voidable, or require such director or officer of the corporation to account to the corporation for any profits therefrom, provided that such transaction or contract is or shall be authorized, ratified or approved either (a) by vote of a majority of a quorum of the board of directors without computing in such majority or quorum any director who is interested or who is a member of a firm so interested or a shareholder, director or officer of a corporation so interested, or (b) by written consent or by a vote at a shareholders' meeting, of the holders of record of a majority in number of the outstanding shares entitled to vote at such meeting.

### **Section 2. LOANS**

No loans shall be contracted on behalf of the corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the board of directors. Such authority may be general or confined to specific instances.

### **Section 3. CHECKS, DRAFTS, ETC.**

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the board of directors.

### **Section 4. DEPOSITS**

All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the board of directors may select.

## **ARTICLE VI - CERTIFICATES FOR SHARES AND THEIR TRANSFER**

### **Section 1. CERTIFICATES FOR SHARES**

Certificates representing shares of the corporation shall be in such form as shall be determined by the board of directors. Such certificates shall be signed by the president and by the secretary, or by a vice president and assistant secretary if so authorized by the board of directors. All certificates for shares shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the stock transfer book of the corporation. All certificates surrendered to the corporation for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled except that in case of a lost, destroyed or mutilated certificate a new one may be issued therefor upon such terms and indemnity to the corporation as the board of directors may prescribe.

### **Section 2. TRANSFER OF SHARES**

Transfer of the shares of the corporation shall be made only on the stock transfer books of the corporation by the holder of record thereof or by his legal representative who shall furnish proper evidence of authority to transfer, or by his attorney thereunto authorized by power of attorney duly executed and filed with the secretary of the corporation, and on surrender for cancellation of the certificates for such shares. The person in whose name shares stand on the books of the corporation shall be deemed by the corporation to be the owner thereof for all purposes.

### **Section 3. RECORDS**

The corporation shall maintain records showing the real property owned in the Sandy Point area by the shareholder to whom a share of Class A or Class C stock is originally issued. As provided in the Articles of Incorporation, such share shall henceforth be appurtenant to such real property and its transfer shall be limited to transactions where such transfer is incident to the transfer of title to such real property.

In the event that any real property to which a share may be so appurtenant shall be subdivided to create more than one parcel for residential purposes, the shareholder shall have the right upon payment of the par value of such stock to have one share of stock issued of the same class as his original share issued to him for each additional parcel into which his property is subdivided. Such additional shares shall then be appurtenance one share for each additional parcel and be so recorded in the corporate records.

#### **Section 4. TRANSFER OF CLASS A OR CLASS C STOCK**

No transfer of Class A or Class C stock shall be recognized by this corporation except as such transfer is incident to and a part of the transfer of the real property owned by the original shareholder of such share at the time of its issue. The secretary may require such proof as he deems advisable to show that such transfer is made incident to such real property transaction. In the event a shareholder of Class A stock of this corporation shall transfer the real property to which his share is appurtenant by virtue of any restriction or covenant with the land but shall neglect to cause his stock to be transferred incident to such sale, the transferee of such real property may apply to the corporation in writing for issuance of a certificate of stock. Upon showing of proof of ownership in form acceptable to the directors, the directors may, after 10 days written notice to the shareholder of record on the corporate records, cause the share appurtenant to such real property to be transferred to the then owner thereof without surrender of the certificate representing such share notwithstanding any other provisions hereof to the contrary.

#### **ARTICLE VII - FISCAL YEAR**

The fiscal year of the corporation shall begin on the 1st day of April and end on the last day of March of each year.

#### **ARTICLE VIII - DIVIDENDS**

The board of directors may from time to time declare, and the corporation may pay, dividends on its outstanding shares in the manner and upon the terms and conditions provided by law and its articles of incorporation.

#### **ARTICLE IX - SEAL**

The board of directors shall provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the corporation and the state of incorporation the words, "Corporate Seal".

#### **ARTICLE X - WAIVER OF NOTICE**

Whenever any notice is required to be given to any shareholder or director of the corporation under the provisions of these bylaws or under the provisions of the articles of incorporation or under the Washington Business Corporation Act, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

## **ARTICLE XI – ACTIONS AGAINST OFFICERS, DIRECTORS AND EMPLOYEES**

Any person made a party to any action, suit or proceeding by reason of the fact that he, his testator or intestate, is or was a director, officer or employee of the corporation, or of any other corporation which he served as such at the request of the corporation, shall be indemnified by the corporation against the reasonable expenses, including attorneys fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except in relation to matters as to which it shall be adjudged in such action suit or proceeding that such officer, director or employee is liable for negligence or misconduct in the performance of his duties. Such right of indemnification shall not be deemed exclusive of any other rights to which such director, officer or employee may be entitled.

## **ARTICLE XII - AMENDMENTS**

Except as to any article hereof pertaining to restrictions on the transfer of shares of the corporation in which article the manner of amendment is specified, any of these bylaws may be amended, altered or repealed and new bylaws adopted by a majority vote of the shareholders at any annual or special meeting called for that purpose.

### **NOTES:**

1. This document includes amendments to previously restated bylaws but is not itself a complete restatement of the bylaws. Items such as gender reference changes and updating will be included in the next restatement.
2. Amendments approved at the Annual General Meeting of shareholders on October 15, 2011 are incorporated in the following sections: Article I (company address), Article II. Sections 1 (date of annual meeting) & 7 (quorum attendance requirement), Article III. Section 2 (director eligibility requirement).
3. A series of amendments and shareholder resolutions have been made regarding Article III. Section 2 (Number, Tenure and Qualifications) but not included in the last restated bylaws:  
1970 – Resolution changing number of board members from three to seven;  
1974 – Amendment staggering terms;  
1977 – Amendment assigning three positions to SPS, three to SPH, and one to NH;  
1996 – Motion which defines the current structure: "combine Sandy Point Heights and Sandy Point Arm with Neptune Heights, with a total of 2 representatives, 2 representatives from Sandy Point Shores and 3 at large." The terms remain staggered with one each from the designated areas elected each year, and one and two at large in alternate years.

**These November, 2012 Restated Bylaws include amendments made at the Annual Meeting of Shareholders of the Sandy Point Improvement Company October 15, 2011 in Ferndale, Washington. The explanatory notes have been added for reference only and not part of the formally adopted Bylaws.**

# **EXHIBIT 3**



September, 2006

1. Articles of Incorporation Amendments as described below:  
Proposition #1: Article V Paragraph 3 – Class C Stock shareholder vote  
Proposition #2 : Amendment to shareholders entitled to vote on any amendment

**PURPOSED ARTICLES of INCORPORATION AMENDMENTS:** We have met with representatives of the Department of Health (DOH) and Washington State Utilities and Transportation Commission (UTC) regarding the distribution of the water hookups recently made available by the DOH. As a result of these discussions the Board of Directors has determined that all shareholders (Class A and Class C) should have equal votes regarding water service matters.

**Article V paragraph 3 needs to be amended. It now reads as follows:**

There shall be One Thousand shares of Class C Stock of a par value of Ten Cents (\$.10) a share. The holders of such Class C Stock shall have no vote upon matters presented at any meeting of the shareholders and shall not participate in any dividend of the corporation or in any distribution on liquidation of the corporation. Such share shall solely represent the right of the holder thereof to have water service provided by the corporation to real property owned by the shareholder in the area of Sandy Point to which real property such share shall be appurtenant as may be determined by the corporation in accordance with its bylaws at the time of original issue thereof, provided that such shareholder shall comply with the regulations pertaining to the use of such water and shall pay the water user's charge for water as may be established by the directors. No shareholder of Class C Stock shall be required to make any capital contributions to the corporation by virtue of holding such stock. Such stock shall not be transferable except as incident to the sale or other transfer of the real property to which it is appurtenant in the Sandy Point area.

In all other respects, except as stated above, the various classes of stock shall be equal. No shareholder shall have any pre-emptive right with respect to share of this corporation. Each shareholder of this corporation hereby agrees to the provisions hereof.

The Board suggests that Paragraph 3 be amended to read as follows:

Annual Shareholders Meeting  
September, 2006

There shall be One Thousand shares of Class C Stock of a par value of Ten Cents (\$.10) a share. The holders of Class C Stock shall have one vote for each share of stock, provided however, the Class C shareholders may only vote for the election of the Board of Directors and on water service matters that are presented by the Board of Directors for a vote of the shareholders at any annual or special meeting called for that purpose. The holders of Class C stock shall have no vote upon other matters presented at any meeting of the shareholders and shall not participate in any dividend of the corporation or in any distribution on liquidation of the corporation. Such share shall solely represent the right of the holder thereof to have water service provided by the corporation to real property owned by the shareholder in the area of Sandy Point to which real property such share shall be appurtenant as may be determined by the corporation in accordance with its bylaws at the time of original issue thereof, provided that such shareholder shall comply with the regulations pertaining to the use of such water and shall pay the water user's charge for water as may be established by the directors. No shareholder of Class C Stock shall be required to make any capital contributions to the corporation by virtue of holding such stock. Such stock shall not be transferable except as incident to the sale or other transfer of the real property to which it is appurtenant in the Sandy Point area.

In all other respects, except as stated above, the various classes of stock shall be equal. No shareholder shall have any pre-emptive right with respect to share of this corporation. Each shareholder of this corporation hereby agrees to the provisions hereof.

The proposed amendment modifies only the second sentence of Paragraph 3.