

After recording return to:

BRIAN C. BALCH
601 S. DIVISION STREET
SPOKANE, WA 99202-1335

Reference # (if applicable): 6026850
Grantor(s): (1) D & J ELK RIDGE HEIGHTS LLC (2)
Grantee(s): (1) D & J ELK RIDGE HEIGHTS LLC (2)
Legal Description (abbreviated): All of ElkRidge Heights, as per plat recorded in
Volume 33 of Plats, pages 96 – 103
Additional legal(s) on page _____
Assessor's Tax Parcel ID# 44031.0740 - .0742 44031.0810 44031.0901 - .0903
44031.0912 - .0922 44031.1001 - .1014 44031.1101 - .1108
44035.1303 45344.0501 - .0511 45344.0601 - .0608
45344.0611 - .0619 45344.0621 - .0625 45344.0701 - .0715
45344.0716 - .0730 45344.0732 - .0748 45344.0801 - .0810
45344.0902 - .0912 45344.0923, 45344.1201 - .1202
45344.1301 - .1304 46344.0505

**FIRST AMENDMENT TO AMENDED AND RESTATED
DECLARATION ESTABLISHING COVENANTS, CONDITIONS AND
RESTRICTIONS FOR ELK RIDGE HEIGHTS**

This First Amendment to the Amended and Restated Declaration Establishing Covenants, Conditions, and Restrictions for ElkRidge Heights ("First Amendment") is made and entered this 17th day of May 2013. This First Amendment amends the Amended and Restated Declaration Establishing Covenants, Conditions and Restrictions for ElkRidge Heights recorded September 12, 2011 as Spokane County, Washington Auditor's Recording Number 6026850 ("Restated Declaration"). The Restated Declaration is amended by this First Amendment as follows:

1. The definition of "Architectural Committee in Section 3.1 is amended in its entirety to read as follows:

3.1 "Architectural Committee" shall mean the committee created by Declaration or an association pursuant to Article IX hereof.

2. A new definition is added as Section 3.19 of the Restated Declaration as follows:

3.19 "Builder for Resale" means a person or entity that owns more than one Building Lot held for the purpose of constructing dwellings thereon for resale to consumers in the ordinary course of business.

3. At the time of this First Amendment it is acknowledged that no Builder for Resale currently qualifies as a Primary Builder for purposes of Section 3.15 since none has been designated as such in a "Designation of Primary Builder Rights" recorded with the Spokane County, Washington Auditor. For purposes of this Amendment, each reference to a Primary Builder in Sections 4.2, 4.6, 5.3, 7.1, 7.2, and 9.3 shall also constitute a reference to a Builder for Resale. The references to Primary Builder in Section 12.2, however, will not apply to any Builder for Resale that does not also qualify as a Primary Builder.

4. The fourth and fifth sentences in Section 4.3 are amended to read as follows: "Building Lots eliminated on or before December 31, 2015 by Declarant as part of the process of reconfiguring the Property, or by Owners other than Declarant who have received requisite approval therefore, will result in fewer Building Lots in the Property sharing in the payment of Assessments. After said date, it is anticipated that any approval given to an Owner other than Declarant to combine Building Lots in any manner that will reduce the number of Building Lot(s) in the Property will be conditioned on not reducing the obligation to pay any Assessments or the share of Assessments that applied to such eliminated Building Lots prior to such permitted combination.

5. Section 4.8 is amended in its entirety to read

4.8 Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from each Building Lot at each

Owner's expense, and shall not be allowed to accumulate thereon. Subject to the provisions stated in the next paragraph, trash, garbage and other waste shall not be kept except in sanitary containers. All equipment, garbage cans, woodpiles, or storage piles shall be kept screened and concealed from view from the dedicated streets, except garbage cans may be placed curbside commencing at 4:00 p.m. on the day before pickup, and must be removed from curbside no later than 8:00 p.m. on the day of pickup. However, at the sole discretion of the Association, and without any requirement to amend this Declaration, circumstances such as pick up schedule revisions by garbage collectors may result in changes to the authorized times waste may be placed curbside and/or removed from curbside.

Notwithstanding the above provisions in this Section, while approved construction activity is ongoing on a Building Lot, all construction debris, scraps, and the like shall be kept in a covered dumpster or other covered receptacle approved in writing by the Architectural Committee in its discretion. Any such dumpster or receptacle shall be regularly emptied and shall be used and maintained in a manner such that no construction debris, scraps, and the like are kept or allowed to be spread on the Building Lot or any of the Property then covered by the Declaration. Once construction activity on the Building Lot terminates, any such dumpster or receptacle shall be removed from the Building Lot; but while it is permitted to remain, it will not be required to be screened and concealed from view.

6. A new second paragraph is added to the end of Section 6.2 as follows

The two private driveways legally described on Exhibit "A" attached hereto, each of which provides a means of primary access to and from two Building Lots in the Property shall be considered Common Area in which the Association has an interest, to be maintained by the

Association in like fashion as private road portions of the Common Area. Maintenance obligations to be performed on these driveways, like the private roads, will include reasonable repair and maintenance, including snow removal. The Association is hereby granted an easement to these private driveways permitting the Association and its designees to enter on the private driveways for purposes of performing maintenance thereon.

7. Section 7.4 is amended in its entirety to read

7.4 Limited Assessments. Notwithstanding the above provisions with respect to Regular and Special Assessments, the Board may levy a Limited Assessment against a Member as a remedy to reimburse the Association for costs incurred in bringing the Member and/or such Member's Building Lot into compliance with the provisions of the governing instruments for the Property, including any actual costs, consultant charges and attorney fees. This shall expressly include the authority to levy Assessments against any Building Lot Owner in violation of any of the requirements imposed on such Building Lot Owner under the Restated Declaration and this or any other amendment which is above and beyond actual out-of-pocket fees, costs and expenses incurred by the Association. Such additional Assessment amount may be imposed in an amount up to fifty dollars (\$50.00) per day (or its equivalent value as compared with January 1, 2011 dollars, as adjusted periodically based on changes in the CPI as defined in Section 3.10), for each violation that remains uncorrected after prior written notice given to such Owner from the Association. The Board shall have discretion to determine the amount of any prior notice that is appropriate in a given situation before imposing a Limited Assessment or any additional Assessment amount, considering the nature and circumstances associated with the violation. By way of example, it is anticipated that under circumstances not considered by the Association to be an intentional violation and in connection with a matter

that cannot be immediately rectified, a notice period of 30 days may be appropriate. However, under circumstances related to matters that are considered by the Association to be intentional, or that can reasonably be rectified more quickly (particularly in connection with violations the Board considers to constitute a nuisance, failure to properly contain and dispose of garbage, issues affecting or threatening the health or safety of any person, or issues threatening damage to property), a shorter notice period and/or no prior notice may be appropriate. Further, notwithstanding anything above to the contrary, the Board shall have discretion to shorten or eliminate any notice period in the case of repeated violations of the same or similar provisions within the Restated Declaration before imposing a Limited Assessment, including imposing an additional Assessment amount. Further, a Limited Assessment may also be assessed against an Owner for damage to any Building Lot or portion of the Common Area within the Property caused by reason of the negligence or willful misconduct of such Owner, such Owner's resident tenant, or such Owner's family or guests, both minor and adult.

8. A new Section 9.4.12 is added to the Declaration as follows:

9.4.12 Minimum Landscaping Requirements. At a minimum, the landscaping to be completed according to approved plans within the time limits stated in the second and third paragraphs of Section 9.3 shall comply with the following:

(a) Front yard areas and areas immediately surrounding each dwelling on a Building Lot will be required to be landscaped in accordance with the approved plans; it being anticipated that plans approved for these areas will include installation of lawn, bedding areas, plantings, shrubs, permitted trees, and similar improvements, all of which must be appropriately installed, irrigated, fertilized, and maintained in a neat, clean, and healthy condition.

Approved plans are also anticipated to require that remaining portions of each Building Lot will be required to be rough-graded to blend slopes and repair any damage caused during construction (such as leveling out tire ruts and any excavation holes); have surface rocks be removed that are in excess of three inches (other than large boulders and rock formations that are not reasonably susceptible to being moved); and then be planted with drought-tolerant, erosion-control grass seed mix installed to create a continuity throughout the development, which grass seed shall initially be irrigated sufficiently to establish reasonable coverage, as determined by the Architectural Committee in its discretion. The grass seed blend mix will be as determined from time to time by the Architectural Committee in its discretion, but at the time of adopting this First Amendment is anticipated to consist of 40% hard fescue (*festuca longifolia*); 40% sheep fescue (*festuca ovina*); and 20% Canadian bluegrass (*poa compressa*).

Further, no trees on any Building Lot may be removed that are located more than 15 feet away from the building footprint approved for the dwelling on such Building Lot without prior written approval from the Architectural Committee. It is anticipated that any trees approved by the Architectural Committee for removal outside that area will be replaced on a two-for-one basis at approved locations on the Building Lot, with healthy trees (anticipated to be pines or other approved varieties) at least five feet in height and with at least a 1 ½ inch caliper measured at three feet above planted grade; all as specified and approved by the Architectural Committee in its discretion).

Further, Owners shall not construct improvements, or finish landscaping, on any portion of any Building Lot that results

in leaving unexposed pipes protruding from the ground, except to the extent expressly approved in writing by the Architectural Committee. It is anticipated that pipes and lines permitted to be installed that will extend to the surface of the ground outside the dwelling on any Building Lot, such as any pipe or line connected to rain gutters, downspouts, and the like to channel and/or disperse roof runoff or surface drainage, will be finished with an approved colored grate installed to blend and match the contour of the surrounding property and finished in a muted earth-tone color in order to blend as much as practicable into the surrounding area. Any lines or pipes that might be permitted to protrude vertically, such as a sewer cleanout, shall be kept as close to finish grade as practicable and, to the extent they are permitted to protrude above grade must be screened with approved vegetation or other features that will blend into the surrounding area, as determined by the Architectural Committee in its discretion. Finally, the discharge ends of any drain lines or pipes must be finished with splash rocks, gravel collection areas, or similar features approved by the Architectural Committee in its discretion to minimize, to the maximum extent possible, the potential for erosion of any areas leading away from such discharge points.

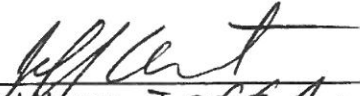
Any Owner violating landscaping provisions by failing to receive advance approval for, and then installing landscaping as and when required under Section 9.3 or this Section, including removing trees without permission or failing to install replacement trees as required, shall be subject to a Limited Assessment covering all costs that may be incurred by the Association in connection with requiring such Owner to come into compliance with Section 9.3 and this Section, as well as the maximum additional Assessment amount that may be imposed under Section 7.4, all without further notice.

9. Section 12.2 is amended in its entirety to read as follows

12.2 Amendment. Except where a greater percentage is required by express provision in the Restated Declaration or this First Amendment, the provisions of the Restated Declaration and this First Amended may be further amended at any time by an instrument in writing signed and acknowledged by any two officers of the Association, certifying and attesting that such amendment has been approved by the vote or written consent of Owners representing more than two-thirds (2/3) of the votes of Owners of Building Lots, together with approval as required below in this Section 12.2. Any further amendment of the Restated Declaration shall also require the consent of Declarant so long as Declarant is an Owner of any Building Lot. Additionally, any further amendment of the Restated Declaration shall also require the written consent of each Primary Builder, that qualifies as such pursuant to Section 3.15, that is then the Owner of at least three Building Lots held for resale. Any such further amendment, once fully executed by an authorized representative of the Declarant, if applicable, and two officers of the Association, confirming that the requisite approval stated above has been obtained, shall be effective upon its recordation with the Spokane County Auditor.

The undersigned representative of the Declarant, and the President and Secretary of the Association, hereby certify and confirm that the requisite approval stated in Section 12.2 of the Restated Declaration for amending the Restated Declaration has been obtained. This First Amendment will be effective upon its recordation with the Spokane County, Washington Auditor.

D & J ELK RIDGE HEIGHTS LLC

By: 
Printed Name: Jeff Amistaro
Title: member

ELKRIDGE HEIGHTS HOMEOWNERS' ASSOCIATION

By: *Jeff Amistoso*
Printed Name: Jeff Amistoso
Title: President

By: *Carrie L. Redd*
Printed Name: Carrie L. Redd
Title: Secretary

STATE OF WASHINGTON)
)ss.
COUNTY OF SPOKANE)

On this 17 day of May 2013 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jeff Amistoso to me known to be a Member of D & J ELK RIDGE HEIGHTS LLC, a Washington limited liability company, the limited liability company that executed the foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of the limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the instrument.

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



Wendy Ann Ahonen
NOTARY PUBLIC in and for the State
of Washington, residing at Spokane
My commission expires: 3-9-15
Wendy Ann Ahonen
Printed Name

STATE OF WASHINGTON)
)ss.
COUNTY OF SPOKANE)

On this 17 day of May 2013 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jeff Amistoso to me known to be the President of ELKRIDGE HEIGHTS HOMEOWNERS' ASSOCIATION, a Washington nonprofit corporation, the corporation that executed the foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the instrument.

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



Wendy Ann Ahonen
NOTARY PUBLIC in and for the State
of Washington, residing at Spokane
My commission expires: 3-9-15
Wendy Ann Ahonen
Printed Name

STATE OF WASHINGTON)
)ss.
COUNTY OF SPOKANE)

On this 17 day of May 2013 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Carrie L. Redd to me known to be the Secretary of ELKRIDGE HEIGHTS HOMEOWNERS' ASSOCIATION, a Washington nonprofit corporation, the corporation that executed the foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the instrument.

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



Wendy Ann Ahonen
NOTARY PUBLIC in and for the State
of Washington, residing at Spokane
My commission expires: 3-9-15
Wendy Ann Ahonen
Printed Name

Exhibit "A"

INGRESS / EGRESS EASEMENT

An ingress, egress easement located across a portion of Lots 5 and 6 of Block 1, Alteration to the Final Plat of Elk Ridge Heights recorded in Book 36 of Plats at Page 76 in Section 34, Township 25 North, Range 44 East, Willamette Meridian, Spokane County, Washington, said easement being more particularly described as follows:

BEGINNING at a found monument marking the southerly corner common to said Lots 5 and 6;

Thence along the Southerly line of said Lot 5 North $71^{\circ}49'50''$ West, a distance of 73.12 feet to the Southwest corner of said Lot 5;

Thence along the West line of said Lot 5 North $21^{\circ}18'07''$ East, a distance of 24.00 feet;

Thence leaving said West line South $32^{\circ}19'44''$ East, a distance of 6.46 feet;

Thence along a tangent curve to the left, having a radius of 30.00 feet, a central angle of $39^{\circ}30'18''$, and an arc length of 20.68 feet;

Thence South $71^{\circ}50'02''$ East, a distance of 46.92 feet;

Thence along a tangent curve to the right, having a radius of 40.00 feet, a central angle of $03^{\circ}08'12''$, and an arc length of 2.19 feet;

Thence South $68^{\circ}41'50''$ East, a distance of 62.33 feet;

Thence South $21^{\circ}17'41''$ West, a distance of 13.00 feet to the South line of said Lot 6;

Thence along the South line of said Lot 6 North $68^{\circ}41'50''$ West, a distance of 63.00 feet to the **TRUE POINT OF BEGINNING** for this description.

Containing 1,858.89 S.F. (0.043 Acres) of land more or less.

INGRESS / EGRESS EASEMENT

An ingress, egress easement located across a portion of Lots 7 and 8 of Block 1, Alteration to the Final Plat of Elk Ridge Heights recorded in Book 36 of Plats at Page 76 in Section 34, Township 25 North, Range 44 East, Willamette Meridian, Spokane County, Washington, said easement being more particularly described as follows:

BEGINNING at a found monument marking the southerly corner common to said Lots 7 and 8;

Thence along the Southerly line of said Lot 7 the following (2) two calls;

- 1) North 88°22'28" West, a distance of 24.12 feet;
- 2) North 68°41'50" West, a distance of 20.85 feet;

Thence leaving said Southerly line North 14°59'26" East, a distance of 25.06 feet;

Thence South 75°00'34" East, a distance of 107.37 feet to a point on the Southerly line of said Lot 8;

Thence along the Southerly line of said Lot 8 the following (2) two calls;

- 1) South 57°05'02" West, a distance of 11.61 feet;
- 2) North 88°22'28" West, a distance of 56.93 feet to the **TRUE POINT OF BEGINNING** for this description.

Containing 1,994.88 S.F. (0.046 Acres) of land more or less.