

137769

FIRST AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS

THE RIDGE AT SUN UP BAY

KOOTENAI COUNTY, IDAHO

This Amendment is adopted and shall be deemed effective as of the recordation of this instrument, and pertains to that certain Declaration of Covenants, Conditions, and Restrictions recorded March 30, 2007, as instrument No. 209154600, Records of Kootenai County, Idaho, which Declaration governs that certain residential planned unit development project located in Kootenai County, Idaho, known as "The Ridge at Sun UP Bay" (the "Project").

This Amendment has been adopted by the Declarant pursuant to Section 16.2 of the Declaration. The Declaration is hereby amended in the following particulars:

Paragraph 10.1, entitled "Design Review Committee and Guidelines," shall be and is hereby amended to read as follows:

10.1 Design Review Committee and Guidelines. There is hereby established a Design Review Committee, ("Design Committee") which will be responsible for the establishment and administration of design guidelines to facilitate the purposes and intent of this Declaration. The Design Committee may amend, repeal and augment the design guidelines from time to time, in the Design Committee's sole discretion. The design guidelines as amended from time to time will be binding on all owners and other persons governed by this Declaration. The design guidelines may include, among other things, those restrictions and limitations set forth below:

10.1.1 Procedures for making up occasion to Design Committee for review and approval, including the documents to be submitted and the time limits within which the design committee must act to approve or disapprove any submission.

10.1.2 Time limitations for completion, within specified periods after approval, of the improvements for which approval is required under the design guidelines.

10.1.3 Designation of the Building, Development on a Lot, establishing the maximum developable area of the Lot.

10.1.4 Minimum and maximum square foot areas of living space that may be

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constructed on any lot.

10.1.4 Landscaping regulations, with limitations and restrictions prohibiting the removal of existing trees, requiring the replacement of existing trees, the use of plants indigenous to the locale and other practices benefitting the protection of the environment, aesthetics, and architectural harmony of the cap community.

10.1.6 General instructions for the construction, reconstruction, refinishing or alteration of any improvements, including the plan to excavate, fill, or make any other temporary or permanent change to the natural or existing surface, contour, or drainage, or any installation of utility lines, or conduits on the property, addressing matters such as loading areas, waste storage, trash removal, equipment and material storage, gladding, transformers, and meters.

2. Paragraph 10.2, entitled "Designation of Design Committee," shall be and is hereby amended to read as follows:

10.2 **Committee Membership.** The Design Committee will be composed of up to five (5) persons. The Design Committee need not include any member of the Association. All of the members of the Design Committee will be appointed, removed, and replaced by Declarant, in its sole discretion, until the expiration of the Period of Declarant Control or such earlier time as Declarant may elect to voluntarily waive this right by notice to the Association and at that time, the Board of Directors will succeed to Declarant's right to appoint, remove, or replace the members of the Design Committee.

10.2.1 **Term.** The term of office of each member of the Design Committee will be one (1) year, commencing January 1 of each year, and continuing until his or her successor has been appointed. Should a Design Committee member die, retire, or become incapacitated, or any event of resignation, removal, or temporary absence of a member, a successor may be appointed as provided in Section 10.2.

10.2.2. **Chairperson.** So long as the Declarant appoints the Design Committee, Declarant will appoint the Chairperson. At such time as the Design Committee is appointed by the Board of Directors, the Chairperson will be elected annually from among the members of the Design Committee by a majority vote of the Members of the Design Committee. In the absence of a Chairperson, the party responsible for appointing or electing the Chairperson may appoint or elect a successor, or if the absence is temporary, an interim Chairperson.

3. Paragraph 10.16, entitled "Successor Design Committee Membership," shall be and hereby is deleted.
4. Paragraph 10.16.1, entitled "Term," shall be and hereby is deleted.
5. Paragraph 10.16.2, entitled "Chairperson," shall be and hereby is deleted.
6. Paragraph 11.2, entitled "Water Service," shall be and is hereby amended to read as follows:

11.2 **Water Service.** Each lot shall be served by a water system operated by The Ridge at Sun Up Bay Homeowner's Association, Inc.

11.2.1 The Declarant shall be responsible for the initial construction for the water

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main, the shut-off valve (curb stop) located at or near the property line of each lot, and the service line between the water main and the water meter. The Association shall be responsible for installation of one (1) water meter on each lot for potable water. The Owner shall be responsible for the cost of the water meter and the installation. The Owner shall also be responsible for the initial construction of all water facilities located on that owner's lot, including but not limited to, the service line running from the house to the water meter located at or near the property line, and individual pressure reducing valve required of each residence and appurtenant shut-off valve required of each residence and appurtenant shut-off valves, pipes, and fittings. A pressure reducing valve is required in order to reduce the water pressure to a maximum of 80lbs per square inch. The Owner shall furnish and install the valve so that it has an external (outside the house) point of discharge. The internal (inside the house) points of discharge are not permitted for pressure reducing valves, and neither the Declarant, nor the Association shall be responsible for any damage that may occur from malfunctioning or improperly designed or installed pressure reducing valves.

7. Paragraph 11.3, entitled "Use of Water for Fire Fighting," shall be and is hereby amended to read as follows:

11.3 Use of Water for Firefighting. Each Owner shall be responsible for the cost of all water use for firefighting on the Owner's lots and be responsible for any loss/damage caused to the Association or other parties by water used on the Owner's lot.

8. Paragraph 11.4, entitled "No Liability for Interruption of Service," shall be and is hereby amended to read as follows:

11.4 No Liability for Interruption of Service. The Association shall not be liable for any actual or consequential damages arising from, or related to, the intentional or unintentional interruption of water services, regardless of the cause of the interruption. Each Owner and their successors and assigns agree to indemnify and hold harmless the Association for any and all liability in any fashion due to interruption of service. Further, each Owner and their successors and assigns agree that they shall never file or assist in the prosecution of any claim against the Association related in any fashion to the provision or lack of provision of water service.

9. Paragraph 12.9, entitled "Water," shall be and is hereby amended to read as follows:

12.9 Water. Each structure designed for occupancy will connect with a water system operated by the Association.

10. Paragraph 14.1, entitled "Covenant to Pay and Personal Obligation for Assessments," shall be and is hereby amended to read as follows:

14.1 Covenant to Pay and Personal Obligation for Assessments. Upon transfer of a deed following the final plat of a lot and acceptance of such deed to a lot, each owner of such lot covenants and agrees to pay the Association all assessments or charges made by the Association, including annual assessments, special assessments, utility assessments, default assessments, and any other assessments as the Board may impose from time to time.

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14.1.1 Each such assessment, together with fines, interest, costs and reasonable attorneys' (and legal assistants) fees, will also be the personal and individual obligation of the Owner of such lot as of the time the assessment becomes due and two or more Owners of a lot will be jointly and severally liable for such obligations. No Owner may exempt himself/herself from liability for any assessment by abandonment of his/her lot or by waiver of the use or enjoyment of the common areas. Suit to recover a money judgment for unpaid assessments or related charges, as listed above may be maintained without foreclosing or waiving the assessment lien provided in this Declaration.

11. Paragraph 14.5, entitled "Utility Assessments," shall be and is hereby amended to read as follows:

14.5 **Utility Assessments.** All fees and charges levied by the Association for water facilities, services, operation and maintenance shall be considered Utility Assessments, and the provisions regarding remedies and liens for the assessments set forth in this Declaration shall apply to such Utility Assessments.

12. Paragraph 14.7, entitled "General Remedies of Association for Non-Payment of Assessments," shall be and is hereby amended to read as follows:

14.7 **General Remedies of Association for Non-Payment of Assessments.** Any installment of an annual assessment or special assessment that is not paid within thirty (30) days after its due date will be delinquent. In the event that an annual assessment or special assessment comes delinquent, or in the event any default assessment is established under this Declaration, the Association, as applicable in its sole discretion, may take any or all the following actions:

14.7.1 Assess a late charge for each delinquency at uniform rates set by the Board of Directors from time to time;

14.7.2 Charge interest from the date of the delinquency at the default rate;

14.7.3 Suspend the voting rights of the Owner during any period of delinquency;

14.7.4 Accelerate all the remaining assessment installments for the fiscal year in question so that the unpaid assessments for the remainder for the fiscal year will be due and payable at once;

14.7.5 Bring an action of law against any owner personally obligated to pay the delinquent assessment charges; or

14.7.6 File a Notice of Lien with respect to the lot and foreclose as set forth in more detail below.

13. Paragraph 14.8, entitled "Assessment Lien," shall be and is hereby amended to read as follows:

14.8 **Assessment Lien.** Any assessment chargeable to a lot will constitute a lien on the lot, effective the due of the assessment. To evidence the lien, the Association may, but will not be obligated to, prepare and record, at the office of the Kootenai County Recorder a Notice of Lien with respect to the lot, setting forth the name of the owner, the legal description of the lot, the name of the Association, and the delinquent assessment amounts. Any such notice will be duly signed and acknowledged by an officer or director

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of the Association and will be served upon the Owner of the lot by personal service, or certified or registered mail to the last known address of the Owner or Owners of the lot and any holder of a prior perfected security interest. Thirty (30) days following the mailing of such notice to the Owner, the Association may proceed to foreclose the lien in the manner provided under Idaho law. The Association will have the power and the right to bid on a lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey any such lot.

14. Paragraph 26.7, entitled "Assignment," shall be and is hereby amended to read as follows:

26.7 **Assignment.** Declarant may assign all or any part of the Special Declarant rights or any Declarant's other rights and reservations hereunder to any successor who takes title to all or part of the property in either (a) a bulk sale in a bulk purchase for the purpose of development and sale or (b) a deed in lieu of foreclosure. Such successor will be identified, the particular rights being assigned will specified and, to the extent required concomitant obligations will be expressly assumed by such successor, all in an instrument duly recorded in the records of the Recorder of Kootenai County, Idaho.

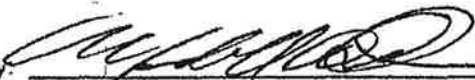
Except as modified by this Amendment, the Declaration shall remain in full force and effect.

THE RIDGE AT SUN UP BAY HOMEOWNERS'
ASSOCIATION, INC., an Idaho nonprofit
corporation

By: 
Marshall R. Chesrown
ks: President

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DECLARANT
BRMC DEVELOPMENT, INC., an Idaho
corporation

By: 
Marshall R. Chesrown
Its President

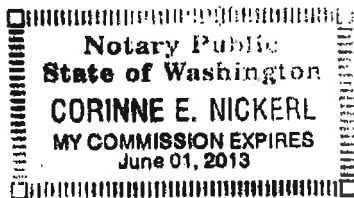
STATE OF ~~Idaho~~ (Washington)

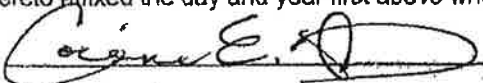
:ss

County of ~~Kootenai~~ Spokane)

On this 18th day of March, ^{CA} ~~Idaho~~ Washington, 2011, before me, Corinne E. Nickert a
Notary Public in and for the State of ~~Idaho~~, personally appeared MARSHALL R. CHESROWN,
known or identified to me to be the President of the corporation that executed this instrument or the
person who executed the instrument on behalf of said corporation and acknowledged to me that
such corporation executed the same.

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



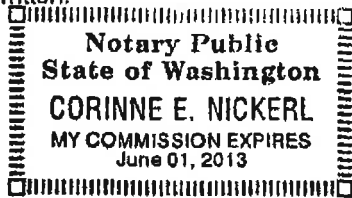

Notary Public for ~~Idaho~~ Washington
Residing at Spokane, WA
Commission expires 6/01/13

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STATE OF ~~IDAHO~~ Washington)
County of ~~Kootenai~~ Spokane)

On this 8th day of March, ^{Washington} 2011, before me, Corinne E. Nickerl, a notary public for the State of ~~Idaho~~, personally appeared MARSHALL R. CHESROWN known to me to be the person who executed the foregoing instrument, and acknowledged that he executed the same.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.



Corinne E. Nickerl
Notary Public (Signature)
Corinne E. Nickerl
(Print Name)
Residing Spokane, WA at:
My commission expires: 6/01/13

STATE OF IDAHO)
County of Kootenai)

On this _____ day of _____, 2011, before me, _____, a notary public for the State of Idaho, personally appeared CHAD V. ROUNTREE known to me to be the person who executed the foregoing instrument, and acknowledged that he executed the same.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.

Notary Public (Signature)

(Print Name)
Residing _____ at:
My commission expires: _____

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CERTIFICATE OF ADOPTION

The undersigned, being the Board of Directors of The Ridge at Sun Up Bay Homeowners' Association, Inc. (the "Association"), do hereby certify as follows:

1. That they are the current Directors of the Association.
2. That a copy of this Amendment was mailed by first class mail, postage prepaid to the address of the Owners on the records of the Association. Fewer than 80% of the Owners objected to this Amendment.

THE 'RIDGE AT SUN UP BAY
HOMEOWNERS' ASSOCIATION, INC.,
an Idaho nonprofit corporation

By _____
Marshall R. Chesrown
Its Director

By  _____
Chad Rountree
Its Director

STATE OF IDAHO)
 : ss
County of Kootenai)

On this _____ day of _____, 2011, before me, _____ a notary public for the State of Idaho, personally appeared MARSHALL R. CHESROWN known to me to be the person who executed the foregoing instrument, and acknowledged that he executed the same.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.

Notary Public (Signature)

(Print Name)
Residing _____ at:
My commission expires: _____

STATE OF IDAHO)
 : ss
County of Kootenai)

On this 18th day of March, 2011, before me, Tanya Lang a notary public for the State of Idaho, personally appeared CHAD V. ROUNTREE known to me to be the person who executed the foregoing instrument, and acknowledged that he executed the same.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.



Tanya Lang
Notary Public (Signature)
Tanya Lang
(Print Name)
Residing _____ at:
Coeur d'Alene
My commission expires: 3-19-2016

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