

0200450, 0002048 + 0002049

Return to:  
Mill Creek LLC  
10900 NE 8th St  
# 900  
Bellevue, WA 98004

2007038 12030

BY Sands  
DATE 2-7-07 TIME 12:03  
\$ 426 PAGES 58 BY [Signature]  
PAULA ROBINSON FIA HEAD COUNTY MONTANA

200703812010 / 200703812020

# MILL CREEK

## Declaration of Covenants, Conditions and Restrictions

2007038 12030

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
MILL CREEK  
A SUBDIVISION IN FLATHEAD COUNTY MONTANA

The undersigned hereby adopt the following DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for those properties owned by the Declarant and located in Section 26, Township 27 North, Range 20 West, PMM Flathead County Montana and more particularly shown on the Plat of Mill Creek on file and of record with the clerk and recorded of Flathead County, Montana. The terms of this Declaration are contained on the following 40 pages including this page plus the exhibits attached hereto.

IN WITNESS WHEREOF, Declarant has signed this Declaration on this 28<sup>th</sup> day of September 2006.

Mill Creek Land, LLC

By: Roger Sortino  
Its: Managing member

STATE OF Washington : ss  
County of King )

On this 28 day of September, 2006, before me, the undersigned, a Notary Public for the State aforesaid, personally appeared Roger Sortino, known to me to be the managing member of Mill Creek, LLC, the entity that executed the within instrument, and acknowledged to me that such entity executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

Diane C. Fulton  
Notary Public for the State of Washington  
Residing at Woodinville  
My Commission expires 4-02-06

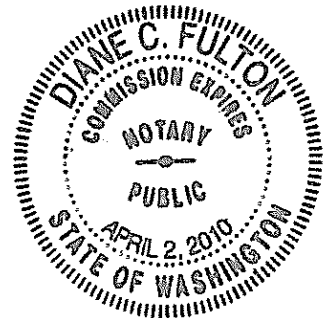


Table of Contents

ARTICLE I DECLARATION-PURPOSES..... 1

    Section 1.1 Declaration ..... 1

    Section 1.2 Right to Expand..... 1

    Section 1.3 Development and Use..... 1

    Section 1.4 Club House ..... 2

ARTICLE II HOMEOWNERS ASSOCIATION..... 2

    Section 2.1 Purpose ..... 2

    Section 2.2 Care of Related Units ..... 2

    Section 2.3 Membership ..... 2

    Section 2.4 Voting ..... 3

    Section 2.5 Member Responsibilities ..... 3

    Section 2.6 Incorporation ..... 3

    Section 2.7 Powers and Duties of Mill Creek Homeowners Association ..... 3

    Section 2.8 Insurance..... 3

    Section 2.9 General Insurance Provisions ..... 3

    Section 2.10 Physical Damage Insurance on Common Area ..... 4

    Section 2.11 Liability Insurance ..... 4

    Section 2.12 Fidelity Insurance ..... 4

    Section 2.13 Provisions Common to Physical Damage Insurance, Liability Insurance, and Fidelity Insurance ..... 4

    Section 2.14 Personal Liability Insurance of Officers and Directors ..... 5

    Section 2.15 Worker's Compensation Insurance ..... 5

    Section 2.16 Other Insurance ..... 5

    Section 2.17 Insurance Obtained by Owners ..... 5

    Section 2.18 Attorney-in-Fact ..... 6

ARTICLE III PROTECTIVE COVENANTS ..... 6

    Section 3.1 Design Review Committee ..... 6

    Section 3.2 Guidelines..... 6

    Section 3.3 Purpose and General Authority ..... 7

    Section 3.4 Limitation of Liability ..... 8

    Section 3.5 Land Use..... 9

    Section 3.6 Dwelling Construction..... 9

    Section 3.7 Exterior Finishes..... 10

    Section 3.8 Condition and Reconstruction ..... 10

    Section 3.9 No Temporary Structures ..... 10

    Section 3.10 Outbuildings ..... 10

    Section 3.11 Utilities ..... 10

    Section 3.12 Antennas, Poles and Other Structures ..... 10

    Section 3.13 Central Mail Delivery ..... 10

    Section 3.14 House Numbers ..... 11

    Section 3.15 Motorized Vehicles ..... 11

    Section 3.16 Animals..... 11

Section 3.17	Nuisances.....	12
Section 3.18	Garbage and Refuse Disposal.....	12
Section 3.19	Signs .....	12
Section 3.20	Hunting and Fireworks.....	12
Section 3.21	Driveways.....	13
Section 3.22	Fuel Tanks .....	13
Section 3.23	Outdoor Lighting .....	13
Section 3.24	Burning.....	13
Section 3.25	No Visible Outside Clotheslines .....	13
Section 3.26	Parking and Auto Repair .....	13
Section 3.27	Fertilizers and Pesticides .....	13
Section 3.28	Noise.....	13
Section 3.29	Obstructions.....	14
Section 3.30	Camping and Picnicking.....	14
Section 3.31	Fire Clearance Measures .....	14
Section 3.32	Fencing .....	14
Section 3.33	General Practices Prohibited .....	14
Section 3.34	Rental and Leasing .....	14
Section 3.35	Declaration of Unit Ownership .....	15
Section 3.36	Townhouse Site Improvements .....	15
ARTICLE IV	ROADWAY AND COMMON FACILITY MAINTENANCE AGREEMENT	15
Section 4.1	Roadway and Utility Easement .....	15
Section 4.2	Cost of Maintenance.....	15
Section 4.3	Damage to Roadway.....	16
ARTICLE V	OWNERS' OBLIGATIONS FOR MAINTENANCE .....	16
Section 5.1	Owner's Responsibility for Lot.....	16
Section 5.2	Owner's Negligence.....	16
ARTICLE VI	ASSESSMENTS.....	17
Section 6.1	Creation of Lien and Personal Obligation for Assessments.....	17
Section 6.2	Determination .....	17
Section 6.3	Default Assessments.....	17
Section 6.4	General Remedies of Mill Creek Homeowners' Association for Nonpayment of Assessment.....	17
Section 6.5	Assessment Lien .....	18
Section 6.6	Successor's Liability for Assessment .....	19
Section 6.7	Waiver of Homestead Exemption; Subordination of the Lien .....	19
Section 6.8	Liens and encumbrances recorded before the date of the recording of this Declaration .....	19
Section 6.9	Liens for real estate taxes and other governmental assessments.....	19
Section 6.10	The lien for all sums unpaid on a First Mortgage .....	19
Section 6.11	Reallocation of Assessments Secured by Extinguished Liens .....	19
Section 6.12	Exempt Property .....	20
Section 6.13	Statement of Status of Assessments .....	20
Section 6.14	Failure to Assess.....	20

ARTICLE VII PROPERTY RIGHTS OF OWNERS .....20

    Section 7.1 Owners' Easements of Access and Enjoyment.....20

    Section 7.2 Emergency Access Easement.....21

ARTICLE VIII SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS21

    Section 8.1 General Provisions.....21

    Section 8.2 Completion of Improvements.....21

    Section 8.3 Development Rights .....21

    Section 8.4 Sales Activities .....21

    Section 8.5 Easements .....21

    Section 8.6 Master Association .....22

    Section 8.7 Association Directors and Officers .....22

    Section 8.8 Order of Exercise of Declarant's Rights .....22

    Section 8.9 Supplemental Provisions Regarding Declarant's Rights .....22

    Section 8.10 Utility Easements.....22

    Section 8.11 Reservation for Expansion and Construction .....23

    Section 8.12 Reservation of Easements, Exceptions, and Exclusions for Utilities,  
                   Infrastructure, and Access .....23

    Section 8.13 Maintenance Easement.....23

    Section 8.14 Drainage Easement.....23

    Section 8.15 Declarant's Rights Incident to Construction .....24

    Section 8.16 Easements Deemed Created .....24

ARTICLE IX DAMAGE OR DESTRUCTION .....24

    Section 9.1 Damage or Destruction of Common Area.....24

    Section 9.2 Repair and Reconstruction .....24

    Section 9.3 Funds for Repair and Reconstruction .....25

    Section 9.4 Disbursement of Funds for Repair and Reconstruction .....25

    Section 9.5 Decision Not to Rebuild .....25

    Section 9.6 Damage or Destruction Affecting Lots .....25

ARTICLE X CONDEMNATION .....26

    Section 10.1 Rights of Owners .....26

    Section 10.2 Partial Condemnation; Distribution of Award; Reconstruction .....26

    Section 10.3 Complete Condemnation .....26

ARTICLE XI EXPANSION AND WITHDRAWAL .....27

    Section 11.1 Reservation of Right to Expand .....27

    Section 11.2 Completion of Expansion .....27

    Section 11.3 Declaration of Annexation .....27

    Section 11.4 Withdrawal of Property .....27

ARTICLE XII MORTGAGEE PROTECTIONS.....28

    Section 12.1 First Mortgagees' Rights.....28

    Section 12.2 Cure of Delinquent Assessments.....28

    Section 12.3 Title Taken by First Mortgagee.....28

ARTICLE XIII TERMS AND ENFORCEMENT .....28

    Section 13.1 Terms .....28

    Section 13.2 Violations Deemed a Nuisance .....28

Section 13.3	Compliance.....	29
Section 13.4	Failure to Comply.....	29
Section 13.5	Who May Enforce .....	29
Section 13.6	Nonexclusive Remedies .....	29
Section 13.7	No Waiver .....	29
Section 13.8	Recovery of Costs.....	29
Section 13.9	Internal Dispute Resolution.....	29
ARTICLE XIV AMENDMENT.....		30
Section 14.1	Amendment .....	30
Section 14.2	Prior to Sale of Lots.....	30
Section 14.3	After Sale of Lots but During Period of Declarant Control .....	30
Section 14.4	After the Period of Declarant Control .....	30
Section 14.5	Declarant's Approval .....	31
Section 14.6	Effect of Amendments.....	31
ARTICLE XV MISCELLANEOUS PROVISIONS.....		31
Section 15.1	Severability.....	31
Section 15.2	Construction .....	31
Section 15.3	Headings .....	31
Section 15.4	Limitation of Liability .....	31
Section 15.5	Conflicts Between Documents .....	31
Section 15.6	Assignment.....	32

TERMS OF THIS DECLARATION

ARTICLE I  
DECLARATION-PURPOSES

**Section 1.1 Declaration**

The "Declarant" for itself and its successors and assigns, hereby declares that the real property described below, and all property added to this Declaration by the Declarant, shall at all times be owned, held, used and occupied subject to the provisions contained in this Declaration and to the covenants, conditions and restrictions contained herein, which are enacted for the benefit of the properties and the owners. These covenants shall run with the land and be binding upon anyone who accepts a conveyance of the property.

That property located in Section 26, Township 27 North, Range 20 West, PMM Flathead County Montana and more particularly shown on the Plat of Mill Creek on file and of record with the clerk and recorded of Flathead County, Montana.

His property is owned by Mill Creek Land LLC, the Declarant, whose address is 10900 NE 8th Street, Suite 900, Bellevue, WA 98004.

**Section 1.2 Right to Expand**

The Declarant also now owns or may in the future own additional real estate in Flathead County, Montana, which is contiguous to Mill Creek or contiguous to other expansions of Mill Creek and which it may desire to incorporate into the Mill Creek Project (the "Expansion Property"), and the Declarant has reserved the right, but will not be obligated, to incorporate the Expansion Property in whole or in part in the regime established under this Declaration, all as provided in Article XI below, so that the Expansion Property, if and when developed, will be treated as an integral part of the single planned community of Mill Creek. Since the common elements shall belong to the association, the only grant needed with additional expansion is that all new common area shall be conveyed to the homeowners' association established herein and the association shall allow the use of the new and old common area by both the new and old members.

**Section 1.3 Development and Use**

Upon completion and prior to any expansion, Mill Creek will consist of a maximum of 113 Lots. Thirty-one lots are single-family lots, while 82 lots are for townhouse condominium units. Each Owner of any Lot or Unit on a Lot will abide by and benefit from the provisions, covenants, conditions, and restrictions contained in the Mill Creek Documents.

**Section 1.4 Club House**

Within the property there has been set aside an area of 1.3 acres, which will have a 7000 square-foot clubhouse, that will serve the needs of the property owners. That facility will remain in private ownership and not be considered part of the common area. But it is understood the facility shall be available to the lot owners and guests accompanied by lot owners for a monthly or usage fee as established by the private owners. Any conveyance of the facility from the Declarant will contain a provision allowing shared leased usage with the homeowners subject to payment of membership fees. The fee shall be determined in a long-term contract between the private owners and the homeowners association providing that Mill Creek Homeowners' Association shall be responsible for the collecting of membership fees of all lot owners. That fee will take into consideration the services provided, cost of the clubhouse lease payments, taxes, utilities and maintenance of the clubhouse. Mill Creek Homeowners' Association will include each lot owner's share of the cost in its annual assessments, which will be paid monthly by each lot owner. There will be no clubhouse assessment until the clubhouse is completed and opened to Mill Creek residences. The use of the clubhouse need not be exclusive to the members of Mill Creek Homeowners' Association.

ARTICLE II  
HOMEOWNERS ASSOCIATION

**Section 2.1 Purpose**

Prior to the sale of lots within the Mill Creek Properties subdivision, the Declarant will cause to be formed, for the mutual benefit of itself and all subsequent property owners within the Mill Creek subdivision, a homeowners association so created for the purposes, but not limited to maintenance of all common use facilities. The enforcement of the conditions, covenants and restrictions, revising, altering, deleting, and enforcing these conditions, covenants, and restrictions, the establishment of liability insurance, determining member assessments, as required for the yearly operation and obligations of the association and entering into such agreement as are for the benefit of the association or required hereunder, including but not limited to the agreement provided herein with respect to the club house use.

**Section 2.2 Care of Related Units**

Any person erecting multiple units upon a lot where the same are allowed, may in preparing the appropriate declarations for such shared lot delegate the collection responsibilities for any fees due to the association of unit owners formed for that lot, to this homeowners association.

**Section 2.3 Membership**

Each lot owner of single home lots and each unit owner of the townhouse condominium units within the Mill Creek subdivision will become a member of the homeowners association and that members shall run concurrent with property ownership, beginning and ending with the close of property sale within the Mill Creek subdivision. Each owner of property added to the coverage of this Declaration shall also be a member. No mortgage holder or beneficiary of a deed of trust or trust indenture shall be a member unless it has acquired the interest in foreclosure.



**Section 2.4 Voting**

The powers, rights, duties and obligations of the Homeowners' Association are set forth in the initial bylaws which are attached and incorporated herein by this reference.

The Bylaws are to be deemed part of these covenants and binding as if the terms were incorporated herein.

**Section 2.5 Member Responsibilities**

Each lot owner in the Mill Creek subdivision is required by the acceptance of a deed to be thereby a member of the homeowners association, by accepting a deed thereby accepts and agrees to abide by the by-laws and rules and regulations of the homeowners association which may be adopted by the board of Directors from time to time, and agrees to pay the homeowners association such dues and assessments as its Board of Directors shall fix and determine, payable at such time as the directors shall determine

**Section 2.6 Incorporation**

The Homeowner's Association call for herein may, at the election of the Declarant, become incorporated. Irrespective of incorporation, the initial bylaws are attached here to as Exhibit A and herein incorporated as part of this declaration with the terms binding as if they were stated in full herein.

**Section 2.7 Powers and Duties of Mill Creek Homeowners Association**

The powers and duties are set forth in the initial bylaws are attached here to as Exhibit A and herein incorporated as part of this declaration with the terms binding as if they were stated in full herein.

**Section 2.8 Insurance**

All insurance policies relating to the Common Area will be purchased by the Board of Directors or its duly authorized agent. The Board of Directors, the Manager and Declarant will not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at demonstrably unreasonable costs.

**Section 2.9 General Insurance Provisions**

All such insurance coverage obtained by the Board of Directors will be governed by the following provisions:

As long as Declarant owns any Lot and for a period of three year after the Declarant conveys its last lot, Declarant will be protected by all such policies in the same manner as any other Owner and shall be named an additional insured.

The deductible, if any, on any insurance policy purchased by the Board of Directors may be treated as a Common Expense payable from Annual Assessments or Special Assessments

(allocable to all of the Lots or to only some of the Lots, if the claims for damages arise from the negligence of particular Owners, or if the repairs benefit only particular Owners), or as an item to be paid from working capital reserves established by the Board of Directors.

**Section 2.10 Physical Damage Insurance on Common Area**

The Mill Creek Homeowners' Association will obtain insurance for such insurable Improvements and with such coverages, limits, deductibles and other terms and conditions as the Board may determine from time to time.

**Section 2.11 Liability Insurance**

The Mill Creek Homeowners' Association will obtain a comprehensive policy of public liability insurance and property damage insurance with such coverages and limits as the Board of Directors may from time to time determine, insuring each member of the Board of Directors, the Mill Creek Homeowners' Association, the Manager, and the respective employees, agents, and all persons acting as agents against any liability to the public or the Owners (and their guests, invites, tenants, agents, and employees) arising in connection with the ownership, operation, maintenance, or use of the Common Area and streets and roads within Mill Creek and any other areas under the control of the Mill Creek Homeowners' Association. Declarant will be included in the coverage as an additional insured in Declarant's capacity as an Owner or Director. The Owners will be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area.

The Board of Directors will review the coverage limits from time to time, but, generally, the Board will carry such amounts of insurance usually required by private institutional mortgage lenders on projects similar to Mill Creek, and in no event will such coverage be less than \$2,000,000.00 for all claims for bodily injury or property damage arising out of one occurrence.

**Section 2.12 Fidelity Insurance**

Fidelity bonds or insurance coverage will be maintained by the Mill Creek Homeowners' Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees, and on the part of all others who handle or are responsible for handling the funds of or administered by the Mill Creek Homeowners' Association. In addition, if responsibility for handling funds is delegated to a Manager, such bonds or insurance coverage will be required for the Manager and its officers, employees, and agents, as applicable. Such fidelity bonds or insurance coverage will name the Mill Creek Homeowners' Association as an obligee or insured and will be written in such amount as the Board may determine appropriate.

**Section 2.13 Provisions Common to Physical Damage Insurance, Liability Insurance, and Fidelity Insurance**

Any insurance coverage obtained by the Mill Creek Homeowners' Association under the provisions of this Article above will be subject to the following provisions and limitations:

The named insured under any such policies will include Declarant, until all of the Lots in Mill Creek have been conveyed, and the Mill Creek Homeowners' Association, as attorney-in-fact for the Owners, or the authorized representative of the Mill Creek Homeowners' Association (including any trustee with whom the Mill Creek Homeowners' Association may enter into any insurance trust agreement, or any successor trustee, each of which is sometimes referred to in this Declaration as the "Insurance Trustee"), who will have exclusive authority to negotiate losses under such policies.

Each Owner will be an insured person with respect to liability arising out of the Owner's interest in the Common Area or membership in the Mill Creek Homeowners' Association.

The policies will contain a waiver by the insurer of any right to claim by way of subrogation against Declarant, the Board of Directors, the Mill Creek Homeowners' Association, the Manager, and any Owner and their respective agents, employees, or tenants, and in the case of Owners, members of their households.

**Section 2.14 Personal Liability Insurance of Officers and Directors**

To the extent obtainable at reasonable cost, appropriate officers' and directors' personal liability insurance will be obtained by the Mill Creek Homeowners' Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Mill Creek Homeowners' Association.

**Section 2.15 Worker's Compensation Insurance**

The Mill Creek Homeowners' Association will obtain worker's compensation or similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

**Section 2.16 Other Insurance**

The Mill Creek Homeowners' Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it will deem appropriate with respect to the Mill Creek Homeowners' Association's responsibilities and duties.

**Section 2.17 Insurance Obtained by Owners**

Each Owner will have the right to obtain insurance for such Owner's benefit, at such Owner's expense, covering the Owner's Lot and Improvements, personal property and personal liability. However, no insurance coverage obtained by an Owner will operate to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Mill Creek Homeowners' Association or cause the diminution or termination of that coverage. Any such insurance obtained by an Owner will include a waiver of the particular insurance company's right of subrogation against Declarant, the Board of Directors, the Mill Creek Homeowners' Association, the Manager, and other Owners.

**Section 2.18 Attorney-in-Fact**

Each and every Owner hereby irrevocably constitutes and appoints the Mill Creek Homeowners' Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Improvements on the Common Area upon damage or destruction as provided in Article IX or a complete or partial taking as provided in Article X below. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner will constitute appointment of the Mill Creek Homeowners' Association as attorney-in-fact as provided in this Article. As attorney-in-fact, the Mill Creek Homeowners' Association will have full and complete authorization, right, and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner that may be necessary or appropriate to exercise the powers granted to the Mill Creek Homeowners' Association as attorney-in-fact.

ARTICLE III  
PROTECTIVE COVENANTS

A. The following covenants apply to all lots within Mill Creek or any expansion thereof:

**Section 3.1 Design Review Committee**

No building shall be permitted without prior approval by said Design Review Committee. This committee shall consist of a three-member panel serving one-year terms, which commence on January 1 of each year. Should a member resign or be removed, the replacement shall be made in the same manner as an original appointment.

The Committee shall elect a chairman and may have such other officers as it desires and advises the Board of Directors.

The Committee shall be formed for the expressed purpose of reviewing all building and landscape plans for conformance with the Architectural Design Guidelines attached hereto as Exhibit B. This committee shall, after the period of Declarant Control, be a committee of the Homeowners Association, but shall during the period of Declarant Control be solely appointed by the Declarant. Further, a member of the Declarant shall be a member of, and preside over, the original Design Review Committee. The Committee need not include any Member of the Mill Creek Homeowners' Association. All of the members of the 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 Mill Creek Homeowners' Association, and at that time the Board of Directors will succeed to Declarant's right to appoint, remove, or replace the members of the Committee.

**Section 3.2 Guidelines**

The Design Review Committee will be responsible for the establishment and administration of the Architectural Design Guidelines attached hereto as Exhibit B to facilitate the purposes and intent of this Declaration. The Committee may amend, repeal and augment the Architectural

2007038/2030

Design Guidelines from time to time, in the Committee's sole discretion. The Architectural Design Guidelines will be binding on all Owners and other persons governed by this Declaration. These may include, among other things, those restrictions and limitations set forth below:

- (a) Procedures for making application to the Committee for design review approval, including the documents to be submitted and the time limits in which the Committee must act to approve or disapprove any submission.
- (b) Time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required under the Architectural Design Guidelines.
- (c) Designation of the Building Site on a Lot, establishing the maximum developable area of the Lot.
- (d) Building and Roof Material and Design and colors.
- (e) Minimum and maximum square foot areas of living space that may be developed on any Lot, within the limitations set forth herein.
- (f) Landscaping regulations, with limitations and restrictions prohibiting the removal or requiring the replacement of existing trees, the use of plants indigenous to the locale, and other practices benefiting the protection of the environment, aesthetics and architectural harmony of Mill Creek.
- (g) And such other matters dealing with the architecture, landscaping and related environmental needs of the Mill Creek Subdivision and any expansion.

### **Section 3.3 Purpose and General Authority**

No Improvement will be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor will any construction, repair or reconstruction be commenced until plans for the Improvements shall have been approved by the Committee; provided, however, that Improvements that are completely inside a Building may be undertaken without such approval. There will be a charge for review of these plans as set forth in the Architectural Design Guidelines. All houses constructed upon the premises shall be constructed in keeping with the location, terrain, and environment of the premises and so as not to be unsightly. No building, fence, wall, or other structure shall be commenced, erected or maintained upon the property, nor shall any addition to, change of, or alteration therein be made until plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to, and approved in writing by, the Design Review Committee as to harmony of external design and location in relation to surrounding structures, topography and native vegetation. In the event said committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been so submitted, approval will not be required, and this article will be deemed to have been fully complied with. Minimum

plans for review will consist of the site plan with proposed grading, floor plans, exterior elevations identifying all finish materials. Noncompliance with plans so approved by the Design Review Committee will not be allowed and the committee may take any legal action necessary to assure compliance with the approval conditions. Two sets of the submittal package shall be required for architectural review.

The Committee will review, study and either approve or reject proposed Improvements on the Property, all in compliance with this Declaration and as further set forth in the Architectural Design Guidelines and such rules and regulations as the Committee may establish from time to time to govern its proceedings. The Committee's determination shall be by majority vote. The Committee will exercise its best judgment to see that all Improvements conform and harmonize with any existing structures as to external design, quality and type of construction, seals, materials, color, location on the Building Site, height, grade and finished ground elevation, and the schemes and aesthetic considerations set forth in the Architectural Design Guidelines and the other Mill Creek Documents. The Committee, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements.

The actions of the Committee in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, will be conclusive and binding on all interested parties.

The Committee may avail itself of other technical and professional advice and consultants as it deems appropriate, and the Committee may delegate its plan review responsibilities, except final review and approval, to one or more of its members or to consultants retained by the Committee. Upon that delegation, the approval or disapproval of plans and specifications by such member or consultant will be equivalent to approval or disapproval by the entire Committee. All Improvements will be constructed only in accordance with approved plans.

### **Section 3.4 Limitation of Liability**

The Committee will use its own judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Committee nor any individual Committee member will be liable to any person for any official act of the Committee in connection with submitted plans and specifications, except to the extent the Committee or any individual Committee member acted with malice or harmful intent. Approval by the Committee does not necessarily assure approval by the appropriate governmental board or commission for the County of Flathead. Notwithstanding that the Committee has approved plans and specifications, neither the Committee nor any of its members will be responsible or liable to any Owner, developer or contractor with respect to any loss, liability, claim or expense which may arise by reason of such approval of the construction of the Improvements. Neither the Board, the Design Review Committee, nor any agent thereof, nor Declarant, nor any of its partners, employees, agents or consultants will be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Mill Creek Documents, nor for any structural or other defects in any work done according to such plans and

specifications. In all events the Committee will be defended and indemnified by the Mill Creek Homeowners' Association in any such suit or proceeding, which may arise by reason of the Committee's review or decision. The Mill Creek Homeowners' Association, however, will not be obligated to indemnify each member of the Committee to the extent any such member of the Committee is adjudged to be liable for negligence or misconduct in the performance of his duty as a member of the Committee, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

### **Section 3.5 Land Use**

Lots 1 through 31 may be used only for single-family residential purposes and only for the purposes set forth in these Covenants, as permitted by the applicable ordinances of the County of Flathead, and the laws of the State of Montana and the United States, and as set forth in the Mill Creek Documents or other specific recorded covenants affecting all or any part of the Property. There shall be no commercial use on the property. Lots 32 through 113 may be used only for townhouse condominiums, and only for the purposes set forth in these Covenants, as permitted by the applicable ordinances of the County of Flathead, and the laws of the State of Montana and the United States, and as set forth in the Mill Creek Documents or other specific recorded covenants affecting all or any part of the Property. There shall be no commercial use on the property

Home office or related activities, which do not result in increased vehicular traffic, shall not be considered commercial use. At no time will said activities be allowed if noise, odor, or visual evidence of said activity is noticeable from adjacent properties or if said activity generates excessive roadway traffic due to the use of delivery vehicles, delivery service, or retail sales. A non-resident work force for said commercial activities of any size, operating on the premises is hereby expressly prohibited. The rental of a dwelling unit is not specifically considered as a commercial use, but the rental shall comply with Section 3.33, below. The Clubhouse property is excluded from this provision.

### **Section 3.6 Dwelling Construction**

Subject to the provision in Article II, above, no house trailer, mobile home, or any other prefabricated structure designed to be hauled or moved on wheels, shall be placed, parked or used upon property for residential purposes. No old or previously used, buildings, whether intended for use in whole or part as the main residential structure or for use as a garage or other outbuilding shall be moved, or permitted upon, any of the property herein described. Each dwelling shall be fully completed externally, including siding and/or masonry, paint and roof, ground finish graded, and building debris removed within 12 months from the time construction starts on such building and shall not be occupied until such time as the above work is completed, in addition to the installation and completion of all plumbing fixtures and utilities.

2007038/2030

**Section 3.7 Exterior Finishes**

All exterior material and color choices including that for siding and roofing must comply to the Architectural Design Guidelines and be approved by the Design Review Committee.

**Section 3.8 Condition and Reconstruction**

Each structure, once constructed on a lot, shall be kept in the same condition as at the time of its original construction, excepting only normal wear. All structures shall be preserved and of pleasing appearance with regard to maintenance of exterior finish (paint, stain, sealer, etc.). If any structure is damaged in any way, the owner shall, with due diligence, rebuild, repair and restore the structure to its appearance and condition prior to the casualty. Reconstruction shall be completed within one year of the casualty.

**Section 3.9 No Temporary Structures**

No temporary building, or partly finished building or structure shall be erected or placed upon this property.

**Section 3.10 Outbuildings**

All outbuildings on a Lot shall be constructed in keeping with the construction and architecture of the home and any other buildings located on the Lot and shall comply with the architectural guidelines. All outbuildings shall be kept and maintained in good condition, repair, and appearance.

**Section 3.11 Utilities**

All utilities shall be placed underground. It is expressly prohibited for Lot owners to provide utility easements for electric, water, sewer, gas, telephone, or other utility service under or through their property for the purpose of providing service to or through adjacent lands without the written consent of and appropriate compensation to the Declarant, its successors or assigns, for such grant of easement.

**Section 3.12 Antennas, Poles and Other Structures**

No antennas, poles, cellular telephone towers, communication towers, or other structures shall be erected unless approved by the Architectural Review Committee. Any satellite dish receiver must be 24 inches or less in diameter and shall not be visible from any road. Displaying the American flag on a short-term basis is permitted if it is hung from a pole bracket mounted on the residence or if it is suspended from a roof overhang.

**Section 3.13 Central Mail Delivery**

All mail delivery within Mill Creek will be delivered to a central mail facility within the Mill Creek Clubhouse. Each Lot owner will have their own private mailbox. Likewise, all newspapers shall also be delivered to the Central mail facility, and NO newspaper tubes shall be allowed anywhere within the Mill Creek development.



**Section 3.14 House Numbers**

Owners shall maintain house numbers at the driveway entrance. All house numbers shall be visible from the driveway entrance. Declarant will develop standard house numbering plaques or signposts, and if such standard house numbering is developed, all Lots and units shall be so numbered.

**Section 3.15 Motorized Vehicles**

No trucks, trail bikes, recreational vehicles, motor homes, motor coaches, snowmobiles, campers, trailer, boats or boat trailers or similar vehicles other than passenger automobiles or pickup or utility trucks with a capacity of three-quarters ton or less or any other motorized vehicles will be parked, stored or in any manner kept or placed on any portion of the Property except in an enclosed garage or screened from public view. This restriction, however, will not be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing services to the Property or for Declarant or the other Owners.

No snowmobiles or off-road vehicles will be allowed to operate on any roads or trails in the Property, except for emergency purposes or in areas specifically designated for such purposes by the Board. Motorcycles may be used on roads in the Property only for transportation to and from a dwelling and shall be operated in a quiet manner. It is specifically understood that a guest's motor coach may remain on the premises for a period not to exceed two (2) weeks.

**Section 3.16 Animals**

No more than two (2) dogs or two (2) cats or other small household pets, not to exceed three, may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. No livestock or poultry of any kind shall be raised, bred or kept on any lot. Household pets, such as dogs, must be contained upon the Owner's Lot or on a leash at all times and such pet may not be permitted to run at large at any time. All pet enclosures must be located in the rear of the house no closer than 25 feet from any lot line, and must be attached to the house. No dog, which barks and can be heard on any frequent or continuing basis, shall be kept on any Lot. Owners shall be responsible to clean up after their pets. Pets constituting a nuisance may be ordered by the Board to be kept within the residence of the Owner or ordered expelled from Mill Creek. In addition, to help assure the protection of all properties and their occupants, the following breeds of dogs shall not be allowed within the Development at any time and shall be considered a nuisance. In addition to the breeds stated below, the Board of Directors of the Mill Creek Homeowners Association may find that other breeds are dangerous, and prohibit them. The following breeds are not allowed in Mill Creek:

- (a) Pitt Bull, Akita, Rottweiler, Doberman (full sized), Easter Island, Argentinian Dogo. The above list can be amended by the Mill Creek Homeowners Association any time.

Any resident or the association may bring an action to abate the presence of the dogs prohibited. These dogs are deemed a nuisance and shall be abated. The party bring the action shall be entitled to attorney fees and costs of the action.

**Section 3.17 Nuisances**

No nuisance or unreasonably offensive or noxious activity, including noises (such as those from sound systems, bells, whistles or other sound devices) and activities or objects that create an offensive odor, nor any other use, activity or practice shall be permitted on or within any lot which is the source of significant annoyance or embarrassment to, or which significantly offends or disturbs, residents of Mill Creek or which materially interferes with the peaceful enjoyment or possession and proper use of any property by its residents. Such uses also include exterior lighting, which infringes on the peaceful enjoyment of the lot owner's neighbors (See 3.23 below); loud parties creating noise after 10:00pm or before 10:00 am; and barking dogs. As used herein, the term "nuisance" shall not include any activities of Declarant or its agents, contractors or designees, which are reasonably necessary to the development of and construction in Mill Creek.

**Section 3.18 Garbage and Refuse Disposal**

No part of this property shall be used or maintained as a dumping or storage ground for rubbish, trash, leaves, debris, garbage, old automobiles or other wastes. Owners shall arrange for weekly pick-up of garbage by only one private garbage contractor. All garbage receptacles and the areas in the vicinity of the receptacles shall be kept in clean and sanitary condition. Garbage receptacles shall not be visible from any roads. No burying or burning of trash will be allowed on any Lot. An Owner or an Owner's contractor may burn slash during construction of a dwelling, provided that the Owner obtains the prior written consent of Declarant and the Owner provides proof of insurance in an amount and with coverage and named insured's satisfactory to Declarant.

**Section 3.19 Signs**

No signs, billboards, banners, or advertising devises of any nature shall be erected, used or maintained on this property, except for the purpose of advertising for sale or for rent the property upon which it is erected. This covenant specifically includes political advertising and alike to the extent the same may be precluded. The Mill Creek Homeowners' Association may erect "private road" and private speed limit signs to discourage excessive use of the property by those who don't own lots and to discourage excessive speed.

**Section 3.20 Hunting and Fireworks**

No person shall be allowed to hunt any animal except rodents, within the boundaries of the above-described property. No discharge of firearms is permitted in Mill Creek. Fireworks may be limited in type, location or time, or prohibited entirely by the Homeowners Association or the Homeowners Association may conduct its own fireworks display.

**Section 3.21 Driveways**

Driveways shall be paved from existing roadway to the front of the garage building with either cement concrete pavement, or other suitable surface approved by the Design Review Committee.

**Section 3.22 Fuel Tanks**

No fuel tanks above or below the ground are allowed on any occupied Lot.

**Section 3.23 Outdoor Lighting**

Security lighting, if any, shall be installed in such a way as to be shielded from direct view from the roadway or other lots and shall be controlled by a timed switch or motion sensor so that such lighting is not under continual operation, but rather on demand by sensor activation or reasonable night time hours of operation. All such fixtures shall have been approved by the International Dark-Sky Association. As of the date of this Declaration, that organization web site is <http://www.darksky.org/>. The installation is subject to the approval of the Design Review Committee.

**Section 3.24 Burning**

Open fires are not permitted in Mill Creek. Outdoor barbecues are not an "open fire" within the meaning of this provision.

**Section 3.25 No Visible Outside Clotheslines**

No laundry or wash will be dried or hung outside any Building in a location visible to any other lot.

**Section 3.26 Parking and Auto Repair**

No automobiles or other vehicles will be parked in any street or upon any portion of the Property except within garages, carports, or designated parking areas. No work on automobiles or other vehicle repair will be performed in any visible or exposed portion of Mill Creek except in emergencies. Guest motor coaches, subject to the earlier provision, may be parked in driveways. No abandoned or inoperable vehicles of any kind will be stored or parked on any portion of the Property, except as provided below. "Abandoned or inoperable vehicle" is defined as any vehicle, which has not been driven under its own propulsion for a period of three weeks or longer; provided, however, this will not include vehicles parked by Owners while on vacation or residing away from Mill Creek.

**Section 3.27 Fertilizers and Pesticides**

Application of fertilizers or pesticides in the subdivision should be minimized to protect the water quality of the downstream residents.

**Section 3.28 Noise**

No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Property or Improvements, will be placed or used on any portion of the Property.

**Section 3.29 Obstructions**

There will be no obstruction of any walkways or bike paths or interference with the free use of those walkways and paths except as may be reasonably required in connection with repairs. The Owners, their families, tenants, guests and invites are granted nonexclusive easements to use the walkways and paths within the Property. That use will be subject to the Mill Creek Rules adopted by the Board from time to time.

**Section 3.30 Camping and Picnicking**

No camping or picnicking will be allowed within the common area of the Property except picnicking will be allowed in those areas designated for picnicking. The Board, in its discretion, may ban or permit public assemblies and rallies within the Property.

**Section 3.31 Fire Clearance Measures**

In construction and landscaping of houses, Owners shall create and maintain defensible space/vegetative clearance measures around structures as required by Flathead County, Montana and as indicated on the approved planned unit development for the Property, for the purpose of reducing fire danger.

**Section 3.32 Fencing**

Subject to the approval of the Design Review Committee before a fence is allowed, all allowed fences or walls in the rear yard which are located on a joint property line will require the approval of the adjacent Lot owner to the rear. Fence and wall height is limited to a maximum of five feet (5').

**Section 3.33 General Practices Prohibited**

The following practices are prohibited at Mill Creek:

- (a) Allowing construction suppliers and contractors to clean their equipment other than at a location designated for that purpose by the Committee;
- (b) Removing any rock, plant material, topsoil or similar items from any property of others;
- (c) Use of surface water for construction; or
- (d) Careless disposition of cigarettes and other flammable materials.
- (e) Minors in or around the created ponds without an adult being present.

**Section 3.34 Rental and Leasing**

The Owner of a Lot or Unit will have the right to rent or lease his Lot, subject to the following conditions:

2007038 / 2030

- (a) For Lots in areas designated on the Plat as being for single-family residential use, all leases or rental agreements must be in writing with a minimum term of at least six (6) months. Lots in areas designated on the Plat as being for townhouse condominium use, all leases or rental agreements for a unit thereon must be in writing with a minimum term of at least one (1) month.
- (b) The lease or rental agreement shall be specifically subject to the Mill Creek Documents, and any failure of a tenant to comply with the Mill Creek Documents will be a default under the lease or rental agreement.
- (c) The Owner shall be liable for any violation of the Mill Creek Documents committed by the Owner's tenant, without prejudice to the Owner's right to collect any sums paid by the Owner on behalf of the tenant.

### **Section 3.35 Declaration of Unit Ownership**

The developer of any townhouse condominium units shall assure compliance with the Unit Declaration act or such other actions as to allow the existence of townhouse or condominiums on the lot. Such documents shall be subject to the provisions of this Declaration and such documents adopted hereunder. The developer of any townhouse condominium units shall provide a means of assuring the exterior of the structure and the adjacent yard remain properly maintained and will delegate the collection of any fees for the same to the Mill Creek Homeowners Association.

### **Section 3.36 Townhouse Site Improvements**

The developers of any townhouse phases are responsible for all costs associated with the construction of the townhouse units, including streets and driveways, landscaping, and all utilities extension from the property line.

## ARTICLE IV

### ROADWAY AND COMMON FACILITY MAINTENANCE AGREEMENT

#### **Section 4.1 Roadway and Utility Easement**

There exists on the plat of this subdivision certain roadways and utility easement shall be for the benefit of and appurtenant to all the subdivision and any expansions. That owner including the Declarant, their heirs, successors and assigns, shall have the perpetual and permanent right to use said roadway, and the utilities located thereon, for ingress, egress, and utility purposes, including the perpetual right to enter upon the real property over which said roadway and utilities traverse at any time as they may deem necessary to use, maintain, and repair the roadway and utilities across said easement, in common with all other parties hereto, and their successors and assigns. The Property will be subject to all easements shown on any recorded Plat and to any other easements of record or of use as of the date of recordation of this Declaration.

#### **Section 4.2 Cost of Maintenance**

Roadway Facility Management shall be the duty and responsibility of the Homeowners Association. Each Owner agrees to share equally the cost of maintaining and repairing: a) the roadway easements shown on the plat and b) the drainage facilities required by the Montana State Department of Environmental Quality. This cost shall be assessed by the Mill Creek Homeowners' Association.

**Section 4.3 Damage to Roadway**

Each party hereto agrees to replace, reconstruct, or repair, at his own cost, any damage to any of the aforementioned facilities that has been caused by him, his agents or employees, as a result of construction or specific actions not within the scope of normal wear or use.

ARTICLE V  
OWNERS' OBLIGATIONS FOR MAINTENANCE

**Section 5.1 Owner's Responsibility for Lot**

Except as provided in the Mill Creek Documents or by written agreement with the Mill Creek Homeowners' Association, all maintenance of a Lot and the Improvements located on it will be the sole responsibility of the Owner of the Lot. Each Owner will maintain its Lot in accordance with the community-wide standard of Mill Creek. The Mill Creek Homeowners' Association will, in the discretion of the Board, assume the maintenance responsibilities of such Owner if, in the opinion of the Board, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming the maintenance responsibilities, the Board will notify the Owner in writing of its intention to do so, and if the Owner has not commenced and diligently pursued remedial action within 30 days after the mailing of such written notice, then the Mill Creek Homeowners' Association will proceed. The expenses of the maintenance by the Board will be reimbursed to the Mill Creek Homeowners' Association by the Owner within 30 days after the Mill Creek Homeowners' Association notifies the Owner of the amount due, and any sum not reimbursed within that 30 day period will bear interest at the Default Rate from the date of the expenditure until payment in full. Such charges will be a Default Assessment enforceable as provided in this Declaration.

**Section 5.2 Owner's Negligence**

If the need for maintenance, repair or replacement of any portion of the Common Area (including Improvements located on it), roadways or utilities arises because of the negligent or willful act or omission of an Owner or his family member, guest, invitee or tenant, then the expenses incurred by the Mill Creek Homeowners' Association for the maintenance, repair or replacement will be a personal obligation of that Owner. If the Owner fails to repay the expenses incurred by the Mill Creek Homeowners' Association within 30 days after the notice to the Owner of the amount owed, then those expenses will bear interest at the Default Rate from the date of the advance by the Mill Creek Homeowners' Association until payment by the responsible Owner in full, and all such expenses and interest will become a Default Assessment enforceable in accordance with this Declaration.

ARTICLE VI  
ASSESSMENTS

**Section 6.1 Creation of Lien and Personal Obligation for Assessments**

Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by accepting a deed for a Lot, is deemed to covenant to pay to the Mill Creek Homeowners' Association (1) the Annual Assessments, of which will be paid monthly, imposed by the Board of Directors as necessary to fund the Maintenance Fund and to generally carry out the functions of the Mill Creek Homeowners' Association (use of the club house, the needs of the Design Review Committee, reserves, insurance, taxes and maintenance ); (2) Special Assessments for capital improvements and other purposes as stated in this Declaration; (3) Utility Assessments for water service and any other services provided by the Mill Creek Homeowners' Association; (4) Assessments for maintenance, repair, improvement, snow plowing and other expenses for said roadway, in such amounts as the Association deems necessary and approves as assessments; and (5) Default Assessments which may be assessed against a Lot pursuant to the Mill Creek Documents for the Owner's failure to perform an obligation under the Mill Creek Documents or because the Mill Creek Homeowners' Association has incurred an expense on behalf of or caused by the Owner under the Mill Creek Documents.

**Section 6.2 Determination**

The Assessments that may be assessed, the manner of assessment and the enforcement are set forth in the Bylaw, attached hereto and incorporated herein by this reference as if set forth in full herein.

**Section 6.3 Default Assessments**

All monetary fines, penalties, interest or other charges or fees (excluding Annual and Special Assessments) levied against an Owner pursuant to the Mill Creek Documents, or any expense of the Mill Creek Homeowners' Association which is the obligation of an Owner or which is incurred by the Mill Creek Homeowners' Association on behalf of the Owner pursuant to the Mill Creek Documents, and any expense (including without limitation attorneys' and legal assistants' fees) incurred by the Mill Creek Homeowners' Association as a result of the failure of an Owner to abide by the Mill Creek Documents, constitutes a Default Assessment, enforceable as provided in this Declaration below.

**Section 6.4 General Remedies of Mill Creek Homeowners' Association for Nonpayment of Assessment**

Any installment of an Annual Assessment, including monthly assessments or a Special Assessment which is not paid within 30 days after its due date, will be delinquent. In the event that an installment payment becomes delinquent, or in the event any Default Assessment is established under this Declaration, the Mill Creek Homeowners' Association, in its sole discretion, may take any or all of the following actions:

- (a) Assess a late charge for each delinquency at uniform rates set by the Board of Directors from time to time in lieu of interest, such rate may

provide for a charge of up to the greater of 15% or an amount that is 6 percentage points per annum above the prime rate of major New York banks, as published in the Wall Street Journal edition dated 3 business days prior to the assessment.

- (b) Charge interest from the date of delinquency at the Default Rate;
- (c) Suspend the voting rights of the Owner during any period of delinquency;
- (d) Accelerate all remaining Assessment installments for the fiscal year in question so that unpaid Assessments for the remainder of the fiscal year will be due and payable at once;
- (e) Bring an action at law against any Owner personally obligated to pay the delinquent Assessment charges;
- (f) File a statement of lien with respect of the Lot and foreclose as set forth in more detail below.

For a delinquent Utility Assessment, the service in question may be suspended after giving the Owner 10 days' written notice that the service will be suspended unless the delinquent Utility Assessments are paid. The remedies provided under this Declaration will not be exclusive, and the Mill Creek Homeowners' Association may enforce any other remedies to collect delinquent Assessments as may be provided by law.

### **Section 6.5 Assessment Lien**

Any Assessment chargeable to a Lot will constitute a lien on the Lot, effective the due date of the Assessment. To evidence the lien, the Mill Creek Homeowners' Association may, but will not be obligated to, prepare a written lien statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Mill Creek Homeowners' Association, and the delinquent Assessments amounts then owing. Any such statement will be duly signed and acknowledged by an officer or director of the Mill Creek Homeowners' Association or by the Manager, and will be served upon the Owner of the Lot by mail to the address of the Lot or at such other address as the Mill Creek Homeowners' Association may have in its records for the Owner. At least 10 days after the Mill Creek Homeowners' Association mails the statement to the Owner, the Mill Creek Homeowners' Association may record the statement in the office of the Clerk and Recorder of Flathead County, Montana. Thirty days following the mailing of such notice to the Owner, the Mill Creek Homeowners' Association may proceed to foreclose the statement of lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Montana. The Mill Creek Homeowners' Association will have the power to bid on a Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot.



**Section 6.6 Successor's Liability for Assessment**

All successors to the fee simple title of a Lot, except as provided in Section 6.6, will be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' and legal assistants' fees against such Lot without prejudice to any such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor will not be personal and will terminate upon termination of such successor's fee simple interest in the Lot. In addition, such successor will be entitled to rely on the statement of status of Assessments by or on behalf of the Mill Creek Homeowners' Association.

**Section 6.7 Waiver of Homestead Exemption; Subordination of the Lien**

The lien of the Assessments will be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Montana, and to all other liens and encumbrances except the following:

**Section 6.8 Liens and encumbrances recorded before the date of the recording of this Declaration**

**Section 6.9 Liens for real estate taxes and other governmental assessments**

Liens for real estate taxes and other governmental assessments or charges duly imposed against the Lot by a Montana governmental or political subdivision or special taxing district, or any other liens made superior by statute; and

**Section 6.10 The lien for all sums unpaid on a First Mortgage**

The lien for all sums unpaid on a First Mortgage recorded before the date on which the Assessment sought to be enforced became delinquent, including any and all advances made by the First Mortgagee, even though some or all of such advances may have been made subsequent to the date of attachment of the Mill Creek Homeowners' Association's lien.

With respect to this Section, any First Mortgagee who acquires title to a Lot by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Lot free of any claims for unpaid Assessments, interest, late charges, costs, expenses, and attorneys' (and legal assistants') fees against the Lot which accrue prior to the time such First Mortgagee or purchaser acquires title to the Lot. All other persons who hold a lien or encumbrance of any type not described in Sections 6.1 will be deemed to consent that the lien or encumbrance will be subordinate to the Mill Creek Homeowners' Association's future liens for Assessments, interest, late charges, costs, expenses and attorneys' (and legal assistants') fees, as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

**Section 6.11 Reallocation of Assessments Secured by Extinguished Liens**

The sale or transfer of any Lot to enforce any of the liens to which the lien for Assessments is subordinate will extinguish the lien of such Assessments as to installments, which became due

prior to such sale or transfer. The amount of such extinguished lien may be reallocated and assessed to all Lots as a Common Expense at the direction of the Board of Directors. However, no such sale or transfer will relieve the purchaser or transferee of a Lot from liability for, or the Lot from the lien of, any Assessments made after the sale or transfer.

**Section 6.12 Exempt Property**

The following portions of the Property will be exempt from the Assessments, charges, and liens created under this Declaration:

- (a) Any real property, an interest in which is owned by any special district established under Montana law;

**Section 6.13 Statement of Status of Assessments**

The Mill Creek Homeowners' Association will furnish to an Owner or his designee or to any Mortgagee a statement setting forth the amount of unpaid Assessments then levied against the Lot in which the Owner, designee or Mortgagee has an interest. The Mill Creek Homeowners' Association will deliver the statement personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party within 14 business days after the registered agent of the Mill Creek Homeowners' Association receives the request by personal delivery or by certified mail, first class postage prepaid, return receipt requested or as otherwise required by the Act. The information contained in such statement, when signed by an officer or director of the Mill Creek Homeowners' Association or the Manager, will be conclusive upon the Mill Creek Homeowners' Association, the Board, and every Owner as to the person or persons to whom such statement is issued and who rely on it in good faith.

**Section 6.14 Failure to Assess**

The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice will not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Annual or Monthly Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Mill Creek Homeowners' Association.

ARTICLE VII  
PROPERTY RIGHTS OF OWNERS

**Section 7.1 Owners' Easements of Access and Enjoyment**

Every Owner has a perpetual, non-exclusive easement for access to and from his Lot and for the use and enjoyment of the Common Area, which easement is appurtenant to and will pass with the title to every Lot, subject to the provisions set forth in this Article. Any Owner may delegate, in accordance with the Mill Creek Documents, its rights of access and enjoyment described in Section 7.1 above to its tenants, employees, family, guests or invites.

**Section 7.2 Emergency Access Easement**

A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

ARTICLE VIII  
SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

**Section 8.1 General Provisions**

Until the expiration of the Period of Declarant Control, Declarant will have the following Special Declarant Rights:

**Section 8.2 Completion of Improvements**

The right to complete Improvements as indicated on any Plat filed with respect to the Property, including the Expansion Property;

**Section 8.3 Development Rights**

The right to exercise all development rights in connection with the development of the Mill Creek Project (referred to here as "Development Rights"), including without limitation the right or combination of rights hereby reserved by Declarant, as follows:

- (a) The right to annex all or part of the Expansion Property to the Project, in accordance with the Declaration.
- (b) The right to create Lots and Common Area on the Property, including the Expansion Property.
- (c) The right to subdivide Lots and convert Lots into Common Area on any part of the Property, including the Expansion Property.
- (d) The right to withdraw real estate, whether contained within the Property initially subject to this Declaration or within the Expansion Property, from Mill Creek, as provided in in this Declaration.

**Section 8.4 Sales Activities**

The right to maintain sales and management offices, signs advertising the Project and model residences on the Common Area and on Lots owned by Declarant, whether contained within the Property initially subject to this Declaration, or within the Expansion Property.

**Section 8.5 Easements**

The right to use easements through the Common Area on the Property, including the Expansion Property, for the purpose of making Improvements on the Property and the Expansion Property.

2007038/2030

**Section 8.6 Master Association**

The right to make the Project subject to a master association.

**Section 8.7 Association Directors and Officers**

The right to appoint any officer or director of the Mill Creek Homeowners' Association, as provided in this Declaration or the Bylaws.

**Section 8.8 Order of Exercise of Declarant's Rights**

Declarant makes no representations and gives no assurances regarding the legal description or the boundaries of any phase of the Expansion Property or the order or time in which the phases of the Expansion Property may be developed or incorporated in the Project, or whether or to what extent any of the Expansion Property will be developed or incorporated in the Project. Further, the fact that Declarant may exercise one or more of Declarant's Development Rights or other Special Declarant Rights on one portion of the Property (including the Expansion Property) will not operate to require Declarant to exercise a Development Right or other Special Declarant Right with respect to on any other portion of the Property (including the Expansion Property).

**Section 8.9 Supplemental Provisions Regarding Declarant's Rights**

Without limiting the generality of the foregoing, certain of these Special Declarant Rights are explained more fully in this Article below. Further, Declarant reserves the right to amend this Declaration and any Plat in connection with the exercise of any Development Right or any other Special Declarant Right, and Declarant also reserves the additional rights retained for the benefit of Declarant in this Article and in other provisions of this Declaration.

**Section 8.10 Utility Easements**

There is hereby created a general easement upon, across, over, in, and under the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electrical, television and a master communications system. By virtue of this easement, it will be expressly permissible and proper for the companies providing utility services to install and maintain necessary equipment on the Property and to affix and maintain utility pipes, wires circuits, conduits and other equipment under the Property. Any utility company using this general easement will use its best efforts to install and maintain the utilities provided for without disturbing the uses of the Owners, the Mill Creek Homeowners' Association and Declarant; will prosecute its installation and maintenance activities as promptly and expeditiously as reasonably possible; and will restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, either Declarant or the Mill Creek Homeowners' Association will have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms of this Declaration. This general easement will in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

**Section 8.11 Reservation for Expansion and Construction**

Declarant hereby reserves for itself and its successors and assigns and for Owners in all future phases of Mill Creek a perpetual easement and right-of-way for access over, upon, and across the Property, including the Expansion Property, for construction, utilities, drainage, ingress and egress, and for use of the Common Area, including Common Area located within the Expansion Property. The location of these easements and rights-of-way may be made certain by Declarant or the Mill Creek Homeowners Association by instruments recorded in Flathead County, Montana.

Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility, ingress and egress, and other easements over and across the Common Areas, and to create other reservations, exceptions, and exclusions convenient or necessary for the use and operation of any other property of Declarant.

**Section 8.12 Reservation of Easements, Exceptions, and Exclusions for Utilities, Infrastructure, and Access**

Declarant reserves for itself and its successors and assigns and hereby grants to the Mill Creek Homeowners' Association, acting through the Board of Directors, the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Area, for purposes including but not limited to streets, paths, walkways, drainage, recreation areas and parking areas, and to create other reservations, exceptions, and exclusions in the interest of the Owners and the Mill Creek Homeowners' Association, in order to serve the Owners within Mill Creek as initially built and expanded. Declarant also reserves for itself and its successors and assigns and grants to the Mill Creek Homeowners' Association the concurrent right to establish from time to time by an instrument recorded in Flathead County, Montana, such easements, permits or licenses over the Common Area for access by certain persons (other than Owners and Owners' families and guests) who may be permitted to use designated portions of the Common Area as contemplated under this Declaration.

**Section 8.13 Maintenance Easement**

An easement is hereby reserved to Declarant for itself and its successors and assigns and granted to the Mill Creek Homeowners' Association, and any member of the Board of Directors or Manager, and their respective officers, agents, employees and assigns, upon, across, over, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Mill Creek Homeowners' Association is obligated or permitted to perform pursuant to the Mill Creek Documents, including the right to enter upon any Lot for the purpose of performing maintenance to the landscaping or the exterior of Improvements to such Lot, as required by the Mill Creek Documents.

**Section 8.14 Drainage Easement**

An easement is hereby reserved to Declarant for itself and its successors and assigns and granted to the Mill Creek Homeowners' Association, its officers, agents, employees, successors and

assigns to enter upon, across, over, in, and under any portion of the Property for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water. Reasonable efforts will be made to use this easement so as not to disturb the uses of the Owners, the Mill Creek Homeowners' Association and Declarant, as applicable, to the extent possible; to prosecute such drainage work promptly and expeditiously; and to restore any areas affected by such work to a sightly and usable condition as soon as reasonably possible following such work. Declarant, or its officers, agents, employees, successors and assigns must inform and obtain the approval of the Board of Directors prior to undertaking such drainage work, which approval will not be unreasonably withheld.

#### **Section 8.15 Declarant's Rights Incident to Construction**

Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant; provided, however, that no such rights will be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner or his family, tenants, employees, guests, or invites.

#### **Section 8.16 Easements Deemed Created**

All conveyances of Lots hereafter made, whether by Declarant or otherwise, will be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance.

### ARTICLE IX DAMAGE OR DESTRUCTION

#### **Section 9.1 Damage or Destruction of Common Area**

As soon as practical after an event causing damage to or destruction of any part of the Common Area, unless such damage or destruction is minor, the Mill Creek Homeowners' Association will obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Common Area so damaged or destroyed. "Repair and reconstruction" as used in this Article will mean restoring the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction. The reconstruction by the Mill Creek Association after destruction by casualty or otherwise of any Common Area that is accomplished in substantial compliance with "as built" plans for such Common Area will not require compliance with the provisions of this Article or the Design Guidelines.

#### **Section 9.2 Repair and Reconstruction**

As soon as practical after obtaining estimates, the Mill Creek Homeowners' Association will diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for the Owners, the Mill Creek Homeowners' Association

may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner will be necessary. Assessments of the Mill Creek Homeowners' Association will not be abated during the period of insurance adjustments and repair and reconstruction.

### **Section 9.3 Funds for Repair and Reconstruction**

The proceeds received by the Mill Creek Homeowners' Association from any hazard insurance will be used for the purpose of repair, replacement and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Mill Creek Homeowners' Association may, levy, assess and collect in advance from all Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

### **Section 9.4 Disbursement of Funds for Repair and Reconstruction**

The insurance proceeds held by the Mill Creek Homeowners' Association and the amounts received from the Special Assessments provided for in this Declaration constitute a fund for the payment of the costs of repair and reconstruction after casualty. It will be deemed that the first money disbursed in payment for the costs of repair and reconstruction will be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance will be distributed to the Owners in proportion to the contributions each Owner made as a Special Assessment to the Mill Creek Homeowners' Association, or, if no Special Assessments were made, then in proportionate shares on the basis of the allocation to the Owners of Common Expenses, first to the Mortgagees and then to the Owners, as their interests appear.

### **Section 9.5 Decision Not to Rebuild**

If, during the Period of Declarant Control, Declarant, and, at all times, Owners representing at least 67% of the votes in the Mill Creek Homeowners' Association agree in writing not to repair and reconstruct damage to the Common Area and no alternative Improvements are authorized, then and in that event the Property will be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Mill Creek Homeowners' Association in a neat and attractive condition, and any remaining insurance proceeds will be distributed in proportionate shares on the basis of the allocation to the Owners of the Common Expenses, first to the Mortgagees and then to the Owners, as their interests appear.

### **Section 9.6 Damage or Destruction Affecting Lots**

In the event of damage or destruction to the Improvements located on any Lot, the Owner thereof will promptly repair and restore the damaged Improvements to their condition prior to such damage or destruction. If such repair or restoration is not commenced within 180 days from the date of such damage or destruction, or if repair and reconstruction is commenced but then abandoned for a period of more than 90 days, then the Mill Creek Homeowners' Association may, after notice and hearing as provided in the Bylaws, impose a fine accruing at the rate of \$100.00 per day or such other rate imposed by the Board in compliance with the Act, charged

against the Owner of the Lot until repair and reconstruction is commenced, unless the Owner can prove to the satisfaction of the Mill Creek Homeowners' Association that such failure is due to circumstances beyond the Owner's control. Such fine will be a Default Assessment and lien against the Lot.

## ARTICLE X CONDEMNATION

### **Section 10.1 Rights of Owners**

Whenever all or any part of the Common Area is taken or conveyed in lieu of and under threat of condemnation by any authority having the power of condemnation or eminent domain, each Owner will be entitled to notice of the taking, but the Mill Creek Homeowners' Association will act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

### **Section 10.2 Partial Condemnation; Distribution of Award; Reconstruction**

The award made for such taking will be payable to the Mill Creek Homeowners' Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which Improvements have been constructed, then, unless, within 60 days after such taking, Declarant, during the Period of Declarant Control, and, at all times, Owners representing at least 67% of the votes in the Mill Creek Homeowners' Association otherwise agree, the Mill Creek Homeowners' Association will restore or replace such Improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board of Directors. If such Improvements are to be repaired or restored, the provisions regarding the disbursement of funds with respect to casualty damage or destruction that is to be repaired will apply. If the taking does not involve any Improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds will be distributed in proportionate shares on the basis of the allocation to the Owners of Common Expenses, first to the Mortgagees and then to the Owners, as their interests appear.

### **Section 10.3 Complete Condemnation**

If all of Mill Creek is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration will terminate, and the portion of the condemnation award attributable to the Common Area will be distributed as provided in Section 10.2.



ARTICLE XI  
EXPANSION AND WITHDRAWAL

**Section 11.1 Reservation of Right to Expand**

Declarant reserves the right, but will not be obligated, to expand the effect of this Declaration to include all or part of the Expansion Property. The consent of the existing Lot Owners and Mortgagees will not be required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option. Declarant will have the unilateral right to transfer to any other person this right to expand by an instrument duly recorded. Declarant will pay all taxes and other governmental assessments relating to the Expansion Property as long as Declarant is the owner of such property.

**Section 11.2 Completion of Expansion**

When Declarant has determined that no further property shall be added to the Project, Declarant shall notify the Mill Creek Homeowners' Association in writing. Until such notice is given, Declarant retains the right to designate additional property as Expansion Property.

**Section 11.3 Declaration of Annexation**

Any expansion of the Project may be accomplished by recording a Declaration of Annexation and one or more supplemental Plats in the records of the Clerk and Recorder of Flathead County, Montana, before the expiration of the Period of Declarant Control. The Declaration of Annexation will describe the real property to be expanded, submitting it to these Covenants and provide for voting rights and Assessment allocations as provided in this Declaration. Specifically, each new Lot in the annexed area will be allocated one vote and liability for the Common Expenses equal to the liability allocated to each of the other Lots, and the proportionate voting interest and allocation of Common Expenses for the other Lots will be adjusted accordingly. Such Declaration of Annexation will not require the consent of Owners, the Mill Creek Homeowners' Association, or the Board of Directors. Any such expansion will be effective upon the filing for record of such Declaration of Annexation, unless otherwise provided therein. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion.

Upon the recordation of any such Declaration of Annexation, the definitions used in this Declaration will be expanded automatically to encompass and refer to Mill Creek as expanded. Such Declaration of Annexation may add supplemental covenants peculiar to the Expansion Property in question, or delete or modify provisions of this Declaration as it applies to the Expansion Property added. However, this Declaration may not be modified with respect to that portion of the Property already subject to this Declaration, except as provided below for amendment.

**Section 11.4 Withdrawal of Property**

Declarant reserves the right to withdraw from the jurisdiction of these Covenants any parcel of the Property (including the Expansion Property), provided, however, that no parcel may be withdrawn after it has been conveyed to a purchaser.

2007038 / 2030

ARTICLE XII  
MORTGAGEE PROTECTIONS

**Section 12.1 First Mortgagees' Rights**

First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Area or Improvements thereon, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area. First Mortgagees making such payments will be owed immediate reimbursement from the Mill Creek Homeowners' Association.

**Section 12.2 Cure of Delinquent Assessments**

A First Mortgagee will be entitled to cure any delinquency of the Owner of the Lot encumbered by the First Mortgagee in the payment of Assessments. In that event, the Eligible Mortgage Holder will be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

**Section 12.3 Title Taken by First Mortgagee**

Any First Mortgagee who obtains title to a Lot pursuant to the remedies provided in the First Mortgage, including foreclosure of the First Mortgage, will be liable for all Assessments due and payable as of the date title to the Lot vests in the First Mortgagee under the statutes of Montana governing foreclosures. Except as provided in the Act, such First Mortgagee will not be liable for any unpaid dues and charges attributable to the Lot which were due and payable prior to the date such title vests in the First Mortgagee

ARTICLE XIII  
TERMS AND ENFORCEMENT

**Section 13.1 Terms**

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them, for a period of ten (10) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the owners has been recorded, agreeing to change said covenants in whole or in part. This Declaration shall be binding upon and inure to the benefit of the heirs, personal representatives, successors in interest, and assigns of the parties hereto, and all present and future owners of the above described real property.

**Section 13.2 Violations Deemed a Nuisance**

Every violation of this Declaration or any other of the Mill Creek Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In

addition, all public and private remedies allowed at law or equity against anyone in violation of these Covenants will be available.

**Section 13.3 Compliance**

Each Owner or other occupant of any part of the Property will comply with the provisions of the Mill Creek Documents as the same may be amended from time to time.

**Section 13.4 Failure to Comply**

Failure to comply with the Mill Creek Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing as provided in the Bylaws will be given to the delinquent party prior to commencing any legal proceedings.

**Section 13.5 Who May Enforce**

Any action to enforce the Mill Creek Documents may be brought by Declarant, the Board, or the Manager in the name of the Mill Creek Homeowners' Association on behalf of the Owners. If, after a written request from an aggrieved Owner, none of the foregoing persons or entities commences an action to enforce the Mill Creek Documents, then the aggrieved Owner may bring such an action. No member of the Board of Directors, the Declarant, the Manager or any Owner will be liable to any other Owner for the failure to enforce any of the Mill Creek Documents at any time.

**Section 13.6 Nonexclusive Remedies**

All the remedies set forth herein are cumulative and not exclusive.

**Section 13.7 No Waiver**

The failure of the Board of Directors, Declarant, the Manager, or any aggrieved Owner to enforce the Mill Creek Documents in any one or more instances will not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the Mill Creek Documents at any future time.

**Section 13.8 Recovery of Costs**

If legal assistance is obtained to enforce any of the provisions of the Mill Creek Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Mill Creek Documents or the restraint of violations of the Mill Creek Documents, the prevailing party will be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees (and legal assistant fees) as may be incurred, or if suit is brought, as may be determined by the court.

**Section 13.9 Internal Dispute Resolution**

If any dispute or question arises between Members or between Members and the Mill Creek Homeowners' Association or relating to the maintenance and repair of the roadway(s), interpretation, performance or nonperformance, violation, or enforcement of the Mill Creek

Documents, such dispute or violation may be subject to a hearing and determination by the Board in accordance with the procedures set forth in the Bylaws.

ARTICLE XIV  
AMENDMENT

**Section 14.1 Amendment**

Subject to this Section, this Declaration, or any provision of it, may be terminated, extended, modified or amended, or revoked as to the whole or any portion of the Property as follows:

**Section 14.2 Prior to Sale of Lots**

Prior to the sale of any Lot (excluding any sale to a Successor Declarant), Declarant (including a Successor Declarant) may terminate, extend, modify, amend or revoke this Declaration as to the whole or any portion of the Property by recording in the records of Flathead County, Montana, a document signed by the Declarant stating the action taken.

**Section 14.3 After Sale of Lots but During Period of Declarant Control**

After the sale of a Lot (excluding a sale to a Successor Declarant) but before expiration of the Period of Declarant Control, Declarant (including Successor Declarant) may terminate, extend, modify, amend or revoke this Declaration as to the whole or any portion of the Property. A copy of the document stating the action intended to be taken by the Declarant and a notice of the Owners' rights under this Section shall be mailed to each Owner by first class mail, postage prepaid, to the address of the Owner on the records of Mill Creek Homeowners' Association. Unless written objection is received by Declarant from the Owners holding 80% or more of the votes within 30 days of the mailing of the notice to the Owners, the action proposed to be taken by the Declarant shall be considered approved and shall become final. The Declarant shall then record in the records of Flathead County, Montana, a document stating the action taken, together with a certificate certifying that notice was given to the Owners as required herein and that fewer than 80% of the Owners objected to the action.

**Section 14.4 After the Period of Declarant Control**

After the Period of Declarant Control, this Declaration, or any provision of it, may be terminated, extended, modified or amended, or revoked as to the whole or any portion of the Property upon the written consent of Owners holding 70% or more of the votes in the Mill Creek Homeowners' Association. Any document will be immediately effective upon recording in the records of Flathead County, Montana, a copy of such executed and acknowledged by the necessary number of Owners, or alternatively, upon the recording in the records of Flathead County, Montana, of a copy of the document together with a certificate signed by an officer of the Mill Creek Homeowners' Association stating that the required number of consents of Owners were obtained.

**Section 14.5 Declarant's Approval**

Notwithstanding the provisions of this Declaration to the contrary, no termination, extension, modification or amendment of this Declaration will be effective in any event during the Period of Declarant Control unless the written approval of Declarant is first obtained.

**Section 14.6 Effect of Amendments**

Amendments made pursuant to this Section will inure to the benefit of and be binding upon all Owners, their families, tenants, guests, invites and employees, and their respective heirs, successors, and assigns. Joinder of the First Mortgagees shall not be required in order to effect an amendment.

ARTICLE XV  
MISCELLANEOUS PROVISIONS

**Section 15.1 Severability**

This Declaration, to the extent possible, will be construed or reformed so as to give validity to all of its provisions. Any provision of this Declaration found to be prohibited by law or unenforceable will be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

**Section 15.2 Construction**

In interpreting words in this Declaration, unless the context will otherwise provide or require, the singular will include the plural, the plural will include the singular, and the use of any gender will include all genders.

**Section 15.3 Headings**

The headings are included only for purposes of convenient reference, and they will not affect the meaning or interpretation of this Declaration.

**Section 15.4 Limitation of Liability**

Neither the Declarant, the Mill Creek Homeowners' Association nor any partner, officer or member of either the Declarant the Board will be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under the Mill Creek Documents if the action or failure to act was made in good faith. The Mill Creek Homeowners' Association will indemnify all of the officers and Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles of Incorporation and Bylaws.

**Section 15.5 Conflicts Between Documents**

In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration will control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation will control.

2007038 / 2030

**Section 15.6 Assignment**

Declarant may assign all or any part of the Special Declarant Rights or any of Declarant's other rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale. Such successor will be identified, the particular rights being assigned will be specified, and, to the extent required, concomitant obligations will be expressly assumed by such successor, all in a written instrument duly recorded in the records of the Clerk and Recorder of Flathead County, Montana.

"*First Mortgagee*" means the holder of record of a First Mortgage.

"*Improvement(s)*" means all Buildings, parking areas, loading areas, fences, walls, hedges, plantings, lighting, poles, driveways, roads, ponds, lakes, trails, gates, signs, changes in any exterior color or shape, excavation and all other site work, including, without limitation, grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvement which may not be included in the foregoing.

"Improvement(s)" does not include turf, shrub, or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearances. "Improvement(s)" does include both original improvements and all later changes and improvements.

"*Lot*" means a parcel of land designated as a lot on any Plat of the Property or of any Expansion Property which the Declarant makes subject to this Declaration, or a condominium unit located on the Property or any Expansion Property which the Declarant makes subject to this Declaration. Each individual condominium unit within a condominium shall be considered a separate Lot. The streets, roads, and Common Areas on any Plat shall not be considered to be separate Lots.

"*Manager*" means such person or entity retained by the Board of Directors to perform certain functions of the Board pursuant to this Declaration or the Bylaws.

"*Member*" means any person or entity holding membership in the Mill Creek Homeowners' Association.

"*Mill Creek*" means the community created by this Declaration, consisting of the Property (including any Expansion Property, after annexation of it) and all of the Improvements located on the Property.

"*Mill Creek Homeowners' Association*" means the Mill Creek Homeowners Association, Inc., a Montana nonprofit corporation, and any successor of that entity by whatever name.

"*Mill Creek Documents*" means the basic documents creating and governing Mill Creek, including, but not limited to, this Declaration, the Articles of Incorporation and Bylaws, the Architectural Design Guidelines, the Mill Creek Rules and any other procedures, rules, regulations or policies adopted under such documents by the Mill Creek Homeowners' Association, all as may be amended from time to time.

"*Mill Creek Rules*" means the rules and regulations adopted by the Mill Creek Homeowners' Association from time to time.

"*Owner*" means the owner of record (including Declarant, and including the most recent contract purchaser, but excluding all contract sellers), whether one or more persons or entities, of fee simple title to any Lot or Unit or, if the Lot or Unit is subject to one or more contracts for deed, the owner of the purchaser's interest in the most recent contract for deed, but "Owner" does not

2007038 / 2030

mean or refer to any person or entity who holds such interest merely as security for the performance of a debt or other obligation, including a Mortgage, unless and until such person or entity has acquired fee simple title pursuant to foreclosure or other proceedings.

*"Period of Declarant Control"* means the period beginning on the date this Declaration is first recorded in the office of the Clerk and Recorder of Flathead County, Montana, and ending on the earlier of: (a) the date which is 20 years later, or (b) the date on which the Declarant has platted all of the Expansion Property and sold 90% of the Lots in each of the Plats. When Declarant has determined that no additional property shall be considered Expansion Property, Declarant shall so notify the Mill Creek Homeowners' Association in writing. The period of Declarant Control may be reinstated or extended by agreement between Declarant and the Mill Creek Homeowners' Association, subject to whatever terms, conditions, and limitations the Board of Directors may impose on the subsequent exercise by Declarant of the Special Declarant Rights. After the termination of the Period of Declarant Control, Declarant, if still an Owner, will continue to have all the rights and duties ordinarily given to Members under this Declaration.



0200450, 0002048 + 0002049

~~Return to: MillCreek LLC  
10900 NE 8th St. 2007038 12030  
#900  
Bellevue, WA 98004~~

# EXHIBIT A

# MILL CREEK HOMEOWNERS' ASSOCIATION

*Bylaws*

2007038 / 2030

ARTICLE I  
REGISTERED OFFICE

The registered office of the Corporation required by the Montana Business Corporation Act to be maintained in the State of Montana may be, but need not be, identical with the principal office in the State of Montana may be, and the address of the registered office may be changed from time to time by the Board of Directors in accordance with the Montana Business Corporation Act.

ARTICLE II  
ASSOCIATION STRUCTURE

Section A. After the period of Declarant Control: The members of said association shall have the right to adopt Articles of Association, ByLaws, and rules and regulations for the benefit of the Association. The Association shall elect a board of three directors to manage the Association, which board of directors shall elect a president, Vice President and Secretary-Treasurer. The Association shall have at least one annual meeting, at which directors and officers of the Association for the next year shall be elected. The annual meetings shall be on or about the second Tuesday of February of each year. Special meetings of the Association may be called upon ten days' written notice from any member of the Association. The board of directors of the Association, duly elected, shall have the authority to promulgate rules, maintain the roadway and easement(s), including the assessment of dues for the maintenance and repair of common areas, said roadway and said easement(s). A majority vote of the members of the Association shall be required to take action at a meeting of the members of the Association. A majority vote of the directors shall be required to take this action at a meeting of the Board of Directors of the Association. Until the expiration of the period of Declarant Control, the Homeowners Association will have the same powers but without the requirement of the membership vote on election of directors or the power to override at the Director's determination.

The period of Declarant Control is discussed in Article III, Section D, below.

Section B. Powers and Duties of Mill Creek Homeowners Association.

B.1 *Mill Creek Homeowners' Association Management Duties.* Subject to the rights and obligations of Declarant as set forth in the Declaration and the Developer as stated herein and to the rights and obligations of the other Owners, the Mill Creek Homeowners' Association will be responsible for the administration and operation of the subdivision. The Board of Directors will exercise for the Mill Creek Homeowners' Association all powers, duties and authority vested in or obligated to be taken by the Mill Creek Homeowners' Association and not reserved to Declarant, the Developer or the other Members by the Declaration, this Document, the other Mill Creek Documents, or other applicable law.

2007038/2030

B.2 *Mill Creek Homeowners' Association's Responsibility.* The Mill Creek Homeowners' Association, subject to the rights and obligations of the Declarant, the Developer and Owners set forth in this Document and the Declaration, shall:

A. will be responsible for the management, maintenance and control of the Common Areas, including roadways and all Improvements on the Common Area (including furnishings and equipment related thereto), and will keep it in good, clean and attractive condition and repair consistent with the standards of Mill Creek;

B. shall enter into an agreement with the owners of the clubhouse, providing that Mill Creek Homeowners' Association shall be responsible for membership fees of all lot owners. That fee will take into consideration the services provided, cost of the clubhouse, including any lease payments, taxes, utilities and maintenance of the clubhouse. Mill Creek Homeowners' Association will include each lot owner's share of the cost in its annual assessments. The use of the clubhouse need not be exclusive to the members of Mill Creek Homeowners' Association;

C. shall prohibit any minor unaccompanied by his/her parent or guardian from recreating or being in or near the created ponds and waterfalls.

D. through its Board of Directors, may adopt, amend and repeal rules and regulations, to be known as the "Mill Creek Rules," governing, among other things and without limitation:

(i) The use of the Common Area; and

(ii) The use of private roads, if any, within Mill Creek that are not designated as Common Area.

A copy of the Mill Creek Rules in effect will be distributed to each Member of the Mill Creek Homeowners' Association, and any change in the Mill Creek Rules will be distributed or made available to each Member within a reasonable time following the effective date of the change.

E. through its Board of Directors provide for enforcement of the Mill Creek Rules, this Declaration, and the Bylaws of the Association. Without limiting the generality of the foregoing, the Board may suspend the voting rights of a Member after notice and hearing as provided in the Bylaws for a violation of any of the afore named documents.

2007038 / 2030

F. may employ or contract for the services of a Manager to act for the Mill Creek Homeowners' Association and the Board and the officers according to the powers and duties delegated to the Manager pursuant to the Bylaws or resolution of the Board. Neither the Board nor any officer of the Mill Creek Homeowners' Association will be liable for any omission or improper exercise by a Manager of any such duty, power, or function so delegated by written instrument executed by or on behalf of the Board. The Manager may be the Declarant or a person related to Declarant.

G. may acquire, hold and dispose of personal property, and real property. The Board, acting on behalf of the Mill Creek Homeowners' Association, will accept any real or personal property, leasehold or other property interests within Mill Creek.

H. will make available for inspection by Owners and Mortgagees, upon request, during normal business hours or under other reasonable circumstances, current copies of the Mill Creek Documents, and the books, records, and financial statements of the Mill Creek Homeowners' Association prepared pursuant to the Bylaws. The Mill Creek Homeowners' Association may charge a reasonable fee for copying such materials.

I. establish and maintain an adequate reserve fund from Annual Assessments levied for maintenance, repair or replacement of the Common Area and Improvements located within the Common Area that must be replaced on a periodic basis and for any other facilities made available to the Mill Creek Homeowners' Association that must be replaced on a periodic basis with contribution from the Mill Creek Homeowners' Association.

J. will perform all of the duties and obligations imposed on it expressly by the Mill Creek Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Mill Creek Documents or reasonably necessary to satisfy any such duty or obligation. The Mill Creek Homeowners' Association may exercise any other right or privilege (i) given to it expressly by the Mill Creek Documents, (ii) reasonably to be implied from the existence of another right or privilege given expressly by the Mill Creek Documents, or (iii) reasonably necessary to effectuate any such right or privilege.

K. through its board of directors, assess the members for the costs of operation of the Association and other needs of the Association as called for herein and more particularly stated in Article VI, below.

L. provide insurance as stated in the Declaration.

ARTICLE III  
MEMBERSHIP

Section A. General. There shall be two classes of Members: (1) Developer, a voting class and (2) Owners, a voting class.

Section B. Mill Creek Land LLC is the Developer, whose address is 10900 NE 8<sup>th</sup> Street, Suite 900, Bellevue, WA 98004.

Section C. Owners are each lot owner of single home lots and each unit owner of townhouse lots within the Mill Creek Subdivision. Each owner of property added to the coverage of the Declaration of Covenants shall also be a member. No mortgage holder or beneficiary of a deed of trust or trust indenture shall be a member unless it has acquired the interest in foreclosure.

The lots or units are located within that property located in Section 26, Township 27 North, Range 20 West, PMM Flathead County Montana and more particularly shown on the Plat of Mill Creek on file and of record with the clerk and recorder of Flathead County, Montana, and such other properties that may be made subject to the Declaration of Covenants filed with this document.

Section D. The Period of Declarant Control shall mean the period beginning on the date the Declaration of Covenants is first recorded in the office of the Clerk and Recorder of Flathead County, Montana, and ending on the earlier of: (a) the date which is 20 years later, or (b) the date on which the Developer has sold ninety percent (90%) of the Lots within Mill Creek (including all additional phases) and the Developer has notified the Homeowners Association in writing that Developer has determined that no additional property shall be added to Mill Creek. The Period of Declarant Control may be reinstated or extended by agreement between Developer and the Homeowners Association upon such terms and conditions as the parties may agree. During the Period of Developer Control, Developer may appoint, remove and replace from time to time any or all of the directors and officers of the Homeowners Association. The membership will not be allowed during this period of time to elect a Director. If Developer so elects, Developer may from time to time relinquish, either on a temporary or permanent basis, the right to appoint all or a portion of the directors and officers of the Homeowners Association; provided that any such relinquishment shall be expressed in writing to the Homeowners Association.

Section E. Voting. After the Period of Declarant Control, unless provided otherwise in these Bylaws, each Member of a voting class shall have one vote, which will be cast by a designated representative of each firm and in person by an individual Member.

Section F. Notice of Membership. Any person, on becoming a Member, will furnish the Secretary of the Mill Creek Homeowners' Association with a photocopy or certified copy of the recorded instrument or such other evidence as may be specified by the Board under the Bylaws or the Mill Creek Rules, vesting the person with the interest required to make him a Member. At the same time, the Member will provide the Mill Creek Homeowners' Association with the single name and address to which the Mill Creek Homeowners' Association will send any notices given pursuant to the Mill Creek Documents. The Member will state in such notice the voting interest in Mill Creek Homeowners' Association to which the Member believes he is entitled and the basis for that determination. In the event of any change in the facts reported in the original written notice, including any change of ownership, the Member will give a new written notice to the Mill Creek Homeowners' Association containing all of the information required to be covered in the original notice. The Mill Creek Homeowners' Association will keep and preserve the most recent written notice received by the Mill Creek Homeowners' Association with respect to each Member.

Section G. Owner's and Association's Addresses for Notices. All Owners and each Lot and each Unit will have one and the same registered mailing address to be used by the Mill Creek Homeowner's Association or other Owners for notices, demands and all other communications regarding Mill Creek Homeowners' Association matters. The Owner or Owners of a Lot or Unit will furnish the registered address to the Secretary of the Mill Creek Homeowners' Association within five days after receiving title to the Lot. The registration will be in written form and signed by all of the Owners of the Lot or Unit or by such persons as are authorized by law to represent the interests of all Owners of the Lot or Unit.

If no address is registered or if all of the Owners cannot agree, then the address of the Lot or Unit will be deemed the registered address until another registered address is furnished as required under this Section.

If the address of the Lot or Unit is the registered address of the Owners, then any notice will be deemed duly given if delivered to any person occupying the Lot or Unit or sent to the Lot or Unit by any other means specified for a particular notice in any of the Mill Creek Documents, or if the Lot or Unit is unoccupied, if the notice is held and available for the Owners at the principal office of the Mill Creek Homeowners' Association. All notices and demands intended to be served upon the Board of Directors will be sent to the address of the Mill Creek Homeowners' Association or such other address as the Board may designate from time to time by a notice delivered to all Owners in accordance with this Section.

All notices given under this Declaration will be sent by personal delivery, which will be effective upon receipt; by overnight courier service, which will be effective one business day following timely deposit with a courier service; or by regular, registered or certified mail, postage prepaid, which will be effective three days after deposit in the U.S. mail.

ARTICLE IV  
MEETINGS OF MEMBERS

Section A. Annual Meeting. The annual meeting of the Members shall be held at 9:00 A.M. on the first Tuesday of May in each year, beginning with the year 2007, 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, 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 Members, or at any adjournment thereof, the board of Directors shall cause the election to be held at a special meeting of the Members as soon thereafter as conveniently may be.

Section B. Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by 25% of the Board of Directors.

Section C. Place of Members' Meeting. The Board of Directors may designate any place, either within or without the State of Montana, as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors. A waiver of notice signed by all Members entitled to vote at a meeting may designate any place, either within or without the State of Montana, as the place for the holding of such meeting. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal office of the Corporation in the State of Montana.

Section D. Notice of Meeting. Notice shall be given for each special meeting to each Member entitled to vote at such meeting stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called. Such notice shall be given not less than thirty nor more than sixty days before the date of the meeting in writing, unless oral notice is reasonable under the circumstances. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member's address as it appears on the books of the Corporation, unless a Member shall have filed with the Secretary of the Corporation a written request that notices intended for such Member be mailed to a different address, in which case the notice shall be mailed to the address designated in the request, with postage thereon prepaid. Any notice of meetings may be waived by a Member by submitting a signed waiver either before or after the meeting, or by attendance at the meeting. When a members' meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. When a meeting is adjourned for less than 10 days, it is not necessary to give any notice of the time and place of the adjourned meeting or of the business to be transacted thereat other than by announcement at the meeting at which the adjournment is taken.

Section E. Voting Lists. The Officer or agent having charge of the transfer books shall make, at least ten days before each meeting of Members, a complete list of the Members entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with

the address of 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 Member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any Member during the whole time of the meeting. The original transfer book shall be prima facie evidence as to who are the Members entitled to examine such list or transfer books or to vote at any meeting of Members.

Section F. Quorum. A majority of the Members of the Corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of Members. If a quorum is present, the affirmative vote of a majority of the Member represented at the meeting and entitled to vote on the subject matter shall be the act of the Members, unless the vote of a greater number is required by the Montana Business Corporation Act, the Articles of Incorporation, or the Bylaws. If less than a majority of the outstanding Members are represented at a meeting, a majority of the Members so represented may adjourn the meeting from time to time without further notice. 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. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section G. Proxies. At all meetings of Members, a Member may vote either in person or by proxy executed in writing by the Member or by such Member's 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 proxy shall be valid after twelve months from the date of its execution, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it, except where an irrevocable proxy is permitted by statute. Any executor, administrator, guardian, trustee or other fiduciary, may give proxies. The Board of Directors may, in advance of any annual or special meeting of the Members, prescribe additional regulations concerning the manner of execution and filing of proxies and the validation of the same, which are intended to be voted at any such meeting.

Section H. Meeting of All Members. If all of the Members shall meet at any time and place, either within or without the State of Montana, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting any corporate action may be taken.

Section I. Voting by Ballot. Voting by Members on any question or on any election may be voice unless the presiding Officer shall order or any Member shall demand that voting be by ballot.



2007038/2030

ARTICLE V  
BOARD OF DIRECTORS

Section A. General Powers. The business and affairs of the Corporation shall be managed by its Board of Directors. 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.

Section B. Meetings. The annual meeting of the Board of Directors at 9:00 A.M. on the first Tuesday of May in each year, beginning with the year 2007, for the election or appointment of Officers and for the transaction of any other business. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day. If the election or appointment of Officers shall not be held on the day designated herein for any annual meeting of the Directors, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Directors as soon thereafter as conveniently may be. The Board of Directors may provide, by resolution, the time and place, either within or without the State of Montana, for the holding of additional regular meetings without other notice than such resolution.

Section C. 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 Montana, as the place for holding any special meeting of the Board of Directors called by such person or persons.

Section D. Notice. Notice shall be given for any special meeting of the Board of Directors to each Director stating the date, time and place of the meeting. Such notice shall be given at least one day prior thereto in writing, unless oral notice is reasonable under the circumstances. If mailed, such notice shall be deemed to be delivered on the earlier of ten days after deposit in the United States mail addressed to the Director's address as shown on the Corporation's records with postage thereon prepaid or upon receipt. The attendance of a Director at a meeting 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 called or convened.

Section E. Conduct of Meeting. All Directors, to the extent possible, shall personally attend regular and special meetings of the Board of Directors. However, any Director may participate in any regular or special meeting by any means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting. The Directors may adopt such rules and regulations for the conduct of their meetings and the management of the Corporation as they may deem proper, not inconsistent with law or these Bylaws.

Section F. Quorum. A majority of the number of the duly elected and qualified Directors shall constitute a quorum for the transaction of business; provided, that if less than a majority of such number of Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section G. Manner of Acting. The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section H. Vacancies. Any vacancy occurring in the Board of Directors and any Directorship may be filled by the affirmative vote of a majority of the remaining Directors. A Director elected to fill a vacancy shall be elected for the unexpired term of such Director's predecessor in office. Any directorship to be filled by reason of any increase in the number of Directors shall be filled by election at an annual meeting or at a special meeting of Members called for that purpose.

Section I. Removal of Directors. The entire Board of Directors or any Director may be removed either with or without cause, at any time, by a vote of the Members who were entitled to vote for the election of the Director sought to be removed, at any special meeting called for that purpose, or at the annual meeting. Except as otherwise prescribed by the Montana Business Corporation Act, a Director may be removed for cause by vote of a majority of the entire Board.

Section J. Resignation of Director. Any Director may resign his or her office at any time, such resignation to be made in writing and to take effect immediately without acceptance.

Section K. 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 the dissent of such Director shall be entered in the minutes of the meeting or unless such Director shall file a written dissent to such action with the person acting as the secretary of the meeting before adjournment thereof or shall forward such dissent by registered or certified 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.

Section L. Action Without a Meeting. Unless prohibited by the Montana Business Corporation Act any action required to be taken at a meeting of the Directors, or any other action which may be taken at a meeting of the Directors or of a committee of Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors or all of the members of the committee of Directors, as the case may be, entitled to vote with respect to the subject matter thereof.

ARTICLE VI  
COMMITTEES

Section A. Permanent and Temporary Committees. The Board of Directors may establish such permanent and/or temporary committees as it deems necessary and proper.

Section B. Other Committees. The Board of Directors by resolution adopted by a majority of the full Board, may designate two or more of its members to constitute such other Committee as it desires. Each committee shall exercise such powers as may be specifically delegated to it by the Board and act upon such matters as may be referred to it from time to time for study and recommendation by the Board or the President.

Section C. Tenure and Qualifications. Each member of each Committee shall hold office until the next regular annual meeting of the Board of Directors following his or her designation and until his or her successor is designated as a member of such Committee and is elected and qualified.

Section D. Meetings. Regular meetings of each Committee may be held without notice at such times and places as each Committee may fix from time to time by resolution. Special meetings of each Committee may be called by any member thereof upon not less than two days' notice stating the place, date and hour of the meeting, which notice may be written or oral, and if mailed, shall be deemed to be delivered when deposited in the United States mail addressed to the member of each committee at his or her address designated to the Corporation. Any member of a Committee may waive notice of any meeting and no notice of any meeting need to be given to any member thereof who attends in person. The notice of a meeting of a Committee need not state the business proposed to be transacted at the meeting.

Section E. Quorum. A majority of the members of a Committee shall constitute a quorum for the transaction of business at any meeting thereof and action of a Committee must be authorized by the affirmative vote of a majority of the members present at a meeting at which a quorum is present.

Section F. Action Without a Meeting. Any action that may be taken by a Committee at a meeting may be taken without a meeting if a consent in writing, setting forth the action so to be taken, shall be signed before such action by all of the members of such Committee.

Section G. Vacancies. Any vacancy in a Committee may be filled by a resolution adopted by a majority of the full Board of Directors.

Section H. Resignations and Removal. Any member of a Committee may be removed at any time with or without cause by resolution adopted by a majority of the full Board of Directors. Any member of a Committee may resign from such Committee at any time by giving written notice to the President or Secretary of the Corporation, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section I. Procedure. Each Committee shall elect a presiding officer from its members and may fix its own rules or procedures which shall not be inconsistent with these Bylaws.

Section J. Design Review Committee. There shall be a Design Review Committee which shall have the powers as stated in the Declaration of Covenants.

## ARTICLE VII OFFICERS

Section A. Number. The Officers of the Corporation shall consist of a President, one or more Vice Presidents (the number thereof to be determined by the Board of Directors), a Secretary and a Treasurer, and such assistant Officers as may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person.

Section B. Election And Term Of Office. The Officers of the Corporation shall be elected annually by the Board of Directors at the annual meeting of the Board of Directors. If the election of Officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each Officer shall hold office until his or her successor shall have been duly elected and qualified or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided. Election or appointment of an Officer or agent shall not of itself create contract rights.

Section C. 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 D. Resignation. Any Officer or agent may resign at any time by giving written notice to the Board of Directors, the President or the Secretary of the Corporation. Such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section E. 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 F. President. The President shall be the principal executive officer of the Corporation and, subject to the general powers of the Board of Directors, shall in general supervise and control all of the business and affairs of the Corporation. The President shall,

when present, preside at all meetings of the Members and of the Board of Directors and shall in general perform all duties incident to the office of President and such other duties as may be prescribed by the Bylaws or by the Board of Directors from time to time.

Section G. Vice President(s). The Vice-President (or in the event there be more than one Vice-President, the Vice-President in the order designated, or in the absence of any designation, then in the order of their election) shall perform the duties of the President in the event of the President's absence, death, inability or refusal to act. When so acting, the Vice-President shall have all the powers of and be subject to all the restrictions upon the President; and in addition thereto, shall perform such other duties as may be assigned by the President or by the Board of Directors, or as may be prescribed by the Bylaws.

Section H. Secretary. The Secretary shall: (a) keep the minutes of the Members' and of the 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; (d) keep a register of the post office address of each Member which shall be furnished to the Secretary by such Member; (e) have general charge of the books of the Corporation; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the President or by the Board of Directors.

Section I. Treasurer. The Treasurer 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 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 by the President or by the Board of Directors. The Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine.

Section J. Other Assistants and Acting Officers. The Board of Directors shall have the power to appoint any person to act as assistant to any Officer, or to perform the duties of such Officer whenever for any reason it is impracticable for such Officer to act personally, and such assistant or acting Officer so appointed by the Board of Directors shall have the power to perform all the duties of the office to which appointed to be assistant, or as to which appointed to act, except as such power may be otherwise defined or restricted by the Board of Directors.

Section K. Compensation. The compensation of the Officers shall be fixed from time to time by the Board of Directors and no Officer shall be prevented from receiving such compensation by reason of the fact that such Officer is also a Director of the Corporation.

ARTICLE VII  
WRITTEN INSTRUMENTS, LOANS AND DEPOSITS

Section A. Written Instruments. Subject always to the specific directions of the Board of Directors, all deeds and mortgages made by the Corporation to which the Corporation shall be a party shall be executed in its name by any Officer and attested by any Officer. All other written contracts and agreements to which the Corporation shall be a party shall be executed in its name by any Officer.

Section B. Loans. No loans shall be contracted on behalf of the Corporation and no evidences 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 C. Check, 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 D. 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.

Section E. Directors' Contracts. No contract or other transaction between the Corporation and any other corporation shall be affected or invalidated by the fact that any one or more of the Directors of this Corporation is or are interested in, or is a Director or Officer, or are Directors or Officers of such other corporation, and any Director or Directors, individually or jointly, may be a party or parties to or may be interested in any contract or transaction of this Corporation or in which this Corporation is interested; and no contract, act or transaction of this Corporation with any person or persons, firm or association, shall be affected or invalidated by the fact that any Director or Directors of this Corporation is a party, or are parties, to, or interested in, such contract, act, or transaction, or in any way connected with such person or persons, firm or association and each and every person who may become a Director of this Corporation is hereby relieved from any liability that might otherwise exist from contracting with the Corporation for the benefit of such person or any firm or corporation in which such person may be in any way interested.

ARTICLE IX  
FISCAL YEAR

The fiscal year of the Corporation shall end on the last day of December each year.

2007038 12030

ARTICLE X  
CORPORATE SEAL

This Corporation shall not have a corporate seal.

ARTICLE XI  
WAIVER OF NOTICE

Whenever any notice is required to be given to any Member or Director of the Corporation under the provisions of the Articles Of Incorporation, Bylaws, or the Montana Business Corporation Act, a waiver thereof in writing, signed by the person or person entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XII  
ASSESSMENTS

Section A. *Determination:* The Board of Directors will prepare a budget before the close of each fiscal year of the Mill Creek Homeowners' Association. Annual Assessments for Common Expenses will be based upon the estimated net cash flow requirements of the Mill Creek Homeowners' Association to cover the functions of Mill Creek Homeowners' Association.

Section B. *Apportionment of Annual Assessments.* Each Owner will be responsible for that Owner's share of the Common Expenses, which will be divided among the Lots included in the Project under this Declaration from time to time. The division will count as one unit each for a single family lot, and each townhome lot, and will be treated as the greater of one lot or the number of units on the lot. Accordingly, at any given time, an Owner's share of Common Expenses will be determined as a fraction, the numerator of which is the number of Lots owned by the Owner, and the denominator of which is the number of single family Lots plus the greater number of units or lots which are townhouses, then platted and incorporated in the Project. The townhouse Lots will be assessed for full outside maintenance and additional landscape maintenance.

Notwithstanding the preceding, any Common Expenses or portion thereof benefiting fewer than all of the Lots or units will be assessed exclusively against the Lots or units benefited. Further, the costs of insurance may be assessed in proportion to risk, and the costs of utilities may be assessed in proportion to usage.

Section C. *Collection.* Annual Assessments will be collected in periodic installments as the Board may determine from time to time, but until the Board directs otherwise, they will be

payable monthly in advance on the first day of each month. The omission or failure of the Mill Creek Homeowners' Association to fix the Annual Assessments for any Assessment period will not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Mill Creek Homeowners' Association will have the right, but not the obligation, to make pro rata refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

Section D. *Capitalization of the Association.* Upon acquisition of record title to a Lot from Declarant or any seller after Declarant, each Owner will contribute to the working capital and reserves of the Mill Creek Homeowners' Association an amount equal to one-fourth of the amount of the Annual Assessment determined by the Board of Directors for the Lot for the year in which the Owner acquired title. The Mill Creek Homeowners' Association will maintain the working capital funds in segregated accounts to meet unforeseen expenditures or to acquire additional equipment or services for the benefit of the Members. Such payments to this fund will not be considered advance payments of Annual Assessments.

Section E. *Utility Assessments.* The Board of Directors may set charges and fees to be paid for domestic water service and the well irrigation system, or any other services provided by the Mill Creek Homeowners' Association to Owners. The charges may include monthly fees, hook-up charges, service fees, and other fees and charges relating to the provision of such services, including charges intended to fund a reserve for repairs and replacement of the irrigation system and waterfall pumping system.

Section F. *Landscape Assessments.* The Board shall establish from time to time the method of setting and apportioning common area landscape maintenance and capital improvements for the single Family Lots and townhouse Lots. In addition, the townhouse Lots will be assessed for additional landscaped areas that are common to the townhouse units.

Section G. *Apportionment and Collection of Assessments.* The Board shall establish from time to time the method of setting and apportioning Common Area Assessments. The Assessments may be set and apportioned depending on the usage of each Lot or unit; they may be set at a fixed amount for each Lot or unit regardless of use; they may be set and apportioned using other methods determined by the Board; or they may be some combination of usage charges, fixed charges, and other charges.

Section H. *Special Assessments.* The Board of Directors may levy in any fiscal year one or more Special Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, or, after adopting and submitting a revised budget to the Mill Creek Homeowners' Association as may be required by the Act, to make up any shortfall in the current year's budget.



H.1 *Apportionment and Collection of Special Assessments.* The Board will apportion Special Assessments among the single Family Lots and townhouse Lots and collect payment according to the same guidelines as set forth above. Lots in a newly platted portion of the Expansion Property which is added to the Property shall not be subject to Special Assessments which preceded the recording of the new Plat, unless the Special Assessment is due in monthly or periodic installments, in which case the Lots in the newly platted portion shall be subject to the Special Assessment only to the extent of the installments which are not yet due at the time of the recording of the new Plat.

H.2 *Notice.* Notice of the amount and due dates for such Special Assessments must be sent to each Owner at least 30 days prior to the due date.

Section I. *Default Assessments.* All monetary fines, penalties, interest or other charges or fees (excluding Annual and Special Assessments) levied against an Owner pursuant to the Mill Creek Documents, or any expense of the Mill Creek Homeowner's Association which is the obligation of an Owner or which is incurred by the Mill Creek Homeowners' Association on behalf of the Owner pursuant to the Mill Creek Documents, and any expense (including without limitation attorneys' and legal assistants' fees) incurred by the Mill Creek Homeowners' Association as a result of the failure of an Owner to abide by Mill Creek Documents, constitutes a Default Assessment, enforceable as provided in this Declaration below.

Section J. *General Remedies of Mill Creek Homeowners' Association for Nonpayment of Assessment.* Any installment of an Annual Assessment or a Special Assessment which is not paid within 30 days after its due date will be delinquent. In the event that an installment of an Annual or Special Assessment becomes delinquent, or in the event any Default Assessment is established under this Declaration, the Mill Creek Homeowners' Association, in its sole discretion, may take any or all of the following actions:

J.1 Assess a late charge for each delinquency at uniform rates set by the Board of Directors from time to time in lieu of interest, such rate may provide for a charge of up to the greater of 15% or an amount that is 6 percentage points per annum above the prime rate of major New York banks, as published in the Wall Street Journal edition dated 3 business days prior to the assessment.

J.2 Charge interest from the date of delinquency at the Default Rate;

J.3 Suspend the voting rights of the Owner during any period of delinquency;

J.4 Accelerate all remaining Assessment installments for the fiscal year in question so that unpaid Assessments for the remainder of the fiscal year will be due and payable at once;

J.5 Bring an action at law against any Owner personally obligated to pay the delinquent Assessment charges.

2007038 12030

Section K. *Statement of Status of Assessments.* The Mill Creek Homeowners' Association will furnish to an Owner or his designee or to any Mortgagee a statement setting forth the amount of unpaid Assessments then levied against the Lot in which the Owner, designee or Mortgagee has an interest. The Mill Creek Homeowners' Association will deliver the statement personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party within 14 business days after the registered agent of the Mill Creek Homeowners' Association receives the request by personal delivery or by certified mail, first class postage prepaid, return receipt requested or as otherwise required by the Act. The information contained in such statement, when signed by an officer or director of the Mill Creek Homeowners' Association or the Manager, will be conclusive upon the Mill Creek Homeowners' Association, the Board, and every Owner as to the person or persons to whom such statement is issued and who rely on it in good faith.

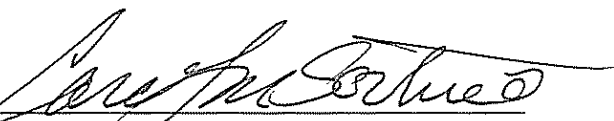
Section L. *Failure to Assess.* The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice will not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Mill Creek Homeowners' Association.

## ARTICLE XII AMENDMENTS

After the period of Declarant control, but not until it has expired, these Bylaws may be altered, amended, or repealed in the same manner and by the same affirmative vote as required to amend the Declaration of Covenants to which the initial version of this document is attached. Member entitled to vote at such meeting, which notice shall state the alterations, amendments, additions, or changes which are proposed to be made in such Bylaws. Only such changes shall be made as have been specified in the notice. Any amendment must be recorded before it is affective.

The foregoing are the Bylaws of Mill Creek Homeowners' Association, duly adopted by the Board of Directors of said Corporation on September 28, 2006.

Mill Creek Homeowners' Association

By   
Carolynn Sortino, Secretary