

0503101 thru 0503109, 0503110  
0002048 thru 000450, 0503027 thru 0503049, 0503052 thru 0503099  
0502992 thru 0502999, 0503001 thru 0503026,  
★ 0002049

Return to:  
Mill Creek Home Owners Association  
P.O. Box 68  
Bigfork, Montana 59911



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# MILL CREEK

*Amended*

## *Declaration of Covenants, Conditions And Restrictions*

A *Declaration of Covenants, Conditions and Restrictions of Mill Creek* was executed and recorded by Declarant on February 7, 2007, as Document No. 2007-038-12030; and corrected by a document entitled, Declaration of Covenants, Conditions and Restrictions of Mill Creek, executed and recorded by Declarant on March 5, 2007, as Document No. 2007-064-13420.

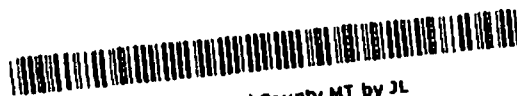
The Declarant has sold 100% of the Lots in the Mill Creek Subdivision, Phase I and Phase II.

Article XIV of the *Declaration of Covenants, Conditions and restrictions*, entitled, Amendment, provides for the amendment of said recorded *Declaration of Covenants, Conditions and Restrictions* by 70% of the Lot Owners.

The Undersigned, own 70% or more of the Lots in Mill Creek Subdivision, Phase I and Phase II, and, therefore, by the Amendment authority set forth in Article IV, entitled, Amendment, adopt the following *Declaration of Covenants, Conditions and Restrictions*, nullifying and replacing all prior *Declarations of Covenants, Conditions,*

*and Restrictions* of record. Said Covenants to run with and be appurtenant to the following real property:

Mill Creek Subdivision, Phase I and Phase II, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder's Officer, Flathead County, Montana.



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## TERMS OF THIS DECLARATION

### ARTICLE I DECLARATION – PURPOSES

#### Section 1.1 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 1.2 Development and Use

Upon completion, Mill Creek will consist of a maximum of 113 Lots. Thirty-one lots are single-family lots, while 82 lots are for townhouse 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.

### 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 Membership

Each lot owner of single home lots and each owner of the townhouses 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 of beneficiary of a deed of trust or trust indenture shall be a member unless it has acquired the interest in foreclosure.



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**Section 2.3 Voting**

The powers, rights, duties and obligations of the Homeowners' Association are set forth in the initial bylaws.

**Section 2.4 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 2.5 Incorporation**

The Homeowner's Association is incorporated and recognized under the laws of the State of Montana.

**Section 2.6 Powers and Duties of Mill Creek Homeowners Association**

The powers and duties are set forth in the Bylaws. A copy of the Bylaws may be obtained from the Homeowners Association Board of Directors upon request.

**Section 2.7 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, officers, the Manager 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 2.8 General Insurance Provisions**

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

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 2.9 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 2.10 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. The Owners will be included as additional insured's, but only for claims and liabilities arising in the 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 2.11 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 2.12 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 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.





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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 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 2.13 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 2.14 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 2.15 Other Insurance**

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

**Section 2.16 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 the Board of Directors, the Mill Creek Homeowners' Association, the Manager, and other Owners.

**Section 2.17 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 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 fully 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**

The following covenants apply to all lots within Mill Creek:

**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 minimum 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 Design Guidelines attached hereto as "Exhibit A". This committee shall be a committee of the Homeowners Association. The Committee may include any Member of the Mill Creek Homeowners' Association. All of the members of the Committee will be appointed, removed, and replaced by the Board of Directors at its sole discretion.

**Section 3.2 Guidelines**

The Design Review Committee will be responsible for the establishment and administration of the Design Guidelines attached hereto as "Exhibit A" to facilitate the purposes and intent of this Declaration. The Committee may amend, repeal and augment the Design Guidelines from time to time, in the Committee's sole discretion. The 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 Design Guidelines.
- (c) Designation of the Building Site on a Lot, establishing the maximum developable area of the Lot.



- (d) Building and Roof Materials 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.

### **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 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 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 submittal packages shall be required for design 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 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 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 Improvements. Neither the Board, the Design Review Committee, nor any agent thereof, 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 that 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 suite 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 property.

#### **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 townhouses, 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, 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 offices 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 commercial use, but the rental shall comply with Section 3.33 below.

**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.

**Section 3.7 Exterior Finishes**

All exterior material and color choices for siding and roofing must 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 Design Guidelines and Design Review. 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 any utility and or access easements under or through their property for the purpose of providing service to or through adjacent lands without the written consent of the Board of Directors, 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 Design Review Committee. Any satellite dish receiver must be 24 inches or less in diameter. 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. 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. The Design Review Committee 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. 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 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 one (1) week.

### **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. The Board of Director's of Mill Creek Homeowners' Association finds that some breeds are dangerous, and may prohibit them.

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 bringing the action shall be entitled to attorney fees and cost 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 property 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 10:00 pm or before 10:00 am; and barking dogs. As used herein, the term "nuisance" shall not include any activities of the Board of Directors 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 clean and in 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 the Design Review Committee and the Owner



provides proof of insurance in an amount and with coverage and named insured's satisfactory to the Design Review Committee.

**Section 3.19 Signs**

No signs, billboards, banners, or advertising devices of any nature shall be erected, used or maintained on this property, except for the purpose of advertising for sale of 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 Homeowner's 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 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 and installation must be approved by 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 the 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 Fencing**

The following are the general guidelines for fencing at Mill Creek:

- (a) Privacy Screens: Privacy screens, if approved for use, shall be consistent with the overall design of the existing residence. The Design Review Committee shall have the authority to approve on a case by case basis. Any such fencing or screening shall not materially restrict view from adjoining properties.
- (b) Retaining Walls: Retaining walls may be approved by the Design Review Committee on a case by case basis. If used, retaining walls shall be an integral part of the overall design of the site and building. Retaining walls shall be a maximum of four (4) feet high. Retaining walls can also be used as a screening device to obscure service areas such as the view of a driveway from the main road. Retaining walls shall be constructed of wood or stone and shall blend into the contour of the existing landscape.

- (c) Fencing: In connection with the construction of a Dwelling Unit, each owner may, but is not required to, fence its Lot with fencing materials approved by the Design Review Committee. Such fencing normally approved by the Design Review Committee will not materially impede the view of other owners. All fence and wall height is subject to the approval of the Design Review Committee

**Section 3.32 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 3.33 Landscaping**

Landscaping of Single Family Residential Lots: Each owner of a Single Family Residence Lot shall provide landscaping in connection with construction of its improvements and shall maintain the landscaping of the Lot in accordance with the standards of the Design Review Committee. Prior to installing landscaping, the Owner of a Single Family Residence Lots shall submit a written landscaping plan to the Design Review Committee and secure approval of the same. In accordance with the Design Guidelines, each Single Family Residence Lot must contain a mix of deciduous trees and evergreen trees. No cottonwood trees or poplar trees, other than Aspen trees, will be permitted under any circumstances. Thereafter, each Owner shall keep all landscaping of every kind located on its Residence Lot neatly trimmed, and shall keep all such area properly cultivated and free of trash, weeds and other unsightly material. While lawn seeding may be permitted by the Design Review Committee, sodding is recommended. All landscaping of Residence Lots must be properly irrigated. Any Owner who fails to complete the initial landscaping within the twelve (12) month construction period, unless such time from is otherwise extended by the Design Review Committee to account for weather or seasonality or who fails to maintain its landscaping shall be subject to a Maintenance Charge by the Association to cover the cost of bringing the lot into compliance with the Landscaping standards. The Association is authorized to take reasonable action to cause the landscaping to be installed and maintained in accordance with the terms of this Declaration.



**Landscaping of Townhouse Residence Lots:** Each Owner of a Townhouse Residence Lot shall provide landscaping in connection with construction of its improvements and shall maintain the landscaping of the Lot in accordance with the standards of the Design Review Committee. Prior to installing landscaping, the Owner of a Townhouse Residence Lots shall submit a written landscaping plan to the Design Review Committee and secure approval of the same. In accordance with the Design Guidelines, each Townhouse Residence Lot must contain a mix of deciduous trees and evergreen trees. No cottonwood trees or poplar trees, other than Aspen trees, will be permitted under any circumstances.

**Section 3.34 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.

**Section 3.35 Irrigation**

Irrigation systems are required for all developed Single Family and Townhouse Lots in Mill Creek. Such irrigation lines need to be to the median of lot lines/ponds or property boundary lines.

**Section 3.36 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:

- (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 1 month. Lots in areas designated on the Plat as being for townhouse use, all leases or rental agreements for a unit thereon must be in writing with a minimum term of at least 2 weeks with a cash bond of \$1,500 deposited to the Homeowners Association.
- (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 at 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.



Paula Robinson, Flathead County MT by JL

**ARTICLE IV  
ROADWAY AND COMMON FACILITY MAINTENANCE AGREEMENT**

**Section 4.1 Roadway and Utility Easement, Open Space, Common Area and Water Resource Systems.**

The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas, Open Space, Landscaping, walkways, recreational facilities and the buildings and structures, if any, located upon said properties. That owner, 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 Covenants for Assessments**

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 easement 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 with



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 the 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**

**In addition to all other covenants for Assessments contained herein, each Owner, by acceptance of title to its Lot, covenants and agrees to pay, as a part of the Quarterly Assessment, the Owner's proportionate share of all costs and expenses incurred by the Association in discharging its obligations and responsibilities under this Declaration and the Bylaws. Any costs and expenses incurred by the Association shall be included in each Owner's Quarterly Assessment regardless of the amount of or frequency in which a particular Owner utilizes such services.**

**Section 6.1 Assessments**

Subject to the provisions of this Article VI, the Owner of any Lot (by acceptance of title thereto, whether by deed, devise or inheritance, regardless of whether it shall be so expressed in any such deed or other conveyance), including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association the Assessments established by the Board from time to time. All Assessments, together with interest thereon, at the highest lawful rate, if delinquent for more than thirty (3) days after the due date, costs of collection and reasonable attorneys' fees, shall be the personal obligation of the Owner and a lien upon the Lot against which each such Assessment is made. No Owner may waive or otherwise avoid liability for the Assessments provided for herein by non-use of the Common Areas or services, or by abandonment or otherwise.

**Section 6.2 Quarterly Assessments.**

Quarterly Assessments shall be collected by the Association and shall be used for the operation, management, provision of services, maintenance and repair of the Common Areas in a manner consistent with the standards set by the Board from time to time, and



to promote the health, safety and welfare of the Owners and to carry out the Association's rights and obligations under this Declaration, including, but not limited to, the following:

A. Payment of all vendor fees incurred by the Association under one or more agreements that the Association may from time to time enter into for the provision of maintenance, cleaning, and other services to Owners.

B. Improvements, maintenance and repair of the Common Areas, including, but not limited to, the cost of operating and maintaining:

1. All Common Roads, parking areas and sidewalks, to the extent that such improvements are a part of the Common Areas;
2. All landscaped areas including lawns, shrubs, trees and other planting located on Common Areas;
3. Fences, signs, street lights and fountains located on the Common Areas;
4. Off-Site Water Well System which serves Common Areas, Irrigation and Ponds.
5. Enforcement and execution of all noxious weed programs;
6. Electrical lighting, and other necessary utility services for the Common Areas;
7. The irrigation system and water to service the landscaped areas within the Common Areas;
8. Community facilities and amenities, if any.

C. Hiring professional advisors, management companies, service providers and payment of management and service fees and charges;

D. Procuring the following insurance coverages:

1. Hazard insurance covering the Common Areas in such amounts and on such terms and conditions as may be set by the Board from time to time;
2. Public liability insurance insuring the Association against any and all liability to the public, to any Owner, or to the invitees, or tenants of an Owner arising out of their occupation or use of the



Common Areas. The policy limits, terms and conditions shall be set by the Board from time to time;

3. Worker's compensation insurance to the extent necessary to comply with Montana law, and any other insurance deemed necessary by the Board; and
4. Directors and Officers liability insurance, if available at rates acceptable to the Board;

E. Acquisition of equipment for Common Areas as may be determined by the Board, including without limitation, all equipment and personnel necessary or proper for use or maintenance of the Common Areas;

F. Acquisition of any other materials, supplies, equipment, labor, management, supervision, services, personnel, repairs, structural alterations or insurance which the Association is required to secure or pay pursuant to the terms of this Declaration or by law, or which shall be necessary or proper in the opinion of the Board for the operation of the Common Areas;

G. Establishment of reserve accounts for capital expenditures and deferred maintenance for or improvements to the Common Areas;

H. Payment of real property taxes, personal property taxes and other assessments levied against the Common Areas by jurisdictional authorities;

I. Improvement, maintenance and repair of any portion of a Lot (or Residence or infrastructure related thereto) which is the right or the responsibility of the Association pursuant to the terms of this Declaration; and

J. Equipment, emergency vehicles, machinery, communication systems and personnel for on-site first response and secondary response fire suppression capability.

K. Security measures as the Board deems necessary in its reasonable discretion, including without limitation, security officers, security systems, surveillance equipment, and security lighting.

L. Costs and expenses related to any garbage or other waste collection, storage and removal services provided by a third party retained by the Association.

If a particular cost or expense is only applicable to one or more Lots or a particular type of Residence then, in such case, the Association, using reasonable judgment, shall only levy the Assessment for such cost or expense (whether pro-rata or in such other manner as deemed fair by the Board in its sole discretion) against those applicable Lots or Residences as an Individual Assessment pursuant to Section 6.3.



### **Section 6.3 Special Assessments**

In addition to the Quarterly Assessments, the Association may levy, as necessary in the opinion of the Board in its sole, from time to time, Special Assessments for reconstruction, unexpected repair or replacement of a capital improvement, including the necessary fixtures and personal property related thereto, the acquisition of property by the Association, the cost of construction of capital improvements to the Property and Common Areas, the cost of construction, reconstruction, unexpected repair or replacement of a capital improvement, including the necessary fixtures and personal property related thereto, the expense of indemnification of each Director and Officer of the Association, any other valid expenses deemed necessary by the Board, or for any other expenditure approved by the Board, including to cover unbudgeted expenses or expenses in excess of those budgeted. All Special Assessments shall become due and payable upon reasonable terms and conditions as set forth at the discretion of the Board upon levying the applicable Special Assessment.

### **Section 6.4 Individual Assessments**

In addition to the Quarterly Assessments and Special Assessments, the Association may levy an Individual Assessment, against any Lot or Lots, for costs and expenses authorized by this Declaration that are for the primary benefit of such Lot or Lots and not generally applicable or for the benefit of all other Lots. Each Individual Assessment shall be allocated among the Lot or Lots in question and become due and payable upon such terms and conditions as determined by the Board upon levying the Individual Assessment. Examples of Individual Assessments, may include, without limitation, (i) the installation, upkeep, maintenance and repair of any of the components of any Shared Water System, Shared Wastewater System, Multi-User Water System, Multi-User Wastewater System, Community Water System, or Community Wastewater System, Multi-User Wastewater System, Community Water System, or Community Wastewater System located within the Common Areas; (ii) costs and expenses incurred in connection with any of the Association's rights granted in the Declaration to maintain, repair and replace Water Systems, Wastewater Systems, landscaping and noxious weeds.

### **Section 6.5 Phase II Townhome Lot Assessments**

In addition to Quarterly Assessments, Owners for each Townhome Lot shall also be responsible for a special Townhome Assessment for the Lot on which the Townhome project is located to compensate for the increased number of occupants associated with the Lot. The Townhome Association shall be responsible to cover the cost of installation of Landscaping on the Townhome Lot and of exteriors of the Townhome Project. The Association shall be responsible for the items outlined below. Owners of Residence Lots shall not be required to pay Townhome Assessments. Townhome Assessments shall be computed and assessed against Townhome Lots as follows:

- (a) Townhome Expenses. Townhome Assessments, for each Townhome Lot shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out





of or connected with the maintenance of the Townhome Lot. Such estimated expenses may include, without limitation, the following expenses of maintenance of landscaping on the Townhome Lot and of the roads and sidewalks; premiums for insurance, if any, that the Association is required or permitted to maintain hereunder; any deficit remaining from a previous period; creation of an adequate contingency reserve; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owner of a Townhome Lot under or by reason of this Declaration. Such shall constitute the Townhome Maintenance Expenses, and all funds received from Assessments under this Section 6.4 (a) shall be part of a Townhome Maintenance Expense Fund.

(b) Apportionment. Each Townhome lot shall have its own distinct assessment based upon the size and number of units contained in the Townhome Phase. Consolidation of Phases will be considered upon written request of the Board of Directors for the Mill Creek Homeowners Association. Individual Townhome Phases will consist of the following.

- Lots 32 through 39
- Lots 40 through 43
- Lots 44 through 51
- Lots 52 through 60
- Lots 61 through 76
- Lots 77 through 84
- Lots 85 through 97
- Lots 98 through 113

**Section 6.6 Determination of Assessments**

The Board shall determine the amount of Assessments as set forth below:

A. Quarterly Assessments. The Board shall determine the amount of Quarterly Assessments at the annual Board of Directors meeting(s) at which the Association budget is approved. The amount of the Quarterly Assessments shall be determined by calculating the estimated cost of the items set forth in Section 4.2 hereof for the year following the meeting. Within fourteen (14) days of the meeting or as soon thereafter as is reasonably practical, the Board shall deliver the invoices for the next year's Quarterly Assessments to each Owner and the Owner shall pay the Quarterly Assessments on or before the due dates set forth therein. Within (90) days after the end of each fiscal year of the Association, the Board shall make an accounting of the difference, if any, between the amount of Quarterly Assessments levied for the preceding year and the actual cost incurred for the items for which the Quarterly Assessments were levied. In the event of a surplus, the Board shall provide a credit to each Owner against the next year's Quarterly Assessments equal to the pro rata share of the surplus actually paid by



the Owner. In the event of a deficiency, if any, by a Special Assessment for each Owner's pro rata share of the deficiency, which shall be payable according to the terms set forth in the invoice.

- B. Special and Individual Assessments. The Board may determine the amount of and levy Special Assessments and Individual Assessments at any meeting of the Board. Within fourteen (14) days of the meeting, the board shall deliver the invoices for the Assessments to the applicable Owners. The assessed Owner's shall pay the invoice on or before the due dates set forth therein. If the amount of the Assessment exceeds the cost of the services for which it was levied, the Owner shall receive a refund of the difference from the Association. If the amount of the Assessment is less than the cost of the services for which it was levied, the Owner shall pay the Association such Owner's pro rata share of the difference.

**Section 6.7 Payment of Quarterly Assessments**

The Quarterly Assessments for which provision is herein made shall be paid quarterly, in advance, unless otherwise determined by the Board. The remainder of the first fiscal year's Quarterly Assessments after purchase by each Owner shall be adjusted according to the number of months remaining in such fiscal year. Notwithstanding the foregoing, Owners may pay the Quarterly Assessments in advance if so desired.

**Section 6.8 Right to Lien**

If any Assessments are not paid by an Owner within thirty (3) days from their due date as determined by the Board pursuant to this Declaration, the Association may, at any time thereafter, record a lien against such Owner's Lot and Residence in the public records of Flathead County, Montana, and bring an action to foreclose the lien in a like manner as a foreclosure of a mortgage on real property and/or a suit on the personal obligation against such Owner. In any such foreclosure action, the Association's legal fees and costs, together with interest on the Assessment at the highest lawful rate. A lien against one Townhome Residence shall not constitute a lien against the other Townhome Residence situated on the same Lot.

**Section 6.9 Priority of Lien**

Liens for delinquent Assessments shall be effective as of the date of recording the claim of lien in the public records of Flathead County, Montana, and shall be prior to and superior to the creation of any homestead status on the Lot and any subsequently recorded liens or encumbrances.

**Section 6.10 Subordination of Lien to Mortgage**

The lien of the Assessments for which provision is herein made, as well as in any other Article of this Declaration, shall be subordinate to the lien of any first mortgage to an Institutional Mortgagee, unless the claim of lien is recorded prior to the mortgage. Such subordination shall apply only to the Assessments which have become due any payable prior to a sale or transfer of the applicable Lot pursuant to a decree of foreclosure and in



any other transfer or proceeding in lieu of foreclosure, and shall not relieve any Owner of any Lot from liability for any Assessments thereafter become due or from the lien of any subsequent Assessment.

**Section 6.11 Exempt Property**

The following property subject to this Declaration shall be exempt from the Assessments charges and liens created herein:

- A. All properties to the extent of any easement or other interest therein dedicated and accepted by Flathead County and devoted to public use; and
- B. All Common Areas

**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  
TERMS AND ENFORCEMENT**

**Section 8.1 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 period 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 real property.



**Section 8.2 Violations Deemed a Nuisance**

Every violation of this Declaration or any other of the Mill Creek Documents is deemed to be 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 8.3 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 8.4 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 8.5 Who May Enforce**

Any action to enforce the Mill Creek Documents may be brought by 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 action. No member of the Board of Directors, the Manager or any Owner will be liable to any other Owner for the failure to enforce any of the Mill Creek Documents at that time.

**Section 8.6 Nonexclusive Remedies**

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

**Section 8.7 No Waiver**

The failure of the Board of Directors, 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 the right to enforce any other part of the Mill Creek Documents at any future time.

**Section 8.8 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 8.9 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 IX  
AMENDMENT**

**Section 9.1 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 9.2 Declaration of Lot Owners**

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 9.3 Effect of Amendments**

Amendments made pursuant to this Section will insure 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 X  
MISCELLANEOUS PROVISIONS**

**Section 10.1 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 10.2 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 use of any gender will include all genders.

**Section 10.3 Headings**

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

**Section 10.4 Limitation of Liability**

Neither the Mill Creek Homeowners' Association nor any partner, officer or member of either 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 10.5 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.

**APPENDIX**

## DEFINITION OF TERMS

As used in the forgoing document, the following terms have the meaning set forth herein.

*"Articles" or "Articles of Incorporation"* means the articles of incorporation of the Mill Creek Homeowners' Association, Inc., which have been filed with the Secretary of State of Montana; as such articles may be amended from time to time.

*"Bylaws"* means the bylaws of the Mill Creek Homeowners' Association which established the methods and procedures of its operation; as such bylaws may be amended from time to time. A copy of such bylaws may be requested at any time from a member of the Board of Directors.

*"Common Area"* means any real property in which the Mill Creek Homeowners' Association owns an interest for the common use, benefit and enjoyment of some or all of the Members and such other persons as may be permitted to use the Common Area under the terms of this Declaration or any contract with the Mill Creek Homeowners' Association.

*"Design Guidelines"* means the guidelines and rules published and amended and supplemented from time to time by the Design Review Committee.

*"First Mortgage"* means any Mortgage or other encumbrance incurred for the purchase of the premises or to refinance the purchase or for the remodeling of the premises, which is not subject to any lien, or encumbrance except liens for taxes or other liens which are given priority by statute.

*"First Mortgagee"* means the holder 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. 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 and all of the Improvements located on the Property.

**"Mill Creek Homeowners' Association"** means the Mill Creek Homeowners' Association 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, Articles of Incorporation and Bylaws, the Design Guidelines, the Mill Creek Rules and 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, whether one or more persons or entities, of fee simple title to any Lot or, if the Lot is subject to one or more contracts for deed the owner of the purchaser's interest in the most recent contractor for deed, but "Owner" does not 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.

DATED this 24 day of June, 2009.



DATED this 24<sup>th</sup> day of June, 2009.

**MILL CREEK, PHASE I:**

Lot(s): 1, 3-4, 6-13, 16-19  
21-23, & 27-30

Owner : Glacier Bank  
Signature: William C. Paullin SUP

Lot(s) 2, 15, 24, & 26

Owner : Theodore Garman  
Signature: \_\_\_\_\_

Lot(s) 14, 20, 25, & 31

Owner : William Cowin  
Signature: \_\_\_\_\_

Lot(s) 5

Owner : Erik J. Lilienthal  
Signature: Erik J. Lilienthal

**MILL CREEK PHASE II:**

Lot(s) 35, 40-76, 79-82  
& 98-113

Owner : Glacier Bank  
Signature: William C. Paullin SUP

Lot(s): 32-34, 36-39,  
77-78 & 83-84

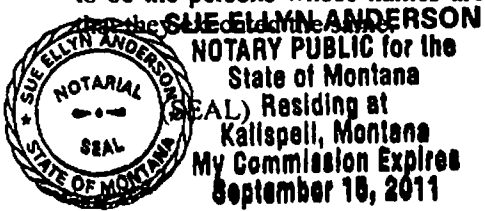
Owner : Calaway Construction, Inc.  
Signature: [Signature]

Lot(s): 85-97

Owner : Calaway Brothers, LLC  
Signature: [Signature]

STATE OF MONTANA )  
 ) :ss.  
County of Flathead )

On this 24<sup>th</sup> day of June, 2009, before me, the undersigned, a Notary Public for the State of Montana, personally appeared: William C. Paullin, Glacier Bank, Tim Calaway, Calaway Construction, Inc., and Geoffrey Calaway, Calaway Brothers, LLC, and Erik Lilienthal, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me



Sue Elyn Anderson  
Notary Public for the State of Montana  
Residing at: Kalispell, Montana  
My Commission Expires: September 15, 2011