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Kalispell, MT 59903



Debbie Pierson, Flathead County MT by NW

20150002255
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Fees: \$70.00
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AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF MILL CREEK

This Amendment to the Declaration of Covenants, Conditions and Restrictions of Mill Creek is made as of this 17th day of December, 2014, by Bigfork Landing II, LLC, a Montana limited liability company, Calaway Construction, Inc. a Montana corporation, Calaway Brothers, LLC a Montana limited liability company, and Ron Terry Construction, Inc., a Montana corporation, who are all owners of Lots contained within the Mill Creek Subdivision, Phase I and II.

0200450
0502992 thru 0502999

WHEREAS, a Declaration of Covenants, Conditions and Restrictions of Mill Creek was executed and recorded by the Declarant on February 7, 2007, as Document No. 2007-038-12030, Flathead County, Montana, and nullified and replaced 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, Flathead County, Montana;

WHEREAS, the Declarant sold 100% of the Lots in the Mill Creek Subdivision, Phase I and II;

0505819
0502992 thru 0502999

WHEREAS, an Amended Declaration of Covenants, Conditions and Restrictions of Mill Creek was executed by 70% or more of the holders of the votes in the Mill Creek Homeowners' Association and recorded as Document No. 200900022104 on July 29, 2009, Flathead County, Montana;

WHEREAS, Bigfork Landing II, LLC, Calaway Construction, Inc., Calaway Brothers, LLC, and Ron Terry Construction, Inc. hold 70% or more of the votes in the Mill Creek Homeowners' Association; and

0503110
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WHEREAS, the undersigned Owners holding 70% or more of the votes in the Mill Creek Homeowners' Association desire to amend said Declaration of Covenants, Conditions and Restrictions of Mill Creek in accordance with Article IX, Section 9.2, and further meet the ownership provisions stated therein.

★
★



NOW THEREFORE, the Undersigned hereby amend and declare as follows:

1. **Article I Section 1.3 Townhouse** shall be added and read as follows:

Nothing in the Declaration of Covenants, Conditions and Restrictions shall restrict construction on Townhouse Residence lots to townhouses, so long as such building complies with the Mill Creek Documents and Flathead County regulations and requirements and is approved by the Design Review Committee.

2. **Article III Section 3.1 Design Review Committee** shall be amended to read as follows:

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 other such officers as it desires and advises the Board of Directors.

The Committee shall be formed for the express purpose of reviewing all building and landscape plans for conformance with the Design Guidelines. This committee shall be a committee of the Mill Creek 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 in its sole discretion.

3. **Article III Section 3.2 Guidelines** shall be amended to read as follows:

The Design Review Committee will be responsible for the establishment and administration of the Design Guidelines to facilitate the purposes and intent of this Declaration. The Committee, by majority vote, may amend, repeal and/or augment the Design Guidelines from time to time, in the Committee's sole discretion.

EXHIBIT A ATTACHED TO THE ORIGINAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF MILL CREEK EXECUTED AND RECORDED BY THE DECLARANT ON FEBRUARY 7, 2007, AS DOCUMENT NO. 2007-038-12030, AS AMENDED FROM TIME TO TIME, ALONG WITH ANY AND ALL PRIOR DESIGN GUIDELINES ARE HEREBY REVOKED. A COPY OF THE APPLICABLE AND GOVERNING DESIGN GUIDELINES IS AVAILABLE FROM THE DESIGN REVIEW COMMITTEE.



The Design Guidelines shall 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 and fees and deposits.
- (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) Construction guidelines contained within the governing Design Guidelines.
- (h) And such other matters dealing with the architecture, landscaping and related environmental needs of the Mill Creek Subdivision.

4. **Article III Section 3.3 Purpose and General Authority** shall be amended to read as follows:

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. Any charge for review of these plans will be 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. All Improvements will be constructed only in accordance



with approved plans. 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.

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 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.

5. **Article III Section 3.33 Landscaping** shall be amended to read as follows:

Each owner of a Single Family Residence Lot or 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. Each Owner of a Single Family Residence Lot or Townhouse Residence Lot shall keep all landscaping of every kind located on its Lot neatly trimmed, and shall keep all such area properly cultivated and free of trash, weeds and other unsightly material. Any Owner of a Single Family Residence Lot or Townhouse Residence Lot who fails to complete the initial landscaping within the twelve (12) month construction period, unless such time frame is otherwise extended by the Design Review Committee 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.

6. **Article III Section 3.34 Townhouse Site Improvements** shall be amended to read as follows:



Owners of Townhouse Residence Lots are responsible for all costs associated with the construction of the residences, including driveways, landscaping and all utilities extensions from the property line. In accordance with Article III Section 3.33 of these Declarations, each individual Townhouse Residence Lot Owner shall also be responsible for landscaping and maintaining his or her own respective Townhouse Residence Lot and shall be responsible for all costs associated therewith.

7. **Article III Section 3.36 Rental and Leasing** shall be amended to read as follows:

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

- (a) All leases or rental agreements shall be in writing. No property shall be allowed to be rented more than once in a 7 day period or in violation of any Flathead County regulations or requirements.
- (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 shall 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.

8. **Article VI Section 6.5 Phase II Townhome Lots Assessments** shall be deleted in its entirety.

9. **Article VI Section 6.12 Partition, Subdivision or Aggregation of Lots** shall be added and read as follows

No Single Family Residence Lots may be partitioned, subdivided or aggregated from any other parcel or property or combined with any other Single Family Residence Lot, Townhouse Residence Lot or other parcel of property.

Except as part of an aggregation of multiple lots, no portion of any Townhouse Residence Lot may be partitioned, subdivided or separated from any other part thereof.

Subject to prior written approval of the Design Review Committee, Townhouse Residence Lots may be aggregated upon the following: (1) application to the appropriate governmental authority, approval by all necessary governmental authorities and satisfaction of any and all corresponding applicable governmental requirements, (2) compliance with the Mill Creek Documents and (3) compliance with and satisfaction of any and all measures necessary to preserve any easements reserved with respect to contiguous Lots upon replatting. Such aggregation of Townhouse Residence Lots shall



not result in more than two Townhouse Residence Lots being created from three Townhouse Residence Lots or more than one Townhouse Residence Lot being created from two Townhouse Residence Lots. Each Townhouse Residence Lot resulting from any replatting shall be entitled to one vote per Lot and have the same rights and responsibilities of any other Lot owner.

10. The Declarations of Covenants, Conditions and Restrictions of Mill Creek shall remain unchanged in all other respects and are hereby restated in all other respects except as expressly set forth herein.

By our signatures set forth below, we, the Undersigned do hereby certify that this Amendment to the Declarations of Covenants, Conditions and Restrictions of Mill Creek was voted on and approved by the Owners holding 70% or more of the votes in the Mill Creek Homeowners' Association.

MILL CREEK, PHASE I:

Lot(s): 1, 10-11, 16-18
21-23, & 27-30

OWNER:
SIGNATURE:

Bigfork Landing II, LLC

Province of Alberta
STATE OF MONTANA)

*Robert McKercher VP
Bigfork Landing Corp*

:ss.

County of Flathead
Province of Alberta ✓

On this 9 day of December, 2014, before me, the undersigned, a Notary Public for the ~~State of Montana~~, personally appeared Robert McKercher, Vice-President of Bigfork Landing Corporation, Operating Manager of Bigfork Landing II, LLC known to me to be the persons whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same.

ccccc

SIGNATURE

PRINT OR TYPE NAME

Notary Public for the State of ~~Montana~~ *Province of Alberta*

Residing at *Calgary, Alberta*

My commission expires: *does not expire* ✓

MONTH, DAY, YEAR (20**)

(SEAL)



W. MARTIN MERONEK
LAWYER & NOTARY PUBLIC
307, 1228 KENSINGTON ROAD NW
CALGARY, ALBERTA
T2N 3P7



MILL CREEK PHASE II:

Lot(s): 40-56, 58-60, 63-67
79-82, 98-102 & 104-113

OWNER:

Bigfork Landing II, LLC

SIGNATURE:

[Signature]
Robert McKercher, VP
Bigfork Landing Corp.

^{mm} Province of Alberta ✓
STATE OF MONTANA)

)
:SS.
)

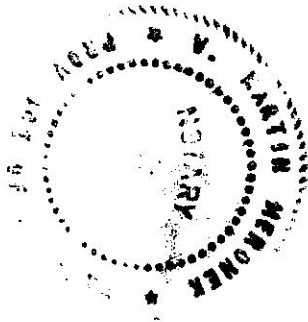
County of Flathead ✓ ^{mm}

On this 9 day of _____ December, 2014, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Robert McKercher, Vice-President of Bigfork Landing Corporation, Operating Manager of Bigfork Landing II, LLC, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same.

[Signature]

SIGNATURE

(SEAL)



PRINT OR TYPE NAME

Notary Public for the State of Montana. ^{mm} Province of Alberta

Residing at Calgary, Alberta

My commission expires: does not expire ✓ ^{mm}
MONTH, DAY, YEAR (20**)

W. MARTIN MERONEK
LAWYER & NOTARY PUBLIC
307, 1228 KENSINGTON ROAD NW
CALGARY, ALBERTA
T2N 2P7



MILL CREEK PHASE II:

Lot(s): 32-34, 37-39
77-78 & 83-84

OWNER: Calaway Construction, Inc.
SIGNATURE: 

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

On this 10 day of _____ December, 2014, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____ of Calaway Construction, Inc., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same.



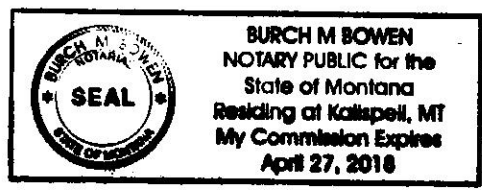
SIGNATURE

(SEAL)

Burch Bowen

PRINT OR TYPE NAME

Notary Public for the State of Montana.
Residing at Kalispell, MT
My commission expires: April 27, 2018
MONTH, DAY, YEAR (20**)





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MILL CREEK PHASE II:

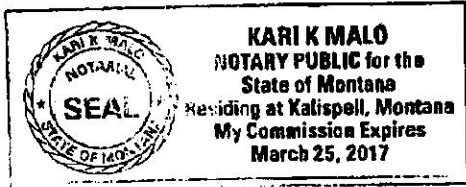
Lot(s): 85-97

OWNER: Calaway Brothers, LLC
SIGNATURE: [Signature]

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

On this 17th day of December, 2014, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Geoffrey Calaway of Calaway Brothers, LLC known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same.

(SEAL)



[Signature]
SIGNATURE

Kari K Malo
PRINT OR TYPE NAME

Notary Public for the State of Montana.

Residing at Kalispell

My commission expires: 03/25/2017
MONTH, DAY, YEAR (20**)

MILL CREEK PHASE II:

Lot(s): 61-62

OWNER:
SIGNATURE:

Ron Terry Construction, Inc.
[Handwritten Signature]

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

On this 5th day of _____ December, 2014, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Merna Terry of Ron Terry Construction, Inc. known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same.

[Handwritten Signature]

SIGNATURE
Cailla R. Johnson

PRINT OR TYPE NAME
Notary Public for the State of Montana.
Residing at _____
My commission expires: _____
MONTH, DAY, YEAR (20**)

