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Debbie Pierson, Flathead County MT by DD

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

This Amendment to the Declaration of Covenants, Conditions and Restrictions of Mill Creek was approved by the Lot owners, who constitute the owners of more than 70% of the Lots contained within Mill Creek Subdivision, Phase I and Phase II, on this 16<sup>th</sup> day of Dec, 2015. This is executed by an officer of Mill Creek Homeowners' Association pursuant to Article IX, Section 9.2 of the Declaration of Covenants, Conditions and Restrictions of Mill Creek.

**BACKGROUND AND PRIOR FILINGS:** 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 was 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.

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. That document nullified and replaced the prior filings. For the purposes of this amendment, the 2009 Amended Declaration of Covenants, Conditions and Restrictions of Mill Creek shall be referenced as "**The Covenants.**"

The Covenants were amended by that Amendment to Declaration of Covenants, Conditions and Restrictions of Mill Creek which was recorded as Document 20150002255, records of Flathead County, Montana, which was executed by more than 70% of the owners of the lots in Mill Creek Phase I and Phase II. That document shall be referenced herein as the "**Prior Amendment.**"

Except as amended herein The Covenants and the Prior Amendment are affirmed and remain unchanged.

**AMENDMENTS:**

1. The undersigned hereby amend the Prior Amendment, by deleting in full section 9 which added a provision. That provision numbered 6.12 is fully deleted.

2. The undersigned hereby amend The Covenants as follows:

a. Section 2.2 is amended so that it now reads [Addition is underlined]:



## Section 2.2 Membership

Each lot owner of Phase I single home lots and each owner of the Phase II townhouses within the Mill Creek subdivision will become a member of the homeowners association and that membership 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. When lots are combined or aggregated, upon any replatting, the newly created lot shall be entitled to only one vote per replatted Lot and have the same rights and responsibilities of any other Lot owner.

**b. Article III, Section 3.24 is deleted and a new section is inserted reading as follows:**

Outdoor fires and burning are only permitted in Mill Creek in accordance with the following provisions:

- A. Only permitted in appropriate permanent firepits or chimineas. Any other installations (outdoor fireplaces, etc.) subject to Design Review Committee's discretionary approval.
- B. Neither decorative metal, terra cotta firepits nor chimineas shall be used on any wooden or composite deck.
- C. Charcoal or wood-burning firepits or chimineas may be used on concrete or stone decks only if all openings are covered by spark arresters, or screens and manufacturer's instructions and local fire/forestry service warnings are heeded.
- D. In all cases of outdoor fires, it is advisable to have a garden hose readily available.
- E. Firepits shall not exceed four (4) feet in diameter.
- F. Chimineas shall not exceed four (4) feet in height.
- G. There shall be no more than one (1) firepit and or chiminca on any home lot.
- F. Firepits and chimineas shall be a minimum of ten (10) feet from any structures and property lines.
- H. Firepits and chimineas shall only be located in rear yards or within fenced and screened areas of side yards. No firepits and chimineas shall be located in front yards.
- I. All firepits and chimineas shall meet the requirements of the Design Guidelines and be subject to approval and conditions of the Design Review Committee.
- J. There shall be absolutely no burning of garbage or hazardous materials whatsoever.

Mill Creek owners must abide by Flathead County Fire Safety Guidelines. These Guidelines may be found at [www.co.flathead.mt.us/frdo](http://www.co.flathead.mt.us/frdo)

Notwithstanding anything contained in this Section 3.24, neither Mill Creek Homeowners' Association nor the Board of Directors assume any liability whatsoever for any damage of any kind caused by any fires or burning in Mill Creek. Any Mill Creek owner securing permission shall remain responsible for all damage and shall hold the Association and its Board of Directors harmless from all claims including attorney fee incurred in defense of a claim.



c. A new section is created as Article III, Section 3.37 which reads:

**3.37 Aggregation or Consolidation of Lots**

- A. No Phase I Single Family Residence Lots may be partitioned, subdivided or aggregated from any other parcel or property or combined with any other Phase I Single Family Residence Lot, Phase II Townhouse Residence Lot or other parcel of property
- B. Subject to the provisions of Article III, Section 3.40 below, two existing Phase II townhouse lots may be combined to create one Phase II townhouse lot and three Phase II townhouse lots may be combined to create two Phase II townhouse lots.

d. A new section is created as Article III, Section 3.38 which reads:

Except as part of a permitted aggregation or combination of lots, no portion of any Phase I Townhouse Lot may be partitioned, subdivided or separated from any other part thereof.

e. A new section is created as Article III, Section 3.39 which reads:

Subject to the provisions of Article III, Section 3.40 below, a Phase II townhouse lot may be relocated provided lot size is not increased and it is approved by the Board of Directors. Any move must comply with local regulations governing the same.

f. A new section is created as Article III, Section 3.40 which reads:

Phase II Townhouse Lots may be aggregated, combined or moved upon the following

- A. An application by the lot owner(s) of the lots being aggregated, combined or moved, hereafter "applicant," to the Board of Directors of Mill Creek Homeowners Association, hereafter "Board," with the Board in its sole discretion approving the application. The Board may require applicant to:
  - 1) comply with the Mill Creek Documents and
  - 2) comply with requirements necessary to preserve any easements reserved with respect to contiguous Lots upon replatting.
- B. Should the Board fail to deny or approve the applicant's request within 10 business days of receipt, the request shall be deemed approved. Any determination by the Board will be in writing and completed within said 10 business days.
- C. The Design Review Committee shall not have authority over aggregation or consolidation of lots, but retains its authority over the structures erected thereupon.
- D. Lot aggregation or consolidation will not be permitted for any lot that already has a residence constructed or under construction
- E. All costs of the aggregation or consolidation shall be borne by the applicant including reimbursing the Board for any expenses incurred by Mill Creek Homeowners Association in reviewing the application.
- F. At the time of application, the applicant shall have paid for the entire calendar year



all dues to the Mill Creek Homeowners Association and if not the application will be denied.

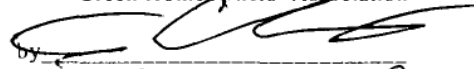
G. Only after the Board has approved the application may the Applicant seek governmental approval, but thereafter applicant shall make application to the appropriate governmental authority, and secure approval by all necessary governmental authorities and satisfaction of any and all corresponding applicable governmental requirements.

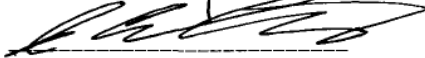
H. Once the number of lots in Mill Creek Phase I and Phase II is reduced to a total of 98 lots, no further consolidation or aggregation will be approved or allowed.

I. Furthermore, only triplex lots, being only lots 44-46, 49-54, 58-60 and 95-100, may be consolidated once the number of lots in Mill Creek Phase I and Phase II is reduced to a total of 98 plus one third of the number of triplex lots that do not have a residence which is constructed or under construction or have not already been aggregated or consolidated.

By our signatures set forth below, we, the Undersigned pursuant to Article 9.2 of the Declarations of Covenants, Conditions and Restrictions of Mill Creek 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.

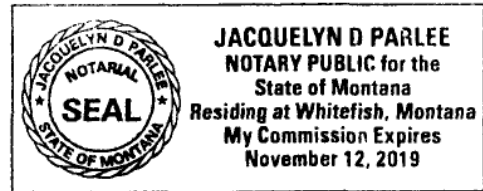
Mill Creek Homeowners' Association

by   
print name and office below Tim Calaway President of the Board

Attest:   
print name and office below Geoff Calaway VP of the Board  
State of Montana

County of Flathead

On this 16th day of December, 2015, personally appeared before me Tim Calaway and Geoff Calaway, the President (office) and Vice President (office) of Mill Creek Homeowners' Association and acknowledged to me that they both executed the forgoing document on behalf of Mill Creek Homeowners' Association.



Print Notary Name: Jacquelyn D Parlee  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_