

**DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS**

(with Amendment 1)

for

MILL CREEK VILLAGE PUD

RECITALS

WHEREAS, Mill Creek Village, LLC, a Utah limited liability company (“MCV” or “Declarant”) is the owner of certain real property located in Grand County, Utah described as the Mill Creek Village PUD (“Mill Creek Village”), and more particularly described in the Final Plat recorded in the real property records of Grand County.

WHEREAS, Mill Creek Village is comprised of twenty-two (22) residential Lots (“Lots”), six (6) of which may be developed as Twin-Home Lots.

WHEREAS, by the execution of this Declaration of Covenants, Conditions and Restrictions (the “Declaration”), MCV desires to maintain and develop Mill Creek Village as a highly desirable residential area.

WHEREAS, the covenants contained in this Declaration are imposed for the mutual benefit of all Lot Owners and Residents of Mill Creek Village, and may be amended from time to time as provided herein.

NOW THEREFORE, MCV, being the owner of Mill Creek Village, heretofore described, situated in Grand County, Utah, hereby makes the following Declaration containing covenants, conditions, and restrictions, which shall attach to Mill Creek Village, and to every Lot and the Common Space and any other land contained in Mill Creek Village, and that they shall constitute binding covenants running with the land.

ARTICLE 1

VISION AND PURPOSE OF PROJECT

It is the purpose of MCV to develop an infill parcel of land within the City of Moab limits into a neighborhood which provides lots for families and individuals from varied economic backgrounds who are encouraged to build environmentally sensitive and energy efficient homes, and will preserve open space as habitat as well as for use by the community.

ARTICLE 2 DEFINITIONS

1. “Accessory Dwelling Unit” or “ADU” means an ancillary building on a Lot used for residential purposes, as further defined by the City of Moab’s Land Use Code.
2. “Accessory Structure” means any ancillary building on a Lot that is enclosed on more than one side.
3. “Allocated Interests” means the Common Expenses liability and the votes in the Association allocated to each Lot, as further described in Section 5.2.
4. “Assessment” means all common expense assessments, insurance assessments, utility assessments, and any other expense levied to Lots pursuant to this Declaration or the Utah Common Interest Ownership Act, including interest, late fees, attorney fees, fines, and costs.
5. “Association” means the Mill Creek Village Homeowners’ Association, Inc., the entity formed for the governance of Mill Creek Village and the administration and enforcement of this Declaration and Rules and Regulations adopted by the Association.
6. “Bylaws” mean the Bylaws of the Association.
7. “Code” means the City of Moab’s Land Use Code, as amended.
8. “Common Elements” mean any personal and real property owned and managed by the Association, including without limitation Dream Drive, Parcel A, Parcel B, the Detention Pond, and the Sewer System. Any residential irrigation system served by shares of water in the Moab Irrigation Company shall be private, owned and managed by the Association, and constitute a Common Element.
9. “Common Expenses” means and refers to all expenditures made and liabilities incurred by or on behalf of the Association, together with any allocation by the Association to reserves, including those expenses incurred to manage, maintain, and repair the Sewer System and Detention Pond.
10. “Common Space” means the Common Space shown on the Plat, including Parcel A, Parcel B (Detention Pond), Utility Easements, Drainage and Pedestrian Paths, Trail Easements, and Dream Drive.
11. “Declaration” means this document, as the same may be hereafter amended or supplemented.
12. “Design Review Committee” or “DRC” means the committee of the Association appointed to consult or review and approve individual house plans for proposed homes in Mill Creek

Village.

13. “Detention Pond” shall mean the drainage pond located on Parcel B, owned and managed by the Association.

14. “Dwelling Unit” shall mean any plumbed residential unit, which includes a Single Family Residence, Twin Home, and ADU.

15. “Executive Board” or “Board” means three (3) of the Members elected by the Association pursuant to the Bylaws.

16. “Governing Documents” means the Articles of Incorporation, Bylaws, Policies and Procedures, and Rules and Regulations of the Association and this Declaration, as amended.

17. “Lot” means a building lot within Mill Creek Village.

18. “Lot Owner” or “Owner” means the owner of a Lot in Mill Creek Village. A Member is also a Lot Owner.

19. “Member” means a Lot Owner within Mill Creek Village.

20. “Mill Creek Village” means the Mill Creek Village PUD, a residential planned unit development approved by the City of Moab and more particularly described in the Plat.

21. “MCV” means Mill Creek Village, LLC, the developer of Mill Creek Village and Declarant herein.

22. “Moab City” and “City of Moab” means the City of Moab and its City Council and/or Boards and Commissions, and/or their staff having jurisdiction and authority over a matter. Moab City and City of Moab may be used interchangeably herein.

23. “Plat” means the the Final Plat for the Mill Creek Village, as amended.

24. “Residence” means a dwelling unit on a Lot.

25. “Resident” means those who live in Mill Creek Village, who may be a Lot Owner or a Tenant.

26. “Rules and Regulations” means the rules and regulations, if any, adopted and distributed to the Members.

27. "Sewer System" shall mean the low-pressure sewer system and its appurtenant facilities, including sewer main lines and laterals, main valves, the flushing connection and combination air release station, and air vacuum relief valve, which Sewer System is owned and managed by the Association. The Sewer System shall run under and through Dream Drive and Powerhouse Lane up to the boundary shut-off and check valve located on each Lot boundary line. The Sewer System does not include, and the Association is not responsible for, the service lines and laterals, grinder pumps, valves, or their appurtenant facilities located on or under each Lot and servicing only the Dwelling Units thereon.

28. "Single Family Lot" means the following sixteen (16) Lots on which development is limited to a single family Residence: Lots 1 through 8, 10, and 12 through 18.

29. "Single Family Residence" means the primary Dwelling Unit on a Single Family Lot.

30. "Tenants" mean those persons who rent from Lot Owners. A Tenant is also a Resident.

31. "Twin Home" shall mean a two (2) family residence with a common wall. A Twin Home need not be identical in design. The expense of the maintenance, repair and replacement of any common wall of a Twin Home shall be shared equally by the two (2) owners of the Twin Home.

32. "Twin Home Lot" means the following six (6) lots on which twin-homes may be built: Lots 9A and 9B, 11A and 11B, and 19A and 19B. A Twin Home Lot may allow for the construction of Twin Homes but may also be used for single family homes.

SUPPLEMENTAL DEFINITIONS MAY BE CONTAINED IN THE ASSOCIATION ARTICLES OF INCORPORATION, BYLAWS AND RULES AND REGULATIONS.

**ARTICLE 3
DESCRIPTION OF PROJECT**

1. Description of Project. Mill Creek Village is a twenty-two (22) lot residential subdivision with Common Space owned by the Association as shown and depicted on the Plat. As more particularly described in Subsections 2.24 and 2.27, sixteen (16) of the Lots are Single Family Lots and six (6) of the Lots are Twin Home Lots.

2. Description of Lots. The identification of each Lot is shown on the Plat. Every contract for sale of a Lot, or every other legal instrument affecting title to a Lot, such as a deed, lease, security interest, or will, shall legally describe the Lot as follows:

Lot_____, Mill Creek Village PUD, Phase ____, according to the Declaration of Covenants, Conditions, and Restrictions of Mill Creek Village, recorded in the real property records of Grand County on_____, at Reception No._____, and the Final Plat, Phase ____, recorded in the real property records of Grand County on _____, at Reception No._____.

Said reference to the Declaration and Plat shall be deemed to include any supplement or amendment thereto, without specific reference. Such description shall be construed to describe the Lot, and to incorporate all rights incident to ownership of a Lot, and all limitations on such ownership as described herein.

3. Owners' Easements of Enjoyment. Every Owner, including the Owner's family, tenants, and guests, shall have a right and easement of enjoyment in and to any Common Space, which easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

a. the right of the Association to promulgate and publish Policies and Procedures, and Rules and Regulations, with which each Owner and their tenants, invitees, licensees and guests shall strictly comply;

b. the right of the Association to suspend the voting rights and after Notice and Hearing, the right to use any Common Space, during any period of violation of any other provision of the Governing Documents, whichever is greater;

c. the right, power, and authority of the Association to grant any easement, right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting any Common Space for any purpose consistent with the intent of this Declaration; and

d. the right of the Association to close or limit the use of any Common Space while maintaining, repairing and making replacements in any Common Space.

ARTICLE 4 USE STANDARDS

MCV intends, by this Declaration, to ensure quiet enjoyment, comfort, and respect for all Lot Owners and Residents. MCV also desires to preserve the Association's Common Space for recreation, solitude and gathering.

1. Residential Lots:

a. *Residential Use Only*. The Lots shall be used for residential purposes only, subject to Section 4.1(e), below, and only as permitted by the applicable ordinances of the City of Moab.

- i. No temporary structures, trailers, tents, garages or any other outbuildings, unless permitted through the City of Moab as an Accessory Dwelling Unit, shall be used for residential purposes on any Lot, except on a temporary basis during construction of a residential dwelling as allowed by the City of Moab and for a period not exceeding twelve (12) months.

b. *Maintenance of Property.* Each Lot and the improvements erected thereon shall be kept and maintained in a proper, neat and orderly manner and in good repair by the Lot Owner and Residents thereof; and shall be used and enjoyed in a manner that promotes common sense and respect for other Lot Owners and Residents. No trash, ashes, garbage, rubbish, debris or other refuse shall be thrown, dumped or allowed to accumulate on the Lots. Each Owner shall provide suitable receptacles for the temporary storage and collection of refuse. All such receptacles shall be screened from the public view and protected from wind and animals. Each Lot Owner shall be solely responsible for the maintenance of such Lot Owner's Lot and its landscaping and other improvements in accordance with the Governing Documents.

c. *Leasing.* Each Lot Owner shall have the right to lease such Lot Owner's Lot, provided such lease is in writing and expressly subject to this Declaration and the Association's Rules and Regulations. Minimum lease period shall be in accordance with and as permitted by the Moab City and shall be for no less than a ninety (90) day period. A Lot Owner who leases their Lot shall provide a copy of said Lease to the Association no less than fifteen (15) days prior to Lease execution. Short term rentals of any kind including but not limited to VRBO, AirBnB, Homeaway, Vacation Rentals.com, Execustay.com, etc. and including early Lease cancellation refunds are strictly prohibited. Advertising said Lot on such short term rental websites or on social media constitutes a direct violation of the Declaration. The Lease agreement will state that Lessee shall abide by all terms of the Declaration and all of the Association's Rules and Regulations. The Association reserves the right to assess additional fees to the Lessor should the Association incur costs resulting from Lease of Lot Owner's Lot.

d. *Home Business.* The pursuit of a trade, business, or profession within Residences in Mill Creek Village shall be permitted, so long as all activity takes place within the Residence thereon; the use is clearly secondary to the residential use of the premises; the use does not cause excessive traffic, disruption, odor, noise or nuisance, to be determined in the sole discretion of the Association; and the use is in compliance with the Code, this Declaration, and the Association's Rules and Regulations, if any.

e. *On-street parking.* On-street parking is prohibited for all unregistered vehicles and all RVs, camper, and utility trailers, which shall be parked in a screened or enclosed carport, shed, or garage on the Owner's Lot.

f. *Lighting.* Exterior lighting shall be installed and operated in a manner as to prevent undue glare or reflection affecting adjacent lots and to minimize night lighting of the sky.

g. *Landscaping.* Any major landscaping renovations and/or the removal of any tree 6" in diameter or larger must be approved by the Design Review Committee. No invasive plants shall be planted. A combination of low water, native plants and/or edible landscapes is encouraged.

h. *Walls and Fencing.* Vegetation is encouraged over walls and fencing to define borders and create screening. Walls and fencing shall not be constructed of chain link, vinyl or reflective material. Corrugated metal may be used if rusted. Non-solid, plastic mesh or polypropylene deer-proof fencing (such as Cintoflex) may be used around food gardens as needed. Deer-proof

fencing shall be subject to the same restrictions as other fencing and may not extend past the front of the house or garage.

i. *Accessory Structures.* If permitted by the Code, Lot Owners may build an Accessory Structure(s) so long as 1) all Accessory Structures use exterior materials to visually and architecturally blend with the main house; and 2) all Accessory Structures are of the same or lesser in height than the main house on a Lot.

j. *Animals.* No animal shall be tethered outside regularly, and all pets shall have regular access to the inside of their owner's home. Dogs at large are prohibited. Pitbulls and other fighting dogs are prohibited. Cows, horses, and roosters shall not be kept in Mill Creek Village.

k. *Signs.* No billboards, signs or other advertising devices of any nature shall be erected, placed, maintained or permitted, provided that this restriction shall not be construed to prevent appropriate name and address signs and signs that advertise property for sale insofar as it is necessary to promote the sale and development of such properties, or temporary yard sale signs. Political campaign signs must be removed within two days following the election. Signs must not exceed eight (8) square feet in overall size and must be less than five (5) feet overall height.

l. *Fireworks and Firearms.* No fireworks or firearms of any kind may be discharged at any time within the Mill Creek Village.

m. *Noise.* A home occupation shall not generate excessive loud and/or raucous noise including but not limited to radios, stereos, car stereos, musical instruments, party activities, diesel engines, car horns or yard equipment that substantially and unreasonably interferes with the use and enjoyment of adjacent or nearby property or interferes with public peace and comfort. Limited short term maintenance and repair activities which produce noise are prohibited before 8:00 am or after 9:00 pm daily.

2. *Common Space:* All Common Space is hereby dedicated to, and owned by, the Association for the use and benefit of the Lot Owners. The Association shall be obligated to maintain all Common Space. Further subdivision, improvement, development, or construction (other than necessary maintenance or repair of roads, utilities, and pedestrian ways) is prohibited within or upon the Common Space. The City of Moab shall be authorized, but not required, to enforce compliance with this Section 2.

a. *Subdivision.* The Common Space may not be further subdivided into parcels for building homes or otherwise.

b. *Improvement.* Without the prior approval of the Association, no vegetation, landscaping, structure or other improvement within the Common Space shall be removed, constructed, enlarged, demolished or altered.

c. *Motorized Vehicles.* Motorized vehicles are allowed in the Common Space areas only as

needed for maintenance and repair of infrastructure or other improvements and only after express authorization from the Association.

d. *Camping.* No camping is allowed within the Common Space.

e. *Dogs.* Dogs must be on a leash or under sight and voice control when enjoying the Common Space. No animals may be housed or kept in the Common Space.

f. *Clearing and Brush Removal.* That portion of Common Space Parcel A located on the North side of Mill Creek shall remain its natural state. The Association, or any Member thereof, shall not clear, remove, or cut any trees, brush, or other vegetation, on any land owned by it on the North side of Mill Creek.

ARTICLE 5 THE ASSOCIATION

1. Membership. As further explained in the Bylaws of the Association, every record Owner of a fee interest in any Lot subject to this Declaration shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Each Lot, regardless of the number of dwelling units, including ADUs, built upon the Lot, shall be allocated one (1) vote which shall be cast as a single vote and shall not be subject to fractional voting. No votes allocated to a Lot owned by the Association may be cast.

2. Allocated Interests. The Allocated Interests, the Common Expenses liability and the votes in the Association allocated to each Lot, are based on the total number of votes in the Association. Each Lot shall have an Allocated Interest of 1/22 regardless of the number of dwelling units built thereon.

3. Association Management of Common Space. The Association shall own, operate, maintain, and repair the Common Space, as defined in Subsection 2.9, for the common benefit of Owners and Residents within Mill Creek Village, and in a condition which will minimize soil erosion, fire, and weed infestation. The Association shall landscape, restore, or revegetate with weed free seed and mulch all excavations, fills and other construction which disturb the existing vegetation. Further, the Association shall not intentionally introduce weeds or invasive plants to the Common Space, and shall control noxious weeds and invasive plants on said property in accordance with federal, state and local laws and regulations. The Association shall, to the extent possible, eradicate weeds and invasive plants with non-mechanical means. Further, the Association may create Rules and Regulations regarding management of the Common Space, as necessary.

ARTICLE 6 EASEMENTS RESERVED BY PLAT

1. Access, Recreation, and Irrigation Easement. The Owner of Parcel 2, Power House Subdivision, Addition 2, his guests, invitees, licensees, successors, and assigns, shall have a perpetual easement along the north side of Mill Creek for access, recreation, and irrigation, together with the right to install, maintain, operate, repair, monitor, and improve water and irrigation lines necessary to serve Parcel 2, Power House Subdivision, Addition 2.
2. Association's Easement of Access and Use. The Association shall have a perpetual easement of access and use over and across each Lot as necessary to the performance of obligations in this Declaration; provided, however, that this easement and use thereof shall not unreasonably interfere with or impair the use of any Improvements constructed on any Lot and shall be exercised only after reasonable notice to the Owner of the Lot.
3. General Emergency Easements. The Association, and all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing Mill Creek Village, shall have a nonexclusive easement for ingress and egress to enter upon any part of Mill Creek Village in the performance of their duties.
4. 10' Utility Easements. The Association shall have a ten-foot (10') wide, perpetual, non-exclusive easement for public utilities, including water, sewer, gas, electrical, internet, cable, and telephone utilities, over, across, and through each Lot's boundary with Dream Drive and Powerhouse Lane, together with the Association's right of ingress and egress to install, construct, operate, maintain, and operate, repair said public utilities. The Association may assign this right to the City of Moab and other regulatory authorities as necessary for installation of utilities and inspections of the same from time to time.
5. 10' Trail Easement. The Association shall have a ten-foot (10') wide, perpetual, non-exclusive trail easement for pedestrian access over, across, and through Lots 12 and 13, together with the right of non-motorized ingress and egress.
6. 15' Drainage Easement. The Association shall have a fifteen-foot (15') wide perpetual, non-exclusive for drainage and pedestrian access over, across, and through Lot 19-B, together with the right of ingress and egress to construct, maintain, and repair natural drainage channels, as depicted on the Plat. Access shall be restricted to non-motorized use except in the event of an emergency and as required to manage natural drainage channels.
7. Sign Easement. The Association shall have a sign easement over, across and through Lot 1 with the right of ingress and egress to install, construct, repair, and maintain a Mill Creek Village sign, as depicted as "Sign Esmt." on the Plat.

ARTICLE 7 ASSESSMENTS

1. Creation of Association Lien. The Association shall charge Assessments on an annual basis against all Lots, which Assessments shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year. The Association may also charge Assessments for future

anticipated costs and expenses, such as upgrades to the Sewer System. The budget shall be submitted to the Lot Owners for ratification pursuant to the Utah Common Interest Ownership Act and as set forth in the Bylaws, as amended. Assessments, apportioned based on the Allocated Interests, shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board. The omission or failure of the Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Lot Owners from their obligation to pay.

2. Personal Obligation to Pay Assessments for Common Expenses. Each Lot, and each Lot Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association Assessments for Common Expenses and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges became due.

3. Unpaid Assessments constitute Lien. Assessments for Common Expenses as imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of the Assessments by waiver of the use or enjoyment of the Common Areas or by abandonment the Lot against which the Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Board is not properly exercising its duties and powers under this Declaration.

4. Apportionment of Common Expenses. Except as provided in this Declaration, all Assessments, including Special Assessments, for Common Expenses shall be assessed against all Lots in accordance with the formula for liability for the Common Expenses as set forth in Section 5.2.

5. Special Assessments. In addition to the annual Assessments authorized above, the Association may levy, in any Assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Areas, including fixtures and personal property related thereto, or for any other purpose deemed necessary and appropriate by the Board; provided that any such Assessment shall have the assent of the majority vote of the Owners at a properly noticed meeting.

6. Default Assessments. All monetary fines assessed against an Owner pursuant to the Governing Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Governing Documents, shall be a Default Assessment and shall become a Lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the

amount and due date of such Default Assessment shall be submitted to the Owner subject to such Assessment at least ten (10) days after the due date.

7. Lot Specific Assessments. The Association shall have the right to add to any Owner's Assessment, those amounts expended by the Association for the benefit of any individual Lot and the Owner thereof, including, but not limited to: a) fines, improvement, repair, replacement and maintenance of a Lot that an Owner has failed to perform (after notice as provided in this Declaration); b) improvement, repair, replacement and maintenance to the Common Area caused by the negligent or willful acts of any Owner, his guests, employees, licensees, lessees or invitees; and c) all other expenditures or charges which the Board, in its sole discretion, chooses to allocate to a Lot.

8. Effect of Non-Payment of Assessment. Any Assessment, charge or fee provided for in his Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date hereof, as established by the Board, shall bear interest at the rate of ten percent (10%) per annum from its due date. In addition, the Association may assess a reasonable late charge thereon as determined by the Board, which late fee shall be no less than fifty dollars (\$50) to reimburse the Association for its administrative burden. If an Owner fails to pay his Sewer Assessment within thirty (30) days of the due date thereof, the Association may, at its sole option, shut off the Owner's service line to the Association's main sewer line. Further, the Association may file a Notice of Lien against the Lot and bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also foreclose on its lien against such Owner's Lot. An action at law or in equity by the Association against a Lot Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at a public auction or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Utah Common Interest Ownership Act.

9. Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer

of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Owner from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

ARTICLE 8 ARCHITECTURAL REVIEW

1. Design Review Committee. The Association shall create a Design Review Committee (“DRC”) prior to construction of any Improvements on any Lots in Mill Creek Village, which Committee shall be comprised of at least three (3) Members of the Association. At such time as there are less than three Lot Owners other than Declarant, Declarant shall serve as the Design Review Committee. The DRC shall review and approve construction and site development plans for each Improvement in Mill Creek Village. The DRC shall approve said plans by a majority vote of its members.

2. Design Approval. Prior to construction of any Improvement, the DRC shall review construction plans to ensure compliance with this Declaration and any other design review requirements contained in the Governing Documents. The Lot Owner shall submit to the DRC three (3) complete sets of construction and site development plans and specifications along with a complete list of all exterior materials and colors to be used. The DRC may request any additional information, plans, specifications, and reports it deems necessary to evaluate the development proposal throughout the approval and construction process. In the event the DRC fails to take any action within thirty (30) days after its receipt of three (3) copies of the complete construction and site development plans, specifications, materials, colors and any requested additional information have been submitted to it, then all of said submitted plans shall be deemed to be approved. The DRC shall not unreasonably disapprove the architectural plans.

3. Design Criteria. In addition to any design review requirements imposed on each Owner by the DRC, when constructing any Improvements, landscaping, and alterations to Improvements on a Lot or landscaping of a Lot:

a. *Conformity and Harmony with Landscape*. Each Owner shall endeavor to protect the conformity and harmony of exterior appearance of structures with neighboring structures and natural surroundings as to external design, materials, siting, height, topography, grade, and finished ground elevation, and the preservation of the aesthetic beauty of the surrounding landscape.

b. *Preservation of Viewsheds*. Each Lot Owner shall protect the seclusion of his home site from other home sites as reasonably possible. To this end, each Owner shall be considerate in planning, not building directly in front of a neighbor’s view so as to protect the property view line and promote neighborly conduct so as not to unreasonably interfere with or disturb the use, enjoyment and access to any other occupant of the Lots. To this end, each Improvement shall be

located on each Lot so as to (1) preserve the use, enjoyment and access – including view planes - of every other occupant of Mill Creek Village; (2) keep traffic flow amiable for construction, road construction, entering and exiting the property; and (3) promote neighborly conduct.

c. *Preservation of Natural Drainage.* In addition, no structure shall be placed or located on any Lot in such a manner that will obstruct, divert or otherwise alter the natural water drainage courses and patterns. Likewise no landscaping or changes to the existing terrain shall be made which shall obstruct, divert or otherwise alter such drainage.

d. *Building Height.* Building heights are limited to seventeen (17) feet for one-story and twenty-two feet (22) for two-stories. Building heights shall be measured from the lowest adjacent finish grade to highest peak of roof.

e. *Solar access.* Improvements shall be planned and designed in a manner which allows access to direct sunlight to all parcels within Mill Creek Village.

4. Variances. The DRC may, at its sole option, elect to grant a Variance to any of the terms and conditions described in Article 8.3. Design Criteria, or in the DRC Architectural Guidelines. Requests for Variance shall be submitted in writing and shall clearly describe the reason for the Variance request. Variances granted by the DRC shall adhere to Moab City Codes and are subject to final approval by the Executive Board. Variance approval for a Lot Owner's specified condition shall not abrogate the requirement for other Lots.

ARTICLE 9 SEWER SYSTEM AND DETENTION POND

1. Sewer System. The Association shall own and manage a residential low-pressure sewer system and its appurtenant facilities including sewer main lines and laterals, main valves, the flushing connection and combination air release station, and air vacuum relief valve for the exclusive benefit of the Lots (“Sewer System”). The Sewer System shall run under and through Dream Drive and Powerhouse Lane up to the boundary shut-off and check valve located on each Lot boundary line, as more particularly shown in the attached *Exhibit A*. The Sewer System does not include service lines and laterals, grinder pumps, valves, or their appurtenant facilities located on or under each Lot and servicing only the Dwelling Units thereon, as more particularly shown in the attached *Exhibit B*. Each Owner shall bear the cost of design, installation, permitting, maintenance, and repair of individual service lines and laterals, grinder pumps, valves, and their appurtenant facilities which are located on and serve the Owner’s Lot.

a. *Construction and Installation.* Developer shall design, construct, install, and permit, as necessary, the Sewer System to the Lot Utility Easement boundary, which includes the installation of valves on each Lot’s service line. Once the Sewer System is operational, and before the sale of any Lot in Mill Creek Village, Developer shall convey the Sewer System to the Association.

b. *Responsibility of the Association.* Once the Sewer System is operational, the Association shall bear the costs to maintain, operate, and repair the Sewer System up to the Association’s

boundary shut-off and check valve on the Lot boundary line. Each Owner shall bear the cost of maintenance and repair of individual service lines and laterals, grinder pumps, valves, and their appurtenant facilities which are located on and serve the Owner's Lot.

c. Sewer Assessment. If necessary, the Association shall levy a Sewer Assessment for the cost to repair, replace, or upgrade the Sewer System to each Owner based on the number of Dwelling Units per Lot. Regular maintenance of the Sewer System should require only an annual flushing operation; however, the Association may also levy assessments for anticipated future upgrades. Thus, to calculate the Sewer Assessment, the Association shall divide the total number of Dwelling Units in Mill Creek Village by the number of Dwelling Units per Lot.

d. Responsibility of Owners. Each Owner shall bear the costs to design, permit, install, maintain, operate, and repair the service lines and appurtenant facilities, which include discharge lines, a grinder pump and cover, and a control panel, which are located on and serve the Owner's Lot. The Owner shall be responsible for designing and permitting the appropriate grinder pump make and model during application for a building permit to the City of Moab.

2. Detention Pond. The Association shall own and manage for drainage the detention pond located on Parcel B ("Detention Pond").

a. Construction and Installation. Developer shall design, construct, install, and permit, as necessary, the Detention Pond. Once the Detention Pond is operational, and before the sale of any Lot in Mill Creek Village, Developer shall convey the Detention Pond to the Association.

b. Responsibility of the Association. Once the Detention Pond is operational, the Association shall bear the costs to maintain, operate, and repair the Detention Pond, the costs of which the Association shall assess to each Owner in accordance with the formula for liability for the Common Expenses as set forth in Section 5.2. Regular maintenance will require periodic removal of sediment; however, the Association may also levy assessments for emergency repair and maintenance, if necessary.

ARTICLE 10 MISCELLANEOUS

1. Severability. Each of the covenants, conditions and resolutions contained in this Declaration shall be deemed independent and separate and the invalidation of any one shall not affect the validity and continued effect of any other.

2. Paragraph Headings. The paragraph headings in this instrument are for convenience only and shall not be considered in construing the restrictions, covenants and conditions contained herein.

3. Singular and Plural. Wherever utilized herein, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular. Furthermore, wherever utilized herein, the masculine shall be deemed to include the feminine, and the feminine shall be deemed to include the masculine.

4. Waiver. Waiver or failure to enforce any restriction, covenant or condition of this Declaration of Covenants shall not operate as a waiver of any other restriction, covenant, or condition.

5. Amendment. This Declaration shall be amended only upon the affirmative vote of two-thirds (2/3) of the Members of the Association less any Members who are deemed ineligible to vote by reason of loss of voting rights resulting from Association action.

6. Binding Effect. The provisions of this Declaration, as amended, shall be deemed to be covenants running with the land benefiting and burdening all of the Property. Additionally, this Declaration shall be binding upon, and inures to the benefit of, MCV, its successors and assigns.

7. Technical Amendments. MCV hereby reserves and is granted the right and power to record technical amendments to this Declaration for the purposes of correcting spelling, grammar, dates or as is otherwise necessary to clarify the meaning of the provisions of this Declaration.

8. Compliance with Provisions. Lot Owners and Residents shall comply strictly with the Governing Documents, and contracts of the Association. Failure to comply with any provision of the Governing Documents shall be grounds for the imposition of fines (as established by the Executive Board) for violations and/or for an action to recover sums due for damages or injunctive relief or both, together with reasonable attorneys' fees, court costs, and injunction bond premiums and shall be maintainable by the Executive Board on behalf of the Owners, or by any Owner, individually.

9. Release and Indemnity. By accepting a deed to a Lot (whether or not it is expressly stated in the deed), each Lot Owner agrees to indemnify and hold harmless MCV and its members, agents, officers, employees, contractors, successors and assigns of, from and against any and all losses, damages, costs, expenses or liabilities related to or arising in connection with, any claims, actions, causes of action, liability, suits or demands of or by the Lot Owner or its family members or Residents for any disturbance, inconvenience, noise, nuisance, personal injury, sickness, death, property damage or other risk resulting from, or associated with, the development, construction, use, maintenance and operation of Mill Creek Village, including without limitation, any of the professional services, activities, occurrences, conditions, state of facts, events or situations related thereto.

10. Rules and Regulations. The Association may adopt reasonable Rules and Regulations of uniform applicability ("Rules and Regulations") relating to Architectural and Construction Standards and such other matters as shall be deemed necessary or appropriate from time to time. As necessary, the initial Rules and Regulations shall be adopted by the Association's First Executive Board, pursuant to Article 5 of the Bylaws. Said Rules and Regulations may be amended by the affirmative vote of two-thirds (2/3) of the Members of the Association. Rules and Regulations shall not be recorded. However, and subject to the Bylaws, it shall be the responsibility of each Member of the Association to be aware of the current Rules and Regulations and to abide by the same.

11. Dispute Resolution. All claims and disputes arising under or relating to this Agreement are to be settled by binding arbitration in Moab, Utah or another location mutually agreeable to the parties. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator experienced in Property Owner Association Covenants, Conditions and Restrictions and shall include a written record of the arbitration hearing. The parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction.

IN WITNESS WHEREOF, MCV approves this Declaration effective as of the 9th day of July 2012.

MILL CREEK VILLAGE, LLC

By: _____
Andrew A. Riley, Member

STATE OF UTAH)
) ss.
COUNTY OF GRAND)

The foregoing Declaration was acknowledged before me this 9th day of July, 2012, by Andrew A. Riley, Member of Mill Creek Village, LLC.

Witness my hand and official seal.
