

# Recommendations for Amendments to the MCSHA Declaration of Covenants, Conditions, and Restrictions Summer, 2016

Compiled by Susie Kirch and Bill Zeller with Greg Einhorn

## PREFACE TO RECITALS P. 1

### **CURRENT LANGUAGE:**

This Declaration of Covenants, Conditions, and Restrictions for of Tract  
No. 02-1006 for Mill Creek, is made on this \_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_, by MILL CREEK LLC, a California limited liability company.

### **RECOMMENDED CHANGE:**

*Change "MILL CREEK LLC, a California limited liability company" to Mill  
Creek Summer Homeowners Association.*

### **RATIONALE:**

The Mill Creek LLC is now defunct.

### **OPINION OF COUNSEL:**

Counsel agrees. "The LLC should be replaced with the HOA.

## RECITALS

### CURRENT LANGUAGE:

B. The Declarant is the owner of that certain real property described as lots 1 through 25, inclusive, 28 through 84, inclusive, 86 through 98, inclusive, 100 through 102, inclusive, 108 through 109, inclusive, 118 through 136, inclusive, and "LOT A" through "LOT E," inclusive, all of which are shown, designated, and described on that certain map entitled "TEHAMA COUNTY FINAL TRACT MAP # 02-1006 that was filed for Record in the office of the County Recorder of Tehama County, California, on May 18, 2005, in Book 2708 of Maps at Page 264, as Document No 010960. It is the intent of the Declarant, in order to promote the efficient preservation of the values and amenities in and on the Property, to establish a common plan ("Common Plan") which is defined by the provisions that are set forth in the Governing Documents, for the subdivision, improvement, and development of the Property together with any additional real property that may be annexed to the Development and become subject to the provisions of the Governing Documents and desires to secure the harmonious and uniform development of the Property in accordance with the Common Plan.

### RECOMMENDED CHANGE:

*Delete current language. Substitute with:*

"Mill Creek LLC was the owner of that certain real property described as lots 1 through 25, inclusive, 28 through 84, inclusive, 86 through 98, inclusive, 100 through 102, inclusive, 108 through 109, inclusive, 118 through 136, inclusive, and "LOT A" through "LOT E," inclusive, all of which are shown, designated, and described on that certain map entitled "TEHAMA COUNTY FINAL TRACT MAP # 02-1006 that was filed for Record in the office of the County Recorder of Tehama County, California, on May 18, 2005, in Book 2708 of Maps at Page 264, as Document No 010960.

Mill Creek LLC, is no longer in existence and has been cancelled as an entity, without successors or assigns. Enforcement of this Declaration of Covenants, Conditions and Restrictions is and continues to be within the authority and direction of the Mill Creek Summer Home Owners Association, California Secretary of State Entity Number: C0600096.

When this Declaration was originally recorded, Mill Creek LLC was defined as the Declarant. To the extent the term "Declarant is set forth herein in reference to any right, power or duty of this Declaration hereunder, such right, power or duty is to be exercised by the Mill Creek Summer Home Owners Association for the benefit of the Mill Creek Summer Home Owners Association Members, as provided in section 5.1.

It is the intent of the Association, in order to promote the efficient preservation of the values and amenities in and on the Property, to establish a common plan ("Common Plan") which is defined by the provisions that are set forth in the Governing Documents, for the subdivision, improvement, and development of the Property together with any additional real property that may be annexed to the Development and become subject to the provisions of the Governing Documents and desires to secure the harmonious and uniform development of the Property in accordance with the Common Plan.

**RATIONALE:**

Counsel comments: “Because there is no longer a “Declarant,” the “Declarant” language may largely be removed as superfluous.

**OPINION OF COUNSEL:**

Counsel recommends this new language.

**ARTICLE II DEFINITIONS**

**2.16 DECLARANT:**

**CURRENT LANGUAGE:**

DECLARANT – “Declarant” shall mean and refer to Mill Creek, LLC, a California limited liability company, and its successors and assigns, if such successors and assigns are assigned to the rights of the Declarant pursuant to the provisions of Section 3.11 of the Declaration, entitled, “FUTURE CONSTRUCTION AND ASSIGNMENT OF DECLARANT’S RIGHTS,” or if such successor or assign is a Mortgagee acquiring Declarant’s interest in the Development by foreclosure or deed in lieu of foreclosure.

**RECOMMENDED CHANGE:**

**DECLARANT:** Delete the current language and replace it with the following: “When this Declaration was originally recorded, Mill Creek LLC was defined as the Declarant. To the extent the term “Declarant is set forth herein in reference to any right, power or duty of this Declaration hereunder, such right, power or duty is to be exercised by the Mill Creek Summer Home Owners Association for the benefit of the Mill Creek Summer Home Owners Association Members, as provided in section 5.1.

**RATIONALE:**

The term “Declarant” is now obsolete. This retains “right, power, and duty” to the Mill Creek Summer Home Owners Association.

**OPINION OF COUNSEL:**

Counsel recommends this new language:

## Article III PROPERTY RIGHTS, RIGHTS OF ENJOYMENT AND EASEMENTS

### 3.4 RIGHTS OF ENTRY OF USE

#### **CURRENT LANGUAGE:**

3.4.A.1 The right of the Declarant or its designee(s) to enter upon any portion of the Development to construct Improvements to the Property, to make repairs and remedy construction defects. Such entry shall not interfere with the use or occupancy of any occupied Lot unless authorized by its Owner, which authorization shall not be unreasonably withheld.

#### **RECOMMENDED CHANGE:**

Delete.

#### **RATIONALE:**

“Declarant” is obsolete language. Rights of Association are covered in subsequent language in 3.4.

#### **OPINION OF COUNSEL:**

Counsel recommends deletion.

### 3.6 POWER TO GRANT EASEMENTS

#### **CURRENT LANGUAGE:**

3.6.A. The Declarant or the Board shall have the power as well as the right to grant and convey....

#### **RECOMMENDED CHANGE:**

Delete the phrase “Declarant or the.”

#### **RATIONALE:**

“Declarant” is obsolete language.

#### **OPINION OF COUNSEL:**

Counsel recommends deletion.

**CURRENT LANGUAGE:**

3.6.B. Each Owner, in accepting a deed to a Lot, expressly consents to such easements and rights-of-way and authorizes and appoints the Board and the Declarant, as long as the Declarant owns one (1) or more Lots, as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easement or rights-of-way.

**RECOMMENDED CHANGE:**

Delete “and the Declarant, as long as the Declarant owns one (1) or more Lots.”.

**RATIONALE:**

Declarant is obsolete language.

**OPINION OF COUNSEL:**

Counsel advises to delete the phrase, “and the Declarant, as long as the Declarant owns one (1) or more Lots,”. Counsel further advises: “If the Association takes title through foreclosure, it would then be an owner of the lot.”

**3.9 PUBLIC SERVICE EASEMENT**

**CURRENT LANGUAGE:**

A. There shall be and the Declarant hereby reserves and covenants for itself as well as all of the future Owners, easements for public services, including, but not limited to, the right of the police and fire departments to enter upon any part of the Development for the purpose of carrying out their official duties.

**RECOMMENDED CHANGE:**

Delete “Declarant” and substitute “Association.”

**RATIONALE:**

“Declarant” is obsolete language.

**OPINION OF COUNSEL:**

Counsel recommends deletion and substituted word.

### **3.10 DELEGATION OF USE.**

#### **CURRENT LANGUAGE:**

3.C. Each Owner shall notify the Secretary of the Association of the names of any Contract Buyer or Tenants of such Owner's Lot. Each Owner, Contract Buyer, or Tenant shall also notify the Secretary of the Association of the names of all persons to whom such Owner, Contract Buyer, or Tenant has delegated any right of use and enjoyment and the relationship that each such person bears to the Owner, Contract Buyer, or Tenant, whichever is applicable.

#### **RECOMMENDED CHANGE:**

Delete.

#### **RATIONALE:**

The requirement to file with the Secretary of the Association the names and relationships of Owner, Contract Buyer, or Tenant using a property is cumbersome, invasive, and would require unnecessary work for the Association. Enforcement would rely solely on the property owners themselves. CC&R sections 3.10.D.e and f and 4.10.B.3, provide remedies for possible abuse.

#### **OPINION OF COUNSEL:**

Counsel agrees.

### **3.11 FUTURE CONSTRUCTION AND ASSIGNMENT OF DECLARANT'S RIGHTS**

#### **CURRENT LANGUAGE:**

3.11 A. Nothing in the provisions of the Governing Documents shall limit the right of the Declarant to complete the construction of Improvements that are located in the Common Area as well as to any Lots that are owned by the Declarant, to alter such Improvements and/or Lots or to construct any additional Improvements that the Declarant might deem advisable, before completion and sale of the entire Development.

B. Any rights given to the Declarant by the provisions of the Governing Documents may be assigned by the Declarant to any successor of all or any part of the Declarant's interest in the Development, by an express assignment that has been incorporated into a Recorded deed that transfers any such interest or portion thereof, as the case may be, to a successor or to a Mortgagee who acquires all of the Declarant's interest in the Development by foreclosure, by deed in lieu of foreclosure, or by assignment in lieu of foreclosure.

C. The provisions of this Section 3.11 may not be amended without the written consent of the Declarant until all of the Lots in the Development owned by the Declarant have been conveyed to Owners other than the Declarant.

#### **RECOMMENDED CHANGE:**

Delete.

#### **RATIONALE:**

This section pertains to the "Declarant." This is obsolete language.

#### **OPINION OF COUNSEL:**

Counsel recommends deletion.

### 3.12 REQUIREMENTS TO COMPLY WITH DUE PROCESS

#### **CURRENT LANGUAGE:**

This is a lengthy section with minor recommended changes; it can be found on page 15 of the CC&Rs.

#### **RECOMMENDED CHANGE:**

*Delete “and/or the Declarant” and “or the Declarant.” Make minor grammatical changes caused by eliminating the reference to both the Board and the Declarant. Section A, Line 3 change “exercise” to “exercises.” Section A Line 4 delete “as the case may be.” Section A.1.a. delete “as the case may be.” Section A.1.d. delete “,whichever is appropriate.” Section A.3. delete “,as the case may be,” and “whichever is applicable.” Section A.4. delete “as the case may be.”.*

#### **RATIONALE:**

“Declarant” is obsolete language. Minor changes are needed in grammatical structure.

#### **OPINION OF COUNSEL:**

Counsel recommends change.

### Article IV COVENANTS AND USE RESTRICTIONS Sections 4.3; 4.10, and 4.12

#### **CURRENT LANGUAGE:**

During the preceding amendment process of changing the CC&Rs these sections were italicized to indicate they were new changes.

#### **RECOMMENDED CHANGE:**

*Change font from italics to normal.*

#### **RATIONALE:**

This would bring the text into conformity with the rest of the document and eliminate possible confusion.

#### **OPINION OF COUNSEL:**

Counsel agrees.



#### **4.23 TEMPORARY LIVING QUARTERS.**

##### **CURRENT LANGUAGE:**

B. However, trailers or temporary structures for use incidental to the initial construction of the Development or the initial sales of Lots may be maintained within the Development, provided that such use does not unreasonably interfere with any Owner's use of the Common Area.

##### **RECOMMENDED CHANGE:**

Delete current language and substitute: "Trailers or temporary structures may be used for a limited time when major construction is occurring on a Lot. Any such use is subject to conditions set by the Architectural Review Committee and must be approved by the Architectural Review Committee."

##### **RATIONALE:**

The original language refers to "initial construction of the Development or the initial sales of Lots." It is reasonable to have a temporary living area during a major remodel or construction.

##### **OPINION OF COUNSEL:**

Counsel agrees.

#### **4.23 TEMPORARY LIVING QUARTERS.**

##### **CURRENT LANGUAGE:**

B. However, trailers or temporary structures for use incidental to the initial construction of the Development or the initial sales of Lots may be maintained within the Development, provided that such use does not unreasonably interfere with any Owner's use of the Common Area.

1. Such trailers or structures will be promptly removed upon completion of all initial construction and all initial sales.

##### **RECOMMENDED CHANGE:**

B.1. Such trailers or temporary structures will be promptly removed upon completion of all construction or at the direction of the Architectural Review Board.

##### **RATIONALE:**

The original language deals with "initial" construction and sales. This reference should be retained in part B to cover any future development, unlikely as it might be. However, B.1. should be amended to give control of any trailers or temporary structures solely to the Architectural Review Committee.

##### **OPINION OF COUNSEL:**

Counsel Agrees.

**Article V: POWERS AND DUTIES OF THE ASSOCIATION**

**5.6 RIGHT TO IMPOSE SANCTIONS FOR A VIOLATION OF A PROVISION OF THE GOVERNING DOCUMENTS.**

**CURRENT LANGUAGE:**

5.6.D The Board may take more than one (1) of the foregoing enforcement actions against any Violation or threatened Violation of a Provision of the Governing Documents, provided that any suspension of use privileges shall not exceed thirty (30) days, unless such suspension is for delinquent Assessments and a monetary penalty shall not exceed fifty dollars (\$50.00), excluding late charges imposed for delinquent payments, for any Violation of a Provision of the Governing Documents.

**RECOMMENDED CHANGE:**

*...and a monetary penalty shall not exceed five-hundred (\$500.00)...*

**RATIONALE:**

The limit of \$50 for a fine does not put enough leverage on an owner to comply, and, is by statute prohibited from being able to be placed as a lien on a property. This has become a problem for the Board in reasonably enforcing the CC&Rs. The Board already has the power in Article V.6.F. of the CC&Rs to establish a Penalty Schedule. By creating and disseminating a reasonable Penalty Schedule, the monetary penalty can be raised.

**OPINION OF COUNSEL:**

Counsel agrees the Board has the authority but when asked about raising the limit to \$500 commented: "Assuming no conflict with the conditions of development, the monetary penalty may be increased. However, an increase from \$50 to \$500 could render the fine unenforceable as arbitrary and capricious."

Counsel further advises: "I think the Association could increase the maximum, provided that it was done on a graduated basis and is dependent upon the type of violation.

Consider this as a suggestion:

**PENALTY SCHEDULE**

1st Violation.....warning or fine up to \$50  
2nd Violation (same offense).....\$100 to \$200  
3rd Violation (same offense).....\$200 to \$300  
Additional Violations (same offense).....up to \$400  
Safety Violation.....warning or fine up to \$500  
Continuing Violation.....daily fines until cured  
Suspension.....common area privileges may also be suspended  
The schedule could be adopted as a change in an operating rule. Civil Code §4355 and §4360." If the Board accepts this form of a penalty schedule, then the CC&R section can be amended to change \$50 to \$500.

**5.13 PREPARATION AND DISTRIBUTION OF FINANCIAL STATEMENTS, REPORTS, AND COPIES OF THE GOVERNING DOCUMENTS.**

**CURRENT LANGUAGE:**

- 5.13.A.1. A balance sheet rendering as of an accounting date that is the last day of the month closest in time to six (6) months from the date of the closing of the<sup>st</sup> first (1 ) sale of a Lot in the Development to a purchaser other than the Declarant, hereinafter referred to as the “Accounting Date,” and an operating statement for the period commencing with the date of the closing of such first<sup>st</sup> (1 ) sale and ending on the Accounting Date.
- a. Such operating statement shall include a schedule of the total Assessments received and/or receivable which are identified by the Lot number and name of the Owner against which and whom such Assessments have been levied.
  - b. Copies of such balance sheet and operating statements shall be distributed to each Owner and any Eligible Mortgage Holder.

**RECOMMENDED CHANGE:**

*Delete.*

**RATIONALE:**

This is outdated, obsolete language referring to the beginning of the LLC.

**OPINION OF COUNSEL:**

Counsel agrees.

**CURRENT LANGUAGE:**

5.13.A.2. A Budget for each Fiscal Year shall be distributed not less than forty-five (45) days nor more than sixty (60) days before the beginning of such Fiscal Year consisting of at least the following:

- a. The estimated revenues and Common Expenses on an accrual basis;
- b. A summary of the Association's reserves based upon the most recent review or study conducted under the provisions of California Civil Code section 1365.5, or compatible superseding statutes, which summary shall be printed in boldface type and include all of the following:
  - 1) The current estimated replacement cost, estimated remaining life, and estimated useful life of each Major Component.
  - (2) As of the end of the Fiscal Year for which the study is prepared:
    - (i) The current Reserve Account Requirements necessary to repair, replace, restore, or maintain the Major Components;
    - (ii) The current amount of Reserve Funds;
    - (iii) If applicable, the amount of funds received from either a compensatory damage award or settlement to the Association from any person, for injuries to property, real or personal, arising out of construction or design defects and the expenditure or disposition of any such funds, including the amounts disbursed for the direct and indirect costs of repair of any construction or design defects. These amounts shall be Recorded at the end of the Fiscal Year for which the study is prepared, as separate line items under Reserve Funds, pursuant to the provisions of Subsection 5.13A.2.b.(2)(ii). In lieu of complying with the foregoing requirements, if the Association is obligated to issue a review of its financial statement, the Board may include with such review a statement containing all of the information required by the provisions of this Subsection 5.13A.2.b.(2)(iii); and
    - (iv). The percentage of the amount in 5.13A.2.b.(1) above, that the amount in 5.13A.2.b.(2) above, represents;.
- c. A statement as to whether the Board has determined or anticipates that the levy of one (1) or more Special Assessments will be required to repair, replace, or restore any Major Component or to provide adequate Reserve Funds for them;
- d. A general statement addressing the procedures used for the calculation establishing Reserve Funds;
- e. A general statement regarding the Members' right to have copies of the minutes of meetings of the Board and how and when these minutes may be obtained; and
- f. Instead of distributing the Budget, the Board may elect to distribute a summary of the Budget to all of the Members with a written notice that the Budget is available at the business office of the Association or at another suitable location within the boundaries of the Development and that copies will be provided upon request at the expense of the Association. Such notice must be in at least ten (10) point boldface type and must appear on the front page of the summary of the Budget. Any Member who requests a copy of the Budget shall be provided a copy by the Board, which shall be sent by first-class United States mail at the Association's expense, within five (5) days of the date the Board received such request.

**RECOMMENDED CHANGE:**

Delete and replace with:

5.13.A.1. A Statement of Activity summarizing by category the financial dealings of the Association for the preceding fiscal year shall be presented to the Members at the Annual Meeting.

5.13.A.2. A current Statement of Financial Position of Association finances shall be presented to the Members at the Annual Meeting.

5.13.A.3 A Proposed Operating Budget for the ensuing fiscal year shall be presented to the Members for approval at the Annual Meeting.

**RATIONALE:**

The recommended changes accurately reflect current and past practice of the Association without unnecessary requirements.

**OPINION OF COUNSEL:**

Counsel agrees.

**CURRENT LANGUAGE:**

**5.13.A.3, 5, 6, 7, 8, 9, 10**

3. Any summary of the Reserve Funds that have been disseminated pursuant to the provisions of Subsection 5.13A.2.b, above, shall not be admissible as evidence to show improper financial management of the Association.

5. A statement of the Association's policies and practices in enforcing its remedies against Owners for delinquent, Regular or Special Assessments including, but not limited to, the Recording and foreclosing of liens against a delinquent Owner's Lot(s). A copy of such statement shall be distributed to each Owner and any Eligible Mortgage Holder.

6. A copy of the Governing Documents and the statement regarding delinquent Assessments that is described in the provisions of Section 7.11 of the Declaration, entitled, "DELIVERY OF REQUESTED ITEMS," shall be provided to any Owner within ten (10) days of the mailing or delivery of a written request to the Board for same from such Owner. The Board may impose a fee to provide such materials, which fee shall not exceed the Association's reasonable cost in preparing and reproducing such materials.

7. A summary of the provisions of California Civil Code section 1354, or any compatible superseding statutes, which shall include the following language: "Failure by any Member of the Association to comply with the pre-filing requirements of the provisions of section 1354 of the California Civil Code may result in the loss of your rights to sue the Association or another Member of the Association regarding enforcement of the Governing Documents."

8. A summary of the Association's property, general liability, earthquake, and flood insurance policies, which are, for the purposes of the provisions of this Section 5.13, individually and collectively hereinafter referred to as the "Policy" or "Policies," shall be distributed to the Members within sixty (60) days preceding the beginning of the Fiscal Year. Such summary shall include the following information on such Policies:

- a. Name of the insurer;
- b. Type of insurance;
- c. Policy limits of the insurance; and
- d. Amount of deductibles, if any.

9. The Board, as soon as reasonably practical, shall notify the Members by first-class mail if any of the Policies have been cancelled and have not been immediately renewed or restored or if there is a significant change, such as a deduction in coverage or limits or an increase in the deductible for any Policy. If the Association receives any notice of non-renewal of a Policy, the Board shall immediately notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

10. To the extent that the information required to be disclosed by the provisions of this Section 5.13 is specified in the provisions of the Policy declaration page, the Board may meet its disclosure obligations by making copies of that page and distributing such copies to all its Members.

**RECOMMENDED CHANGE:**

Delete.

**RATIONALE:**

These sections are lengthy, confusing, and obsolete.

**OPINION OF COUNSEL:**

Counsel agrees. "All of the sections you reference may be deleted. The Civil Code section cited has been repealed."

**CURRENT LANGUAGE:**

5.13.A.4 An annual report, which for the purposes of the provisions of this Subsection 5.13A.4., shall be hereinafter referred to as the “Annual Report,” consisting of the Association’s balance sheet rendered as of the last day of the preceding Fiscal Year; the Association’s operating statement for such Fiscal Year and a statement of the changes in the Association’s financial position for the Fiscal Year. A copy of the Annual Report shall be distributed to each Owner and any Eligible Mortgage Holder within one hundred twenty (120) days after the close of such Fiscal Year. In any Fiscal Year in which the gross income of the Association exceeds seventy-five thousand dollars (\$75,000.00), either a copy of a review of the Annual Report for such Fiscal Year that has been prepared by a licensee of the California State Board of Accountancy in accordance with the generally accepted accounting principles, or a certificate which has been acknowledged by an authorized officer of the Association that the report was prepared from the books and records of the Association, without independent audit or review, shall be distributed with the Annual Report for such Fiscal Year.

**RECOMMENDED CHANGE:**

Delete. Replace with language included in **RECOMMENDED CHANGE in 5.13.A.1 above.**

**RATIONALE:**

This current language is overly complicated and can be better, and more simply, expressed with recommended change.

**OPINION OF COUNSEL:**

Counsel agrees



**CURRENT LANGUAGE:**

5.13.A.11. The summary required in the provisions of these Subsections 5.13A.7. through 5.13A.9, inclusive, above, shall contain, in at least ten (10) point boldface type, the following statement:

“This summary of the Association’s policies of insurance provides only certain information as required by the provisions of subdivision (e) of section 1365 of the Civil Code and should not be considered a substitute for the complete policy and conditions contained in the actual policies of insurance. Any Member, upon request and reasonable notice, may review the Association’s insurance policies and, upon request and payment of reasonable duplication charges, may obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association’s policies of insurance may not cover your property, including personal property, or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association Members should consult with their individual insurance brokers or agents for appropriate additional coverage.”

**RECOMMENDED CHANGE:**

Delete.

**RATIONALE:**

This section references Subsections 5.13.A.7. through 5.13.A.9 which are being deleted.

**OPINION OF COUNSEL:**

Counsel agrees.

## **5.16. LIMITATIONS ON THE AUTHORITY OF THE BOARD OR THE ASSOCIATION**

### **5.16.A. LIMITATIONS ON THE AUTHORITY OF THE BOARD OR THE ASSOCIATION**

#### **CURRENT LANGUAGE:**

A. The Board shall not take any of the following actions, unless it has the assent of a simple majority of the Members other than the Declarant, who constitute a quorum consisting of fifty-one percent (51%) of the voting power of the Association residing in Members other than the Declarant. Such assent shall have been granted by a vote at a meeting of the Association or, after complying with the provisions of Corporations Code section 7513, or any compatible superseding statutes, by a written ballot without a meeting:

#### **RECOMMENDED CHANGE:**

*Delete the phrase "other than the Declarant".*

#### **RATIONALE:**

"Declarant" is obsolete language. Minor changes are needed in grammatical structure.

#### **OPINION OF COUNSEL:**

Counsel recommends change.

**5.16.D. LIMITATIONS ON THE AUTHORITY OF THE BOARD OR THE ASSOCIATION.**

**CURRENT LANGUAGE:**

D. If the proposed Significant Legal Proceeding is against the Declarant, any other developer, or any contractor, subcontractor, architect, engineer, or materials supplier, who is or has been, as the case may be, engaged by or on behalf of the Declarant and/or any other developer, for the design or alleged damage of or to, as the case may be, the Development or any elements thereof, the notice shall also specify each of the following, unless not required by reason of the provisions of Civil Code sections 1375(g)(1)(E) or 1375(g)(2)(D), or any compatible superseding statutes:

**RECOMMENDED CHANGE:**

Delete "the Declarant" and substitute "Mill Creek, LLC" in line 1 and line 4.

**RATIONALE:**

Counsel advises: The reason here is that this section provides a remedy by the HOA against entities, including Mill Creek, LLC. While the LLC is defunct, and therefore is not a potential target, I suggest that it remain in place, together with contractors, subcontractors, etc. As indicated, while the statute of limitations has likely run here, I would like to preserve this remedy.

**OPINION OF COUNSEL:**

Counsel recommends change.

**5.16.D.a.4.d).e). and f).**

**CURRENT LANGUAGE:**

d. Lease agreements for equipment that do not exceed five (5) years in duration, provided, the Declarant does not have a direct or indirect ownership interest of ten percent (10%) or more in any lessor under such an agreement;

e. Agreements for cable television services and equipment or satellite dish television services and equipment, not exceeding five (5) years in duration, provided, the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more;

f. Agreements for the sale or lease of burglar alarm and/or fire alarm equipment, installation, and services that do not exceed five (5) years in duration, provided, the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more; and

**RECOMMENDED CHANGE:**

Delete the following:

(in d.) “provided, the Declarant does not have a direct or indirect ownership interest of ten percent (10%) or more in any lessor under such an agreement;”

(in e.) “provided, the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more;”

(in f.) “provided, the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more; and”

**RATIONALE:**

“Declarant“ is obsolete language. Changes are needed for grammatical structure and clarity.

**OPINION OF COUNSEL:**

Counsel recommends change.

**CURRENT LANGUAGE:**

*5.16.G. If the proposed Significant Legal Proceeding is brought by the Association or any Owner or any combination of same, against the Declarant, other developer or any contractor, subcontractor, architect, engineer, or materials supplier, who is or who has been, as the case may be, engaged by or on behalf of, the Declarant and/or any other developer, for the design or alleged damage of or to, as the case may be, the Development or any elements thereof, the Association and/or any Owner or any combination thereof, hereinafter referred to as the "Complaining Party," shall send the Declarant and/or any other developer, contractor, subcontractor, architect, engineer, or materials supplier, as the case may be, hereinafter referred to as the "Responding Party," a thirty (30) day written notice of the nature of the dispute, the facts giving rise to its claim and its, his, or her intent to initiate litigation, hereinafter referred to as the "Litigation Notice."*

**RECOMMENDED CHANGE:**

Replace "Declarant" with "Mill Creek, LLC."

**RATIONALE:**

Counsel advises: The reason here is that this section provides a remedy by the HOA against entities, including Mill Creek, LLC. While the LLC is defunct, and therefore is not a potential target, I suggest that it remain in place, together with contractors, subcontractors, etc. As indicated, while the statute of limitations has likely run here, I would like to preserve this remedy.

**OPINION OF COUNSEL:**

Replace "Declarant" with "Mill Creek LLC."

**ARTICLE VI PROVISIONS DECLARING MEMBERSHIP AND VOTING RIGHTS**

**6.1 MEMBERSHIP APPERTURNATE TO OWNERSHIP**

**CURRENT LANGUAGE:**

A. Each Owner, including the Declarant, shall be a Member.

**RECOMMENDED CHANGE:**

Delete ",including the Declarant,".

**RATIONALE:**

"Declarant" is obsolete language.

**OPINION OF COUNSEL:**

Counsel recommends change.

## ARTICLE VII: ASSESSMENTS

### 7.1.A ASSESSMENTS AGREEMENT TO PAY

#### CURRENT LANGUAGE:

A. The Declarant covenants and agrees for each Lot owned by it that is expressly made subject to Assessments in compliance with the provisions of the Governing Documents, and each Owner by the acceptance of a deed that conveys an ownership interest in title to a Lot, covenants and agrees for each Lot in which such an interest is held, to pay to the Association any Regular and/or Special Assessments levied in accordance with the provisions of the Governing Documents, and to allow the Board to enforce any Assessment lien established in accordance with such provisions by nonjudicial proceedings under a power of sale or by another means that may be authorized by law.

#### RECOMMENDED CHANGE:

Delete the following: “The Declarant covenants and agrees for each Lot owned by it that is expressly made subject to Assessments in compliance with the provisions of the Governing Documents, and”. Capitalize “Each”.

#### RATIONALE:

“Declarant” is obsolete language.

#### OPINION OF COUNSEL:

Counsel recommends change.

### 7.6 SPECIAL ASSESSMENTS - PURPOSE OF AN PROCEDURE FOR LEVYING

#### CURRENT LANGUAGE:

7.6.A. Subject to the restrictions described in the provisions of Subsections 7.6F and 7.6G., below, the Board may levy a Special Assessment if, for any particular Fiscal Year in which the Board, in its sole discretion, determines that the for any reason . . .

#### RECOMMENDED CHANGE:

Remove the word “the” from “in its sole discretion, determines that the for any reason....”

#### RATIONALE:

This appears to be a typo.

#### OPINION OF COUNSEL:

Counsel agrees.

### **7.8.1 ASSESSMENT PERIOD.**

#### **CURRENT LANGUAGE:**

7.8.1.A. Unless the Board determines otherwise, the Association's Fiscal Year shall be a calendar year and the Regular Assessment period shall commence on January 1 of each year and shall terminate on December 31 of that year, provided that the first (1st) Regular Assessment period for all of the Lots in the Development shall commence on the first (1st) day of the calendar month following the date of the closing of the first (1st) conveyance of a Lot in the Development to an Owner other than the Declarant and shall terminate on December 31 of that year.

#### **RECOMMENDED CHANGE:**

Delete: January 1 of each year and shall terminate on December 31 of that year, provided that the first (1st) Regular Assessment period for all of the Lots in the Development shall commence on the first (1st) day of the calendar month following the date of the closing of the first (1st) conveyance of a Lot in the Development to an Owner other than the Declarant and shall terminate on December 31 of that year.

Following "...the Regular Assessment period shall commence on" add "July 1 of each year and shall terminate on June 30 of the following year."

#### **RATIONALE:**

This will reflect the actual assessment period that has been in place.

#### **OPINION OF COUNSEL:**

Counsel agrees.

### **7.10 DUE DATE, LATE CHARGES, AND INTEREST.**

#### **CURRENT LANGUAGE:**

7.10.A. At least ten (10) days prior to the commencement of any Regular or Special Assessment, the Board shall give each Owner who is subject to such Assessment, a written notice of the amount of the Assessment and that is about to commence and the due date, or due dates if paid installments, as well as the amount of any such installment.

#### **RECOMMENDED CHANGE:**

In the phrase "...of the Assessment and that is about to commence...", delete the word "and."

#### **RATIONALE:**

This is a typographical error.

#### **OPINION OF COUNSEL:**

Counsel agrees.

## **7.12 ASSOCIATION'S POWER TO COLLECT AND ENFORCE ASSESSMENT LIEN.**

### **CURRENT LANGUAGE:**

Sections: 7.12; 7.13; 7.14; 7.16; 7.17

### **RECOMMENDED CHANGE:**

*Change font to match text.*

### **RATIONALE:**

These sections were printed in *italics* to make clear that this was newly added language.

### **OPINION OF COUNSEL:**

Counsel agrees. Counsel also advises: "To track the history on this, a copy with the italics should be maintained...."

## **ARTICLE VIII MUTUAL WATER COMPANY**

### **8.1 MUTUAL WATER COMPANY MEMBERSHIP**

#### **CURRENT LANGUAGE:**

8.1 A. The Mill Creek/Lassen Mutual Water Company ("Mutual Water Company") has been formed under the general non-profit corporate law of the State of California, for the purpose of operating a water system to serve the development.

#### **RECOMMENDED CHANGE:**

*Remove the "(".*

#### **RATIONALE:**

This appears to be a typo.

#### **OPINION OF COUNSEL:**

Counsel agrees.



## ARTICLE IX INSURANCE

### 9.1 LIABILITY INSURANCE

**CURRENT LANGUAGE:**

A. The Board shall obtain and maintain a comprehensive public liability insurance policy insuring the Association, any manager, the Declarant and the Owners and occupants of Lots as well as their respective family members, Tenants, and Invitees together with the agents and employees of each, ...

**RECOMMENDED CHANGE:**

Delete “the Association.”

**RATIONALE:**

“Declarant” is obsolete language.

**OPINION OF COUNSEL:**

Counsel recommends change.

### 9.2 FIRE AND CASUALTY INSURANCE

**CURRENT LANGUAGE:**

2.) The policy shall name as insured, the Association, the Owners and the Declarant, as long as the Declarant is the Owner of any Lot, and all Mortgagees as their respective interests may appear and may contain a loss payable endorsement in favor of the Trustee described in the provisions of Section 9.3 of the Declaration, entitled, “PROVISION APPOINTING TRUSTEE.”

**RECOMMENDED CHANGE:**

Delete “,the Owners and the Declarant, as long as the Declarant is the Owner of any Lot.”

**RATIONALE:**

“Declarant” is obsolete language.

**OPINION OF COUNSEL:**

Counsel recommends change.

## Article XI PROTECTION OF MORTGAGES

### 11.2 SUBORDINATION.

#### **CURRENT LANGUAGE:**

*11.2. D. On the foreclosure of any such Mortgage, the liens for any Assessments or the installments thereof that have accrued up to the date such foreclosure is commenced, shall be subordinate to the lien of such Mortgage, with the foreclosure-purchaser taking title to the Lot free of any lien for Assessments or installments that have accrued up to the time of such foreclosure sale.*

*E. In taking title to any such Lot the foreclosure-purchaser thereof shall be obligated to pay only those Assessments or other charges levied or assessed by the Association against such Lot and/or the Owner of same that became due or payable on or after such foreclosure-purchaser acquired title to such Lot.*

#### **RECOMMENDED CHANGE:**

Delete.

#### **RATIONALE:**

These sections are confusing and limiting. See OPINION OF COUNSEL.

#### **OPINION OF COUNSEL:**

Counsel agrees. "I would strike D and E as they appear to impair the rights of the HOA liens."

### 11.15 REQUIREMENTS OF THE VETERANS ADMINISTRATION.

#### **CURRENT LANGUAGE:**

A. So long as there is a Class B Membership pursuant to the provisions of Section 6.3 of the Declaration, entitled, "TWO CLASS SYSTEM; WEIGHTED VOTES," the following actions require approval of the Veterans Administration if there are loans in the Development covered by Mortgages insured by them:

1. Annexation of additional properties;
2. Dedication of the Common Area;
3. Mortgage or sale of the Common Area;
4. Levying of any Special Assessments that will affect any Lot that is encumbered by any such Mortgage; and
5. Material amendment of the Declaration.

#### **RECOMMENDED CHANGE:**

Delete.

#### **RATIONALE:**

The "Two Class System" of weighted votes has been eliminated from our CC&Rs. There is no need for this language to remain.

#### **OPINION OF COUNSEL:**

Counsel agrees.

**Article XII ARCHITECTURAL CONTROL**

**12.1. PROVISION FOR ARCHITECTURAL APPROVALS**

**CURRENT LANGUAGE:**

A. With the exception of any Improvements in the Development by or at the direction of the Declarant, no Improvement of any kind shall be commenced, erected or maintained within the Development, nor shall any exterior addition, change, or alteration be made to the exterior of any Residence until the plans and specifications showing the nature, color, kind, shape, height, including front, side and rear elevations, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Review Committee as to quality of workmanship and materials, harmony of external design and location in relation to the surrounding structures, setback lines, topography, and finish grade elevations.

**RECOMMENDED CHANGE:**

Delete "With the exception of any Improvements in the Development by or at the direction of the Declarant, n". Capitalize N.

**RATIONALE:**

Declarant is obsolete language.

**OPINION OF COUNSEL:**

Counsel recommends change.

**12.2 APPOINTMENT AND MAKEUP OF ARCHITECTURAL REVIEW COMMITTEE**

**CURRENT LANGUAGE:**

12.2.A. The Declarant shall appoint all of the original constituents of the Architectural Review Committee, which shall be not less than three (3) nor more than five (5) persons and any replacements for them.

**RECOMMENDED CHANGE:**

Delete 12.2.A. and substitute: The Board shall appoint not less than three (3) nor more than five (5) Members to serve on the Architectural Review Committee.

**RATIONALE:**

The current language is dated and unclear.

**OPINION OF COUNSEL:**

Counsel agrees.

**CURRENT LANGUAGE:**

12.2.B The appointees must be Members.

**RECOMMENDED CHANGE:**

Delete 12.2.B and substitute: Members of the Architectural Review Board serve at the pleasure of the Board.

**RATIONALE:**

The requirement that Members be appointed is contained in the new language for 12.2.A. The new language clarifies the term of service on the ARC.

**OPINION OF COUNSEL:**

Counsel agrees.

**CURRENT LANGUAGE:**

12.2.C. The number of persons initially appointed shall constitute the number of authorized members of the Architectural Review Committee, unless they are increased or decreased by the vote or written consent of the holders of at least fifty-one percent (51%) of the voting rights of the Members.

D. The initial appointees and any of their replacements shall hold office until the first (1st) anniversary of the original issuance of the Final Subdivision Public Report for the Development.

E. Thereafter, the Declarant may appoint a majority of the members of the Architectural Review Committee, and any of their replacements, until ninety percent (90%) of the Lots in the Development have been sold and deeds to them Recorded in favor of Owners, other than the Declarant, or until the fifth (5th) anniversary of the original issuance of the Final Subdivision Public Report for the Development, whichever is the first (1st) to occur.

F. After one (1) year from the date of the original issuance of the Final Subdivision Public Report, the Board shall have the power to appoint one (1) member of the Architectural Review Committee, whose power shall continue until ninety percent (90%) of the Lots have been sold and deeds to them Recorded in favor of Owners, other than the Declarant, or until the fifth (5th) anniversary of the issuance of the Final Subdivision Public Report, whichever is first (1st) to occur.

G. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Review Committee.

H. Any person appointed to the Architectural Review Committee by the Board must be a Member.

**RECOMMENDED CHANGE:**

Delete.

**RATIONALE:**

This is outdated language that is no longer applicable.

**OPINION OF COUNSEL:**

Counsel Agrees.

## **ARTICLE XIII AMENDMENT OF DECLARATION**

### **13.5.A. CONFORMING WITH THE MORTGAGEE REQUIREMENT PROVISIONS OF THE DECLARATION**

#### **CURRENT LANGUAGE:**

A. It is the intent of the Declarant that the provisions of the Governing Documents, together with the Development in general, shall now and in the future, meet all of the requirements necessary to purchase, guarantee, insure, or subsidize any Mortgage of a Lot by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration, and the Veterans Administration.

#### **RECOMMENDED CHANGE:**

Delete "Declarant" and substitute "Association".

#### **RATIONALE:**

"Declarant" is obsolete language.

#### **OPINION OF COUNSEL:**

Counsel recommends change.

### **13.6 LOT 1 OWNER'S APPROVAL REQUIRED FOR CERTAIN AMENDMENTS**

#### **CURRENT LANGUAGE:**

13.6.A; 13.6.A.10; 13.8; and 13.8.A

#### **RECOMMENDED CHANGE:**

Change font to match text.

#### **RATIONALE:**

These sections were printed in italics to make clear that this was newly added language.

#### **OPINION OF COUNSEL:**

Counsel agrees.

## 13.7 COUNTY APPROVAL FOR CERTAIN AMENDMENTS

### **CURRENT LANGUAGE:**

13.7 COUNTY APPROVAL REQUIRED FOR CERTAIN AMENDMENTS.

A. Notwithstanding any other provision of the Declaration, no addition, amendment, change, modification, or termination of the conditions, covenants and restrictions of the Declaration, which establish, provide for, regulate or relate to matters imposed on the Development by the Conditions of Approval for Tentative Tract Map No. 02-1006, shall be affective for any purpose until approved in writing by the County.

### **RECOMMENDED CHANGE:**

Change “shall be affective” to read “shall be effective.”

### **RATIONALE:**

This is a typo.

### **OPINION OF COUNSEL:**

Counsel agrees.

## ARTICLE XIV GENERAL PROVISIONS

### 14.10 NO REPRESENTATIONS OR WARRANTIES.

#### **CURRENT LANGUAGE:**

14.10.A. No representations or warranties of any kind, express or implied, have been given or made by the Declarant, or its agents or employees, in connection with the Property or any portion thereof, including, but not limited to, its physical condition, zoning, compliance with applicable laws, fitness for intended use or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes, or regulation thereof as a Common Interest Planned Development, except as specifically and expressly set forth in the provisions of the Governing Documents and/or as filed by the Declarant from time to time with the California Department of Real Estate.

#### **RECOMMENDED CHANGE:**

Delete.

#### **RATIONALE:**

This section is obsolete.

#### **OPINION OF COUNSEL:**

Counsel agrees.

**14.17 DISPUTE RESOLUTION.**

**CURRENT LANGUAGE:**

14.17

**RECOMMENDED CHANGE:**

*Change font to match text.*

**RATIONALE:**

These sections were printed in italics to make clear that this was newly added language.

**OPINION OF COUNSEL:**

Counsel agrees.