

2009-116231

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**Mill Creek Landing**  
**Amendments to Declaration of**  
**Covenants, Conditions and Restrictions**  
**Effective January 1<sup>st</sup>, 2010**

THE STATE OF TEXAS	x	KNOW ALL MEN BY THESE
COUNTY OF	x	PRESENTS:
MONTGOMERY	x	

WHEREAS, on August 30, 1979 MILL RIDGE, INC. (herein and therein referred to as "Developer") executed that certain Declaration of Covenants, Conditions and Restriction for Mill Creek Landing, Section One (hereinafter referred to as the "Original Restrictions"), filed for record in Volume 1152, Page 337, Deed Records of Montgomery County, Texas; and,

WHEREAS, the Developer adopted said Original Restriction for Mill Creek Landing, Section Two by instrument filed under Clerk's File No. 8257615, in the Real Property Records of Montgomery County, Texas; and,

WHEREAS, the Original Restrictions provide in Article VI, Paragraph 14 thereof that the Board of Directors of the Mill Creek Landing Homeowners' Association may upon majority vote on December 31, 1989, or on any 10 year anniversary thereof, change the Original Restrictions in whole or in part; and

WHEREAS, the Board of Directors for the Association did in fact amend the Original Restrictions effective December 21, 1999; and

WHEREAS, the Board of Directors for the Association desires and has voted that as of December 31, 2009 it shall further amend the Original Restrictions; and

WHEREAS, the Board of Directors for the Association has notified all Owners in said Mill Creek Landing Subdivision, Sections One, Two and Three;

NOW, THEREFORE, THE Board of Directors of the Mill Creek Landing Homeowners' Association hereby adopts, establishes and imposes upon the Subdivision known as Mill Creek Landing Subdivision the following reservations, restrictions, covenants and conditions applicable to the real property described as follows:

MILL CREEK LANDING, Section One, a subdivision in Montgomery County, Texas according to the map or plat thereof recorded in Cabinet C, Sheet or Page 47, of the Map Records of Montgomery County, Texas;

MILL CREEK LANDING, Section Two, a subdivision in Montgomery County, Texas according to map or plat thereof recorded in Cabinet D, Sheet or Page 84B and replatted in Cabinet E, Sheet or Page 6, Map Records of Montgomery County, Texas; and

MILL CREEK LANDING, Section Three, a subdivision in Montgomery County, Texas according to the map or plat thereof recorded in Cabinet D, Sheet or Page 83B, Map Records of Montgomery County, Texas.

## **ARTICLE 1**

### **Definitions**

#### **Section 1.**

"Association" shall mean and refer to the MILL CREEK LANDING HOMEOWNERS' ASSOCIATION, a Texas nonprofit corporation, to be formed as hereinafter provided.

#### **Section 2.**

"Owner" shall mean and refer to the record owner of a Lot in Mill Creek Landing, a recorded subdivision in Montgomery County, Texas, being out of and a part of the above described property.

#### **Section 3.**

"Developer" shall mean and refer to MILL RIDGE, INC., a Texas corporation.

#### **Section 4.**

"Lot" shall mean and refer to a lot out of and a part of the said MILL CREEK LANDING, a recorded subdivision in Montgomery County, Texas.

#### **Section 5.**

"Subdivision" shall mean and refer to MILL CREEK LANDING, a recorded subdivision located out of and a part of the above described property.

#### **Section 6.**

"Common Area" shall mean and refer to all real property (including the improvements thereon) within the Subdivision owned by the Association for the common use and enjoyment of all Owners as may be determined by the Association.

## **ARTICLE II**

### **Homeowners' Association**

Developer has, or will cause to be, organized under the laws of the State of Texas, as a non-profit corporation, a community service association under the name of the MILL CREEK LANDING HOMEOWNERS' ASSOCIATION, INC. (hereinafter sometimes referred to as the Association) which has the specific purpose of enforcing, collecting and receipting for the service charge hereinafter imposed upon the above described lots and for the purpose of managing, controlling and expending the funds derived there from and the membership in said Association shall be restricted to the record owners of lots in the aforesaid subdivision and such other members as shall be admitted from time to time by the lot owners in accordance with the charter and bylaws of the association including, but not limited to, the Developer and its successors and assigns, home builders, and investors who may become record owners of the lots in said Subdivision. Each such person or entity owning one or more lots therein shall be entitled to membership in the Association, subject to the bylaws and rules and regulations pertaining to membership which are legally established from time to time and, at a meeting of the membership where voting takes place, shall be entitled to one vote per lot.

## **ARTICLE 111**

### **Maintenance Assessment**

#### **Section 1 – Creation of the Lien and Personal Obligation of Assessments.**

The Developer hereby covenants, and each Owner of any Lot by acceptance of a Deed therefore subject to these Covenants, Conditions and Restrictions is deemed to covenant and agree to pay to the Association (1) annual assessments of charges, and (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as is hereinafter provided. The annual and special assessments, together with such interest thereon and cost of collection thereof, as is hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with such interest, cost and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation shall not pass to successors in title unless expressly assumed by such successors.

**Section 2 – Purpose of Assessments.**

The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the subdivision and for the improvement and maintenance of the common areas in the Subdivision. Such uses may include, but are not limited to, the cost to the Association to purchase, build, and maintain property with a community center, and other facilities and activities including, but not limited to, mowing grass along the road, caring for the roadsides and other services that the Board of Directors of the Association shall determine to be necessary or desirable to meet the primary purpose of the Association, including the establishment and maintenance of a reserve for repair, maintenance, taxes and other charges.

**Section 3 – Amount of Assessment.**

Until December 31, 2009 the maintenance assessment for each Lot shall be \$60.00 per year payable to the Association on or before the 15<sup>th</sup> day of January of the year for which the assessment is made. Subsequent to December 31<sup>st</sup>, 2009 the maintenance assessment shall be \$60.00 per year or such other amount as the Board of Directors of the Association shall, in accordance with the Association's bylaws, determine. Said bylaws limit any annual increase to 15% of the then existing assessment unless a greater increase is approved by a majority of voting Members at a duly called and constituted meeting of Members.

**Section 4 – Accrual of Assessment.**

The maintenance assessment chargeable to each Lot shall begin to accrue at the time that each respective Lot is sold by the Developer. The Developer, its successors or assigns shall not be liable for any uncollected maintenance fees and shall not be liable for the payment of maintenance fees on its unsold lots or any repossessed lots held by it. Written notice of the maintenance assessment shall be sent to each Lot owner.

**Section 5 – Quorum for Action by the Association.**

At a meeting of the members of the Association a quorum shall consist of no less than fifteen percent (15%) of the Lot owners represented either in person or by proxy. Subsequent to December 31<sup>st</sup>, 2009 said quorum may be amended by the Board of Directors of the Association to require that a greater percentage of Lot owners be represented at a meeting either in person or by proxy.

**Section 6 – Effect of Nonpayment of Assessments: Remedies of the Association.**

Assessments which are not paid on or before the due date are delinquent. If the assessment is not paid within thirty (30) days after the due date the assessment shall bear interest from the delinquency date at the rate of six percent (6%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay same or foreclose the lien against the property; interest, costs and reasonable attorney's fees on any such action shall be added to the amount of such assessment.

Each Owner, by acceptance of a deed to a Lot, hereby expressly vests in the MILL CREEK LANDING HOMEOWNERS' ASSOCIATION, INC. or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale for the benefit of all other Lot owners. The Association, acting on behalf of the Lot owners, shall have the power to bid in at foreclosure sale and to acquire and hold, lease, mortgage and convey the same; and to subrogate so much of its right to any such lien as may be necessary and expedient.

### **Section 7 – Subordination of the Lien to Mortgages.**

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages granted or created by the Owner of any lot to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a foreclosure under such purchase money or improvement mortgage or any proceedings in lieu of foreclosure thereof, shall extinguish the lien of such assessment as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

## **ARTICLE IV**

### **Use Restrictions**

- 1. Septic System** -- No cesspools shall be dug, used or maintained on any Lot and, once a residence is established upon a Lot, all toilets shall be connected to a properly functioning septic system approved and licensed by Montgomery County Environmental Health Services and shall remain so connected until such time as sanitary sewers are made available to the property by Montgomery County or some other duly constituted entity.
- 2. Surface Drainage** -- Surface drainage structures beneath private walks or driveways shall be restricted to culverts or bridges and they shall have a net drainage capacity sufficient to permit the free flow of water without creating backwater.
- 3. Structures and Uses** -- Lots shall be used solely for residential purposes. All dwellings erected thereupon shall be new, built-in-place structures that conform to requirements set forth elsewhere in these Restrictions. No unsightly outbuilding shall be constructed upon nor allowed to exist upon any Lot nor, other than as a short-lived temporary convenience, shall any trailer, camper or other wheeled device or vehicle other than operational and properly registered private motor vehicles be parked in obvious public view upon the Lot. Other than for the

occasional, temporary and short-lived convenience of guests or workmen, no wheeled device or vehicle of any kind shall be parked in or alongside a road, or in or over any part of a roadside drainage ditch or swale in Mill Creek Landing.

- 4. Use for Business or Temporary Dwelling Prohibited; Exception** -- No part of any dwelling or outbuilding existing upon any Lot shall be used for business purposes other than such business functions as a homeowner might ordinarily conduct out of public view in the privacy of the dwelling and which business functions do not draw traffic or attract attention to the Lot. Unless or until actual construction of the residence has commenced and is continuing on a daily bases no trailer, garage, barn or other outbuilding situated or erected on the property shall be used as a temporary residence. HOWEVER, regardless the provisions of this paragraph or any other provision in these Restrictions, a majority of the Board of Directors may designate a Lot purchased by the Association as a common area upon which a community building with appropriate amenities may be constructed.
- 5. Minimum Square Footage** – Residences erected upon any Lot herein after the first day of January, 2010, shall contain a minimum of 2,000 square feet of living space exclusive of porches and garages. No corrugated iron, roll siding, tar paper or similar material or composition will be used as an outside finishing material.
- 6. Approval of Construction Documents, etc.** --Plans for the residence, all outbuildings such as barns, garages, sheds and servant houses, and privacy fences to be constructed upon any Lot must be submitted to and approved by the Board of Directors before construction of any such structure or fence commences. This provision applies to original construction as well as to later exterior modifications of the residence and to outbuildings and privacy fences whenever constructed. A scale drawing that shows the location of any and all existing and proposed structures upon the Lot shall be included within the plans submitted to the Board of Directors. The exterior of residences and servant houses must be completed within six months of the commencement of construction. Outbuildings other than servant houses must be completed within three months. A trash receptacle of suitable size shall be in place on all construction sites from the commencement to the completion of construction.
- 7. Leash Requirement for Dogs and Restrictions Regarding Number and Types of Animals Permitted** --Except for participation in educational projects such as 4H and FFA, and then only for the time of participation, hogs, goats, chickens or other animals generally considered undesirable in a residential subdivision shall not be raised, bred or kept on any property within Mill Creek Landing. So long as they are not kept, bred or maintained for commercial purposes, and subject to the limitations and provisions set out herein, horses, dogs and cats are allowed. HOWEVER, only one horse, two dogs and two cats may be kept per contiguous acre of Mill Creek Landing property owned and maintained by the owner of the animals. EXCEPT, regardless the number of contiguous acres owned and maintained by the owner, no more than five of each such animals shall be kept

on any such property. ALSO, regarding dogs, the Leash Law enacted by Montgomery County ordinance is hereby made a part of these Restrictions. The ordinance requires that at all times dogs must be either securely confined within the boundaries of their owner's property or secured on a leash under the control of a responsible individual.

- 8. Setbacks and Fences** -- No building shall be located nearer than 75 feet to the front property line, nearer than 20 feet to any side street line, nor nearer than 15 feet to the inside property line. Chain-link fences shall not be installed across the front of any Lot. Fences along the front easement line and along rear and side property lines, and interior fences visible from roads and/or adjacent Lots, shall be erected in workmanlike fashion and thereafter shall be maintained in a neat condition of good and presentable repair. Previously painted wooden fences shall be repainted as frequently as is necessary to avoid their becoming unsightly. Plastic fences shall be cleaned as frequently as necessary to avoid their becoming unsightly.
- 9. Easements** -- Lot owners are advised that there is a 5 foot utility easement over, under, along and across each Lot on the three non-front sides of the Lot and a 10 foot utility easement on the front (side that faces the road) for purposes of installing, using, repairing and maintaining public utilities, water and sewer lines, electric power and telephone poles, pipelines and drainage ditches. Other than fences, no structure shall be erected within an easement.
- 10. Neat, Orderly and Presentable Condition, etc.** -- The cleared or partially cleared part of any Lot visible from any road or adjacent Lot shall be maintained in a neat, orderly and presentable condition. On no part of any Lot shall trash, junk, unlicensed or disabled vehicles, abandoned equipment or appliances or unsightly objects of any kind or nature be dumped or accumulated. If a Lot owner is in default of the foregoing provisions and fails to correct the default within thirty days after notice is provided to the owner by certified mail, or hand delivered by a member of the Board of Directors, or served upon the owner by a law enforcement officer engaged by the Board for that purpose, the association or its agents or assigns is licensed to enter the Lot to cause the default to be corrected. Cost incurred by the Board in the provision of notice and for the corrective measures will be assessed to the owner and if such costs are not paid within sixty days of demand for payment of same the costs shall become a lien upon the Lot and shall bear interest at the rate of 6 per cent per annum from the date of demand. Such liens, together with the cost of foreclosure including attorney's fees, shall be foreclosable under the same procedure liens for nonpayment of annual assessment may be foreclosed.
- 11. Signs** -- Other than ordinary, non-obtrusive "For Sale," "Burglar (Security) Alarm Notice," "Posted," "No Trespassing" and "Bad Dog Warning" signs and, in accordance with Texas law, a reasonable number of political advocacy and campaign signs, no sign shall be displayed to public view on any Lot without written (includes e-mailed) permission from the Association. All Board members are individually authorized to provide this permission.

12. **Tree Removal Restricted** -- No tree or trees shall be sold, cut or removed from a Lot without written permission from the Association.
13. **Re-subdividing of Lots Prohibited and Dwelling Limitation** -- No Lot within Mill Creek Landing shall be re-subdivided. No more than one dwelling per two and one-half acres shall be constructed upon any Lot.
14. **Firearms and Hunting** -- Firearms shall not be discharged on any Lot nor shall any animals, game or otherwise, be hunted within Mill Creek Landing.
15. **Household Garbage** -- Household garbage shall not be burned, buried or otherwise disposed of on any property within Mill Creek Landing. Organic waste (foodstuffs and other material that might attract animals) left at the roadside for pickup by a waste management service shall be secured in animal proof containers. All garbage containers shall be removed from the roadside within twelve hours after a waste management service has emptied them.
16. **Impact of Restrictions and Covenants** -- These Restrictions and Covenants are to run with the land; they shall be binding on all parties and persons until December 31, 2019, at which time they shall be automatically extended for successive periods of 10 years unless a majority of the Board of Directors of the Association agrees to change them in whole or in part.
17. **Acceptance** -- An Owner of a Lot accepts a Lot subject to the above set out Restrictions, Easements and Covenants running with the land, and Owner and Owner's heirs, successors and assigns, covenant with their respective grantors that they will, and that their successors, heirs, and assigns shall, faithfully observe and perform said Restrictions and Conditions, and each of them and if any purchaser or any person claiming under such purchaser shall at any time violate or attempt to violate, or shall omit to perform or observe any of the foregoing restrictions or conditions, it shall be lawful for any person owning land subject to these restrictions or conditions, or for any grantor of any such property to institute and prosecute appropriate proceedings at law or equity, including the right of injunctive relief, for the wrong done or attempted.
18. **Water Rights** -- Nothing shall be done by an Owner, his grantees or assigns which would result in changing or altering or interfering with existing drainage of water across a Lot or adjacent property.
19. **Affect of Invalidation** -- Invalidation of any of these Covenants and Restrictions by judgment or court order shall in no way affect any of the other provisions or covenants and same shall remain in full force and effect.
20. **Owner's Obligation** -- Owners of a Lot or Lots are obligated through the purchase of same to maintain the property at the Owner or Owner's expense in a neat and presentable manner.



## **ARTICLE V**

### **Property Subject to Covenants, Condition and Restrictions**

The Covenants, Conditions and Restrictions set out herein shall be applicable to all Lots in Mill Creek Landing, Section One, Section Two and Section Three.

## **ARTICLE VI**

### **General Provisions**

#### **Section 1 -- Enforcement.**

The Association or any Owner shall have the right to enforce by a proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

#### **Section 2 – Severability.**

Invalidation of any one of the covenants or restrictions set out herein by judgment or court order shall in no way affect any other of said covenants or restrictions: they shall remain in full force and effect.

EXECUTED this 19 day of December, 2009

MILL CREEK LANDING H.O.A.

ATTEST Jenna K Hansel  
Secretary

By: Sidney G Beaver  
SIDNEY G. BEAVER, Chairman of the Board and President of  
MILL CREEK LANDING H.O.A.

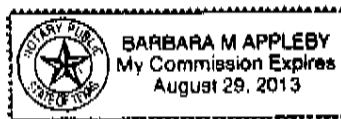
THE STATE OF TEXAS

COUNTY OF MONTGOMERY

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared SIDNEY G. BEAVER, Chairman of the Board and President of MILL CREEK LANDING H.O.A., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDR MY HAND AND SEAL OF OFFICE THIS, THE 19 DAY OF December, 2009.

Barbara M. Appley



10 Mill Creek Landing HOA  
Po Box 874  
Magnolia Tx 77353

FILED FOR RECORD

2009 DEC 28 AM 8:38

*Mark Turnbull*  
COUNTY CLERK  
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS  
COUNTY OF MONTGOMERY

I hereby certify this instrument was filed in  
File Number Sequence on the date and at the time  
stamped herein by me and was duly RECORDED in  
the Official Public Records of Real Property at  
Montgomery County, Texas.

DEC 28 2009



*Mark Turnbull*  
County Clerk  
Montgomery County, Texas