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**FIRST AMENDMENT TO AND COMPLETE RESTATEMENT OF  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND RESERVATIONS FOR SILVERBROOK ESTATES**

**A RESIDENTIAL AND COMMERCIAL DEVELOPMENT IN KALISPELL, MONTANA**

**THIS FIRST AMENDMENT TO AND COMPLETE RESTATEMENT OF THE DECLARATION** of Covenants, Conditions, Restrictions and Reservations for Silverbrook Estates is executed this \_\_\_\_ day of \_\_\_\_\_, 2009 by 93 and Church, LLC, a Montana limited liability company, hereinafter referred to herein as the “Declarant.”

**WHEREAS**, Declarant caused to be filed the Declaration of Covenants, Conditions, Restrictions and Reservations for Silverbrook Estates with the Flathead County Clerk and Recorder as Document No. 200800008099, hereinafter sometimes “Original Declaration” or “Declaration”; and

**WHEREAS**, pursuant to the Original Declaration, Declarant specifically reserved unto itself the right to amend said Declaration during the period of Declarant Control; and

**WHEREAS**, Declarant is the owner of more than seventy-five percent (75%) of the lots comprising Silverbrook Estates; and

**WHEREAS**, NOTICE HAS BEEN PROVIDED TO Owners pursuant to Section 16.8.2 of the Declaration and Declarant certifies that fewer than 75% of Owners objected to this action by virtue of Declarant’s ownership of greater than 75% of the lots; and

**WHEREAS**, Declarant desires to amend and completely restate said Declaration to change or add the following: (1) requirements governing the Association contained in Article IV; (2) Declarant’s right to waive assessments in Article V; (3) construction commencement and completion in Article X; (4) driveway location and installation in Article XI; (5) parking requirements contained in Article XI; (6) size and configuration of structures contained in Article XVII; and to otherwise correct internal discrepancies, discrepancies between the Declaration and the Bylaws of Silverbrook Estates and/or design guidelines; and

**WHEREAS**, Declarant continues to reserve the right to further amend said Declaration as contemplated within the Declaration referenced hereinabove.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the amendment powers reserved unto Declarant as set forth in the Declaration, Declarant hereby amends and completes restates said Declaration as follows:

**THE DECLARANT** is the owner and/or developer of certain real property situated in Flathead County, Montana, which is more particularly described on Exhibit A attached to this Declaration and by this reference made a part hereof. This property is the site of a mixed residential and commercial development to be known as “Silverbrook Estates,” sometimes referred to herein as the “Property;” and

**THE DECLARANT** desires to subject the Property, together with all the buildings and other improvements now or hereafter constructed thereon, as well as all appurtenances to the Property, to this Declaration; and

**THE DECLARANT** further desires to establish for its own benefit and for the mutual benefit of all future owners of the Property, or any part thereof, certain covenants, conditions, restrictions,

easements, rights, privileges, assessments and liens as set forth herein which shall encumber and run with the Property and shall apply to all buildings and other improvements now or hereafter constructed thereon; and

**THE DECLARANT** intends that the future owners, and all other persons who may acquire an interest in the Property shall at all times hold their interest subject to the burdens of, and enjoy the benefits of, the provisions of this Declaration which is made and recorded in furtherance of establishing an outstanding and environmentally sensitive residential and commercial community governed by this Declaration and its rules for the use, occupancy, management and enjoyment of the Property, which rules are designed to protect and enhance the value, desirability and attractiveness of the Property and all buildings and other improvements constructed thereon, while minimizing any negative impacts the development may have on the natural environment.

**ARTICLE I**  
**DECLARATION AND IMPOSITION OF COVENANTS AND STATEMENT**  
**OF DEVELOPMENT PHILOSOPHY**

**Section 1.1 *Statement of Purpose:*** The purpose of the Declarant in making this Declaration and subjecting the Property to it is to create an outstanding and carefully planned mixed residential and commercial community to be known as Silverbrook Estates (the “Project” or “Silverbrook Estates”).

The purpose of this document is to assist Owners in Silverbrook Estates by providing a framework for the design, construction, maintenance and use of their individual property within the subdivision. This will allow each individual project to contribute to the long-term goal of creating a development that compliments and enhances the surrounding natural environment. This document also explains the rules and restrictions that are intended to protect the landscape, wildlife, and use of property for the protection and enjoyment of all Owners in Silverbrook Estates. This document, together with the Silverbrook Estates Design Guidelines, also outlines appropriate architectural elements that reflect the specific context and environment of Silverbrook Estates.

Specific Objectives of this Declaration are:

- To protect and enhance the natural environment, wildlife and individual property values;
- To respect environmental conditions as well as neighbors;
- To impose architectural criteria for buildings which allow for individual expression but also establish clearly delineated parameters;
- To address all types of development and property use, including buildings, landscaping, maintenance, water usage, fences, signs, driveways, utility installation, parking, lighting and maintenance.

**Section 1.2 *Right to Expand:*** The Declarant may acquire in the future additional real estate which it may desire to incorporate into Silverbrook Estates (the “Expansion Property”), and the Declarant has reserved the right, but will not be obligated, to incorporate the Expansion Property in whole or in part in accordance with the annexation procedures set forth in Article XVIII below, so that the Expansion Property, if and when annexed and developed, will be treated as an integral part of the planned community of Silverbrook Estates.

**Section 1.3 *Imposition of Covenants:*** To accomplish the purposes outlined above, the Declarant hereby declares that from the date of the first recording of the original Declaration forward, the Property will constitute a planned community known as Silverbrook Estates, and will be held, sold and conveyed subject to the covenants, conditions, restrictions, easements and other reservations set forth herein (collectively, the “Covenants”). The Covenants will run with the land and will be binding upon all persons and entities having any right, title, or interest in all or any part of the Property (including Declarant) and their heirs, successors and assigns, as well as their tenants, employees, guests and invitees. These Covenants will inure to the benefit of each Owner of the Property.

## ARTICLE II DEFINITIONS

The following terms are given the definitions set forth below, and when used in this Declaration the defined terms are capitalized.

**Section 2.1** *Association* and *P.O.A.* shall mean the Silverbrook Estates Property Owners Association. The Association may be incorporated as a Montana nonprofit corporation, with its Members as the residential Lot Owners. The Declarant reserves the right to create associations of the commercial property owners and/or the townhome Lot owners, as well as a master association with over-arching jurisdiction over the other associations. Declarant reserves the right to structure these associations of the Silverbrook property owners in the manner Declarant believes best serves the interests of Silverbrook Estates.

**Section 2.2** *Contract Purchaser* shall mean a person buying a Lot pursuant to a contract for deed, Montana Trust Indenture or mortgage.

**Section 2.3** *Covenants and CCRs* shall refer to the *Declaration of Covenants, Conditions, Restrictions and Reservations for Silverbrook Estates* (this document).

**Section 2.4** *Declarant* shall mean and refer to 93 and Church, LLC, and its successors and assigns.

**Section 2.5** *Directors* shall mean the Board of Directors of the Association who shall be elected at the annual meeting pursuant to the Bylaws.

**Section 2.6** *Design Guidelines* shall mean the guidelines and rules adopted and incorporated herein by this reference. The Design Guidelines may be amended and supplemented from time to time pursuant to the requirements set forth in the Design Guidelines.

**Section 2.7** *Improvement(s)* shall mean all buildings, parking areas, loading areas, fences, walls, hedges, plantings, lighting, poles, driveways, roads, ponds, lakes, trails, gates, signs, changes in any exterior color or shape, excavation and all other site work, including, without limitation, grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvement which may not be included in the foregoing. *Improvement(s)* does not include turf, shrub, or tree repair or replacement or changes to existing buildings which do not change exterior colors or exterior appearances. *Improvement(s)* does include both original improvements and all later changes to improvements.

**Section 2.8** *Lot(s)* shall mean all of the real property herein described and subsequently surveyed and platted into lots as Silverbrook Estates development, according to the official plats thereof filed of record in the office of the Clerk and Recorder of Flathead County, Montana. There will be lots for individual residences, townhome lots and commercial lots.

**Section 2.9** *Majority* shall mean fifty-one percent (51%) or more of cast votes in reference to the Association and its Members.

**Section 2.10** *Member* shall mean any Owner or Lot Owner of a residential Lot. Each Member or Owner agrees to abide and be bound by these Covenants, the Articles of Incorporation, the Design Guidelines, and the Bylaws and the Resolutions of the Property Owners Association.

**Section 2.11** *Open Space* or *Common Area* shall mean all of the property conveyed to the Association for use by the Association and its Members and Owners in common including roads, trails, parks and waterways. Common Area also includes those areas not conveyed to the Association, but with respect to which the Association has responsibility, such as boulevards, sidewalks and landscaped areas within road rights-of-way owned by the City of Kalispell.

**Section 2.12** *Owner* or *Lot Owner* shall mean any person or entity owning a fee simple interest in a Lot or a Contract Purchaser, whether one or more persons or entities, owning or purchasing a Lot, but excluding those having a mortgage or an interest merely as security for the performance of an obligation, provided, however, that prior to the first conveyance of a Lot for value, the term "Owner" shall mean

“Declarant” or its successors or assigns. The term “person” hereinafter shall include any person, persons or entities.

**Section 2.13 *Period of Declarant Control*** shall mean the period beginning on the date the original Declaration is first recorded in the office of the Clerk and Recorder of Flathead County, Montana, and ending on the earlier of: (i) the date which is seven (7) years later, or (ii) the date on which the Declarant has sold seventy-five percent (75%) of the Lots in Silverbrook Estates, including any annexations or additions to the subdivision.

The Period of Declarant Control may be reinstated or extended by agreement between Declarant and the Association, subject to whatever terms, conditions, and limitations the Board of Directors may impose. After the termination of the Period of Declarant Control, Declarant, if still an Owner, will continue to have all the rights and duties ordinarily given to Owners under this Declaration.

**Section 2.14 *Property*** means and includes the property described on *Exhibit A* and initially subjected to this Declaration, and also refers to any additional real property that may be incorporated in the Project from time to time and made subject to these Covenants pursuant to the provisions of this Declaration.

**Section 2.15 *Other Definitions:*** Other definitions may be found throughout these Covenants. Any term not specifically defined shall be deemed to have its common and ordinary meaning.

### **ARTICLE III CONFIDENTIALITY**

**Section 3.1 *Duty of Confidentiality:*** Silverbrook Estates and its P.O.A. shall maintain the confidentiality of information at all times. This requirement recognizes that Owners have a reasonable right to privacy and that an Owner could be harmed by an unjust or unfounded allegation of a violation of a Covenant or rule relating to the Property. At the same time, Owners who report violations should be able to do so without fear of reprisal.

**Section 3.2 *Importance of Confidentiality:*** In situations involving alleged violations of the Covenants, confidentiality facilitates interaction between the Association and its Members. Communication can be less guarded and more direct than it would be with a public process. Confidentiality helps the Association determine the facts in disputes involving neighbors. Complaints and counter-complaints from neighbors sometimes arise; sometimes these are legitimate, sometimes they are exaggerated or fabricated. Confidentiality helps in distinguishing facts from feelings in such cases. Confidentiality also guards against adverse publicity and public misunderstanding for individual Owners and for the Association.

**Section 3.3 *Disclosure in Reporting:*** Those who report covenant or rule violations to the Association must disclose their identity, but the Association shall take care to protect the confidentiality of such reports. Reports of violations shall be submitted in writing and signed. Generally, reports submitted anonymously to the Association will not be investigated or pursued. There are several reasons for this policy:

**3.3.1** The requirement that reports of violations be signed and in writing allows the Association to contact the reporter when additional information is needed. An anonymous report affords insufficient means for follow-up.

**3.3.2** Requiring disclosure of a violation reporter’s identity to the Association significantly reduces the number of frivolous or unnecessary complaints. Anonymous complaints are often less reliable than those in which the reporter’s identity is disclosed.

**3.3.3** The Association cannot initiate enforcement action without just cause. Written complaints document that cause. This helps internally within the Association; directors who must act on a problem can be assured that a reliable rendition of the complaint exists. If the matter results in legal action, written documentation is in the hands of the Association.

**ARTICLE IV**  
**SILVERBROOK ESTATES PROPERTY OWNERS ASSOCIATION**

**Section 4.1 *Establishment of Association:*** An association is hereby established known as “Silverbrook Estates Property Owners Association” hereinafter referred to as the P.O.A. or the Association. Said Association may be incorporated under a different name as may be determined by the Association and approved by the Montana Secretary of State.

**Section 4.2 *Association Membership and Voting Rights:*** Every Owner or contract purchaser of a residential Lot shall be a member of the Silverbrook Estates Property Owners Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. Each Owner shall be responsible for notifying the Association of their acquisition of ownership, of their mailing address, and of any subsequent changes of ownership or mailing address. The initial address of the Association shall be 33 Hunter Circle, Suite 1, Kalispell, Montana 59901. The address of the Association may be changed by the Board of Directors upon notice to the Owners.

All members will be entitled to vote on Silverbrook Estates Property Owners Association matters on the basis of one vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons will be Members, but they may cast only one vote for each Lot with such vote to be cast in such manner as those multiple owners may determine among themselves.

For the purpose of determining membership at any meeting, a person or entity shall be deemed to be a Member upon the recording of a duly executed deed to that Owner, or upon the recording of a notice of a purchaser’s interest or an abstract of a contract for deed showing a contract purchase by an Owner. The legal title retained by the vendor selling under contract shall not qualify such vendor for membership.

Foreclosure of a mortgage, trust indenture or the termination or foreclosure of a contract for deed wherein title is vested in the mortgagee, beneficiary or original seller on a contract, or repossession for any reason of a Lot sold under a contract shall terminate the vendee’s membership, whereupon all rights to such membership shall vest in the legal owner.

**Section 4.3 *Association Meetings:*** The annual meeting of the Association shall occur in May of each year in accordance with the notice requirements set forth in the Association’s Bylaws.

Special meetings may be called by the President of the Association or by a majority of the Board of Directors, or upon written request of Members who are collectively entitled to vote at least twenty percent (20%) of all of the votes in the Association. Special meetings shall require seven (7) days notice, in writing. Notice of annual and special meetings shall be mailed to Owners at the address for each Owner as maintained by the Association. The presence of Members, in person or by written proxy, representing twenty percent (20%) of the total votes of the membership shall constitute a quorum.

At the annual meeting, the Members shall review and approve a budget for the next year, elect Directors and conduct such other business as shall be reasonable or necessary to carry out the purposes of the Association. The Board of Directors shall be comprised of not less than three (3) Directors or more than seven (7) Directors.

The annual meeting of the Board of Directors shall be held immediately after the annual meeting of the Members. At the annual meeting, the Directors shall elect a President, Vice-President, Secretary and a Treasurer for the Association from among the Directors, except that the Secretary and Treasurer may be Members who are not Directors.

This Section is subject to Declarant’s rights set forth in Article XIX during the period of Declarant control.

**Section 4.4 *Turnover Meeting:*** The Declarant reserves the right, at any time before the expiration of the Period of Declarant Control, to call a special meeting of the Association for the purpose of transferring control of the Association to the Members. Should the Declarant call such a meeting, it shall present to the Members its plan for the orderly transfer of control the Association to the Members, and the Members will be obligated to accept control of the Association in accordance with such plan.

**Section 4.5 *Terms of Directors:*** The Directors shall serve for a term of three (3) years as set forth in the Bylaws. Each Director shall serve until replaced by his or her successor. Any vacancy on the

Board of Directors occurring before the next annual meeting of the Members shall be filled by appointment or special election as determined by the remaining Directors. This Section is subject to Declarant's rights set forth in Article XIX during the period of Declarant control.

**Section 4.6 Board Powers:** The Board of Directors shall have the power and responsibility of acting on behalf of the Association and its members as shall be reasonably necessary to carry out the purposes of the Association, including but not limited to taking such actions as shall be necessary or reasonable to care for, protect and maintain the Open Space and Common Areas; to enforce these Covenants and the Design Guidelines; to levy and collect assessments; to set annual and special meetings; and to act in any other matters set forth herein or which may serve Silverbrook Estates, including the formation of special improvement districts, either public or private, for such improvements as the Association shall approve.

The Directors shall act by simple majority vote. The officers of the Association shall follow the directions of the majority vote of the Directors.

**Section 4.7 Board Duties:** The duties of each of the officers shall be as follows:

**4.7.1 President:** The President shall preside over all meetings of the P.O.A. The President shall call the membership together whenever necessary. The President shall be the general administrative and executive officer of the P.O.A., and shall perform such duties as may be specified, and exercise such powers as may be delegated to the office of President by the Board of Directors.

**4.7.2 Vice-President:** The Vice-President shall exercise the powers of the President in the absence of the President.

**4.7.3 Secretary:** The Secretary shall give notice of all meetings of the P.O.A. and shall keep a record of the proceedings of the meetings of the P.O.A. The Secretary shall be authorized to sign on behalf of the P.O.A. all records, documents and instruments when such are authorized to be signed by the P.O.A.

**4.7.4 Treasurer:** The Treasurer shall keep and maintain adequate and correct records of the accounts, properties and business of the P.O.A., including accounts of its assets, liabilities, receipts, disbursements, gains and losses. The Treasurer shall prepare and report such periodic accountings as shall be required by the P.O.A., but not less frequently than annually.

**Section 4.8 Jurisdiction of the Association:** The Association shall have jurisdiction over all areas of Silverbrook Estates which are designated as residential on the final plat of the subdivision or by City of Kalispell zoning ordinances.

**Section 4.9 Additional Associations:** The Declarant reserves the right, to establish additional associations of Silverbrook Estates property owners to further the objectives of this Declaration and to promote the interests and enhance the governance of Silverbrook Estates. Such additional associations may consist of an association of the commercial property owners, as association of the townhome Lot owners or a master association to oversee and coordinate the functions of all the sub-associations.

## ARTICLE V ANNUAL AND SPECIAL ASSESSMENTS

**Section 5.1 Assessments:** Each owner, whether or not it shall be so expressed in any deed or contract, is deemed to have agreed to these Covenants, and to pay to the Association:

- a) Annual assessments or charges; and
- b) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot, and shall be a continuing lien upon the property against which each such assessment is

made. Each assessment, together with any accruing interest, costs and attorney's fees, shall be the personal obligation of the Owner of such Lot at the time when the assessments are due.

**Section 5.2 Purpose of Assessments:** The assessments levied by the Association shall be used to promote the health, safety, convenience, recreational opportunities and welfare of the Owners; for the improvement, repair and maintenance of easements, trails, water features, roads, Open Spaces, and Common Areas; and for any other purposes, expressed or implied, in these Covenants.

**Section 5.3 Annual Assessments:** The maximum annual assessment per Lot which may be made by the Association in any calendar year shall not substantially exceed the projected and budgeted actual and reasonable costs to be incurred by the Association during the coming year in carrying out its functions, and may include a reasonable reserve for contingencies. The amount of the annual assessments shall be fixed by the Board of Directors in the following manner:

At each annual meeting of the Members, the Directors shall present a proposed budget of the estimated expenses for the Association for the coming year to the Members for review, discussion, amendment, comment and approval. The Members shall approve or amend the proposed budget by a majority vote of the Members present or voting by proxy. After the annual meeting, the Board of Directors shall set the amount of the assessments and the date(s) upon which they are due for the coming year to cover the budget approved in the manner herein set forth.

**Section 5.4 Special Assessments for Capital Improvements:** In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or other capital improvements on the Property, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-thirds (2/3) or more of all of the votes of the Members who are present, in person or by proxy, at a meeting duly called for that purpose. Special assessments may be levied to be paid over one or more years. Assessments for normal maintenance and repairs shall require only a simple majority vote.

**Section 5.5 Uniform Rate of Assessment:** Annual assessments shall be fixed by the Directors at a uniform rate for each of the following three (3) categories: Neighborhood Commercial, Residential Town Home and Residential Single Family. All commercial Lots will be included in the Silverbrook Estates parking district. Each of the commercial Lots is subject to additional assessments relative to their parking obligation associated with that Lot.

**Section 5.6 Due Date of Assessments:** The annual assessments shall be payable in monthly installments as directed by the Board of Directors. The Board of Directors shall make provision for prepayment of the annual assessment such that the Members have the ability to prepay their assessments quarterly or annually. Due dates for assessments shall be determined by the Board of Directors. The Board of Directors shall fix the amount of the annual assessments upon each Lot at least thirty (30) days in advance of the due date of each annual assessment, and at least ninety (90) days in advance of special assessments. Written notice of the annual and special assessments shall be mailed or personally delivered to every Owner subject thereto, at the last known mailing address.

**Section 5.7 Failure to Pay Assessments; Remedies of the Association:** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action against the Owner obligated to pay the same or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Open Space or Common Areas, or by abandonment of their Lot.

Upon delivery of the notice of assessment to the Owner, the assessment shall be a lien upon the Owner's Lot until paid. The Association may record a notice of the lien with the Clerk and Recorder of Flathead County, Montana. If the assessment is not paid within thirty (30) days after the recording of the notice of lien, the Association may foreclose the lien in the manner set forth under Montana law for the foreclosure of liens against real property. The Association shall be entitled to recover from the Owner any and all reasonable attorney's fees and costs incurred in the collection of any delinquent assessments.

**Section 5.8 Sale or Transfer of a Lot:** The sale, transfer or encumbrance of any Lot shall not affect the personal liability of the Owner responsible for the assessment or the assessment lien if the lien is recorded in the records of Flathead County, Montana. No sale or transfer to a third party with actual or

constructive knowledge of an assessment shall relieve such new Owner from the liability for any outstanding assessments, or from any assessments thereafter becoming due, or from the recorded lien thereof. A person or entity purchasing a Lot shall be responsible for checking with the Association for any outstanding assessments against said Lot before closing the transaction.

**Section 5.9 Waiver:** During the Period Declarant Control, Declarant reserves the right to waive any assessments it deems advisable, in its sole discretion.

## **ARTICLE VI SUSTAINABILITY**

**Section 6.1 Commitment to Sustainable Development:** The preservation of the natural beauty and quality of life found in the Flathead Valley – sustainability – is an important objective of Silverbrook Estates. These Covenants are intended to promote and ensure a more environmentally conscious way of living. There are provisions throughout these Covenants and the Design Guidelines which emphasize and foster the concept of sustainability. All such provisions must be met by any development project within Silverbrook Estates, unless a waiver or variance is granted by the Design Review Committee.

## **ARTICLE VII DESIGN GUIDELINES**

**Section 7.1 Intent of Design Guidelines:** The intent of the Design Guidelines, a separate document adopted to govern the building of any and all structures in Silverbrook Estates, is to define a level of quality and consistency of building design which will maximize the overall quality of Silverbrook Estates. The creativity of the Owners and their professional consultants will be respected. Individual expression is encouraged, provided it is harmonious with the overall character established by the Design Guidelines.

**Section 7.2 Compliance With Design Guidelines:** The Design Guidelines are incorporated herein by reference and are enforceable as if they were a part of the Covenants. All Improvements shall be in conformance with the Design Guidelines. Variances may be granted if a plan is of excellent architectural design and meets the overall philosophy of the Design Guidelines.

**Section 7.3 Design Review Committee:** The Silverbrook Estates Design Review Committee (DRC) is hereby established and shall carry out all duties bestowed upon it by the Association, these Covenants, the Design Guidelines and any amendments to such documents.

The procedures for seeking DRC review and approval of any proposed Improvement are set forth in the Design Guidelines.

No Improvement of any kind shall be commenced without the written approval of the DRC. Each structure must be constructed in compliance with the Design Guidelines, including but not limited to, location, size, height, color, materials, design and all other requirements of the Design Guidelines.

All landscaping must be installed within the first growing season following substantial completion of any residential or commercial development.

## **ARTICLE VIII SILVERBROOK ESTATES DESIGN REVIEW COMMITTEE (DRC)**

**Section 8.1 Authority of DRC:** The Silverbrook Estates Design Review Committee (DRC) shall act in addition to, and not in lieu of the City of Kalispell and its planning and zoning authority, to which Silverbrook Estates is subject. Neither the City of Kalispell nor its Planning Board, however, is an appeal board for the DRC. The DRC is given authority through Article VII above.

**Section 8.2 DRC Organization and Enforcement:** The DRC will be organized by the P.O.A., which is responsible for appointing DRC members and setting their terms of service. The DRC shall consist of three members appointed by the P.O.A.

**Section 8.3 Purpose of the DRC:** The DRC is established and given the authority to coordinate, interpret, apply and assure fair and equitable implementation of the Covenants and Design Guidelines. The objective of the DRC is to encourage a level of quality that will enhance both the natural and built environments of Silverbrook Estates.

**Section 8.4 Duties of the DRC:** The DRC is responsible for administering the Covenants and Design Guidelines and performing the following duties:

**8.4.1 Adopt Rules:** To adopt such reasonable rules and procedures as it deems necessary to carry out its functions.

**8.4.2 Require Plans:** To require any of the following it deems necessary for its review of a project:

- a) Site plans
- b) Landscape plans
- c) Building plans, elevations, and associated drawings
- d) Material and color samples
- e) Other information deemed appropriate to individual proposals

**8.4.3 Require Review of All Improvements:** To require that all proposed Improvements be reviewed under the design review process (see Article IX, below) and that all plans are reviewed and approvals granted before the commencement of any construction.

**8.4.4 Enforce Rules:** The DRC is given broad powers to apply and enforce all rules relating to Improvements, and to:

- a) Determine the adequacy of plans submitted to it;
- b) Enforce height requirements contained in the Covenants and Design Guidelines and to impose such requirements where they are not specified;
- c) Reject materials, design, and colors submitted with plans and the plans themselves, if they are not compatible with or are inappropriate to the overall vision of Silverbrook Estates or do not conform to the Design Guidelines;
- d) Hear all testimony related to variances and grant variances to the Covenants and Design Guidelines as it deems appropriate;
- e) Interpret the Covenants and Design Guidelines as it deems appropriate and make rulings thereon;
- f) Require that all improvements be constructed in substantial compliance with approved plans and specifications;
- g) Enforce the Covenants and Design Guidelines in a court of law;
- h) Revoke or suspend approvals and order the suspension or cessation of any construction in violation of the Covenants or Design Guidelines or any approval issued by the DRC; and
- i) Require that a fee of \$200 for residential projects or \$1,000 for commercial projects be paid to the P.O.A. for the review of building plans and specifications.

**Section 8.5 Liability:** Neither the DRC, the Association or the Declarant, or any member thereof, shall be liable to any Owner or any other person or entity for any damage, loss or prejudice suffered or claimed on account of the following, so long as the DRC or member has acted in good faith:

- a) The approval or rejection of any plans, drawings or specifications, whether or not defective;
- b) The construction or performance of any work, whether or not pursuant to approved plans, drawings or specifications;
- c) The development or manner of development of any property within Silverbrook Estates; and
- d) Any other act carried out in the DRC's or member's official capacity.

## **ARTICLE IX DESIGN REVIEW PROCESS**

**Section 9.1 *Applicability of Design Review Process:*** The design review process must be followed for any of the following:

- a) Construction of any building;
- b) Renovation, expansion, or refinishing of the exterior of any building;
- c) For commercial buildings, interior changes which affect the major function of a building;
- d) Site alterations, including roads, parking and driveways;
- e) Major landscaping including fences and walls;
- f) Exterior lighting changes; and
- g) Utility installation or modification.

In addition to meeting the requirements of this Declaration, an Owner must comply with the requirements of all governing agencies including the City of Kalispell and the State of Montana in order to obtain required building permits, certificates of occupancy, temporary certificates of occupancy or similar authorizations.

**Section 9.2 *Plan Requirements:*** All architectural and building plans submitted to the DRC shall be of architectural quality prepared by a licensed architect or architectural designer. All site, landscape and irrigation plans shall be prepared by a certified irrigation designer, landscape architect or landscape designer. The DRC shall reject materials, designs and colors submitted with the plans, and the plans themselves, if they do not comply with the Covenants and Design Guidelines, or are not compatible with the overall plan for Silverbrook Estates.

**Section 9.3 *Plan Review and Approval:*** The Silverbrook design review process consists of two steps; Initial Plan Review and Final Plan Review and Approval. It is recommended that Owners follow this two-step process for any major building project. Owners may, however, submit materials for Final Plan Approval without an Initial Plan Review. Owners may appeal unfavorable DRC decisions to the Silverbrook Estates Property Owners Association.

**9.3.1 *Initial Plan Review:*** The purpose of the Initial Plan Review is to consider the conceptual design of the proposed project. The review will consider existing site conditions and planned improvements, building floor plans and elevations, roof design, architectural character or expression, exterior materials, grading, drainage and erosion control measures. Owners and their representatives should consult the Initial Plan Review Checklists and Evaluation Criteria for submission requirements.

The Initial Plan Review consists of the following steps:

- 1. The Owner/architect prepares and submits to the DRC two copies of the Initial Plan which must include all information required by the Initial Plan Review Checklist.
- 2. The DRC reviews the Initial Plan at a scheduled meeting and notifies the Owner in writing of its findings within ten (10) business days.
- 3. If necessary, the Owner may resubmit an Initial Plan or appeal to the P.O.A. within thirty (30) business days.

**9.3.2 *Final Plan Review and Approval:*** The Final Plan Review and Approval addresses the final design details of the project. The review will consider planned improvements, building elevations, building sections, roof design, architectural character or expression, exterior materials, site conditions, grading, drainage and erosion control measures. The Final Plan Review Checklist and Evaluation Criteria set forth the submission requirements.

The Final Plan Review and Approval consists of the following steps:

- 1. Upon approval of the Initial Plan the Owner/architect shall prepare and submit two copies of the Final Plan which shall include all information required by the Final Plan Review Checklist.
- 2. The DRC notifies the Owner in writing of the Final Plan Approval decision within ten (10) business days.
- 3. Upon issuance of written approval, the Owner may apply for a building permit and design approval from the governing authorities.

4. If necessary, the Owner may resubmit a revised Final Plan or appeal to the P.O.A. within thirty (30) business days.

Chapter XI of the Design Guidelines contains the Checklist Forms, listing the required steps and submittals needed for both the Initial Plan Review and the Final Plan Review. To make sure that the Owner, the Owner's architect, builder or other representative files a complete submittal package with the DRC at each stage of the review, it is recommended that these forms be used in compiling the necessary materials prior to scheduling a review by the DRC.

## **ARTICLE X CONSTRUCTION PROCEDURES**

**Section 10.1 *Approvals Required Prior to Commencement of Construction:*** No construction may be commenced until Final Plan Approval has been received from the DRC and all required building permits have been issued by the appropriate regulatory authorities. Building construction must strictly conform to the approved Final Plan.

**Section 10.2 *Plan Modifications:*** All modifications to previously approved site, landscape or building plans must be submitted to and approved by the DRC.

**Section 10.3 *Construction Codes:*** All structures shall be constructed in compliance with applicable state, local and federal codes for construction, including codes for seismic Zone 3 and National Fire Protection Codes.

### **Section 10.4 *Construction Regulations:***

**10.4.1 *Noise Abatement and Hours of Work:*** Heavy equipment operation and other loud noise from construction is prohibited between 7:30 p.m. and 6:30 a.m. No blasting is permitted at any time.

**10.4.2 *Construction Staging and Material Storage:*** All construction staging, including but not limited to, material storage, equipment storage, construction trailer placement, etc., must take place within the Lot for which the building permit was issued unless an alternate staging area is approved in writing by the DRC. All parking in connection with the construction shall be on dedicated public streets or the lot on which construction is taking place.

**10.4.3 *Trash Containment and Removal:*** Trash and construction debris shall be cleaned up on a daily basis in containers which shall be emptied on a regular basis to insure sufficient room to store trash at the end of each working day. Owners must ensure that their contractors remove and dispose of, at an authorized county landfill, any excess trash and construction debris.

Burning of construction debris within Silverbrook Estates is prohibited.

**10.4.4 *Tree and Property Protection:*** Construction practices must include care during grading and excavation to avoid damage to existing trees and shrubs and their root structures.

All construction equipment and activity including vehicular movement, unloading or daily parking, as well as stockpiling of materials and topsoil must be kept within the perimeter of the Lot unless specific written authorization to do otherwise is obtained from the DRC. Any adjacent property including roads or Common Areas damaged during construction shall be restored and re-vegetated within thirty (30) days of the occurrence to the satisfaction of the DRC. If such restoration is not completed promptly, the DRC may contract for such restoration with all costs to be charged to the Lot Owner or person in whose name the Final Plan approval was issued.

**10.4.5 *Temporary Structures:*** A small job office or trailer may be located on the site during the construction period. The job office must be removed from the site within fifteen (15) days of completion of construction.

**10.4.6 *Construction Sequence:*** No accessory structures, buildings, garages or sheds may be constructed or maintained on any Lot prior to the construction of the main structure of the

residence. Provided, however, that the provisions of this sub-paragraph shall not preclude temporary construction shelters (addressed in Section 10.4.5, above).

**10.4.7 Erosion Control:** All disturbed areas shall be protected from erosion during and after the construction period. Erosion control shall be implemented during construction to insure soil stabilization and sediment control, and to foster timely re-vegetation. No Owner may change the drainage pattern on any Lot without the specific approval of the DRC.

**Section 10.5 Building Inspections:** The DRC will not inspect projects for building code conformance. Compliance with building codes and regulations is the responsibility of each Owner. The DRC will, however, from time to time inspect construction sites for compliance with approved plans, the Covenants and Design Guidelines.

It is the responsibility of the Owner or the Owner's representative to contact the appropriate state, local and other authorities regarding electrical, plumbing and other required inspections for building code conformance.

**Section 10.6 Construction Commencement and Completion:** The construction of the primary residential structure must be substantially completed within eighteen (18) months of the commencement of construction.

**Section 10.7 Construction Time Extensions and Penalties:** The POA may, in its discretion and subject to appeal to and review by the Board, extend the construction time limits set forth in this Article X, or impose appropriate penalties for failure to comply with such time limits. Such penalties may include fines which will be treated in the same manner as assessments, which if not timely paid will become a lien against the Owner's Lot.

## **ARTICLE XI PROPERTY USE AND RESTRICTIVE COVENANTS**

**Section 11.1 Hunting:** No hunting of, shooting at or harassing of birds, animals or other wildlife is permitted. Skunks, gophers and rodents may be trapped; however, poison may not be used.

**Section 11.2 Pets:** No livestock, poultry or other animals, except domestic dogs and cats, or small house pets and birds, are permitted. Excessive numbers of pets of any type are not allowed. Numbers become excessive when the pets become uncontrollable from within the interior confines of the structure on the property, thus becoming a nuisance to neighboring properties. All dogs, cats and other pets shall be strictly controlled by their owners so as not to annoy or interfere with the use of the properties by the other Owners and to prevent any interference or harassment of wild birds or animals in the subdivision or on surrounding or adjacent properties. Dogs and cats shall be kept on the owner's property and shall not be allowed to roam free. Dogs must be kept on a leash when not on the owner's Lot and pet owners shall immediately pick up all pet feces from other Lots or Common Areas.

**Section 11.3. Artificial Feeding:** The artificial feeding of any big game animal is prohibited.

**Section 11.4. Animal Proof Containers:** All garbage must be stored in animal-proof containers. Foodstuffs, including garden, pet and other sources may not be stored out of doors unless kept secure in animal-proof containers.

**Section 11.5. Acceptance of Wildlife Damage:** Lot Owners acknowledge that wildlife damage to landscaping will occur. Lot Owners accept that risk and shall not file claims against adjacent Lot Owners, the Association, or any other governing body for such damage unless it is established that a violation of these Covenants led to such damage.

**Section 11.6 Open Space and Trail Maintenance:** The Association shall be responsible for the maintenance of all trails within Silverbrook Estates. The Association shall also be responsible for weed control, mowing, irrigation, care and maintenance of all Common Areas and Open Spaces as well as any other common amenities within Silverbrook Estates. The Association will use the assessment process to collect funds to pay for such care and maintenance.

**Section 11.7 Noxious Weeds:** In order to comply with the requirements of the Flathead County Weed Control District and the Montana *Noxious Weed Control Act*, the following rules apply:

**11.7.1 Responsibility for Control:** The P.O.A. is responsible for noxious weed control in all Open Spaces and Common Areas within the subdivision. Each Owner is responsible for the Owner's Lot. The P.O.A. will also act as the contact point for any noxious weed complaints within the subdivision.

The control of noxious weeds by the P.O.A. on those areas for which the P.O.A. is responsible and the control of noxious weeds by individual Owners on their respective Lots shall be as provided in the Montana *Noxious Weed Control Act* (Section 7-22-2101, *et seq.*, MCA) and the rules and regulations of the Flathead County Weed Control District.

**11.7.2 Failure to Control; Authority of P.O.A.:** Both improved and unimproved Lots shall be managed for noxious weeds. In the event an Owner does not adequately control the noxious weeds, after ten (10) days notice from the P.O.A., the P.O.A. may cause the noxious weeds to be controlled. The cost and expense associated with such weed management shall be assessed to the Lot and such assessment will become a lien if not paid within thirty (30) days of the mailing of such assessment.

**Section 11.8 Water Testing:** Silverbrook Estates will be connected to City of Kalispell water and sewer. Any and all testing shall be performed by the appropriate authorities appointed by the City of Kalispell.

**Section 11.9 Road Maintenance:** All roads within the Silverbrook Estates Subdivision are to be owned and maintained by the City of Kalispell. However, within the road rights-of-way owned by the City of Kalispell there may be medians, landscaping and other amenities which will be owned or controlled and maintained by the P.O.A. These common amenities are considered part of the Silverbrook Estates Common Area.

**Section 11.10 Driveway Location and Installation:** Each driveway access point must be at least fifty (50) feet from the nearest road intersection. Driveways and driveway location must be pre-approved by the DRC. A four inch (4") sleeve for irrigation shall be installed under each driveway prior to construction of any driveway or driveway apron. All costs of the installation of the driveway, driveway apron and irrigation sleeve are the responsibility of the Lot Owner.

**Section 11.11 Fencing:** Fences projecting beyond the primary façade of residences are prohibited. All fences must be constructed with the finished façade to the exterior of the Lot upon which the fence is being erected. The Declarant will install fencing along all residential rear lot lines along Silverbrook Drive and Church Drive.

**Section 11.12 Exterior Lighting:** All exterior lighting shall be reflected downward with full cutoff luminaires. No light spill outside of the property being illuminated is permitted. Exterior lighting may contribute only minimally to light pollution.

**Section 11.13 Storage of Equipment:** No Lot or adjacent street or road may be used for the storage of any inoperable vehicle, machinery or equipment. No Lot may be used for storage of any articles, vehicles, equipment or other personal property of any quantity in excess of the immediate needs and personal use of the Owner of the Lot or the occupants and guests thereof as the case may be, and shall not interfere with the use or enjoyment of neighboring Lots.

**Section 11.14 Commercial Equipment:** No Lot or adjacent street or road may be used for the outside parking or storage of any commercial trucks (does not include 1-ton or smaller pickup trucks), large commercial vehicles or other heavy equipment, except as may be reasonably necessary during periods of construction. Nothing herein shall prohibit the storage of such vehicles within the confines of a garage approved by the DRC.

**Section 11.15 Recreational Equipment:** All campers, trailers, motor homes, boats and all other recreational equipment shall only be parked on the owner's Lot. In no event shall such equipment be parked on roads, nor shall any equipment be parked such that it is visible from the streets or adjacent Lots for a period exceeding seven (7) days in any thirty (30) day period. Storage or location of such equipment

and vehicles for periods longer than those permitted by this section is allowed only in an enclosed garage or other screened area with such garage or screen having been approved by the DRC.

**Section 11.16 *Offensive Activity:*** No noxious odors or offensive activity shall take place upon any portion of the Property, nor shall anything be done thereon which may be, or may become, an annoyance to the neighborhood. Firearms may not be discharged anywhere on the Property.

Any violation of applicable city, county or state laws or ordinances or other applicable governmental regulations constitutes a violation of these Covenants and may be enforced by the Association or individual Lot Owners.

**Section 11.17 *Ditches, Ponds and Water Courses:*** Each Owner of property within Silverbrook Estates acknowledges the presence of water features located in the Open Spaces and Common Areas of the development. Each Owner of property within Silverbrook Estates, as individuals and as members of the Association, acknowledges that water could pose a danger to humans, animals and property. By this acknowledgement, each Owner of property within Silverbrook Estates, as individuals and as members of the Association, assumes the normal and ordinary consequences of their actions when in, next to, or in the vicinity of water features within Silverbrook Estates.

## **ARTICLE XII OWNERS RESPONSIBILITIES FOR MAINTENANCE**

**Section 12.1 *Owners Responsibility for Lot:*** Except as provided in this Declaration or by written agreement with the Association, all maintenance of a Lot and the Improvements located on it will be the sole responsibility of the Owner of the Lot. For purposes of allocating responsibility for landscape maintenance between the Lot Owners and the Association, the Lots will be defined as the area from the back of the curb to the rear lot line. Each Owner will maintain its Lot in accordance with the community-wide standard of Silverbrook Estates. The Association will, in the discretion of the Board, assume the maintenance responsibilities of such Owner if, in the opinion of the Board, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming the maintenance responsibilities, the Board will notify the Owner in writing of its intention to do so, and if the Owner has not commenced and diligently pursued remedial action within thirty (30) days after the mailing of such written notice, then the Association may proceed. The expenses of the maintenance by the Association will be reimbursed to the Association by the Owner within thirty (30) days after the Association notifies the Owner of the amount due, and any sum not reimbursed within that thirty (30) day period will bear interest from the date of the expenditure until payment in full. Such charges will be a lien against the Lot.

**Section 12.2 *Owner's Negligence:*** If the need for maintenance, repair or replacement of any portion of the Common Areas (including Improvements located on them) arises because of the negligent or willful act or omission of an Owner or his family member, guest, invitee or tenant, then the expenses incurred by the Association for the maintenance, repair or replacement will be a personal obligation of that Owner. If the Owner fails to repay the expenses incurred by the Association within 30 days after the notice to the Owner of the amount owed, then those expenses will bear interest from the date incurred by the Association until payment by the responsible Owner in full, and all such expenses and interest will become a lien against the Owner's Lot.

## **ARTICLE XIII EMERGENCY SERVICES**

**Section 13.1 *Fire and Ambulance:*** Silverbrook Estates will be under the jurisdiction of the Kalispell Fire Department. Ambulance service will be provided by the Kalispell Fire Department.

## **ARTICLE XIV OPEN SPACES**

**Section 14.1 *Purpose and Public Access:*** The Open Space within the development shall be accessible for public use.

**Section 14.2 *Mandatory Requirements:*** The Open Space as designated on the final plat shall be preserved in perpetuity. The Board, among its other duties, shall establish and levy assessments to pay for the taxes, insurance, maintenance and other expenses associated with the Open Space and Common Areas under the control and authority of the Association.

The Association shall be responsible for liability insurance, local taxes and maintenance of recreation and other facilities in designated Open Spaces and Common Areas. The Board may, in its discretion, adjust the assessments to meet the changing needs of the Silverbrook Estates community and the areas serving the community.

**Section 14.3 *Permissible Uses:*** No unauthorized motorized travel or horseback travel will be allowed within any of the Open Spaces or Common Areas. Signage in the Open Spaces and Common Areas is also hereby prohibited.

**Section 14.4 *Nuisances:*** No Owner, guest or invitee may use or occupy the Open Space, trails, roads, Common Areas or any Lot in such a manner as to disturb or interfere with the peaceful use, occupancy or enjoyment of any other Owner or guest of Silverbrook Estates. Violations shall be enforced as provided for in Article XVI of these Covenants.

**Section 14.5 *Control and Management:*** The Association shall have the exclusive right and obligation to manage, control, improve and maintain the Open Space and Common Areas within Silverbrook Estates.

## **ARTICLE XV UTILITIES INSTALLATION AND MAINTENANCE**

**Section 15.1 *Utilities Easements:*** Easements for utilities such as electricity, gas, sewer, water, television, telephone and cable communications and other utility equipment shall be as designated on the Silverbrook Estates Subdivision Plat. All utility installations shall be underground. All Owners shall have the right to enter upon and excavate in such easements upon securing the approval of the DRC. Easements for ingress and egress and for utilities shall not be moved, deleted or restricted without the written approval of all affected Lot Owners and the Association. Utility companies and Owners must promptly restore disturbed areas to a condition as close as possible to the natural condition of the land before work commenced.

**Section 15.2 *Utilities Installation and Maintenance:*** Declarant or its designated representative shall install and P.O.A. shall maintain utility services to the Lots or to points in close proximity to the Lots. Owners shall bear all responsibility and costs for extending utilities from such points.

All utilities shall be installed and maintained underground. Piping and wiring shall be concealed. Each owner shall be responsible for utility installation and maintenance in accordance with applicable state and local regulations and the requirements of the DRC.

**Section 15.3 *Water and Sewer:*** All improvements or structures designed for occupancy or use by humans shall be connected to domestic water and sewer service provided by the City of Kalispell. All Lot Owners shall hook up to the city water and sewer systems when a structure is constructed on a Lot.

## **ARTICLE XVI ENFORCEMENT, TERM AND AMENDMENT**

**Section 16.1 *Right to Enforce:*** The Owner of each Lot shall be primarily liable, and the occupant, if any, secondarily liable for the violation or breach of any covenant, condition or restriction contained in this Declaration or in the Design Guidelines. Violation or breach of any such covenant, condition, restriction or requirement shall give to Declarant, or the Association, following thirty (30) days written notice to the Owner or occupant in question the right, privilege and license to enter upon the Lot where said violation or breach exists and to abate or remove, at the expense of the Owner or occupant, any improvement, structure, thing or condition present on such Lot which is in violation of or contrary to the intent and meaning of these Covenants. The Declarant and the Association may also bring an action at law or in equity against the person or persons who have violated or are attempting to violate any of

these Covenants, to enjoin or prevent a violation or to require that a violation which has already occurred be remediated. No such entry by Declarant, the Association or their agents shall be deemed a trespass, and neither Declarant nor the Association or their agents shall be subject to liability to the Owner or occupant of said Lot for such entry or any action taken to remediate a violation. The cost of any abatement, removal or other remediation shall be a binding personal obligation on any Owner or occupant in violation of any provision of this Declaration, as well as a lien (enforceable in the same manner as a lien for delinquent assessments) upon the Lot in question. The lien provided for in this section shall not be valid as against a bona fide purchaser or mortgagee for value of the Lot in question unless a suit to enforce said lien shall have been filed in a court of record in Flathead County, Montana, prior to the recordation of the deed or mortgage conveying or encumbering the Lot to such purchaser or mortgagee.

**Section 16.2 *Right of Entry:*** During reasonable hours and upon reasonable advance notice (not less than twenty-four (24) hours), and subject to reasonable security requirements, Declarant, the Association or their agents, shall have the right to enter upon and inspect any Lot and the improvements thereon for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and neither Declarant nor the Association or their agents shall be deemed to have committed a trespass or wrongful act by reason of such entry or inspection.

**Section 16.3 *Enforcement:*** Enforcement of these Covenants may be by proceedings either at law or in equity against any person or persons violating, or attempting to violate, any provision of this Declaration. The legal proceedings may be to restrain the violation, to remediate a violation which has already occurred, to recover damages, or any combination thereof. Should any lawsuit or other legal proceeding be instituted by the Association or an Owner against an Owner alleged to have violated one or more of the provisions of these Covenants, and should the Association or Owner enforcing the provisions of the Covenants be wholly or partially successful in such proceedings, the offending Owner shall be obligated to pay the costs of such proceeding, including reasonable attorney's fees for all time associated with the action.

**Section 16.4 *Failure to Enforce Not a Waiver:*** The failure of the Declarant, the Association or an Owner, to enforce any covenant or restriction contained herein shall not be deemed a waiver nor shall it in any way prejudice the right to later enforce that covenant or any other covenant thereafter, or to collect damages for any subsequent violation.

The waiver, or granting of a variance of a covenant by the Board or non-action of the Association or Declarant in the event of a violation of a covenant by an Owner, shall not be deemed to waive or nullify the covenant or impair enforcement thereof as it pertains to other Owners or Lots.

**Section 16.5 *Covenants Run With Title:*** In any conveyance of a Lot or other portion of the Property, it shall be sufficient to insert a provision in any deed or instrument of conveyance to the effect that the property is subject to protective or restrictive covenants without setting forth such restrictions and covenants verbatim or in substance in said deed and without referring to the recording data. All of the Lots and other portions of the Property shall be subject to the restrictions of this Declaration whether or not there is a specific reference to it in a deed or instrument of conveyance.

**Section 16.6 *Protection of Mortgagees:*** A breach of any restrictions or covenants contained in this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon any Lot or portion of the Property or any improvements thereon. However, this Declaration shall be binding upon and shall inure to the benefit of any subsequent owner whose title thereto was acquired by foreclosure, trustee sale or otherwise.

**Section 16.7 *Term of Declaration:*** This Declaration and any amendments to it will remain in effect until the 50th anniversary of the date this Declaration is first recorded in the office of the Clerk and Recorder of Flathead County, Montana. Thereafter this Declaration will be automatically extended for five successive periods of ten (10) years each, unless otherwise terminated or modified as provided below.

**Section 16.8 *Amendment:*** Subject to the limitations of Section 16.9, this Declaration, or any provision of it, may be terminated, extended, amended or revoked as to the whole or any portion of the Property as follows:

**16.8.1 *Prior to Sale of Lots:*** Prior to the sale of any Lot (excluding any sale to a person or entity affiliated with Declarant), Declarant may terminate, extend, amend or revoke this

Declaration as to the whole or any portion of the Property by recording in the records of Flathead County, Montana, a document signed by the Declarant stating the action taken.

**16.8.2 After Sale of Lots But During Period of Declarant Control:** After the sale of a Lot (excluding any sale to a person or entity affiliated with Declarant) but before expiration of the Period of Declarant Control, Declarant may terminate, extend, amend or revoke this Declaration as to the whole or any portion of the Property. A copy of the document stating the action intended to be taken by the Declarant and a notice of the Owner rights under this Section shall be mailed to each Owner by first class mail, postage prepaid, to the address of the Owner in the records of the Association. Unless written objection is received by Declarant from the Owners holding seventy-five percent (75%) or more of the votes within thirty (30) days of the mailing of the notice to the Owners, the action proposed to be taken by the Declarant shall be considered approved and shall become final. The Declarant shall then record in the records of Flathead County, Montana, a document stating the action taken, together with a certificate certifying that notice was given to the Owners as required herein and that fewer than seventy-five percent (75%) of the Owners objected to the action.

**16.8.3 After the Period of Declarant Control:** After the Period of Declarant Control, this Declaration, or any provision of it, may be terminated, extended, amended or revoked as to the whole or any portion of the Property upon the written consent of Owners holding seventy-five percent (75%) or more of the votes in the Association. The amendment will be immediately effective upon recording in the records of Flathead County, Montana, the document setting forth the amendment executed and acknowledged by the necessary number of Owners, or alternatively, upon the recording in the records of Flathead County, Montana, of a copy of the document together with a certificate signed by an officer of the Association stating that the required number of consents of Owners were obtained.

**Section 16.9 Declarant Approval:** No termination, extension or amendment of this Declaration will be effective in any event during the Period of Declarant Control unless the written approval of Declarant is first obtained.

## **ARTICLE XVII ZONING REGULATIONS AND CODES**

**Section 17.1 General Information:** Silverbrook Estates is located within the jurisdictional area of the City of Kalispell. All improvements in Silverbrook Estates shall comply with the ordinances of the City of Kalispell as well as this Declaration and the Design Guidelines for the development. In addition to the Design Guidelines, building design and construction will be regulated by city, county, state and federal regulatory agencies having jurisdiction. The Owners and their agents shall be responsible to ensure they are in compliance with all such regulations. Approval of a project by the DRC does not necessarily mean that the project is in compliance with such codes and regulations. Owners must ensure independently that their project is in compliance with all applicable local, state and federal codes and regulations. Any impact fees or other charges or assessments imposed on an Owner's project or in connection with the improvement of an Owner's Lot by the City of Kalispell or other regulatory authority are the responsibility of the Lot Owner.

Lot Owners and residents of the subdivision are hereby notified that there are agricultural activities on adjoining and nearby properties. Lot Owners recognize and accept that standard agricultural and farming practices can result in dust, smoke, animal odors, flies and machinery noise. Standard agricultural practices include the use of heavy equipment, chemical sprays, periodic burning and the use of machinery early in the morning and sometimes late into the evening.

No construction or alteration of any Improvements, including any site work, whether temporary or permanent, including but not necessarily limited to buildings, fences, walls, earthwork, paving, vegetation, signs or secondary structures such as utility or trash enclosures may be commenced on any Lot prior to receiving the written approval of the DRC.

**Section 17.2 General Development Parameters:**

**17.2.1 Density:** Not more than one single family residence may be built on each single family residential Lot. The foregoing does not prevent one single family residence from being constructed on two or more residential lots.

**17.2.2 Allowable Uses – Residential:** The residential Lots shall be used exclusively for residential purposes, and no more than one family (including its servants and transient guests) shall occupy such residence; provided however, that nothing in this subparagraph shall be deemed to prevent:

- a) The construction of detached garages which shall be in accordance with the Covenants and Design Guidelines.
- b) An artist, artisan or craftsman from pursuing his or her artistic calling upon the Lot or dwelling unit owned by such artisan, if such artist, artisan, or craftsman uses such Lot or dwelling unit for residential purposes, is self-employed and has no employees working on such Lot or in such dwelling unit, and does not advertise any product or work or art for sale to the public upon such Lot or in such dwelling unit.
- c) The leasing of any Lot by the Owner thereof, subject, however, to all of the restrictions as may be adopted from time to time by the Association.

Among the uses which are prohibited are safe houses, group day care facilities, and day care centers. (See Kalispell Zoning Ordinance 27.37.010 for definitions.)

**17.2.3 Allowable Uses – Commercial:** The purpose of the commercial district is to provide goods and services primarily to the residents of Silverbrook Estates and their guests. It is also intended to be a buffer zone between the residential zone and the intersection of U.S. Highway 93 and Church Drive.

The base zoning for the commercial district shall conform to Kalispell’s B-1 zoning. Prohibited uses include but are not limited to light manufacturing, automobile service centers, adult novelty/bookstores and pawn shops.

**17.2.4 Building Envelopes:** Each Lot in Silverbrook Estates shall have a building envelope surveyed and located on site. The building envelopes are established by the setbacks which are set forth in Section 17.2.5, below. All dwellings, exterior parking spaces, garages, sheds, carports, porches and decks shall be contained within the building envelope. The DRC may approve the location of swimming pools outside the building envelope, so long as adequate and acceptable screening and fencing approved by the DRC is provided.

**17.2.5 Setbacks and Building Envelopes:** The following setback distances must be observed throughout Silverbrook Estates (setbacks shall be measured from the property line to the furthest projecting part of the structure):

- a) Residential Town Home Lots:
  - 5’ side yard
  - 10’ front yard
  - 10’ rear yard
  - 0’ shared side yard
- b) Single Family Residential Lots:
  - 10’ side yard
  - 25’ front yard
  - 20’ rear yard
  - 25’ side corner yard
  - 30’ rear yard where adjacent to Open Spaces along the Stillwater River and its tributaries
- c) Commercial Lots:
  - 5’ front yard
  - 10’ side yard
  - 5’ rear yard

- d) Tennis courts, swimming pools and other areas of active use and noise shall be buffered from adjacent properties.
- e) Additional setbacks from tree masses, native vegetation transition zones, topography, drainage, view corridors, roads, paths and utility easements may be required by the DRC.
- f) A minimum setback of 100 feet is required for all buildings adjacent to declared wetlands and 50 feet to other declared waterways.
- g) Any building envelope overlapping with front, rear or side yard setbacks shall be restricted by the required setbacks.

**17.2.6 Maximum Lot Coverage:** The maximum allowable coverage of any Lot subject to the R-2 residential zone under the City of Kalispell zoning ordinance by any built surface (driveway, garage, primary residence, auxiliary structure, decking, etc.) shall be no greater than thirty-five percent (35%) of the Lot.

**17.2.7 Maximum Building Footprints and Minimum Floor Areas:**

The minimum ground level floor area of any single family residence located east of Silverbrook Drive shall not be less than 1200 square feet of living space. The minimum ground level floor area of any single family residence located west of Silverbrook Drive shall not be less than 1600 square feet of living space. These square footages are exclusive of exterior parking spaces and decks. Each principal residential structure shall have at a minimum, an attached or detached two-car garage.

Residential Town Home residences shall have a maximum building footprint of forty-five percent (45%) of the lot square footage, excluding exterior parking spaces and decks.

Commercial properties have no maximum footprint or lot coverage requirements except as limited by the confines of the applicable setbacks.

All building size requirements are subject to the maximum lot coverage restrictions set forth in Section 17.2.6, above and the applicable City of Kalispell zoning ordinance, which take precedence over building size requirements and allowances.

**17.2.8 Building Height:** Maximum allowable building height is set at thirty-five (35) feet from the lowest adjacent grade level to the highest point on the roof or parapet wall for commercial structures and thirty-five (35) feet from the lowest adjacent grade level to the highest point of the roof or parapet wall for residential structures.

**17.2.9 Applicable Codes:** The following codes, standards and regulations are applicable to Silverbrook Estates and compliance with them is required:

- a) Silverbrook Estates Design Guidelines
- b) Declaration of Covenants, Conditions, Restrictions and Reservations, as same may be amended
- c) City of Kalispell Zoning Ordinance
- d) Uniform Building Code (UBC)
- e) National Electric Code
- f) Uniform Mechanical Code
- g) Uniform Fire Code
- h) National Fire Protection Association Code
- i) State Fire Code Standards
- j) Montana Energy Code
- k) All other applicable local, state, and federal regulations

**ARTICLE XVIII  
EXPANSION AND WITHDRAWAL**

**Section 18.1 Reservation of Right to Expand:** Declarant reserves the right, but will not be obligated, to expand the effect of this Declaration to include all or part of the Expansion Property. The consent of the existing Lot Owners and Mortgagees will not be required for any such expansion, and

Declarant may proceed with such expansion without limitation at its sole option. Declarant will have the unilateral right to transfer to any other person this right to expand by an instrument duly recorded. Declarant will pay all taxes and other governmental assessments relating to the Expansion Property as long as Declarant is the owner of such property.

**Section 18.2 Completion of Expansion:** When Declarant has determined that no further property shall be added to the Project, Declarant shall notify the Association in writing. Until such notice is given, Declarant retains the right to designate additional property as Expansion Property.

**Section 18.3 Declaration of Annexation:** Any expansion of the Project may be accomplished by recording a notice of such annexation and one or more supplemental plats in the records of the Clerk and Recorder of Flathead County, Montana. The declaration or notice of annexation will describe the real property to be annexed, and subject it to these Covenants with all exceptions and additional restrictions or reservations noted. Specifically, each new Lot in the annexed area will be allocated one vote and liability for common expenses and assessments equal to the liability allocated to each of the existing Lots and the proportionate voting interest and allocation of common expenses for the existing Lots will be adjusted accordingly. Such annexation will not require the consent of Owners, the Association or the Board of Directors. Any such expansion will be effective upon the filing for record of such declaration or notice of annexation, unless otherwise provided therein. The expansion may be accomplished in stages by successive annexations or in a single expansion.

Upon the recordation of any such notice of annexation, the definitions used in this Declaration will be expanded automatically to encompass and refer to Silverbrook Estates as expanded. Such notice of annexation may add supplemental covenants specific to the Expansion Property in question, or delete or modify provisions of this Declaration as it applies to the Expansion Property. However, this Declaration may not be modified with respect to that portion of the Property already subject to this Declaration, except as provided herein for amendment.

**Section 18.4 Withdrawal of Property:** Declarant reserves the right to withdraw from the jurisdiction and effect of this Declaration any parcel of the Property (including the Expansion Property), provided, however, that no parcel may be withdrawn after it has been conveyed to a purchaser.

## **ARTICLE XIX SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS AND EASEMENTS**

**Section 19.1 Rights Reserved to Declarant:** Until the expiration of the Period of Declarant Control, Declarant will have the following rights:

**19.1.1 Completion of Improvements:** The right to complete Improvements as indicated on any plat filed with respect to the Property, including any Expansion Property.

**19.1.2 Development Rights:** The right to exercise all development rights in connection with the development of the Silverbrook Estates Project (referred to here as “Development Rights”), including without limitation the right or combination of rights hereby reserved by Declarant, as follows:

- (a) The right to annex all or part of the Expansion Property to the Project, in accordance with Article XVIII.
- (b) The right to create Lots and Common Area on the Property, including the Expansion Property.
- (c) The right to subdivide Lots and convert Lots into Common Area on any part of the Property, including the Expansion Property.
- (d) The right to withdraw real estate, whether contained within the Property initially subject to this Declaration or within the Expansion Property, from Silverbrook Estates, as provided in Article XVIII.

**19.1.3 Sales Activities:** The right to maintain sales and management offices, signs advertising the Project and model residences on the Common Area and on Lots owned by Declarant, whether contained within the Property initially subject to this Declaration, or within the Expansion Property.

**19.1.4 Easements:** The right to use easements through the Common Areas on the Property, including the Expansion Property, for the purpose of making improvements on the Property and the Expansion Property.

**19.1.5 Master Association:** The right to establish and make the Project subject to a master association and to establish such other associations of property owners as Declarant determines is appropriate.

**19.1.6 Association Directors and Members of the DRC:** The right to appoint any officer or director of the Association, and any member of the DRC.

**Section 19.2 Reservation for Expansion and Construction:** Declarant hereby reserves for itself and its successors and assigns and for Owners in all future phases of Silverbrook Estates a perpetual easement and right-of-way for access over, upon, and across the Property, including the Expansion Property, for construction, utilities, drainage, ingress and egress, and for use of the Common Areas, including Common Areas located within the Expansion Property. The location of these easements and rights-of-way may be made certain by Declarant or the Association by instruments recorded in Flathead County, Montana.

Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility, ingress and egress, and other easements over and across the Common Areas, and to create other reservations, exceptions, and exclusions convenient or necessary for the use and operation of any other property of Declarant.

**Section 19.3 Reservation of Easements for Utilities, Infrastructure and Access:** Declarant reserves for itself and its successors and assigns and hereby grants to the Association, the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Areas, for purposes including but not limited to streets, paths, walkways, drainage, recreation areas and parking areas, and to create other reservations, exceptions, and exclusions in the interest of the Owners and the Association, in order to serve the Owners within Silverbrook Estates.

Declarant also reserves for itself and its successors and assigns and grants to the Association the concurrent right to establish from time to time by an instrument recorded in Flathead County, Montana, such easements, permits or licenses over the Common Areas for access by certain persons (other than Owners and Owners' families and guests) who may be permitted to use designated portions of the Common Areas as contemplated under this Declaration.

**Section 19.4 Maintenance Easement:** An easement is hereby reserved to Declarant for itself and its successors and assigns and granted to the Association, and any member of the Board of Directors or Manager, and their respective officers, agents, employees and assigns, upon, across, over, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to this Declaration, including the right to enter upon any Lot for the purpose of performing maintenance to the landscaping or the exterior of Improvements to such Lot.

**Section 19.5 Drainage Easement:** An easement is hereby reserved to Declarant for itself and its successors and assigns and granted to the Association, to enter upon any portion of the Property for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water. Reasonable efforts will be made to use this easement so as not to disturb the uses of the Owners, the Association and Declarant, as applicable, to the extent possible; to prosecute such drainage work promptly and expeditiously; and to restore any areas affected by such work to a slightly and usable condition as soon as reasonably possible following such work. Declarant, or its officers, agents, employees, successors and assigns must inform and obtain the approval of the Board of Directors prior to undertaking such drainage work, which approval will not be unreasonably withheld.

**Section 19.6 Snow Storage Easement:** An easement is hereby reserved to Declarant for itself and its successors and assigns and granted to the Association, its officers, agents, employees, successors and assigns upon any and all portions of the Property for the storage of snow in the course of clearing snow accumulations from the Silverbrook Estates roads, trails, parking areas, Common Areas and other areas within Silverbrook Estates. Reasonable efforts will be made to use this easement in a way that will minimize the interference with the Owners' use and enjoyment of their Lots.

**Section 19.7 *Declarant Rights Incident to Construction:*** Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant; provided, however, that no such rights will be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner.

**Section 19.8 *Easements Deemed Created:*** All conveyances of Lots hereafter made, whether by Declarant or otherwise, will be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance.

## **ARTICLE XX MISCELLANEOUS PROVISIONS**

**Section 20.1 *Limitation of Liability:*** Neither the Declarant nor the Association, or their successors or assigns, shall be liable to any Owner or occupant of the Property by reason of any mistake in judgment, negligence, nonfeasance, action or inaction, or for the enforcement or failure to enforce any provision of this Declaration. Every Owner or occupant by acquiring its interest in the Property agrees that it will not bring any action or suit against the Declarant or the Association to recover any such damages or to seek equitable relief because of same.

**Section 20.2 *Severability:*** This Declaration, to the extent possible, will be construed or reformed so as to give validity to all of its provisions. Any provision of this Declaration found to be prohibited by law or unenforceable will be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

**Section 20.3 *Construction:*** In interpreting words in this Declaration, unless the context will otherwise provide or require, the singular will include the plural, the plural will include the singular, and the use of any gender will include all genders.

**Section 20.4 *Headings:*** The headings are included only for purposes of convenient reference, and they will not affect the meaning or interpretation of this Declaration.

**Section 20.5 *Waiver:*** No failure on the part of the Association or the Board to give notice of default or to exercise or to delay in exercising any right or remedy will operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver will be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association.

**Section 20.6 *Conflicts Between Documents:*** In case of conflict between this Declaration and the Design Guidelines, this Declaration will control.

**Section 20.7 *Assignment:*** Declarant may assign all or any part of the Special Declarant Rights or any of Declarant's other rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale. Such successor will be identified, the particular rights being assigned will be specified, and, to the extent required, concomitant obligations will be expressly assumed by such successor, all in a written instrument duly recorded in the records of the Clerk and Recorder of Flathead County, Montana.

/////SIGNATURES NEXT PAGE/////

IN WITNESS WHEREOF, the Declarant has executed this Declaration this \_\_\_\_ day of \_\_\_\_\_, 2009, to be effective \_\_\_\_\_.

**93 and Church, LLC**  
a Montana Limited Liability Company

By: \_\_\_\_\_  
Howard T. Mann  
Its Managing Member

STATE OF MONTANA     )  
  :ss  
County of Flathead     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me, the undersigned, a Notary Public for the State of Montana, personally appeared **HOWARD T. MANN**, known to me to be the Managing Member of 93 and Church, LLC, a Montana limited liability company, the Declarant herein, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate last above written.

\_\_\_\_\_  
[Signature of Notary]

\_\_\_\_\_  
[Typed, stamped or printed Name of Notary]

Notary Public for the State of Montana  
Residing at \_\_\_\_\_

[City of Residence]

My commission expires: \_\_\_\_\_ 20\_\_\_\_  
  [Month      Day            Year]

(NOTARIAL SEAL)

**EXHIBIT "A"**

**TO DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND RESERVATIONS**

**FOR SILVERBROOK ESTATES**

**(Legal Description of Silverbrook Estates Property)**

Tract 3 of Certificate of Survey No. 15896 in the North Half of the Northeast Quarter and in the Northeast Quarter of the Northeast Quarter of the Northwest Quarter of Section 13 of Township 29 North, Range 22 West, P.M.M., Flathead County, Montana

AND

Tract 4 of Certificate of Survey No. 15896 in the Southwest Quarter of the Northeast Quarter and in the South Half of the Northwest Quarter of Section 13 of Township 29 North, Range 22 West, P.M.M., Flathead County, Montana

AND

Tract 5 of Certificate of Survey No. 15896 in the Southeast Quarter of the Northeast Quarter and in the North Half of the Southeast Quarter and in the Northeast Quarter of the Southwest Quarter of Section 13 of Township 29 North, Range 22 West, P.M.M., Flathead County, Montana.