



WHEN RECORDED RETURN TO:

CHESTER T. LACKEY  
BELCHER SWANSON LAW FIRM, P.L.L.C.  
900 DUPONT STREET  
BELLINGHAM, WA 98225

Document Title:	Declaration of Covenants, Conditions, Easements & Restrictions of Silver Creek Business Park (Third Amended)
Grantor/borrower:	Silver Creek Group, L.L.C., a Washington limited liability company
Grantee/assignee/beneficiary:	Silver Creek Group, L.L.C., a Washington limited liability company and The City of Ferndale
Legal Description:	Portion of NE ¼ Sec 4, Twp 38N R2E WM; and Portion of SE ¼ of Sec 33, Twp 39N R2E WM
Parcel #:	380204 352537 0000; 390233 370005 0000; 390233 348012 0000; 390233 378017 0000; 390233 403033; and 390233 420040
Reference:	2070503956, 2070504326 & 2090302210

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS OF SILVER CREEK BUSINESS PARK (Third Amended)

This Declaration is made this 31 day of January, 2011, by Silver Creek Group, L.L.C., a Washington limited liability company, hereafter referred to as the "Declarant".

Declarant hereby states that all of the real property located within Exhibit "A", is subject to the limitations, restrictions, easements, covenants, conditions, liens and charges as set forth in this Declaration. Each and all of these limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land and shall apply to and benefit and bind any and all heirs, assigns, successors in interest, and lessees of the Declarant.

I. STATEMENT OF PURPOSE

a. The purpose of this Declaration is:

(a) to ensure the proper use of all property that constitutes Silver Creek Business Park in order to protect the Owner of each Parcel against improper development and use of surrounding Parcels;

- (b) to ensure maintenance of the Common Properties;
- (c) to create an organization to manage common properties and enforce the terms of this Declaration;
- (d) to create easements for the common benefit of all of the properties within the Silver Creek Business Park; and
- (e) to ensure architectural consistency within the Silver Creek Business Park.

## II. DEFINITIONS

2.1. Association. "Association" shall mean the Silver Creek Business Park Association a non-profit corporation created pursuant to Article VI of this Declaration.

2.2 Binding Site Plans. "Binding Site Plans" shall mean the General and Specific Binding Site Plan, Lots 1 and 2 of Silver Creek, LLA, recorded under Whatcom County Auditor's File No. 2110103705, and the General and Specific Binding Site Plan for Silver Creek Business Park, recorded under Whatcom County Auditor's File No. 2070504020.

2.3. Board. "Board" shall mean the Board of Directors of Silver Creek Business Park Association.

2.4. Common Properties. The following are Silver Creek Business Park "Common Properties":

(a) Stormwater Facilities: retention and detention ponds, water quality facilities, pipes, catch basins and all other improvements related thereto, including, but not limited to, the area designated "STORMWATER DETENTION / RETENTION EASEMENT" on the Binding Site Plans.

(b) Easements for access and utilities shown on the Binding Site Plans, access and utility easements created herein or created from time to time by Declarant for future development of the Silver Creek Business Park.

(c) The landscape areas and landscape buffers as shown on the Binding Site Plans, including landscaping, located within adjacent rights of way and landscape areas that may be created in the future by the Declarant.

(d) The area adjacent to Silver Creek labeled as "NATURAL BUFFER AREA or "BUFFER AREA" on the Binding Site Plans.

2.5. Declaration. "Declaration" shall mean this Declaration of Covenants, Conditions, Easements, Reservations and Restrictions of Silver Creek Business Park (Third Amendment).

2.6. Improvements. "Improvements" shall mean and include, without limitation, any buildings, out-buildings, structures, private roads, driveways, parking areas, fencing, retaining walls, screening, walls, ornamentation, signs, stairs, decks, poles, lighting, wind breaks, and landscaping within landscaping easements and areas.

2.7. Owner. "Owner" shall mean any person holding fee title or a vendee's interest in a real estate contract to a Parcel within Silver Creek Business Park.

2.8. Parcel. "Parcel" shall mean each legal lot of record within the Binding Site Plans.

2.9. Person. "Person" shall mean any individual, firm, corporation, partnership, association, limited liability company, unincorporated association or other legal entity.

2.10. Required Infrastructure. "Required Infrastructure" shall be roads, drainage improvements, landscaping and utilities required to meet the City of Ferndale's minimum standards for specific or general binding site plans.

2.11 Silver Creek Business Park. "Silver Creek Business Park" shall mean all real property described in Exhibit "A" of this Declaration.

2.12 Stormwater Facilities. "Stormwater Facilities" means retention and detention ponds, water quality facilities, pipes, catch basins and all other improvements related thereto.

### III. USE RESTRICTIONS AND REQUIREMENTS

The following general restrictions apply to Owners and Parcels within Silver Creek Business Park:

3.1. Nuisances. No obnoxious or offensive trade or activity shall be carried on upon any parcel or any part of Silver Creek Business Park. All noises, sounds, odors, and vibrations shall be appropriately modified or muffled in such a manner so as not to be objectionable. A nuisance includes the escape or discharge of fumes, odors, gases, vapors, acids, or other substances into the atmosphere if such escape or discharge shall be detrimental to the health, safety or welfare of persons within the vicinity.

3.2. Drainage. There shall be no interference with drainage over or under any portion of Silver Creek Business Park.

3.3. Refuse. All rubbish, garbage and other waste shall be regularly removed from each Parcel and adjoining Common Properties.

3.4. Maintenance. The grounds and exterior of all Improvements of each Parcel shall be regularly maintained as needed, painted and repaired and kept in good order and condition .

3.5. Signs. Except for signs erected or constructed by or on behalf of Declarant or approved by the ARC, no exterior advertising sign shall be permitted other than those identifying the name, business and products offered by the person or firm occupying the Parcel and those offering a Parcel for sale or for lease. All signs must conform to prescribed setback lines, regulations and laws.

3.6. Clean-up and Restoration after Fire/Casualty Losses. Damage after any and all casualty losses, including but not limited to those by fire, windstorm, rain and/or other natural or man made causes, shall be repaired and restored as soon as possible.

3.7. Dumping of Hazardous, Dangerous and/or Polluting Substances. There shall be absolutely no dumping or discharge of any hazardous, damaging or polluting materials upon the surface of the land and Common Properties of Silver Creek Business Park or into the Stormwater Facilities on or adjoining Silver Creek Business Park. All hazardous, dangerous or polluting materials shall be disposed of according to State and Federal regulations and law.

3.8. Common Property Protection. The Owners shall not in any way cause or permit obstruction to or hindrance of the free flow of traffic upon interior roads and easements within Silver Creek Business Park. Owners shall not cause or allow damage to Common Properties by their agents, employees or customers, and will take reasonable steps to prevent damage to the Common Properties.

#### IV. EASEMENTS

The Declarant hereby creates, reserves and grants the following easements:

4.1. Landscaping Easements. The Declarant reserves the right to create landscaping easements that are Required Infrastructure. Landscaping easements and Improvements therein, shall, when landscaping has been completed, become Common Properties.

4.2. Access, Parking and Utilities Easements. The Declarant reserves the right to create ingress, egress, parking and utilities easements within the Silver Creek Business Park for the benefit of all Parcels within Silver Creek Business Park, including Required Infrastructure. These easements and Improvements thereon shall become Common Properties.

4.4 Natural Buffer Easement. Declarant hereby creates and reserves a natural buffer easement over and across that area designated "NATURAL BUFFER AREA" and "NATURAL BUFFER" on the Binding Site Plans ("Natural Buffer Easement"). No activity shall be permitted

within the Natural Buffer Easement, and nothing shall be done to change or interfere with the natural character of the Natural Buffer Easement without the prior written consent of the City of Ferndale. The Declarant reserves the right to dedicate to the City of Ferndale a Conservation Easement or similar recordable document that restricts uses or activities within the Natural Buffer Easement, as may be required by the City of Ferndale as a condition of approval for permits or approval required to develop or use of the Silver Creek Business Park.

4.5 Binding Site Plans Easements. The Declarant hereby creates, establishes and reserves those easements shown on the Binding Site Plans.

#### V. COMMON PROPERTIES TRANSFER

The Declarant shall grant and convey Common Properties located within the Silver Creek Business Park to the Association prior to sale or transfer of any Parcel as provided in Article VI. Common Properties subsequently created shall be conveyed to the Association as they are created.

#### VI. ESTABLISHMENT, DUTIES AND POWERS OF SILVER CREEK BUSINESS PARK ASSOCIATION

The Declarant shall form an Owners Association to include as its only members all Owners of Parcels within Silver Creek Business Park. The Association shall be a non-profit corporation organized pursuant to Title 24 of the Revised Code of Washington, and shall be known as the Silver Creek Business Park Association.

6.1. Purpose. The purpose of the Association shall include, without limitation, the furtherance and promotion of the common welfare of the Owners of any Parcel within Silver Creek Business Park; wetland and stream mitigation monitoring and maintenance, regulation, use, care, operation, maintenance, repair and preservation of the Common Properties; administration and collection of assessments for the purpose of managing the Association and maintaining, protecting and preserving the Common Properties; and for the purpose of enforcing the covenants, conditions and restrictions set forth in this Declaration.

6.2. Creation and Transfer of Control. The Association shall be organized at the instance of the Declarant, and each Owner shall be a member of the Association. The Declarant shall designate and appoint the Board until such time as the Declarant has sold Parcels with more eighty percent (80%) or more (based on square footage) of the Silver Creek Business Park. At which time the control of the Association shall be turned over to the members, and the members may elect the Board as required by the Articles of Incorporation and Bylaws of the Association. The Declarant at its sole and exclusive option may elect at any time to transfer control of the Association to the members.

6.3. Voting. The Association shall have one hundred votes. Each Owner shall be allocated a number of votes equal to the percentage interest calculated by dividing the usable square footage of each Parcel by the total usable square footage of all Parcels in the Silver Creek

Business Park. For the purpose of this calculation of the total usable square footage that portion of each Parcel covered by the Natural Buffer Easement and the Stormwater and Detention / Retention Easement shall not be included in the usable square footage calculation. Such percentage interest shall be rounded to the next nearest whole percentage point. (e.g. in calculating votes an Owner with a Parcel that represents 25% of the usable square footage of Silver Creek Business Park shall be entitled to 25 votes)

6.4. Association Duty. At such time as the Declarant conveys the Common Properties to the Association and at all times subsequent thereto, the Association shall be responsible for the maintenance and upkeep of the Common Properties at its sole and exclusive expense. Until the Common Properties have been transferred to the Association, the Declarant shall be solely responsible for the maintenance of the Common Properties.

6.5 Master Association. To comply with the master association requirements of RCW 64.34, if any Parcel is subjected to the provisions of RCW 64.34 (the "Condominium Act"), then the condominium association for such Parcel shall be entitled to elect one (1) director on the board of the Silver Creek Business Park Association, at which time the number of directors for the Silver Creek Business Park Association shall be increased by two (2) positions each time a Parcel is subjected to the Condominium Act. The Condominium Declaration for any condominium within the Silver Creek Business Park must comply with the master association provisions of the Condominium Act.

## VII. ASSESSMENTS AND LIENS

7.1. Authority. The Association and Declarant shall be empowered to establish and collect dues and assessments upon Parcels within Silver Creek Business Park for the common benefit of all Parcels within Silver Creek Business Park.

7.2. Purpose. The purpose for which dues and assessments may be assessed and collected include the maintenance, repair, and reconstruction of Improvements and facilities within Common Properties; liability insurance; Common Properties' taxes; management; wetland monitoring and maintenance; and enforcement of this Declaration.

7.3. Personal Obligation and Lien Foreclosure. Assessments shall constitute an obligation of any Owner of record, and shall also constitute a lien on the Parcel assessed. Such lien shall arise upon filing with the Auditor of Whatcom County by the Association. Such lien shall be enforced by the Association in the same form and manner of procedure as foreclosure of real property mortgages under the laws of the State of Washington.

7.4. Costs of Collection. The delinquent Owner shall pay the costs of collection if collection of the assessment is referred to an attorney. Costs shall include title examination, title insurance, attorney's fees incurred by the Association and other court costs, as well as all other costs reasonably and necessarily incurred in the foreclosure action.

7.5. Interest. Delinquent assessments shall also include interest at the rate of twelve percent (12%) per annum from the date they are due.

7.6. Manner of Assessment. The Board shall prepare an annual budget for the purposes described in Section 7.2. The total budget amount shall be allocated to the Parcels and assessments established based upon the percentage of votes held by each Parcel. The assessments shall be billed to the Owners on a periodic basis as determined by the Board.

7.7. Application of Assessments. Assessments received by the Association shall be applied exclusively to fulfillment of those purposes described in Section 7.2 of this Article and may include reasonable administrative expenses.

## VIII. ARCHITECTURAL REVIEW COORDINATOR

8.1 General. Construction of Improvements on any Parcel within the Subdivision shall be subject to the prior approval of an Architectural Review Coordinator ("ARC"), who shall be appointed by the Declarant, but if no ARC is appointed, the ARC shall be Cleo Callen. No Improvements shall be erected, placed or altered on any Parcel until the construction plan, specification, site plan and landscaping plan, showing the location of all proposed Improvements on the Parcel in a form established by the ARC, have been approved. The approval or disapproval of the ARC as to such construction plan, specifications, site plan and landscaping plan, shall be based upon the quality of materials utilized in the construction, the harmony of the external design and color scheme of the proposed Improvements with other existing improvements within the Silver Creek Business Park, bulk and location of Improvements with respect to typography and finish grade, road visibility protection and compliance with the Declaration.

8.2 Approval/Disapproval. The ARC shall approve or disapprove the construction plans, specifications and site plan, including specified color finish, within fifteen (15) days following receipt by the ARC of a complete duplicate set thereof from an Owner. Any complete submission of construction plan, specifications, site plan and landscaping plan on which no action is taken by the ARC for fifteen (15) days following the date of receipt thereof shall be deemed approved as submitted, unless within such fifteen (15) day period the ARC has sought, in writing, clarifying information concerning the same. Two sets of construction plans, specifications (including exterior color finish detail), site plan and landscaping plan must be submitted to the ARC. One such complete set shall be returned to the Owner with the approval or disapproval endorsed upon such complete set by the ARC. The other complete set shall be retained by the ARC for its permanent files.

The ARC shall have the right to disapprove any construction plans, specifications and/or site plan in the event the same are not in accordance with the provisions of this Declaration, if the design or exterior color scheme of the proposed Improvements is not in harmony with the general surroundings of the Silver Creek Business Park, or with the adjacent Improvements, if the construction plan, specification, site plan and landscaping plan are incomplete, or if the ARC determines that the construction plans, specifications and site plan, or any portion of them, are

contrary to the interest, welfare and/or rights of the Owners of other Parcels within the Silver Creek Business Park.

8.3 Conditional Approval. Any approval given by the ARC may be conditioned upon compliance by the applicant with any reasonable condition which the ARC deems appropriate, including, without limitation, the posting of bonds or other acceptable security in order to insure performance by the applicant in accordance with the construction plan, specifications, site plan and landscaping plan being approved.

8.4 No Liability. Neither the ARC, nor any member thereof nor any successor thereto, shall be liable to any person for any action taken by the ARC or for any failure to act by it under or pursuant to the provisions of this Declaration, so long as the ARC, and any successors thereto act in good faith and without malice.

8.5 Expiration. The Declarant may remove and replace the ARC at the Declarant's sole discretion. This right to appoint and remove the ARC shall not expire until the Declarant no longer owns any Parcels within the Silver Creek Business Park. Upon expiration of the Declarant's right to appoint the ARC the Association shall appoint a Design Review Committee ("DRC") that shall have all of the powers of the ARC. The DRC shall consist of three (3) Association members appointed by the Board. All decisions of the DRC shall be made by a majority vote.

#### IX. STORMWATER FACILITIES ALLOCATION

Each Parcel shall be entitled to use a portion of the Stormwater Facilities capacity equal to the percentage of votes held by each Parcel in the Association.

#### X. PROTECTION OF MORTGAGE OR DEED OF TRUST HOLDER

No violation or breach of any covenant, condition or restriction contained in this Declaration or in any supplement thereto and no action to enforce the same, shall defeat, render invalid or impair the lien of any mortgage or deed of trust taken in good faith and for value against any title or interest in any Parcel which is subject to an action arising from violation or breach of this Declaration.

#### XI. ENFORCEMENT

The Association, Declarant and any Owner shall have the right to enforce by any proceeding in law or in equity of all covenants, conditions, restrictions, reservations, liens and charges now or hereinafter imposed by this Declaration. The failure of the Association, the Declarant, or any Owner to enforce any rights hereunder shall not be deemed to constitute a waiver of the right to do so thereafter. The prevailing party in any litigation involving the enforcement of any provision of this Declaration, shall be entitled to a judgment for reasonable attorney's fees and costs incurred in such litigation by the prevailing party.



## XII. GRANTEE'S ACCEPTANCE

The grantee of any Parcel subject to this Declaration shall by acceptance of the deed or real estate contract conveying title thereto, accept all terms and conditions of this Declaration and agrees to keep, observe, comply with and perform all obligations of the Owners set forth herein.

## XIII. AMENDMENT TO DECLARATION

This Declaration may be amended by an instrument signed by not less than Owners holding seventy five percent (75%) of the votes in the Association. The seventy five percent (75%) shall be based upon voting power as described in Article VI. Any such amendment shall take effect upon being recorded with the Whatcom County Auditor. No amendment to this Declaration concerning an easement shall take effect, without consent of all Owners benefited by the easement.

## XIV. ENTIRE DECLARATION/SEVERABILITY

In the event that any provision of this Declaration is deemed by judicial decree to be invalid, then the remaining portion of this Declaration shall in no way be affected. This Declaration constitutes the entire Declaration of the Declarant, and there are no statements or representations other than those included herein.

## XV. PARAGRAPH HEADINGS

The paragraph headings of this Declaration are for convenience only and shall not be considered in construing this Declaration.

## XVI. EXTINGUISHMENT OF PREVIOUS DECLARATIONS AND EASEMENTS

16.1 Declaration. That certain Declaration of Covenants, Conditions, Easements and Restrictions of Silver Creek Business Park, dated May 23, 2007, recorded under Whatcom County Auditor's File No. 2070503956, and the amendment thereto, recorded under Whatcom County Auditor's File No. 2070504326, and that certain Declaration of Covenants, Conditions, Easements and Restrictions of Silver Creek Business Park, dated May 24, 2007, recorded under Whatcom County Auditor's File No. 2070504021 and the Declaration of Covenants, Conditions, Easements and Restrictions of Silver Creek Business Park (Second Amendment) recorded under Whatcom County Auditor's File No. 2090302210, are hereby extinguished and shall have no further force or effect. This extinguishment shall include easements created therein, and shown on the Record Survey.

16.2 Utility Easement. That certain ten foot (10') utility easement shown on the Record Survey and recorded under Whatcom County Auditor's File No. 910614134, is hereby extinguished and shall have no further force or effect.

DATED this 31 day of January, 2011.

SILVER CREEK GROUP, L.L.C.

By *Cleo Callen*  
CLEO CALLEN, Manager

STATE OF WASHINGTON    )  
                                      ) ss.  
COUNTY OF WHATCOM   )

On this \_\_\_ day of January, 2011, before me personally appeared CLEO CALLEN, to me known to be the manager of Silver Creek Group, L.L.C., the limited liability company that executed the within and foregoing instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

*Sergio Ruiz*  
Notary Public in and for the State of Washington,  
residing at LINDEN.  
My Commission Expires: JULY 27, 2014.

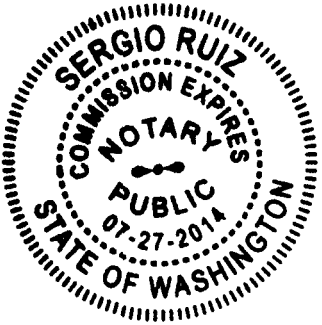


EXHIBIT "A"

Parcel 1:

Lots 1 and 2 of the Silver Creek Lot Line Adjustment, recorded under Whatcom County Auditor's File No. 2061203390.

Situate in Whatcom County, Washington.

Parcel 2:

All of the real property located within the General and Specific Binding Site Plan for Silver Creek Business Park, recorded under Whatcom County Auditor's File No. 2070504020.

Situate in Whatcom County, Washington.