



Millcreek Covenant Index

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR MILLCREEK SUBDIVISION**

THIS DECLARATION is made on the date hereinafter set forth by MILLCREEK, L.L.C., an Idaho limited liability company, hereinafter referred to as "Declarant".

Recitals: Declarant is the owner of the following real property in Ada County, State of Idaho, hereinafter sometimes referred to as the "Property":

All of the land within the boundaries of Millcreek Subdivision No. 1, according to the plat thereof recorded in Ada County, State of Idaho.

ARTICLE I. DECLARATION

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following Covenants, Conditions, Restrictions and Easements which are established for the purpose of protecting the value and desirability of, and which shall run with and bind, the Property, and each and every part, parcel and lot thereof, and be binding on all parties having any right, title or interest in the Property or any part, parcel or lot thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE II. DEFINITIONS

As used in this Declaration or in any supplemental Declaration, unless the context otherwise specifies or requires, the following words and phrases shall be defined as follows:

2.1 "Annexed Property" shall mean and refer to any real property made subject to this Declaration by supplemental Declaration pursuant to the provisions hereof for the annexation of additional parcels of real property.

2.2 "Association" shall mean and refer to Millcreek Homeowners' Association, Inc., a nonprofit corporation organized under the laws of the State of Idaho, or any successor or assign of the corporation.

2.3 "Association Property" shall mean Common Area and Common Facilities and, in addition, such other property as may be owned and operated by the Association for the benefit of the Owners.

2.4 "Common Area" shall mean and refer to Lots 1 and 14, Block 1, Lot 1, Block 2, Lots 1, 16 and 26, Block 3, Lots 1, 14, 27 and 35, Block 4, Lots 1, 2, 3 and 28, Block 6, Lot 1, Block 7, and Lots 1 and 9, Block 9, Millcreek Subdivision No. 1, and to any Lot or parcel designated as Common Area in a Supplemental Declaration subjecting additional real property to this Declaration or on any plat of the Property. Said areas are intended to be devoted to the common use and enjoyment of the Owners (subject to the provisions hereof) and are not dedicated to the public.

2.5 "Common Facilities" shall mean and refer to those physical improvements constructed by Declarant upon Common Area, or upon the utility easement over each Lot including, without limitation, all street lights (but excluding entry way lights), benches, bridges, walkways and pedestrian paths, streams, and waterways owned or operated by the Association. Common Facilities shall also include the temporary sewer system lift station and the public transit system shelter to be located at Overland Road and Cotterell Street, both of which shall be installed by Declarant and thereafter maintained by the Association. Common Facilities shall not include the pressurized irrigation system which shall be installed by or on behalf of Declarant and shall be conveyed to the Nampa & Meridian Irrigation District, together with an easement over each Lot and Common Area for the installation, operation and maintenance of the system by the District.

2.6 "Declarant" shall mean and refer to Millcreek, L.L.C., its successors and assigns provided that such successor or assign has acquired more than two (2) Lots and that such Lots constitute the remainder of unconveyed Lots owned by Declarant.

2.7 "Declaration" shall mean this Declaration as it may be amended from time to time.

2.8 "Exempt Property" shall mean all properties within the Project which have been dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit corporation exempt from taxation by the laws of the United States of America, all of which properties shall be exempt from assessments created herein, except that such term shall not include any land or improvements devoted to dwelling use.

2.9 "Lot" shall mean and refer to all Lots within and shown upon any recorded subdivision map of the Property, except the Common Area, and except for streets dedicated to the public as shown upon the recorded plat map.

2.10 "Member" shall mean and refer to any person or entity who is a member of the Association as defined by the Articles and Bylaws of the Association and this Declaration.

2.11 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

2.12 "Project" shall mean and refer to the Property and all contemplated improvements thereto.

2.13 "Property" shall mean and refer to the real property consisting of Millcreek Subdivision No. 1 according to the official plat thereof and every part, parcel, and Lot thereof, and shall further mean and refer to such additional real property as may hereafter be made subject to this Declaration by Supplemental Declaration, pursuant to the provisions hereof for the annexation of additional parcels of real property.

2.14 Whenever the context so requires, the use of the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders.

ARTICLE III. HOMEOWNERS ASSOCIATION

3.1 Formation: It is contemplated that simultaneously with the execution and recordation of this Declaration Of Covenants, Conditions, Restrictions and Easements (the "Declaration"), the Association will be incorporated and will adopt Bylaws (the "Bylaws") for its governance. To the extent the Articles of Incorporation or Bylaws of the Association may conflict with the provisions of this Declaration, the provisions of this Declaration shall control.

3.2 Responsibilities: The Association shall maintain all Common Area and Common Facilities, and all landscaping, waterways, fencing, surfacing, bridges and other improvements thereon and easements therefor. The Association shall maintain in good working order all conduit, wiring, fuse systems, service box and related parts of the street lights within the Project. Unless and until such time as the City of Boise assumes responsibility therefor, the Association shall maintain and operate the street lights and shall pay all costs incident thereto. The Association shall maintain the public transit system shelter installed and constructed by or on behalf of the Declarant.

ARTICLE IV. PROPERTY RIGHTS

Every Owner shall have a right and non-exclusive easement of enjoyment in and to the Common Area and Common Facilities which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

4.1 Rules And Regulations: The Association shall have the right from time to time to adopt Rules and Regulations regulating the use and enjoyment of the Common Area and Common Facilities including the right to limit the number of guests and charge admission and other fees for the use of any Common Facility;

4.2 Improvements: The Association shall have the right, in accordance with its Articles and Bylaws, to borrow money for the purpose of maintaining and improving the Common Area and Common Facilities and in support thereof to mortgage said property, provided that the rights of such mortgagee shall at all times be subordinate to the rights of the Owners under this Declaration;

4.3 Enforcement: The Association, the Architectural Control Committee, the Declarant, and any Lot Owner or Owners shall have the right to enforce the provisions of this Declaration as provided for in this Declaration;

4.4 Suspension: The Association shall have the right to suspend the voting rights and right to use the Common Area and Common Facilities of any Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

4.5 Easements: The Association shall have the right to grant easements in the Common Area for utilities and similar purposes;

4.6 Dedication: The Association shall have the right to dedicate or transfer all or any part of the Common Area or Common Facilities to any public agency, authority or utility for such purposes and subject to such conditions as may be approved by two-thirds (2/3) of the Board of Directors of the Association; and,

4.7 Delegation: Any Owner may license or delegate his right of enjoyment of the Common Area and Common Facilities to the members of his family, his tenants, or contract purchasers who reside on the Property, subject to the provisions of this Declaration.

ARTICLE V. RIGHTS RESERVED BY DECLARANT

Notwithstanding anything to the contrary contained in this Declaration, Declarant expressly reserves unto:

(a) Itself, its employees, successors and assigns, agents, representatives, contractors and their subcontractors and employees, easements and rights-of-way on, over and across all or any part of the streets for vehicular and pedestrian ingress and egress to and from any part of the Property, or any adjacent real property owned by Declarant, or its successors or assigns;

(b) Itself, its employees, successors and assigns, and its agents, representatives, contractors and their subcontractors and employees (including any district, company, unit of local government, association or other entity providing water, sewer, gas, oil, electricity, telephone, cable television, or other similar services), easements, access and rights-of-way on, over, under and across all or part of the Common Area and utility easements on, over and under all Lots and Common Area as provided on any recorded subdivision plat of the Property for installation, use, maintenance and repair of all lines, wires, pipes, pumps, water

wells, facilities, and other things necessary for all such services, provided that any installation, maintenance or repair of such lines, wires or pipes shall be performed with reasonable care and that the surface of said easement area shall be restored to the level and condition that existed prior to the doing of work; and

(c) Itself, its employees, agents, representatives, contractors and their subcontractors and employees, and its successors and assigns, the right to use the Common Area and Common Facilities, where applicable, to facilitate and complete the development of the Property, and any Annexed Property, including without limitation the use of the Common Area and Common Facilities, where applicable, for:

(i) Construction, excavation, grading, landscaping, parking and/or storage;

(ii) Maintenance and operation of a sales office and model units for sales purposes;

(iii) The showing to potential purchasers of any unsold Lot, unit or improvements within the Project;

(iv) Display of signs to aid in the sale of any unsold Lots and units, or all or part of the Project;

(v) Construction, operation and maintenance of all or any portion of any Common Area or Common Facilities by Declarant, its successors or assigns;

(d) Itself, its agents, contractors, subcontractors and employees, successors and assigns, all water and water rights over, upon or under or appurtenant to the Property, or any portion thereof, and a nonexclusive easement twelve (12) feet wide, inside the boundary of each Lot and the Common Area adjacent to the right-of-way and along the rear boundary of each Lot for construction of a pressurized pipe irrigation system to be conveyed to and operated by the Nampa & Meridian Irrigation District. Surface water for irrigation appurtenant to each phase of development of the Property will be conveyed to the Association as each plat is recorded.

ARTICLE VI. MAINTENANCE

6.1 Common Area and Common Facilities: Among its other responsibilities, the Association shall be responsible for maintenance of all Common Area and Common Facilities. The Association may employ the services of a manager and other personnel to carry out the management of such responsibilities. Such Common Area and Common Facilities shall be maintained in a neat, landscaped and becoming manner. Common Area within the Property hereinabove described shall include Lots 1 and 14, Block 1, Lot 1, Block 2, Lots 1, 16 and 26, Block 3, Lots 1, 14, 27 and 35, Block 4, Lots 1, 2, 3 and 28, Block 6, Lot 1, Block 7, and Lots 1 and 9, Block 9, according to the plat of the Property on file in the office of the Recorder of Ada County, Idaho, together with easements and rights-of-way as shown upon the recorded plat for pedestrian paths, streams and other waterways of the Association, if any. Common Area and Common Facilities shall also include such other real and personal property as may be conveyed to the Association from time to time by Declarant, or designated by it as Common Area in any Supplemental Declaration.

6.2 Private Property: Owners of Lots shall be responsible for and perform all exterior maintenance upon such Lots and all improvements thereon. In the event an Owner fails to maintain the premises of a Lot and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, upon a 2/3 vote of the Board of Directors, the Association shall have the right to give a 30 day written notice of its intended action, and if satisfactory arrangements are not then made by such Owner, the Association shall have the right through its agents, employees and contractors, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of any improvements located thereon. The cost of such activity shall be added to and become part of the assessment to which such Lot is subject. In the event the Board of Directors declares an emergency by a 3/4 vote, such action to repair, maintain and restore may be taken at any time after written notice is given to the Owner.

ARTICLE VII. USE AND BUILDING RESTRICTIONS

The use of any Lot and the construction of any improvements thereon, shall be subject to the following requirements and restrictions:

7.1 Building Restrictions:

(a) No building, structure, or improvement shall be constructed, erected, altered or maintained on, nor shall any portion of the Property covered by this Declaration be used, designed or intended to be used for any purpose other than a single family dwelling, subject to the provisions as to Common Areas and Common Facilities and facilities used in common including schools and daycare centers, utility services and service facilities.

(b) Each Lot is restricted to a single family dwelling together with usual and appropriate structures, if any, approved by the Architectural Control Committee. Nothing contained in this Declaration shall be construed to prohibit the construction and use of a guest house in conjunction with and as an accessory to the single-family residence constructed on a Lot, provided that such guest house is approved by the Architectural Control Committee, to be used solely as part of the single-family dwelling by a guest, a family member or household employee and not for commercial purposes as a separate rental unit, and is in conformity with applicable zoning ordinances.

(c) The occupancy of a single family dwelling shall be limited to persons related by blood, adoption or marriage, or to other persons living together as a single household no more than two of whom are unrelated to any other occupant.

(d) The size, configuration, style and finish of each proposed building or structure on each Lot shall be subject to architectural and aesthetic control pursuant to Section 7.16 of this Article VII and pursuant to Article X hereof. Said Property shall be used in such manner as to be inoffensive to any other property Owners in the Project.

(e) Water and sewer hookup fees as well as charges for such utility services and for delivery of irrigation water by the Nampa & Meridian Irrigation District (the "District") shall be the responsibility of the Lot Owner. Owner shall submit to inspection upon connection to the Boise City public sewer system and to the District irrigation system and shall pay monthly sewer and sprinkler charges following connection. This shall constitute a covenant running with the land, and the City of Boise and the Nampa & Meridian Irrigation District are hereby authorized and empowered to bring actions against the Owner for the collection of the charges imposed by each of them respectively and enforcement of the conditions stated herein.

(f) Millcreek is situated in an Airport Influence Area, requiring that dwellings be constructed with soundproofing to provide a noise level reduction of at least 25 dB or as otherwise may be required from time to time by Ada County ordinances.

(g) All Lots in Millcreek are located within the area of impact of the City of Boise and, as such, are subject to Solar Access Standards (Boise City Code 9-20-7.9), as amended from time to time. Standards in effect at the date of recording this Declaration are set forth in Articles XIV through XVI hereof.

7.2 Minimum Building Size: The dwelling on each Lot shall satisfy the minimum floor area requirement of the Architectural Control Committee, provided, however, that in no event, absent exceptional circumstances deemed worthy by the Architectural Control Committee, shall the required ground floor area be less than the following number of square feet exclusive of garages, patios, breezeways, porches and similar attached or unattached structures, applicable to a dwelling of one story or more than one story in height:

Minimum Ground Floor Area (in square feet) For:

One story dwelling 1200

Two story dwelling 700

7.3 Maximum Building Height: On a Corner Lot no structure which exceeds one story in height shall be erected unless approved in writing by the Architectural Control Committee. "Corner Lot" for purposes of this Declaration means any Lot two sides of which are contiguous to dedicated streets. On any other Lot no dwelling shall be more than two stories or 35 feet in height. No other structure on a Lot shall be more than six (6) feet in height unless approved in writing by the Architectural Control Committee. A basement or daylight basement shall not be counted as a story in determining compliance with this section.

7.4 Building Location: No building, structure, or grade, other than approved fencing, shall be constructed, used, maintained or made on any Lot closer to any exterior line (front, rear or side) of the same Lot than is permitted by the Architectural Control Committee, provided that the setbacks allowed by the committee shall not be less than required by zoning ordinances applicable to the Lot at the time a building permit is issued. At the time this Declaration was recorded, Ada County ordinances required minimum setbacks of 20 feet for the front yard and street side yard, 15 feet for the rear yard, and five feet per story for other side yards. If the Property is annexed to the City of Boise in the future, its zoning ordinances will govern the minimum setbacks, but required setbacks for a particular Lot shall still be determined by the Architectural Control Committee.

For the purpose of this section, eaves, steps, chimneys and gutters shall not be considered as a part of the building; provided, however, that this shall not be construed to permit any eaves, steps, chimneys or gutters or any portion of the building on any Lot to encroach upon any other Lot. Open porches shall not be considered as a part of the building for purposes of this section, but any open porch shall, prior to construction, require the approval of the Architectural Control Committee.

7.5 Building Site; Subdivision: A building site shall consist of at least one (1) Lot, or a parcel composed of more than one Lot. No Lot shall be further subdivided after the initial transfer thereof by Declarant. No parcel composed of more than one Lot conveyed for the purpose of constructing a single family dwelling thereon, shall be subdivided or conveyed other than as a single indivisible parcel unless title thereto reverts to Declarant.

7.6 Fences; hedges: No fence, hedge or boundary wall situated anywhere upon any Lot shall have a height greater than six (6) feet, or such other lesser height as the Architectural Control Committee may specify, above the finished graded surface of the ground upon which such fence, hedge or wall is situated. No fence shall be constructed of any material other than wood nor finished in other than a natural finish, except as may be specifically approved by the Architectural Control Committee. No fence shall be constructed so as to extend toward the front of the Lot past the front plane of the dwelling structure constructed thereon or toward the side of a Corner Lot past the front plane of the dwelling constructed on an adjoining lot. Where a dwelling has not been constructed on the adjoining lot, no fence shall be constructed closer than ten (10) feet to any side Lot line adjacent to a dedicated street on a Corner Lot. No fence, wall, hedge, tree or shrub planting with an elevation above three (3) feet shall be permitted in front of the front yard setback requirements without special written consent of the Architectural Control Committee. No fence, wall, hedge, tree, or shrub planting which obstructs sight lines at an elevation between four (4) and eight (8) feet above the roadways shall be placed or permitted to remain on any Corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines or, in the case of a rounded property corner, from the intersection of the street property lines within ten (10) feet from the intersection of a street property line with the edge of a driveway. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

7.7 Construction: No building or structures shall be moved onto any Lot. During the course of construction no trailer houses or similar mobile units designed for overnight accommodations shall be parked in any street or within building setback lines. No trailer, basement, tent, shack, garage, barn or other unattached structure erected on a Lot shall at any time be used as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted. No building of any kind shall be erected or maintained on a Lot prior to the construction of the dwelling house thereon, except that a garage or other small building of permanent construction may be erected with the approval of the Architectural Control Committee for the purpose of storing tools and other articles during the construction of the permanent dwelling. Notwithstanding the foregoing, a portable construction office may be placed upon a Lot during the period in which construction of a dwelling unit thereon is in progress, provided that such office may not remain or be kept upon such Lot for more than six months unless renewed with the approval of the

Architectural Control Committee. A temporary sales office of a portable nature also may be placed upon any Lot by Declarant or its authorized agents, to facilitate Lot sales.

(a) The construction of the dwelling and associated structures shall be prosecuted diligently and continuously from the time of commencement thereof until such dwelling and associated structures are fully completed and painted.

(b) No excavation for stone, sand, gravel, earth, water or minerals shall be made upon a Lot unless and only to the extent such excavation is necessary in connection with the construction of an approved structure thereon. No irrigation drain or waste water shall be permitted to flow in open ditches to or on any Lot or tract in said Project and may be transmitted only by the irrigation and drainage systems installed by Declarant and operated and maintained by the Nampa & Meridian Irrigation District.

7.8 Mining and Drilling: No derrick or other structure designed for use in boring or drilling for water, oil, natural gas or other products shall be erected, placed, permitted or maintained upon any portion of the Property, nor shall any water, oil, natural gas, petroleum, asphalt or other hydrocarbon product or substance be produced or extracted by or from any well upon, in or under said Property. No oil drilling, oil development operations, oil refining, mining, quarrying or other mineral excavation or similar activity shall be permitted on or under any part of the Property, nor shall oil wells, tanks, tunnels, mineral excavations, shafts or drifts be permitted upon or in any Lot.

7.9 Animals: No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, domestic cats or other household pets may be kept for an Owner's personal use, provided:

(a) Such animals are not bred or maintained for any commercial purpose;

(b) Dogs and cats shall be limited to 2 dogs and 2 cats.

(c) Any such household pets shall be properly restrained and controlled at any time they are within the Project. It shall be the obligation of an Owner to control his animals in accordance with the Rules and Regulations from time to time adopted by the Association.

(d) Any kennel for animals which is constructed or maintained on any Lot, shall be (1) screened from view so as not to be visible from anywhere within or adjacent to the Project from the Common Area or adjacent Lots and in a location and of construction approved by the Architectural Control Committee; (2) located and maintained in a manner to avoid any endangerment of or nuisance to, adjacent Lot Owners; and (3) maintained in a clean, odor free and insect free manner.

(e) "Household pets" as permitted hereby shall not include livestock, poultry, swine, waterfowl, reptiles, amphibians or rodents (except hamsters and gerbils).

(f) Notwithstanding the foregoing, household pets shall not be kept which unreasonably bother or constitute a nuisance to Owners of other Lots.

7.10 Landscaping: Prior to the beginning of construction of the dwelling upon any Lot, the Owner shall submit a landscaping plan to the Architectural Control Committee for approval.

(a) Within 30 days following initial occupancy of the dwelling structure each Lot shall be improved with the landscaping specified in the plan approved by the Architectural Control Committee, provided, however, that if placement and planting of landscaping is made impractical by inclement weather during the months of November, December, January, February or March, completion of landscaping may be deferred a reasonable period of time in the discretion of the Architectural Control Committee but shall be completed no later than the next April 30 following occupancy.

(b) All yard areas shall be landscaped, sodded and maintained in a professional manner and in accordance with an approved landscaping plan.

(c) Landscaping and vegetation shall be watered, pruned, cut and maintained weed-free according to good landscape practice and in good appearance.

7.11 Unsightly Structures, Property or Practices: No unsightliness shall be permitted on any Lot. Without limiting the generality of the foregoing, all unsightly facilities, equipment or structures shall be enclosed within approved structures or appropriately screened from view.

(a) Basketball backboards or posts shall not be installed without prior approval of the Architectural Control Committee as to materials and positioning. At a minimum, backboards shall be freestanding, constructed of plexiglass or acrylic materials and shall be supported by a removable metal post or posts, painted white or to blend with the color of the house and anchored in concrete. Backboards must be perpendicular to and adjacent to the driveway, or to the side of the house, or shall be located in the backyard, so as not to constitute a nuisance or visual obstruction to adjacent homeowners. Backboards and posts shall be removed and placed in storage during the months of January, February and March.

(b) All refuse, garbage and trash shall be kept at all times in covered, reasonably noiseless containers, which shall be kept and maintained within an enclosed structure or appropriately screened from view, except when necessarily placed for pick up by garbage removal service.

(c) Storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. Compost piles shall be maintained so that they do not emit offensive odors, attract insects or otherwise constitute a nuisance. Clotheslines and similar structures for hanging, drying or airing clothes shall not be permanently installed. No lumber or scrap, refuse, trash or other materials shall be kept, stored or allowed to accumulate on any Lot.

7.12 Material Storage: No building materials of any kind shall be placed or stored upon a building site until the Owner is ready and able to commence construction, and then such material shall be placed within the property lines of the building site upon which the structure is to be erected. The Architectural Control Committee and/or Association through its agents, shall have the right to enter upon any vacant Lot for the purpose of burning or removing weeds, brush, growth or refuse, and charge the cost thereof to the Owner and which shall become a Limited Assessment against the Lot.

7.13 Noxious Use of Property: No portion of the Common Area, or any Lot or any structure thereon shall be used for the conduct of any trade or business or professional activities. Noxious or undesirable acts or undesirable use of any portion of the Property, including (but not limited to acts or uses causing noise which interferes with the peaceable enjoyment of neighboring properties) is prohibited and shall not be permitted or maintained; provided, however, that an office and model home or homes for the purpose of the development, construction and sale of the Lots and homes in the Project may be maintained by Declarant and provided, further, that educational facilities, including schools and children's day care centers if approved by the Architectural Control Committee and properly licensed and zoned to operate within the Project, may be allowed with prior authorization of the Declarant. The prohibition of use of any Lot or any structure thereon for the conduct of any trade or business or professional activities includes and prohibits use of any Lot or any structure thereon for a "half-way house," treatment center, nursing home, shelter home, or other similar use, including use for the full time care and residence of unrelated physically or mentally handicapped persons (notwithstanding the provisions of Sections 67-6530 and 67-6531, Idaho Code).

7.14 Condition and Repair: No building or structure upon any Lot covered by this Declaration shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted as required under the provisions of, and which may be enforced as described in, Paragraph 6.2.

7.15 Vehicle and Equipment Parking: No campers, recreational vehicles, trailers, boats or motorcycles shall be parked upon any Lot for longer than forty-eight (48) hours (provided, however, that visitors may park for not longer than seventy-two (72) hours), unless fully enclosed in a garage or fenced or screened in a manner specifically approved for that Lot by the Architectural Control Committee, and shall not be parked on any street or Common Area within the Project. No snowmobiles, snow removal equipment, golf carts, maintenance equipment or similar equipment or vehicles, and no working or commercial vehicles of greater than three quarter ton in size and no junk cars or other unsightly vehicles shall be parked upon any Lot at any time, unless fully enclosed in a garage on said Lot, and shall not be parked on any street adjacent thereto or on any Common Area. All other parking of equipment shall be prohibited, except as approved in writing by the Architectural Control Committee. No parking areas or driveways shall be constructed or maintained except as approved by the Architectural Control Committee. Parking bays or areas, or driveways, are prohibited in areas between side Lot lines and buildings or approved driveways unless specifically approved by the Architectural Control Committee.

7.16 Control of Exterior Appearance, Walls, Etc.: The visual harmony and aesthetic appeal of the Project being of mutual concern to all Owners and having a direct bearing on the value of Lots and improvements thereon, the Association or the Architectural Control Committee shall have the right to control the texture, design and color scheme of the outside walls, fences, screening devices, roofs, patio roofs, and covers of all structures erected upon any Lot and to require basic landscaping and maintenance thereof. The Owner shall not repaint the outside walls or fences without the prior approval of the Architectural Control Committee as to color. All open porches and patio roofs shall require the prior approval of the Architectural Control Committee.

7.17 Exterior Antennas, Etc.: Radio and television antennas on the exterior of the building or roof are prohibited. However, satellite dishes for television will be considered as long as they are not visible to the public and subject to Architectural Control Committee approval as to size and location.

7.18 Signage: No sign of any kind shall be displayed to the public view on any Lot except one (1) sign of not more than six (6) square feet advertising the property for sale or rent, or a sign used by a builder to advertise the property during the course of construction and any sales period. In addition, signs may also be allowed as follows:

(a) The Association may erect and maintain uniform subdivision identification signs, street signs, and other appropriate informational signs upon the Common Area and Common Facilities, or upon utility easements, of a size and design approved by the Architectural Control Committee. No other signs shall be placed or maintained upon any of the Common Area.

(b) Declarant is entitled to place signs of such size, design and number as Declarant may deem appropriate, to identify the Project and display related information pertaining thereto, and to advertise Lots for sale.

7.19 Exterior Lighting: No exterior lighting shall be installed or maintained on any Lot or structure thereon, which interferes with the use and enjoyment of adjacent Lots, or without prior written approval of the Architectural Control Committee.

7.20 Mail Boxes: Each Lot shall have a uniform mail box and support structure of a design and color approved by the Architectural Control Committee and maintained by Owner.

7.21 Sewage Disposal: No septic tank or other individual sewage disposal system shall be constructed or installed on any Lot.

ARTICLE VIII. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

8.1 Membership: Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

8.2 Classes of Voting Members: The Association shall have two classes of voting membership; however, all votes shall be equal and counted as such, except where voting by separate classes may otherwise be provided in the Articles and Bylaws of the Association or this Declaration.

(a) Class A Members shall be Owners with the exception of the Declarant (during the period when the Declarant is a Class B Member). Each Class A member shall be entitled to one vote for each Lot owned. When more than one person is an Owner of a Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) The sole Class B Member shall be the Declarant, who shall be entitled to three votes for each Lot owned. Class B membership shall cease and be converted automatically to Class A memberships (one Class A membership for each Lot owned) upon the happening of either of the following events, whichever occurs earlier:

- (i) When ninety percent (90%) of the Lots have been conveyed by deed to Owners other than Declarant; or
- (ii) On January 15, 2014.

ARTICLE IX.

COVENANT FOR MAINTENANCE ASSESSMENTS; LIENS AND ENFORCEMENT

9.1 Creation of the Lien and Personal Obligation of Assessments: The Declarant, for each Lot owned within the Development, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay when due all Assessments or charges made by the Association, including all Regular or Annual, Special and Limited Assessments and charges made against such owner pursuant to the provisions of this Declaration or other applicable instrument. Such Assessments, together with interest, costs, and reasonable attorney's fees which may be incurred in collecting the same, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. Each such Assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot beginning with the time when the Assessment falls due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them but shall remain such Owner's personal obligation regardless of whether he remains an Owner.

9.2 Regular or Annual Assessments: All Owners are obligated to pay Regular Assessments to the treasurer of the Association on a schedule of payments established by the Board.

(a) The proceeds from Regular Assessments are to be used to pay for all costs and expenses incurred by the Association, including legal and other professional fees, for the conduct of its affairs, including without limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of Association Property, as well as other property managed and maintained by the Association and an amount allocated to an adequate reserve fund to be used for repairs, replacement, maintenance and improvement of those elements of the Common Area and Common Facilities, or other property of the Association or managed by the Association that must be replaced and maintained on a regular basis (collectively "Expenses").

(b) Until January of the year immediately following the conveyance of the first Lot to an Owner, the Regular Assessment shall be Twenty and no/100 Dollars (\$20.00) for each Lot.

(c) The Board of Directors shall fix the amount of the Regular Assessment against each Lot at least thirty (30) days in advance of each fiscal year, based on its estimate of Expenses for that year. The Regular Assessment to be paid by any particular Owner for any given fiscal year shall be computed by multiplying the net amount of the Association's total advance estimate of Expenses by the fraction produced by dividing the number of Lots attributable to the Owner by the total number of Lots in the Project.

9.3 Special Assessments: In the event the Board shall determine that the Regular Assessment for a given calendar year is or will be inadequate to meet the expenses of the Association for any reason, including but not limited to the cost of any construction, reconstruction, unexpected repairs or replacement of capital improvements upon the Common Area or attorney's fees and/or litigation costs, other professional fees, or for any other reason, the Board shall determine the approximate amount necessary to defray such expenses and levy a Special Assessment against the portions of the Project within its jurisdiction which shall be computed in the same manner as Regular Assessments. No Special Assessment shall be levied which exceeds twenty percent (20%) of the budgeted gross expenses of the Association for that fiscal year, without the vote or written assent of the Owners representing a two-thirds majority of the votes of the Members of the Association voting in person or by proxy at any meeting at which a quorum is present as provided for in Section 9.9. Every Special Assessment levied by and for the Association shall be levied and paid upon the same basis as that prescribed for the levying and payment of Regular Assessments.

9.4 Limited Assessments: Notwithstanding the above provisions with respect to Regular and Special Assessments, the Board may levy a Limited Assessment against a Member as a remedy to reimburse the Association for costs incurred in bringing the Member and/or the Member's Lot into compliance with the provisions of the governing instruments for Millcreek or for damage to Association Property which is attributable to a Member as provided in this Declaration.

9.5 Assessment Period: The Assessments provided for herein shall commence as to each Lot on the first day of the month following the recordation of the deed from Declarant for that Lot or, as to the remaining Lots owned by Declarant, when such Lots are no longer offered for sale to the general public. The Owner shall be required to notify the Board of a change in ownership of the Lot within thirty (30) days following closing of the sale of the Lot. The initial Assessments against each Lot shall be adjusted according to the number of months remaining in the calendar year and shall be payable in advance for the balance of that year.

9.6 Uniform Rate of Assessment: Unless otherwise specifically provided herein, both Regular and Special Assessments shall be fixed at a uniform rate per Lot for all Members of the Association.

9.7 Notice and Assessment Due Date: Written notice of Regular and Special Assessments shall be sent to the Owner of every Lot subject thereto prior to the Assessment Period or to the due date for any Special Assessment. The due dates for payment of Regular and Special Assessments allowed by the Board to be made in installments shall be the first day of each installment period (month or quarter) unless some other due date is established by the Board. Each installment shall become delinquent if not paid on or before the due date. There shall accrue with each delinquent installment payment a late charge equal to ten percent (10%) of the delinquent installment. In addition, each installment payment which is delinquent for more than ten (10) days shall accrue interest at eighteen percent (18%) per annum calculated from the date of delinquency to and including the date full payment is received by the Association. The Association may bring an action against the delinquent Owner and may foreclose the lien against such Owner's Lot as more fully provided herein.

No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

9.8 Estoppel Certificate: The Association shall, upon at least twenty (20) days prior written request, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specific Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance. Reliance on such certificate may not extend to any default as to which the signor shall have had no actual knowledge.

9.9 Special Notice and Quorum Requirements: The Regular Assessment for any year may be increased by not more than twenty percent (20%) over the previous year, by action of the Board, without a vote of the membership. A Special Assessment may be made if it does not exceed twenty percent (20%) of the budgeted gross expenses of the Association for that fiscal year, by action of the Board, without a vote of the membership. Written notice of any meeting called for the purpose of levying a Special Assessment which exceeds twenty percent (20%) of the budgeted gross expenses of the Association for that fiscal year, or for the purpose of obtaining a membership vote in connection with an increase in the Regular Assessment by more than twenty percent (20%) over the previous year, shall be sent to all Members of the Association not less than fifteen (15) days nor more than thirty (30) days before such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total votes of the Association shall constitute a quorum. If such quorum is not present, subsequent meetings may be called subject to the same notice requirement, and the required quorum at the subsequent meetings shall be fifty percent (50%) of the quorum required at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting. Action to approve any assessment requiring membership approval shall require the affirmative vote of two-thirds (2/3) of the Members voting in person or by proxy at any meeting of the Members at which a quorum is established.

9.10 Subordination of the Lien to First Mortgages: The lien for the Assessments provided for herein shall not be subordinate to the lien of any deed of trust or mortgage except the lien of a first deed of trust or first mortgage given and made in good faith and for value that is of record as an encumbrance against such Lot prior to the recordation of a claim of lien for the Assessments. Except as expressly provided herein with respect to a first mortgagee who acquires title to a Lot, the sale or transfer of any Lot shall not affect the Assessment lien provided for herein, nor the creation thereof by the recordation of a claim of lien on account of the Assessments becoming due whether before, on or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

9.11 Rights of Mortgagees: Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat the rights of the Beneficiary under any deed of trust upon a Lot made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such deed of trust such Lot shall remain subject to this Declaration as amended.

9.12 Right to Enforce: The Association has the right to collect and enforce its Assessments pursuant to the provisions hereof. Each Owner of a Lot, upon becoming an Owner of such Lot, shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorney's fees in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity, or the Board may exercise the power of foreclosure and sale pursuant hereto to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

9.13 Assessment Liens:

(a) There is hereby created a claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against such Lot pursuant to this Declaration together with interest thereon at the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Association making the Assessment in connection therewith, including reasonable attorneys' fees. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on such respective Lots upon recordation of a claim of lien with the Ada County Recorder. Such lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the notice of delinquency and claim of lien except for tax liens for real property taxes on any Lot and Assessments on any Lot in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.

(b) Upon default of any Owner in the payment of any Regular, Special or Limited Assessment issued hereunder, or payment of any installment pursuant to an approved installment plan, the Association may cause to be recorded in the office of the Ada County Recorder a claim of lien. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the Lot(s) against which the same have been assessed, and the name of the record Owner thereof. Each delinquency shall constitute a separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien, including defaults which occur after the notice and claim of lien and before satisfaction of the defaults is recorded. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction of relief of such delinquent sums and charges. The Association may demand and receive the cost of preparing and recording such release before recording the same.

9.14 Method of Foreclosure: Such lien may be foreclosed by appropriate action in court or by sale by the Association establishing the Assessment, its authority or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale permitted by law. The Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting such power of sale or foreclosure.

9.15 Required Notice: Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of the notice of delinquency and claim of lien, whether judicially, by power of sale or otherwise, until the expiration of thirty (30) days after a copy of such claim of lien has been deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot(s) described in such notice of delinquency and claim of lien, and to the person in possession of such Lot(s), and a copy thereof is recorded by the Association in the Office of the Ada County Recorder.

ARTICLE X. ARCHITECTURAL CONTROL

In order to protect the quality and value of the homes built in the Project and for the continued protection of the Owners thereof, an Architectural Control Committee is hereby established consisting of three or more members to be appointed by Declarant as long as Declarant owns Lots in the Project. Thereafter, the Architectural Control Committee shall be appointed by the Board of Directors of the Association, to succeed the prior committee membership upon such appointment.

10.1 Approvals Required: No building, fence, wall, patio cover, window awning or other structure or landscaping improvements of any type shall be commenced, erected or installed upon any Lot, Common Area or other property within the Project, nor shall any exterior addition to or change or alteration of existing improvements be made, until the plans and specifications showing the nature, kind, shape, configuration, height, materials, location of the same and such other detail as the Architectural Control Committee may require (including but not limited to any electrical, heating or cooling systems), shall have been submitted to and approved in writing by the Architectural Control Committee as to harmony of external design and location in relation to surrounding structures and topography and as to conformity with the requirements of this Declaration. In the event the Architectural Control Committee fails to approve, disapprove, or specify the deficiency in, such plans, specifications and location within thirty (30) days after submission to the Architectural Control Committee in such form as they may require, approval will not be required, and this Article will be deemed to have been fully complied with.

10.2 Rules and Regulations: The Architectural Control Committee is hereby authorized to adopt Rules to govern its procedures including such rules as the Committee deems appropriate and in keeping with the spirit of due process of law with regard to the right of concerned parties due to be heard on any matter before the Committee, the Committee is further hereby empowered to adopt such regulations as it shall deem appropriate, consistent with the provisions of this Declaration including matters of design, materials, and aesthetic interest.

10.3 Fees: The Architectural Control Committee may establish by its adopted rules, a fee schedule for an architectural review fee to be paid by each Owner submitting plans and specifications to the Committee for approval. No submission for approval will be considered complete until such fee has been paid. Such fee shall not exceed such reasonable amount as may be required to reimburse the Architectural Control Committee for the costs of professional review of submittals and the services of a consultant to administer the matter to its completion, including inspections which may be required.

10.4 Enforcement: The Architectural Control Committee may in its own name or on behalf of the Association, exercise all available legal and equitable remedies available to prevent or remove any unauthorized or unapproved construction or improvements on any Lot or the Property, or any portion thereof.

10.5 Waivers: The approval of any plans, drawings or specifications for any plans, improvements or construction, or for any matter requiring the approval of the Architectural Control Committee, shall not be deemed a waiver of any right to withhold approval of any similar plan, drawing, specifications or matter subsequently submitted for approval.

10.6 Liability: Neither the Architectural Control Committee nor any member thereof shall be liable to the Association, to any Owner, or to any other party, for any damage suffered or claimed on account of any act, action or lack thereof, or conduct of the Architectural Control Committee or any members thereof, so long as the Committee, or the respective members thereof, acted in good faith on the basis of information they then possessed.

ARTICLE XI. ENFORCEMENT

11.1 Authority to Enforce: The provisions of this Declaration may be enforced by any of the following persons or entities under the procedure outlined herein:

- (a) The Association as to all matters, and the Architectural Control Committee as to matters subject to its enforcement.
- (b) The Declarant so long as it has any retained ownership of any of the Property.
- (c) The Owner or Owners of any Lot adversely affected, but, except for enforcement of the provisions of Articles XIV, XV or XVI relating to solar access, only after written demand is made on the Association and its failure to act, provided that no such Owner shall have the right to enforce independently of the Association any assessment or lien herein.

11.2 Methods of Enforcement: Subject to the provisions of Paragraph 11.3 hereof, the following methods of enforcement may be utilized:

- (a) Legal or equitable action for damages, injunction, abatement, specific performance, foreclosure, rescission, cancellation of any contracts of an executory nature, or such other remedies at law and equity which may be available in a court of law;
- (b) Eviction for trespass by police action;

(c) Monetary penalties and temporary suspension from Association membership rights and privileges in accordance with the Bylaws of the Association, provided that, except for late charges, interest, and other penalties for failure to pay, as and when due, assessments levied by the Association as provided in this Declaration, no discipline or sanction shall be effective against a Member unless:

(i) The Member is given fifteen (15) days' written notice of the proposed compliance action and a timely opportunity to be heard on the matter. The opportunity to be heard may, at the election of such Member, be oral or in writing. The notice shall be given personally to such Member or sent by first-class or certified mail to the last address of such Member as shown on the records of the Association and shall state the place, date and time of the hearing, which shall not be less than five (5) days before the effective date of the proposed expulsion, termination, or suspension.

(ii) The hearing shall be conducted by a committee composed of not less than three (3) persons, appointed by the president of the Association, which shall conduct the hearing in good faith and in a fair and reasonable manner and shall not reach a decision regarding appropriate compliance measures until the conclusion of the meeting.

(iii) Any Member challenging the compliance measures taken by the Board, including any claim alleging defective notice, must commence court action within one (1) year after the date of the contested compliance measure taken by the Board.

11.3 Limitations on Enforcement: The Association may not cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his individually owned subdivision interest on account of the failure of the Owner to comply with provisions of this Declaration except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure for failure of the Owner to pay assessments duly levied by the Association.

11.4 Fees and Costs: The Association, or any person entitled to enforce any of the terms hereof, by any of the means contained herein, who obtains a judgment or decree from any court or arbitrator enforcing any of the provisions hereof, shall be entitled to reasonable attorneys' fees and all costs incurred or anticipated to be incurred in remedying or abating the offensive condition as a part of his or its judgment or decree against the party in violation hereof.

11.5 Failure to Enforce: Neither the Association nor the Architectural Control Committee shall be liable to any person for failure to enforce any of the terms hereof, for personal injury, loss of life, damage to property, economic detriment or for any other loss caused either by their enforcement or non-enforcement. The failure to enforce any of such matters, including any covenants contained in this Declaration, shall not be deemed a waiver of the right to subsequently do so.

ARTICLE XII. ANNEXATION

12.1 Procedure: Additional land may be annexed by Declarant in Declarant's sole discretion without the consent of Members at any time within twenty (20) years of the date of this instrument and thereafter upon approval by majority vote of the Members, provided that if any homes are to be financed by HUD/VA, then annexation of additional parcels shall also require approval by HUD/VA. Amendment of the Declaration to include such Additional Property, and to subject such Additional Property to the rights, privileges, restrictions, covenants and easements herein provided shall be made by the execution and recordation by Declarant of a Supplemental Declaration, which shall describe the Additional Property being annexed, and any supplemental covenants, conditions and restrictions applicable thereto, and shall describe the Common Area and Common Facilities thereof. The Supplemental Declaration may expressly modify the terms and conditions of this Declaration as they apply to such Additional Property. However, except for such express modifications, upon the recordation of the Supplemental Declaration, the Additional Property described therein shall be subject to the terms and provisions of this Declaration as though included originally in this Declaration and the definitions of Property, Common Area and Common Facilities shall automatically be amended to conform to such supplement or supplements, as shall all the other definitions herein, including the definitions of Lot and Owner. All Owners of Lots located within the expanded Project shall be subject to all easements, restrictions and reservations set forth in this Declaration and shall have the privileges of use of Common Area and Common Facilities, except as otherwise provided herein and subject to the restrictions and reservations set forth in the Declaration as amended and supplemented from time to time.

12.2 Designation of Common Areas: Any Common Area and Common Facilities designated by Declarant as such on the plat of the newly annexed additional Property or in the Supplemental Declaration applicable thereto, or which may be acquired by or conveyed to the Association by Declarant, shall be subject to the same easements and other rights for the use and enjoyment of the Owners as for the other owners of Lots subject to this Declaration.

ARTICLE XIII. PRESSURIZED IRRIGATION

13.1 Irrigation District Service: The Nampa & Meridian Irrigation District provides pressurized irrigation water service to all Lots in the Project. Lot Owners shall be required to pay an assessment based on Lot area to the District whether or not water is actually used. Lot Owners are prohibited from making any cross connection or tie in between the irrigation water system and their domestic water systems. WATER FROM THE IRRIGATION WATER SYSTEM IS NOT DRINKABLE; EACH LOT OWNER SHALL BE RESPONSIBLE TO ENSURE THAT IRRIGATION WATER WITHIN THE BOUNDARIES OF HIS LOT IS NOT CONSUMED BY ANY PERSON OR USED FOR CULINARY PURPOSES.

13.2 No Private System: Lot Owners shall not construct any ditch, drain, well or water system upon any Lot or Common Area for domestic use or irrigation purposes.

13.3 Water Master: The Association shall elect or may contract for hire a Water Master to designate any rotation schedule required for the delivery of irrigation water. The Water Master shall serve as the liaison to Nampa Meridian Irrigation District for all matters of the Millcreek Subdivision.

ARTICLE XIV. SOLAR ACCESS DEFINITIONS

14.1 Exempt Tree: Any preexisting vegetation as defined in Section 15.2, or any vegetation included on the list of solar friendly vegetation kept by the City of Boise's Public Works and Community Planning and Development Departments.

14.2 Front Lot Line: The line represented by the connection of the most distant corners of a Lot, including flag Lots, where said corners are in common with the boundary of a public or private road. For corner Lots, the Front Lot Line is designated on the plat.

14.3 North Slope: The gradient, in percent slope, from the average finished grade of the Front Lot Line of the Shade Restricted Lot to the average finished grade of the Solar Lot Line of a Solar Lot. The slope must be downward or decreasing in elevation from south to north.

14.4 Restricted Vegetation: A tree or other vegetation which is either evergreen, or if deciduous, tends to retain its leaves late in the fall and/or drop them late in the spring, or has dense branching pattern which generally tends to block a high level of the sun's rays during the heating season. Refer to the list of "solar friendly" trees on file with the Boise City Public Works and Community Planning and Development Departments.

14.5 Shade: That portion of the shadow cast by the shade point of a structure or vegetation which exceeds the 11.5 foot fence at the Solar Lot Line at solar noon, January 21.

14.6 Shade Point: That part of a structure, tree or other object, on a shade restricted lot, which causes the longest shadow (the most northerly shadow) when the sun is due south on January 21st at an altitude of twenty-six (26) degrees above the horizon, except a shadow caused by a narrow object such as a chimney, antenna, utility pole, wire, etc.

14.7 Shade Point Height: The vertical distance or height measured from the average elevation at the Solar Lot Line to the shade point. If the shade point is located at the north end of a ridge line of a structure oriented within 45 degrees of a geodetic north-south line, the shade point height computed according to the preceding sentence may be reduced by 3 feet. If a structure has a roof oriented within 45 degrees of a geodetic east-west line with a pitch which is flatter than 6 feet (vertical) in 12 feet (horizontal), the shade point will be the cave of the roof. If such a roof has a pitch which is 6 feet in 12 feet or steeper, the shade point will be the peak of the roof.

14.8 Shade Restricted Lot: Any Lot within the subdivision that is southerly of and adjacent to a Solar Lot. These lots have some restriction on vegetation types and structure height.

14.9 Solar Friendly Vegetation: A tree or other vegetation which is included on the Solar Friendly Vegetation list kept by the City of Boise's Public Works and Community Planning and Development Departments.

14.10 Solar Lot: A Lot which has the following characteristics:

1. The front line is oriented within thirty (30) degrees of a geodetic east/west bearing;
2. The Lot to the immediate south has a north slope of ten (10) percent or less;
3. Is intended for the construction of an above ground inhabited structure.

14.11 Solar Lot Line: The most southerly boundary of a Solar Lot: the line created by connecting the most distant southerly corners of the Solar Lot.

14.12 Solar Setbacks: The minimum distance, measured perpendicular in a southerly direction, from the center of the Solar Lot Line to the shade point of a structure or to restricted vegetation based upon its height at maturity on the Shade Restricted Lot.

14.13 Solar and Shade Restricted Lots: Millcreek Phase I Solar (S) and Shade Restricted (R) lots are listed in the HARD COPY OF THIS DOCUMENT, NOT THE ONLINE VERSION

ARTICLE XV. SOLAR ACCESS

15.1 Shade Restriction: Each Lot within the subdivision which is classified as a Shade Restricted Lot shall have the following restriction: Any structure or restricted vegetation (solar unfriendly) cannot cast a shadow higher than an imaginary fence 11.5 feet above the solar lot line on solar noon of January 21st when the sun is at an angle of 26 degrees above the horizon. This sun angle at noon on January 21 causes structures, vegetation, and other objects to cast a shadow twice as long as their height. The height of the shade point of a structure on the Shade Restricted Lot is limited to 19 feet at the 15 foot rear yard zoning setback in order that the 11.5 foot high "solar fence" at the north property line of the Shade Restricted Lot is not exceeded. These standards assure that a structure built to the 15 foot rear yard zoning setback, on the Solar Lot located to the north, will not be shaded more than 4 feet above grade on its south wall on January 21 at solar noon.

15.2 Pre-Existing Vegetation: Restricted vegetation (solar unfriendly), which existed when the subdivision was platted is exempt from the provisions of these covenants, conditions and restrictions. Any lot which would be shaded beyond the allowed shade limit by such vegetation shall not be classified as a Solar Lot.

15.3 Solar Setbacks: Each separate structure and item of restricted vegetation shall have a solar setback dependent on and calculated by its shade point height. All shade restricted lots shall have the following solar setback: Solar Setback (in feet) = [Shade Point Height (in feet) - 11.5] x 2. Table 1 below shows a few examples of solar setbacks in the HARD COPY OF THIS DOCUMENT, NOT THE ONLINE VERSION...

15.4 Solar Friendly Vegetation: Certain vegetation is considered "solar friendly" and is not restricted in regards to location on individual Lots. Such vegetation is deciduous, dropping its leaves during early fall and regaining them during late spring. Such vegetation also has sparse branching which allows a high level of sunlight to penetrate through. This growth cycle produces shading during summer but allows sun to penetrate during winter. A list of acceptable solar friendly trees is maintained by the Boise City Public Works and Community Planning and Development Departments.

ARTICLE XVI. SOLAR ACCESS RIGHTS, DUTIES AND RESPONSIBILITIES

16.1 Solar Access Rights: The owner(s) of Solar Lots shall have a right to unobstructed solar access in accordance with these covenants, conditions and restrictions.

16.2 Solar Access Duties: The owner(s) of any Lot shall not build, install, or otherwise allow a structure or non solar friendly tree on that Lot to cast more shade at their Solar Lot Line than permitted under these solar access covenants, restrictions and conditions.

ARTICLE XVII. GENERAL PROVISIONS

17.1 Severability: Invalidation of any of these covenants or restrictions by judgment or court order shall not affect any other provision hereof, which shall remain in full force and effect.

17.2 Amendment: The easements, covenants, conditions, and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration, other than the provisions of paragraph 8.2 hereof, may be amended during the first twenty (20) year period by a document signed and acknowledged by Owners representing not less than ninety percent (90%) of the Lots subject to this Declaration, and thereafter by a document signed and acknowledged by the Owners of not less than seventy-five percent (75%) of the Lots subject to this Declaration. Any amendment to paragraph 8.2 of the Declaration shall, until the last Lot in the Project is sold by Declarant, require, in addition to a document signed and acknowledged by the requisite number of Owners, the written consent of Declarant, its successors or assigns. No amendment to the Declaration shall be effective until recorded.

17.3 Conveyance of Common Area: The Common Area and Common Facilities in each phase of development of the Project shall be conveyed to the Association by Declarant, free and clear of all encumbrances, prior to the first mortgage in that phase being insured by HUD. Until conveyed, Declarant shall be solely responsible for the maintenance and management of Common Area and Common Facilities, and for all costs and expenses associated therewith not covered by the assessments provided for herein.

17.4 HUD/VA Approval: If any home in the Project is to be financed by HUD/VA, then as long as there is a Class B. membership, the following actions will require the prior approval of the Federal Housing Administration (HUD) or the Veterans Administration: annexation of additional real property to the Project, mergers and consolidations, mortgaging or dedication of Common Area, dissolution or amendment of the Articles of Incorporation or Bylaws of the Association and amendment of this Declaration.

17.5 Contracts or Agreements: The Board of Directors may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, FHA, FHLMC, FNMA, GNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first mortgages encumbering building Lots in the Project with dwelling structures thereon.

17.6 Special Covenant for the Benefit of the City of Boise: The Project is subject to annexation to the City of Boise at the instigation and discretion of the City. Duties and obligations of the Association and of the Owners of all Lots are expressly made a covenant running to and for the benefit of the City of Boise to the extent they pertain to the perpetual requirement of the Association and the Owners of Lots in the Project to maintain the private street lights and the obligation to submit to inspection upon hookup to the City sewer system and to pay monthly sewer charges thereafter. This special covenant for the benefit of the City of Boise, which shall run with the land, may not be amended, nor may the Association be dissolved without the prior express consent of the City of Boise.

