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**DECLARATION ESTABLISHING  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MILLIRON PLACE SUBDIVISION**

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**DECLARATION ESTABLISHING  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
MILLIRON PLACE SUBDIVISION**

THIS DECLARATION ESTABLISHING COVENANTS, CONDITIONS AND RESTRICTIONS FOR MILLIRON PLACE SUBDIVISION ("Declaration") is made this 11<sup>th</sup> day of October, 2005, by DYVER DEVELOPMENT, L.L.C., an Idaho limited liability company, hereinafter called "Grantor," and also sometimes hereinafter referred to as the original Grantor under this Declaration.

**ARTICLE I RECITALS**

- 1.1 **Real Property Description.** Grantor is the owner of all that real property located in Ada County, Idaho, as described on Exhibit "A" attached hereto and incorporated herein by this reference. Such described real property, together with 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, is hereinafter referred to as the "**Property.**"
- 1.2 **Conditions.** Any development plans for the Property in existence prior to or following the effective date of this Declaration are subject to change at any time by Grantor, in Grantor's sole discretion, and impose no obligations on Grantor as to how the Property is to be developed or improved. Any purchaser of a Building Lot, by acceptance of a deed therefore, acknowledges that said Building Lot is subject to currently enacted zoning and subdivision ordinances and regulations and such other governmental ordinances and regulations and approvals hereunder as may be in effect or as may from time to time be imposed.
- 1.3 **Purpose.** The purpose of this Declaration is to set forth the basic restrictions, covenants, limitations, easements, conditions and equitable servitudes (collectively "**Restrictions**") that apply to the Property. The Restrictions are designed to preserve the value, desirability and attractiveness of the Property, to ensure a quality development, and to guarantee the maintenance of the Common Area and improvements located thereon in a cost effective and administratively efficient manner.

**ARTICLE II DECLARATION**

Grantor hereby declares that the Property and those Tracts of real property subjected to this Declaration by the recordation of Supplemental Declarations of Annexation as provided herein, and each Building Lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in

furtherance of a general plan for the protection, maintenance, improvement and sale thereof, and to enhance the value, desirability and attractiveness thereof. The terms, covenants, conditions, easements and restrictions set forth herein shall run with the land, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any Building Lot, parcel of portion thereof; shall inure to the benefit of and be binding upon Grantor, Grantor's successors in interest, each Owner, and each Owner's successors in interest; and, subject to the terms and conditions hereof, may be enforced by Grantor, Grantor's successors in interest, any Owner, any such Owner's successors in interest, or by the Association.

Notwithstanding the foregoing, no provision of this Declaration shall be construed so as to prevent or limit Grantor's right to complete development of the Property and to construct improvements thereon, nor Grantor's right to maintain model homes, construction, sales or leasing offices or similar facilities (temporary or otherwise) on any portion thereof, including any Common Area or any public right-of-way, nor Grantor's right to post signs incidental to construction, sales or leasing, nor Grantor's right to modify plans for the Property.

### ARTICLE III DEFINITIONS

- 3.1 "**Architectural Committee**" shall mean the committee created by Grantor pursuant to ARTICLE V hereof, which may also be referred to herein as the "Committee".
- 3.2 "**Association**" shall mean MILLIRON PLACE Homeowner's Association, Inc., to be organized by Grantor as described in Article VIII of this Declaration.
- 3.3 "**Building Lot**" shall mean a subdivision lot as specified or shown on any Plat or preliminary Plat of the Property and/or by any Supplemental Declaration, upon which Improvements may be constructed.
- 3.4 "**Declaration**" shall mean this Declaration as it may be amended from time to time.
- 3.5 "**Grantor**" shall mean Dyver Development, L.L.C., an Idaho limited liability company, or any person or entity to whom the rights under this Declaration are expressly transferred by Grantor.
- 3.6 "**Improvement**" shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed or placed upon, under or in any portion of the Property, including but not limited to buildings, fences, streets, drives, driveways, sidewalks, curbs, landscaping, signs, lights, mailboxes, electrical lines, pipes, pumps, ditches, waterways, recreational facilities, and fixtures of any kind whatsoever.
- 3.7 "**Limited Assessment**" shall mean a charge against a particular Owner and such Owner's Building Lot, directly attributable to the Owner, equal to the cost incurred by Grantor or the Association for corrective action performed pursuant to the provisions of this Declaration or any Supplemental Declaration.

- 3.8 **“Member”** shall mean the Owner or Owners of a Building Lot in such Owner’s or Owners’ capacity as a member of the Association.
- 3.9 **“Owner”** shall mean the person or other legal entity, including Grantor, holding fee simple title of record to a Building Lot, and sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation.
- 3.10 **“Person”** shall mean any individual, partnership, corporation or other legal entity.
- 3.11 **“Plat”** shall mean any subdivision plat now or hereafter covering any portion of the Property as recorded at the office of the County Recorder, Ada County, Idaho, as the same may be amended by duly recorded amendments thereof, and shall mean collectively all subdivision plats now or hereafter covering any or all of the Property.
- 3.12 **“Supplemental Declaration”** shall mean any Supplemental Declaration recorded by Grantor including additional covenants, conditions and restrictions that might be adopted with respect to any portion of the Property, and/or adding or deleting a Tract or Tracts to or from the Property. A Supplemental Declaration which adds an additional Tract or Tracts to the Property may be referred to herein as a “Supplemental Declaration of Annexation.” A Supplemental Declaration which deletes a Tract or Tracts from the Property may be referred to herein as a “Supplemental Declaration of Deletion.”
- 3.13 **“Tract”** shall mean a defined portion of the Property (including that described on Exhibit “A,” or a portion of Exhibit “A”) which has been designated as a Tract by this Declaration or a recorded Supplemental Declaration of Annexation. Designation of a Tract is a sole and exclusive right of Grantor.

#### ARTICLE IV GENERAL AND SPECIFIC RESTRICTIONS

- 4.1 **Structures - Generally.** All structures (except for sales offices or similar facilities of Grantor) are to be designed, constructed and used in such a manner as shall be compatible with this Declaration, and shall meet the following minimum standards:
- 4.1.1 **Use, Size, Height and Construction of Dwelling Structure.** All Building Lots shall be improved and used solely for residential use. Except for Accessory Structures as may be approved as provided below, no Building Lot shall be improved except with a single family dwelling structure, which dwelling structure, excluding garages and porches, shall not be less than 1400 square feet except lots 7-20, block 1 and lots 1-4 block 5, then the minimum home size will be 1700 square feet single story or 1900 square feet two story, and shall be designed to accommodate no more than a single family and occasional guests, and such other Improvements as are necessary or customarily incidental to a single family residence. No business or home occupation shall be conducted from said dwelling structure or Improvement, exclusive of Grantor’s use thereof, including, without limitation, use by Grantor as a sales office intended for the sale of Building Lots or new homes thereon. Subject to other building restrictions set

forth herein, no dwelling structure shall (i) exceed thirty (30) feet in height, and (ii) be more than two stories in height, including split-level designs. A basement or daylight basement shall not be counted as a story in determining compliance with this section. The dwelling structures and accessory structures shall be constructed on site, unless otherwise specifically permitted in writing by the Architectural Committee. Modular or manufactured homes or houses shall not be permitted. Already constructed homes or houses shall not be permitted to be moved onto a Building Lot, except the existing house and out structures located on lot 17, block 1.

- 4.1.2 Architectural Committee Review.** No improvements which will be visible above ground or which will ultimately affect the visibility of any above ground Improvement shall be built, erected, placed or materially altered on or removed from the Property unless and until the building plans, specifications, and plot plan or other appropriate plans and specifications have been reviewed in advance by the Architectural Committee and the same have been approved in writing. The review and approval or disapproval may be based upon the following factors: size, height, scale, design and style elements, mass and form, topography, setbacks, finished ground elevations, architectural symmetry, drainage, color, materials, physical or aesthetic impacts on other property, artistic conformity to the terrain and the other Improvements on the Property, and any and all other factors which the Architectural Committee, in its reasonable discretion, may deem relevant, from time to time.

The Architectural Committee shall be generally guided by the following:

- (a) All roofing material shall be thirty (30) year (or greater) black architectural composition shingles, as approved by the Architectural Committee. Samples must be submitted and approved in writing by the Architectural Committee before installation.
- (b) The Committee shall not approve flat roofs, zero roof overhangs, or exterior roof construction of tarpaper, gravel or metal.
- (c) Exterior colors shall be of a flat or semi-gloss type and must be approved in writing by the Architectural Committee prior to application. Colors shall be compatible with surrounding homes.
- (d) The Committee shall not approve any plans which contemplate visible construction with blocks of cement, cinder, pumice or similar materials, unless the same is faced on the outside with wood, stone, stucco or similar materials and approved in writing by the Committee.
- (e) The Committee shall not approve any extreme, bizarre, or eccentric design or construction.

- (f) All roofs must have a pitch of at least 6/12. (Porches and covered patio roof pitch shall be addressed on a case by case basis in context with the overall appearance of the structure.)
- (g) Exterior surfaces of chimneys are to be of hardboard, stucco, wood, stone or brick. No vinyl siding to be allowed.
- (h) Utility meters are to be placed in an unobtrusive location and concealed behind fences where possible. Location shall be shown on the site plan.
- (i) Front elevation must have some type of brick, stucco, or stone as approved by the Architectural Control Committee.
- (j) Exterior surfaces are to be of masonite, hardboard, stucco, stone, brick or other as approved by the Architectural Control Committee. No vinyl siding to be allowed.

Said requirements as to the approval of the architectural design shall apply only to the exterior appearance of the Improvements. This Declaration is not intended to serve as authority for the Architectural Committee to control the interior layout or design of residential structures except to the extent incidentally necessitated by use, size and height restrictions.

**4.1.3 Setbacks and Height.** No residential or other structure (exclusive of fences and similar structures) shall be placed nearer to the Building Lot lines or built higher than permitted by the Plat for the Tract in which the Building Lot is located, by any applicable zoning restriction, by any conditional use permit, or as may be specified in this Declaration or any Supplemental Declaration, whichever is more restrictive. This section is intended to comply with the building standards for the City of Meridian, Idaho. Any and all buildings shall comply, at a minimum, with City of Meridian Building Codes.

**4.1.4 Accessory Structures.** Detached garages shall be allowed if in conformity with the provisions of this Declaration, and as approved by the Architectural Committee. No pools, pool slides, diving boards, hot tubs, spas, outbuildings, or similar items shall extend higher than ten (10) feet above the finished graded surface of the Building Lot upon which such item(s) are located, and no playhouses or playground equipment shall extend higher than ten (10) feet, except for basketball backboards, which may extend beyond this limit as reasonably required to accommodate a ten (10) foot rim. However, the existing house and out structures located on lot 17, block 1 are exempt.

**4.1.5 Driveways.** All access driveways shall have a wearing surface approved by the Architectural Committee consisting of concrete and shall be properly graded to assure proper drainage. No driveway shall be wider than the garage to which said driveway leads unless approved by the Architectural Committee.

- 4.1.6 **Mailboxes.** All mailbox stands will be of consistent design, material and coloration as specified by the Architectural Committee. All mailboxes shall be standard sized black galvanized steel rural mailboxes and to assure uniformity, shall be located at places designated by the Architectural Committee and/or the Postal Service.
- 4.1.7 **Fencing.** The rear lot line fencing adjacent to the North and East property line as well as those lots that are adjacent to the park area are restricted to four foot height maximum, and must be constructed of vinyl material as approved by the architectural control committee. Street side fencing shall be installed on a Building Lot within sixty (60) days after occupancy permit, with wing fencing on interior lots, and wing fencing plus street side fencing on corner lots. Wing fencing shall be set back five (5) feet from each corner of the front of the residential structure, and **street side fencing shall be set back twenty (20) feet from the sidewalk.** Subject to the foregoing, no fence, hedge or boundary wall situated anywhere upon a Building Lot shall have a height greater than six (6) feet, or other lesser height as the Architectural Committee may require, above the finished graded surface. Fencing using natural landscaping as a visual and/or privacy barrier is strongly encouraged. "Invisible" fencing to control and contain dogs is strongly encouraged and shall be allowed. No fence shall be constructed of any material other than 6 foot vinyl fencing (the color of "Sandstone"), except as may be specifically approved in writing by the Architectural Committee prior to construction. Any and all fencing shall comply with City of Meridian Building Codes.
- 4.1.8 **Lighting.** Exterior lighting, including flood lighting, shall be part of the architectural concept of the Improvements on a Building Lot. Fixtures, stands and all exposed accessories shall be harmonious with building design and shall be as approved by the Architectural Committee prior to installation. Lighting shall be restrained in design, and excessive brightness shall be avoided. During construction of the residential structure, there shall be installed in the front yard within ten feet of the front boundary line a photosensitive pole light designed to switch on automatically at sunset and off at sunrise with a minimum bulb power of 60 watts.
- 4.2 **Antennae.** No exterior radio antenna, television antenna or other antenna of any type shall be erected or maintained on the Property unless it is approved by the Architectural Committee and located or screened in a manner acceptable to said Architectural Committee. Satellite dishes shall be allowed on the Property if size and location are submitted and approved by the Architectural Committee prior to installation. All such applications will be reviewed on a case-by-case basis.
- 4.3 **Insurance Rates.** Nothing shall be done or kept on any Building Lot which will increase the rate of insurance on any other portion of the Property without the approval of the Owner of such other portion, nor shall anything be done or kept on the Property or a Building Lot which would result in the cancellation of insurance or which would be in violation of applicable laws, regulations, and ordinances.

Building Lot which would result in the cancellation of insurance or which would be in violation of applicable laws, regulations, and ordinances.

- 4.4 **No Further Subdivision.** Subject to the express provisions in this Declaration regarding easements, and subject to Section 4.20 below (Exemption of Grantor), no Building Lot as depicted on a final recorded Plat of the Property may be further subdivided, nor may any easement or other interest therein be granted, unless applied for or granted by Grantor.
- 4.5 **Signs.** No sign of any kind shall be displayed to the public view without the approval of the Architectural Committee except: (i) such signs as may be used by Grantor in connection with the development of the Property and sale of Building Lots or new homes thereon; (ii) temporary signs naming the contractors, the architect, and the lending institution for a particular construction operation; (iii) such informational signs of customary and reasonable dimensions as prescribed by the Architectural Committee; and (iv) one (1) temporary sign of customary and reasonable dimensions not to exceed three (3) feet by two (2) feet as may be displayed by an Owner other than Grantor on or from a Building Lot advertising the residence for sale. No visible for rent or lease signs allowed.
- 4.6 **Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to the Property or to its occupants, or to any other property in the vicinity thereof or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to the Property or to its occupants or to other property in the vicinity or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), flashing lights or search lights shall be located, used or placed on the Property without the prior written approval of the Architectural Committee.
- 4.7 **Exterior Maintenance: Owner's Obligations.** No Improvement shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. In the event that any Owner shall permit any Improvement, including trees and landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, or so as to damage adjoining property or facilities, the Architectural Committee, upon fifteen (15) days prior written notice to the Owner of such property, shall have the right to correct such condition and to enter upon such Owner's Building Lot for the purpose of doing so, and such Owner shall promptly reimburse the Committee for the cost thereof. Such cost shall be a Limited Assessment and shall create an enforceable lien. The Owner of the offending Building Lot shall be personally liable, and such Owner's property may be subject to a mechanic's lien for all costs and expenses incurred by the Architectural Committee in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefore.

- 4.8 **Drainage.** There shall be no interference with the established drainage pattern over any portion of the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Committee. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Property is completed by Grantor, or that drainage which is shown on any plans approved by the Architectural Committee.
- 4.9 **Grading.** The Owner of any Building Lot within the Property in which grading or other work has been performed pursuant to an approved grading plan shall maintain and repair all graded surfaces and erosion prevention devices, retaining walls, drainage structures, means or devices which are not the responsibility of the Architectural Committee or a public agency, and plantings and ground cover installed or completed thereon. Such requirements shall be subject to such assessment as may be applicable. An approved grading plan means such plan as may have been approved by the applicable government agency and/or Architectural Committee. Without limitation on the foregoing, each Building Lot Owner shall grade and maintain, or cause to be graded and maintained, the grade of such Owner's Building Lot so that all storm water runoff and/or irrigation water runoff shall not drain to any other Owner's property except to an approved drainage easement area. All Building Lots shall be graded at the time of initial construction of Improvements thereon so that the front, side and rear yards drain sufficiently away from the foundation, and so that the Building Lot drains in a manner that will not cause damage or flooding to neighboring property. All drainage shall be in accordance with all local building code requirements. In the event that any Owner (or any Owner's builder, contactor, agent or employee) does not adequately grade and slope such Owner's Building Lot, and water drains onto neighboring property and causes ponding, flooding, or other damage, the offending Owner shall be responsible to remedy the problem and shall be solely liable for any injuries or damages occurring as a result of same. Grantor shall have no liability or obligation whatsoever relating to any Owner's inadequate grading or drainage of any Building Lot.
- 4.10 **Irrigation.** No Owner shall excessively irrigate or water such Owner's Building Lot, so as to cause any damage or flooding to neighboring property. Grantor shall have no liability or obligation whatsoever relating to any Owner's excessive irrigation or watering of such Owner's Building Lot. The area wherein the Property is located is desert. Irrigation water is not always reliable and water is not unlimited. Irrigation water may not be available due to drought, harsh weather conditions, governmental action, system breakdown, transmission failure, overuse by Building Lot Owners, or any other cause. No Building Lot shall have any right to continuous or unlimited water from any source, including, without limitation, from any pressurized irrigation system. Each Building Lot Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to have acknowledged the foregoing, and to covenant and agree to be bound by and to comply with any and all rules or regulations for the use and rotation of irrigation water as may be imposed by Grantor, the Association or the Board.



- 4.11 **No Hazardous Activities.** No activities shall be conducted on the Property, and no Improvements constructed on any property which are or might be unsafe or hazardous to any person or property.
- 4.12 **Unsightly Articles.** No unsightly articles shall be permitted to remain on any Building Lot so as to be visible from any other portion of the Property. Without limiting the generality of the foregoing, refuse, garbage and trash shall be kept at all times in such containers and in such areas as approved by the Architectural Committee. Playground equipment, such as slides, swings, etc., shall not be permitted in the front yard of any Building Lot. No clothing or fabrics shall be hung, dried or aired in such a way as to be visible to other property, and no equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant waste, metals, bulk material, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any Building Lot except within an enclosed structure or as appropriately screened from view. Any holiday decorations may be placed no earlier than 30 days prior to the holiday and must be removed within 30 days after the holiday for which they were placed. No vacant residential structures shall be used for the storage of building materials.
- 4.13 **No Temporary Structures.** No house trailer, mobile home, or tent (other than for short term individual use which shall not exceed one month unless approved by the Architectural Committee), no temporary building, improvement or structure shall be placed upon any portion of the Property, except temporarily as may be required by construction activity undertaken on the Property. Also exempted from this restriction is any sales office established by Grantor for the Property.
- 4.14 **No Unscreened Items.** No garbage cans, trash containers, firewood, boats, trailers, campers, all-terrain vehicles, motorcycles, recreational vehicles, bicycles, dilapidated or unrepaired and unsightly vehicles or similar items, vehicles or equipment shall be placed or parked upon any portion of the Property (including without limitation, streets, parking areas and driveways) unless the same are screened from view in a manner approved by the Architectural Committee. To the extent possible, garage doors shall remain closed at all times.
- 4.15 **No Mining or Drilling.** No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, sand, gravel or earth. This section shall not prohibit exploratory drilling or coring which is necessary to construct a residential structure or Improvement.
- 4.16 **Energy Devices, Outside.** No energy production devices, including but not limited to generators of any kind and solar energy devices, shall be constructed or maintained on any portion of the Property without the written approval of the Architectural Committee, except for heat pumps shown in the plans approved by the Architectural Committee. This section shall not apply to passive solar energy systems incorporated into the approved design of a residential structure.

- 4.17 **Vehicles.** Vehicles parked on a driveway shall not extend into any sidewalk or bike path or pedestrian path. Motor homes and other recreational vehicles may be stored behind the front yard fence. No recreational vehicles shall remain parked on the driveway or street for more than is required for loading and unloading for typical use (approximately 72 hours).
- 4.18 **Animals/Pets.** No animals, birds, insects, pigeons, poultry, etc. shall be kept on the Property unless the presence of such creatures does not constitute a nuisance nor conflict with any City of Meridian ordinance. This section does not apply to the keeping of up to two (2)-domesticated dogs, up to two (2)-domesticated cats, and other household pets which do not unreasonably bother or constitute a nuisance to others. Without limiting the generality of the foregoing, consistent and/or chronic barking by dogs shall be considered a nuisance. Each dog shall be kept on a leash, curbed, and otherwise controlled at all times when such animal is off the premises of the Owner. With respect to any animal outside of the premises of the Owner, the Owner or the custodian of animal shall be responsible or the immediate clean up any animal droppings. The construction of dog runs or other pet enclosures shall be subject to Architectural Committee approval, shall be appropriately screened, and shall be maintained in a sanitary condition. Dog runs or other pet enclosures shall be placed a minimum of five (5) feet from the side and fifteen (15) feet from the rear Building Lot line, shall not be placed in any front yard of a Building Lot, and shall be screened from view so as not to be visible from an adjacent Building Lot. The use of "invisible" fencing to control or restrain dogs to the respective animal Owners' Building Lot is strongly encouraged and is recommended.
- 4.19 **Landscaping.** Upon substantial completion of the residential structure located thereon, each Building Lot shall have (i) in the front yard thereof, an underground sprinkler system, with rolled (sod) lawns, (ii) at least two (2), two inch (2") caliper conifer or deciduous trees, each tree to have a three foot (3') diameter surrounding tree ring, (iii) at least five (5) two (2) gallon shrubs, and (iv) if a corner lot, two (2) additional two inch (2") caliper trees installed on the street side of the residential structure with three foot (3') diameter surrounding tree ring. Within six (6) months of occupancy of the residential structure, the rear (and side, if applicable) yards of the Building Lot shall also be completed with grass, seed or sod and, in the rear yard, one (1) conifer or deciduous tree. Lots 17-20, block 1 and lots 1-4, block 5 are required to have a minimum of four (4) trees, seven (7) five (5) gallon shrubs, and seven (7) one (1) gallon shrubs in the rear yard. An allowance of additional time shall be granted at the sole discretion of the Architectural Committee during the months of November through March given weather conditions and irrigation water availability. A landscape plan shall be submitted to and approved by the Architectural Committee prior to commencement of any landscaping work. In the event that any Owner shall fail or refuse to install the aforesaid landscaping, the Architectural Committee, upon ten days prior written notice to such Owner, shall have the right to enter upon such Owner's Building Lot for the purpose of installing the same, and such Owner shall promptly reimburse the Architectural Committee for the cost thereof. Such costs shall be a Limited Assessment and shall create an enforceable lien. The Owner of the offending Building Lot shall be personally liable, and such Owner's Building Lot may be subject to a mechanics' lien for all cost and expenses incurred by the Architectural Committee in taking such actions, plus all costs incurred in collecting

the amounts due. The Owner of the offending Building Lot shall pay all amounts due for such work within (10) ten days after receipt of written demand thereof. The Association will assume the role of the Architectural Committee with respect to enforcement only upon the establishment of the Association.

- 4.20 **Exemption of Grantor.** Nothing contained herein shall limit the right of Grantor to subdivide or re-subdivide any portion of the Property, to grant licenses, to reserve rights-of-way and easements to utility companies, public agencies or others, or to complete excavation, grading and construction of Improvements to and on any portion of the Property owned by Grantor, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Grantor deems advisable in the course of development of the Property so long as any Building Lot within the Property remains unsold, and regardless of whether a Building Lot is depicted on a final recorded Plat. Such right shall include, but shall not be limited to, erecting, constructing and maintaining on the Property such structures and displays as may be reasonably necessary for the conduct of Grantor's business of completing the work and disposing of the same by sales, lease or otherwise. Grantor shall have the right at any time prior to acquisition of title to a Building Lot by a purchaser from Grantor to grant, establish and/or reserve on that Building Lot additional licenses, reservations and rights-of-way to Grantor for the development and disposal of the Property. Grantor may use any structures owned or leased by Grantor on the Property as model home complexes or real estate sales or leasing offices. Grantor need not seek or obtain Architectural Committee approval of any Improvement constructed or placed by Grantor or an affiliate of Grantor on any portion of the Property owned by Grantor or an affiliate of Grantor. The rights of Grantor hereunder may be assigned by Grantor to any successor in interest in connection with Grantor's interest in any portion of the Property by an express written assignment recorded in the office of the Ada County Recorder. The original Grantor under this Declaration shall be entitled to reserve any such rights thereunder as such original Grantor may deem appropriate.

#### ARTICLE V ARCHITECTURAL COMMITTEE

- 5.1 **Creation.** On or before thirty (30) days of the date on which Grantor first conveys a Building Lot to an Owner (other than Grantor), Grantor shall appoint at least one (1) individual to serve on the Architectural Committee ("Architectural Committee"). Each member shall hold office until such time as such member has resigned or has been removed, or such member's successor has been appointed, as provided herein. A member of the Architectural Committee need not be an Owner. Members of the Architectural Committee may be removed by the person or entity appointing them at any time without cause. Members of the Architectural Committee currently are:

**The Board of Directors of the Homeowner's Association or the property management company that is being used at the current time.**

- 5.2 **Grantor's Right of Appointment.** Grantor shall have the exclusive right to appoint and remove all members of the Architectural Committee until Grantor has conveyed 100% of

the aggregate Building Lots within the Property, as the same may be now or hereafter platted, or until ten (10) years after the recording date of this Declaration whichever occurs later. If a vacancy on the Architectural Committee occurs until a permanent replacement has been appointed, Grantor may appoint an acting member to serve for a specified temporary period not to exceed one (1) year. The original Grantor under this Declaration shall also have the right to appoint and remove all members of the Architectural Committee for a Tract annexed pursuant to a Supplemental Declaration, as shall be set forth in such Supplemental Declaration. Any Tract annexed pursuant to a Supplemental Declaration shall be subject only to the control of the Architectural Committee specifically appointed for the Tract annexed.

**5.3 Association's Right of Appointment.** After Grantor has conveyed 100% of the aggregate Building Lots within the Property, or ten (10) years after the recording date of this Declaration, whichever occurs later, the Association shall have the exclusive right to appoint and remove all members of the Architectural Committee.

**5.4 Review of Proposed Construction.** The Architectural Committee shall consider and act upon any and all proposals or plans and specifications submitted for its approval pursuant to this Declaration, including the inspection of construction in conformance with plans approved by the Architectural Committee. The Architectural Committee shall have the power to determine, by rule or other written designation consistent with this Declaration, which types of Improvements shall be submitted for Architectural Committee review and approval. The Architectural Committee shall have the power to hire an architect, licensed with the State of Idaho, to assist the Architectural Committee in its review of proposals or plans and specifications submitted to the Architectural Committee. The Architectural Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction alterations, or additions contemplated thereby in the locations indicated are in conformity with this Declaration, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on Grantor, the Association, or the Property, as the case may be.

**5.4.1 Conditions on Approval.** The Architectural Committee may condition its approval of proposals or plans and specifications upon such changes therein as it deems appropriate, and/or upon the agreement of the Owner submitting the same ("Applicant") to grant appropriate easements for the maintenance thereof, and may require submission of additional plans and specifications or other information before approving or disapproving any material submitted.

**5.4.2 Architectural Committee Rules.** The Architectural Committee also may establish rules and/or guidelines setting forth procedures for and the required content of the applications and plans submitted for approval. Such rules and guidelines may establish, without limitation, specific rules and regulations regarding design and style elements, landscaping and fences and other structures such as animal enclosures, as well as special architectural guidelines applicable to Building Lots located adjacent to public and/or private open space.

- 5.4.3 Detailed Plans.** The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, landscape plans, drainage plans, elevation drawings and descriptions or samples of exterior material and colors. Until receipt by the Architectural Committee of any such required plans and specifications, the Architectural Committee may postpone review of any plan submitted for approval.
- 5.4.4 Architectural Committee Decisions.** Responses by the Architectural Committee to the Applicant will be sent to the address set forth in the application for approval within twenty (20) days after filing all materials required by the Architectural Committee. Any materials submitted pursuant to this Article shall be deemed approved unless written disapproval by the Architectural Committee shall have been mailed or otherwise delivered to the Applicant within twenty (20) days after the date of filing of all of said materials with the Architectural Committee.
- 5.5 No Waiver of Future Approvals.** The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent.
- 5.6 Compensation of Members.** The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder and except as otherwise agreed by Grantor or the Association.
- 5.7 Non-Liability of Architectural Committee Members.** Neither the Architectural Committee nor any member or representative thereof shall be liable to Grantor, the Association, any Owner or any other party for any loss, damage or injury arising out of or in any way connected with performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee or such member or representative. The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the Property generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of building, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.
- 5.8 Variances.** The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship,

aesthetic, market conditions, or environmental considerations may require. Such variances must be evidenced in writing, and must be signed by at least one (1) member of the Architectural Committee. If such variances are granted, no violation of the covenants, conditions or restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or any Supplemental Declaration for any purpose except as to the particular Building Lot and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting such Owner's use of the Building Lot, including but not limited to zoning ordinances or requirements imposed by any governmental or municipal authority.

## ARTICLE VI ANNEXATION AND DELETION OF TRACTS

- 6.1 **Annexation.** Property may be added at the sole discretion of the Grantor and in compliance with all city and county codes. Tracts of such property may be annexed into the Property and brought within the provisions of this Declaration as provided herein by Grantor, its successors or assigns, at any time, and from time to time, without the approval of any Owner by means of Grantor's recordation of a Supplemental Declaration of Annexation covering such Tract in the Office of the Ada County Recorder. The use and development of such Tracts shall conform to all applicable land use regulations, as such regulations are modified by variances. The original Grantor under this Declaration, as long as it owns any portion of the property, without the approval of any Owner of any successor Grantor, shall be entitled to annex any Tract of such property, at any time, and from time to time, as such original Grantor deems appropriate. Such reserved right of annexation may be assigned by such original Grantor.
- 6.2 **Deletion.** Grantor may delete all or a portion of the Property, including the property described on Exhibit "A", and subsequently annexed Tracts, from the Property and from coverage of this Declaration so long as Grantor is the Owner of all such property being deleted and provided that Grantor records a Supplemental Declaration of Deletion in the office of the Ada County Recorder in the same manner as a Supplemental Declaration of Annexation. Owners other than Grantor shall not be entitled to delete all or any portion of the Property on written approval of Grantor so long as Grantor owns any portion of the Property. The original Grantor under this Declaration, as long as it owns all of the property within a Tract being deleted, shall be entitled to delete such Tract as aforesaid. Such reserved right of deletion may be assigned by such original Grantor.

## ARTICLE VII EASEMENTS

- 7.1 **Drainage and Utility Easements.** Grantor expressly reserves for the benefit of all the Property reciprocal easements of access, ingress and egress for all Owners to and from their respective Building Lots for installation and repair of utility services, for drainage of water over, across and upon adjacent Building Lots resulting from the normal use of

adjoining Building Lots, and for necessary maintenance and repair of any Improvement including fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees and landscaping. Notwithstanding anything expressly or impliedly contained herein to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Grantor for the installation and maintenance of utilities and drainage facilities that are required for the development of the Property, and Grantor reserves the right to grant such easements. In addition, Grantor reserves the right to grant additional easements and rights-of-way over the Property to utility companies and public agencies as necessary or expedient for the proper development of the Property until close of escrow for the sale of the last Building Lot in the Property to a purchaser.

- 7.2 **Maintenance and Use Easement Between Walls and Lot Lines.** Whenever the wall of a structure or a fence or retaining wall is legitimately constructed on a Building Lot under plans and specifications approved by the Architectural Committee, and is located within three (3) feet of the lot line of such Building Lot, the Owner of such Building Lot is hereby granted an easement over and on the adjoining Building Lot (not to exceed three (3) feet from the Building Lot line) for purposes of maintaining and repairing such wall or fence and eaves or other overhangs, and the Owner of such adjoining Building Lot is hereby granted an easement for landscaping purposes over and on the area lying between the lot line and such structure or fence so long as such use does not cause damage to the structure or fence.
- 7.3 **Easement Reserved unto Grantor and Association.** Grantor and the Association, as the case may be, shall have and are hereby granted a permanent easement to go upon the privately owned property of Owners to perform maintenance upon the Property, or any facilities or systems related thereto, and including, but not limited to, for purposes of snow removal, lawn maintenance, utility service and drainage system maintenance, subterranean irrigation water system maintenance and perimeter fence (if any) maintenance, together with all rights of ingress and egress necessary for the full and complete use, occupation and enjoyment of the easements hereby reserved, and all rights and privileges incident thereto, including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the use, occupation or enjoyment of the reserved easement and the operation, maintenance and repair of utility service connections and drainage systems. Without limitation on the foregoing, in the event an Owner shall fail or refuse to perform its maintenance or repair obligations as required under this Declaration, Grantor or the Association, as the case may be, shall have the power to enter onto said Owner's Building Lot for the purpose of performing such maintenance or repairs as may be reasonably required and shall have the power to incur expenses therefore; provided, however, that Grantor or the Board of Directors of the Association, as the case may be, shall have delivered to such Owner reasonable advance written notice describing the maintenance or repairs required to be made and advising the Owner of Grantor's or the Association's intent to perform such maintenance and repairs if the Owner fails or refuses to do so within the time set forth in such notice. The cost incurred by Grantor or the Association in performing such maintenance or repairs shall be a Limited Assessment and shall create an enforceable lien.

## ARTICLE VIII MILLIRON PLACE HOMEOWNER'S ASSOCIATION, INC.

8.1 **Organization of Association; Bylaws.** The MILLIRON PLACE Homeowner's Association, Inc. (Association) shall be organized by Grantor as an Idaho corporation under the provisions of the Idaho Code relating to general non-profit corporations and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, the Bylaws and this Declaration. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The following sections of this Article VIII set forth, collectively, the Bylaws of the Association ("Bylaws").

### 8.2 **Membership: Register: Voting.**

8.2.1 **Membership.** The Owners of the Building Lots within the Property, including the property described on Exhibit "A" and any subsequently annexed Tracts from the property shall constitute the Association. Each Owner of a Building Lot shall automatically become a member of the Association upon taking title to such Building Lot. Membership shall be appurtenant to and may not be separated from Ownership of any Building Lot.

8.2.2 **Voting.** The Association shall have two (2) classes of voting membership:

Class A: The Class A members shall be all Owners, with the exception of Grantor (during the period when Grantor is a Class B member). Each Class A member shall be entitled to one vote for each Building Lot owned on any matter to come before the members for a vote pursuant to this Declaration, the Articles, the Bylaws or pursuant to law. Owners of a Building Lot as joint tenants, tenants in common, community property, or other ownership involving more than one Owner, shall be joint members of the Association, but the vote of the Building Lot shall be cast as a single vote.

Class B: The sole Class B member shall be Grantor, who shall be entitled to three (3) votes for each Building Lot owned. The Class B membership shall cease and be automatically converted to Class A membership (one Class A membership for each Building Lot owned) when all the Tracts have been added to the Property by recordation of the Supplemental Declaration of Annexation and when following such addition, the total votes outstanding in Class A memberships equal the total votes outstanding in the Class B membership. For purposes of calculating the number of votes outstanding in each class of membership, all Building Lots, which have been officially platted as of the date the vote is taken shall be included, whether such Building Lots are a part of the Property as described on Exhibit "A" attached hereto, or were subsequently added to the Property pursuant to a Supplemental Declaration of Annexation.

8.2.3 **Persons Under Disability.** Minors and persons declared legally incompetent shall be eligible for membership in the Association, if otherwise qualified, but shall not be permitted to vote except through a legally appointed, qualified and



acting guardian of their estate voting on their behalf, or, in the case of a minor with no legal guardian of such minor's estate, through a parent having custody of the minor.

### **8.3 Meeting of Members.**

**8.3.1 Place.** Meetings of the members of the Association shall be held at such suitable place as may be convenient to the membership and designated from time to time by the Board.

**8.3.2 Annual Meetings.** The annual meeting of the Association shall be held in the first quarter of each year, on a date fixed by the Board. At such annual meeting, there shall be a financial report, if applicable, the Owners shall elect members to the Board or fill vacancies therein, and such other business shall be transacted as may properly come before the meeting.

**8.3.3 Special Meetings.** It shall be the duty of the president to call a special meeting of the Association as directed by resolution of the Board or upon the written request of a majority of the Board or upon the written request of Owners having one-third (1/3) of the votes of the membership. A meeting called at the request of the members shall be held at such time as the president may fix, which time shall not be less than fifteen (15) nor more than thirty (30) days after the receipt of the written request therefore.

**8.3.4 Notice of Meeting.** It shall be the duty of the secretary to give notice of each annual and special meeting, stating the purpose thereof and the time and place where it is to be held, to each member of the Association and to each mortgagee that has requested notice. Notice shall be given at least ten (10) days before annual meetings and at least ten (10) days before special meetings. Before any meeting of the Association, any member may, in writing, waive notice of such meeting. Attendance by a member at a meeting of the Association shall be a waiver by such member of timely and adequate notice unless such member expressly challenges the notice when the meeting begins.

**8.3.5 Quorum.** The presence in person or by proxy of members of the Association holding twenty-five percent (25%) of all the votes of each class of membership shall constitute a quorum for the transaction of business at any meeting of members of the Association.

**8.3.6 Proxies.** Any Building Lot Owner may vote by proxy. Proxies shall be in writing, signed by the owner and filed with the Board. Proxies may be revoked at any time by written notice to the Board. Any designation of proxy may be signed by all Owners of a Building Lot; but when husband and wife are Owners, the proxy needs to be signed by only one spouse unless the other spouse notified the Board not to accept the proxy.

**8.3.7 Majority Vote.** Except as otherwise provided by statute, by this Declaration, or by the Bylaws, passage of any matter submitted to vote at a meeting where a

quorum is in attendance shall require the affirmative vote of at least fifty-one percent (51%) of the votes of the membership.

**8.3.8 Order of Business.** The order of business at meetings of the Association shall be as follows unless dispensed with no motion:

- (a) Roll call;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of committees;
- (f) Election of directors (annual meeting or special meeting called for such purpose);
- (g) Unfinished business;
- (h) New business;
- (i) Adjournment.

**8.3.9 Parliamentary Authority.** In the event of dispute, the parliamentary authority for the meetings shall be the most current available edition of Robert's Rules of Order.

#### **8.4 Board of Directors**

**8.4.1 Number and Qualifications.** The affairs of the Association shall be governed by a Board of three (3) directors, who shall be elected by ballot from the members of the Association. The members of the Association at any annual meeting may change the number of directors retroactively by amending this provision, but shall not reduce the number below three (3) or in such a manner to deny an incumbent director (unless removed for cause) a full term of office.

**8.4.2 Powers and Duties.** The Board shall have the powers and duties provided for in the Idaho Non-Profit Corporation Act and in this Declaration, and all other powers necessary for the administration of the affairs of the Association, and may do all such acts and things as are not prohibited by statute or by this Declaration required to be done in another manner.

**8.4.3 Election and Term of Office.** The initial directors named in the Articles shall serve until the first day of the calendar month following the date of adjournment of the first annual meeting. Thereafter, the term of office for directors shall begin on the first day of the calendar month following the date of adjournment of the

annual meeting at which they are elected. The normal term of office for directors will be for three (3) years and until their successors are elected and take office. However, to provide for staggered terms, at the first annual meeting, one-third (1/3) of the number of directors (or the whole number nearest to one-third) shall be elected for one (1) year, the same number shall be elected for two (2) years, and the remainder shall be elected for three (3) years.

- 8.4.4 Vacancies.** Vacancies on the Board caused by reasons other than the removal of a director by a vote of the Association shall be filled by vote of the majority of the remaining directors, even though they may constitute less than a quorum. Each person so selected shall be a director until a successor is elected at the next annual meeting of the Association to serve the balance of the unexpired term.
- 8.4.5 Removal of Directors.** At any regular or special meeting, any one or more of the directors may be removed with or without cause by the Owners of a majority of the Building Lots and a successor may then and there be elected to fill the vacancy thus created and to serve the balance of the unexpired term. Any director whose removal has been proposed shall be given an opportunity to be heard at the meeting.
- 8.4.6 Compensation.** No compensation shall be paid to directors for their services as directors.
- 8.4.7 Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the directors. Notice of regular meetings of the Board shall be given to each director personally or by mail, telephone or telegraph, at least three (3) days before the day fixed for the meeting.
- 8.4.8 Special Meetings.** Special meetings of the Board may be called by the president on three (3) days notice to each director, given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by either the president or the secretary in like manner and on like notice on the written request of any two (2) directors.
- 8.4.9 Waiver of Notice.** Before any meeting of the Board, any director may, in writing, waive notice of such meeting. Attendance by a director at any meeting of the Board shall be a waiver by such director of timely and adequate notice unless such director expressly challenges the notice when the meeting begins.
- 8.4.10 Quorum.** At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board.
- 8.4.11 Open Meeting.** Any Building Lot Owner may attend any meeting of the Board, but shall not be entitled to participate.

## 8.5 Officers

- 8.5.1 **Designation.** The principal officers of the Association shall be a president, a vice president, a secretary and a treasurer, all of whom shall be elected by the Board. The directors may appoint such other officers as in their judgment may be necessary or desirable. Two or more offices may be held by the same person, except that a person may not hold offices of president and secretary simultaneously.
- 8.5.2 **Election of Officers.** At any regular meeting of the Board or at any special meeting of the Board called for such purpose, upon an affirmative vote of a majority of the members of the Board, any officer may be elected at any such meeting.
- 8.5.3 **Removal of Officers.** At any regular meeting of the Board or at any special meeting of the Board called for such purpose, upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause. A successor to the removed officer may be elected at any such meeting.
- 8.5.4 **President.** The president shall be the chief executive officer of the Association. He shall, when present, preside at all meetings of the Association and of the Board and shall have all the powers and duties usually vested in the office of the president.
- 8.5.5 **Vice President.** The vice president shall perform the duties of the president when the president is absent or unable to act, and shall perform such other duties as may be prescribed by the Board.
- 8.5.6 **Secretary.** The secretary shall keep the minutes of all meetings of the board and of the Association, and shall have custody of the business records of the Board and the Association, other than financial records kept by the treasurer. He shall also perform such other duties as may be prescribed by the Board.
- 8.5.7 **Treasurer.** The treasurer shall have responsibility of the Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association.
- 8.5.8 **Other Officers and Employees.** Other officers of the Association and any persons employed to assist the officers shall have such authority and shall perform such duties as the Board may prescribe within the provisions of the applicable statutes, this Declaration and the Bylaws.
- 8.5.9 **Compensation.** No compensation shall be paid to officers for their services as officers.
- 8.5.10 **Grantor's Powers.** In accordance with this Declaration, Grantor or Grantor's agent may exercise the powers of the officers until officers are elected.

## 8.6 Powers and Duties of the Association

8.6.1 **Powers.** The Association shall have all the powers of a nonprofit corporation organized under the general non-profit corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration, and may do and perform any and all acts which may be necessary or proper for, or incidental to the proper management and operation of the Common Areas and the performance of the other responsibilities herein assigned, including without limitation, as set forth in the following subsections:

- (a) **Assessments.** The power to levy assessments (annual, special and limited) on the Owners of Building Lots and to force payment of such assessments, all in accordance with the provisions of this Declaration.
- (b) **Right of Enforcement.** The Association or any Owner or the owner of any recorded mortgage upon any part of the Property shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. In addition to the foregoing, the Association shall be entitled to impose a monetary penalty, not to exceed the sum of \$25.00 per day, against an Owner who has caused or permitted a violation of any of the restrictions, conditions or covenants contained herein, provided that the Owner is given fifteen (15) days advance written notice of the proposed monetary penalty and a timely opportunity to be heard on the matter. The opportunity to be heard may, at the election of such Owner, be oral or in writing. The notice shall be given personally to such Owner or sent by first class or certified mail to the last known address of such Owner as shown in the records of the Association and shall state the place, date and time of the hearing. The hearing shall be conducted by the Board of Directors of the Association or by a committee composed of not less than three (3) persons appointed by the Board of Directors. Such hearing shall be conducted in good faith and in a fair and reasonable manner. Any Owner challenging the monetary penalty imposed as provided herein, including and claim alleging defective notice, must commence legal action within one (1) year after the date of the imposition of the said penalty. Any monetary penalty imposed as provided herein shall become a part of the assessment to which such Owner's Building Lot is subject, shall be in addition to any assessments levied by the Association pursuant to the provisions of ARTICLE IX of this Declaration, and shall not be subject to any of the requirements, limitations or restrictions on the amount or uniformity of assessments contained herein. In the event the Association or an Owner is required to initiate any action to enforce the provisions of this Declaration or in the event the Association retains legal counsel in connection with any of its methods of enforcement as set forth herein, the Association or the enforcing Owner shall be entitled to recover from the Owner against

whom an enforcement is sought, all attorney fees and costs incurred as a consequence hereof, whether or not any lawsuit is actually filed, and any such attorney fees and costs so incurred by the Association shall be added to and become a part of the assessment to which such Owner's Lot is subject. Failure by an Association, or by any Owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

- (c) **Delegation of Powers.** The authority to delegate its powers and duties to committees, officers, employees or to any person, firm or corporation to act as manager. Neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty or power so delegated.
- (d) **Association Rules.** The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Association deems reasonable ("Association Rules"). The Association Rules shall govern the use of the Common Area by the Owners, families of an Owner, or by an invitee, licensee, lessee, or contract purchaser of an Owner, provided, however, the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or the Bylaws. In the event of any conflict between (i) any Association Rule and (ii) any provision of this Declaration, the Articles or the Bylaws, the Association Rules shall be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such conflict. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, may, but need not be mailed or otherwise delivered to each Owner, or recorded. Upon such mailing, delivery or recordation, said Association Rules shall have the same force and effect as if they were set forth in and were a part of the Restrictions. In addition, as to any Owner having actual knowledge of any Association Rules, such Association Rules shall have the same full force and effect and may be enforced against such Owner.
- (e) **Emergency.** The Association or any person authorized by the Association may enter upon any Building Lot in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable and any damage caused thereby shall be repaired by the Association.
- (f) **Licenses, Easements and Rights-of-Way.** The power to grant and convey to any third party such licenses, easements and rights-of-way in, on or under the Common Area as may be necessary or appropriate for the orderly maintenance of the Common Area or the preservation of the

health, safety convenience and welfare of the Owners, or for the purpose of constructing, erecting, operating or maintaining:

- (i) Underground lines, cables, wires, conduits and other devices for the transmission of electricity for lighting, heating, power, telephone and other purposes;
- (ii) Public sewer, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and
- (iii) Any similar public or quasi-public improvements or facilities.

The right to grant such licenses, easements and rights-of-way are hereby expressly reserved to the Association.

(g) **Duties of the Association.** In addition to the power delegated to it by the Articles and the Bylaws, without limiting the generality thereof, the Association or its agent, if any, shall have the obligation to conduct all business affairs of common interest to all Owners, and to perform each of the following duties:

- (i) **Operation and Maintenance of Common Area.** Operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Common Area including the repair and replacement of property damaged or destroyed by casualty loss and all other property acquired by the Association.
- (ii) **Taxes and Assessments.** Pay all real and personal property taxes and assessments separately levied against the Common Area owned and managed by the Association or against the Association and/or any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state or local, including income or corporate taxes levied against the Association in the event that the Association is denied the status of a tax exempt corporation.
- (iii) **Water and Other Utilities.** Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone and gas and other necessary

services for the Common Area and other property owned or managed by the Association.

- (iv) **Insurance.** Obtain from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the following policies of insurance:
- (a) Comprehensive public liability insurance insuring the Board, the Association Grantor and the individual Owners and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Area or other property owned or managed by the Association. Limits of liability of such coverage shall be as follows: Not less than Five Hundred Thousand Dollars (\$500,000.00) per person and Five Hundred Thousand Dollars (\$500,000.00) per occurrence with respect to personal injury or death, and property damage.
  - (b) Such other insurance including Worker's Compensation insurance to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any Association funds or other property.
  - (c) The Association shall be deemed trustee of the interest of all Members of the Association in any insurance proceeds paid to it under such policies, and shall have full power to receive their interests in such proceeds and to deal therewith.
  - (d) Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the annual assessments levied by the Association.
  - (e) Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements of the Federal Housing



Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association and the Veterans Administration to the extent applicable to the Property and/or the Association.

- (v) **Rule Making.** Make, establish, promulgate, amend and repeal the Association Rules.
- (vi) **Architectural Committee.** Appoint and remove members of the Architectural Committee, all subject to the provisions of this Declaration.
- (vii) **Drainage Systems.** Operate, maintain, repair and replace all drainage and sprinkler systems installed on or used in connection with Common Area, provided said improvements are not maintained by the appropriate municipality.
- (viii) **Rights-of-Way Maintenance.** Maintain, repair and replace all irrigation lines or channels located in or serving the Common Area, and to pay all maintenance and construction fees of the irrigation district with respect to the property, which amounts shall be assessed against each Building Lot as provided herein.

## **8.7 Handling of Funds**

**8.7.1 Accounts.** The Association shall establish the necessary funds or accounts to provide properly for the operation and maintenance of the Association. Overall superintendence of these funds shall be the responsibility of the treasurer of the Association. All accounts with banks or other depositories shall require the signature of two (2) officers on checks or other withdrawals.

**8.8 Amendment.** The Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the Board of Directors or by the members of the Association at any regular or special meeting; provided, however, that any amendment of the Bylaws shall be subject to the limitations set forth in this Declaration.

## **ARTICLE IX COVENANT FOR MAINTENANCE ASSESSMENTS**

**9.1 Creation of the Lien and Personal Obligation of Assessments.** For each Building Lot owned within the Property, each Owner (subject to the provision in Section 9.4) by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Set-up fee to be collected at the close of each Building Lot in the amount of Three Hundred Fifty dollars (\$350.00) payable to the Association. Upon each transfer of any Building Lot and recording of the deed, each buyer at closing shall pay to the Association a special transfer assessment of Fifty dollars (\$50.00). A one-time site fee is to be collected at the close of each building lot in the amount of One Hundred dollars (\$100.00) payable to the Association.
- (b) Annual regular assessments.
- (c) Special assessments for capital improvements, such assessments to be established and collected as herein provided.
- (d) Limited Assessments as herein provided.

The set-up fee, annual, special and Limited Assessments, together with interest as allowed by this Declaration, the Bylaws or Idaho law, whichever is greater, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees incurred in a collection effort, whether or not suit has been filed, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to an Owner's successors in title unless expressly assumed by them.

**9.1.1 Purpose of Assessments.** The regular assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Property and for the improvement and maintenance of the Common Area, and to pay the annual assessments of the irrigation district and other financial obligations.

**9.1.2 Special Assessments for Capital Improvements.** In addition to the annual regular assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of at least two-thirds (2/3) of the votes of the membership, either in person or by proxy at a meeting duly called for this purpose.

**9.1.3 Limited Assessments.** Limited Assessments may be levied against any Owner in an amount equal to the costs and expenses incurred by Grantor or the Association, including, without limitation, legal fees, whether or not suit has been filed, for any corrective action taken by Grantor or the Association pursuant to this Declaration or otherwise as necessitated by any intentional or negligent act or omission by any such Owner or the occupant of such Owner's Building Lot, or the agents, contractors or employees thereof. Such costs and expenses shall include, without

limitation, costs and expenses incurred for the repair and replacement of Common Area or other property owned or maintained by Grantor or the Association, and for landscaping performed by Grantor or the Association which has not been performed by such Owner as provided herein.

- 9.2 **Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Building Lot to an Owner, the maximum annual regular assessment shall be Three Hundred Fifty dollars (\$350.00) per Building Lot per year, to be billed and paid monthly, quarterly, semi-annually, or annually. Said billing schedule shall be determined at the discretion of the Board of Directors.

From and after January 1 of the year immediately following the conveyance of the first Building Lot to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership of the Association as provided below.

- (a) From and after January 1 of the year immediately following the conveyance of the first Building Lot to an Owner, the maximum annual assessment may be increased above ten percent (10%) by a vote of three-fourths (3/4) of the votes of the membership, at a meeting duly called for this purpose.
- (b) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

- 9.3 **Notice and Quorum for any Action Authorized Under Sections 9.1 and 9.2.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 9.1 and 9.2 shall be sent to all members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty-one percent (51%) of the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

- 9.4 **Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Building Lots and may be collected on a semi-annual basis; provided, however, that during the time there is a Class B member, such Class B member's obligation shall be limited to the difference between the amount of regular and special assessments levied against all Building Lots not owned by Grantor and the amount of the Association's actual expenses rather than those sums otherwise due by Class A members established in 9.1 and/or 9.2 above.

- 9.5 **Date of Commencement of Annual Assessments-Due Dates.** The annual regular assessments provided for herein shall commence as to all Building Lots on January 1, 2004. The Board of Directors shall fix the amount of the annual assessment against each

Building Lot at least thirty (30) days in advance of each annual assessment period. Written Notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Building Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Building Lot is binding upon the Association as of the date of its issuance.

- 9.6 **Effect of Nonpayment of Assessments – Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Building Lot.
- 9.7 **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Building Lot shall not affect the assessment lien. However, the sale or transfer of any Building Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Building Lot from liability for any assessments thereafter becoming due or from the lien thereof.
- 9.8 **Effect of Nonpayment as Against Mortgagees.** No mortgagee shall be required to collect an assessment, and the failure of a Building Lot Owner to pay assessments shall not by itself cause a default under an insured (HUD/VA) mortgage.

## ARTICLE X IDENTIFICATION AND USE OF COMMON AREA

- 10.1 **Common Area.** The Common Areas granted to the Milliron Homeowners Association, Inc. are:

Lot 1 and 6, Block 1; Lot 9, Block 2; Lot 9, Block 5; Lot 1 and 9, Block 6; and Lot 1, Block 7.

This Common Area shall be conveyed to the Association free and clear of all liens and title encumbrances (other than easements, taxes, and common restrictions) and shall be owned and maintained by the Association.

- 10.1.1 **Notes.** The Common Area is subject to the following "Notes," as stated on the final recorded Plat for MILLIRON PLACE SUBDIVISION, recorded in County of Ada, Idaho:

1. A TEN (10) FOOT WIDE PERMANENT PUBLIC UTILITIES, PROPERTY DRAINAGE, AND IRRIGATION EASEMENT IS HEREBY DESIGNATED ALONG ALL LOT LINES COMMON TO A PUBLIC RIGHT-OF-WAY AND ALONG ALL REAR LOT LINES UNLESS OTHERWISE NOTED. A FIVE (5) FOOT WIDE IRRIGATION, PUBLIC UTILITIES AND

PROPERTY DRAINAGE EASEMENT IS HEREBY DESIGNATED ALONG EACH SIDE OF INTERIOR LOT LINES UNLESS OTHERWISE NOTED.

2. ALL OF LOT 9, BLOCK 5, AND PORTIONS OF LOTS 1, 2, 3, AND 4, BLOCK 2, LOTS 6 AND 7, BLOCK 3 AND LOTS 5, 6, AND 7, BLOCK 4 ARE SERVIENT TO AND CONTAIN THE ACHD STORM WATER DRAINAGE SYSTEM. THESE LOTS ARE ENCUMBERED BY THAT CERTAIN MASTER PERPETUAL STORM WATER DRAINAGE EASEMENT RECORDED ON JUNE 1, 2004 AS INSTRUMENT NO. 104068411. OFFICIAL RECORDS OF ADA COUNTY, AND INCORPORATED HEREIN BY THIS REFERENCE AS IF SET FORTH IN FULL (THE "MASTER EASEMENT"). THE MASTER EASEMENT AND THE STORM WATER DRAINAGE SYSTEM ARE DEDICATED TO ACHD PURSUANT TO SECTION 40-2302 IDAHO CODE. THE MASTER EASEMENT IS FOR THE OPERATION AND MAINTENANCE OF THE STORM DRAINAGE SYSTEM.
3. ANY RE-SUBDIVISION OF THIS PLAT SHALL BE IN COMPLIANCE WITH THE MOST RECENTLY APPROVED SUBDIVISION STANDARDS OF THE CITY OF MERIDIAN.
4. LOT 1 AND 6, BLOCK 1; LOT 9, BLOCK 2; LOT 9, BLOCK 5; LOT 1 AND 9, BLOCK 6; AND LOT 1, BLOCK 7 ARE COMMON LOTS WHICH SHALL BE OWNED AND MAINTAINED BY THE MILLIRON PLACE HOMEOWNER'S ASSOCIATION.
5. THIS DEVELOPMENT RECOGNIZES IDAHO CODE SECTION 22-4503, RIGHT TO FARM ACT, WHICH STATES: "NO AGRICULTURAL OPERATION OR APPURTENANCE TO IT SHALL BE OR BECOME A NUISANCE, PRIVATE OR PUBLIC, BY ANY CHANGED CONDITIONS IN OR ABOUT THE SURROUNDING NONAGRICULTURAL ACTIVITIES AFTER THE SAME HAS BEEN IN OPERATION FOR MORE THAN ONE (1) YEAR, WHEN THE OPERATION WAS NOT A NUISANCE AT THE TIME THE OPERATION BEGAN; PROVIDED, THAT THE PROVISIONS OF THIS SECTION SHALL NOT APPLY WHENEVER A NUISANCE RESULTS FORM THE IMPROPER OR NEGLIGENT OPERATION OF ANY AGRICULTURAL OPERATION OR APPURTENANCE TO IT."
6. MAINTENANCE OF ANY IRRIGATION OR DRAINAGE PIPE OR DITCH CROSSING A LOT IS THE RESPONSIBILITY OF THE LOT OWNER UNLESS SUCH RESPONSIBILITY IS ASSUMED BY AN IRRIGATION/DRAINAGE DISTRICT. THE OWNER HAS COMPLIED WITH IDAHO CODE SECTION 31-3805 (B). IRRIGATION WATER WILL BE PROVIDED BY SETTLERS IRRIGATION DISTRICT AND ALL LOTS WILL BE OBLIGATED FOR ASSESSEMENTS FROM THE SETTLERS IRRIGATION DISTRICT.
7. THE BOTTOM ELEVATION OF HOUSE FOOTINGS SHALL BE SET A MINIMUM OF 12 INCHES ABOVE THE HIGHEST ESTABLISHED NORMAL GROUNDWATER ELEVATION.
8. A FIFTEEN (15) FOOT WIDE EASEMENT IS HEREBY DEDICATED TO THE SETTLERS IRRIGATION DISTRICT FOR OPERATION AND MAINTAINANCE OF THE SETTLERS CANAL.
9. REFER TO RECORD OF SURVEY NO. 2453 FOR ADDITIONAL BOUNDARY INFORMATION.
10. DIRECT LOT ACCESS TO N. BLACK CAT ROAD AND W. CHERRY LANE IS PROHIBITED.

- 10.2 **Use.** Every Building Lot Owner shall have a right and easement of enjoyment in and to the Common Area, and such right and easement shall be appurtenant to and shall pass with the title to every Building Lot, subject, however, to the applicable provisions set forth in this Declaration.
- 10.3 **Liability to Building Lot Owners.** No individual Building Lot Owner shall have liability for damage to the Common Area or liability for injury to another arising out of someone's use of the Common Area, merely by virtue of being a Building Lot Owner.

## ARTICLE XI MISCELLANEOUS

- 11.1 **Term.** The easements created hereunder shall be perpetual, subject only to extinguishment by the holders of such easements as provided by law. The covenants, conditions, restrictions and equitable servitudes of this Declaration shall run for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants, conditions, restrictions and equitable servitudes shall be automatically extended for successive periods of ten (10) years each, unless, prior to expiration of the term or extended term then in effect (as the case may be) of this Declaration, the term is extinguished by an instrument signed by members entitled to cast not less than three-fourths (3/4) of the votes of the membership of the Association. Except as otherwise specifically provided herein, any of the covenants and restrictions of this Declaration, except the easements herein granted, may be amended as set forth below. Any amendment or election not to extend the term must be recorded, and shall not be effective or binding until it is recorded in the Official Records of Ada County, Idaho.
- 11.2 **Amendment**
- 11.2.1 **By Grantor; Grantor's Consent Required.** Until the recordation of the first deed to a Building Lot, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to (collectively, "amendment") or terminated only by Grantor by recordation of written instrument setting forth such amendment or termination. Any amendment affecting only a particular Tract may be made only by Grantor by an Amendment to this Declaration at any time up to the recordation of the first deed to a Building Lot in such Tract. Without limitation on the foregoing, and notwithstanding anything to the contrary as may be set forth below or elsewhere in this Declaration, as a right reserved unto the original Grantor under this Declaration, as long such original Grantor owns any portion of the property described on Exhibit "B" which has not yet been annexed into the Property, no amendment to or termination of this Declaration shall be effective or enforceable without the prior written consent of such original Grantor. Such reserved right of consent may be assigned by such original Grantor.
- 11.2.2 **After Sale of First Building Lot.** Subject to the required prior written consent of the original Grantor under this Declaration, as set forth in Section 11.2.1, after the recordation of the first deed to a Building Lot, the provisions of this Declaration

may be amended by a written instrument approved by Owners holding at least three-fourths (3/4) of the votes of the membership of the Association.

11.3 **Notices.** Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to Grantor, the Association or any other person or entity for the purpose of service of notices by such person or entity, or to the address of an Owner's Building Lot, if no other address for notices has been given to such person or entity by such Owner. Such address may be changed from time to time by notice in writing given in compliance with the foregoing.

11.4 **Enforcement and Non-Waiver**

11.4.1 **Right of Enforcement.** Except as otherwise provided herein, any Owner of any Building Lot shall have the right to enforce any or all of the provisions hereof against any property within the Property and the Owners thereof.

11.4.2 **Violations and Nuisances.** The failure of any Owner of a Building Lot to comply with any provision hereof, is hereby declared a nuisance and will give rise to a cause of action in Grantor, the Association, or any Owner of a Building Lot(s) within the Property for recovery of damages or for negative or affirmative injunctive relief or both. However, any other provision to the contrary notwithstanding, only Grantor or the Association may enforce by self-help any of the provisions hereof, and only if such self-help is preceded by reasonable notice to the Owner.

11.4.3 **Violation of Law.** Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration any or all enforcement procedures in law and equity.

11.4.4 **Remedies Cumulative.** Each remedy provided herein is cumulative and not exclusive.

11.4.5 **Non-Waiver.** The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the right to enforce any such provision.

11.5 **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property. This Declaration shall be construed and governed under the laws of the State of Idaho.

11.5.1 **Restrictions Construed Together.** All of the provisions hereof shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property as set forth in the recitals of this Declaration.

- 11.5.2 **Restrictions Severable.** Notwithstanding the provisions of the foregoing section, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.
- 11.5.3 **Singular Includes Plural.** Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.
- 11.5.4 **Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.
- 11.6 **Successors and Assigns.** All references herein to Grantor, an Owner, or a person shall be construed to include all successors, assigns, partners and authorized agents of such Grantor, Owner, or person.
- 11.7 **Assignment by Grantor.** Any or all rights, powers and reservations of Grantor herein contained may be assigned to any person or entity which is now organized or which may hereafter be organized and which will assume the duties of Grantor hereunder pertaining to the particular rights, powers and reservations assigned, and, upon any such person or entity evidencing his, her or its intent in writing to accept such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Grantor herein. In the event of any such assignment and assumption, Grantor shall be released from any liability or obligation arising under this Declaration and accruing after the date of such assignment and assumption, except with respect to any rights, powers and reservations as may have been reserved unto Grantor. All rights of Grantor hereunder reserved or created shall be held and exercised by Grantor alone, so long as it owns any interest in any portion of the Property or a Tract that may be annexed into the Property, which Property or Tract is subject to such reserved or created rights.
- 11.8 **Private Pathway.** The pathway on the North and East property line is private property and it owned and maintained by Golf View Homeowners Association; access from Milliron Subdivision is PROHIBITED.
- 11.9 **Existing House.** The existing house located on lot 17, block 1 is exempt from any of the ACC guidelines mentioned in these CC&R's for the Milliron Place Subdivision.

## ARTICLE XII INDEMNIFICATION

To the full extent permitted by applicable law, Grantor, each member of the Board, each member of an Association committee, and each officer shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceedings to which he, she or it may be a party, or in which he, she or it may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not he, she or it holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by insurance and except

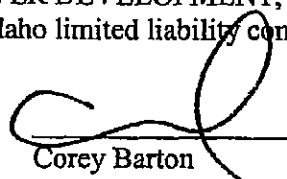


in such cases wherein such person or entity is adjudged guilty of willful misfeasance in the performance of his, her or its duties; provided, however, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interest of the Association; and further provided that this right of indemnification shall be inapplicable to the extent necessary, if at all, for the Association to obtain any insurance required by this Declaration.

IN WITNESS WHEREOF, the party hereto has hereunto caused its name to be subscribed this 11<sup>th</sup> day of October, 2005.

DYVER DEVELOPMENT, L.L.C.,  
an Idaho limited liability company

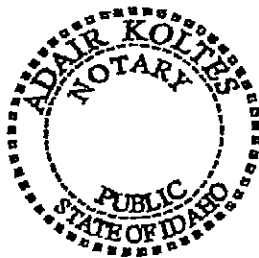
By:

  
\_\_\_\_\_  
Corey Barton  
Managing Member

STATE OF IDAHO            )  
                                          ) ss.  
County of Ada                )

On this 11<sup>th</sup> day of October, 2005, before me, Adair Koltjes, a Notary Public in and for said State, personally appeared Corey Barton, known or identified to me to be the Managing Member of the limited liability company of Dyver Development, L.L.C., who subscribed said company name to the foregoing instrument, and acknowledged to me that he executed the same in said company name.

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



Adair Koltjes  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at Nampa, ID  
My commission expires 6-05-2010

# Exhibit A

## Milliron Subdivision

A parcel of land located in the SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 3, T. 3N., R. 1W., B.M., Ada County, Idaho, more particularly described as follows: Commencing at the corner common to Section 3, 4, 9 and 10 of T. 3N., R. 1W., from which the  $\frac{1}{4}$  corner common to said Sections 3 and 10 bears south  $89^{\circ}15'27''$  East, 2644.99 feet;

Thence South  $89^{\circ}15'27''$  East, 1023.49 feet to the southwest corner of Golf View Estates No. 4, as same is recorded in Book 72 of plats at Page 7446, records of Ada County, Idaho; thence along the West line of said subdivision North  $00^{\circ}45'31''$  East (record North  $00^{\circ}45'06''$  East), 45.00 feet to the REAL POINT OF BEGINNING.

Thence along the North right-of-way of W. Cherry Lane North  $89^{\circ}15'10''$  West, 10.30 feet;

Thence 101.69 feet along the arc of a curve to the left, having a radius of 5,775.00 feet, a central angle of  $1^{\circ}00'32''$ , and a long chord bearing North  $89^{\circ}46'24''$  West, 101.69 feet;

Thence South  $89^{\circ}43'20''$  West, 461.70 feet;

Thence 102.92 feet along the arc of a curve to the right, having a radius of 5,685.00 feet, a central angle of  $1^{\circ}02'14''$ , and a long chord bearing North  $89^{\circ}45'33''$  West, 102.91 feet;

Thence North  $89^{\circ}14'26''$  West, 289.25 feet;

Thence North  $27^{\circ}20'52''$  West, 33.96 feet to a point on the East right-of-way of N. Black Cat Road;

Thence along said right-of-way North  $00^{\circ}37'42''$  East, 180.14 feet;

Thence North  $3^{\circ}57'46''$  West, 210.68 feet;

Thence North  $00^{\circ}37'42''$  East, 871.93 feet to a point on the South line of Golf View Estates No. 5 Subdivision, as same is recorded in Book 72 of plats at Page 7448, records of Ada County, Idaho;

Thence departing said right-of-way along the South line of said subdivision South  $89^{\circ}22'28''$  East (record South  $89^{\circ}21'59''$  East), 169.69 feet to the Initial Point of said subdivision;

Thence South  $65^{\circ}11'41''$  East, 428.02 feet (record South  $65^{\circ}10'00''$  East, 428.01 feet);

Thence South  $63^{\circ}10'10''$  East, 365.18 feet (record South  $63^{\circ}10'00''$  East, 365.00 feet);

Thence South  $77^{\circ}31'50''$  East, 115.33 feet (record South  $77^{\circ}32'13''$  East, 115.27 feet) to the southeast corner of said subdivision, common to an exterior boundary angle point of said Golf View Estates No. 4 Subdivision;

Thence along the West line of said Golf View Estates No. 4 Subdivision South  $00^{\circ}45'31''$  West (record South  $00^{\circ}45'06''$  West), 923.84 feet to the Point of Beginning. Containing 25.86 acres, more or less.