

ACCOMMODATION

ADA COUNTY RECORDER J. DAVID NAVARRO
BOISE IDAHO 09/21/06 10:51 AM
DEPUTY Bonnie Oberbillig
RECORDED-REQUEST OF
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MASTER DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF
ARROWHEAD CANYON ESTATES HOMEOWNER'S ASSOCIATION, INC.
FOR EYRIE CANYON SUBDIVISIONS NO. 1, 2 &3

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ARTICLE 1 - RECITALS

WHEREAS, the undersigned ("Grantor") is the owner of certain land in Ada County, Idaho, more particularly described on Exhibit A attached hereto and made a part hereof (hereafter "Property");

WHEREAS, Grantor desires to subject the Property to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes herein set forth to (i) insure the enhancement and preservations of property values within the property, (ii) provide for the proper design, development, improvement and use of the Property by Grantor and all other persons or entities who may subsequently acquire an interest in the Property and (iii) create a residential development of high quality;

WHEREAS, as additional land owner by Grantor adjacent to the property is platted and developed for uses similar to that of the Property, upon election by the Grantor, such shall become subject to the terms of this Master Declaration by annexing the same as provided herein;

WHEREAS, because Eyrie Canyon Subdivision will be developed in two or more Phases, each of which may have unique characteristics, needs and requirements; Grantor may, from time-to-time, promulgate further conditions, covenants, restrictions and easements as "Supplemental Declarations" relating to particular tracts or parcels of real property within Eyrie Canyon Subdivision; and

WHEREAS, in order to achieve the objectives and desires of Grantor, Grantor will control the management and government of the Property and the non-profit association of the Owners to be created until such time as the Owners take over the Management functions through the Association upon substantial completion of the development process.

ARTICLE II - DECLARATION

Grantor hereby declares that the Property and each lot, tract or parcel thereof (hereafter called "Lot," unless specified to the contrary), is and shall be held, sold, conveyed, encumbered, ,hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easement, reservations, limitations and equitable servitudes (hereafter collectively called covenants and restrictions"), all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property or any Lot therein, and to enhance the value, desirability and attractiveness thereof. The covenants and restrictions set forth herein shall run with the land and each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any Lot therein; shall inure to the benefit of every Lot in the Property and any interest therein; and shall inure to the benefit of and be binding upon Grantor and each Owner, and each successor in interest of each, and may be enforced by Grantor by and any Owner's Association, as hereafter provided.

Notwithstanding the foregoing, no provision of this Master Declaration shall be construed or enforced to prevent or limit Grantor's right to complete development of the Property in accordance with the plan therefore as the same exists or may be modified from time to time by Grantor nor prevent normal construction activities during the construction of Improvements upon any Lot in the Property. No development or construction activities shall be deemed to constitute a nuisance or violation of this Master Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion. In the event any dispute concerning the foregoing shall arise, a temporary waiver of the applicable provision(s) of this Master Declaration may be granted by the Architectural Control Committee provided that such waiver shall be for a reasonable period of time. Any such Waiver need not be recorded and shall not constitute an amendment of this Master Declaration.

In the event of a conflict between the provisions of this Master Declaration and the requirements of the ordinances of the City of Boise applicable to the Property, the more restrictive shall control.

ARTICLE III - DEFINITIONS

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

ACC: The Architectural Control Committee for the Property.

ACC Rules/ ACC Standards: Such rules or standards promulgated by Grantor or the ACC as authorized by Section 5.31, below.

Annexation: The process by which additional tracts or parcels of land not initially a part of the Property is made subject to this Master Declaration.

Assessment: A payment required of Association members, including Regular, Special or Limited Assessments as provided in this Master Declaration.

Association: Arrowhead Canyon Estates Homeowners Inc.

Board: The duly elected and qualified Board of Directors of the Association.

Building: A structure constructed on a Lot on a temporary or permanent basis and, unless specified to the contrary, shall include all other appurtenances and improvements thereto or used in connection therewith.

By-Laws: The By-Laws of the Association, including any amendments thereto duly adopted.

Eyre Canyon Subdivision 1,2 & 3: The whole of the Land described on Exhibit A and any additional land annexed thereto as provided herein (also sometimes referred to herein as "Property").

Arrowhead Canyon Estates Homeowner's Association, Inc.: The Idaho non-profit corporation organized by the Grantor and comprised of Members and existing for the purpose of providing self-government for the Property.

Common Area: All real property including easements or other interests therein, located within the Property or outside of the boundaries of the Property in which the Association owns an interest or which the Association controls or which the Association is required to maintain the which is owned, held, controlled, or maintained for the betterment of the Owners and Occupants of the Property.

Development: The project to be undertaken by Grantor resulting in the improvement of the Property or any additional property annexed hereunder, including landscaping, amenities, construction of roadways, utility services and other improvements.

Grantor: The undersigned owner of the land comprising the Property, including a successor of the undersigned Grantor, succeeding to the ownership of all of Grantor's remaining interest in the Property.

Improvements: All structures and appurtenances thereto of all kinds and types, including but not limited to, buildings, roads, driveways, parking lots, sidewalks, walkways, walls, fences, landscaping, poles, signs and lighting. Improvements shall not include those items which are located totally in the interior of a Building and cannot be readily observed from the outside of such Building.

Initial Construction: The first construction of permanent Improvements intended for residential occupancy on a Lot following the sale of that Lot by Grantor to an Owner.

Limited Assessment: An Assessment levied by the Association upon one or more Lots, but not upon all Lots within the Property, for the purpose of securing payment by the Owner(s) thereof of amounts expended by the Association to correct a condition prohibited hereunder or to cure an Owner's breach of the terms of this Master Declaration.

Lot: A portion of the Property which is a legally described tract or parcel of land within the property or which is designated as a Lot on any recorded subdivision plat relating to the Property.

Master Declaration: This instrument as it may be amended from time to time.

Member: Any person(s) who is an Owner of a Lot within the Property.

Mortgage: Any mortgage or deed of trust or other hypothecation of land located in the Property to secure the performance of an obligation. Unless otherwise specifically provided, the reference to a "Mortgage" in this Master Declaration shall be limited to a "first Mortgage," including a "first Deed of Trust," on a Lot in Eyrie Canyon.

Mortgagee: The holder of a Mortgage or the beneficiary under a Deed of Trust, including an assignee(s) thereof, which Mortgage or Deed of Trust encumbers a Lot in the Property owned by an Owner. Unless otherwise specifically provided, the reference to a "Mortgagee" in this Master Declaration shall be limited to a holder of a first Mortgage, including a beneficiary under a first Deed of Trust on a Lot.

Occupant: Any person, association, corporation or other entity who or which is an Owner, or has leased, rented, been licensed, or is otherwise legally entitled to occupy and use any Building or Improvement on a Lot, whether or not such right is exercised, including the Occupant's heirs, personal representatives, successors and assigns.

Owner: A person or persons or other legal entity or entities, including Grantor, holding fee simple title to a Lot in the Property, including contracts sellers, but excluding those having such interest merely as security for the performance of an obligation, but including any Mortgagee (of any priority) or other security holder provided said Mortgagee or other security holder is in actual possession of a Lot as a result of foreclosure or otherwise, and any person taking title through such Mortgagee or other security holder by purchase at foreclosure sale or otherwise.

Plat: A final subdivision plat covering any portion of the Property, as recorded in the office of the County Recorder, Ada County, Idaho, as the same may be amended by duly recorded amendments thereto.

Property: The whole of the Property described in Article I above, and any additional land annexed thereto pursuant to Article XII below.

Regular Assessment: An assessment levied by the Association to provide funds to pay the ordinary estimated expenses of the Association.

Special Assessment: An assessment levied by the Association other than a Regular or Limited Assessment.

Sub-Association: An Idaho non-profit corporation or unincorporated Association organized by Grantor or by any Owner(s) pursuant to a Supplemental Declaration recorded by Grantor for any specific tract or parcel within Eyrie Canyon. Unless specifically provided to the contrary, or the context requires otherwise, a reference to "Association" shall include "Sub-Association."

Supplemental Declaration: The additional or different conditions, covenants, conditions, restrictions and easements relating to a particular tract or parcel of real property within Eyrie Canyon promulgated by Grantor and recorded in the office

records of Ada County, Idaho. Unless specifically provided to the contrary, or unless the context otherwise requires, a reference to "Master Declaration" shall include "Supplemental Declaration."

ARTICLE IV - PURPOSE

The Property is hereby made subject to the covenants and restrictions contained in this Master Declaration, all of which shall be deemed to be imposed upon and run with the land and each and every Lot and parcel thereof, and shall apply to each and every Owner and Occupant thereof and their respective successors in interest, to insure proper design, development, improvement, use and maintenance of the Property for the purpose of:

- (a) Insuring Owners and Occupants of Buildings of quality of design, development, improvement, use and maintenance as shall protect and enhance the investment and use of all Lots and Improvements.
- (b) Preventing the erection in Eyrie Canyon of improvements of improper design or construction with improper or unsuitable materials or with improper quality and method of construction.
- (c) Encouraging and insuring the erection of quality and attractive Improvements appropriately located with Eyrie Canyon to assure visual quality and harmonious appearance and function.
- (d) Securing and maintaining proper setbacks from streets and open areas in Eyrie Canyon and adequate free spaces between Improvements.
- (e) Integrating development of the different Lots within common general standards consistent with the ACC Rules/ACC Standards existing from time to time.
- (f) Insuring attractive landscaping and the conservation of existing natural features with minimum adverse impact on the ecosystem.

As used hereafter, "*Project Objectives*" shall mean the foregoing specified purposes.

ARTICLE V - PERMITTED USES AND PERFORMANCE STANDARDS

5.01 Use.

Unless otherwise specified in a Supplemental Declaration covering a particular Lots(s) or parcel(s), Lots shall be used only for residential purposes and such uses as are customarily incidental thereto, including, but not limited to, a home office so long as such incidental use does not result in a consistent increase in traffic and demand for parking and Common Area.

As used herein and elsewhere in this Master Declaration on a Lot for living accommodations by one (1) or more related or unrelated persons, including guests of the principal occupants, which guests reside therein on a temporary basis. Notwithstanding the provisions of Idaho Code Sections 67-6530 et seq., as used in this Master Declaration, the term "residential" is not intended, nor shall the same be construed to include the use of a Lot for the operation of a shelter home for persons unrelated to each other or unrelated to the Owner or Occupant.

5.02 Buildings.

- (a) Unless otherwise specified for a particular Lot, tract or parcel in a Supplemental Declaration, or allowed by the zoning ordinance applicable to a Lot, all lots shall be used exclusively for single-family residential purposes, and no Lot shall be improved except with one (1) dwelling unit and accessory structures allowed pursuant to subparagraph 5.02 below. Each dwelling unit shall have an attached fully enclosed garage a minimum width of two (2) standard sized automobile bays and a maximum width of four (4) standard size automobile bays. No carports shall be allowed. The minimum square footage of living area within a dwelling unit located on a Lot shall be as provided in the ACC Rules/ACC Standards. The square footage of living area shall be based on finished interior living space at

or above the grade of the Lot, exclusive of basement, porches, patios and garages. The ACC Rules shall require that each structure have gutters attached so as to catch all roof run-off.

5.03 Approval of Use and Plans.

No improvements shall be built, constructed, erected, placed or materially altered within the property unless and until the plans, specifications and site plan therefore have been reviewed in advance and approved by the ACC in accordance with the provisions of Article XI, below.

5.04 Prohibited Buildings/Uses.

No trailer or other vehicle, tent, shack, garage, accessory building or out building shall be used as a temporary or permanent residence. No noxious or offensive activities shall be conducted on any Lot nor shall anything be done thereon which may be or become an unreasonable annoyance or nuisance to the Occupant(s) of the other Lots within the Property by reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise.

5.05 Set-Backs.

No building or other structure (exclusive of fences and similar structures approved by the ACC) shall be located on a Lot nearer to a Lot line than the distance permitted by (1) the ordinances of the City of Boise applicable to the property except as may be modified by a Conditional Use Permit issued by the City of Boise, or (ii) the ACC Rules/ACC Standards, whichever requires the greater distance. The ACC shall have the right to stagger the front setbacks of the Lots in order to create a more pleasing appearance of each cul-de-sac and to minimize the negative visual appearance of a uniform building line.

5.06 Antenna.

No exterior radio antennae, television antennae or other antennae, including a satellite dish, shall be erected or maintained on a Lot unless it is screened in a manner conforming to the prior approval in writing by the ACC.

5.07 Easements.

There is hereby reserved for the use and benefit of Grantor and granted for the use and benefit of each Lot, and for the use of each Owner and Occupant, and for the use and benefit of the Association, and their successors and assigns, for the purpose incident to such use, development and maintenance of the Property, the following easements:

- (a) For the installation and maintenance of public utility facilities of all kinds, including radio and television and transmission cables, and easements so designated on the recorded subdivision plat(s) for Eyrie Canyon.
- (b) For the purpose of permitting Grantor or the Association, their contractors and agents, to enter onto those portions of Lots contiguous to any Common Area to maintain, replace and restore landscaping and other Improvements within the Common Area.
- (c) Reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto, or between adjacent lots, due to the unintentional placement or settling or shifting of the Improvements constructed thereon, which easements of encroachment shall be valid so long as they exist and the rights and obligations of Owners shall not be altered in any way by said encroachments, settling or shifting; provided, however, that in no event shall a valid easement for encroachment occur due to the willful acts or acts of an Owner.
- (d) Any additional easements, if any, as shown and designated on the recorded Subdivision plats. The easement areas (excluding any equipment or appurtenances owned by Grantor, the Association or a utility company located thereon) herein reserved shall be maintained by the Owner of the Lot upon which they are situated. No

improvements shall be placed or permitted to remain on such easement areas located within any Lot which shall interfere with the intended use or purpose of such easement(s), and no other activity shall be undertaken on any Lot which may interfere with the use and access intended to be provided by such easement or the installation or maintenance of the utilities or other facilities, if any, located thereon or therein.

5.08 Lighting.

Exterior lighting and interior lights reflecting outside shall not be placed in any manner which shall cause glare or excessive light spillage on a neighboring Lot(s) and shall be in accordance with the Acc Rules/Acc Standards.

5.09 Animals.

No animals, livestock, birds, insect or poultry of any kind shall be raised, bred, or kept on any Lot, except that domesticated dogs, cats or other small household pets which do not unreasonably bother or constitute a nuisance to others may be kept, provided that they are no kept, bred or maintained for any commercial purpose. Dogs and other similar pets shall be on a lease when not confined to an Owner's Lot.

5.10 Roofs.

All type, pitch and roof covering materials which shall be required on building within the property shall be as set forth in the ACC Rules/ACC Standards.

5.11 Septic Tanks/Cesspools.

No septic tanks and/or cesspools shall be allowed within Eyrie Canyon Subdivision.

5.12 Grading and Drainage.

A site plan indicating the proposed grading and drainage of a Lot must be approved by the ACC before any construction of Improvements is initiated. Lot grading shall be kept to a minimum and Buildings are to be located for preservation of the grade(s) approved by the Grantor so long as the Grantor owns any Lot and the ACC thereafter, and any grade(s), berm or swales should be an integral part of the grading design. Subject to the requirements of any governmental entity having jurisdiction thereof, water may drain or flow into adjacent streets but shall not be allowed to drain or flow upon, across or under adjoining Lots or Common Areas, unless an express written easement for such purpose exists. The owner of a Lot which drains upon, across, or under an adjoining Lot or Common Area shall be liable for any damage caused thereby and shall promptly take all action and make all modifications necessary to correct such non-permitted drainage. Notwithstanding the foregoing, roof gutters, on all structures must direct all roof run-offs into drainage system approved by Boise City and Ada County Highway District. Certain Lots have been approved for on-site retention of roof drainage and other Lots have been approved with a requirement that roof drainage be directed to drainage facilities maintained by the Association. Each Lot is required to comply with these requirements imposed by Boise City and Ada County Highway District or such other requirements as Boise City or Ada County Highway District may impose on construction. For Lots whose roof drainage shall be responsible to maintain the service line for the Lot's drainage from the point of entry of the service line exclusive to the Lot to its connection with the drainage systems mainline.

Street and roof drainage run-off containment ponds located on Lot 2, Block 1, Eyrie Canyon Subdivision No. 1; Lot 9, Block 2, Eyrie Canyon Subdivision No. 2; and lot 13, Block 3, Eyrie Canyon Subdivision No. 3 are designated drainage facilities and will be maintained by the Association. Maintenance will be in accordance with the Maintenance and Operation Manual prepared by Briggs Engineering, Inc. and approved by Ada County Highway District.

Ada County Highway District has been granted easements to all retention facilities on Association owned common lots on which the ponds are located. Ada County Highway District has the right to enter the properties for inspection and corrective action if so required. Ada County Highway District also has lien rights to recover any costs incurred due to failure of

the Association to maintain the facilities as required by the Maintenance and Operation Manual prepared by Briggs Engineering, Inc. Liens will be assessed on all properties that are members of the Arrowhead Canyon Estates Homeowner's Association, Inc.

5.13 Oil and Mineral Rights.

There is hereby reserved to Grantor, together with the right of Grantor to grant and transfer the same, the following: (i) all oil, oil rights, minerals, mineral rights, natural gas rights and other hydrocarbons by whatever name known, and the rights in connection therewith; (ii) geothermal steam and all products derived from any of the foregoing that may be within or under the land comprising Eyrie Canyon; (iii) the perpetual right of drilling, mining, exploring and operating therefore and scoring in and removing the same from said land or any other land, including the right to whip stock or directionally drill and mine from land other than land within Eyrie Canyon, oil and gas wells, tunnels and shafts into, through or across the subsurface of land within Eyrie Canyon and to bottom such whip stock or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines without, however, the right to drill, mine, store, explore and operate through the surface or the upper fifty feet (50') of the subsurface of the land within Eyrie Canyon.

5.14 Commercial Use Prohibited.

Unless otherwise specifically permitted in a Supplemental Declaration, no Lot shall be used at any time for commercial or business activity, provided, however, that Grantor or persons authorized by Grantor may use a Lot(s) for development and sales activities relating to Eyrie Canyon, model homes or real estate sales. As used herein, "Commercial or Business Activity" shall not include the use of a Lot for an incidental uses as described in Section 5.01 above, or the rental by an owner of a Lot and the improvements thereon for residential purposes. The use of a Lot for a shelter home, as the same is defined in Sections 67-6530 et DEQ., Idaho Code, whether or not operated for profit, shall, for the purposes of this Master Declaration, be a prohibited commercial or business use.

5.15 Maintenance.

The following provisions shall govern the maintenance of Lots and all Improvements thereon:

- a) Each Owner of a Lot shall maintain all Improvements located thereon in good and sufficient repair and shall keep the Improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows glazed, rubbish and debris removed, weeds cut and otherwise maintain the same in a neat and aesthetically pleasing condition
- b) All damage to any Improvement shall be repaired as promptly as is reasonably possible.
- c) A Building which is vacant for any reason shall be kept locked and the windows glazed in order to prevent entrance by vandals. Vacant Buildings and unimproved Lots shall not be exempt from the provisions of this Master Declaration.
- d) All structures, facilities, equipment, objects and conditions determined by the ACC, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.
- e) No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a Lot in the required set-back area along a public or private right-of-way or otherwise kept in the open or exposed to public view.
- f) Any event or condition on a Lot which, in the sole discretion of the ACC, creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Master Declaration. If such event or condition is not promptly corrected by the Owner, the Association shall have the right to correct the same pursuant to subsection (h) below.

- g) In the event that any Owner shall permit any Improvement, including any 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, the Board, upon fifteen (15) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any building or structure thereon, if necessary, for the purpose of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The owner of the offending Lot shall be personally liable, and such Owner's Lot may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective action, 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, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as other assessments set forth in Article VIII of this Master Declaration.
- h) In the event that any owner shall permit any improvement, including any 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, the Association, upon fifteen (15) days prior written notice to the Owner of such Lot, shall have the right to correct such condition and to enter upon said Lot and into any building or structure thereon, if necessary, for the purpose of correcting or repairing the same and such owner shall promptly reimburse the Association for the cost thereof. The Owner of the offending Lot shall be personally liable and such Owner's Lot may be subject to a Mechanics Lien for all costs and expenses incurred by the Association in taking such corrective action, 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, or the amounts may, at the option of the Board, be levied as a limited assessment against said Lot and shall be enforceable in the same manner as set forth in Article IX of this Master Declaration.

5.16 Mining and Drilling.

No Lot shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, steam, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth; provided the Grantor or the Association may, by permit, grant, license or easement, allow the drilling for and the extraction of water for use on the Lot.

5.17 Boats, Campers and Other Vehicle.

Trailers, mobile homes, trucks larger than standard size pickups, boats, tractors, campers, garden or maintenance equipment and vehicles other than automobiles (collectively "Vehicles and Equipment"), when not in actual use, shall be kept at all times in an enclosed structure or screened from public view except for a temporary period not to exceed twenty-four (24) hours, and at no time shall any of said Vehicles and Equipment be parked or stored on a public or private right-of-way within Eyrie Canyon. No operative vehicle shall be parked or stored for a period in excess of seventy-two (72) consecutive hours on any portion of a Lot between the front of a Building and the abutting public right-of-way. No inoperative vehicle shall be parked or stored at any time on a Lot unless wholly within an enclosed structure or screened from public view. Each Lot shall have a driveway that provides a minimum of two (2) off street parking spaces for automobiles. The primary purpose of the garage required on each Lot is for the parking and storage of automobiles. No other use of a garage which prohibits or limits the use of the garage for the parking or storage of the number of automobiles for which it is designed shall be permitted. The Owner shall provide sufficient garage space or other enclosed parking approved by the ACC for all automobiles used by the occupants of a Lot, which automobiles shall be kept within the garage and the parking thereof in the driveway on the Lot or in a public right-of-way within the subdivision, other than for temporary purposes (as determined by the ACC) is prohibited.

5.18 Garage Doors.

Garage doors shall be closed except when open for a temporary purpose.

5.19 Exterior Materials and Colors.

Only exterior materials and colors that are approved by the ACC and are compatible with other buildings on the Lot and on neighboring Lots may be used in the construction, reconstruction, remodeling, repainting or refinishing of a building, to the end that all such buildings will present a unified and coordinated appearance. All exterior finishes and/or colors must be approved by the ACC and shall be in accordance with the ACC Rules/ACC Standards.

5.20 Vehicles.

The use of all vehicles, including but not limited to automobiles, trucks, bicycles and motorcycles, shall be subject to ACC rules, which may prohibit or limit the use thereof within Eyrie Canyon, and may provide parking regulations and other rules regulating the same.

5.21 Exterior Energy Devices.

No energy production device including, but not limited to, generators of any kind and solar energy devices, shall be constructed or maintained on any Lot without the prior written approval of the ACC, except for heat pumps or similar appliances shown on the plans approved by the ACC.

5.22 Mailboxes.

No freestanding mailbox shall be constructed or installed on any Lot. Cluster mailboxes will be provided as directed by the United States Postal Service.

5.23 Signs.

No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a dwelling unit and Lot for rent or for sale by displaying a single, neat, reasonably sized vacancy sign or "For Sale" sign thereon. Signs advertising the name of the builder and the name of the institution providing financing therefore may be displayed on a Lot during construction of the Improvements. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions. Any directional or identifications sign in Arrowhead Canyon shall be permitted, provided the same is approved by the ACC prior to installation. Notwithstanding the foregoing, the ACC shall have the right to adopt ACC Rules/ACC Standards with respect to sign allowed within Eyrie Canyon Subdivision, which ACC Rules/ACC Standards, if adopted, shall regulate signs within Eyrie Canyon Subdivision and shall control over the specific provisions of this Section.

5.24 Subdividing.

No Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written consent of the ACC; provided, however, that nothing herein shall be deemed to prevent an Owner from transferring or selling any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property or require the approval of the ACC therefore. In addition, the conveyance of an insignificant portion(s) of a Lot to the Owner of the Lot which abuts said conveyed portion for the purpose of correcting a common boundary or other similar purpose, shall not be deemed to be a subdividing of a Lot within the prohibition contained herein.

5.25 Fences.

No fence or wall of any kind shall be constructed on a Lot unless the plans and specifications therefore, including the location, design, material and color thereof, have been approved in writing by the ACC prior to the construction or installation. The type, design, material, and finish of all privacy fences shall be as specified in the ACC Rules/ACC Standards, it being the intent of Grantor that all such privacy fencing shall present, to the extent reasonable practicable, a uniform appearance throughout the property. All fences and/or walls constructed on the Lot shall be in compliance with the ordinances of the City of Boise applicable to the property. In addition to the requirements of the ACC Rules/ACC Standards, all fences, fencing and walls shall be subject to the following restrictions:

- a) No fence or wall shall be located closer than twenty feet (20') from any street. There shall be at least five feet (5') of Building wall perpendicular to a fence from the point of attachment of the fence to such Building wall to the front end of such structure wall at each point where a fence is attached to a structure. (See illustration attached hereto as Exhibit B).
- b) All fences and walls shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Lot on which they are located and all damaged fencing and walls shall be repaired or replaced to original design, materials and color within a reasonable time after said damage occurs.
- c) No fence or wall shall interfere with the use and enjoyment of any easement reserved in this Master Declaration or shown on the recorded subdivision plat of the Property.
- d) No fence, wall, hedge, high planting, obstruction or barrier shall be allowed if, because of the design, material, color, nature, qualities or characteristics thereof, the same would have a noxious or nuisance effect upon neighboring Lots as determined by the ACC, and the ACC may direct the removal or trimming of any hedge or planting that grows so as to have a noxious or nuisance effect upon neighboring Lots. It is not the intent of this subsection (d) to create a view easement on a across any lot (affected Lot) in favor of any lot which is adjacent to or in the vicinity of the affected Lot.

5.26 Landscaping.

The following provisions shall govern the landscaping of Lots within Eyrie Canyon:

- (a) The Owner shall prepare a landscape plan and shall submit the same to the ACC as provided in Article XI, below. The ACC shall approve said landscape plan prior to the installation and/or construction of landscaping on a Lot. The landscape plan must include no less than three (3) trees of not less than three-inch (3") caliber to be planted in the front yard of the Lot. Such tree shall be a type approved by the ACC. The ACC May waive this requirement if it determines in its discretion that the presence of such tree(s) will unreasonably interfere with a neighboring lot's view.
- (b) All required landscaping in the front yard of a Lot shall be installed within thirty (30) days following substantial completion of the initial improvements and prior to occupancy of the Building on the Lot, with a reasonable extension allowed for weather. All other required landscaping shall be installed within six (6) months after the date of occupancy.
- (c) The ACC Rules/ACC Standards shall set forth the initial minimum landscaping required on each Lot.
- (d) No landscaping in any Lot shall exceed a reasonable height or width or unreasonably obstruct the view of surrounding Owners. In the event the Board determines that landscaping unreasonably obstructs a neighboring Lot's view, the Board may require trimming or removal of the objectionable Landscaping at the expense of the Lot Owner on whose Lot the Landscaping is located.

5.27 Exemption of Grantor.

Nothing herein contained shall limit the right of Grantor to subdivide or re-subdivide any Lot or portion of the Property or to grant licenses, reservations, rights-of-way or easements with respect to Common Areas to utility companies, public agencies or others; or to complete excavation, grading and Development to or on any lot or other portion of the Property owned or controlled by Grantor, or to alter the foregoing and its Development plans and designs, or construct additional improvements as Grantor deems advisable in the course of Development of Eyrie Canyon. This Master Declaration shall not limit the right of Grantor at any time prior to acquisition of a title to a Lot by an Owner to establish on that Lot additional licenses, restrictions, reservations, rights-of-way and easements to itself, to utility companies and to others, as may from time to time be reasonably necessary. Grantor need not seek or obtain ACC approval of any Improvements constructed or placed

within the Property by Grantor in connection with the Development of Eyrie Canyon, but this exemption shall not apply to a Building's) constructed by Grantor on a Lot owned by Grantor. Grantor shall be entitled to the non-exclusive use, without charge, of any recreational facilities and Common Area within Eyrie Canyon in connection with the market of the Lots therein.

5.28 Neighboring Uses.

Each Owner, by acceptance to title to a Lot within Eyrie Canyon, acknowledges that there is a motorcycle track in the vicinity of Eyrie Canyon and that the uses within the motorcycle track may, from time-to-time, emit noise or other influences which, although allowed by applicable zoning ordinances and otherwise legally permitted, may be objectionable to some persons.

5.29 Drainage Facilities.

Arrowhead Canyon Estates Homeowners Association, Inc., shall have reasonable access to each lot for the purpose of inspections, implementation, and maintenance of drainage systems, pursuant to Section 6.08(j) herein.

5.30 Solar Access Requirements.

a) General.

The City of Boise Ordinance 9-20 requires that private restrictions be recorded with subdivision plats which provide the same level of solar access protection as required under the City's solar setback and new development solar access design ordinances. Therefore, in recognition of the City of Boise subdivision ordinance for energy use, these covenants, conditions, and restrictions run with the land and hereby provided a general scheme of solar access protection upon the ownership, use, and occupation of designated Lots which shall be binding on all parties have any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof, so long as City of Boise Ordinance 9-20 is in effect (as the same may be modified or amended from time to time).

b) Definitions.

For purposes of the Declaration, the following definitions shall apply:

- (i) "*Exempt Tree*". Any vegetation listed in 504(b) herein, as exempt; also, all solar friendly vegetation.
- (ii) "*Front Lot Line*". The line represented by the connection of the most distant corners of a lot, including flag lots, where said corners are in common with the boundary of a public or private road. For corner lots, the front lot line shall be designated by the developer at the time of preliminary plat submittal.
- (iii) "*North Slope*". The gradient, in percent slope, from the average finished grade of the front lot line of the shade restricted lot to the average finished grade of the solar lot line of a solar lot. The slope must be downward or decreasing in elevation from south to north.
- (iv) "*Restricted Vegetation*". A tree of other vegetation which is either evergreen, or if deciduous, tend to retain its leaves late in the fall and/or drop them late in the spring, or has a dense branching pattern which generally tends to block a high level of the sun's rays during the heating season. Refer to the list of "solar-friendly" trees on file with the Boise City Public Works and Planning Departments.
- (v) "*Shade*". That portion of the shadow cast by the shade point of a structure or vegetation which exceeds the 11.5 foot fence at the solar lot line at solar noon, January 21.
- (vi) "*Shade Point*". That part of a structure, tree or other object, on a shade restricted lot, which casts the longest shadow (the most northerly shadow) when the sun is due south on January 21st at an altitude of twenty-six(26) degrees above the horizon, except a shadow caused by a narrow object such as a chimney, antenna, utility pole, wire, etc.

- (vii) *"Shade Point Height"*. Three vertical distance or height measured from the average elevation at the solar lot line to the shade point. If the shade point is located at the north end of a ridge line of a structure oriented within 45 degrees of geodetic north-south line, the shade point height computed according to the preceding sentence may be reduced by 3 feet. If a structure has a roof oriented within 45 degrees of a geodetic east-west line with a pitch which is flatter than 6 feet (vertical) in 12 feet (horizontal), the shade point will be the eave of the roof. If such a roof has a pitch which is 6 feet in 12 feet or steeper, the shade point will be the peak of the roof.
- (viii) *"Shade Restricted Lot"*. Any lot within a subdivision that is southerly of and adjacent to a solar lot. These lots will have some restriction on vegetation types and structure height.
- (ix) *"Solar Friendly Vegetation"*. A tree or other vegetation which is considered "solar friendly" and is not restricted vegetation. Such vegetation is generally deciduous, providing shade to houses in the summer, but which generally lose their leaves early in the fall and gain them late in the spring. Trees may be added or deleted from this list based on reliable evidence that their foliage and growth characteristics either meet or exceed solar-friendly vegetation characteristics. Refer to the list of "solar friendly" trees on file with the Boise City Public Works and Planning Departments.
- (x) *"Solar Lot"*. A lot which has the following characteristics:
 - (1) The front lot line is oriented within thirty (30) degrees of a geodetic east/west bearing;
 - (2) The lot to the immediate south has a north slope of ten (10) percent or less;
 - (3) The lot is intended for the construction of an above ground inhabited structure.
- (xi) *"Solar Lot Line"*. The most southerly boundary of a solar lot; the line created by connecting the most distant southerly corners of the solar lot.
- (xii) *"Solar Setbacks"*. The minimum distance, measured perpendicular in a southerly direction, from the center of the solar lot line to the shade point of a structure or to restricted vegetation based upon its height at maturity on the shade restricted lot.

(c) Solar Access Covenants, Conditions and Restrictions.

- i) *Shade Restrictions.* Each lot within a subdivision that is classified as a Shade Restricted Lot shall have the following restriction. Any structure or restricted vegetation (solar friendly) cannot cast a shadow higher than an imaginary fence 11.5 feet above the solar lot line on solar noon on January 21st when the sun is at an angle of 26 degrees above the horizon. This sun angle at noon on January 21 causes structures, v vegetation, and other objects to cast a shadow twice as long as their height. The height of a shade point of a structure on the shade restricted lot is limited to 19 feet at the 15 foot rear yard zoning setback in order that the 11.5 foot high "solar fence" at the north property line of the Shade Restricted Lot is not exceeded. These standards assure that a structure built to the 15 foot rear yard zoning setback, on the Solar Lot located to the north, will not be shaded more than 4 feet above grade on its south wall on January 21 at solar noon.
- ii) *Restricted Vegetation.* Restricted vegetation (solar unfriendly), existing and to remain when the subdivision is platted and developed, is exempt from the provisions of these Covenants, Conditions and Restrictions. Any lot that would be shaded beyond the allowed shade limit by such vegetation shall not be classified as a Solar Lot.
 - (1) *Slope Exemption.* Any lot with an average finished grade slope along the north-south lot dimensions greater than ten (10) percent shall be exempt from the solar restrictive terms and conditions of these Covenants, Conditions and Restrictions.

(2) *Solar Setbacks.* Each separate structure and item of restricted vegetation shall have a solar setback dependent on and calculated by its shade point height. All shade restricted lots shall have the following solar setback: Solar Setback (in feet) = [Shade Point Height (in feet) - 11.5']X 2. Table 1 below shows a few examples of solar setbacks for given shade point heights:

TABLE 1

SOLAR SETBACKS REQUIRED FOR A GIVEN SHADE POINT HEIGHT

<u>Shade Point Height</u>	<u>Solar Setback</u>
10'	0'
15'	7'
20'	17'
25'	27'
30'	37'

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

(e) Solar Access Rights and Duties.

- i) Solar Access Rights. The owner(s) of solar lots shall have a right to unobstructed solar access in accordance with these Covenants, Conditions and Restrictions.
- ii) Solar Access Duties. The owner(s) of any lot within Eyrie Canyon Subdivision shall not build, install, or otherwise allow a structure or non-solar friendly tree on that lot to cast more shade at their solar lot line that permitted under the above solar access covenants, restrictions and conditions.

5.31 Adoption of ACC Rules/ACC Standards.

Grantor, or in the event of Grantor's failure to do so, the ACC shall have the power to promulgate ACC Rules/ACC Standards relating to the planning, construction, alteration, modification, removal or destruction of Improvements within or upon the Property deemed necessary or desirable by Grantor or the ACC, as the case may be, to carry out the purposes of this Master Declaration. All ACC Rules/ACC Standards shall be consistent with the provisions of this Master Declaration.

ARTICLE VI- ARROWHEAD CANYON ESTATES HOMEOWNERS ASSOCIATION, INC.

6.01 Organization of Association.

Arrowhead Canyon Estates Homeowners Association, Inc. shall be organized by Grantor as an Idaho non-profit corporation and shall be chartered with the duties and vested with powers prescribed by law and set forth in its Articles of Incorporation, its By-Laws and this Master Declaration. Neither said Articles nor said By-Laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Master Declaration.

6.02 Sub-Association(s).

Until completion of the Development of the Property, Grantor shall have the sole and absolute right to create one or more Sub-Associations for purposes not inconsistent with this Master Declaration including, but not limited to, the following which shall be provided for in a Supplemental Declaration:

- i) Acquire and improve and Lot, tract, parcel or portion of Eyrie Canyon.
- ii) Promulgate rules and regulations governing Common Area owned by or under the control of the Sub-Association.
- iii) Determine the services, in addition to those furnished by the Association, which are to be furnished to or for the benefit of the Members of the Sub-Association.
- iv) Assess and certify to the Association for collection the Regular, Special and Limited Assessments required to meet the estimated cash needs of the Sub-Association.

The Articles of Incorporation, By-Laws, rules, regulations and the Supplemental Declaration relating to a Sub-Association shall not be inconsistent with the terms and provisions of this Master Declaration and any inconsistency shall be governed by this Master Declaration. Unless earlier consented to in writing by Grantor, after completion of Development of Eyrie Canyon, Sub-Associations may be formed by any Owner or group of Owners with the approval of the Board and by satisfying all necessary legal requirements including, but not limited to, the preparation, execution and recording of a Supplemental Declaration.

Except as provided to the contrary in the Master Declaration or unless specifically provided to the contrary in the Supplement Declaration relating to a Sub-Association, the provisions of this Article shall be applicable to and shall regulate each Sub-Association.

6.03 Relationship Between Association and Sub-Association.

It is the purpose and intent of the provisions of this Master Declaration that the Association shall be charged with and responsible for the management of all activities in Eyrie Canyon including, in addition to all other duties and responsibilities set forth herein, the following:

- i) The approval of all rules and regulations of each Sub-Association and providing of assistance to a Sub-Association in the enforcement thereof; and
- ii) The levy and collection of Assessments of each Sub-Association which have been certified by the Sub-Association Board to the Association.

Nothing herein contained shall restrict or prohibit a Sub-Association from owning, in its own name, Common Area and recreational facilities located hereon or other property related thereto, the use of which shall be restricted to Members of that Sub-Association. However, it is the intent of this Master Declaration that any such Common Area owned by a Sub-Association, the use and maintenance thereof and the activities of the Sub-Association, shall be consistent with an in furtherance of the Project Objectives and the terms and provisions of this Master Declaration to assure that the whole of Eyrie Canyon is developed and approved as a quality residential community.

6.04 Members.

Each Member (including Grantor) of a Lot by virtue of being such an Owner and for so long as such membership is maintained shall be a Member of the Association and no Owner shall have more than one (1) membership in the Association, and shall have voting rights as hereafter set forth. A membership in the Association shall not be assignable, except to the Successor-in-Interest of the Owner and a membership in the Association shall be appurtenant to and inseparable from the Lot owned by such Owner. A membership in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to said Lot and then only in the transfer of title to said lot. Any attempt to make a prohibited transfer of a membership shall be void and shall not be reflected on the books of the Association.

6.05 Voting.

The Association (and each Sub-Association) shall have two (2) classes of voting membership:

CLASS A. Class A shall be all Owners of Lots within Eyrie Canyon, with the exception of the Grantor, and shall be entitled to one (1) vote for each Lot owned.

CLASS B. Class B Members shall be Grantor, and its successor(s) in title to a Lot(s), which Lot(s) is held by such successor in an unimproved condition (i.e., without a residential dwelling thereon) for resale to a builder or other person for the purpose of constructing thereon a residential dwelling, and to which successor Grantor has specifically granted such Class B voting rights in writing; provided that if such voting rights are not so granted, such successor shall be entitled to the voting rights of a Class A Member with respect to each Lot owned. Upon the first sale of a Lot to an Owner, Grantor shall thereupon be entitled to five (5) votes for each Lot owned by Grantor. The Class B Membership shall cease and be converted to Class A Membership (1) when all Lots other than Common Area Lots have been sold or conveyed to Owners other than Grantor or (ii) January 1, 2016, whichever shall first occur.

6.06 Board of Directors and Officers.

The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and By-Laws, as the same may be amended from time to time.

6.07 Powers of Association.

The Association shall have all powers of a non-profit corporation organized under the laws of the State of Idaho subject only to such limitations as are expressly set forth in the Articles, the By-Laws or this Master Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under the Articles, By-Laws or this Master Declaration, and to do and perform any and all acts which may be necessary or proper for, or incident to, the proper management and operation of the Common Areas and the performance of other responsibilities including, but no limited to, the following:

- a) *Assessments.* The power to levy Regular, Special and Limited Assessments on the Owners and/or Lots and to enforce payment thereof in accordance with the provisions of this Master Declaration.
- b) *Right of Enforcement.* The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, By-Laws, Master Declaration or ACC Rules/ACC Standards, and to enforce my mandatory injunction or otherwise, all provisions thereof.
- c) *Delegation of Powers.* The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation to act as manager.
- d) *Liability of Board Members and Officers.* Neither any member of the Board nor any officers of the Association shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, its officer, a manager or any other representative or employee of the Association, or the ACC, provided that said Board Member, officer, manager or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.
- e) *Association Rules.* The power to adopt, amend, and repeal such rules and regulations as the Association deems reasonable. Such rules shall govern the use by Owners and Occupants or any other person of Common Areas and other property owned or controlled by the Association; provided, however, Association rules shall not discriminate among Owners and shall not be inconsistent with the Articles, By-Laws or this Master Declaration. A copy of Association rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and Occupant. Upon such mailings said Association rules shall have the same force and effect as if they were set forth in and were part of this Master Declaration. In the event of any conflict between an

Association rule or any provision of the Articles, By-Laws or this Master Declaration, the conflicting provisions of the Association rules shall be deemed superseded to the extent of any such inconsistency.

- f) *Emergency Powers.* The Association, or any person authorized by the Association, may enter onto any Lot or into any Building or other structure on a 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 Occupants as practicable and any damage caused thereby shall be repaired by the Association unless said entry was necessitated by a condition caused by the Owner or Occupant.
- g) *Licenses, Easements and Right-of-Way.* The power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on through, under or of the Common Areas as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:
 - 1. Underground lines, cables, wires, conduits and other devices for the transmission of any utility or other service.
 - 2. Public sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes.
 - 3. Any similar public or quasi-public improvements or facilities.
- h) *Fiscal Year.* The Board shall have the right to elect a fiscal year for the Association instead of a calendar year for budget, Assessment and accounting purposes.

6.08 Duties of Association.

In addition to the powers delegated to it by the Articles, By-Laws and this Master Declaration, without limiting the generality thereof, the Association or its authorized agents, 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:

- (a) Operation and Maintenance of Common Areas. Perform, or provide for the performance of, the operation, maintenance and management of the Common Areas including the repair and replacement of property or Improvements thereon damaged or destroyed by casualty loss and all other property owned by the Association.
- (b) Taxes and Assessments. Pay all real and personal property taxes and assessments separately levied against the Common Areas owned by the Association and/or any property owned by the Association. Such taxes and assessments may be contested or comprised by the Association; provided however, that they are paid or a bond insuring payment is posted prior to the sale or the 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.
- (c) Utilities. Acquire, provide and/or pay for water, sewer, refuse collection, electrical, telephone, gas and other necessary services for the Common Areas owned by the Association.
- (d) Insurance. Obtain, from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the following policies of Insurance:
 - i. Fire insurance, including those risks embraced by coverage of the type now known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreement amount basis for the full insurable replacement value of all improvements, equipment, fixtures and other property not located in the Common Areas, if the same are used or necessary for the use of the Common Areas or easement areas under the control of the Association.

- ii. Comprehensive public liability insurance insuring the Association, the Board, officers, the 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 Areas owned by the Association or easement areas under the control of the Association. The limits of liability of such coverage shall be as determined by the Board of Directors.
 - iii. If elected by Board, full coverage directors and officers liability insurance in an amount determined by the Board.
 - iv. Such other insurance, including workmen'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 or required to carry out the Association's functions or to insure the Association against any loss from malfeasance or dishonesty of any person charged with the management or possession of any Association funds or other property.
 - v. The Association shall be deemed a trustee of the interests of all Owners 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.
 - vi. Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.
- (e) Administration Costs and Fees. Pay Grantor, so long as Grantor manages the Association, all actual out-of-pockets costs paid or incurred by Grantor in the management and administration of the affairs of the Association plus an administrative fee equal to ten percent (10%) of the total income received by the Association, which Administrative fee shall be compensation to Grantor for the services provided to the Association.
 - (f) Identification Signs. Maintain, repair and replace all permanent entry and special identification signs for Eyrie Canyon, whether the same be located within or without the boundaries of Eyrie Canyon.
 - (g) Rule Making. Make, establish, promulgate, amend and repeal Association rules.
 - (h) Architectural Control Committee. Appoint and remove members of the Architectural Control Committee, all subject to the provisions of this Master Declaration.
 - (i) Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Master Declaration, as may be reasonably necessary to enforce any of the provisions of this Master Declaration and the Association Rules.
 - (j) Drainage Facilities. Inspect and maintain in perpetuity all storm drainage systems as well as all grades surfaces located on the Common Areas or on Easements for surface drainage within Eyrie Canyon, including all erosion prevention devices, retaining walls (related to drainage facilities), drainage structures, means or devices, and all plantings, and ground cover, which are not the responsibility of a public agency, and which are installed or constructed to control, regulate, or promote drainage, or to prevent drainage and erosion, in accordance with a maintenance and operations system acceptable to and approved by Ada County Highway District.

6.09 Budgets and Financial Statements.

Financial statements for the Association shall be regularly prepared and copies distributed to each Member as follows:

- (a) A pro forma operating statement (budget) for each fiscal year shall be distributed not less than thirty (30) days after the beginning of each fiscal year.

- (b) Within ninety (90) days after the close of each fiscal year, the Association, or its agent, shall cause to be prepared and delivered to each Owner, a balance sheet as of the last day of the Association's fiscal year and an annual operating statement reflecting the income and expenditures of the Association for that fiscal year.

6.10 Default by Association.

If the Association fails to maintain the Common Areas within Eyrie Canyon as provided in Section 6.08(a) and (j), above, Ada County Highway District shall have the right, but not the obligation, to maintain the same and, in such event, Ada County Highway District shall have the right to levy and enforce against the Lots within Eyrie Canyon a Regular or Special Assessment(s) pursuant to Article VIII, below, for the costs so incurred by Ada County Highway District. Ada County Highway District is hereby granted an easement to enter upon any portion of the Common Areas to perform such maintenance. The Association shall not be dissolved or relieved of its responsibility to so maintain such Common Areas without the prior written approval of Ada County Highway District.

ARTICLE VII - ASSOCIATION PROPERTIES

7.01 Use.

Each Owner of a Lot, his family, licensees, invitees, lessees and contract purchasers who reside on the Lot, shall be entitled to use the Association properties and the properties of any Sub-Association of which the Owner is a Member subject to the following:

- (a) Articles, Etc. The provisions of the Articles and By-Laws of the Association and any Sub-Association applicable to the Lot, this Master Declaration and applicable Supplemental Declaration and the rules, regulations and standards promulgated there under. Each Owner, in using the association or Sub-Association properties, shall comply with the same.
- (b) Admission Fees. The right of the Association or Sub-Association to charge reasonable admission and other fees for the use of any recreational facility located upon property owned by it.
- (c) Suspension of Rights. The right of the Association or Sub-Association to suspend the rights to use properties owned by it (except roads and other means of access by an Owner) for any period during which any Assessment against that Owner's Lot remains unpaid; and for any infraction or published rules and regulations of the Association or Sub-Association.
- (d) Dedications. The right of the Association or Sub-Association to dedicate or transfer all or any part of properties owned by it to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Board, so long as said transfer does not diminish the security of the Mortgagees on any Lot or Common Area in Eyrie Canyon.

7.02 Licenses, Easements, and Rights-of-Way.

The right of the Association to grant and convey to any third party such licenses, easements, and rights-of-way in, on, or under Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Common Area, and for the preservation of the health, safety, convenience and the welfare of the Owners, for the purpose of permitting, constructing, erecting, operating or maintaining:

- (a) Underground lines, cables, wires, conduits or other devices for the transmission of electricity or electronic signals for lighting, heating, power, telephone, television, or other purposes, in the above-ground lighting, stanchions, meters, and other facilities associated with the provision of such lighting and services;
- (b) Public sewers, storm drains, water drains and pipes, water supply systems, sprinkling systems, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities;

(c) Mail boxes and sidewalk abutments around such mail boxes or any service facility, berm, fencing and landscaping abutting Common Areas, public and private streets or land conveyed for any public or quasi public purpose; and

(d) Fire prevention, suppression or fuel modification activities.

7.03 Damages.

An Owner shall be liable for any damages to the common Area or the recreational facilities located thereon or an easement area controlled by the Association or Sub-Association which may be sustained by reason of the negligence, reckless or intentional misconduct of said Owner or of his family, licensees, invitees, lessees or contract purchasers, both minor and adult. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be as a Limited Assessment against that Owner's Lot and may be collected as provided in Article IX, below.

7.04 Damage and Destruction.

In the case of damage by fire or other casualty to property owned by the Association or any Sub-Association, insurance proceeds to compensate for damage and destruction shall be paid to the Association or the Sub-Association, as the case may be, and the recipient thereof shall thereafter determine what repair or reconstruction shall be undertaken.

7.05 Condemnation.

If at any time any part of a Common Area or other property owned by the Association or any Sub-Association be taken or condemned by any public entity or sold or otherwise disposed of in lieu thereof, all compensation, damages or other proceeds shall be paid to the Association or the Sub-Association, whichever entity owns said property. The recipient of said payment shall then use all or a portion of the funds to pay obligations secured by any lien on the property taken or thereafter may determine to use the funds to (i) improve other properties of the Association or Sub-Association; (ii) acquire and/or improve additional properties for the Association or Sub-Association; or (iii) use such proceeds to reduce future assessments.

ARTICLE VIII - ASSESSMENTS

8.01 Covenants to Pay Assessments.

Each Owner hereby, and by acceptance of a deed to a Lot, covenants and agrees to pay when due all Regular, Special and Limited Assessments or charges made by the Association or a Sub-Association of which the Owner is a Member/

All such Assessments, together with interest, costs and reasonable attorney's fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made, and shall be also the personal obligation of the Owner of such Lot at the time when the Assessment become due and payable. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner may waive or otherwise avoid liability for any Assessment by non-use of the Common Areas or by abandonment of his Lot.

8.02 Regular Assessments.

Regular Assessments shall be made by the Association at times and intervals deemed appropriate by the Board. The Regular Assessments shall be based upon advance estimates of cash requirements as determined by the Board for the maintenance and operation of the Common Areas and all easement areas, if any, controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of local governmental units, premiums for all insurance which the Association is required or permitted to maintain hereunder, landscaping and care of grounds, lighting, water charges, trash collection, sewerage charges, repair and maintenance, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s).

8.03 Special Assessments.

In addition to Regular Assessments, the Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

- (a) To defray, in whole or in part, the cost of any construction or reconstruction of improvements on a Common Area, unexpected repair or replacement of a Common Area or any facility located thereon or an easement area controlled by the Association, the furnishing of a special service or services (other than those appropriate for a Limited Assessment), or for any other expenses incurred or to be incurred as provided in this Master Declaration.
- (b) To cure deficit in the common and ordinary expenses of the Association for which Regular Assessments for a given calendar or fiscal year are or will be inadequate to pay, as determined by the Board.
- (c) At the closing of the sale of each Lot, other than Common Area Lots, by Grantor, a special assessment of \$300.00 shall be collected from each purchaser of a Lot as payment to the Association for the set-up costs and the maintenance of the Common Area and landscape easements to be maintained by the Association. Upon the transfer of ownership of the Lot by an Owner to a third party, a transfer fee in an amount determined by the Board of Directors shall be payable by the Owner to Association. No transfer fee shall be payable if the Lot was purchased by a builder from Grantor and within six (6) months thereafter sold by the builder to a third party.

8.04 Limited Assessments.

In addition to Regular and Special Assessments, Owners shall pay Limited Assessments as follows:

- (a) **Maintenance and Repair.** The Association shall have the power to incur expenses for maintenance and repair of any Lot or any Improvements on a Lot, if such maintenance and repair is necessary, in the opinion of the Board, to protect the Common Area or any other portion of the Property, and if the Owner of said Lot has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity thereof has been delivered by the Board to said Owner. The Board shall levy a Limited Assessment against the Owner of the Lot owned by said Owner to pay for the cost of such maintenance and repair, and any other cost or expense, including attorney's fees, arising out of or incident to such maintenance and repair and the Assessment therefore.
- (b) **Correction of Violations; Assessment of Penalties.** In addition to maintenance and repair, the Board, upon certification from the ACC of the failure or refusal of an Owner to correct a violation of this Master Declaration or the ACC Rules/ACC Standards, shall have the power to correct any such violation on a Lot or any Improvement on a Lot, and incur costs necessary in Connection therewith. The cost of such corrective action, together with interest, related expenses and attorneys' fees shall be assessed and collected as set forth in Article IX of this Master Declaration. Further, in the event the ACC Rules/ACC Regulations impose a penalty for violation of any rule or regulation promulgated by the ACC may assess such penalty against the Lot of the Owner in violation and collect such assessment as set forth in Article IX of this Master Declaration.
- (c) **Limited Purpose.** The Association shall have the power to levy a Limited Assessment against Owners and Lots for any Limited special purpose which the Board believes necessary with respect to certain Lots but not an appropriate expense for payment by the Association. Such Limited Assessment shall not be made until the Owners of said Lots subject thereto have been given an opportunity, after notice, to participate in a hearing with respect to said Limited Assessment.

8.05 Sub-Association Assessments.

Any Sub-Association of Eyrie Canyon is hereby empowered to assess and certify for levy and collection by the Association, Regular, Special and Limited Assessments on the Lots and Owners thereof who are Members of the Sub-Association. The certification for levy by a Sub-Association and the collection thereof by the Association shall be as follows:

- (a) The Sub-Association Board shall, following its By-Laws, rules and regulations, meet and approve a Regular, Special or Limited Assessment.
- (b) A written certification signed by the President and Secretary of the Sub-Association that a Regular, Special or Limited Assessment has been approved by the Sub-Association Board shall be submitted to the Board. The certification shall contain the following: (i) a description of the type of Assessment to be levied and collected; (ii) the name and address of the Owner and the legal description of each Lot to be assess; (iii) the amount to be levied and collected from each owner; and (iv) the term of said levy and the due dates for the payment thereof by the Owners affected. The due dates may be adjusted by the Board to conform the same to the due dates of the Assessments of the Association for the purpose of achieving efficiency and economy in preparing and mailing statements and notices and collection.
- (c) Upon compliance with the foregoing, the Board shall levy the Assessment so certified in accordance with the terms of the certification in the same manner as levies for Assessments of the Association. Any levy made by the Association on behalf of a Sub-Association pursuant to a proper certification shall have the same force and effect as a levy made by the Association.
- (d) The Association, upon receipt of funds paid pursuant to a levy certified by a Sub-Association, shall deposit such funds as received in the separate account of the Sub-Association, as designated by the Sub-Association.

8.06 Commencement of Regular Assessments.

Regular Assessments of the Association against each Lot shall commence on the date of the closing of the sale of the Lot; provided however, that any Lot owned by the Grantor shall be assessed a Regular Assessment not exceeding ten percent (10%) of the amount assessed against Lots owned by other Owners. If the Grantor pays all or any portion of the expenses of the Association in excess of the amount assessed to Lots owned by the Grantor, such excess amounts so paid shall constitute either (i) a prepayment of Assessments (Regular and Special) to become due and payable on the Lots owned by the Grant or within Eyrie Canyon or (ii) a loan by Grantor to the Association to be repaid without interest from Association funds available make such repayment. Nothing herein contained shall obligate the Grantor to pay any Assessment with respect to a Lot within a separately platted phase or subdivision within Eyrie Canyon in which the Grantor owns all of the Lots.

8.07 Uniform Rate of Assessment.

Except as expressly provided to the contrary in this Master Declaration, Regular and Special Assessments of the Association shall be fixed at a uniform rate for all Lots.

8.08 Assessment Due Date.

The due dates for Regular, Special and Limited Assessments shall be the first day of the first month of each calendar quarter, unless some other due date is established by the Board. Each installment of an Assessment shall be delinquent if not paid within fifteen (15) days after the due date thereof. Nothing herein contained shall prohibit the Board from requiring that Special or Limited Assessments be paid in a lump sum instead of installments.

8.09 Interest and Penalties.

Any Regular, Special or Limited Assessment levied by the Association on Lots, if not paid when due, shall bear interest at an annual rate as shall be set by the Board fro time to time, or if none is so set, at an annual rate of twelve percent (12%). Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charge the Board may, in accordance with rules and regulations promulgated by it, impose additional fines or charges for the failure of an Owner to timely pay any Assessment when due. The right of the Board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non-payment of an Assessment.

8.10 Estoppel Certificate.

The Association, upon not less than twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of such Association, a particular Owner is in default under the provisions of this Master Declaration and further stating the dates to which Assessments have been paid by said Owner, it being intended that any such certificate delivered pursuant to his Section may be relied upon by any perspective purchases or Mortgagee of said Lot, but reliance of such certificate may not extend to any default as to which the signer shall have had no actual knowledge. The Association shall have the right to charge a reasonable fee for the certification herein provided.

8.11 Notice in Quorum Requirements.

Notwithstanding anything to the contrary in either the Articles or the By-Laws of the Association, written notice of any meeting called for the purpose of levying a Special Assessment or a Limited Assessment described in Section 8.04, above, shall be sent to all Owners subject to the levy of such Special or Limited Assessments not less than ten (10) nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of the total votes of each class of Members of the Association subject to the levy of such Special or Limited Assessments shall constitute a quorum. If the required quorum is not present, another meeting(s) maybe called subject to the same notice requirement and the required forum at each subsequent meeting shall be one-half (1/2) of the required forum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

ARTICLE IX - ENFORCEMENT OF ASSESSMENTS

9.01 Right to Enforce.

The right to collect and enforce payment of the Assessments made by the Association (including the Assessments made and certified by a Sub-Association) is vested in the Association. Each Owner of a Lot hereby agrees to the enforcement of the payment of all Assessments in the manner herein provided. In the event an attorney is employed for the collection for an assessment, whether by suit or otherwise, or to enforce compliance with specific performance of any of the terms and conditions of this Master Declaration, the Owner against whom such enforcement is sought shall pay reasonable attorney's fees in connection therewith.

9.02 Creation of Assessment Liens.

There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against any and all Lots in Eyrie Canyon. Pursuant to this Master Declaration, together with interest thereon and all costs of collection which may be paid on incurred by the Association in connection therewith, including reasonable attorney's fees. Said lien shall be prior and superior to all other liens or claims created subsequent to the recordation of this Master Declaration except only for: (i) valid tax and Special Assessment liens on Lots in favor of any governmental unit assessing authoring; (ii) a lien for all sums unpaid and secure by first Mortgage or first Deed of Trust, duly recorded in Ada County, Idaho, including all unpaid obligatory advances to be made pursuant to; (iii) labor or material man's liens, if the same are prior by reason applicable law. All other lien holders acquiring liens on any lot after recordation of this Master Declaration shall be deemed to consent that such liens shall be inferior liens to the lien for capital Assessments levied by this Association, whether or not such consent be specifically set forth in the instruments creating such other liens.

9.03 Notice of Assessment.

If an Owner fails to pay an Assessment within thirty (30) days of its due date, the Association shall prepare a written Notice of Assessment setting forth the type of capital Assessment, the amount of the Assessment, the due date thereof, including the amount and due date of installments (if the same are permitted), the amount remaining unpaid at the time of filing, the name of the record Owner of the Lot and a legal description of the Lot. Such notice shall be signed by the president and secretary of the Association, acknowledge by a Notary Public and recorded in the office of the Ada County Recorder. At such time as a delinquent Assessment which is described in the notices paid, the Association shall prepare and record a Notice of satisfaction with respect thereto.

9.04 Enforcement.

Upon the failure of an Owner to pay an Assessment with accordance with its terms, the lien for Assessment herein created maybe enforced by sale by the Association, such sale to be conducted in the manor provided by law in Idaho for the exercise of the power of sale of Deeds of Trust or in any other manner permitted by law elected by the Board. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including all reasonable attorney's fees. All such costs and expenses shall be secured by the lien being foreclosed the Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire and thereafter hold, convey lease, rent, encumber, use and otherwise deal with and in said Lot as the Owner thereof.

9.05 Notice Required.

Notwithstanding anything to the contrary contained in this Master Declaration, no action may be brought to foreclose the lien for any Assessment, whether by power of sale or otherwise, until the expiration of thirty (30) days after written Notice of Default has been deposited in the United States mail, certified or registered mail, postage pre-paid, return receipt requested. Addressed to the Owner of the Lot described in such notice at the last known address of the Owner as shown on the books and records of the Association. Said Notice shall specify the amount and due date of the unpaid Assessment(s) and the legal description of the Lot.

9.06 Reporting.

The Association shall provide a Mortgagee with a copy of the Notice of Default served on an Owner under Section 9.05, above. The duty to give such Notice shall arise only after said Mortgagee furnishes to the Association written notice of a mortgage (or Deed of Trust) that shall contain the following:

- (a) The name and address of said Mortgagee;
- (b) A legal description Lot subject to the lien of the Mortgage and Law, Block and Subdivision;
- (c) The name and address of the Owner;
- (d) The date the lien of the Mortgage was filed of record in Ada County, Idaho, and the instrument number thereof;
- (e) The maturity date of obligation secured by said Mortgage lien;
- (f) A copy of a Title Insurance Report for evidencing that the Mortgagee is the holder of the first mortgage or the beneficiary of a first Deed of Trust;
- (g) The signature of the Mortgagee or authorized agent.

In the event the Association shall be required to notify a Mortgagee as herein provided, the Association shall assess the Owner who is delinquent the sum of \$25.00 as a reasonable charge for such notification and such charged shall be a cost of collection secured by the Assessment lien described in Section 9.02, above. The charge for such notification shall be subject to change by the Board.

9.07 Term of Assessment.

Unless sooner satisfied and released or the enforcement thereof initiated as provided in this Article, the lien for any Assessment levied under this Master Declaration or any applicable Supplemental Declaration shall expire and be of no further force or effect after a period of five (5) years from the later of (i) the date of said Assessment, (ii) the date the last installment thereof is due and payable. Provided the expiration of the lien as provided herein shall not release an Owner from the personal obligation to pay any Assessment.

9.08 Non-Exclusive Remedy.

The remedies set forth in this Article or elsewhere in this Master Declaration shall not be deemed to be an exclusive remedy and the Association may pursue all other remedies available at law or in equity.

ARTICLE X - SUB-ASSOCIATIONS

10.01 Creation.

The Grantor shall have the right to create Sub-Associations as Idaho non-profit corporations. Each such Sub-Association shall have all power, rights, obligations, responsibilities and duties and be subject to all the same limitations and restrictions as are specified in this Master Declaration with respect to the Association, except for such differences, requirements or limitations as are expressly set out in this Master Declaration and/or the applicable Supplemental Declaration and such changes as the Grantor made deem appropriate as a result of the different end specific Common Areas being owned, maintained and managed by such Sub-Association, which changes shall set forth in a Supplemental Declaration.

10.02 Voting.

Each Sub-Association shall have the two (2) classes of voting membership and the voting rights shall be as specified for the Association Section 6.05, above.

10.03 Powers and Duties.

Each Sub-Association shall be managed by a Board of Directors and officers in the same manner as specified in Section 6.06, above, for the Association and shall have the same powers and duties with respect to its Members and the Common Areas and recreational facilities located thereon owned, managed or maintained by it, including any easement areas controlled by it, said powers and duties to include the levying of Assessments and certification thereof to the Association for collection, adopting rules and regulations, granting easements, licenses and rights-of-ways, payment of expenses, taxes, Assessments, utility charges, insurance premiums, and the preparation and distribution of budgets and financial statements as are provided in Article VI, above.

10.04 Members.

The Members of each Sub-Association shall be the Owners of lots in the portion or phase of Eyrie Canyon described in the Supplemental Declaration relating thereto. Memberships may only be transferred in the same manner as specified in Section 6.04, above.

ARTICLE X - ARCHITECTURAL CONTROL COMMITTEE

11.01 Members of the Committee.

The Architectural Control Committee shall be comprised of at least three (3) persons, all of whom shall be appointed as herein provided. A Member of the ACC shall hold office until he has resigned or has been removed, but in any event, until said Members' Successor has been appointed. Members of the ACC may be removed at any time, with or without cause.

11.02 Appointment.

So long as the Grantor owns any lot or parcel within the Property, the Grantor shall have the sole right to appoint and remove all members of the ACC. Thereafter, all members of the ACC shall be appointed or removed by the Board. The ACC shall have the right by resolution in writing unanimously adopted, to designate one (1) of its members to take any action or perform any duties for an on behalf of the ACC. In the absence of such designation the vote of any two (2) members of the ACC shall constitute an act of the ACC.

11.03 Compensation.

The Members of the ACC shall be entitled to reasonable compensation from the Association for services rendered, together with reimbursement for expenses incurred by them in the performance of their duties hereunder, said compensation to be determined by the Grantor, or, if the Grantor no longer owns any Lot or parcel within the Property, the Board.

11.04 Non-Liability.

Neither the ACC, or any Member thereof, or the Grantor or any partner, officer, employee, agent, successor or assigned thereof shall be liable to the Association, any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ACC of its duties and responsibilities by reason of a mistake, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application. Every person who submits an application to the ACC for approval of plans and specification agrees, by submission of such an application, and every Owner and Occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Association. The ACC, or any Member thereof, or the Grantor or an officer, partner, employee, agent, successor or assigned thereof to recover such damages.

11.05 Approval Required.

No construction, alteration, modification, removal, or destruction of any Improvements of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within Eyrie Canyon with the prior express written approval of the ACC.

11.06 Variances.

The ACC may authorize variances from compliance with the requirements of any conditions and restrictions contained in this Master Declaration, the ACC Rules/ACC Standards, or any prior approval when, in the sole discretion of the ACC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such variances must be evidenced in a writing signed by at least two (2) Members of the ACC.

If a variance is granted as provided herein, no violation of this Master Declaration, ACC Rules/ACC Standards or prior approval shall be deemed to have occurred with respect to the matter of which the variance was granted. The granting of such a variance shall not operate to waive any of the terms of the provisions of this Master Declaration or the ACC Rules/ACC Standards for any purpose except as to the particular subject matter of the variance thereof, and the specific lot covered thereby.

The ACC shall have the right to consider and grant a variance as herein provided either with or without notice to other Owners or a hearing of Owners thereon. The granting of a variance by the ACC pursuant to this Section shall not relieve the Owner and whose favor a variance is granted from the obligation to fully comply with the Ordinances of the City of Boise, applicable to the property.

11.07 Application.

To request ACC approval for the construction, alteration, modification, removal or demolition of any improvements within the Property. The Owner shall submit a written application in a form required by the ACC which must be signed and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.

All applications must contain, pertain or have submitted therewith, the following material (collectively called "plans and specifications") prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ACC:

(a) Site Plan. A site plan showing the location of the Building(s) and all other structures and improvements including fences and walls on the Lot, Lot Drainage and all Set-backs, curb cuts, driveways, parking areas and other pertinent information relating to the improvements.

(b) **Building Plan.** A building plan which shall consist of preliminary or final blue prints, elevation drawings of the north, south, east and west sides, and detailed exterior specifications which shall indicate, by sample if required by the ACC, all exterior colors, materials and finishes, including roof to be used.

(c) **Landscape Plan.** A landscape plan for portions of the Lot to be landscaped which shall show the location, type and size of trees, plants, ground cover, shrubs, berming and mounding, grading, drainage, sprinkler system, fences, freestanding exterior lights, driveways, parking areas and walkways.

The ACC may, in its discretion, require the Owner to furnish additional specifications, drawings, material samples or such other information as the ACC, in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the ACC in reviewing and processing the application.

The ACC shall have the right to require an Owner submitting an application for approval of plans and specifications to pay a fee at the time the application is submitted, the amount of such fee to be based upon the anticipated reasonable and actual expenses of the ACC in reviewing and processing the application. The ACC shall not be obligated to commence the review and processing of application until such fee, if required, is paid.

11.08 Completion Security Deposit.

At the time of submission of the application under Section 11.07, above, the Owner shall deposit with the ACC as a Completion Security Deposit ("*Completion Deposit*") the amount one thousand dollars (\$1,000.00), or such other amount as shall be determined by the ACC. The Completion Deposit shall be held by the ACC as security for the time, the completion by the Owner of the improvement on the Lot as approved by the ACC, including but not limited to the landscaping as provided in Section 5.26, above, and upon such time the completion shall be returned to the Owner without interest. If the Owner fails to timely complete such improvements the ACC shall have the right to deduct from such Completion Deposit the amount of any penalties, offsets, and costs as set forth in the Master Declaration or the ACC Rules/ACC Standards, including any costs which may be paid or incurred by the Association or a third party to complete such improvements.

11.09 Decision.

In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ACC shall use its best efforts and judgment to assure that all improvements shall produce and contribute to an orderly and aesthetically complimentary design and appearance to be of the quality to maintain Eyrie Canyon as a quality residential development.

Unless extended by mutual consent of the Owner and the ACC, the ACC shall render its decision with respect to an application within forty five (45) days after the receipt of a properly submitted application the decision of the ACC can be in the form of an approval, a conditional approval or denial. The decision of the ACC shall be in writing signed by a Member of the ACC, dated, and a copy thereof mailed to the Owner at the address shown on the application.

A conditional approval shall set forth with particularity the conditions upon which the application is approved and the Owner shall be required to affix a copy of said conditions to the working drawings or blueprints which are to be kept on the jobsite during the entire course of the work to which said plans relate.

A denial of a application shall state with particularity the reasons for such denial.

11.10 Inspection and Complaints.

The ACC is empowered to inspect all work in progress on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating there from or violating this Master Declaration or the ACC Rules/ACC Standards or the approved plans and specifications.

The ACC is empowered to receive from other Owners ("*complainant*") complaints in writing involving deviations from approved applications or violations of this Master Declaration or any applicable ACC Rules/ACC Standards. In the event the

ACC receives such a complaint from a complainant, it shall first determine the validity of such complaint by inspection or otherwise. Should the ACC determine that there has been a deviation or a violation it shall promptly issue a notice in writing thereof to the Owner and to the Complainant, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner confirm to either or both of the following directives:

- (a) The Owner shall immediately cease the activity which constitutes a deviation or violation.
- (b) The Owner shall adhere to the corrective measures set forth in the written notice.

Should the ACC determine there has been no deviation or violation, it shall promptly issue a notice of such determination to the Owner and the Complainant.

11.11 Hearing.

An Owner submitting an application under Section 11.07, above, that is denied by the ACC or an Owner that is served with a written notice of deviation, or a Complainant, shall have the right to request and be heard at a hearing held by the ACC for the purpose of presenting facts and information to the ACC. Such hearing must be requested by such party within ten (10) days from the date the written notice of the decision of the ACC is mailed to the Owner (and Complainant) as evidenced by the records of the ACC.

The hearing shall be held within ten (10) days following receipt by the ACC of the request for the hearing, unless the ACC shall extend said period of time because of the unavailability of ACC Members. A hearing may be continued by the ACC for the purpose of further investigation or to receive additional evidence. Upon completion of the hearing, the ACC shall issue a written opinion to the involved parties within ten (10) business days thereafter which opinion shall set forth the findings of the ACC with respect to the matters at issue and shall affirm, modify or rescind its previous decision. If the ACC incurs any costs or expenses in connection with the investigation, processing or hearing on a matter arising under Section 11.10 including the costs of retaining a consultant(s) to advise the ACC and legal fees, such costs shall be paid by the Complainant unless an Owner is found to be in violation in which event such Owner shall pay all such costs, the payment of costs shall be enforceable as provided in Section 11.13, below.

11.12 Appeal.

Either an Owner or Complainant shall have the right to appeal to the Board a decision of the ACC on an application with respect to the conditions imposed thereon or a denial thereof, or a decision of the ACC adverse to the Owner or the Complainant reached following a hearing held pursuant to Section 11.11, above, provided, however, that neither an Owner nor a Complainant shall be entitled to such an appeal with respect to deviations or violations unless said Owner or Complainant has participated in the ACC Hearing.

A notice of appeal shall be in writing and shall be delivered by mail to the secretary to the Board within ten (10) days from the date of the decision by the ACC. Said notice of appeal shall be dated and shall contain the name of the Owner and the Complainant, if any, and a copy of the written decision or determination of the ACC. The failure of an Owner or Complainant to appeal a decision of the ACC in the manner and within the time herein provided shall terminate all rights of said Owner or Complainant to appeal said decision and it shall be binding and enforceable.

The Board shall fix a date for the hearing of such an appeal which date shall be no later than fourteen (14) days from the date of receipt of a notice of appeal unless extended by the Board because of the unavailability of Board Members. The Owner and Complainant, if any, shall be advised of the time and the place of the hearing by a mailed written notice. Written notice of time and place for hearing shall also be served by mail upon each Member of the ACC.

The Board may require the Owner or Complainant to provide additional information to facilitate the Board's decision and the failure of such party to comply promptly with such a request shall entitle the Board to deny the appeal, in which event the decision by the ACC shall be considered final and not subject to further appeal.

At the hearing the Owner, Complainant, if any, and the ACC, together with their representatives and other witnesses, shall present their position to the Board. The order of presentation and evidence to be admitted shall be solely within the discretion of the Board provided, however, that the Owner, the Complainant, if any, and the ACC shall have the opportunity to question and cross-examine witnesses presented by the other. The Owner, the Complainant, if any, and the ACC will have the opportunity to present final argument consistent with rules adopted by the Board for such hearing process. Any party may be represented by an attorney at any hearing by the ACC or the Board.

Upon receiving all the evidence oral and documentary, and following the conclusion of the hearing, the Board shall retire to deliberate and shall reconvene at a time and place determined by the Board at which time the Board shall cast its official ballot and the decision shall be duly recorded in the minutes of the meeting. The Owner, the Complainant, if any, and the ACC Member shall be given written notice of the decision which shall be deemed given when deposited in the United State mail, postage pre-paid and properly addressed.

If the Board incurs any costs and expenses with connection with the investigation, processing or hearing of an Appeal, including the costs of retaining a consultant(s) to advise the Board and legal fees, such costs shall be paid by the party(s) filing the appeal unless the decision by the Board constitutes a substantial reversal of the decision of the ACC, in which event such costs shall be paid by the Association. If the party filing the appeal is obligated to pay such costs, payment is the same shall be enforceable in Section 11.13, below.

A decision of the Board of an Appeal shall be final and not be subject to reconsideration or further appeal.

11.13 Enforcement.

The ACC, upon approval by the Board, shall be authorized on behalf and in the name of the Association to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or to enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of this Master Declaration, the ACC Rules/ACC Standards or the approved plans and specifications.

The ACC shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the ACC shall have the sole discretion to commence such proceedings.

The authority of the ACC has herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, depositions costs, writings and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association.

In the event the ACC and/or Association shall prevail in such legal or equitable proceedings, all costs and expenses incurred in connection therewith including, but not limited to, attorneys' fees shall be reimbursed to the Association by the Owner against whom said proceedings are filed and on the failure of said Owner to reimburse the Association by the Owner against whom said proceedings are filed and upon the failure of said Owner to reimburse the Association within five (5) days after written demand therefore is mailed to the Owner, the Association shall have the right to levy a Limited Assessment against the Owner and the Lot owned by the Owner which Assessment shall be equal to said costs and expenses incurred plus any additional costs and expenses incurred in levying the Assessment. Said Limited Assessment shall be due and payable at such time or in such installments as may be determined by the Board, in its sole discretion. The failure of the Owner to pay said Assessments or any installment thereof when due, shall be enforceable in the manner provided in Article IX, above.

11.14 Additional Damages.

In addition to the costs and expenses to be reimbursed by the Owner or the Complainant, all the costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Association to correct the same shall be Assessed as a Limited Assessment against the Owner and the Lot owned by the said Owner, or the Complainant and the Lot owned by the Complainant, as the case may be, which Limited Assessment shall be due

and payable at such time or in such installments as determined by the Board, in its sole discretion. The right of the Board to enforce said Limited Assessment shall be the same as provided in Article IX, above.

11.15 Non-Exclusive Remedy.

The right of the Association to levy a Limited Assessment as described in Sections 11.13 and 11.14, above, shall not be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver or any other legal or equitable remedy, pursue enforcement of the lien of said Limited Assessment(s), proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity.

11.16 Private Rights.

The Association shall not have the right to mediate or litigate private disputes between Owners where there is a legal or equitable remedy available to resolve their dispute when, in the sole discretion of the Board, the interests of the Association or a substantial number of the Owners would not be benefited thereby.

ARTICLE XII - ANNEXATION

12.01 Annexation.

Additional property may be annexed to Eyrie Canyon and brought within the provisions of this Master Declaration by Grantor, at any time Grantor still owns and interest in any part of the Property, without the approval of any Owner or the Association. Further, the Grantor shall, upon request of the Owner of the property being platted as Arrowhead Ridge Subdivision and identified on the attached Exhibit B, so long as Grantor owns an interest in any part of the Property, bring such property within the provisions of this Master Declaration by filing a supplemental declaration without the approval of any Owner or the Association. As such annexed property is developed, Grantor shall record an amendment to this Master Declaration with respect thereto which shall annex such property to Arrowhead Canyon and which may supplement this Master Declaration with additional or different covenants and restrictions applicable to the annexed property, as Grantor may deem appropriate, and may delete or modify as to such annexed property such covenants or restrictions as are contained herein which Grantor deems not appropriate for the annexed property, so long as the quality of development and the Project Objectives are not materially adversely affected. Upon such annexation, the Owners of the Lots within the annexed property shall become members of the Association with all rights, privileges and obligations as all other members. The amendment of this Master Declaration as authorized by this Section, to annex additional property to Arrowhead Canyon, shall be controlled by the provisions of this Section and shall be expressly excluded from the requirements of Section 14.02 of this Master Declaration.

12.02 De-Annexation.

The Grantor shall have the right to delete all or a portion of the Property from the coverage of this Master Declaration and the jurisdiction of the Association, so long as the Grantor is the Owner of all of the property to be de-annexed and, provided further, that an appropriate amendment to this Master Declaration if recorded in the office of the Ada County Recorder.

ARTICLE XIII - INTENTIONALLY OMITTED

ARTICLE XIV - MISCELLANEOUS

14.01 Term.

This Master Declaration and all covenants, conditions, restriction and easements contained herein shall run until December 31, 2030, unless amended as hereafter provided. After December 31, 2030, said covenants, conditions, restrictions and easements shall be automatically extended for successive period of ten (10) years each, unless extinguished by a written instrument executed by the Owners of at least seventy-five percent (75%) of the Lots (excluding Common Area Lots) covered by this Master Declaration and such written instrument is recorded with the Ada County Recorder.

14.02 Amendment.

This Master Declaration may be amended as follows:

- (a) By Grantor. Until title to a lot within Eyrie Canyon is conveyed by the Grantor to an Owner, this Master Declaration may be amended or terminated by the Grantor by recordation of a written instrument signed by the Grantor and acknowledged setting forth such amendment or termination. Notwithstanding the foregoing, Grantor shall not amend, modify or terminate any provision(s) of this Declaration which were required by the City of Boise City as a condition of approval for this Development, without the express written consent of the City of Boise City.
- (b) By Owners: Except as otherwise expressly provided in this Master Declaration, the provisions of this Master Declaration, other than this Section 14.02, may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment has been approved by a majority of the cumulative total of the Class A votes and the Class B votes cast by the Class A member and the Class B members either in person or by proxy at a meeting of the members duly held for such purpose and/or by the approval in writing by the members, including the Class A members and the Class B members, entitled to a majority of the cumulative total of the Class A votes and the Class B votes. Such amendment shall be effective upon its recordation with the Ada County Recorder. Any amendment to this Section 14.02 shall require the vote of seventy-five percent (75%) of the cumulative total of the Class A votes and the Class B votes cast by the Class A members and the Class B members either in person or by proxy at a meeting of the member duly held for such purpose and/or by the approval in writing by the member, including Class A members and the Class B members, entitled to seventy-five percent (75%) of the cumulative total of the Class A votes and the Class B votes. Such amendment to this Section shall be in the form of an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such Amendment to the Section has been approved as provided herein, and shall be effective upon its recordation with the Ada County Recorder.

14.03 Sewer Covenants.

The following covenants shall run with each Lot and any portion of the Common Area affected thereby and shall be binding upon each Owner of a Lot and all occupants of any Improvements constructed on a Lot:

- (a) No Lot may be used or occupied for any allowed use unless the same is connected to the public sewerage collection system constructed and installed within the Property.
- (b) All sewer hook-up fees charged by the municipality having jurisdiction and control over the Lot shall be paid by the Owner at the time of construction of the Improvements thereon and the connection thereof to the public sewerage collection system, said sewer hook-up fees to be paid at such time and in such amount as shall be required by the ordinances and regulations of the municipal entity having jurisdiction thereof.
- (c) A monthly sewerage charge shall be paid to the municipal entity having jurisdiction thereof, or its designee, after connection to the public sewerage collection system in accordance with the ordinances and regulations of said municipal entity.
- (d) All sewer lines connected to the sewerage collection system constructed and installed by the Grantor in the Property shall be constructed in accordance with all applicable codes and regulations and shall be inspected as required by the governmental entity having jurisdiction thereof to assure a minimum of infiltration from said service line into the sewerage collection system.
- (e) The Grantor shall provide access, satisfactory to the governmental entity having jurisdiction thereof, for sewer cleaning equipment to all sanitary sewer manholes located outside of public right-of-way.
- (f) The Grantor and each Owner of a Lot hereby authorizes the governmental entity having jurisdiction thereof, or its designee, to bring any action it deems necessary or required for the collection of any fees or charges due said entity for sewer service connected or monthly sewer charges and/or to otherwise enforce any of the obligations respecting the connection to the public sewerage collection system or use thereof as provided in this Section.
- (g) Unless the Property has been previously annexed into the corporate limits of the City of Boise, the recording of a plat covering any portion of the Property shall be deemed and construed as a request by the Grantor for the

annexation by Boise City of the Property covered by the plat. Such request shall be binding on all subsequent Owners of Lots within the said platted portion of the Property.

14.04 Books and Records.

All books, records and minutes of the Board and all other books and records maintained by the Association shall be made available for inspection and copying by any Owner or by his duly authorized representative, at any reasonable time and for a purpose reasonably related to his interest as a member in the Association, or at such other place and time as the Board shall prescribe.

14.05 Non-Waiver.

The failure of the Grantor, the Board or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements or other provisions of this Master Declaration or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such covenant, condition, restriction, easement or other provision, but the same shall be in full force and effect.

14.06 Acceptance.

Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, contract of sale or agreement or option, accepts the same subject to all of the covenants, conditions, restrictions, easements and other provisions set forth in this Master Declaration and agrees to be bound by the same.

14.07 Indemnification of Board Members.

Each member of the Board and each member of the ACC shall be indemnified by the Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding in which said member may be a party or in which said member may become involved, by reason of being or having been a member of the Board or the ACC, or any settlement thereof, whether or not said person is a member of the Board or ACC at the time such expenses or liabilities are incurred, except in such cases wherein said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Board or the ACC approves such settlement and reimbursement as being in the best interest of the Association or Owners. This Section shall extend to and apply also for the indemnification of the Grantor during the initial period of operation of the Association or prior thereto during the period the Grantor is exercising the powers of the Association.

14.08 Notices.

Any notice permitted or required to be delivered as provided in this Master Declaration shall be in writing and shall 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, properly addressed.

14.09 Interpretation.

The provisions of this Master Declaration and any Supplemental Declaration shall be liberally construed to effectuate the Project Objectives set forth in Article IV, above, and shall be construed and governed by the laws of the State of Idaho. 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 include the masculine, feminine or neuter. 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.

14.10 Severability.

Notwithstanding the provisions of the preceding Section, each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

IN WITNESS WHEREOF, the Grantor has executed this Master Declaration as of the day and year first above written.

Arrow Villa, L.L.C.,

An Idaho Limited Liability Company

By: [Signature]
Colin Connell, Managing Member

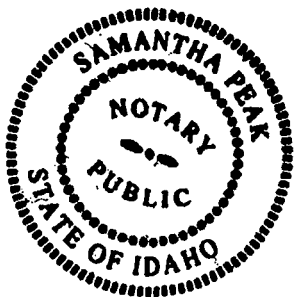
State of Idaho)

) ss.

County of Ada)

On this 20 day of Sept, in the year 2006, before me, personally appeared COLIN CONNELL, known or identified to me to be the, Manager of Arrow Villa LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

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



Samantha Peak

Notary Public for Idaho

Residing at: EO8 10

My Commission Expires: 3-19-2010