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KKCL File No. 7670

Instrument # 546880
HAILEY, BLAINE, IDAHO
2007-04-19 01:51:00 No. of Pages: 51
Recorded for : KNEELAND, KORB & COLLIER
JOLYNN DRAGE Fee: 153.00
Ex-Officio Recorder Deputy *mp*
Index to: AMENDED COVENANTS & RESTRICTIONS

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**AMENDED AND RESTATED CONDOMINIUM DECLARATION
FOR
PTARMIGAN CONDOMINIUMS**

THIS AMENDED AND RESTATED DECLARATION is made on the date hereinafter set forth by the owners of Condominium Units 1-12 of Ptarmigan Condominiums, Ketchum, Blaine County, Idaho, by and through their attorney in fact, the Board of Directors of Trail Creek West Homeowners Association, Inc., through its President, Michael G. Torres, those owners being hereafter referred to collectively as "Declarants".

RECITALS

A. Declarants are the owners of that certain real property located in Ketchum, Blaine County, Idaho, which property is legally described as follows:

Condominium Units 1-12 of Lot 1A, Block 1, as shown on the Amended Plat for Ptarmigan Condominiums: Lots 1A and 3, recorded July 19, 2006 as instrument No. 537574, to the extent applicable as regards the diagrammatic floor plans of the condominium units set forth in instrument No. 202652, and as defined and described in this Amended and Restated Declaration for Ptarmigan Condominiums, recorded _____, 2007 as instrument No. _____.

These condominiums are also commonly known as Trail Creek West Condominiums, the homeowner association for the project being Trail Creek West Homeowners Association, Inc.

B. Each individual condominium owner, including the interval owners of condominium units 2 and 12, are specifically identified in Exhibits A, B, and C attached hereto and incorporated by reference herein, the owners of Units 1 and 3-11 being set forth in Exhibit A, the interval owners of Unit 2 being set forth in Exhibit B, and the interval owners of Unit 12 being set forth in Exhibit C.

C. The original Condominium Declaration and the original plat for Ptarmigan Condominiums were recorded April 11, 1980 as instrument Nos. 202651 and 202652, respectively, records of Blaine County, Idaho. The original Ptarmigan Condominium project was

platted within the property described as Lot 1, Ptarmigan Subdivision, Blaine County, Idaho, as reflected on the instrument No. 202652 plat.

D. The original Declaration has been amended by instruments Nos. 214613, 215707, 215874, 217495, 232572, and 349858, records of Blaine County, Idaho. Instrument No. 316373 purporting to affect Units 4 and 11 is also of record in Blaine County, Idaho.

E. By amended plat recorded July 19, 2006 as Blaine County, Idaho instrument No. 537574, the Ptarmigan Condominium project was replatted into Ptarmigan Condominiums: Lots 1A and 3, Block 1 in which all condominium units are located within Lot 1A. The project was replatted into two lots to facilitate removal by Declarants of the newly described Ptarmigan Condominiums Lot 3, Block 1 from their condominium regime, the objective being to transfer Lot 3 to a third party as a stand alone property.

F. Declarants were unanimous in their desire to remove Lot 3 from the Idaho Condominium Property Act. Their approval and consent to so act is confirmed in their various Limited Powers of Attorney of record in Blaine County, Idaho, the applicable instrument numbers for each power being identified in the above noted Exhibits A, B, and C. The powers of attorney, among other things, authorize the Board of Directors of Trail Creek West Homeowners Association, Inc., by and through its President, to execute all necessary documentation to effectuate removal of Lot 3 from the condominium regime. In accordance therewith the "Owner Consent to Withdrawal from Condominium Property Act of Lot 3 of Ptarmigan Condominiums: Lots 1A & 3, Block 1" has been recorded _____, 2007, as instrument No. _____, records of Blaine County, Idaho.

G. All lenders of record with liens upon any Ptarmigan Condominium unit have also consented to the removal of Lot 3 from the condominium regime, acknowledging in so doing that their liens will no longer encumber Lot 3. These lenders, by the same document, have also approved the recently recorded amended plat, and consented to the recording of this Amended and Restated Declaration. The instrument number of each of the various lender consents, all of which are of record in Blaine County, and the applicable condominiums are set forth in Exhibit D attached hereto and incorporated by reference herein.

H. As part of the process to facilitate Declarants' transfer of Lot 3 to a third party, Declarants also processed a quiet title action concerning Lot 3, the judgment therein quieting title in Declarants having been recorded in Blaine County as instrument No. 527978.

I. Pursuant to the intentions herein expressed Lot 3 has been transferred to a third party by deeds recorded _____, 2007, as instrument Nos. _____ and _____, Blaine County, Idaho.

J. The removal of Lot 3 from condominium status and its transfer to a third party renders certain provisions of the original Declaration and its amendments inapplicable. In an effort to incorporate all the remaining applicable provisions of the Original Declaration, as amended, into one concise document, the Declaration for Lot 1A of Ptarmigan Condominiums, in accordance

with Article 15.1, is herein amended and restated in its entirety, the intention being that the instant document shall entirely supersede and replace the original Declaration recorded as instrument No. 202652, the amendments of record as instrument Nos. 214613, 215707, 215874, 217495, 232572, and 349858, as well as instrument No. 316373, records of Blaine County, Idaho. This Amended and Restated Declaration shall apply only to the property within Lot 1A, Block 1, Ptarmigan Condominiums, having no application to Lot 3, Block 1, Ptarmigan Condominiums.

K. It is not Declarants' intention to supersede and replace the Supplemental Declaration dated July 19, 2006 and recorded as Instrument No. 537576, records of Blaine County, Idaho, which was recorded as a condition of approval of the amended plat by the City of Ketchum because that document will continue to apply to additional properties. It addresses maintenance and snow removal obligations for a mutual access easement concerning Ptarmigan Condominiums: Lot 1A, Block 1, the property subject to this Declaration, and also concerning Ptarmigan Subdivision, Lot 2 (Trail Creek Place Condominiums) and Ptarmigan Condominiums: Lot 3, Block 1. It is Declarants' intention that the instrument No. 537576 document remain effective as to all three properties.

NOW THEREFORE, in furtherance of the above stated circumstances and intentions, the Declarants, with the consent and approval of Trail Creek West Homeowners Association, Inc., amend and restate in its entirety the Condominium Declaration, as amended, for Ptarmigan Condominiums, Lot 1A, Block 1.

ARTICLE I
Recitals and Certain Definitions.

Section 1.1 The Declarants and The Real Property. Those persons and entities identified in Exhibits A, B, and C as set forth in Recital B above, together with their successors and assigns, (collectively, the "Declarants") constitute all of the owners of that certain real property located in the City of Ketchum, Blaine County, Idaho, more specifically described as set forth in Recital A above and made a part of this Declaration (the "Real Property").

Section 1.2 Intention of Declarants. Declarants intend to provide for condominium ownership of the Real Property under the Condominium Property Act of the State of Idaho.

Section 1.3 The Project. The term "Project" shall collectively mean the Real Property and all buildings and other improvements located on the Real Property.

Section 1.4 Type of Ownership. This condominium project will provide a means for ownership in fee simple of separate interests in Units and co-ownership with others, as tenants in common, of Common Area, as those terms are herein defined.

ARTICLE II
Additional Definitions.

The following terms shall have the following meanings when used herein unless the context otherwise requires.

Section 2.1 Building. "Building" means one of the buildings constructed on the Real Property pursuant to this Declaration.

Section 2.2 Unit. "Unit" means the separate interest in a condominium as bounded by the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof and the interior surfaces of built-in fireplaces as shown and numbered on the Condominium Map to be filed for record, together with all fixtures and improvements therein contained. Notwithstanding such markings, the following are not a part of a Unit: bearing walls, columns, floors and roofs (except for the interior surface thereof, if a perimeter wall, floor or ceiling), foundations, clothes chutes, shafts, central heating, reservoirs, tanks, pumps and other services used by more than one Unit, pipes, vents, ducts, flues, chutes, conduits, wires, garages, and other utility installations, wherever located, except the outlets thereof when located within the Unit. The interior surfaces of a perimeter window or door means the points at which such surfaces are located when such windows or doors are closed; the physical windows and doors themselves are part of the Common Area, as herein defined. In case of combination of two or more adjoining Units, those portions of partition walls between Units which are from time to time used as 'door openings between such Units shall be deemed to be divided in half longitudinally, parallel to the partition wall, and each half shall constitute part of the Unit which it adjoins, as Limited Common Area appurtenant to such Unit. "Unit" also means the twelve (12) Units originally constructed and presently existing on the Real Property as shown on the Condominium Map.

Section 2.3 Common Area. "Common Area" means the entire Project excepting all Units.

Section 2.4 Limited Common Area. "Limited Common Area" means that Common Area designated herein for exclusive use by Owners of particular Condominiums, as those terms are herein defined.

Section 2.5 General Common Area. "General Common Area" means all Common Area excepting all Limited Common Area.

Section 2.6 Condominium. "Condominium" means a separate interest in a Unit together with an undivided interest in common in the Common Area (expressed as a percentage of the entire ownership interest in the Common Area) as set forth in Exhibit E attached hereto and by this reference made a part hereof.

Section 2.7 Owner. "Owner" means any person or entity, including Declarants, at any time owning a Condominium. The term "Owner" shall not refer to any Mortgagee, as herein defined, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 2.8 Mortgage. "Mortgage" means any mortgage, deed of trust, or other security instrument by which a Condominium or any part thereof is encumbered.

Section 2.9 Mortgagee. "Mortgagee" means any person, or any successor to the interest of such person named as the mortgagee, trust beneficiary or creditor under any mortgage, as mortgage is defined in Article II, Section 2.8, under which the interest of any Owner, or successor to the interest of such Owner, is encumbered.

Section 2.10 Association. "Association" means Trail Creek West Homeowners Association, Inc. (formerly Wild Bird Homeowners Association, Inc.), an Idaho corporation, not for profit, its successors and assigns, organized as provided herein.

Section 2.11 Condominium Map. "Condominium Map" means the Condominium Map for Ptarmigan Condominiums filed for record in the office of the County Recorder of Blaine County, Idaho, on July 19, 2006 as instrument No. 537574 (and to the extent applicable as regards the diagrammatic floor plans of the Units the original plat filed for record in the office of the Blaine County Recorder on April 11, 1980 as instrument No. 202651) consisting of a plat or survey map of the surface of the ground of the Real Property showing a survey and legal description thereof, the location of each Building with respect to the boundaries of the Real Property, together with diagrammatic floor plans of the Buildings showing the boundaries of each Unit within each Building, including horizontal and vertical locations and dimensions of all boundaries of each Unit, Unit number identifying the Units, together with such other information as may be included thereon in the discretion of the Declarants.

ARTICLE III

Statement of Intention and Purpose.

Declarants hereby declare that the Project and every part thereof, is held and shall be held, conveyed, devised, leased, rented, encumbered, used, occupied and improved and otherwise affected in any manner subject to the provisions of this Declaration, each and all of which provisions are hereby declared to be in furtherance of the general plans and scheme of condominium ownership referred to in Article I and are further declared to be for the benefit of the project and every part thereof and for the benefit of each Owner. All provisions hereof shall be deemed to run with the land as covenants running with the land or as equitable servitudes as the case may be, and shall constitute benefits and burdens to the Declarants and their successors and assigns and to all persons hereafter acquiring or owning any interest in the project however such interest may be obtained.

ARTICLE IV

Nature and Incidents of Condominium Ownership.

Section 4.1 Estates of an Owner. The Project is hereby divided into Condominiums each consisting of a separate interest in a Unit and an undivided interest in common in the Common Area in accordance with the attached Exhibit E setting forth the Common Area appurtenant to each Unit. The percentage of ownership interest in the Common Area which is to be allocated to each Unit for purposes of tax assessment under Section 55-1514 of the Idaho Code and for

purposes of liability as provided by Section 55-1515 of such Code shall be the same as set forth in Exhibit E. Such percentages are based upon the relative interior floor space of each Unit. Exhibit E also contains a legal description of each Unit in the Project, consisting of the identifying number of such Unit as shown on the Condominium Map. Such undivided interests in the Common Area are hereby declared to be appurtenant to the respective Units.

Section 4.2 Designation of Limited Common Area. "Limited Common Area" shall consist of balconies, porches, and heating equipment located in the crawl space under each Unit. The balcony or balconies and the porch or porches adjoining a Unit and the individual heating equipment, as referred to above, shall be used in connection with such Unit to the exclusion of the use thereof by the other Owners of Common Area except by invitation. The deck, hot tub and/or jacuzzi in place or to be constructed adjacent to Unit 6 by the Unit 6 Owner pursuant to Section 4.18 hereof shall also be Limited Common Area to be used in connection with said Unit 6 to the exclusion of the use thereof by the other Owners except by invitation.

Section 4.3 Right to Combine Units. Declarants reserve the right to combine physically the area or space of one Unit with the area or space of one or more adjoining Units. Such combination shall not prevent separate ownership of such Condominiums in the future. Upon such combination of adjoining Units, any walls, floors, or other structural separations between Units so combined, or any space which would be occupied by such structural separations but for the combination of the Units, shall automatically become additional Limited Common Area for the exclusive use by the Owners of the Units so combined. Such structural separations and such space shall automatically become General Common Area if the combined Units become subject to separate ownership in the future.

Section 4.4 Title. Title to a Condominium may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Idaho.

Section 4.5 Inseparability. No part of a Condominium or of the legal rights comprising ownership of a Condominium may be separated from any other part thereof during the period of Condominium ownership prescribed herein, so that each Unit and the undivided interest in the Common Area appurtenant to such Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Condominium. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Condominium or any part thereof shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Condominium; together with all appurtenant rights created by law or by this Declaration.

Section 4.6 Partition Not Permitted. The Common Area shall be owned in common by all Owners of Condominiums, and no Owner may bring any action for partition thereof.

Section 4.7 Owner's Right to Common Area. Subject to the limitations contained in this Declaration, each Owner shall have the non-exclusive right to use and enjoy the General Common Area, and shall have the exclusive right to use and enjoy the Limited Common Area designated herein for exclusive use by such Owner.

Section 4.8 Taxes and Assessments. Each Owner shall execute such instruments and take such actions as may be reasonably specified by the Association to obtain separate real property

tax assessments of the interest of each Owner in each Condominium. If any taxes or special district or other assessments may, in the opinion of the Association, nevertheless be a lien on the Project or any part thereof, the Association shall pay the same and assess the same to the Owner or Owners responsible therefore. Each Owner shall pay the taxes or assessments assessed against his Condominium, or interest therein, or his interest in the Common Area, or any part of any or all of the foregoing. Each Owner shall pay taxes, rates, impositions and assessments levied against the project or any part of the Common Area in proportion to his interest in the Common Area, such payment to be made to the Association at least thirty (30) days prior to the delinquency of such tax or assessment. Each such unpaid tax or assessment shall bear interest at the rate of fifteen percent (15%) per annum from and after the time the same becomes payable by each Owner and shall be secured by the lien crated by Section 9.6 hereof.

Section 4.9 Owner's Rights with Respect to Interiors. Each Owner shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise maintain, refinish and decorate the interior surfaces of the walls, ceilings, floors, windows, and doors forming the boundaries of his Unit and all walls, ceilings, floors and doors within such boundaries.

Section 4.10 Easements for Encroachments. If any part of the Common Area encroaches or shall hereinafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Area, or upon an adjoining Unit or Units, an easement for such encroachment and for maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances whether on the Common Area or the units. Encroachments referred to herein include, but are not limited to, encroachments caused by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

Section 4.11 Easements of Access for Repair, Maintenance and Emergencies. Some of the Common Area is or may be located within the Units or may be conveniently accessible only through the Units. The Owners of other Units shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each Unit and to all Common Area from time to time during such reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the Common Area located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Area or to another Unit or Units. The Association shall also have such right independent of any agency relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair or replacement of any of the Common Area as a result of emergency repairs within another Unit at the instance of the Association or of Owners shall be an expense of all of the Owners; provided, however, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all of such damage. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant thereto shall be collected by the Association by assessment pursuant to Article IX below.

Section 4.12 Owner's Right to Ingress and Egress and Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Area necessary for access to his Unit and to the Limited Common Area designated for use in connection with his Unit, and

shall have the right to the horizontal and lateral support of his Unit, and such rights shall be appurtenant to and pass with the title to each Condominium.

Section 4.13 Association's Right to Use Common Area. The Association shall have a non-exclusive easement to make such use of the Common Area as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain in the General Common Area maintenance and storage facilities for use by the Association.

Section 4.14 Declarants' Right Incident to Construction. Declarants and persons it shall select, shall have the right to ingress and egress over, upon and across the Common Area, the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to complete development of the Project.

Section 4.15 Easements For Utilities. In order to adequately serve each Unit and the Common Area, utility facilities may be constructed in and encroach upon the general Common Area, limited Common Area and/ or any of the Units. An easement for such encroachment and for the maintenance of such utilities shall and does exist.

Section 4.16 Easements Deemed Created. All conveyances of Condominiums hereafter made, whether by the Declarants or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to Sections 4.10, 4.11, 4.12, 4.13, 4.14 and 4.15 above, even though no specific reference to such easements or to those Sections appears in any such conveyance.

Section 4.17 Parking Area. Declarants has constructed a parking area which shall be a part of the General Common Area and shall be maintained by the Association for the benefit of and use by the Owners. The right to the use of such parking spaces and to the maintenance thereof by the Association shall be appurtenant to and shall pass with the title to each Condominium.

Section 4.18 Unit 6 Construction and Limited Common Area. The right to increase the size of Unit 6 by expanding the master bedroom thereof to include what is now Common Area adjacent thereto and, further, to construct adjacent to the expanded Unit 6 a deck, hot tub and/or jacuzzi which shall become Limited Common Area appurtenant to said Unit 6 is reserved to the Owner of that unit. The Owner of Unit 6 shall bear the entire expense of exercising this right of construction and shall indemnify and hold harmless the Association and all other Owners against any and all claims, liabilities and/or causes of action arising out of or directly related to the exercise of such right. Such right hereunder is subject to the requirements that the proposed construction be approved by the City of Ketchum, Idaho and that the expanded Unit 6 shall thereafter have a greater percentage ownership in the Common Area of the Project for the purposes of tax assessment, liability, voting power, and condominium assessment liability as described in Section 4.1 hereof. The rights of the Unit 6 Owner hereunder shall in no way be limited by anything in this Declaration other than as herein set forth, nor by any action taken by the Association, and shall pass to, be enforceable by, and inure to the benefit of any successor or assign of the interest of the Unit 6 Owner. Every Condominium Owner, by the acceptance of a deed therefore, whether or not it be so expressed in the deed, shall be deemed to consent to the

exercise by Declarants of these rights in accordance with the provisions of this Section 4.18, and shall take title to such Condominium subject to these rights.

ARTICLE V

Description of a Condominium.

Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium may describe that Condominium by the number shown on the Condominium Map with the appropriate reference to the Condominium Map and to this Declaration, as each appears on the records of the County Recorder of Blaine County, Idaho, in the following fashion:

Condominium Unit ___ of Lot 1A, Block 1, as shown on the Plat for Ptarmigan Condominiums: Lots 1A & 3, Block 1, recorded July 19, 2006, as Instrument No. 537574, records of Blaine County, Idaho, as shown on Instrument No. 202652 to the extent applicable as regards the diagrammatic floor plans of the units, and as defined and described in the Amended and Restated Declaration for Ptarmigan Condominiums, recorded _____, 2007, as Instrument No _____, records of Blaine County, Idaho .

Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Area, and to incorporate all the rights incident to ownership of a Condominium and all the limitations on such ownership as described in this Declaration. As regards Units 2 and 12, the description shall also include the interval designations and the instrument nos. of the Interval Declaration documents.

ARTICLE VI.

Mechanic's Lien Rights

No labor performed or services or materials furnished with the consent of or at the request of an Owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against the Condominium of any other Owner, or against any part thereof, or against any other property or any other Owner, unless such other Owner has expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such express consent shall be deemed to have been given by the Owner of any Condominium in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner. Any Owner may remove his Condominium from a lien against two or more Condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to his Condominium.

ARTICLE VII.

The Association

Section 7.1 Membership. Copies of the Association's Articles of Incorporation dated February 14, 1980, its Amended Articles of Incorporation filed February 15, 2002 and its By-Laws dated March 10, 1980 are attached hereto as Exhibits F, G and H, respectively, and hereby made a part of this Declaration by incorporation. To the extent that the Bylaws refer to "Phase 1" and "Phase 2" of the condominium project, Declarants confirm that Phase 2 was never

constructed and that the portion of the Real Property upon which Phase 2 development was apparently originally contemplated is no longer part of this condominium project, it having been removed from condominium status as set forth in the Recitals herein and conveyed to a third party. Therefore, any reference to the project in "phase" development is now inapplicable as is the reference to adjustment of voting rights for the benefit of Phase 2 members. Every Owner shall be entitled and required to be a member of the Association. If title to a Condominium is held by more than one person, the membership related to that Condominium shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which the title to the Condominium is held. An owner shall be entitled to one membership for each Condominium owned by him. No person or entity other than an Owner may be a member of the Association, and the Articles of Incorporation or By-Laws of the Association state that the memberships in the Association may not be transferred except in connection with the transfer of a Condominium, provided, however, that the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Condominium.

Section 7.2 Voting Rights. The total number of votes which may be cast by all members of the Association shall be as set forth in the Articles of Incorporation and By-laws of the Association, and each Owner shall be entitled to vote the same percentage of the total number of votes of the Association as such Owner's percentage interest in the Common Area as set forth in Exhibit E attached hereto. It is provided, however, that each Owner shall be entitled to cumulate his votes in any election for members of the Board of Directors of the Association in accordance with the appropriate provisions of the By-Laws of the Association.

Section 7.3 Transfer. Except as otherwise expressly stated herein any of the rights, interests and obligations of the Association set forth herein or reserved herein may be transferred or assigned to any other person or entity; provided, however, that no such transfer or assignment shall relieve the Association of any of the obligations set forth herein. Any such transfer or assignment shall not revoke or change any of the rights or obligations of any Owners as set forth herein.

Section 7.4 Amplification. The provisions of this Article are amplified by the Articles of Incorporation of the Association, as Amended, and by the By-Laws of the Association; provided, however, that no present or future provision of such Articles of Incorporation, as Amended, or By-Laws shall substantially alter or amend any of the rights or obligations of the Owners set forth herein.

ARTICLE VIII.

Certain Rights and Obligations of the Association

Section 8.1 The Management Body. Trail Creek West Homeowners Association, Inc., an Idaho non-profit corporation, formerly Wild Bird Homeowners Association, Inc., is hereby designated to be the "Management Body" as provided in Sections 55-1503 and 55-1506 of the Idaho Code and shall administer the project in accordance with the Condominium Property Act of such Code, the Articles of Incorporation, as Amended, the By-Laws of the Association and the provisions of this Declaration. Although the Exhibit H Bylaws identify the Association as Wild

Bird Homeowners Association, Inc., Declarants confirm that by amendment of the Articles of Incorporation that name has been changed to Trail Creek West Homeowners Association, Inc.

Section 8.2 The Common Area. The Association, subject to the rights of the Owners set forth in Article IV hereof, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair; however, each Owner of a Condominium Unit shall keep the Limited Common Area designated for use in connection with his Unit in a clean, sanitary and attractive condition, and shall maintain and repair the heating equipment and the water heater servicing his Unit exclusively. The Association shall be responsible for the maintenance and repair of exterior surfaces of Buildings and improvements located on the project, including without limitation, the painting of the same as often as necessary, and replacement of trim and caulking, the maintenance and repair of roofs, the maintenance and repair of other Common Area, including utility lines, areas for access to any automobile parking structures constituting part of the Condominiums and all other improvements or materials located within or used in connection with the Common Area. The Association shall maintain in a proper, first class manner, all landscaping and natural vegetation constituting part of the Common Area, including assuring the preservation of good visual continuity between landscaped areas and natural vegetation. The specification of duties of the Association with respect to particular Common Area shall not be construed to limit its duties with respect to other Common Area, as set forth in the first sentence of this Section. The cost of such management, maintenance and repair by the Association shall be borne as provided in Article IX.

The Association shall have the right to grant easements for utility purposes over, upon, across, under or through any portion of the Common Area, and each Owner hereby irrevocably appoints this Association as attorney-in-fact for such purpose.

Section 8.3 Miscellaneous Services. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Association may arrange with others to furnish electrical, water, sewer, trash collection services, and other common services to each Unit.

Section 8.4 Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in the Common Area. Such interest shall not be transferable except with the transfer of a Condominium. A transfer of a Condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purpose for which it is intended, without hindering or

encroaching upon the lawful rights of other Owners. The transfer of title to a Condominium under the foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Condominium.

Section 8.5 Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Units and of the Common Area, which rules and regulations shall be consistent with the rights and duties established in this Declaration. Such rules and regulations may include, without limitation, assignment of particular portions of storage areas within the Common Area for exclusive use by Owners of particular Condominiums. A copy of the rules as adopted, amended or repealed or otherwise shall be delivered to each owner and a copy may be posted in a conspicuous place within the project.

In addition to any other enforcement rights described in this Declaration and the Bylaws or authorized by law and subject to any restrictions on the Association's enforcement rights, including any due process requirements, imposed by this Declaration, or the law, the Association may take any of the following actions against any person or entity whose act or failure to act violates or threatens to violate any provisions of this Declaration, the Bylaws, or Association Rules and Regulations:

- (a) Impose monetary penalties including late charges and interest;
- (b) Suspend voting rights in the Association;
- (c) Suspend use privileges for the Common Area; and
- (d) Commence a legal action for damages, injunctive relief or both.

The determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Association. Any legal action may be brought in the name of the Association on its own behalf and on behalf of the Owner who consents, and the prevailing party in any such action shall be entitled to recover costs and reasonable attorney's fees. The Association may make more than one of the foregoing enforcement actions against anyone violation or threatened violation, provided that a suspension of use privileges shall not exceed thirty days (unless the suspension is for delinquent assessments) and a monetary penalty shall not exceed \$500.00 (excluding late charges imposed for delinquent assessments) for any violation. The Association, in its sole discretion, may resolve or settle any dispute, including legal action, under such terms and conditions as it considers appropriate.

Amounts owing by Owners pursuant to this Section may be collected by the Association by assessment as provided by the Declaration and any amendment thereto.

An Owner shall be given fifteen days prior notice before the imposition of any disciplinary action and the reasons for such action. The notice shall be hand delivered certified, return receipt requested, to the Owner's last known address. The Owner shall have the opportunity to be heard, orally or in writing by a majority of the Board of Directors not less than five days before the imposition of the penalty.

The Association may not cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his or her Condominium except by judgment of a court or decision arising out of arbitration or on account of foreclosure or sale under power of sale for failure of the owner

to pay assessments duly levied by the Association.

Section 8.6 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE IX.
Assessments

Section 9.1 Agreement to Pay Assessment. Declarants, for each Condominium owned within the Project, and for and as the Owner of the project and every part thereof, hereby covenants, and each Owner of any Condominium by the acceptance of a deed therefore, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association to pay to the Association periodic assessments made by the Association for the purposes provided in this Declaration and special assessments for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed, established and collected from time to time in the manner provided in this Article.

Section 9.2 Amount of Total Periodic Assessments. Not more than 60 nor less than 30 days before the beginning of each fiscal year of the Association, the Board of Directors of the Association shall meet for the purpose of establishing the budget for total periodic assessments for all Condominiums. The budget shall be based on advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Area or furnishing electrical, water, sewer and trash collection and services, and other common services, to each Unit, which estimates may include, among other things, expenses of management, taxes and special assessments until the Condominiums are separately assessed as provided herein, premiums for all insurance which the Association is required or permitted to maintain pursuant hereto, landscaping and care of grounds, common lighting and heating, water charges, trash collection, sewer service charges, repairs and maintenance, wages for Association employees, legal and accounting fees, and deficit remaining from a previous period, the creation of a reasonable contingency reserve, surplus and/or sinking funds, and any other expenses and liabilities which may be incurred by the Association for the benefit of the owners under or by reason of this Declaration.

Section 9.3 Apportionment of Periodic Assessments. Expenses attributable to the Common Area and to the Project as a whole shall be apportioned among all Owners in proportion to the interest in the Common Area owned by each.

Section 9.4 Notice of Periodic Assessments and Time for Payment Thereof. The Association shall make periodic assessments, which assessments shall be annually, quarterly or monthly, as the Association shall from time to time determine. The Association may, in its discretion, allow assessments to be paid in installments. Written notice of assessment shall be given to each Owner, which notice shall specify the amount of the assessment and the date or dates of payment of the same. No payment shall be due less than fifteen (15) days after the said