

**WINTERHAVEN CONDOMINIUM DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

This Declaration, made on the date hereinafter set forth by Bradley Construction North, Inc., P.O. Box 41, Hailey, Idaho, 83333, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Hailey, County of Blaine, State of Idaho, which is more particularly described as:

See Exhibit A Attached

WHEREAS, Declarant intends to provide for condominium ownership of the real property described in Exhibit A and of all the improvements thereon under the Condominium Property Act of the State of Idaho.

NOW THEREFORE, Declarant hereby declares that all of the property described in Exhibit A together with all of the improvements thereon shall be held, sold, and conveyed subject to the following covenants, conditions, and restrictions. Declarant declares that such covenants, conditions, and restrictions are for the purpose of protecting the value and desirability of the real property, are in furtherance of a general plan and scheme of condominium ownership. Said covenants, conditions, and restrictions shall run with the real property described above or be considered equitable servitudes as the case may be, shall be binding on all parties having any right, title or interest in the described properties or any part thereof, and their heirs, successors, and assigns, and shall inure to the benefit of the Project and every part thereof and for the benefit of each Owner and their successors and assigns.

ARTICLE I.
DEFINITIONS

Section 1. "Association" shall mean and refer to the non-profit corporation, Winterhaven Condominium Association, its successors and assigns.

Section 2. "Building" shall mean each free-standing residential buildings on the Property, each of which contains two Units.

Section 3. "Common Area" shall mean the entire Project excepting all Units.

Section 4. "Limited Common Area" shall mean that Common Area that is designated on the Condominium Map for exclusive use by the Owner of a particular Unit.

Section 5. "General Common Area" shall mean all Common Area except all Limited Common Area.

Section 6. "Condominium" shall mean a separate interest in a Unit and Unit improvements together with an interest in common in the Common Area and Common Area improvements, which shall be expressed as a percentage of the entire interest in the Common Area as set forth in Exhibit B, which is attached and incorporated into this Declaration.

Section 7. "Condominium Map" shall mean the plat for the Winterhaven Condominiums to be filed for record in the office of the Blaine County Recorder, Hailey, Blaine County, Idaho, consisting of a plat of the surface of the ground of the Property showing a survey and legal description thereof, the location of each Building with respect to the boundaries of the Property, the location and number of each Unit within each Building, the location of the Limited Common Area for each Unit, and such other information as may be included thereon in the discretion of the Declarant.

Section 8. "Declarant" shall mean and refer to Bradley Construction, Inc., its successors and assigns.

Section 9. "Design Committee" shall mean the committee described in Article IX or in the event no separate committee is appointed by the Board of Directors of the Association, it shall mean the Board of Directors of the Association.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Condominium which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 11. "Party Wall" shall mean those walls or materials, whether structural or not, connecting the two Units in the same Building.

Section 12. "Project" shall collectively mean the Property and all buildings and all other improvements located on such real property.

Section 13. "Property" shall mean and refer to that certain real property described in Exhibit A, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 14. "Unit" shall mean the separate interest in a Condominium as shown and numbered on the Winterhaven Condominium Plat. A Unit includes one-half of an entire Building to the center line of the air space between the two units that comprise the Building, including but not limited to the respective interior and exterior walls, foundation, roof, garage, chimney, storage areas, and water, sewer, electrical, cable, gas, telecommunications and other systems, within or a part of that half of the Building, together with all fixtures and improvements thereon and therein.

ARTICLE II.

PROPERTY RIGHTS

Section 1. Estates of an Owner. The Project is hereby divided into Condominiums, each Condominium consisting of a separate interest in a Unit and an interest in common in the Common Area in accordance with the attached Exhibit B setting forth the percentage of Common Area appurtenant to each Unit. The percentage of interest in the Common Area which is to be allocated to each Unit for purposes of tax assessment under Idaho Code Section 55-1514 and for purposes of liability as provided in Idaho Code Section 55-1515 shall be the same as set forth in Exhibit B. Exhibit B may be amended from time to time, but not more frequently than every three years, in the event of a substantial change in the value or size of a Unit as provided in Idaho Code Section 55-1505.

Section 2. Owner's Easement of Enjoyment in the General Common Area. Subject to the provisions of this Declaration and the Rules and Regulations of the Association, each Owner shall have the non-exclusive right to use and enjoy the General Common Area, and shall have a right and easement of enjoyment in and to the General Common Area, which shall be appurtenant to and shall pass with the title to every Unit.

Section 3. Owner's Easement of Enjoyment in the Limited Common Area. Subject to the provisions of this Declaration, the Rules and Regulations of the Association, the rights and duties of the Association, and any easements, uses, or common improvements designated on the Condominium Map, each Owner of a Unit shall have the exclusive right to use and enjoy the Limited Common Area designated on the Condominium Map for that Unit, and shall have a right and easement of exclusive enjoyment in and to the Limited Common Area designated for that Unit, which shall be appurtenant to and shall pass with the title to every Unit. An Owner's rights in the Limited Common Area shall be to the exclusion of the use by the other Owners of Common Area except by invitation. An Owner may encroach on the Limited Common Area for the purpose of constructing a patio or deck for their Unit, expanding or adding on to their Unit, constructing a storage shed, constructing a fence, installing children's swing sets, or to make other like modifications to their Unit or the Limited Common Area for their Unit, as long as the Owner obtains the prior approval of the Association as provided in Article VIII.

Section 4. Delegation of Use. Any Owner may delegate, in accordance with this Declaration and the Rules and Regulations of the Association, his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 5. Owner's Other Easements. Each Owner shall have such other easements that are necessary to perform the duties and obligations of Owners set forth in this Declaration.

Section 6. Owner's Rights with Respect to Units. Each Owner shall have all rights of ownership in their Units, subject to the provisions of this Declaration and the

rules and Regulations of the Association, including but not limited to the Party Wall provisions set forth below, the rights of the Association with respect to maintenance, repair, and design review of the exterior of the Units, and the rights of the Association as provided in Section 8 and 9 below.

Section 7. Party Walls.

- (a) **General Rules of Law Apply.** Unless inconsistent with the other provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to the Party Walls;
- (b) **Cost of Repair.** The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the two Owners who make use of that wall;
- (c) **Destruction by Fire or Other Casualty.** If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has use of the wall may restore it, and the other Owner who makes use of the wall shall contribute one-half of the cost of restoration, without prejudice to the rights of either Owner to seek a larger contribution under any rule of law regarding liability for negligent or intentional acts or omissions;
- (d) **Weatherproofing.** Notwithstanding any other provisions of this Article, an Owner who by his negligent or intentional acts causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements;
- (e) **Lien.** The Owner incurring the costs and who has a right of contribution pursuant to this section shall have a lien upon the Condominium of the non-contributing Owner and may prepare a written notice of lien setting forth the amount of such costs, and identifying the Condominium upon which the costs in question were incurred and the name of the Owner thereof. The lien for such costs shall attach upon recordation of the notice of lien. Such lien shall be prior to any declaration of homestead recorded after the recording of this Declaration. The lien shall continue until fully paid or otherwise satisfied. When the lien has been fully paid or satisfied, a further notice releasing the lien shall be recorded. The lien may be foreclosed in the same manner as provided under the laws of the State of Idaho for the foreclosure of liens on real property, or as otherwise provided by law. In any such foreclosure, the Owner of the Condominium being foreclosed upon, shall be required to pay all costs, expenses and reasonable attorney fees in connection with the preparation and recordation of the notice of the lien and the foreclosure. Said amounts owed and costs, expenses and fees shall also be the personal debt of the

defaulting Owner and suit to recover a money judgment may be maintained without foreclosing or waiving the lien.

Section 8. Easements Subject to Rights of Association. In addition to being subject to the all of the provisions of this Declaration, the easements and ownership rights set out in this Article shall be subject to:

- (a) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Condominium remains unpaid or for any violation of the Association's Rules and Regulations;
- (b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the members agreeing to such dedication or transfer has been recorded; and
- (c) The right of the Board of Directors of the Association to adopt Rules and Regulations that it deems desirable respecting the use and maintenance of the Units and the Common Area, in order to promote or preserve the Project or the use or administration thereof and in order to prevent unreasonable interference with the use of the respective Units or Common Areas by the Owners, and the right to assess charges and impose sanctions for the violation of such Rules and Regulations.

Section 9. Association Easement. There is hereby reserved to the Association, or its duly authorized agents and representatives, such easements that are necessary to perform the duties and obligations of the Association set forth in this Declaration, and the Articles, Bylaws, and Rules and Regulations of the Association, including but not limited to the non-exclusive right to make such use of the Common Area as may be necessary and appropriate to perform its duties and obligations.

Section 10. Utility Ownership and Easements. The Owners agree that they jointly own the water and sewer lines on the General Common Area and those common improvements in the Limited Common areas that are designated on the Condominium Map in proportion to their respective percentage interests in the Common Area as defined in Idaho Code Section 55-1503, together with all improvements that may be made in the future. Each Owner separately owns the water and sewer lines serving their respective Unit. There is hereby created an easement upon, across, over, through and under the General Common Area, in favor of the Association and in favor of each Owner, for ingress, egress, installation, replacement, repair and maintenance of all utilities and service lines and systems including, but not limited to, water, sewer, gas, telephones, electricity, television, cable, or communication lines and systems. There is also created an easement upon, across, over, through and under the Limited Common Area in favor of

the Association for ingress, egress, installation, replacement, repair, and maintenance of those common improvements or utilities that are located in any Limited Common Area.

Section 11. Easements for Encroachments. If any part of the General Common Area encroaches or shall hereinafter encroach upon a Unit or the Limited Common Area for that Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit or Limited Common Area for that Unit encroaches or shall hereafter encroach upon the General Common Area, or upon an adjoining Limited Common Area or Unit, an easement for such encroachment and for the maintenance of the same shall and does exist; such encroachments being caused by, but not limited to, settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

In the event any Unit or the Limited Common Area for that Unit is partially or totally destroyed, and then repaired or rebuilt, or in the event an Owner repairs, maintains or improves their Unit or Limited Common Area, the Owners agree that minor encroachment over adjoining Units and Limited Common Areas shall be permitted during the period such work is being performed. There shall be valid easements for the maintenance of such encroachments, provided that each Owner shall utilize only such portion of another Unit or Limited Common Area, and only for such duration as is necessary to accomplish a permitted purpose and in a manner that will not unreasonably disturb the peaceful enjoyment of such other Unit by the Owner thereof. Also at said Owner's expense, the encroaching Owner shall repair any damage caused to such other Unit and Limited Common Area. The foregoing encroachment shall not be construed to be encumbrances affecting the marketability of title to any Unit.

Section 12. Partition Not Permitted. The interest in the Common Area shall be owned in common by Owners of Condominiums, and no Owner may bring an action for partition thereof.

ARTICLE III. **THE ASSOCIATION**

Section 1. The Management Body. The Association is hereby designated to be the Management Body as defined in Idaho Code Sections 55-1503 and 55-1506 and shall administer the Project in accordance with the Condominium Property Act of the Code, the Articles of Incorporation and Bylaws of the Association, and this Declaration.

Section 2. Membership. The Articles of Incorporation and Bylaws of the Association are attached and incorporated into this Declaration as Exhibit C. Every Owner of a Unit which is subject to assessment shall be entitled and required to be a member of the Association. 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. Membership 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 but a mortgagee may only exercise such rights in the event it obtains title to such condominium through foreclosure of a proceeding in lieu thereof. Membership shall be appurtenant to and may not be separated from ownership of any Condominium which is subject to assessments.

Section 3. Voting Rights. The voting rights of a member of the Association shall be determined by the number of individual Units owned, one vote per Unit.

Section 4. Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Common Area and of the Units, which rules and regulations shall be consistent with the purposes of and rights and duties established in this Declaration and which rules and regulations shall be published on a yearly basis to all Owners.

Section 5. 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, management and upkeep of the project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom it contracts. The Association may obtain and pay for legal and accounting and other professional services necessary or desirable in connection with the operation, upkeep and management of the Project or the enforcement of this Declaration, the Articles, Bylaws or Rules and Regulations of the Association.

Section 6. Enforcement of Rights. The Association may enforce or exercise any right or privilege given to it expressly or implied by or necessary to effectuate this Declaration, the Articles or Bylaws of the Association, the Rules and Regulations, or by law. Without limiting the foregoing, the Association may suspend the voting rights, may assess monetary infractions, may file liens, may take judicial action, may seek specific legal or equitable relief, or may take any other action against an Owner for the violation of or to enforce or interpret the terms of the Declaration, the Articles or Bylaws, or the Rules and Regulations.

ARTICLE IV. **TAXES AND ASSESSMENTS**

Each Owner shall execute such instruments and take such actions as may reasonably be 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 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 Unit, or interest therein, or his interest in the Common Area or any part of any or all of the foregoing. Each Owner shall pay all 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 eight and one-half (8½ %) per cent per annum from and after the time the same becomes payable by each Owner and shall be secured by a lien on such Condominium in favor of the Association upon recordation of a Notice of Assessment signed by the Association setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the record owner of the Condominium and a description of the Condominium.

ARTICLE V.
MANAGEMENT, REPAIR, MAINTENANCE, AND INSURANCE

Section 1. The Common Area. The Association, subject to the rights of Owners set forth herein, shall be responsible for the exclusive management and control of the General Common Area and all improvements thereon and all property owned by the Association, and shall keep the same in good, clean, sanitary, safe, and attractive condition, order and repair. Without limiting the foregoing rights and obligations, the Association shall be responsible for the maintenance, upkeep, repair, or replacement as necessary of the sewer, water and other utility lines, the sprinkler system, the drives and access ways, signs, lighting, landscaping, snow removal and storage, and other all improvements, located on or within the General Common Area. All direct and indirect costs of such management, maintenance, upkeep, repair, and replacement by the Association shall be borne as provided in Article VI.

Each Owner of a Condominium shall be responsible for the exclusive management and control of the Limited Common Area designated for use in connection with his Unit, and all improvements thereon and property owned by the Owner, and shall keep the same in a good, clean, sanitary, safe, and attractive condition, order and repair. Without limiting the foregoing, each Owner shall be responsible for the maintenance, upkeep, repair, or replacement as necessary of the sewer, water and other utility lines, sprinkler system, landscaping, lighting, driveway, sidewalks, snow removal and storage, fences, decks, patios, storage sheds, and any other improvements, located on or within the Limited Common Area designated for his Unit. All direct and indirect costs of management, maintenance, upkeep, repair, and replacement for the Limited Common Areas and improvements thereon and Units shall be borne buy the respective Unit Owners.

Section 2. Units. The maintenance, upkeep, repair, and replacement of the Units shall be the sole responsibility of the respective Owner. Each Owner shall keep his Unit in a good, clean, sanitary, safe and attractive condition, order and repair. No individual Unit or the systems serving such Unit shall unreasonably interfere with the access and use of another Unit or the systems or equipment of any other Owner. Each Owner shall bear all expense associated with each individual Unit without right of contribution from any other Owner, except as provided for Party Walls. Each Owner shall be responsible for keeping his Unit clean, free of debris, and in good condition and repair to insure a uniform look of all of the Units in the Project.

Section 3. Insurance. To the extent necessary to fulfill the above obligations, the Association shall obtain insurance coverage in an amount as near as practicable to the full insurable replacement value for loss and damage to the General Common Area and all property owned by the Association.

In addition, the Association may obtain any other insurance it deems necessary in the best interests of the Association or to fulfill its obligations under this Declaration, including but not limited to comprehensive liability insurance, public liability insurance, directors insurance, worker's compensation insurance, and employer's liability insurance.

Each Owner shall obtain insurance coverage in an amount as near as practicable to the full insurable replacement value for loss and damage to the Limited Common Area and the improvements thereon and for his property and Unit. In addition, each Owner shall obtain liability insurance to cover any and all liabilities arising from or in any way connected to the use, enjoyment or control of the Limited Common Area for his Unit. Each Owner shall also obtain such insurance necessary to fulfill his obligations under this Declaration.

Section 4. Indemnity. Each Owner, and any person or entity claiming through him, hereby indemnifies and holds the Association and other Owners in the Project harmless from any and all liability arising from or in any way connected to the use, enjoyment, or control of the Limited Common Area designated for his Unit. As such, each Owner is responsible for obtaining the insurance necessary to insure against any and all risks associated with the use, enjoyment, and control of the Limited Common Area designated for his Unit.

ARTICLE VI.
ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Unit owned within the Project, hereby covenants, and each Owner of any Condominium by acceptance of a deed therefore, whether or not it shall so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges for the purposes provided in this Declaration;
- (b) Special assessments for capital improvements and other matters as provided in this Declaration, such assessments to be established and collected as hereinafter provided; and
- (c) Assessments imposed for the violation of the Rules and Regulations adopted by the Association.

The above assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Condominium against which each such assessment is made. Each such assessment, together with interest, costs, reasonable attorney's fees, shall also be the personal obligation of the person or entity who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Project, for the improvement, maintenance, upkeep, repair and replacement of the Common Area and improvements thereon, for the enforcement of this Declaration, for the administration and operation of the Project, and for such other matters as provided in this Declaration.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment, per each developed Condominium, shall be determined by the Declarant. Condominiums owned by the Declarant shall not be assessed until sold. However, Declarant shall pay its proportionate share of taxes and insurance on Condominiums not purchased.

- (a) From and after January 1 of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a vote of the membership.

- (b) From and after January 1 of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment may be increased above 10% by a vote of two-thirds (2/3) of members voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements and Building Exterior Maintenance. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year or the following year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the General Common Area or upon any other property owned by Owners in common, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of members voting in person or by proxy at a meeting duly called for this purpose.

In addition to maintenance upon the General Common Area, the Association, by vote of two-thirds (2/3) of the members, may provide exterior maintenance upon the Condominiums which are subject to assessment hereunder as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building siding and surfaces, fencing, landscaping, driveways and walkways, and other exterior improvements. The cost of such maintenance or repairs shall be assessed as a special assessment, and in addition to the annual assessments provided in Section 3 above.

The Association may also levy in any assessment year, a special assessment applicable to that year or the following year for the purpose of defraying in whole or in part, the cost of any unanticipated expenditure so long as the expenditure was incurred or will be incurred for the purposes set forth in Section 2.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Date of Commencement of Annual Assessment, Due Date. The annual assessments provided herein shall commence as to each Condominium on the first day of the month following the conveyance of the Condominium. The first annual assessment shall be adjusted according to the number of months remaining in the

calendar year. The Board of Directors shall fix the amount of annual assessment against each Condominium at least thirty days (30) in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid.

Section 7. Effect of Nonpayment of Assessment: Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the date at the rate of eight and one-half (8½ %) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, or abandonment of his Condominium.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments, which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from liability for any assessments thereafter becoming due or from the lien thereof.

Section 9. Assessments for Violation of Rules and Regulations. The Association may levy assessments or impose sanctions as it deems appropriate against an Owner for the violation of its Rules and Regulations by either the Owner or its tenants or guests. Uniform assessments or sanctions for violation of the Rules and Regulations shall be adopted by the Board and published to the Owners and such assessments or sanction shall reasonably relate to the cost, damage, or necessary action taken by the Association due to such violation.

In levying such assessments, the Association shall notify the Owner in writing, by certified mail or by personally delivery, of the reasons for the assessment and the effective date of the assessment at least twenty days prior to the effective date of the assessment. The Owner may submit a written objection or request in writing a hearing objecting to the proposed assessment which objection or request must be received by the Association not less than five days prior to the effective date of the assessment.

If a hearing is requested, it shall be held by the Board of Directors within fifteen days of receipt of the request, if practicable, or the Board may extend such time for a hearing at its sole discretion. Conduct of hearings shall be as established by the Board. The Board of Directors shall review any objection submitted and the substance of any such hearing in making its decision imposing, lessening, or withdrawing the proposed assessment. The Board may make its decision at the hearing or may notify the Owner in writing of the decision as soon as practicable.

This section only applies to assessments imposed under this Section 9 for the violation of Rules and Regulations. It does not apply to annual or special assessments, late fees, interest, or any other costs or fees assessed as a result of the late payment or failure to pay annual or special assessments, including but not limited to those amounts that may be charged under the provisions of Article IV, nor does it apply to late fees, interest, or any other costs or fees assessed as a result of the late payment of an assessment for violation of the Rules and Regulations. No hearing is available under this Declaration to an Owner who fails to pay annual and special assessments or late fees, assessments, costs or interest associated with such failure, nor is a hearing available to an Owner who fails to pay late fees, costs or interest associated with the late payment of an assessment for violation of the Rules and Regulations.

ARTICLE VII. **USE OF PROPERTY AND UNITS**

Section 1. No Unit shall be used for any purpose (including any retail or wholesale or commercial activity), other than a single-family residence. No attached improvements or exterior changes to a Unit or to the Limited Common Area shall be constructed or undertaken without the prior written approval of the Design Committee. No Limited Common Area may be used for improvements, structures storage sheds for landscaping maintenance equipment, patios, decks, fences, landscaping features, or the like, without the prior written approval of the Design Committee. All improvements and structures shall conform in appearance with said Unit.

Section 2. No sign or other advertising device of any nature shall be placed upon any Limited or General Common Area or Unit except as permitted by the Design Committee as hereinafter defined; provided, however, that real estate for sale signs shall be permitted as long as their size does not exceed eighteen (18) inches by twenty-four (24) inches.

Section 3. No temporary building, trailer, garage, tent or other structure of any type shall be used temporarily or permanently as a residence or overnight shelter on any Limited or General Common Area. Parking of boats, trailers, campers, motor homes, and derelict vehicles of any kind on the General Common Area is not permitted. No boat, camper, recreational vehicle, horse trailer, or any other kind of trailer shall be kept on the Limited Common Area for periods longer than six (6) months unless it is within an enclosed building or otherwise completely screened from public view from outside the Limited Common Area.

Section 4. No trash cans or receptacles of any description (whether for gas, oil or any other substance), shall be visible but rather shall be protected by enclosure or screened from view, except on the evening before and the day of the designated trash pickup day.

Section 5. No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Limited Common Area, except building materials used during the course of construction, and kept in a reasonable and orderly manner. No machinery or equipment shall be placed or operated upon any Limited Common Area except such machinery as is used in the maintenance of a private residence and is enclosed by a fence or other enclosure which precludes visibility of such machinery or equipment. At no time shall abandoned equipment or machinery, junk vehicles, or other trash or debris of any description be allowed to accumulate.

Section 6. No noxious weeds shall be allowed to accumulate on the Limited Common Area or General Common Area

Section 7. No noxious or offensive activity shall be carried on in any Unit or Limited or General Common Area nor shall anything be done or placed in or on any Unit or Limited or General Common Area which is or may become a nuisance to another Condominium Owner. No activities shall be conducted on any Unit or Limited or General Common Area and no improvements constructed thereon which are or might be unsafe or hazardous to any person or property.

Section 8. No light shall be emitted from any Unit or Limited Common Area which is unreasonably bright. All exterior lighting shall comply with the City of Hailey Dark Sky Ordinance. No sound shall be emitted from any Unit or any of the Limited or General Common Area that is unreasonably loud or annoying, including, but not limited to, sounds from electronic devices, radio controlled airplanes or other hobbies or sporting activities. No odor shall be emitted from any Unit or Limited or General Common Area that is noxious or offensive to others. No snowmobiles, motorbikes and other off-road vehicles may be on the Property, except they may be used on roads or streets within the Project to access public roads and highways from any Unit.

Section 9. Two or more adjoining Units which under the same ownership may be combined and developed as one Unit, with the prior approval of the Design Committee.

Section 10. Only household pets, such as dogs and cats and birds, shall be permitted in the Limited or General Common Area or in a Unit. All such pets will be subject to expulsion from the Project upon complaint by two (2) or more Association Members, and upon a finding by the Association that said animal creates a continuing nuisance. The Association shall have the right to establish rules and regulations governing the keeping of such household pets by Condominium Owners on any and all parts of the Project.

Section 11. No motor vehicles of any kind may be parked in the General Common Area or the Limited Common Areas, except for the designated driveways for the Units.

ARTICLE VIII.
**REQUIRED APPROVAL OF ALL CHANGES TO LIMITED COMMON AREAS
AND EXTERIORS OF UNITS**

Section 1. No Changes Without Approval. Except for very minor or temporary changes that do not impact other Owners, no changes in the existing state of any Limited Common Area or to the exterior of any Unit shall be made or permitted without the prior written approval of the Design Committee. Changes in the existing state of the Limited Common Area or to the exterior of a Unit shall include without limitation, fences, the construction of any building, structure or other improvement, the excavation, filling or similar disturbance of the surface of land, the clearing or landscaping or planting of trees, shrubs, lawns or plants, the building of patios or decks, any change of color, texture or exterior appearance of a Unit, any additions to a Unit, or changes to any previously approved change in the existing state of property.

Section 2. Considerations for Approval. The Design Committee shall have complete discretion approve or disapprove any change in the existing state of any Limited Common area or any Unit but shall exercise such discretion with the following objectives in mind: to carry out the general purposes expressed in this Declaration; to prevent violation of any specific provision of this Declaration or any Supplemental Declaration; to prevent any change which would be unsafe or hazardous to any persons or property; to minimize obstruction or diminution the view of others; to preserve visual continuity of the area and to prevent a marked or unnecessary transition between improved and unimproved areas and any sharp definition or boundaries of property ownership; to assure that any change will be of good and attractive design and in harmony with the setting of the area; to assure that materials and workmanship for all improvements are of high quality comparable to other improvements in the area; and to assure that any change will require as little maintenance as possible so as to assure a better appearing area under all conditions.

Section 3. Required Procedure for Approval. Prior to expenditure of any substantial time or funds in the planning of any proposed change in the existing state of any Limited Common Area or any Unit, the Owners of such property shall advise the Design Committee in writing of the general nature of the proposed change and shall, if requested by the Design Committee, meet with a member or members of the Design Committee to discuss the proposed change and furnish the Design Committee with a plan and specifications for comment and review. There shall also be furnished to the Design Committee any and all further information regarding the proposed change that the Design Committee may reasonably require to allow it to make an informed decision on whether or not to grant approval of the change. No proposed change shall be deemed to have been approved by the Design Committee unless its approval is in writing by at least two (2) members of the Design Committee; provided, approval shall be deemed given if the Design Committee fails to approve or disapprove a proposed change or to make additional requirements or request additional information within thirty (30) days after a full and complete description of the proposed change has been furnished in writing to the Design Committee with a written and specific request for approval.

After approval by the Design Committee, the proposed change shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed change and any plans and specifications given to the Design Committee. Failure to accomplish the change within one (1) year after the date of approval or to complete the proposed change strictly in accordance with the description thereof and plans and specifications shall operate to automatically revoke the approval of the proposed change, and, upon demand by the Design Committee, the Limited Common Area or Unit shall be restored as nearly as possible to its state existing prior to any work in connection with the proposed change. The Design Committee and its duly appointed agents may enter upon any property at any reasonable time or times to inspect the progress or status of any changes in the existing state of property being made or which may have been made. The Design Committee shall have the right and authority to record a notice to show that any particular change in the existing state of property has not been approved or that any approval given has been automatically revoked.

ARTICLE IX. **DESIGN COMMITTEE**

The Design Committee shall consist of three (3) members, each of whom must be an Owner in good standing in the Project. There may be designated one (1) or more alternate members for each regular member of the Design Committee who shall be authorized to act in the place and stead of the member for whom they are an alternate in the event of his absence or inability to act. Any other members and alternate members of the Design Committee shall be appointed by and shall serve at the pleasure of the Association. The Association shall compensate the Design Committee members and alternate members for actual and reasonable expenses incurred working for the Design Committee.

The vote or written consent of any two (2) members shall constitute action of the Design Committee. The Design Committee shall report in writing all approvals and disapprovals of changes in the existing state of property to the Association, shall keep a permanent record of all such reported action. The Association shall, upon written request of any interested person, furnish a certificate with respect to approval or disapproval by the Design Committee of any change in the existing state of property.

The Design Committee shall adopt guidelines that govern the development, design, and construction process for additions, alterations, and improvements within the Project that are in keeping with the purposes and provisions of this Declaration. The Design Committee shall consider and act upon proposals submitted to it in accordance with such guidelines. Such guidelines may be amended from time to time by the Board.

ARTICLE X.
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions, restrictions, easements, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, including the Articles, Bylaws, Rules and Regulations, or any guidelines adopted pursuant to this Declaration. Failure by the Association or by any Owner to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party in any action to enforce or interpret the terms of this Declaration, the Articles, Bylaws, Rules and Regulations, or any guidelines adopted pursuant to this Declaration, shall be entitled to an award of their costs and attorney fees, including costs and fees on appeal.

Section 2. Severability. Invalidation of any of one of the provisions of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The provisions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may only be amended by an instrument signed by not less than seventy-five (75%) of the Owners. Any amendment must be recorded. Any such amendment shall be binding upon every Owner and every Condominium whether or not the burdens thereon are increased or decreased by such amendment and whether or not the Owner of each and every Condominium consents thereto.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Project with the consent of two-thirds (2/3) of members.

EXHIBIT A

**Winterhaven Condominiums, Lots 3, 4, 5, & 6, Block 62, Woodside Subdivision No. 15,
according to the official plat of record of Blaine County, State of Idaho.**

EXHIBIT B

The percentage of ownership in the Common Area of Winterhaven Condominium Association which is allocated for 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 the Idaho Code and this Condominium Declaration, is as follows:

<u>Unit No.</u>	<u>Percent of Common Area</u>
1	5.56%
2	5.56%
3	5.56%
4	5.56%
5	5.56%
6	5.56%
7	5.56%
8	5.56%
9	5.56%
10	5.56%
11	5.56%
12	5.56%
13	5.56%
14	5.56%
15	5.56%
16	5.56%
17	5.56%
18	5.56%