

**DECLARATION OF RESTRICTIVE COVENANTS
AND CONDITIONS FOR
TRAIL CREEK ESTATES ADDITION 1
HOMEOWNER'S ASSOCIATION**

THIS HOMEOWNERS ASSOCIATION DECLARATION AND COVENANTS (hereafter "Declaration"), is hereby made as of this ____ day of May 2007, by Trail Creek Development, LLC, whose address is: P.O Box 1533 Pocatello, Idaho, 83204, hereinafter referred to as "Grantor".

RECITALS:

WHEREAS Grantor is the owner of certain real property in the County of Bannock, State of Idaho, which shall hereinafter be referred to as the "Property" and is more particularly described as follows:

[See Legal Description Attached Hereto as Exhibit "A"]

WHEREAS The property is in an area of much natural beauty, including distinctive terrain features;

WHEREAS It is the desire and intent of Grantor to create a planned development community for residential use, in which such natural beauty shall be substantially preserved for the enjoyment and convenience of the persons living in such community; and

WHEREAS The covenants, conditions and restrictions established by this Declaration are intended to secure the objectives of Grantor;

DECLARATION:

NOW, THEREFORE, Grantor hereby declares that all lots on the Property sold, transferred or conveyed by the Grantor and/or its successors and assigns are and shall be held, owned, conveyed, encumbered, leased, used, occupied and/or improved subject to the following uniform covenants, conditions, restrictions and equitable servitudes. The restrictions set forth herein shall run with all lots on the Property sold, transferred or conveyed by the Grantor and/or its successors and assigns; shall be binding upon all persons having or acquiring any interest in all lots in the Property sold, transferred or conveyed by the Grantor and/or its successors and assigns or any part thereof and their successors and assigns; shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding

upon Grantor, its successors and assigns. But nothing contained herein shall limit the right of Grantor to use the lots of the Property that are not yet sold, transferred or conveyed, within the limits of the law.

ARTICLE I **DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

1.01 “UNIT” and/or “LOT” shall mean each separate residential home and/or residential lot associated with the real property described with particularity above, as well as each separate residence in any twin-home located on and/or associated with the real property described with particularity above.

1.02 “OWNER” shall mean (a) the person or persons or other legal entity or entities, including Grantor, holding an aggregate fee simple interest in a unit or, as the case may be, (b) the purchaser of a unit under an executory contract of sale, but excluding those having such interest as security for the performance of an obligation.

1.03 “UNINCORPORATED NONPROFIT HOMEOWNER’S ASSOCIATION” (hereafter “Association”), shall mean an unincorporated organization consisting of members as defined below and shall be named the TRAIL CREEK HOMEOWNER’S ASSOCIATION, as designated by that certain Unincorporated Nonprofit Association Appointment of Agent for Service of Process which was filed with the Idaho Secretary of State’s Office on or about October 2006.

1.04 “MEMBER” shall mean a person or persons who is (are) the owner(s) of a unit. There shall be only one member per unit owner. Should a husband and wife, or any other type of co-ownership of a unit exist, said husband and wife or other co-owners shall constitute one member and shall hold one membership in the Association. For all purposes of the Association there shall be only one vote per unit.

ARTICLE II **GENERAL RESTRICTIONS**

The Property shall be held, used and enjoyed subject to the following limitations, restrictions, covenants and conditions:

2.01 Ownership. Nothing herein shall prevent the transfer or sale of any unit to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property. However, as set forth herein, should a husband and wife, or any other type of co-ownership of a unit exist, said husband and wife or other co-owners shall constitute one member and shall hold one membership in the Association. For all purposes of the Association there shall be only one vote per unit.

2.02 Signs and Lighting. No signs of any character shall be placed or maintained on any unit, except:

- (1) one sign advertising the premise for sale or rent, which sign shall not exceed two (2) square feet;
- (2) one sign professionally prepared identifying the name and/or address of the owner's or occupant's unit, which sign shall not exceed two (2) square feet;

Flashing light signs shall not be permitted. Any light used to illuminate signs or for any other purposes shall be so arranged as to reflect the light away from, and not be obtrusive to, other units and away from the vision of passing motorists.

2.03 Animals. No animals of any kind shall be raised, bred or kept, except that each unit can have two (2) dogs, and/or two (2) cats, and/or other one (1) other household natured pet may be kept such as a bird or an aquarium for fish, provided that they are not kept, bred or maintained for any commercial purpose. All owners of animals shall exercise such proper care and control of their animal or animals to prevent them from becoming a nuisance or a noisy animal. "NUISANCE" means any noisy animal, any vicious animal or any animal which destroys, or in any other manner injures clothing, washing, garbage containers, gardens, flower beds, lawns, trees shrubbery, or any other property. Excessive, continued or untimely barking, molesting passersby, chasing vehicles, habitually attacking other animals, trespassing upon private property in such a manner as to damage property shall also be deemed a nuisance. "NOISY ANIMAL" means any animal which habitually, constantly or frequently disturbs the sleep, peace or quiet of any person.

2.04 Architectural Control. No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure with a lot drainage plan has been approved by the Architectural Control Committee as to quality of material, color, workmanship and harmony of external design with existing structures and as to location with respect to topography and finished grade elevation. Roof pitches on two story homes shall be 5/12 or greater and on single level homes, 6/12 or greater. No structure shall be built on any lot unless it meets with the approval of the Committee hereinafter referred to, or if there is no committee, it shall conform to be in harmony with the existing structures in the subdivision. The committee's approval or disapproval as required in these covenants shall be in

writing. In the event the committee, or designated representatives, fail to approve or disapprove within thirty (30) days after plans and specifications have submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will be deemed to have been fully complied with. The architectural committee is composed of Jonathan Kucera, Chester Lackey and Raymond Langhaim, all of Pocatello, Idaho. A majority of the committee may designate a representative to act for it. So long as Trail Creek Development, LLC owns any lots in the subdivision the authority and functions of the architectural committee shall be lodged in and exercised by them. At the time a certificate of occupancy is given for the home built on the last vacant residential lot in the Trail Creek Estates 1st Addition subdivision the architectural control committee is dissolved and in turn the existing committee may appoint at least three lot owners of Trail Creek Estates 1st Addition to replace them on the committee. The then formed interim committee will have all the powers and rights of architectural control and will be responsible to call by notice in writing, a meeting of all homeowners within the subdivision to elect a standing architectural control committee for the subdivision.

2.05 Offensive Activity. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any unit and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other unit in the vicinity thereof or to its occupants. Trash, garbage or other waste shall be kept in sanitary containers. Garbage shall not be visible from any other unit or street and shall be disposed of to comply with health standards of the State of Idaho or any division thereof. No discharge of firearms shall be permitted on the Property. No noise or other nuisance shall be permitted to exist or operate upon any unit so as to be offensive or detrimental to any other unit or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any unit on the Property without the prior written approval of the Association.

2.06 Construction and/or Repair of Buildings. All buildings, homes, residential units, and/or improvements shall be built on site within two (2) year of the owner's purchase of said unit or lot, with no "pre-built" or manufactured homes to be moved onto any lot on the Property. Additionally, the following shall apply as to all construction, repair and landscaping for all units:

(1) All structures, fences, buildings, walls, terraces or other construction shall not be commenced unless plans and specifications, plot plans and grading plans have been submitted to and approved by the Grantors;

(2) No building, or structure shall be closer than twenty-five (25) feet minimum to a front easement or property line, seven (7) feet to a side property line and twenty (20) feet to a back property line;

(3) No dwelling shall be permitted on the Property having a ground floor area of less than 1,250 square feet with a total area of not less than 1,500 square feet for a one-story dwelling and not less than 1,650 square feet on the above grade floors of a two-story dwelling so long as there is at least a three (3) car garage. All 3-car garages are to have either 3 separate single garage door openings, each of which are to be at least 9 feet in width, or a double garage door opening of at least 16 feet in conjunction with a single garage door opening of at least 9 feet.

Block 3, Lots 2, 3, 4, 5, 9, 10, 11 and Block 1 lots 1 and 2 shall have a minimum of 1,700 square feet above grade and a minimum total of 2,000 square feet for a one story dwelling and 2,200 square feet on the above grade floors for a two story dwelling so long as there is at least a three (3) car garage. All 3-car garages are to have either 3 separate single garage door openings, each of which are to be at least 9 feet in width, or a double garage door opening of at least 16 feet in conjunction with a single garage door opening of at least 9 feet.

Each dwelling may have a minimum two car garage having an exterior width of not less than 24 feet attached to the home with two single garage doors of at least 9 feet in width each or one door of at least 18 feet in width. However, if homes are constructed with 2 car garages, then minimum square footage shall be increased by 150 square feet above grade, added to the minimum for a 3 car dwelling.

In the entire subdivision, garages may only be used for the storage of automobiles or other personal property and may not be converted to living area unless a new garage is built at the same time of garage conversion and is approved by both the architectural review committee and the City.

Additionally, no improvement upon the Property or any of the units thereon shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the unit owner thereof.

(4) All buildings and structures shall be erected or constructed so that one hundred percent (100%) of the front of the building is constructed with brick, brick veneer, stone, stone veneer, wood, wood veneer, and/or stucco. The sides and back of all buildings and structures can be constructed from the above listed materials and/or in addition with vinyl siding, steel siding, or hardy wood plank.

(5) All buildings and structures must have wood shingle roofs, simulated wood shingle roofs, tile roofs, simulated tile roofs, or composite shingles (300 weight), unless express approval to use other materials is obtained from the Grantors. All shingle materials must be fireproofed. A certificate from the manufacturer must be produced to the Grantors evidencing the fireproofed nature of any materials used for roofing;

(6) All yards shall be landscaped in a professional-like manner, and shall commence not later than ninety (90) days from the date of occupancy (weather permitting). Homeowners are responsible for the maintenance of the “Parkway” between the curb and the sidewalk adjacent to their respective property. Three (3) trees, of at least 1 ½” caliper, per street frontage area are to be evenly spaced and planted in the “Parkway” as part of the landscaping for each yard. These trees are to be of the species Little Leaf Linden, (*Tilia cordata*). Certain species of trees will not be allowed in this subdivision. These include Siberian Elm (*Ulmus pumila*), American Elm (*Ulmus Americana*), Russian Olive (*Eleagnus Spp.*), all cottonwood and poplar species (*populus spp.*), except Quaking Aspen (*P. tremuloides*). Trees are not to exceed 40 ft. in height. At the time any tree exceeds this height of 40 feet, it must be trimmed or removed.

(7) All fences must be approved by the Grantor prior to construction and are not to exceed 72 inches (6 feet) in height. All fences, except those that border the trail system, must be white vinyl fencing. No fences will be permitted in the front yard of any unit. This area is defined as the front of the unit to the curb. Additionally, chain link fences are only permitted for dog runs so long as they are placed at the rear of the property. All fencing that borders the trail must be constructed of black wrought iron and be five (5) feet in height;

(8) Each unit owner will design and be responsible for on-site lot grading, in accordance with Pocatello Municipal Code, to facilitate protection of the unit owner’s residence from runoff. Lot grading should be completed in accordance with or similar to those designs provided by HUD-FFA in their manual (4140.1); and as approved by the City.

2.07 Improvements and Alterations. There shall be no excavation or construction or alteration which in any way alters the exterior appearance of any improvement on the Property, nor removal of any improvement (other than repairs or rebuilding pursuant to Section 2.05 hereof) without the prior approval of the Grantor or the Association.

2.08 Unightly Articles. No unsightly articles shall be permitted to remain so as to be visible from adjoining units. Without limiting the generality of the foregoing, trailers, mobile homes, trucks other than pickups, boats, tractors, vehicles other than automobiles, automobiles that are not operable, campers not on a truck, snowmobiles, snow removal equipment and garden or maintenance equipment shall be kept at all times, except when in actual use, out of sight in a garage or behind the front edge of the unit/dwelling/structure and screened from street view. Facilities for hanging, drying or airing clothing or household fabrics shall be installed exclusively within a fenced service yard or otherwise concealed and shall not be visible from neighboring property. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk

materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on the Property or in or around any unit.

2.09 Trash Containers and Collection. All garbage and trash shall be placed and kept in covered containers of a type and style as approved by the City of Pocatello. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection. All rubbish, trash or garbage shall be removed from the lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any lot.

2.10 Temporary Structures. No trailers, temporary buildings, tents or shacks shall be permitted upon the Property except on a temporary basis during repair of a unit as approved by the Association.

2.11 Plants, Grass and Weeds. It shall be the duty of the Grantor or the Association to enforce the maintenance and cleanliness of any and all lots on the premises. The Association shall have the right to perform any and all maintenance upon any lot/unit as is required by this Declaration. Prior to doing so, the Association shall provide written notice to the owner of said lot/unit. In the event the owner fails or refuses to maintain said lot/unit the Association shall do so and shall charge the owner of the lot/unit all costs plus twenty percent (20%) per annum. Interest shall accrue on said amount until paid in full at the rate of eighteen percent (18%) per annum. Any of said sums expended or paid as described herein by the Grantor or the Association shall be added to and become a part of the next semi-annual assessment for the unit owner. It shall also be the duty of the Association to control the spread of and to eradicate noxious weeds on the common areas of the Property and to otherwise comply with any applicable ordinance, law, rule, or regulation pertaining to the removal and control of noxious weeds on the common areas of the Property. However, it shall be the duty of the unit owner to control the spread of and to eradicate all noxious weeds on the unit owner's property and to otherwise comply with any applicable ordinance, law, rule, or regulation pertaining to the removal and control of noxious weeds. "NOXIOUS WEEDS" shall mean those plants which are injurious to public health, crops, livestock, land or other property, and/or which are unsightly.

2.12 Hazardous Materials. No hazardous materials of any type may be used, stored or disbursed on the Property in violation of any applicable environmental law, rule or regulation.

2.13 Use of Units. No residence shall be used for any purpose other than single-family residential purposes. No gainful occupation, profession, trade or other nonresidential use shall be conducted on or in any such unit or on the Property. Additionally, no single family home on the property can be rented. However, nothing in this Declaration shall prevent the rental of a townhouse unit by the owner thereof for residential purposes, on either a short or long term basis.

2.14 Antenna. There shall be no antenna of any sort either installed or maintained, upon the Property, unless approved by the committee. Satellite dishes and small internet antennas made a part of the home structure and measuring 18” or less in diameter are precluded from this restriction.

2.15 Mailbox Location. Mailboxes shall be individual mailboxes furnished by homeowner/builder.

2.16 Construction. Notwithstanding any provision herein contained to the contrary, it shall be expressly permissible for the builder of homes in the subdivision to maintain during the period of construction and sale of said homes, upon such portion of the premises as such builder may choose, such facilities as in the sole opinion of said builder may be reasonably required, convenient or incidental to the construction and sale of said homes, including but not without limitation, a business office, storage area, construction yard, signs, model units and sales office.

2.17 Restriction on Further Subdivision. No lot in the subdivision shall be further subdivided or separated into small lots, nor shall any less than all of such lots as originally platted be conveyed or transferred or any easement or other interest given therein, except for public utilities, without the prior written approval of the Grantor or the Association.

ARTICLE III **UNICORPORATED NONPROFIT HOMEOWNER’S ASSOCIATION**

3.01 Creation of Association. Unless and until Grantor conveys by written deed, ownership to each and every unit of the Property there shall be no Association, and all authority, decisions, assessments, restrictions and/or powers reserved to the Association herein shall be held, maintained and administered solely by Grantor. All restrictions, limitations and/or conditions described herein shall be in full force and effect regardless of whether Grantor has conveyed by written deed, the ownership to each and every unit of the Property. Upon the conveyance by the Grantor of all of the units, the Trail Creek Homeowner’s Association, as defined above, shall be created pursuant to Idaho Code § 53-701 et seq., and/or the then existing Uniform Unincorporated Nonprofit Association Act as adopted by the State of Idaho. Membership of the Association shall be as defined in Article I, Clause 1.04 above.

3.02 Officers of the Association. Upon the creation of the Trail Creek Homeowner’s Association, as set forth above, the then existing members shall elect by majority vote the following officers/persons who are authorized to manage the affairs of the Association by the majority vote of the members: (1) a President; (2) a Secretary; (3) a Treasurer; and (4) an Agent, who shall be named by appointment in a formal statement which shall be filed with the Idaho Secretary of State’s Office pursuant to Idaho Code § 53-710. In the event of the death, incapacity or resignation of the above named officers and/or Agent, the remaining members shall

have full authority to designate successor officers and/or an Agent pursuant to Idaho Code § 53-710(3). Unless altered by the majority vote of the members, officers of the Association shall perform the duties of their office for a period of two years, at which time new officers shall be elected by a majority vote of the members at the annual meeting of the Association which shall be held at the same time and place each year as designated by the Grantor. The responsibilities of the officers will be as follows:

- A. **President.** The President of the Association shall be responsible for carrying out the terms, conditions, requirements, limitations, restrictions and covenants that exist upon the creation of the Association and/or that are approved and/or are modified at any time by the members of the Association;
- B. **Secretary.** The Secretary of the Association shall be responsible for maintaining the records of the Association including minutes of meetings, notices, mailings, and any other records that arise due to the operation of the Association;
- C. **Treasurer.** The Treasurer of the Association shall be responsible for the collection of the monthly assessments from the owners and for the maintaining of any accounts held by the Association and for any payments made by the Association to third persons as designated by the President of the Association;
- D. **Agent.** The Agent of the Association shall be responsible for receiving service on behalf of the Association from third persons as set forth in Idaho Code § 53-710.

3.03 Voting within the Association. Once Grantor has conveyed by written deed, ownership to each and every unit of the Property, which shall create said Association, all Association business, decisions, restrictions, authority and powers shall be determined by majority vote of the members as follows: there shall be allowed one (1) vote for each unit owned. Should a husband and wife, or any other type, kind or degree of co-ownership of a unit exist, said husband and wife or other co-owners shall be constituted as one member in the Association.

3.05 Deadlock. In the event the Members are equally divided in their vote on the basis of any aspect of the management of the Association and/or the Property, business and/or affairs of the Association, and the deadlock is preventing action or non-action by the Association, then the Association may submit the deadlock to be decided by the President of the Association.

3.06 Purposes of the Association. The purposes of creating the Association are as follows:

(1) to provide for the maintenance, repair and upkeep of the common areas by creating and collecting a general monthly assessment together with collecting any special assessments as are necessary from the members to pay for the expenses of the common areas of the Property, which may include but are not limited to storm water retention ponds, retention walls, private roadways and/or streets, walkways, mailboxes, park areas, grassy areas and/or any and all other common areas associated or created with respect to the Property and/or for any other legal purpose;

- (i) the amount of the regular semi-annual assessment will be determined by Grantor, will be reflected in the buy/sell agreement for each lot, and will be subject to review annually by the Grantor or the Association, once it is active, for purposes of determining increases and/or decreases;
- (ii) all other assessments will be determined by the Grantor or the President of the Association;
- (iii) each assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the owner(s) of the unit assessed, and shall constitute a lien and charge upon the unit;
- (iv) in the event the Association is required to file any Notice of Lien or lawsuit, legal proceeding, administrative proceeding or the like against any member to collect any assessment and/or to enforce compliance with any other provision of this Declaration, all the legal fees, costs, expenses and interest associated with said action shall likewise constitute a separate, distinct and personal debt and obligation of the owner(s) and shall become a lien on the lot assessed pursuant to applicable Idaho law;

(2) to manage the Property by the majority vote of the members;

(3) to maintain the common areas, and enforce compliance with the covenants, conditions, limitations, restrictions and equitable servitudes of the Property as contained herein including the collection of any and all Association Fees that are due and owing by any member; the enforcement of compliance with this Declaration shall be accomplished by any and all legal means available to the Association including but not limited to recording of a Notice of Lien, filing of legal suit or action, and/or the like; and

(4) to provide a fair and equitable means of allowing the members to collectively resolve any and all issues or disputes not contemplated by Grantor with

regard to the Property. The Association shall have all the rights and abilities to enforce the terms and conditions contained in this Declaration

3.07 Non-Liability of Officers, the Agent and/or Members of the Association.

Neither the Officers, nor the Agent nor any member of the Association thereof shall be liable to any unit owner for any loss, damage or injury arising out of or in any way connected with the performance of the Association hereunder, unless due to the negligence, willful misconduct or bad faith of said persons.

3.08 Reservations to the Grantor/Association. The Grantor hereby reserves to itself an easement on each residential lot on the Property and/or associated with the Property or the Association for the installation and maintenance of any and all utilities and drainage facilities or the like. Said easement may or may not be identified on the recorded plat. After the creation of the Association, the easement created and described herein in favor of the Grantor shall pass by assignment and succession from the Grantor to the Association.

3.09 Association Fees. At all times while Grantor maintains the Association as set forth herein, and at all times thereafter, the Association Fee for each and every unit, unless changed by an amendment to this Declaration, shall be \$300 annually. This \$300 annual assessment is due and owing by each unit owner in two semi-annual payments on or before the 15th of March and the 15th of September. Said payments are to be made payable to: _____ and mailed to the following address: _____, Pocatello, Idaho 83201. Furthermore, if at any time a unit is sold, conveyed or transferred in any way, a \$150 exchange fee shall be assessed by the Grantor and/or the Association to the member(s) obtaining said unit.

(1) If at any time a member of the Association fails to make the regular semi-annual payment, or the exchange fee described more fully above, a monthly late fee of \$10.00 shall accrue on each unpaid assessment for each and every month said assessment goes unpaid.

(2) If after 90 days a member's unpaid assessments together with all late fees are not paid the Grantor and/or the Association shall cause a lien to be filed for the amount that is unpaid and shall charge the member against whom the lien is filed a filing fee of \$100.00 for filing fees and attorney expenses.

(3) Grantor reserves the right to increase or decrease these Association Fees, late fees or filing fees at any time by written notice to all existing members and by recording of an Addendum to this Declaration. The failure of any member to pay these fees shall also result in the Association's collection of these fees as outlined herein. The Grantor's and/or Association's failure to timely exercise any rights provided by this Declaration shall not constitute a waiver of those rights.

ARTICLE IV
MISCELLANEOUS

4.01 Term. The covenants, conditions, limitations and restrictions of this Declaration shall run until December 31, 2026, unless amended as herein provided. After December 31, 2026, such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument as set forth below.

4.02 Amendment/Extinguishment. The provisions of this Declaration, other than this Article, may be amended and/or extinguished by unanimous vote of the members of the Association and such an amendment and/or extinguishment shall be effective upon its recordation with the Bannock County Recorder.

4.03 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the property.

4.04 Enforcement and Non-Waiver.

A. **Right of Enforcement.** Except as otherwise provided herein, any owner of any unit within the Property shall have the right to enforce any or all of the provisions of this Declaration upon any unit within the Property and the Owners thereof. The prevailing party in any such enforcement action shall be entitled to recover their reasonable attorney fees and costs incurred.

B. **Violations and Nuisance.** Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action by Grantor or the Association.

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

D. **Remedies Cumulative.** Each remedy provided by this Declaration is cumulative and not exclusive.

E. Non-Waiver. The failure to enforce any of the provisions of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provisions of said restrictions.

4.05 Construction.

A. Restrictions Construed Together. All of the provisions of this Declaration shall be liberally construed together to promote and effectuate the fundamental purposes set forth in the preamble and throughout the remainder of this Declaration.

B. Restrictions Severable. Notwithstanding the provisions of the foregoing paragraph A, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

C. Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

D. Captions. All captions and titles used in this Declaration are intended solely for convenience or reference and shall not affect that which is set forth in any of the provisions hereof.

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

[Grantor's Name]

By: _____
Chester Lackey, Managing Member

By: _____
Jonathan Kucera, Managing Member

STATE OF IDAHO)
 : ss
County of Bannock)

On the _____ day of October, 2006, before me, the undersigned, a notary public in and for said State, personally appeared Chester Lackey and Jonathan Kucera, Managing Members of

Trail Creek Development, LLC, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he 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.

(SEAL)

NOTARY PUBLIC FOR IDAHO,
Residing at:_____
My Commission Expires:_____

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

[Insert Here]