

*J. C. Callahan*

CONDOMINIUM DECLARATION

FOR

OROFINO BY STRAIGHT CREEK CONDOMINIUMS

THIS DECLARATION, made and executed this 26<sup>th</sup> day of SEPTEMBER, 1972, by HICO INVESTMENT COMPANY, a Delaware corporation, hereinafter called the "Declarant",

WITNESSETH THAT:

WHEREAS, the Declarant is the owner of certain real property situate in the County of Summit, State of Colorado, and described more particularly on Exhibit A attached hereto; and

WHEREAS, the Declarant desires to construct and create upon and with respect to said real property a condominium project under the Condominium Ownership Act of the State of Colorado, said project to include fifteen separate residential buildings, each containing certain numbers of condominium units, and other improvements.

NOW, THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the land, shall be a burden and a benefit to the Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, personal representatives, devisees and assigns.

I. DEFINITIONS.

1.1 Real Property. "Real Property" means that certain real property located in the County of Summit, State of Colorado, described on Exhibit A attached hereto.

1.2 Building. "Building" means one of the building improvements to be constructed on the Real Property, as shown on the Condominium Map.

1.3 Project. "Project" means the Real Property and all Buildings and other improvements on the Real Property.

1.4 Condominium Map. "Condominium Map" means the engineering survey of the Project to be prepared and recorded in the Real Property records of Summit County, Colorado, in accordance with the provisions set forth in the following Section II of this Declaration.

1.5 Unit. "Unit" means an individual air space unit, consisting of enclosed rooms occupying part of a Building and bounded by the interior surfaces of the walls, floors, ceilings, windows, doors and built-in fireplaces thereof, as shown and numbered on the Condominium Map, together with all fixtures and improvements therein contained. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit insofar as they are necessary for the support or full use and enjoyment of another Unit: bearing walls, floors, ceilings and roofs (except the interior surfaces thereof); foundations, shafts, reservoirs, tanks, pumps and other surfaces

used by more than one Unit; and pipes, vents, ducts, flues, chutes, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. The interior surfaces of a window or door means the point at which such surfaces are located when such windows or doors are closed. The perimeter windows and doors themselves are part of the Common Elements, as herein defined.

1.6 Common Elements. "Common Elements" means all of the Project except all Units.

1.7 Condominium Unit. "Condominium Unit" means a Unit together with the undivided interest in the Common Elements appurtenant to that Unit, as described in the following paragraph 4.1 of this Declaration.

1.8 Owner. "Owner" means any person or persons or entity or entities, including Declarant, at any time owning a Condominium Unit. The term "Owner" shall not refer to any Mortgagee unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

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

1.10 Mortgagee. "Mortgagee" means any person named as the mortgagee or beneficiary under any Mortgage under which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage.

1.11 Association. "Association" means Orofino By Straight Creek Condominium Association, a Colorado corporation not for profit, its successors and assigns, organized to be the Association referred to herein.

1.12 General Common Elements. "General Common Elements" means all Common Elements except Limited Common Elements.

1.13 Limited Common Elements. "Limited Common Elements" means any Common Elements designated for exclusive use by Owners of particular Condominium Units. Structural separations between Units or the space which would be occupied by such structural separations may become Limited Common Elements for the exclusive use of the Owner or Owners of the Units on either side thereof as provided in the paragraph hereof entitled Right To Combine Units. Any storage units which are identified on the Condominium Map with the same number or other designation by which a Unit is identified shall be Limited Common Elements for the exclusive use of the Owner or Owners of the Unit bearing the same number or designation. Outside decks identified on the Condominium Map as "L.C.E. DECKS" also shall be Limited Common Elements for the exclusive use of the Owner or Owners of the Unit to which such deck is appurtenant.

1.14 Common Expenses. "Common Expenses" means: (a) all expenses for the maintenance, repair, operation, management and administration of the common elements; (b) taxes and special assessments until the Condominium Units are separately assessed as provided herein; (c) premiums for all insurance which the Association is required or permitted to maintain pursuant hereto; (d) common lighting, heating, water charges, trash collection and sewer service charges; (e) wages for Association employees; (f) legal and accounting fees; (g) the creation of a reasonable contingency reserve, surplus and/or sinking fund; (h) expenses declared to be Common Expenses by the provisions of this Declaration and by the By-Laws of the Association; (i) all expenses incurred with respect to the ownership by the Association of

any Condominium Unit or Units; (j) all sums lawfully assessed against the Common Elements by the Association; and (k) 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.

## II. CONDOMINIUM MAP.

The Condominium Map shall not be filed for record until the Buildings have been substantially completed in order to permit the location both horizontally and vertically of the Units. Upon substantial completion of the Buildings, and prior to the first conveyance of a Condominium Unit, the Declarant shall cause the Condominium Map to be filed for record. The Condominium Map shall depict and show at least the following: (a) the legal description of the surface of the Real Property; (b) the linear measurements and location, with reference to the exterior boundaries of the Real Property, of the Buildings and all other improvements built on the Real Property; (c) each Building number or designation; (d) the floor plans, which shall indicate the perimeter boundaries of each Unit; (e) the number or designation of each Unit; (f) the linear dimensions of each Unit; (g) the elevation plans of each Building, which shall depict the upper and lower boundaries of each Unit; and (h) such other information as may be included thereon in the discretion of the Declarant.

Declarant reserves the right to amend The Condominium Map, from time to time, to conform the same to the actual physical location of the constructed improvements and to establish, vacate and relocate easements and access road easements.

The Condominium Map and any amendments thereto shall be filed for record in the Real Property Records of the County of Summit, State of Colorado.

There shall be filed for record, as part of The Condominium Map, or any amendment thereto, the certificate of a registered architect or licensed professional engineer or surveyor certifying that such map accurately depicts the matters and things shown thereon.

## III. DECLARATION OF INTENTION AND PURPOSE.

Declarant hereby declares 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 plan and scheme of condominium ownership referred to herein, 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 Declarant, its successors and assigns, and to all parties hereafter owning any interest in the Project.

## IV. CREATION OF CONDOMINIUM UNITS AND INCIDENTS OF OWNERSHIP.

4.1 Division Of Project Into Condominium Units. The Project is hereby divided into seventy (70) Condominium Units, each consisting of a fee simple interest in a Unit and an undivided one-seventieth (1/70th) fee simple interest in the Common Elements, which interest is hereby declared to be appurtenant to such Unit. Subject to the limitations contained in this Declaration, any Owner shall have the exclusive right to use and enjoy any Limited Common Elements which may be designated for exclusive use by such Owner.

4.2. Right to Combine Units. With the written consent of Declarant, two or more contiguous Units may be utilized by the Owner or Owners thereof, as if they were one Unit. To the extent permitted in the written consent of Declarant any walls, floors or other structural separations between any two such Units, or any space which would be occupied by such structural separations but for the utilization of the two Units as one Unit, may, for so long as the two Units are utilized as one Unit, be utilized by the Owner or Owners of the adjoining Units as Limited Common Elements, except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use or enjoyment of other parts of the Project. At any time, upon the request of the Owner of one of such adjoining Units, any opening between the two Units which, but for joint utilization of the two Units, would have been occupied by a structural separation, shall be closed at the equal expense of the Owners of each of the two Units and the structural separations between the two Units shall thereupon become General Common Elements.

4.3 Title. Title to a Condominium Unit 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 Colorado, including, but without limitation, joint tenancy or tenancy in common.

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

4.5 Partition Not Permitted. The Common Elements shall be owned in common by all the Owners of Condominium Units, and no Owner may bring any action for partition thereof.

4.6. Ad valorem Taxation. Each Condominium Unit shall be assessed separately for all taxes, assessments and other charges of the State of Colorado or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. For the purpose of such assessment, the valuation of the Common Elements shall be apportioned among the Units in proportion to the fractional interest in Common Elements appurtenant to such Units. The Association shall furnish to the assessor all necessary information with respect to such apportionment. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.

4.7 Legal Description Prior to Filing Condominium Map. Every contract for the sale and purchase of a Condominium Unit executed prior to the filing for record of the Condominium Map may legally describe a Condominium Unit by its identifying Unit number and the undivided interest in and to the Common Elements appurtenant thereto upon Tract A and a part of Tract B, Block 5, Dillon Valley Subdivision, County of Summit, State of Colorado, "Orofino By Straight Creek Condominiums", in accordance with plans and specifications prepared by Denver Design Group. Upon the filing of the Condominium Map for record in Summit County, Colorado, such description will conclusively be presumed to relate to the corresponding units thereon.

**4.8 Legal Description After Filing of Condominium Map.** After the Condominium Map shall have been filed for record in Summit County, Colorado, every contract for the sale of a Condominium Unit and every other instrument affecting title to a Condominium Unit may describe that Condominium Unit by the numbers 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 Clerk and Recorder of Summit County, Colorado, in the following fashion:

Condominium Unit \_\_\_\_\_, Orofino By Straight Creek Condominiums, according to the Condominium Map appearing in the records of the County Clerk and Recorder of Summit County, Colorado, as Reception No. \_\_\_\_\_, and as defined and described in that Condominium Declaration for Orofino By Straight Creek Condominiums, appearing in such records in Book \_\_\_\_\_ at page \_\_\_\_\_.

Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Elements, and to incorporate all the rights incident to ownership of a Condominium Unit and all the limitations on such ownership as described in this Declaration.

**4.9 Owner's Right With Respect To Interiors.** Each Owner shall be entitled to exclusive ownership and possession of his Unit, and each Owner shall have the exclusive right to paint, re-paint, tile, wax, paper or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of his Unit and all walls, ceilings, floors and doors within such boundaries.

**4.10 Use Restriction.** Each Unit shall be occupied and used only as and for a single family residential dwelling for the Owner or Owners, or for his or their family and guests. Subject to such rules and regulations as may be established by the Association as to numbers of persons who may temporarily occupy a Unit, an Owner or Owners may lease a Unit for similar temporary residential use by others.

**4.11 Animals.** The Association may by rules and regulations prohibit or limit the raising, breeding, or keeping of animals in any Unit or on the Common Elements or any part thereof.

**4.12 Easements for Encroachments.** If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Elements or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Building to be constructed on the Real Property, by error in the Condominium Map, 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.

**4.13 Easements for Access for Repair, Maintenance and Emergencies** Some of the Common Elements are 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 Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage

to the Common Elements 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 Elements or as a result of emergency repairs within another Unit at the instance of the Association or of Owners shall be an expense of all 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 hereto shall be collected by the Association by assessment pursuant to this Declaration.

4.14 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 Elements necessary for access to his Unit, and to any Limited Common Elements 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 Unit.

4.15 Association's Right to Use of Common Elements. The Association shall have a nonexclusive easement to make such use of the Common Elements 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 Elements maintenance and storage facilities for use by the Association, and to assign particular storage facilities for use by the Owners of particular Units.

4.16 Easements Deemed Created. All conveyances of Condominium Units hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided for herein, even though no specific reference to such easements appears in any such conveyance.

4.17 Mechanic's Lien Rights and Indemnification. No labor performed or materials furnished for use in connection with a Unit with the consent or at the request of an Owner or his agent or subcontractor shall create any right to file a statement of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Elements except as to the undivided interests therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners from and against liability or loss arising from the claim of any lien against the Condominium Unit, or any part thereof, of any other Owner for labor performed or for materials furnished in work on the first Owner's Unit. At the written request of any Owner the Association shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed and materials furnished the amount necessary to discharge any such lien, including all costs incidental thereto, and obtaining a discharge of the lien. Such collection shall be made by a special assessment.

4.18 Responsibility of Owner for Maintenance and Repairs. For purposes of maintenance, repair, alteration and remodeling, an Owner shall be deemed to own the interior non-supporting walls, the materials (such as, but not limited to, plaster, gypsum dry-wall, paneling, wallpaper, paint, carpeting, wall and floor tile, and

flooring, but not including the sub-flooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the Unit, the Unit doors and windows, the Unit electrical heating system, waterheater, and other appliances within the Unit. The Owner shall not be deemed to own the utilities running through his Unit which are utilized for or serve one or more other Units except as a tenant in common with the other Owners. Each Owner shall maintain and keep and repair the interior of his own Unit, including the fixtures thereof. All fixtures and equipment installed within the Unit commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity, are hereafter referred to as "Utilities") enter the Unit shall be maintained and kept and repaired by the Owner. No alteration or remodeling shall be undertaken by any Owner which changes the floor-plan of the Unit, or which is a rearrangement of, or an addition to, existing walls or partitions or which is an addition to, or a removal of fixtures, furnishings or equipment permanently in place and attached to the Unit, unless plans for such alteration or remodeling are submitted to and receive the approval of the Association. The Association shall permit no alteration nor remodeling which is a violation of law, ordinance or public regulation, or which is contrary to the provisions of this Declaration.

4.19 Compliance With Declaration and Articles, By-Laws and Regulations of Association. Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, and the Regulations, Resolutions and Decisions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief, or both, maintainable by the Association on behalf of the Owners, or in a proper case, by an aggrieved Owner.

#### V. THE ASSOCIATION.

5.1 Administration. The Administration of the Project shall be governed by the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, and the Regulations, Resolutions and Decisions of the Association adopted pursuant thereto, as the same may be amended from time to time.

5.2 Membership. Every Owner shall be entitled and required to be a member of the Association. If title to a Condominium Unit is held by more than one person, the membership related to that Condominium Unit 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 Unit is held. An Owner shall be entitled to one membership for each Condominium Unit owned by him. Each such membership shall be appurtenant to the Condominium Unit upon which it is based and shall be transferred automatically by conveyance of that Condominium Unit. No person or entity other than an Owner may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of a Condominium Unit; 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 Unit.

5.3 Voting Rights. The total number of votes in the Association shall be seventy (70), and the membership related to each Condominium Unit shall be entitled to one (1) vote; except that, no vote shall be exercised with respect to the membership related to any Condominium Unit owned by the Association.

