



**SECOND AMENDED DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR
TIVOLI GARDENS OWNERS ASSOCIATION, INC.**

This Amended Supplement DECLARATION is made effective upon the 8th day of January 2024, by vote of the Members of Tivoli Gardens Owners Association, Inc., an Idaho nonprofit corporation (the "Association" or "Declarant"), and amends and supplements all previous Declarations of Covenants, Conditions, and Restrictions of the Association.

RECITALS

WHEREAS, this Declaration is a supplement and amendment to that certain Master Declaration of Covenants, Conditions and Restrictions for the Lakeharbor Development recorded October 11, 1985, as Instrument No. 8554322, records of Ada County, Idaho, as amended by that certain Amendment of the Master Declaration of Covenants, Conditions and Restrictions for Lakeharbor, recorded April 18, 1988, as Instrument No. 8818549, records of Ada County, Idaho, and amended by the Second Amendment of the Master Declaration of Covenants, Conditions and Restrictions for Lakeharbor, recorded March 20, 1990 as Instrument No. 9014235, records of Ada County, Idaho collectively (the "Master Declaration"). This Declaration supplements the Master Declaration with respect to the Property. This Declaration also amends, supersedes, and replaces in its entirety that certain Declaration of Covenants, Conditions and Restrictions for Lakeharbor No. 4 Subdivision recorded June 21, 1988, as Instrument No. 883023, records of Ada County, Idaho.

WHEREAS the covenants, conditions, and restrictions ("Restrictions") contained in this Declaration are an addition to those Restrictions contained in the Master Declaration, except insofar as the Restrictions of the Master Declaration are hereinafter expressly modified hereby. Each purchaser of a Lot in the Property expressly acknowledges and understands that the Master Declaration created a master association, architectural committee and created other Restrictions, in addition to the Restrictions created by this Declaration, all of which bind each purchaser of a Lot in the Property.

WHEREAS the purpose of this Declaration is to subject the Property to the Restrictions to (i) ensure the enhancement and preservation of property values, (ii) provide for the proper design, improvement, and use of the Property by all persons or entities who may subsequently acquire an interest in the Property and (iii) maintain a residential townhouse development of high quality pursuant to a common architectural theme with private roads.

WHEREAS, Declarant hereby declare that the Property and each lot, tract or parcel thereof, is a tract for purposes of the Master Declaration and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the Restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection,

maintenance, subdivision, improvement and sale of the Property or any Lot therein, and to enhance the value, desirability and attractiveness thereof. The Restrictions shall run with the land constituting the Property and each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any Lot therein; shall inure to the benefit of every Lot in the Property and any interest therein; and shall inure to the benefit of and be binding upon each Owner, and each successor in interest of each; and may be enforced by any Owner, and/or by the Association;

WHEREAS, McLeod Realty, Inc., the developer, and original declarant of the Property, has materially completed all construction, subdivision, and improvement of the Property as anticipated, and the Association shall henceforth act as the Declarant.

THEREFORE, the Association proclaims that all of the Property described herein shall be held, sold, and conveyed subject to the following easements, conditions, covenants, and restrictions, all of which are set forth to enhance the value, desirability, and attractiveness of such property and all shall run with the Property and bind any party having right or title in such properties, and any successors, assigns, heirs, or other transferees of the Properties.

ARTICLE I **DEFINITIONS**

- 1.1 Architectural Control Committee:** The architectural and landscaping committee created pursuant to this Declaration that shall serve the functions indicated in this Declaration (referred to hereinafter as "ACC").
- 1.2 Articles:** The Articles of Incorporation of the Association, as they may be amended from time to time.
- 1.3 Assessments:** The payments required of Owners, including Regular, Special, and Limited Assessments of the Association as further defined in this Declaration.
- 1.4 Association:** Tivoli Gardens Owners Association, Inc., a nonprofit corporation organized under the laws of the State of Idaho, or any successor or assign of the Association.
- 1.5 Association Property:** Any Lot or other real Property or personal property owned in fee by the Association.
- 1.6 Board:** The board of directors of the Association elected in accordance with the Association Bylaws and this Declaration.
- 1.7 Bylaws:** The Association's Bylaws may be amended from time to time.
- 1.8 Common Area:** shall mean all real property or interest therein (including the improvements thereto) owned, held, and maintained by the Association for the common use of the Owners, including, without limitation, storm water and/or drainage facilities, common landscaped areas, and private roads. .

1.9 Declarant: Tivoli Gardens Owners Association, Inc.

1.10 Declaration: This Amended Declaration of Covenants, Conditions and Restrictions, as may be amended from time to time.

1.11 Design Guidelines: The design guidelines and rules which may be promulgated, published, amended, and supplemented by the ACC from time to time.

1.12 Developer: McLeod Realty, Inc., the original developer of the Property.

1.13 Improvements: All structures, facilities or systems, and appurtenances thereto of all kinds and types, including but not limited to, Residences, roads, driveways, sidewalks, walkways, mailboxes, walls, fences, screens, landscaping, poles, signs, lighting, storm water and/or drainage facilities, and fixtures of any kind whatsoever. Improvements shall not include those items which are located totally on the interior of a Residence and cannot be readily observed when outside thereof.

1.14 Lake Tivoli: That certain water amenity identified on Exhibit B.

1.15 Landscape Berm: Those landscaped areas shown on Exhibit B, with average depths of the Landscape Berms that are 10-12 feet from the West Property Line, 8-10 feet from the North Property Line and 8-10 feet from the Property Line running along N. Harbor Lane.

1.16 Limited Assessment: A charge against a particular Owner and such Owner's Lot, directly attributable to the Owner, equal to the cost incurred by the Association in repair, maintenance or replacement performed pursuant to the provisions of this Declaration including, without limitation, damage to the Pressurized Irrigation System or Common Area, or the failure of an Owner to keep such Owner's Lot or Residence in proper repair.

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

1.18 Maintenance Area: That portion of the Property, which is not Common Area, but is operated or maintained by the Association. The Maintenance Area may be established from time to time by the Association on any portion of the Property by describing such area on a recorded Plat, by granting or reserving it in a deed or other instrument, or by designating it as such in this Declaration.

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

1.20 Mortgage: Any mortgage or deed of trust, or other hypothecation of land located in the Property to secure the performance of an obligation or payment of a debt. Unless otherwise

specifically provided, the reference to a "Mortgage" in this Declaration shall be limited to a "first Mortgage," including a "first deed of trust," on a Lot within the Property.

- 1.21 Mortgagee:** The holder of a Mortgage or the beneficiary under a deed of trust encumbering a Lot within the Property.
- 1.22 Notice and Hearing:** Written Notice and a hearing before the Board or the ACC, as applicable, and as further provided by the Bylaws.
- 1.23 Owner:** A person or persons, or other legal entity or entities, holding fee simple title to a Lot within the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.24 Person:** A natural individual, a corporation, partnership, or any other entity with the legal right to hold title to real property.
- 1.25 Plat:** A final subdivision plat covering any portion of the Property, as recorded in the office of the County Recorder, Ada County, Idaho, as the same may be amended by duly recorded amendments thereto.
- 1.26 Pressurized Irrigation System:** That certain irrigation system identified herein, including, without limitation, the water rights, well, pump, valves and main lines owned and maintained by the Master Association, as well as the clock/valve control stations, valves, service lines and sprinkler heads located on the Owners' Lots and maintained by the Owners.
- 1.27 Property:** All real property consisting of the Tivoli Gardens Subdivision according to the official plat thereof and every part, parcel, and Lot thereof, and shall further mean and refer to such additional real property as may hereafter be made subject to this Declaration, pursuant to the provisions hereof for the annexation of additional parcels of real property.
- 1.28 Record, Recorded, Recordation:** The recordation or filing of any document in the Office of the Ada County Recorder.
- 1.29 Regular Assessment:** The portion of the cost of lawn mowing, minor plant pruning, maintaining, improving, repairing, and operating the Common Area, Maintenance Areas, and the Pressurized Irrigation System (other than the irrigation equipment and service lines located on the Lots of the Owners which are the responsibility of the Owners to maintain). Regular Assessment shall also mean that portion of all other costs and expenses incurred to conduct the business and affairs of the Association which is levied against the Lot of each Owner by the Association, pursuant to the terms of this Declaration.
- 1.30 Residence:** A dwelling for the use and occupancy by a single family and located on a Lot.
- 1.31 Restrictions:** This Declaration, the Master Declarations, the Articles, the Bylaws, the Architectural Control Committee, the Rules, and Regulations.

- 1.32 Rules and Regulations:** The rules and regulations adopted by the Board as provided herein.
- 1.33 Special Assessment:** That portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in Regular Assessments paid to the Association pursuant to the provisions of this Declaration.
- 1.34 Supplemental Declaration:** Any Declaration of covenants, conditions and restrictions and reservation of easements or similar document adding real property to the Properties or supplementing this Declaration which may be Recorded pursuant to this Declaration
- 1.35 Transfer Fee.** A one-time fee assessed to Owners upon any transfer of title or refinancing of a Lot, which shall be used for general purposes of the Association.

ARTICLE II
GENERAL AND SPECIFIC RESTRICTIONS

- 2.1 Use:** Each Lot shall be used exclusively for attached single family residential purposes and such uses as are customarily incidental thereto, and Common Area. As used herein and elsewhere in this Declaration, "residential" shall mean the use of the Improvements on a Lot for living accommodations by not more than two (2) unrelated persons, excluding guests of the principal occupant(s), which guests may reside therein on a temporary basis. No trailer or other vehicle, tent, shack, garage, accessory building, or out-building shall be used as a temporary or permanent residence. Each Owner shall use, operate, maintain, and repair such Owner's Lot in accordance with all applicable state, federal, and local laws, rules, regulations, and ordinances, and shall not otherwise commit or allow any waste to occur in the Common Area, Maintenance Area, any Lot, or any Dwelling Unit.
- 2.2 Residences:** No Lot shall be improved except with one (1) Residence. Each Residence shall have an attached fully enclosed garage adequate for a minimum of two (2) standard-size automobiles. No carports shall be allowed. The minimum square footage of living area within a dwelling unit located on a Lot shall be 1600 sq. ft. No split-entry Residence or Residences having more than two (2) stories shall be allowed.
- 2.3 Approval of Use and Plans:** No Improvements (including fences), signs or other structures shall be built, erected, placed, or materially altered on the Property unless, and until the building plan specifications and plot plan have been reviewed and approved in writing by the ACC. The scope of the ACC's review and approval may include, without limitation, type, pitch, and roof covering materials, lighting requirements, topography, finish ground elevations, architectural symmetry/conformity/harmony, landscaping drainage, color, material design, physical or aesthetic impacts on Common Areas, and artistic conformity to the terrain and the other Improvements on the Property. This Declaration is not intended to serve as authority for the ACC to control the interior layout or design of Residences except to the extent incidentally necessitated by use and size restrictions. Notwithstanding the foregoing restriction on landscaping, each Owner shall have the right to plant any shrubs,

flowers, or vegetables on the rear portion of such Owner's Lot that the Owner may desire, except as may otherwise constitute a nuisance or violate applicable law.

2.4 Set-Backs: No Residence or other structure (exclusive of fences and similar structures) shall be placed nearer to the Lot lines than permitted by the Plat and/or, by any applicable zoning restriction or conditional use permit.

2.5 Antennae: All exterior radio antenna, television antenna, satellite dish antenna or other antenna of any type shall be out of sight from the streets and screened by a fence, landscaping or similar structures as approved by the ACC or as otherwise required to ensure the safety of the residents, except that screening shall not be required where it would unreasonably delay installation or unreasonably increase the cost of installation, maintenance or use of the antennae, or preclude the reception of an acceptable quality signal. No antennae may be installed until after an Owner has received ACC approval for construction of Improvements on the Owner's Lot.

2.6 Animals: No animals (which term includes livestock, domestic animals, poultry, reptiles and any other living creature of any kind) shall be raised, bred or kept In or on any Dwelling Unit, Lot or the Common Area, whether as pets or otherwise, except as may be allowed by rules and regulations adopted by the Board; provided however, this provision shall not prohibit Owners from having no more than two (2) domestic dogs and two (2) domestic cats. The Board may at any time require the removal of any animal, including domestic dogs and cats, which it finds is creating unreasonable noise or otherwise unreasonably disturbing the Owners, in the Board's determination, and may exercise this authority for specific animals even though other animals are permitted to remain. All dogs shall be walked on a leash only and shall not be allowed to roam or run loose, whether or not accompanied by an Owner or other person. All Owners shall be responsible for picking up and properly disposing of all organic waste of their domestic dogs, cats, and any other animal approved or allowed by the Board. The restrictions herein this Section 2.6 shall not apply to service animals to the extent that such restrictions would violate applicable law.

2.7 Sewage Disposal Systems: No individual sewage disposal system shall be used on any Lot, including without limitation, septic tanks and/or cesspools.

2.8 Grading and Drainage: There shall be no interference with the established drainage pattern over any portion of the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the ACC. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Property previously completed by Developer, or that drainage which is shown on any plans approved by the ACC, which may include drainage from Maintenance Area or Common Area over any Lot in the Property. The Owner of any Lot in which grading or other work has been performed pursuant to a grading plan approved under applicable provisions of Boise City Code or by the ACC, shall maintain and repair all graded surfaces, drainage structures, means or devices which are not the responsibility of any irrigation district or other public agency at such Owner's cost and expense.

2.9 Commercial Use Prohibited: No Lot shall be used at any time for commercial or business activity. An Owner that rents a Residence to a tenant for residential purposes shall not be in violation of this Section 2.9 if the Owner complies with Section 2.22 herein. The use of a Lot for a shelter home, as the same is defined in §67-6530 et. seq., Idaho Code, whether or not operated for profit, shall, for the purposes of this Declaration, be a commercial or business use.

2.10 Mining and Drilling: No Lot shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, steam, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel, or earth.

2.11 Boats, Campers, and Other Vehicles. The use of all vehicles, including but not limited to automobiles, trucks, bicycles, and motorcycles, shall be subject to the following Association Rules and Regulations, which may prohibit or limit the use thereof within the Property and provide parking rules and regulations. The primary purpose of the garage required on each Lot is for the parking and storage of automobiles and other vehicles. The Owners shall provide garage space for automobiles used by the Owners and occupants of a Lot, and parking in the driveways or streets within the Tivoli Property is restricted as follows. No vehicle shall be parked or stored for a period in excess of seventy-two (72) consecutive hours in a driveway or on a street within the Property, provided, however that the City of Boise may require a vehicle be moved within a shorter period of time pursuant to its rules and ordinances. Parking on a street within the Property is prohibited between the hours of 12:00 AM and 8:00 AM. Parking along curbs painted red is prohibited at all times. Trailers, mobile homes, trucks larger than standard pickups, boats of any kind, tractors, campers, garden or maintenance equipment and vehicles other than automobiles and standard pickups, when not in actual use, shall be kept in an enclosed structure, or otherwise shall not be parked or stored in a driveway or on a street within the Property. Individual temporary exceptions to these parking regulations will be considered upon contacting the Board. To the extent possible, garage doors shall remain closed at all times.

2.12 Exterior Energy Devices: No energy production devices including, without limitation, generators of any kind and solar energy devices, shall be constructed or maintained on any Lot without the prior written approval of the ACC, except for heat pumps, air conditioners, gas meters and other utility items to properly operate a dwelling unit or similar appliances shown on plans approved by the ACC.

2.13 Nuisances: No noxious or offensive activity shall be carried on in any Residence, Common Area, Maintenance Area, or Lot, nor shall anything be done therein which may be or become an annoyance or nuisance to other Owners or Persons. No rubbish or debris or any kind shall be placed or permitted to accumulate anywhere upon the Property, including the Common Area, and no odor or pet waste shall be permitted to arise from any portion of the Property so as to render the Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to the Property or to its occupants or residents, or to any other property in the vicinity thereof or to its occupants or residents. No noise, no exterior fires, no obstructions of pedestrian walkways, no unsightliness, or other nuisance shall be permitted to exist or

operate upon any portion of the Property so as to be offensive or detrimental to the Property or to its occupants or residents, or to other property in the vicinity, or to its occupants or residents, as determined by the Board, in its reasonable judgment, or in violation of any state or local law or ordinance. Without limiting the generality of any of the foregoing, no whistles, bells, or other sound devices (other than security devices used exclusively for security purposes which have been approved by the ACC), no flashing lights or search lights, shall be located, used, or placed on the Property. No unsightly articles shall be permitted to remain on any Lot so as to be visible from any other portion of the Property. Without limiting the generality of the foregoing, trash and recycle receptacles and compost receptacles, dog houses, and firewood shall at all times be screened so as to not be visible from any other Tivoli property. Trash and recycle receptacles set curbside for collection should not be left curbside or otherwise within view of the street for more than twenty-four (24) hours. No clothing or fabric shall be hung, dried, or aired in such a way as to be visible to any other portion of the Property.

2.14 Common and Maintenance Areas: Nothing shall be altered or constructed in or removed from the Common Area or Maintenance Area except upon written consent of the Board and In accordance with procedures required herein or by law.

2.15 Insurance: Nothing shall be done or kept in any Residence, Lot, Maintenance Area, or Common Area which will increase the rate of insurance on the Maintenance Area, Common Area, or any other Residence without the prior written consent of the Board. Each Owner must maintain a homeowner's insurance policy for insuring the homeowner and the related Residence from loss by fire, theft, or all other loss or damage.

2.16 Signs: No signs of any kind shall be displayed on or from any portion of the Property, except those approved by the ACC, or signs required by law. Notwithstanding the foregoing, one (1) "for sale" or "for rent" sign may be displayed on the Owner's Lot for the sale or rental of such Lot.

2.17 No Unsafe or Hazardous Activities: No activities shall be conducted on the Property and no improvements shall be constructed on any Property which are or might be unsafe or hazardous to person or property.

2.18 Subdivision: No Lot may be further subdivided unless expressly approved by the Board and consistent with all applicable federal, state, and local laws, rules, regulations and ordinances, and the Master Declaration.

2.19 Fence/Wall: No fence or wall of any kind shall be constructed on a Lot unless the plan and specifications therefor, including the location, design, material, and color thereof, have been approved in writing by the ACC prior to the construction or installation. No fence or wall shall be permitted to be constructed or installed on the Common Area or any portion of the designated Landscape Berm within the Property or Tivoli Lake. Fences and walls shall not extend closer to any street than twenty feet (20) nor project beyond the front setback of the principal Residence on the Lot. No fence higher than six feet (6') shall be allowed without the prior approval of both the City of Boise, Idaho, and the ACC. The type, design, material,

and finish of all privacy fences must have prior approval from the ACC.. With the exception of the perimeter fence surrounding the Tivoli Development, which is maintained by the Association, all fences and walls shall be installed and maintained in good appearance and condition at the expense of the Owner of the Lot on which they are located, and all damaged fencing and walls shall be repaired or replaced to original design, material, and color within a reasonable time after said damage occurs. No fence or wall shall interfere with the use and enjoyment of any easement reserved in this Declaration or shown on a Plat of the Property. All fences and walls constructed on a Lot shall be in compliance with the ordinances of the City of Boise applicable to the Property.

2.20 Irrigation Water: Each owner, by the acceptance of a deed to a Lot, acknowledges that Declarant has installed a Pressurized Irrigation System which it has transferred to the Association to deliver irrigation water to the individual Lots within the Property. The maintenance, repair and replacement of any equipment and facilities for the delivery of irrigation water to the individual Lots of such facilities shall be the responsibility of the Association, with the cost therefor to be included within the Regular Assessments. The clock/valve control stations, valves, service lines and sprinkler heads located on the individual Lots of the Owners are the responsibility of the individual Owners to maintain.

2.21 Water Rights Appurtenant to Property: Declarant reserves unto itself any and all water rights appurtenant to the Property, and accordingly, Owners of any and all Lots shall have no right, title, or interest in any of said water rights.

2.22 Rentals: Any current Owner as of the date of execution of this Declaration is permitted to lease or rent Owner's Lot unless expressly agreed to otherwise in writing by the Owner of the affected Lot, provided, however, that no rental is allowed for a period of ninety (90) days or less. Any tenant renting a Residence within the Property must abide by and be subject to all terms and provisions the Declaration, Bylaws, Articles, and Rules and Regulations of the Association. Any such rental agreement shall abide by the provisions of this Declaration and failure to comply with this Declaration shall result in a default under the lease or rental agreement.

Owners are allowed to lease their Individual Units within the boundaries as set forth below:

- (a) Renting and Leasing. In order to maintain the character of Tivoli Gardens as primarily a housing community for owner-occupants, and to assure that the Individual Units meet the requirements of a variety of institutional mortgagees, governmental agency guarantors, and mortgage insurers, necessary to qualify owner-buyers for owner-occupant residential financing, no more than twenty percent (20%) of the total Individual Units shall be leased at any time ("Maximum Limit"), in accordance with the terms of this Section. 20% is recognized as 6 individual homes.
- (b) Approval to Lease. The Board of Directors or such person authorized to act on behalf of the Board of Directors ("Board") shall maintain a list of Individual Units that are leased. If an Owner desires to lease an Individual Unit, such Owner shall provide written notice to the Board at least thirty (30) days prior to the proposed commencement date of any such lease. If

the Board receives notice of intent to lease an Individual Unit from an Owner, and such lease meets all requirements set out below in (d) and will not increase the number of leased Individual Units above the twenty percent (20%) 6 units Maximum Limit, then the Board shall provide written notice of the approval of such lease to the requesting Owner.

- (c) Leasing Wait List. If the Board receives a notice of intent to lease an Individual Unit from an Owner, and the number of leased Individual Units is already at or would be more than the 6 units Maximum Limit, the Owner providing such notice of intent to lease shall be notified by the Board that 6 units Maximum Limit has already been reached. The Board shall maintain a Leasing Wait List of Owners that sought permission to lease their Individual Units but were unable to do so due to the 6 units Maximum Limit, which Leasing Wait List shall be maintained according to the date of each Owner's request to lease.
- (d) Lease Agreements. Any lease agreement for an Individual Unit shall be in writing, shall provide that the lease is and shall be subject in all respects to the provisions of the Covenants, shall be for a term of not less than 90 days and no longer than twelve (12) calendar months, and shall provide that the failure by the tenant to comply with the terms of the Covenants shall be a default under the lease and the Owner shall be liable for any violation(s) committed by tenants of the Owner. Prior to the commencement of the term of the lease the Owner shall notify the Board, in writing, of the name or names of the tenants and the time during which the lease term shall be in effect. If an Owner leases an Individual Unit in violation of the restrictions set forth in this subsection (d) or otherwise fails to comply with this subsection (d), such Owner shall be in default of the Covenants, and shall indemnify, defend, and hold harmless the Board and the other Owners from and against any and all claims, loss or damage arising from or related to such violation.
- (e) Re-Leasing; Change of Tenants. At least thirty (30) days prior to the expiration of an existing lease of an Individual Unit, or within five (5) days of the termination of an existing lease, the Owner of such Unit shall notify the Board of such expiration or termination. Additionally, the Owner shall at that time provide written notice to the Board of its intent to either re-lease the Individual Unit to another tenant or to be removed from the list of Individual Units approved for leasing. If an Owner does not lease its Individual Unit within 60 days of such expiration or termination date, the Board's approval for leasing shall be revoked and the next owner on the Leasing Wait List will be moved up.
- (f) Lease Opportunity Notice. If the number of leased Individual Units falls below the 6 units Maximum Limit, the Board shall provide the first Owner on the Leasing Wait List (if any) with notice of the ability to lease such Owner's Individual Unit (the "Lease Opportunity Notice"). If an Owner declines to lease its Individual Unit or does not lease its Individual Unit within 60 days of receipt of a Lease Opportunity Notice, the Board's approval for such Owner to lease its Individual Unit shall be revoked, and the Board shall notify the next Owner on the Leasing Wait List (if any). Owners who have had their approval revoked pursuant to this subsection (f) may resubmit a new request to the Board for a new approval subject to Section 1).
- (g) Exceptions for Hardship, or Familial Relationships. In cases of extreme hardship, including, but not limited to, disability, job loss, temporary job relocation, military service, divorce, etc., the Board may, in its sole discretion, make an exception to the rental restriction and temporarily authorize an Owner to lease its Individual Unit. The Board may also, in its sole discretion, waive the rental restriction for tenants who are immediate family members such as a parent or child. Though not to exceed 7 units.

ARTICLE III
EXTERIOR APPEARANCE AND MAINTENANCE

- 3.1 Exterior Maintenance; Owner's Obligations:** Each "Owner" agrees to maintain all improvements on the Owner's Lot in good condition and repair, and no improvement shall be permitted to fall into disrepair. In the event that any Owner shall permit any improvement, including trees and landscaping, maintenance, exterior painting and roofing, which are the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, or damages property or facilities on or adjoining such Owner's Lot, the Association, upon thirty (30) days' prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon such Owner's Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments as set forth herein. The Owner of the offending property shall be personally liable, and such Owner's property may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the costs may, at the option of the Board, be assessed against said Owner's Lot as a Limited Assessment.
- 3.2 Interior Maintenance:** Each Owner shall be responsible for all maintenance required for the interiors of the Owner's Residence, including, without limitation, maintaining, repairing, and replacing the electrical wiring and fixtures, plumbing pipes and conduits, all fixtures, and appliances, whether built-in or freestanding, air conditioning, heating, sewage disposal and interior fire protection systems and all amenities and hardware located therein. All damage to any Improvements shall be repaired by the applicable Owner as promptly as possible.
- 3.3 Vacant Residences:** A Residence which is vacant for any reason shall be kept locked and the windows glazed, and window coverings drawn in order to prevent entrance by vandals. Vacant Residences shall not be exempt from the provisions of this Declaration.
- 3.4 Easements:** There is hereby reserved for the use and benefit of each Owner, the Association, and their successors and assigns, for the purposes incident to such use, improvement and maintenance of the Property, the following easements:
- 3.4.1 For the Installation and maintenance of public utility and drainage facilities of all kinds, including radio and television and transmission cables, and the easements so designated on the recorded Plat(s) for any portion of the Property.
- 3.4.2 For the purpose of permitting the Association, their contractors, and agents, to enter onto those portions of Lots contiguous to any Maintenance Area and Common Area to maintain, replace and restore landscaping and other Improvements within the Common Area and Maintenance Area.

- 3.4.3 Reciprocal appurtenant easements of encroachment, not to exceed one foot (1'), as between each Lot and such portion(s) of the Common Area or Maintenance Area adjacent thereto, or between adjacent Lots, due to the unintentional placement or settling or shifting of the Improvements constructed thereon, which easements of encroachment shall be valid so long as they exist and the rights and obligations of Owners shall not be altered in any way by said encroachments, settling or shifting; provided, however, that in no event shall a valid easement for encroachment occur due to the willful or negligent act or omission of an Owner.
- 3.4.4 For the purpose of permitting the Association, its contractors and agents, to enter upon the Lots within the Development and, if required, within the Residences, for the purpose of performing all maintenance, repair and replacement rights and duties set forth in this Declaration; provided, that entry upon a Lot or within a Residence shall be at reasonable times and intervals with a minimum of inconvenience to the Owners and the occupants of the Residence(s).
- 3.4.5 Any additional easements, if any, as shown and designated on a recorded Plat(s) for any portion of the Property.

Except as otherwise provided in this Declaration, the easement areas (excluding any equipment or appurtenances owned by Declarant or a utility company located thereon) herein reserved shall be maintained by the Owner of the Lot upon which they are situated. Wherever utility house connections are installed within the Property, which connections or any portions thereof lie in or upon Lots owned by an Owner other than the Owner of the Lot served by the connections, the Owner of the Lot served by the connections shall have the right and is hereby granted an easement to the full extent necessary therefor, to enter upon any Lot or to have their agent enter upon any Lot in or upon which said connections, or any portion thereof lie, to repair, replace and generally maintain the connections as and when it may be necessary. Whenever utility house connections are installed within a Lot, which connections serve more than one Lot, the Owner of each Lot served by the connections shall be entitled to full use and enjoyment of such portions of said connections as service such Owner's Lot.

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

ARTICLE IV **USE AND REPAIR OF MAINTENANCE AREA**

- 4.1 Designation:** Tivoli Lake and the Landscape Berm are designated as Maintenance Areas to be maintained by the Association.

4.2 Easement of Use: The following have been reserved to the Association and for the benefit of the Lots reciprocal easements on over and under Tivoli Lake and the Landscape Berm for the operation, maintenance, repair and replacement of Tivoli Lake and the Landscape Berm and the related main lines, services, pumps, stations, and related improvements to the extent reasonably required to operate and maintain Tivoli Lake and the Landscape Berm. Association maintenance of Landscape berm does not include maintenance of existing, or newly planted, shrubs, bushes or trees which are the sole responsibility of lot owners(s).

The cost of the maintenance, repairs and replacements of Tivoli Lake and the Landscape Berm and the continuing operational expenses; including insurance and taxes, if any, shall be paid by the Association from the funds of the Association and shall be charged as Regular Assessments. The decision as to what costs and expenses are required with respect to Tivoli Lake and the Landscape Berm and the timing of the payment thereof shall rest solely with the Association, provided, however, that the Association is obligated to take all actions necessary to operate, maintain and repair Tivoli Lake and the water contained therein in good condition consistent with sound hydrological principles. The Association shall also be obligated to maintain and repair the Landscape Berm in a healthy growing condition and shall not allow the Landscape Berm to deteriorate to a dangerous, unsafe, unsightly, and unattractive condition.

4.3 Use of Tivoli Lake: All Owners acknowledge that Tivoli Lake is a water amenity under the exclusive control of the Association and no Owner shall have any right of use for Tivoli Lake and/or right of access thereto across any of the adjacent Lots. No Owner may enter Tivoli Lake or otherwise place any object in, on, or under Tivoli Lake without the consent of the Association. In all events, the Owner of any Lot containing Maintenance Area shall comply in all respects with any and all, federal, state, and local statutes, law, ordinances, codes, regulations, and rules, including, without limitation, those relating to the Clean Water Act and/or relating to hazardous materials. The term "Hazardous Materials" shall mean any substance or material defined or designated as hazardous or toxic waste, material or substance, or other similar term, by any federal, state, or local environmental statute, regulation, or ordinance presently in effect or that may be promulgated In the future. All Owners shall protect the aesthetics of Tivoli Lake by using only non-foaming, biodegradable detergent where there would be runoff into streets as street runoff drains into Tivoli Lake.

4.4 Liability for Damage: In the event that any maintenance, repair or replacement of all or any portion of the Maintenance Area is performed by the Association as a result of the negligent or willful act or omission of an Owner, an Owner's family, guests or invitees, the cost of such maintenance, repair or replacement shall be reimbursed by said Owner to the Association, and the Association may seek the cost of the same against the Owner and the Owner's Lot as a Limited Assessment.

4.5 Modifications: The easements, restrictions and covenants contained in this Article IV shall not be modified or terminated unless expressly agreed to by all of the Owners.

ARTICLE V
MAINTENANCE OF PRIVATE ROADS

5.1 Ownership of Private Roads: At a date not later than the date that a Lot is improved with a Residence and occupied, Developer shall convey all of the Developers interest In Lot 35, Block 1 of the Plat (hereafter "Private Roads") to the Association.

5.2 Duty to Maintain Private Roads. The Association shall be responsible for maintaining the Private Roads which upon conveyance pursuant to Section 5.1 shall become Common Area and serve the Lots in the Property. Such maintenance shall Include, but not be limited to, the repairing, patching, sealing, sweeping, cleaning, replacing, and caring for the Private Roads. As used herein, "Private Roads" shall include without Limitation the roadway surface, curbs, gutters and sidewalks, if any, and storm water and/or drainage facilities, and any appurtenant Improvements located thereon or therein, such as streetlights, street signs and landscaping for street entrances. The Association's maintenance obligations under this Section 5.2 shall be deemed a covenant running with the Property and shall benefit and bind the Owners and their respective heirs, successors, and assigns

5.3 Liability for Damage: In the event that any maintenance, repair or replacement of all or any portion of the Private Roads is performed by the Association as a result of the negligent or willful act or omission of an Owner, an Owner's family, guests or invitees, the cost of such maintenance, repair or replacement shall be reimbursed by said Owner to the Association and the Association may assess the cost of the same against said Owner's Lot as a Limited Assessment.

5.4 Cost of Maintenance Repairs and Replacement: The cost of the maintenance, repairs and replacements of the Private Roads within the Property and the continuing operational expenses, including taxes and insurance, shall be paid by the Board from the funds of the Association obtained by Regular or Special Assessments against the Lots. Such costs and expenses shall be apportioned among the Lots within the Property on an equal basis. In the event the Association does not have adequate funds to pay the cost and expenses deemed by the Association to be required, the deficiency shall be assessed to each Lot, on an equal basis as a Special Assessment. The decision as to what costs and expenses shall be required with respect to the Private Roads and the timing of the payment thereof shall rest solely with the Board.

5.5 Easement for Use: There is hereby reserved for the use and benefit of each Lot, each Owner, and their respective successors and assigns, for the purposes incidental to the use and enjoyment of the Lots, a perpetual easement to enter on, over and across the Private Roads, which Private Roads are to be used for ingress to and egress from each Lot. It is expressly understood and agreed that the easement herein created shall be absolute and non-exclusive and that in all respects the Private Roads shall be used, and available for use, by all such persons, their tenants, guests, invitees and licensees in the same manner as if the Private Roads were a public road, subject to the right of the Board to impose such Rules and Regulations, as may be necessary, required or convenient to assure the privacy, safety,

security and well-being of each such Lot and the Persons residing in the Property, provided, however, that such Rules and Regulations shall not deprive nor unreasonably restrict any Owner's right to have access to and from such Owner's Lot.

5.6 Easement for Maintenance. There is hereby reserved to the Association, its contractors and agents, an easement to enter upon the Lots for the purpose of accomplishing all maintenance, repair and replacement rights and duties set forth in this Article V.

5.7 Flood Easement: There is hereby reserved to the City of Boise an easement on the Berm to channel flood water along the West Property Line of the Development.

5.8 Reserve for Maintenance, Repair and Replacement: The Association shall have the right to establish a reserve account for the payment of the costs and expenses as set forth herein with regard to the maintenance, repair and replacement of the Private Roads, and the Board shall have the right to assess each Lot an amount to be included in a Regular or Special Assessment. The amount of said Regular or Special Assessment for the purpose of funding the maintenance, repair and replacement reserve account shall be determined in the Board's sole discretion.

5.9 ACHD Not Liable: It is acknowledged and agreed that neither Ada County Highway District nor any other governmental entity having jurisdiction and control over the public right(s)-of-way within Ada County shall have any obligation or responsibility to maintain, repair or replace all or any portion of the Private Roads. Any purported amendment to this Section to impose liability upon Ada County Highway District or any other governmental entity for the Private Roads shall be of no force or effect unless Ada County Highway District or such other governmental entity shall expressly consent thereto.

ARTICLE VI PRESSURIZED IRRIGATION SYSTEM

6.1 Dual Water Supply: Potable, drinkable water is supplied to the Property by Suez Water Idaho. Non-potable, non-drinkable irrigation water is supplied using water provided by the Master Association through its membership in the Boise Valley Irrigation Ditch Company and as delivered by the Pressurized Irrigation System. The Lake Harbor Master Association shall hold all water rights and maintains the well, pump, and main lines. The Tivoli Garden Association shall maintain the downstream irrigation delivery equipment and facilities up to the Owners' valves and clock/valve control stations as well as all irrigation equipment and service lines serving the Maintenance Areas and Common Area. Each individual Lot Owner of Tivoli Property maintains the clock/valve control station, valves, service lines and sprinkler heads located on their individual lot.

6.2 Indemnification of Association Regarding Irrigation System: The Pressurized Irrigation System will be used for all irrigation, including the irrigation of the Common Area and Maintenance Areas. By accepting a deed to any portion of the Property, each Owner hereby covenants and agrees to indemnify and hold the Association harmless from any and all

liability for damages or injuries to their children, guests, agents, or invitees caused by the Pressurized Irrigation System.

6.3 Reservation of Easement: The Association reserves an easement for all main lines, service lines, sprinkler heads, pumps, and other equipment on, over, across, and through the Common Area and Maintenance Areas to the extent reasonably required to operate and maintain the Pressurized Irrigation System as well as an easement through all Lots to start up and blow out service lines.

ARTICLE VII **ASSOCIATION, MEMBERSHIP, VOTING AND POWERS**

7.1 Organization of Association: The Association is formed as an Idaho non-profit corporation, is charged with the duties, and vested with the powers prescribed by law and set forth in its Articles, its By-Laws, and this Declaration. The existence of the Association and the performance of its obligations under this Declaration are hereby recognized to be a condition of platting the Property imposed by the City of Boise. Accordingly, the Association may not be dissolved without the City of Boise's prior written consent.

7.2 Members: Each Owner of a Lot shall be a Member of the Association. A membership in the Association shall be appurtenant to and inseparable from the Lot owned by such owner. A membership in the Association shall not be transferred, pledged, or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer of a membership shall be void and shall not be reflected on the books of the Association.

7.3 Voting. The Association has one (1) class of Member votes subject to the Bylaws, which shall govern matters of voting in full. The Associations voting power in the Master association (as defined in the Master Declaration) shall be exercised by a Delegate elected pursuant to Article VI of the Master Declaration

7.4 Board of Directors and Officers: The affairs of the Association shall be conducted by a board of directors and such officers as the Board may elect or appoint, in accordance with the Articles and Bylaws, as the same may be amended from time to time.

7.5 Powers of Association: The Association shall have all powers of a non-profit corporation organized under the laws of the State of Idaho subject only to such limitations as are expressly set forth in the Articles, the Bylaws, or this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under the Articles, Bylaws, the Master Declaration or this Declaration, and to do and perform any and all acts which may be necessary or proper for or incident to, the proper management and operation of the Common Area and the Maintenance Area and the performance of the duties of the Association and other responsibilities set forth in this Declaration, including, but not limited to the following:

- 7.5.1 The power to determine the amount of and to levy Assessments on the Owners and/or Lots and to enforce payment thereof in accordance with the provisions of this Declaration.
- 7.5.2 The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, Bylaws, Master Declaration, or this Declaration and to enforce by mandatory injunction or otherwise, all provisions thereof.
- 7.5.3 Delegation of Powers. The authority to delegate its power and duties to committees, officers, employees, or to any person, firm, or corporation to act as manager, and to pay such manager such compensation as shall be reasonable.
- 7.5.4 The authority to indemnify and hold any member of the Board or officer harmless. Neither any member of the Board nor any officers of the Association shall be personally liable to any Owner, or to any other Person, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board or its officers, a manager or any other representative or employee of the Association, or the ACC, provided that said Board Member, officer, manager or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.
- 7.5.5 The power to adopt, amend and repeal such Rules and Regulations as the Association deems reasonable. Such Rules and Regulations shall govern the use by Owners, or any other Person of Common Area, Maintenance Area and other property owned or controlled by the Association provided, however, Association rules shall not discriminate among Owners and shall not be inconsistent with the Articles, Bylaws, or this Declaration. A copy of Association Rules and Regulation, as they may from time to time be adopted, amended, or repealed shall be mailed or otherwise delivered to each Owner. Upon such mailings or delivery, said Association rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between an Association rule or any provision of the Articles, By-Laws or this Declaration, the conflicting provisions of the Association rules shall be deemed superseded to the extent of any such inconsistency.
- 7.5.6 Emergency Powers. The Association, or any person authorized by the Association, may enter onto any Lot or into any Residence or other structure on a Lot in the event of any emergency involving illness or potential danger to life or property, or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable and any damage caused thereby shall be repaired by the Association unless said entry was necessitated by a condition caused by the Owner.

7.5.7 The power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on, through, or under the Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining: (i) underground lines, cables, wires, conduits and other devices for the transmission of any utility or other service; (ii) Public sewers, storm drains, water drains and pipes (including the Pressurized Irrigation System), water, sprinkling systems, water, heating and gas lines or pipes; and (iii) any similar public or quasi-public improvements or facilities.

7.5.8 The right for the Board to select a fiscal year for the Association instead of a calendar year for budget, Assessment, and accounting purposes

7.6 Duties of Association: In addition to the powers delegated to it by the Articles, Bylaws, and this Declaration, without limiting the generality thereof, the Association or its authorized agents, if any, shall have the obligation to conduct all business affairs of common interest to all Owners and to perform each of the following duties:

7.6.1 To perform, or provide for the performance of the operation, maintenance and management of the Common Area, the Maintenance Areas, the elements of the Pressurized Irrigation System not otherwise the responsibility of the Master Association or the individual Lot Owners to maintain Private Roads and landscape easement areas, if any, owned or controlled by the Association including the repair and replacement of property or Improvements thereon damaged or destroyed by casualty loss, the maintenance, repair and replacement of any facilities, if any, installed by Developer and/or an irrigation district for the delivery of irrigation water to the Lots, and the maintenance, management, repair or replacement of all other property owned or controlled by the Association, and provide for lawn mowing and pruning on the individual Lots of the Owners.

7.6.2 To pay all real and personal property taxes and assessments levied against the Common Area, , and the Pressurized Irrigation System, or against the Association or any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association, provided, however, that they are paid, or a bond insuring payment is posted prior to the sale or the disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state, or local, including income or corporate taxes, levied against the Association in the event that the Association Is denied the status of a true exempt corporation.

7.6.3 To maintain, repair and replace the Berm as a two (2) foot high compacted berm in good condition and repair as appropriate to channel any storm water overflow or discharge in excess of the capacity of the existing drainage system in Lakeharbor over and across North Harbor Lane.

- 7.6.4 To acquire, provide and/or pay for water, sewer, refuse collection, electrical, telephone, gas and other necessary services for the Common Area, Maintenance Area, Pressurized Irrigation System, or property owned or controlled by Association.
- 7.6.5 To obtain from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the policies of Insurance specified in Section 7.8, below.
- 7.6.6 To maintain, repair and replace all permanent entry and special identification signs for the Property, whether the same be located within or without the boundaries of the Property.
- 7.6.7 To make, establish, promulgate, amend, and repeal Association Rules as deemed necessary by the Board.
- 7.6.8 To appoint and remove members of the ACC, all subject to the provisions of this Declaration.
- 7.6.9 To perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration and the Association Rules and Regulations.

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

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

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

7.8 Insurance: The Association shall obtain insurance from insurance companies authorized to do business in the State of Idaho, and maintain in effect any insurance policy the Association deems necessary or advisable, which shall include, without limitation, the following policies to the extent it is possible for the Association to obtain the same:

7.8.1 Fire Insurance Including those risks embraced by coverage of the type known as the broad form or "All Risk" or special extended coverage endorsement on a blanket agreed amount basis for the full insurable replacement value of all equipment and fixtures located within the Common Area and the Maintenance Area.

7.8.2 Comprehensive general liability insurance insuring the Association and the Owners, and the individual grantees, tenants, agents and employees, Invitees, and guests of each of the foregoing against any liability Incident to the ownership, management, maintenance and/or use of the Common Area, Maintenance Area, and the Pressurized Irrigation System. Limits on liability of such coverage shall be as follows: Not less than One Million Dollars (\$1,000,000) per occurrence with respect to personal injury or death, and One Million Dollars (\$1,000,000) per occurrence with respect to property damage or such amounts In excess thereof which the Association determines is commercially reasonable and prudent under the circumstances after taking into account Inflation occurring after the execution of this Declaration.

7.8.3 Such other insurance, including motor vehicle Insurance and worker's compensation Insurance, to the extent necessary to comply with all applicable laws and Indemnity, faithful performance, fidelity and other bonds as the Association shall deem necessary or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any Association funds or other property.

7.9 Insurance Proceeds: The Association shall be deemed trustee of the interests of all Owners in connection with any insurance proceeds paid to the Association under such policies and shall have full power to receive such Owner's interests, if any, in such proceeds and to deal therewith.

7.10 Premiums Included in Assessments: Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association. The Association shall have the right to establish a reserve account (hereafter "Insurance Reserve Account") for the payment of insurance premiums relating to the insurance policies purchased and maintained by the Association under this Article or otherwise. For the purpose of funding the Insurance Reserve Account, the Board shall have the right to assess each Lot an Assessment which shall be certified to and collected by the Association as other Assessments. The amount of said Assessments determined for the purpose of funding the Insurance Reserve Account shall be determined by the Board consistent with the terms of this Declaration. The right to assess each Lot to fund the Insurance Reserve Account shall include the right to make an initial Assessment in the amount of the first year's premium(s) for said Insurance. The Board of the Association shall have the right to place all funds collected for the Insurance Reserve Account in an interest-bearing account at a financial institution approved by the Board.

ARTICLE VIII **ENFORCEMENT BY ASSOCIATION**

8.1 Authority to Enforce: Pursuant to applicable Idaho law and consistent with Idaho Code § 55-115, the Association has full authority to enforce the provisions of this Declaration through any of the following persons or entities under the procedures outlined herein:

- a) The Association as to all matters; and
- b) the ACC as to matters subject to its enforcement.

8.2 Methods of Enforcement: The following methods of enforcement may be utilized:

- a) Legal or equitable action for damages, injunction, abatement, specific performance, foreclosure, rescission, cancellation of any contracts of an executory nature, or such other remedies at law and equity which may be available in a court of law.
- b) Eviction for trespass by police action.
- c) The filing of homeowner's association liens and foreclosure thereon pursuant to Idaho Code § 45-810 and as prescribed herein; and
- d) Monetary fees and temporary suspension from Association membership rights and privileges in accordance with the Bylaws of the Association, provided that, except for late charges, interest, and other fees for failure to pay, as and when due, and assessments levied by the Association as provided in this Declaration, no discipline, fine, or sanction shall be effective against a Member unless:
 - i. The Member is given thirty (30) days written notice of the proposed compliance action and a timely opportunity to be heard on the matter. The opportunity to be heard may, at the election of such Member, be oral or in writing. The notice shall be given personally to such Member or sent by certified mail to the last address of such Member as shown on the records of the Association and shall state the place, date, and time of the hearing, which shall not be less than five (5) days before the effective date of the action to be taken for enforcement.
 - ii. The hearing shall be conducted by the Board of the Association, which shall conduct the hearing in good faith and in a fair and reasonable manner and shall not reach a decision regarding appropriate compliance measures until conclusion of the meeting.
 - iii. For the imposition of any fines on a Member, a majority vote of the Board is required, provided however that Limited Assessments shall not be subject to a majority vote; and
 - iv. Any Member challenging the compliance measures taken by the Board, including any claim alleging defective notice, must commence court action within one (1) year after the date of the contested compliance measure taken by the Board.

- 8.3 Remedial Measures Prior to Meeting.** If a Member is in violation of this Declaration and a hearing is scheduled as set forth in this Article 8, no fine shall be imposed if said Member begins resolving the violation in advance of the meeting in good faith until the violation is fully resolved to the satisfaction of the Board.
- 8.4 Limitation on Enforcement:** The Association may not cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his individually owned subdivision interest on account of the failure of the Owner to comply with provision of this Declaration except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure for failure of the owner to pay assessment duly levied by the Association.
- 8.5 Fees and Costs:** The Association, or any person entitled to enforce any of the terms hereof, by any of the means contained herein, who obtains a judgment of decree from any court or arbitrator enforcing any of the provisions hereof, shall be entitled to reasonable attorney's fees and all costs incurred or anticipated to be incurred in remedying or abating the offensive condition as a part of his or its judgment or decree against the party in violation hereof.
- 8.6 Failure to Enforce:** Neither the Association nor the ACC shall be liable to any person for failure to enforce any of the terms hereof, for personal injury, lost of life, damage to property, economic detriment of for any other loss caused either by their enforcement or non-enforcement. The failure to enforce any of such matters, including any covenants contained in this Declaration, shall not be deemed a waiver of the right of subsequent enforcement.
- 8.7 No Fines for Remuneration.** No portion of any fine may be used to increase the remuneration of any Board Member or agent of the Board.

ARTICLE IX **PARTY WALLS**

- 9.1 General Rules Apply:** Each wall which is built as a part of the original construction of the Improvements constructed on a Lot and placed on the dividing line between two (2) Lots shall constitute a party wall and, to the extent not inconsistent with provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to neglect or willful acts or mischief shall apply thereto.
- 9.2 Sharing of Costs:** The cost of the repair, replacement or maintenance of a party wall shall be shared by the Owners of the Lots located on either side of said party wall, without prejudice, subject to the right of any such Owner to call for a larger contribution from the other Owner, or under any rule of law regarding liability for the negligent or willful acts or omissions of such other Owner or its agents or Contractors.
- 9.3 Weatherproofing:** Notwithstanding any other provision of this Article to the contrary, an Owner who by such Owner's negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost or furnishing the necessary protection against such elements or the repairs necessary from the failure to timely provide such protection.

9.4 Right of Contribution: The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successor's in title.

9.5 Arbitration: In the event of any dispute arising concerning a party wall, or a dispute involving the Interpretation of the obligations of an Owner(s) under the provisions of this Article, the matter shall be submitted to the Board, who shall act as a Board of Arbitration and shall proceed in accordance with the rules and procedures of the American Arbitration Association then in effect, and the decision of the majority of the members of the Board shall be binding on the Owners.

ARTICLE X

RIGHT OF USE FOR COMMON AREA

10.1 Owners' Easements of Enjoyment of Common Area: Every Owner shall have a right to use each parcel of Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

10.1.1 The right of the Association to levy and increase assessments for the construction protection, maintenance, repair, management, and operation of Improvements on the Common Area.

10.1.2 The right of the Association to suspend the voting rights and right to use any Common Area by an Owner for any period during which any Assessment against the Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations; and

10.1.3 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 agreeing to such dedication or transfer signed by two-thirds (2/3) of Members has been recorded.

10.2 Delegation of Use: Any Owner may delegate that Owner's enjoyment of the Common Area and facilities to the members of that Owner's family, tenants, guests, invitees or contract purchasers who reside on the Property.

10.3 Encumbrance of Common Area: The Common Area cannot be mortgaged or conveyed without the approval of at least two-thirds (2/3) of the Members. If ingress or egress to any Residence is through the Common Area, any conveyance or encumbrance of the Common Area shall be subject to an easement for the benefit of the Owners of such Residences for the purpose of ingress and egress.

10.4 Damages: An Owner shall be liable for any damages to the Common Area which may be sustained by reason of the negligent or willful act or omission of said Owner or of said Owner's family, licensees, invitees, lessees, or contract purchasers, both minor and adult in the case of joint ownership of a Lot, the liability of such Owners shall be joint and several.

The cost of correcting such damage shall constitute a Limited Assessment against that Owner's Lot.

10.5 Damage and Destruction: In the case of damage by fire or other casualty to the Common Area or other property owned by the Association, insurance proceeds to compensate for damage and destruction shall be paid to the Association, and the recipient thereof shall thereafter determine what repair or reconstruction shall be undertaken.

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

ARTICLE XI **ASSESSMENTS**

11.1 Covenant to Pay Assessments: Each Owner hereby, and by acceptance of a deed to a Lot, covenants and agrees to pay when due all Assessments or charges made by the Association. All such Assessments, together with, interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made, and shall be also the personal obligation of the Owner of such Lot at the time when the Assessment become due and payable. The personal obligation for delinquent Assessments shall not pass to and Owners successors in title unless expressly assumed by them. No Owner may waive or otherwise avoid liability for any Assessment by non-use of the Common Area or by abandonment of such Owners lot.

11.2 Regular Assessments: Regular Assessments shall be made by the Association in such amounts and at times and intervals deemed appropriate by the Board. The Regular Assessments shall be based upon advance estimates of cash requirements as determined by the Board for lawn mowing and pruning, for the operation, maintenance, repair and replacement of the Private Roads, the Common Area, the Maintenance Areas, and all easement areas, if any, owned or controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of local governmental units, premiums for all insurance which the Association is required or permitted to maintain hereunder, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s) for such purposes as deemed necessary and prudent by the Board.

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

11.3.1 To defray, in whole or in part, the cost of any construction or reconstruction of Improvements on a Common Area or Maintenance Area, unexpected repair or replacement of Common Area or Maintenance Area or any facility located thereon, or an easement area controlled by the Association, the furnishing of a special service or services {other than those appropriate for a Limited Assessment), or for any other expenses incurred or to be incurred as provided in this Declaration.

11.3.2 To cure a deficit in the common and ordinary expenses of the Association for which Regular Assessments for a given calendar or fiscal year are or will be Inadequate to pay, as determined by the Board.

11.4 Transfer Fees: A Transfer Fee in the amount of two hundred and seventy-five dollars (\$275.00) shall be charged and paid to the Association at the closing of each sale and transfer of an existing Owner-Member ("Seller") Lot to a new Owner-Member ("Purchaser"). The Seller and Purchaser may enter into an agreement setting forth the payment to the Association as a part of the closing proceeds, but in the event the Association has not received payment from a closing agent, then the ultimate responsibility for payment shall fall upon the Purchaser as the new Owner-Member. In the event that the new Owner-Member does not pay this transfer assessment after written notice from the Association, the Association shall be entitled to exercise all rights, duties and powers of enforcement as provided for collecting other assessments herein.

11.5 Limited Assessments: In addition to Regular and Special Assessments, Owners shall pay Limited Assessments for the following, payable over such period of time as the Board may deem appropriate:

11.5.1 The Association shall have the power to incur expenses for maintenance and repair of any Lot or any Improvements on a Lot, which maintenance and repair is the responsibility of the Owner of said Lot, if such maintenance and repair is necessary, in the opinion of the Board, to protect the Property or the Residence(s), and if the Owner of said Lot has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity thereof has been delivered by the Board to said Owner. The Board shall levy a Limited Assessment against the Owner of the Lot owned by said Owner to pay for the cost of such maintenance and repair, and any other cost or expense, including attorneys' fees, arising out of or incident to such maintenance and repair and the Assessment.

11.5.2 In addition to maintenance and repair, the Board, upon certification from the ACC of the failure or refusal of an Owner to correct a violation of this Declaration, shall have the power to correct any such violation on a Lot or any improvement

on a Lot and incur costs necessary in connection there with. The cost of such corrective action, together with interest, related expenses and attorneys' fees shall be assessed and collected as a Limited Assessment.

11.5.3 The Association shall have the power to levy a Limited Assessment against Owners and Lots for any limited special purpose which the Board believes necessary with respect to certain Lots but not an appropriate expense for payment by the Association. Such Limited Assessment shall not be made until the Owners of said Lots subject thereto have been given an opportunity, after notice, to participate in a hearing with respect to said Limited Assessment.

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

11.6.1 Commencement of Regular Assessments. Regular Assessments of the Association against each Lot shall commence the date of the closing if the sale of said lot to a person and the conveyance of title to said Person, and shall continue to be passed on to all future Owners in like manner.

11.7 Assessment Due Date. The due dates for Assessments shall be the first (1st) day of each calendar month unless some other due date is established by the Board. Each installment of an Assessment shall be delinquent if not paid within fifteen (15) days after the due date thereof. Nothing herein contained shall prohibit the Board from requiring that Special or Limited Assessments be paid in a lump sum instead of installments.

11.8 Interest and Penalties: Any Assessment levied by the Association on Lots, if not paid when due, shall bear interest at an annual rate as shall be set by the Board from time to time, or if none is so set, at a rate of one percent (1.0%) per month. Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charge the Board may in accordance with rules and regulations promulgated by it, impose additional fines or charges for the failure of an Owner to timely pay any Assessment when due. The right of the Board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non-payment of an Assessment.

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

11.10 Notice and Quorum Requirements: Not with standing anything to the contrary contained in either the Articles or the Bylaws, written notice of any meeting called for the purpose of levying a Special Assessment or a Limited Assessment shall be sent to each Owner whose Lot is subject to the levy of such Special or Limited Assessment not less than ten (10) nor more than fifty (50) days in advance of the meeting. The presence of Owners or of proxies entitled to cast sixty percent (60%) of the total votes of Members of the Association subject to the levy of such Special or Limited Assessment shall constitute a quorum. If the required quorum is not present, the meeting may be rescheduled by the Board for a date not later than sixty (60) days after the date of initial meeting and at the rescheduled meeting the presence of Owners or of proxies entitled to cast ten percent (10%) of the total votes of Members shall constitute a quorum. No written notice of the rescheduled meeting shall be required. Notwithstanding the foregoing, in a case involving the levying of a Limited Assessment on a Lot, as provided in Section 11.5 above, there shall be no requirement of a quorum at a meeting rescheduled because of a lack of the required quorum at the initial meeting, and the Board may approve and levy such Limited Assessment even though the Owner of the Lot subject thereto is not present in person or by proxy.

SECTION XII **ENFORCEMENT OF ASSESSMENTS**

12.1 Right to Enforce: The right to collect and enforce payment of the Assessments made by the Association is vested in the Association. Each Owner of a Lot hereby agrees to the enforcement of the payment of all Assessments in the manner herein provided in the event an attorney is employed for the collection of an Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of any of the terms and conditions of this Declaration, the Owner against whom such enforcement is sought shall pay reasonable attorneys' fees in connection therewith.

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

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

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

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

12.6 Reporting: The Association shall provide a Mortgagee with a copy of a notice of default served on an Owner under Section 12.5 above. The duty to give such notice shall arise only after said Mortgagee furnishes to the Association notice of a Mortgage, which shall contain the following:

12.6.1 The name and address of said Mortgagee.

12.6.2 A legal description of the Lot subject to the lien of the Mortgage by Lot and Block:

12.6.3 The name and address of the Owner,

12.6.4 The date the lien of the Mortgage was filed of record in Ada County, Idaho, and the instrument number thereof

12.6.5 The maturity date of the obligation secured by said Mortgage lien.

12.6.6 A copy of the title insurance report evidencing that the Mortgagee is the holder of a first Mortgage or the beneficiary of a first Deed of Trust; and

12.6.7 The signature of the Mortgagee or authorized agent.

In the event the Association shall be required to notify a Mortgagee as herein provided, the Association shall assess the Owner who is delinquent the sum of \$150.00 as a reasonable charge for such notification and such charge shall be a cost of collection secured by the Assessment lien described in Section 12.2, above. The charge for such notification shall be subject to change by the Board.

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

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

ARTICLE XIII ARCHITECTURAL CONTROL COMMITTEE

13.1 Creation; Declarant's Right of Appointment: The ACC has been hereby appointed and approved. The Board shall have the right to appoint, remove and replace all members of the ACC. If a vacancy on the ACC occurs and a permanent replacement has not yet been appointed, the Board may appoint an acting Member to serve for a specific temporary period not to exceed one (1) year. All members of the ACC shall be an Owner. A member of the ACC may be removed by the Board appointing them at any time without cause. Pursuant to Section 13.3 below, the ACC shall review, study, and either approve or reject the proposed improvements on each Lot, all in compliance with the Declaration. The actions of the ACC, in the exercise of its discretion by its approval or disapproval of the proposed improvements on each Lot, or with respect to any other matter before it, shall be conclusive and binding on all parties.

13.2 Appointment of ACC Representative: The ACC may appoint in writing one (1) of its members to act as its designated representative (the "Committee Representative"). The Committee Representative may be delegated all duties and obligations of the ACC if expressly approved by all members of the ACC. In the event a Committee Representative is appointed, it is intended that the ACC shall look to the Committee Representative to perform all functions of the ACC, provided, however, that the ACC shall make all final

determinations and decisions regarding all ACC duties and obligations. Any action or decision made by two (2) members of the ACC shall be a binding decision of the entire ACC.

13.3 Improvements Generally: No improvements on any portion of the Property shall be constructed, reconstructed, placed, or removed without the ACC's prior written consent, and without being in compliance with this Declaration, the Articles, and the Bylaws. Approval by the ACC ensures that all improvements conform and harmonize as to external design, quality and type of construction, architectural character, materials, color, location on the Lot, height, grade and finish ground elevation, natural conditions, landscaping, and all aesthetic considerations to protect the special qualities of the Property. Nothing contained in this Article XIII limits any Owner's obligation and duty to ensure that the Owner's Lot development is in compliance with the Master Declaration, this Declaration and any other applicable documents or applicable city and state laws.

13.4 Expenses: All expenses of the ACC shall be paid by the Association. The ACC shall have the right to charge a fee for each application submitted to it for review in an amount which may be established by the ACC from time to time and such fees shall be collected by the ACC and remitted to the Association to help defray the expenses of the ACC's operation, including reasonable payment to each member of the ACC for their services as provided herein.

13.5 Review of Proposed Rebuild: The ACC shall consider and act upon any and all proposals or plans and specifications submitted for its approval pursuant to this Declaration and perform such other duties from time to time as may be assigned to it by the Board, including the inspection of construction in progress. The ACC may condition its approval of proposals upon the agreement of the Owner to an additional assessment for the cost of maintenance and the payment of an architectural review processing fee. The ACC may require submission of additional plans or review by a professional architect. The ACC may issue guidelines setting forth procedures for the submission of plans for approval. The ACC may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevations, drawings, and description of samples of exterior material and colors. Until receipt by the ACC of any required plans and specifications the ACC may postpone review of plans. Decisions of the ACC and the reasons therefor shall be transmitted by the ACC in writing, to the applicant at the address set forth in the application for approval within thirty (30) days after filing all materials required by the ACC.

13.6 Inspection of Approved Alterations: Inspection of Improvements and correction of defects therein shall proceed as follows: upon completion of any Improvements for which approved plans are required under this Article, the Owner shall give written notice of completion to the ACC. Within thirty (30) days thereafter, the ACC or its duly authorized representative may inspect such Improvement and if the ACC finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner and the Board in writing of such noncompliance within such thirty (30) day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same. If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to

remedy such noncompliance, the Board, at its option, may exercise its right to enforce the provisions of this Declaration, by any proceeding at law or in equity on behalf of the Association, and may take such other actions as are appropriate, including levy of a Limited Assessment against such Owner for reimbursement pursuant to this Declaration.

13.7 Review of Unauthorized Alterations: The ACC may identify for review, alterations which were not submitted to the approval process. The ACC or its duly authorized representative shall inspect such unauthorized alteration. If the ACC finds that the work is in noncompliance it shall notify the Owner and the Board in writing of such noncompliance. Upon notice the Board shall determine whether there is a noncompliance and, if so, the nature thereof and estimated cost of correcting or removing the same. If noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date of the announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may exercise its right to enforce the provisions of this Declaration, by a proceeding at law or in equity on behalf of the Association, and may take such other actions as are appropriate, including levy of a Limited Assessment against such Owner for reimbursement pursuant to this Declaration.

13.8 Non-Liability of ACC Members. Approval by the ACC does not assure approval of the Improvements by any other governmental or quasi-governmental agency, Board or commission having jurisdiction over the Property or the Architectural Committee as established in the Master Declaration section 14.8. Notwithstanding that the ACC has approved improvements, plans and specifications, neither the ACC nor any of its members shall be responsible or liable to the Association or any Owner with respect to any loss, liability, claim or expense which may arise by reason of such approval of the improvements, unless due to the willful misconduct or bad faith of the ACC. Neither the Board, ACC, or any agent thereof nor Declarant, its employees, agents, or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised, or approved in accordance with the provisions of the Declaration, nor for any structural or other defects in any work done according to such plans and specifications. In any and all events, the ACC shall be defended, indemnified, and held harmless by the Association in any such suit or proceeding which may arise by reason of the ACC's decision. The Association, however, shall not be obligated to defend, indemnify and hold harmless any member of the ACC to the extent any such member of the ACC shall be adjudged to be liable for willful misconduct or bad faith in the performance of such member's duty as a member of the ACC, unless and only to the extent that the court in which such action or suit may be brought shall determine that, despite the adjudication of liability, but in view of all circumstances of the case, such member is fairly and reasonably entitled to indemnification and defense for such expense if such court shall deem it proper.

ARTICLE XIV **MISCELLANEOUS**

14.1 Term: This Declaration and all Restrictions contained herein shall run until December 31, 2041, unless amended as hereafter provided. After December 31, 2041, said covenants, conditions, restrictions, and easements shall be automatically extended for successive periods

of ten (10) years each, unless extinguished by a written instrument executed by the Owners of at least eighty percent (80%) of the Lots covered by this Declaration and such written instrument is recorded with the Ada County Recorder.

14.2 Amendments to Declaration. This Declaration and all restrictions contained herein may only be amended by the Members as follows:

14.2.1 By Owners. Any amendment to any provision of this Declaration, other than to this Section, shall be by an instrument in writing signed and acknowledged by the president and secretary of the Association certifying and attesting that such amendment has been approved by the vote or written consent of Members representing more than eighty percent (80%) of the total voting power in the Association, except where a greater percentage is required by express provision in this Declaration, and such amendment shall be effective upon its recordation with the Ada County Recorder's Office. Any amendment to this Section 14.2.1 shall require the vote or written consent of Members holding ninety-five percent (95%) of the total voting power of the Association.

14.2.2 Effect of Amendment. Any amendment of this Declaration approved in the manner specified above shall be binding on and effective as to all Owners and their respective properties, notwithstanding that such Owners may not have voted for or consented to such amendment. Such amendments may add to and increase the Restrictions applicable to the Property but shall not prohibit or unreasonably interfere with the allowed uses of such Owner's property which existed prior to said amendment.

14.3 Mortgage Protection: Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat or render invalid the rights of the beneficiary under any first Mortgage upon a Lot made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after foreclosure of any such first Mortgage, such Lot shall remain subject to this Declaration, as amended. The Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, the FHA, the FHLMC, the FNMA or the GNMA or any similar entity, so as to allow for the purchase, guaranty, or insurance, as the case may be, by such entities of first Mortgages encumbering Lots with Residences thereon. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential Mortgage borrowers and potential sellers of their Lots, if such agencies approve the Property as a qualifying subdivision under their respective policies, rules, and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Lot.

14.5 Books and Records: All books, records and minutes of the Board, and all other books and records maintained by the Association shall be made reasonably available for inspection and copying by any Owner or by his duly authorized representative, at any reasonable time and

for a purpose reasonably related to his interest as a Member, or at such other place and time as the Board shall prescribe.

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

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

14.8 Interpretation: The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Property. This Declaration shall be construed and governed under the laws of the State of Idaho, and as follows:

14.8.1 Restrictions Construed Together. All of the provisions here of shall be liberally construed together to promote and effectuate the fundamental concepts of the operation of the Property as set forth in the recitals of this Declaration.

14.8.2 Restrictions Severable. Notwithstanding the provisions of the foregoing 14.8.1, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or part on thereof shall not affect the validity or enforceability of any other provision herein.

14.8.3 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.

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

14.10 Successors and Assigns. All references herein to Declarant, Owners, Members, an Association or Person shall be construed to include all successors, assigns, partners and authorized agents of such Declarant, Owners, Members, Association or Person.

IN WITNESS WHEREOF, this Declaration has been executed in Boise, Idaho, this ___ day of January, 202416.

Paula BF
Paula Forney, Director of Association

STATE OF IDAHO)

) Ss:

County of Ada)

On this 8th day of January, 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared Paula Forney, known to me to be the person who executed the foregoing instrument on behalf of Tivoli Gardens Owners Association, Inc. and acknowledged to me that such Association 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.

Elizabeth Sherfick

Notary Public for Idaho

Residing at Ada, Idaho

My Commission Expires: 9/25

