

ADA COUNTY RECORDER J. DAVID NAVARRO
BOISE IDAHO 02/26/03 11:31 AM
DEPUTY Michelle Turner
RECORDED - REQUEST OF
Group Agent Central
AMOUNT 66.00

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DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS

FOR

MOONBEAM SUBDIVISION
BOISE, IDAHO

**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
MOONBEAM SUBDIVISION**

THIS DECLARATION is made on the date hereinafter set forth by **SVCD-SUPERIOR VALUE CONSTRUCTION and DEVELOPMENT, L.L.C** an Idaho Limited Liability Company, hereinafter referred to as **"Declarant."**

Recitals:

A. Declarant is the owner of the following real property in the City of Boise, County of Ada, State of Idaho, hereinafter sometimes referred to as the "Property" which is more particularly described as follows:

MOONBEAM SUBDIVISION, according to the official plat thereof, recorded in Book 85 of Plats at Pages 9599 and 9600, as Instrument No. 103023803, records of Ada County, Idaho; and

B. Declarant intends to develop the Property as shown on the recorded plat map. All owners of Moonbeam Subdivision shall be members of the Moonbeam Homeowners Association, Inc.

ARTICLE I. DECLARATION

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following Covenants, Conditions, Restrictions and Easement which are established for the purpose of protecting the value and desirability of, and which shall run with and bind, the Property, and each and every part, parcel or lot thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE II. DEFINITIONS

As used in this Declaration or in any Supplemental Declaration, unless the context otherwise specifies or requires, the following words and phrases shall be defined as follows:

2.1 **"Association"** shall mean and refer to Moonbeam Homeowners' Association, Inc., a nonprofit corporation organized under the laws of the State of Idaho, or any successor or assign of the corporation.

2.2 **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the property,

including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

2.3 **"Property"** shall mean and refer to the real property consisting of Moonbeam 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 hereinafter be made subject to this Declaration by Supplemental Declaration, pursuant to the provisions hereof for the annexation of additional parcels of real property.

2.4 **"Lot"** shall mean and refer to all Lots within and shown upon any recorded subdivision map of the Property except for streets dedicated to the public as shown upon the recorded plat map.

2.5 **"Declarant"** shall mean and refer to S.V.C.D. - Superior Value Construction and Development, L.L.C. and its successors and assigns provided that such successor or assign has acquired more than two (2) Lots and that such Lots constitute the remainder of unconveyed Lots owned by Declarant.

2.6 **"Annexed Property"** shall mean and refer to any real property made subject to this Declaration by Supplemental Declaration pursuant to the provisions hereof for the annexation of additional parcels of real property.

2.7 **"Member"** shall mean and refer to any person or entity who is a member of the Association as defined by the Articles and Bylaws of the Association and this Declaration.

2.8 **"Project"** shall mean and refer to the Property and all contemplated improvements thereto.

2.9 **"Exempt Property"** shall mean all properties within the Project which have been dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit corporation exempt from taxation by the laws of the United States of America, all of which properties shall be exempt from assessments created herein, except that such term shall not include any land or improvements devoted to dwelling use.

ARTICLE III. RIGHTS RESERVED BY DECLARANT

Notwithstanding anything to the contrary contained in this Declaration, Declarant expressly reserves unto:

(a) Itself, its employees, successors, assigns, agents, representatives, contractors and their subcontractors and employees, easements, and right-of-ways on, over and across all or any part of the streets for vehicular and pedestrian ingress and egress to and from any part of the Property, or any adjacent real property owned by Declarant, or its successors or assigns;

(b) Itself, its employees, successors, assigns, agents, representatives, contractors and their subcontractors and employees (including any district, company, unit of local government, association or other entity providing water, sewer, gas, oil, electricity, telephone, cable television, or other similar services), easements, access and right-of-way on, over, under and across all Lots, as provided on any recorded subdivision plat of the Property for installation use, maintenance and repairs of all lines, wires, pipes, pumps, water wells, facilities and other things necessary for all such services, provided that any such installation, maintenance or repair of such enumerated above lines, wires or pipes shall be performed with reasonable care and that the surface of said easement area shall be restored to the level and condition that existed prior to the doing of work; and

(c) Itself, its employees, agents, representatives, contractors and their subcontractors and employees, and its successors and assigns, the right to use any portion of the Property to facilitate and complete the development of the Property, and any Annexed Property, including without limitation the use of the Property, where applicable, for:

- (i) Construction, excavation, grading, landscaping, parking and/or storage;
- (ii) Maintenance and operation of the sales office and mode units for sales purposes;
- (iii) The showing to potential purchasers of any unsold Lot, unit or improvements within the Project;
- (iv) Display of signs to aid in the sale of any unsold Lots and units, or all part of the Project;
- (v) Construction, operation and maintenance of all or any portion of the Irrigation Water Supply System by Declarant, its successors or assigns;

(d) itself, its agents, contractors, subcontractors and employees, successors and assigns, all water and water rights over, upon or under or appurtenant to the Property, or any portion thereof.

ARTICLE IV. MAINTENANCE RESPONSIBILITIES

4.1 **By Association:** The Association shall be responsible for the operation, maintenance and repair of the following elements of the Property: (a) the temporary emergency access easement across Lots 2 and 3, Block 3 in accordance with the requirements of the City of Boise until such time as the easement has been vacated by the City of Boise; (b) the Irrigation Water Supply System as more particularly set forth in Article XI below; and (c) the trees located on Lots 5, 7, and 12, Block 3 and Lots 1-3, 7, 10 and 12, Block 1 in accordance with sound arboricultural standards, including but not limited to periodic pruning, fertilizing and spraying, as needed and, the removal thereof when required.

4.2 **By Owners:** Owners of Lots shall be responsible for and perform all exterior maintenance upon the Lots owned by them and all improvements thereon. In the event an owner fails to maintain the premises of a Lot and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association upon a two-thirds (2/3) vote of the Board of Directors, the Association shall have the right to give a thirty (30) day written notice of its intended action, and if satisfactory arrangements are not then made by such Owner, the Association shall have the right through its agent, employees and contractors, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of any improvements located thereon. The cost of such activity shall be added to and become part of the assessment to which such Lot is subject. In the event the Board of Directors declares an emergency by three-quarters (3/4) vote, such action to repair, maintain and restore may be taken at any time after written notice is given to the Owner.

ARTICLE V. USE AND BUILDING RESTRICTIONS

The use of any Lot and the construction of any improvements thereon, shall be subject to the following requirements and restrictions:

5.1 Building Restrictions:

(a) No building, structure, or improvement shall be constructed, erected, altered or maintained on, nor shall any portion of the Property covered by this Declaration be used, designed or intended for any purpose other than a single family dwelling.

(b) Each Lot is restricted to a single family dwelling together with usual and appropriate structures, if any, approved by the Architectural Control Committee.

(c) The occupancy of a single family dwelling shall be limited to persons related by blood, adoption or marriage, or to other persons living together as a single household no more than two of whom are unrelated to any other occupant.

(d) The size, configuration, style and finish of each proposed building or structure on each Lot shall be subject to architectural and aesthetic control pursuant to Section 5.16 of this Article V and pursuant to Article VIII hereof. Said property shall be used in such manner as to be inoffensive to any other Property Owners in the Project.

(e) All buildings shall be of frame, stone, stucco, or brick construction and, if other than stone or brick, shall be finished, painted and maintained in good repair.

(f) Water and sewer hookup fees shall be the responsibility of the Lot Owner.

5.2 **Minimum Building Size:** The dwelling on each Lot shall satisfy the minimum floor area requirement of the Architectural Control Committee, provided,

however, that in no event, absent exceptional circumstances deemed worthy by the Architectural Control Committee, shall the required ground floor area be less than the following number of square feet, exclusive of garages, patios, breezeways, porches, and similar attached or un- attached structures, applicable to the dwelling one story or more than one story in height: Minimum ground floor area for houses of one story (exclusive of basement) is 800 square feet; in addition, a two or more story dwelling shall have a minimum ground floor area of at least 750 square feet and at least 800 square feet of total floor area.

5.3 Maximum Building Height: No dwelling shall be more than two stories in height. No structure that exceeds one story in height shall be erected on any Corner Lot unless approved in writing by the Architectural Control Committee. A basement or daylight basement shall not be counted as a story in determining compliance with this section. "Corner Lot" for purposes of this Declaration means any Lot two sides of which are contiguous to dedicated streets.

5.4 Building Location: No building, structure, or grade shall be constructed, used, maintained or made closer to any exterior line (front, rear or side) of any Lot than is permitted by the setback provisions contained in the deed from Declarant covering such Lot; provided, however, if any such deed fails to provide any such setback, the Architectural Control Committee shall determine the setback for such Lot. In general, unless otherwise specifically approved in writing by the Architectural Control Committee or as otherwise provided in the deed from the Declarant, no structure or improvement, other than approved fencing, shall be placed nearer than the following number of feet to the front or to the rear Lot lines, or to any side Lot line of the Lot on which such improvement is located:

In Moonbeam Subdivision, the setbacks shall be those required by the ordinances of the City of Boise as of the date of this Declaration, which are front, 20 feet; rear, 15 feet; and side, 5 feet for one-story and two-story dwellings.

Setbacks for Lots in any Annexed Property shall be as specified in the Supplemental Declaration, effective upon annexation in accordance with this Declaration, unless otherwise provided for in the deeds for such Lots or as determined by the Architectural Control Committee.

For the purpose of this section, eaves, steps, chimneys and gutters shall not be considered as a part of the building; provided, however, that this shall not be construed to permit any eaves, steps, chimneys, gutters or any portion of the building on any Lot to encroach upon any other Lot. Open porches shall not be considered as a part of the building for purposes of this section, but any open porch shall, prior to construction, require the approval of the Architectural Control Committee.

5.5 Building Site; Subdivision: A building site shall consist of at least one (1) Lot, or parcel composed of more than one Lot. No Lot shall be further subdivided after the initial transfer thereof by Declarant. No Parcel composed of more than one Lot

conveyed for the purpose of constructing a single family dwelling thereon, shall be subdivided or conveyed other than as a single indivisible parcel unless title thereto reverts to Declarant.

5.6 Fences; Hedges: No fence, hedge, or boundary wall situated anywhere upon any Lot shall have a height greater than six (6) feet or such other lesser height as the Architectural Control Committee may specify, above the finished graded surface of the ground upon which the fence is constructed. No fence shall be constructed of any material other than wood nor finished in other than a natural finish, except as may be specifically approved by the Architectural Control Committee. No fence shall be constructed so as to extend toward the front of the Lot past the front plane of the dwelling structure constructed thereon, or closer than ten (10) feet to any side Lot line adjacent to a dedicated street on a Corner Lot. No fence, wall, hedge, or shrub planting with an elevation above three (3) feet shall be permitted within the front building setback without special written consent of the Architectural Control Committee. No fence, wall, hedge, or shrub planting which obstructs sight lines at an elevation between four (4) and eight (8) feet above the roadways shall be placed or permitted to remain on any Corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines or, in the case of a rounded property corner, from the intersection of the street property lines within ten (10) feet from the intersection of a street property line with the edge of a driveway. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

5.7 Construction: No building or structures shall be moved onto any Lot without prior approval of the Architectural Control Committee. Prefabricated or manufactured homes are not permitted. During the course of construction no trailer houses or similar mobile units designed for overnight accommodations shall be parked in any street or within building setback lines. No trailer, basement, tent, shack, garage, barn or other unattached structure erected on a Lot shall at any time be used as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted. No building of any kind shall be erected or maintained on a Lot prior to the construction of the dwelling house thereon, except that a garage or other small building of permanent construction may be erected with the approval of the Architectural Control Committee for the purpose of storing tools and other articles during the construction of the permanent dwelling. Notwithstanding the foregoing, a portable construction office may be placed upon a Lot during the period in which construction of a dwelling unit thereon is in progress, provided that such office may not remain or be kept upon such Lot for more than six (6) months unless renewed with the approval of the Architectural Control Committee. A temporary sales office of a portable nature also may be placed upon any Lot by Declarant or its authorized agents, to facilitate Lot sales.

(a) The construction of the dwelling and associated structures shall be prosecuted diligently and continuously from the time of commencement thereof until such dwelling and associated structures are fully completed and painted.

(b) No excavation for stone, sand, gravel, earth or minerals shall be made upon a Lot unless and only to the extent such excavation is necessary in connection with the construction of an approved structure thereon. No irrigation drain or wastewater shall be permitted to flow in open ditches to or on any Lot or tract in said Project.

5.8 Mining and Drilling: No derrick or other structure designed for use in boring or drilling for oil, natural gas or other products shall be erected, placed, permitted or maintained upon any portion of the Property, nor shall any oil, natural gas, petroleum, asphalt or other hydrocarbon product or substance be produced or extracted by or from any well upon, in or under said Property. No drilling, oil development operations, oil refining, mining, quarrying or other mineral excavation or similar activity shall be permitted on or under any part of the Property, nor shall oil wells, tanks, tunnels, mineral excavations, shafts or drifts be permitted upon or in any Lot.

5.9 Animals: No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, domestic cats or other household pets may be kept for an Owner's personal use.

(a) Any such household pets shall be properly restrained and controlled at any time they are within the Project. It shall be the obligation of an Owner to control his animals in accordance with the Rules and Regulations from time to time adopted by the Association.

(b) Any kennel for animals which is constructed or maintained on any Lot shall be (1) screened from view so as not to be visible from anywhere within or adjacent to the Project from the Common Area or adjacent Lots and in a location and of construction approved by the Architectural Control Committee; (2) located and maintained in a manner to avoid any endangerment of or nuisance to adjacent Lot Owners; and (3) maintained in a clean, noise-free, odor-free and insect-free manner.

(c) "Household pets" as permitted hereby shall not include livestock, poultry, swine, waterfowl, reptiles, amphibians or rodents (except hamsters and gerbils).

(d) Notwithstanding the foregoing, household pets shall not be kept which unreasonably bother or constitute a nuisance to Owners of other Lots.

5.10 Landscaping: Within thirty (30) days of occupancy of the dwelling upon any Lot, the Owner shall submit a landscaping plan to the Architectural Control Committee for approval, which plan shall include the immediate (as provided in subsection (a), below) seeding (with grass) or sodding and the location of one (1) deciduous tree in the front yard of each Lot.

(a) Within sixty (60) days of occupancy of the dwelling structure, the landscaping specified in the plan approved by the Architectural Control Committee shall be completed; provided, however, that if placement and planting of landscaping is made impractical by inclement weather during the months of November, December, January,

February or March, completion of landscaping may be deferred a reasonable period of time in the discretion of the Architectural Control Committee (but shall be completed no later than the next April 30 following occupancy).

(b) The front yard area, side yards facing onto streets and all areas abutting on Common Area, shall be landscaped, sodded and maintained in a professional manner. Owners shall be responsible for landscaping rear and side yards not abutting on streets or Common Area.

(c) Landscaping lawns and vegetation shall be watered, pruned, cut and maintained weed-free according to good landscape practice and in good appearance.

(d) No Owner shall remove, destroy or otherwise injure any shade tree existing as of the date hereof as described in 4.1, without the express written approval of the Board of Directors of the Association. It is Declarant's intent that the said shade tree shall be preserved and maintained by the Association in accordance with the provisions of Section 4.1, above.

5.11 Unsightly Structures. Property or Practices: No unsightliness shall be permitted on any Lot. Without limiting the generality of the foregoing, all unsightly facilities, equipment or structures shall be enclosed within approved structures or appropriately screened from view.

(a) Basketball backboards or posts shall not be installed without prior approval of the Architectural Control Committee as to materials and positioning. At a minimum, backboards shall be freestanding, constructed of Plexiglas or acrylic materials and shall be supported by removable metal posts, painted to blend with the color of the house. Backboards must be factory made, perpendicular to and adjacent to the driveway, or to the side of the house, or shall be located in the backyard, so as not to constitute a nuisance or visual obstruction to adjacent homeowners.

(b) All refuse, garbage and trash shall be kept at all times in covered, reasonably noiseless containers, which shall be kept and maintained within an enclosed structure or appropriately screened from view, except when necessarily placed for pickup by garbage removal service.

(c) Storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. Clotheslines and similar structures for hanging, drying or airing clothes shall not be permanently installed. No lumber, grass, shrubs or tree clippings or scrap, refuse, trash or other materials shall be kept, stored or allowed to accumulate on any Lot.

5.12 Material Storage: No building materials of any kind shall be placed or stored upon a Lot until the Owner is ready and able to commence construction, and then such material shall be placed within the boundary lines of the Lot upon which the structure is to be erected. The Architectural Control Committee and/or Association

through its agents, shall have the right to enter upon any vacant Lot for the purpose of burning or removing weeds, brush, growth or refuse, and charge the cost thereof to the Owner.

5.13 Noxious Use of Property: No Lot or any structure thereon shall be used for the conduct of any trade or business or professional activities. Noxious or undesirable acts or undesirable use of any portion of the Property; including (but not limited to acts or uses causing noise which interferes with the peaceable enjoyment of neighboring properties) is prohibited and shall not be permitted or maintained; provided however, that an office and model home or homes for the purpose of the development, construction and sale of the Lots and homes in the Project may be maintained by Declarant and provided, further, that educational facilities, including schools and children's day care centers if approved by the Architectural Control Committee and properly licensed and zoned to operate within the Project, may be allowed with prior authorization of the Declarant. The prohibition of use of any Lot or any structure thereon for the conduct of any trade or business or professional activities includes and prohibits use of any Lot or any structure thereon for a "half-way house," treatment center, nursing home, shelter home, or similar use, including use for the full-time care and residence of unrelated physically or mentally handicapped persons.

5.14 Condition and Repair: No building or structure upon any Lot covered by this Declaration shall be permitted to fall into despair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted as required under the provisions of Section 5.16 and which may be enforced in the same manner as described in Section 4.2.

5.15 Vehicle and Equipment Parking: Any boat, camper trailer or recreational vehicle which is in good repair and working order which does not exceed the following dimensions: eight (8) feet wide, twenty-seven (27) feet long and ten (10) feet high, may be stored on a Lot between front and rear yard setbacks if screened by six (6) foot fence. No snowmobiles, snow removal equipment, golf carts, maintenance equipment or similar equipment or vehicles, and no working or non-working commercial vehicles of greater than three-quarter (3/4) ton in size and no junk cars or other unsightly vehicles shall be parked upon any Lot at any time, unless fully enclosed in a garage on said Lot. None of the above shall be parked on any street in the subdivision. All other parking of equipment shall be prohibited, except as approved in writing by the Architectural Control Committee. No parking areas or driveways shall be constructed or maintained except as approved by the Architectural Control Committee. Each dwelling constructed within the Property shall include at least a two (2) car, enclosed garage which is an integral part of the dwelling structure. Detached "shops" or recreational vehicle storage garages will be permitted only with approval of the Architectural Control Committee.

5.16 Control of Exterior Appearance, Walls, Etc.: The visual harmony and aesthetic appeal of the Project being of mutual concern to all Owners and having a direct bearing on the value of Lots and improvements thereon, the Association or the Architectural Control Committee shall have the right to control the texture, design and

color scheme of the outside walls, fences, screening devices, roofs, awnings, patio roofs, and covers of all structures erected upon any Lot and to require basic landscaping and maintenance thereof. The Owner shall not repaint, except using the original approved color, the outside walls or fences without the prior approval of the Architectural Control Committee as to color. All open porches and patio roofs shall require the prior approval of the Architectural Control Committee.

5.17 Exterior Antennas, Etc.: Radio and television antennas on the exterior of the building or roof are prohibited. However, satellite dishes for television will be considered as long as they are not visible from the street in front of the Lot(s) upon which such may be proposed for construction, and subject to Architectural Control Committee approval as to size and location.

5.18 Signage: No sign of any kind shall be displayed to the public view on any Lot except one (1) sign of not more than thirty two (32) square feet advertising the Property for sale or rent, or a sign used by a builder to advertise the property during the course of construction and any sales period. In addition, signs may also be allowed as follows:

(a) The Association may erect and maintain uniform subdivision identification signs, street signs, and other appropriate informational signs of a size and design approved by the Architectural Control Committee.

(b) Declarant is entitled to place signs of such size, design and number as Declarant may deem appropriate, to identify the Project and display related information pertaining thereto, and to advertise Lots for sale.

5.19 Exterior Lighting: No exterior lighting shall be installed or maintained on any Lot or structure thereon, which interferes with use and enjoyment of adjacent Lots, or without prior written approval of the Architectural Control Committee.

5.20 Mail Boxes: Each Lot shall have a uniform mail box within a cluster box unit and support structure installed by Declarant and maintained by the Association.

5.21 Sewage Disposal: No septic tank or other individual sewage disposal system shall be constructed or installed on any Lot.

5.22 Common Driveways: Vehicular access to Lots 7, 8 and 9, Block 1, shall be provided by a common driveway to be constructed in the location depicted on the Plat. Lots 7, 8 and 9, Block 1, are subject to cross easements at the location shown in the Plat providing perpetual and indefeasible access rights for ingress and egress to the Lots encumbered and benefited by the easements. It is the intent of the Declarant that the easements so created shall run with the land and not be sold or conveyed separately from the Lots taking access over them. No Owner or other person shall place or permit to be placed across the easement premises any obstruction or in any manner otherwise interfere with the use of the easement premises by the Owners of the said Lots without the mutual

consent of all such Owners. The Owners of Lots 7, 8 and 9, Block 1, shall share equally the costs and expenses of maintaining the common driveway in good repair, including, but not limited to, resurfacing from time to time as may be necessary or desirable.

ARTICLE VI. HOMEOWNER ASSOCIATION

6.1 Formation: Within a reasonable time after the execution and recordation of this Declaration, the Association will be incorporated and will adopt Bylaws (the "Bylaws") for its governance. To the extent the Articles of Incorporation or Bylaws of the Association may conflict with the provisions of this Declaration, the provisions of this Declaration shall control.

6.2 Membership: Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

6.3 Classes of Voting Members: The Association shall have two classes of voting membership; however, all votes shall be equal and counted as such, except where voting by separate classes may otherwise be provided in the Articles and bylaws of the Association or this Declaration.

(a) Class A members shall be owners with the exception of the Declarant (during the period when the Declarant is a Class B Member). Each Class A Member shall be entitled to one vote for each Lot owned. When more than one (1) person is an Owner of a Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) The sole Class B Member shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned. So long as Declarant continues to own Lots, Class B membership shall cease and be converted automatically to Class A memberships (one Class A membership for each Lot owned) upon the happening of either of the following events, whichever occurs later:

- (i) When the total votes outstanding in the Class A membership equals or exceeds two times the total votes outstanding in the Class B membership; or
- (ii) On January 15, 2012.

ARTICLE VII. COVENANT AND LIEN ASSESSMENTS

The Declarant, for each Lot within the Property, hereby covenants and creates a claim of lien, with power of sale, to secure payment to the Association of any and all assessments levied hereunder. Each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, for each Lot

owned, to pay to the Association (a) annual assessments or charges, and (b) special assessments for capital improvement, such assessments to be established and collected as hereinafter provided. Notwithstanding any other provision in these covenants to the contrary, exempt Property shall not be subject to the assessment provided for herein unless a dwelling is construction thereon.

7.1 Annual Assessment: The Board of Directors of the Association shall determine the annual assessment each year. Each such annual assessment shall be sufficient, at a minimum, to permit the Association to discharge its obligations under this Declaration. The maximum annual assessment for the year after the first Lot is sold shall be \$100.00 per lot built upon or not owned by Declarant.

(a) Each year, beginning January 1 of the year immediately following the year in which conveyance of the first Lot to an Owner occurs, the maximum annual assessment may be increased effective as of that January 1 (and each year thereafter) by action of the Board of Directors of the Association without a vote of the membership, in an amount equal to fifteen percent (15%) of the annual assessment for the preceding year.

(b) For the calendar year beginning January 1 immediately following the year in which conveyance of the first Lot to an Owner occurs, or any subsequent year, the maximum annual assessment may be increased in excess of the amount derived from the formula set forth in subsection (a) hereinabove, only by an affirmative vote of two-thirds (2/3) of the Members voting in person or by proxy at a meeting duly called for this purpose. The limitations hereof shall not apply to any change in the maximum basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

7.2 Rate: Both annual and special assessments must be fixed at a uniform rate for all Lots.

7.3 Lien: The annual and special assessment, together with interest at the legal rate, costs, and reasonable attorney's fees, incurred in collection, shall be a charge on the Lot and shall be a continuing lien upon the Property against which each such assessment is made.

7.4 Personal Obligation: Each such assessment, together with interest thereon at the legal rate, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Property at the time when the assessment falls due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them, and in any event shall not relieve the Owner of his personal responsibility therefore, but unpaid assessments shall constitute a continuing lien against the Lot until paid.

7.5 Purpose of Assessment: The assessments levied by the Association shall be used exclusively to promote and develop the health, safety, welfare and economic well-being of the residents in the Project; for the improvement, operation and maintenance of

the Irrigation Water Supply System; for the costs incurred by the Association to perform and fulfill its maintenance responsibilities as set forth in Section 4.1, above; and for the performance of the responsibilities of the Association as set forth in the Articles, Bylaws, and this Declaration.

7.6 Billing for Annual Assessment: The annual assessment may be billed semi-annually or annually in advance.

7.7 Special Assessments: In addition to the annual assessments authorized above, the Association may levy in any calendar year a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of construction, reconstruction, repair or replacement of a capital improvement upon the Irrigation Water Supply System, including fixtures and personal property related thereto provided that any such assessment shall have the approval of two-thirds (2/3) of the Members voting in person or by proxy at a special meeting called for this purpose.

In its discretion, the Association may require that any such assessment not expended by the Association in the year of its collection be treated as a contribution to the capital of the Association and maintained in a separate capital account until expenditure of such funds is appropriate.

7.8 Notice and Action Required: Written notice of any meeting called for the purpose of taking any action authorized under Sections 7.1 and 7.7 hereof shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the scheduled meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes shall constitute a quorum. If the required quorum is not present, the meeting shall be adjourned and rescheduled for a time and place not less than ten (10) days nor more than thirty (30) days subsequent. Written notice of the rescheduled meeting shall be mailed to all Members not less than thirty (30) days in advance of the rescheduled meeting date. The quorum at the subsequent meeting shall be satisfied by the presence in person or by proxy of one-half (1/2) of the required quorum at the previous meeting.

7.9 Assessment and Due Dates: The annual and special assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance of the said Lot by Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The annual assessment period shall be the number of months remaining in the calendar year. The annual assessment period shall be the calendar year. At least thirty (30) days in advance of each annual assessment period, the Board of Directors of the Association shall fix the amount of the annual assessment for each Lot and establish the due dates therefore.

(a) Written notice of the annual assessment and the due date(s) thereof shall be sent to each Owner.

(b) Upon written request by an Owner, and for a reasonable charge, the Association shall provide a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

7.10 Collection of Assessments: Any assessments not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of one percent (1%) per month or twelve percent (12%) per annum, or at such other rate or not at any rate, as may be established annually by the Board of Directors. The Board of Directors may not shorten the time for payment to less than the thirty (30) days provided in this Section 7.10 but may extend such period in its discretion. Each assessment, when levied, shall constitute a lien on and against the Lot to which the assessment pertains, provided a claim of lien is filed in accordance with law.

(a) The Association may, from time to time, retain the services of a professional organization, bank, credit bureau, attorney, accountant, or such other disinterested party or entity for the purpose of giving notice and collective the annual or any special assessments.

(b) The Association may:

- (i) bring an action at law against the Owner personally for the assessment, interest due, and the costs of action; or
- (ii) foreclose the assessment lien against the Lot in the manner as provided by law; or
- (iii) use any other enforcement means as may be provided by law.

(c) In the event of enforced collection of an assessment, the costs of collection as well as reasonable attorney's fees (including costs and attorney's fees on appeal) shall be added to the amount of the assessment for collection.

(d) No Owner may waive or otherwise escape liability for the assessments provided for herein by failure to use the Irrigation Water Supply System or by the abandonment of his Lot.

7.11 Subordination of Liens to Mortgages: The lien of the assessments provided for herein shall be junior and subordinate to the lien of any first mortgage or deed of trust. The sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to foreclosure of a mortgage or deed of trust, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such foreclosure shall not affect the personal liability of the Owner for such assessments. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

7.12 **Rights of Mortgages:** Mortgagees shall not be required to collect assessments on behalf of the Association. The Owner's failure to pay assessments due to the Association shall not constitute a default under any mortgage affecting the Owner's Lot.

ARTICLE VIII. ARCHITECTURAL CONTROL

In order to protect the quality and value of the homes built in the Project and for the continued protection of the Owners thereof, an Architectural Control Committee is hereby established consisting of three (3) or more members to be appointed by Declarant. At such time as the total number of Lots owned by Declarant (including Lots in any annexed property) total less than ten percent (10%) of the total number of platted Lots, then the membership of the Architectural Control Committee shall be appointed by the Board of Directors of the Association, to succeed the prior committee membership upon such appointment.

8.1 **Approvals Required:** No building, fence, wall, patio cover, window awning or other structure or landscaping improvements of any type shall be commenced, erected or maintained upon any Lot, or other Property within the Project, nor shall any exterior addition to or change or alteration of existing improvements be made, until the plans and specifications showing the nature, kind, shape, configuration, height, materials, location of the same and such other detail as the Architectural Control Committee may require (including but not limited to any electrical, heating or cooling systems), shall have been submitted to and approved in writing by the Architectural Control Committee as to harmony of external design and location in relation to surrounding structures and topography and as to conformity with the requirements of this Declaration. In the event the Architectural Control Committee fails to approve, disapprove, or specify the deficiency in, such plans, specifications and location within thirty (30) days after submission to the Architectural Control Committee in such form as they may require, approval will not be required, and this Article will be deemed to have been fully complied with.

8.2 **Rules and Regulations:** The Architectural Control Committee is hereby authorized to adopt Rules to govern its procedures including such rules as the Committee deems appropriate and in keeping with the spirit of due process of law with regard to the right of concerned parties to be heard on any matter before the Committee. The Committee is further hereby empowered to adopt such regulations as it shall deem appropriate, consistent with the provisions of this Declaration, governing any matter within the Architectural Control Committee's power, including matters of design, materials, and aesthetic interest.

8.3 **Fees:** The Architectural Control Committee may establish by its adopted rules, a fee schedule for an architectural review fee to be paid by each Owner submitting plans and specifications to the Committee for approval. No submission for approval will be considered complete until such fee has been paid. Such fee shall not exceed such

reasonable amount as may be required to reimburse the Architectural Control Committee for its reasonable expenses, including the costs of professional review of submittals and the services of a consultant to administer the matter to its completion, including any inspection which may be required.

8.4 Enforcement: The Architectural Control Committee may in its own name or on behalf of the Association, exercise all available legal and equitable remedies available to prevent or remove any unauthorized or unapproved construction or improvements on any Lot or the Property, or any portion thereof.

8.5 Waiver: The approval of any plans, drawings or specifications for any plans, improvements or construction, or for any matter requiring the approval of the Architectural Control Committee, shall not be deemed a waiver of any right to withhold approval of any similar plan, drawing, specifications or matter subsequently submitted for approval.

8.6 Liability: Neither the Architectural Control Committee nor any member thereof shall be liable to the Association, any owner, or to any other party, for any damage suffered or claimed on account of any act, action or lack thereof, or conduct of the Architectural Control Committee or any members thereof, so long as the Committee, or the members thereof, acted in good faith on the basis of information they then possessed.

ARTICLE IX. ENFORCEMENT

9.1 Authority to Enforce: The provisions of this Declaration may be enforced by any of the following persons or entities under the procedure outlined herein:

(a) The Association as to all matters, and the Architectural Control Committee as to matter subject to its enforcement.

(b) The Declarant so long as it has any retained ownership of any of the property.

(c) The Owner or Owners of any Lot adversely affected, but only after written demand is made on the Association and its failure to act, except that no such Owner shall have the right to enforce any assessment or lien herein independently of the Association.

9.2 Methods of Enforcement: Subject to the provisions of Section 9.3 hereof, the following methods of enforcement may be utilized:

(a) An action for damages, injunction, abatement, specific performance, foreclosure, rescission, cancellation of any contracts of any executory nature, or such other remedies at law and equity which may be available from the courts of the State of Idaho.

(b) Eviction for trespass by police action.

(c) Monetary penalties 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 penalties for failure to pay as due assessments levied by the Association as provided in this Declaration, no discipline or sanction shall be effective against a member unless:

- (i) The member is given fifteen (15) 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 first-class or 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 proposed penalty, expulsion, termination or suspension.
- (ii) The hearing shall be conducted by a committee composed of not less than three (3) persons, appointed by the Board of Directors 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 the conclusion of the meeting.
- (iii) Any Member challenging the compliance measures taken by the Board, including any claim alleging a defective notice, must commence court action within one (1) year after the date of the contested compliance measure taken by the Board.

9.3 Limitations 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 property other than the right to receive water from the irrigation system, on the account of the failure of the Owner to comply with the provisions of this Declaration except by the judgment of a court or a decision arising out of arbitration or on account of a foreclosure for failure of the Owner to pay annual or special assessments duly levied by the Association.

9.4 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 or a 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 part of his or is judgment or decree against the party in violation hereof.

9.5 Failure to Enforce: Neither the Association nor the Architectural Control Committee shall be liable to any person for failure to enforce any of the terms hereof, for personal injury, loss of life, damage to property, economic detriment or for any other loss caused either by their enforcement or non-enforcement. The failure to enforce any such matters, including any covenants contained in this Declaration, shall not be deemed a waiver of the right to subsequently do so.

ARTICLE X. ANNEXATION

10.1 Time for Annexation; Land Subject to Annexation: Declarant hereby reserves the right to annex any abutting, adjoining or contiguous real property, into the project by recording a Notice of Annexation or Supplemental Declaration particularly describing the real property to be annexed and added to the project created by this Declaration, pursuant to the provisions of this Article.

Upon the recording of a Notice of Annexation containing the provisions set forth in this Section (which Notice may be contained within a Supplemental Declaration affecting such property), except as may be provided for therein, the covenants, conditions and restrictions contained in this Declaration shall apply to the added land in the same manner as if it were originally covered by this Declaration and originally constituted a portion of the project; and thereafter, the rights, privileges, duties and liabilities of the parties to this Declaration with respect to the added land shall be the same as with respect to the original land, and the rights, privileges, duties and liabilities of the Owners, lessees and occupants of Lots and Units within the added land shall be the same as in the case of the original land. Notwithstanding the foregoing, any Supplemental Declaration may provide a special procedure for amendment of any specified provision thereof, e.g., by a specified vote of only the owners of Dwelling Units within the area subject thereto. Any provision of a Supplemental Declaration for which no special amendment procedure is provided shall be subject to amendment in the manner provided in this Declaration.

10.2 Procedure for Annexation: Any of the above-described real property may be annexed into the project by the recordation of a Notice of Annexation executed by Declarant and containing the following information:

- A. A reference to this Declaration, which reference shall state the date of recordation hereof and the Recorder's instrument number or the book and page of the official records of Ada County where this Declaration is recorded;
- B. An exact legal description of the added land;
- C. A statement that the provisions of this Declaration shall apply to the added land, except as set forth therein; and

- D. A statement of the use restrictions applicable to the annexed property, which restrictions may be the same or different from those set forth in this Declaration.

ARTICLE XI. IRRIGATION WATER SUPPLY SYSTEM

11.1 Irrigation Water Supply: Each Lot shall have access to an Irrigation Water Supply System to be constructed by Declarant and owned and operated by the Association. The water supplied by this system is non-potable and cross-connection with the separate domestic water supply system presents a health risk and is prohibited. All Owners to which the system has been extended shall be required to pay the assessment therefore as provided for hereinabove, regardless of actual use or non-use of water from the irrigation system. In addition, all Owners shall be responsible to pay all charges and assessments levied by the New York Irrigation District for the delivery of irrigation water to the Subdivision.

11.2 Operation of the Irrigation Water Supply System: The Irrigation Water Supply System shall be operated in accordance with the laws of the State of Idaho and all rules and regulations as may be promulgated from time to time by the Association and any governmental entity having jurisdiction thereof. The right to receive water from the Irrigation Water Supply System is, in any event, subject to availability of water. Use of the Irrigation Water Supply System shall be subject to such rules and regulations as may from time to time be adopted by the Association and the right to receive water therefrom is, in any event, subject to availability. Irrigation water will be provided to each Lot on a rotating basis and is not available to each Lot on a constant, unlimited basis. The Association, in conjunction with the appropriate irrigation authority, shall establish the water rotation for each Lot. The Association shall have no liability for any temporary interruptions in water supply service so long as necessary repairs are made in a reasonably prompt manner. The Association shall be permitted to enter into a contract with a qualified water system management and maintenance entity for the management and maintenance of the Irrigation Water Supply System.

11.3 Easement For Irrigation Water Supply System: The Declarant and the Association shall have a permanent easement for the construction, maintenance and repair of the Irrigation Water Supply System and related wells, pumps, pipes, and any other conveyancing apparatus in the public utilities, drainage and irrigation easements as described on the Plat, together with the right of ingress to and egress from the easement premises over and across the privately owned property of Owners to perform maintenance upon the well, pump, pipes and other conveyancing apparatus comprising the Irrigation Water Supply System together with all rights necessary for the full and complete use, occupation and enjoyment of the easements hereby reserved, and all rights and privileges incident thereto, including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the use, occupation or enjoyment of the reserved easement.

11.4 Extension of Irrigation Water Supply System: The Declarant and the Association shall have the power and authority to extend the irrigation water supply system to other lands in the vicinity of the Properties provided, however, that the owners of any lands to which the Irrigation Water Supply System has been extended shall be obligated to pay to the Association, by contract or otherwise, the fee as established by Section 7.1, for the delivery of such water. Any agreement made with the Owners of any such lands to which the Irrigation Water Supply System has been extended shall include, without limitation, a provision authorizing the Association to disconnect any such lands from the irrigation water supply system in the event the Owners thereof have failed or refused to pay the charges and assessments therefore.

ARTICLE XII. GENERAL PROVISIONS

12.1 Severability: Invalidation of any of these covenants or restrictions by judgment or court order shall not affect any other provision hereof, which shall remain in full force and effect.

12.2 Amendment: The covenants and restrictions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the legal Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for ten (10) successive periods of ten (10) years. Except as otherwise provided herein, any of the covenants and restrictions of this Declaration, except the easements herein granted or reserved, and except the rights granted or reserved to Declarant, may be amended by an instrument signed by members entitled to cast not less than sixty-six and two-thirds percent (66-2/3%) of the votes of membership. Any amendment must be recorded.

12.3 FHA/VA Approval: As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional real property to the Project, mergers and consolidations, mortgaging or dedication of Common Area, dissolution or amendment of the Articles of Incorporation or Bylaws of the Association, and amendment of this Declaration.

12.4 Contracts or Agreements: The Board of Directors may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, 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 building Lots in the Project with dwelling structures thereon.

IN WITNESS WHEREOF, the undersigned Declarant executes this Declaration this 19 day of February, 2003.

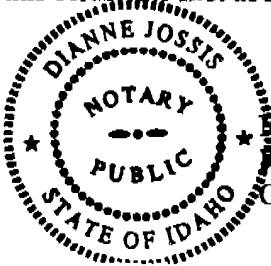
S.V.C.D.-SUPERIOR VALUE CONSTRUCTION & DEVELOPMENT, LLC, an Idaho Limited Liability Company

By: *J. S. Gibson*
James S. Gibson, Manager

STATE OF IDAHO)
) ss.
County of Ada)

On this 19 day of February, 2003, before me, Dianne Jossis a Notary Public in and for said State, personally appeared JAMES S. GIBSON, known or identified to me to be the Manager of S.V.C.D.-Superior Value Construction & Development, LLC, the Limited Liability Company that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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.



Dianne Jossis
Notary Public for Idaho
Residing at Boise, Idaho
Commission expires 8/1/07