

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

LINDA VISTA EIGHTH SUPPLEMENT - PHASE 1

This Declaration is made this 28 day of January, 1998, by **SCOTT A. TWITE and JOY E. TWITE**, hereinafter referred to as "Declarants," who are the owners in fee simple of real property located in Missoula County, Montana, more particularly described as Linda Vista Eighth Supplement - Phase 1.

RECITALS:

WHEREAS, the Declarants have deemed it desirable to create covenants, easements, conditions, restrictions beneficial and necessary for the properties.

NOW THEREFORE, the Declarants hereby make, declare and impose the following limitations, restrictions, regulations and uses upon and of such real property as restrictive and protective covenants running with the land and binding upon all present and future owners of any part of such real property, and further declares that each lot located within such Properties and any additional property hereinafter made subject to the declarations as hereafter set forth, are and shall be held, transferred, sold, conveyed and occupied subject to the restrictive and protective covenants, easements, charges and liens hereafter set forth, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of the premises.

ARTICLE I

DEFINITIONS

Section 1. Architectural Control Committee. "Architectural Control Committee" shall mean and refer to a committee comprised of individuals designated by the Declarants so long as the Declarants own any Lot in the subdivision or thereafter, owners of Lots within the subdivision appointed by the Board of Directors of the Homeowners Association having jurisdiction over the enforcement of covenants within the subdivision.

Section 2. Association. "Association" shall mean and refer to the Declarants until such time as the subdivision has come within the jurisdiction of another Homeowners Association for purposes of administering and enforcing the covenants hereafter set forth. The Homeowners Association which the Declarants intend to assume jurisdiction over the subdivision is the Upper Linda Vista Homeowners Association, Inc., its successors or assigns.

1. Within six (6) months after the sale of the last Lot owned by Declarants in the Linda Vista Eighth Supplement - Phase 1, the responsibility for maintaining,

Restrictions indicating a preference limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin are hereby deleted to the extent that such restrictions violate 42 USC 3604(c)

administering and enforcing the covenants, easements, conditions and restrictions as set forth herein for Linda Vista Eighth Supplement - Phase 1 be assumed by the Upper Linda Vista Homeowners Association, Inc., or its successor entity, if any.

2. If, for any reason, the Upper Linda Vista Homeowners Association, Inc., refuses or fails to accept jurisdiction over the Properties within the Linda Vista Eighth Supplement - Phase 1, within six (6) months of the date the Declarants have sold the last Lot owned by the Declarants in the subdivision, then the Linda Vista Eighth Supplement Homeowners Association, or its successors or assigns shall continue in jurisdiction administering and enforcing the covenants as set forth herein.

Section 3. Board of Directors or Board. "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, duly elected pursuant to the Bylaws of the Association or appointed by Declarants as herein provided.

Section 4. Bylaws. "Bylaws" shall mean the Bylaws adopted by the Association as amended from time to time.

Section 5. Declarant. "Declarants" shall mean Scott A. Twite and Joy E. Twite, their heirs, successors or assigns.

Section 6. Declaration. "Declaration" shall mean this document of Declaration of Covenants, Conditions and Restrictions of Linda Vista Eighth - Phase 1, as may be amended from time to time.

Section 7. Lot. "Lot" shall mean and refer to any division of land shown upon any recorded subdivision map of the Properties which shall be used exclusively for residential purposes.

Section 8. Manager. "Manager" shall mean any duly authorized property manager employed or appointed by the Association to implement the duties and responsibilities incumbent upon the Association.

Section 9. Owner and Member. "Owner and Member" shall mean and refer to every person or entity who is a recorded Owner of a fee, or undivided fee interest in any Lot which is subject by Covenants of record to assessment by the Association. Record Owners who have sold any Lot under a recorded contract shall not be considered Owners, while the purchaser of any Lot, which is a part of the Properties, under a recorded contract, shall be considered the Owner for all purposes herein. Persons or entities having an interest in any Lot merely as security for the performance of an obligation are hereby excluded.

Section 10. Person. "Person" shall mean an individual, corporation, partnership, association, trust or other legal entity or combination thereof.

Section 11. Properties. "Properties" shall mean and refer to those Properties described herein as Linda Vista Eighth Supplement - Phase 1.

Section 12. Subdivision. "Subdivision" shall mean the properties contained within the Linda Vista Eighth Supplement - Phase 1 as noted on the plat filed in the Office of the County Clerk and Recorder, Missoula County, Montana.

Section 13. Up Hill Lot. "Up Hill Lot" shall mean a Lot whose grade increases from the street side of the Lot to the rear of the Lot (opposite side from the street side).

Section 14. Down Hill Lot. "Down Hill Lot" shall mean a Lot whose elevation decreases from the street side of the Lot to the rear of the lot (opposite side from the street side).

ARTICLE II

HOMEOWNERS ASSOCIATION

Until such time as Lots are sold by the Declarants, Declarants shall act as the Homeowners Association known as Linda Vista Eighth Supplement Homeowners Association. At such time as Lots are sold, Declarants, together with other property owners, shall act as the Homeowners Association. It is Declarants' intention that within six (6) months after Declarants sell their last Lot in Linda Vista Eighth Supplement - Phase 1, the responsibility for maintaining, administering and enforcing the covenants, easements, conditions and restrictions set forth herein shall be assumed by the Upper Linda Vista Homeowners Association, Inc., or its successor entity, if any. The term Homeowners Association as used throughout the covenants shall refer to Declarants, Declarants and other property owners, or the Upper Linda Vista Homeowners Association, Inc., as may from time to time be applicable.

ARTICLE III

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this declaration is located in Missoula County, Montana, and is more particularly described as Linda Vista Eighth Supplement - Phase 1.

Section 2. Additional Property. At any time during the term of these covenants, and without any requirement of consent by Owners then existing, Declarants shall have the exclusive right, at its option, to subject additional property to this declaration.

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ARTICLE IV

MEMBERSHIP & VOTING RIGHTS

Section 1. Membership. Every person or entity who is an Owner of record of a fee, or undivided fee, interest in any Lot shall be a member of the Homeowners Association; excepting, however, any person or entity who has sold or is selling any such Lot under a contract shall not qualify as a member. Every person or entity purchasing any such Lot under a contract shall be a member of the Association.

The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of the Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

Acceptance of a deed, notice of purchasers' interest or documentation evidencing an ownership interest in a Lot shall be deemed to be consent to membership in the Association. The recording of a deed or other document evidencing an ownership interest shall be prima facie evidence of acceptance of that document by the receiver of the interest transferred.

Section 2. Suspension of Membership. During any period in which a member shall be in default in the payment of any annual or special assessment levied by the Association. Such rights of a member may also be suspended, after notice and hearing, for a period not to exceed thirty (30) days, for violation of any rules and regulations established by the Board of Directors.

Section 3. Voting Rights. The Association shall have one class of voting membership. Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in 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.

Section 4. Procedures. The procedure concerning meetings, voting, quorums, and administration of the Association shall be established in its articles and bylaws.

ARTICLE V

ASSESSMENTS

Section 1. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Properties, and in particular for the administration and enforcement of the covenants and any Bylaws of the Association.

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Section 2. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. However, where one owner is utilizing more than one (1) Lot as a single homesite, and has commenced construction of a residence thereon, the Directors may, in their discretion, elect to treat such Owner the same as a single Lot Owner for assessment purposes. Assessments may be based on a flat rate or on usage.

Section 3. Types of Assessments. The assessments levied by the Board of Directors of the Association shall be utilized to provide funds consistent with the purposes of the Association. The assessments may include, but shall not be limited to, the following:

(a) Annual Assessment: An annual assessment for administration of the Association, including, but not limited to maintenance costs, liability insurance, other normal expenses and to provide funds for such other purposes as the Board of Directors may find necessary and consistent with the purposes of the Association. No compensation for service shall be paid to members of the Architectural Control Committee. Reimbursement for actual costs incurred may be paid if deemed appropriate by the Board of Directors.

(b) Capital Improvement Assessments: The Association may levy in any year a special assessment for the purpose of defraying in whole or in part, the costs of any construction or reconstruction, unexpected repair or replacement of any capital improvement, including the necessary fixtures and personal property related thereto, or for such other capital improvements as are determined necessary or desirable. However, no assessment shall be levied which has not been approved by the affirmative vote of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called to consider such special assessment. No such assessment shall be established to cover a period in excess of five (5) years.

(c) Emergency Assessments: The Board of Directors is authorized to levy in any assessment year an emergency assessment, which shall not exceed four (4) times the amount of the Annual Assessment for that year. Additional emergency assessments require the approval of a simple majority of the votes of the Members who are voting in person or by proxy at a meeting duly called to consider such additional emergency assessment. Emergency assessments shall be levied only to meet costs and expenses precipitated by an emergency causing damage or a change of condition that must be remedied promptly to insure a safe and adequate continuation of facilities or services.

(d) Legal Reserve and Compliance Assessments: In addition to the assessments herein provided, the Board of Directors may levy an assessment for the purpose of establishing a legal reserve fund for legal fees and costs to enforce this Declaration. Nothing herein shall be interpreted to preclude the Board of Directors from utilizing other funds for compliance purposes.

Section 4. Payment of Assessments: The assessments provided for herein shall be completed on a yearly basis, commencing on the 1st day of January of each year and terminating on the 31st day of December of the same year. The assessments for any year shall become due and payable monthly, quarterly, annually and/or in advance, at the discretion of the Board of Directors of

the Association. The Board shall fix the amount of the assessment against each residential structure and/or Lot for each assessment period of at least thirty (30) days in advance of the due date specified herein and shall at that time, prepare a roster of the properties and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The amount of the assessment which may be levied on any residential structure shall be prorated in proportion to the total assessment for the entire year.

Section 5. **Effect of Non-Payment of Assessment:** If the assessments are not paid by midnight on the date when due, then such assessment shall become delinquent and shall, together with any interest thereon, become a continuing lien on the residential structure and/or Lot which shall run with the land. If the assessment remains unpaid for thirty (30) days after such due date, the assessment shall bear interest from the due date at the maximum annual percentage rate permitted by law. The obligation of the then Owner to pay any assessment or interest shall not be affected by any conveyance or transfer of title to said Lot. The Association may bring an action at law against the Owner obligated to pay the same and/or Lot, and there shall be added to the amount of such assessment their costs of collecting the same for foreclosing the lien thereof, including reasonable attorneys' fees.

Section 6. **Exempt Property:** The following property subject to this Declaration shall be exempt from the assessments created herein.

- (a) All properties dedicated to and accepted by a public authority or agency;
- (b) All properties owned by a charitable organization exempt from taxation by the laws of the State of Montana. However, no land or improvements owned by a charitable organization and devoted to residential use shall be exempt from said assessments.

ARTICLE VI

ARCHITECTURAL CONTROL COMMITTEE

Section 1. **Approval of Construction Plans:** No site clearing shall be commenced, no building or other structure shall be started, constructed, installed, erected or maintained on any Lot, nor shall any addition thereto or change or alteration therein, including exterior surface finish or other appearance changes, be made until the complete plans and specifications for each development, addition, change or alteration thereof have been submitted to and approved in writing by the Architectural Control Committee. Said plans and specifications shall include but not be limited to the following; site clearance, the designs, dimensions, location and principal materials and color schemes to be used, as well as a full description of all fences, lighting, off-street parking, ponds or other water retaining structure, and landscaping planned in connection with the construction. The Architectural Control Committee reserves the right to require reasonable fees to be paid with the filing of the plans and specifications and the issuance of building approvals. Any undertaking that is approved under this

section shall be concluded in strict accordance with the approved plans and specifications. Approvals may be based on engineering, architectural, or aesthetic grounds.

Section 2. Appointment of Architectural Committee. Several subdivisions of the Linda Vista area have been created, designed and constructed by the Declarants pursuant to the plan of development intended to promote the overall desirability of the area, the quality of the residential structures existing and proposed, and the esthetics desired by present and future homeowners. To fulfill the assurances given by the Declarants to the various governmental agencies and authorities for approval of the subdivision, Declarants have a vested interest in ensuring that the quality of the development in the area continue as planned. Accordingly, until such time as Declarants have sold a Lot in the subdivision, Declarants shall constitute the Architectural Control Committee. When Lots are sold in the subdivision, but the Declarants continue to own one (1) or more Lots, the Homeowners Association shall appoint to the Architectural Control Committee such representatives as requested by Declarants. At such time as Declarants no longer hold an ownership interest in any Lot in the subdivisions, covered by this declaration, the Associations's Board of Directors will select from the existing homeowners three (3) persons to serve on the Architectural Control Committee.

ARTICLE VII

GENERAL RESTRICTIONS AND COVENANTS

Section 1. General Purposes: These covenants are made for the purposes of creating and keeping the premises, insofar as is possible, desirable, attractive, beneficial and suitable in architectural design, materials and appearance; and guarding against an unnecessary interference with the natural beauty of the property; all for the mutual benefit and protection of the Owners of Lots within the property.

Section 2. Uses and Zoning: All Lots within the Properties, shall be known and described as residential Lots and not business, trade, or commercial activity of any kind or description shall be conducted thereon. Property usage shall conform to the restrictions of Missoula County, Montana as well as those of the Declarants.

Section 3. Type of Residential Structures: No residential structures shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single family residential structure. A single-family residential structure may include a ranch style, split level or tri-level residence. Two (2) story residences are permitted on up hill Lots only. No two (2) story residences will be permitted to be constructed or maintained on down hill Lots. Two (2) story residences for purposes of these covenants are defined as a structure having two (2) floors above ground level as viewed from the primary access side (street address side). Further, two (2) story homes include structures which require an eight foot (8') high flight of stairs to pass from one (1) level to another. Outbuildings including detached garages, and storage sheds may be constructed if approved by the Architectural Control Committee and as allowed by Missoula County regulations and the conditions of final plat approval.

Section 4. Noxious or Offensive Activity and Materials: No noxious or offensive activity shall be carried on upon the Properties, nor shall anything be done thereon which constitutes an annoyance or nuisance to the neighborhood. No materials or mechanical equipment shall be used in a manner detrimental to residential use of the surrounding tracts because of vibration, noise, dust, smoke or odor.

Section 5. Residential Structure Site: No Lot shall have more than one (1) residential structure located upon it except as provided in Section 3. The Architectural Control Committee, however, may authorize exceptions to this restriction and may, in writing, permit a structure to be built upon portions of two (2) or more Lots, when in its discretion such action is considered in the best interests of the subdivision.

Section 6. Residential Structure Size: The ground floor area of any main structure exclusive of open porches and garages shall be not less than:

- (a) 1,150 square feet for a one-story house; and
- (b) 1,100 square feet of above ground living area for a split level house.

For purposes of clarification, the term "split level house" includes split foyer, split entry, bi-level, or tri-level.

Section 7. Setback Lines: Each Lot herein described is subject to the following conditions and restrictions:

- (a) No house, appurtenance or outbuilding shall be less than fifteen feet (15') from the exterior to the side of any Lot.
- (b) No portion of any house, appurtenance, or outbuilding shall be less than twenty-five feet (25') from any front Lot.
- (c) Providing however that in the event any Owner of Lots within said subdivision owns two (2) or more contiguous Lots for the purpose of one (1) building site where a portion of the structure or any outbuilding would be built on both Lots, then in that event the above setback lines shall apply as though both Lots constituted one (1) building set without reference to the contiguous Lot lines.
- (d) Each home shall have a paved driveway at least sixteen feet (16') wide.

Section 8. Building Roof Drainage: All building roof drainage shall be controlled by Owner to the extent such drainage shall not pass beyond a perimeter located fifteen feet (15') from the foundation of any structure.

Section 9. Topography of Lot. All residential structures shall be situated so the topography of the Lot has positive drainage away from the structure.

Section 10. Easements. Easements for installation and maintenance of utilities and drainage facilities and drain ways are perpetually reserved by Declarants as shown on the recorded plat and site plan. Declarants shall have and do hereby reserve by perpetual easement the right to locate, install, erect, construct, expand, maintain, and use, or authorize the location, installation, erection, construction, expansion maintenance, and use of waterlines, drains, sewer lines, electric lines, telephone lines, and other utilities, and to give or grant a right-of-way easement, not more than twenty feet (20') in width thereof: (a) over any part of any Lot within the Properties, and (b) over any additional property referenced in Section 2 of Article III, providing that such location, installation, erection, construction, expansion, maintenance, and use is harmonious with the development of the Properties.

Section 11. Fences. Fences or hedges shall not exceed five feet (5') in height and may be placed on any side and rear property lines. All fences and hedges are subject to the approval of the Architectural Control Committee.

Section 12. Trash and Garbage. No trash, garbage or other refuse shall be thrown or dumped on any land withing the properties. There shall be no burning of refuse out of doors except as may be approved by the Missoula County Health Department, the Missoula County Rural Fire District and the Declarants. This shall not be construed to prohibit or deny the installation and use of barbecue pits. Each property Owner shall provide suitable receptacles for the temporary storage and collection of refuse and all receptacles shall be screened from the public view and protected from disturbance.

Section 13. Temporary Structures and Vehicular Parking: Trucks exceeding one (1) ton capacity, semi-tractors, semi-trailers, mobile homes, equipment, unsightly vehicles, recreational vehicles such as motor homes, travel trailers, fifth wheel trailers, pickup truck campers, boats, snowmobiles, or utility trailers are not permitted on the streets or Lots within the subdivisions subject to this declaration for more than twenty-four (24) hours unless stored in a garage or other structure as approved by the Architectural Control Committee.

Section 14. Signs. No advertising signs, billboards or unsightly objects shall be erected, placed or permitted to remain on any Lot. However, an exception is permitted for one (1) small "For Rent" sign or "For Sale" sign per Lot, and for a period of ten (10) years from the date of this Declaration, the Declarants shall be permitted to place signs within the Properties to promote the development of the Properties.

Section 15. Exterior Maintenance. Each Owner of a Lot on which there is a structure shall provide exterior maintenance upon such Lot and structure to include painting and repairing the structure, maintaining any lawn planted at Owners' discretion and the surrounding grounds of any Lot to preclude weeds, underbrush and other unsightly objects to accumulate or remain on the grounds.

Section 16. Seeding and Planting. Within six (6) months of the completion or occupancy of any dwelling erected on any Lot, whichever occurs first, the Owner of such Lot shall within a reasonable period of time, seed, plant and landscape to protect against erosion and the creation of any nuisance. "Boulevard trees" shall be placed on all Lots within the subdivision, to be placed close to the curbside sidewalk, spaced approximately every 30 feet.

In addition, the following shall apply:

- a. The builder shall supply and plant a minimum of four (4) trees (8' to 10' in height) within thirty (30) days of completion of home construction, or when weather conditions will allow for proper planting.
- b. The homeowner will supply and plant three (3) trees per year for each of the first three (3) years of occupancy. Trees shall be 8' to 10' high and shall be in addition to item "a" above.

Section 17. Vehicles. There shall be no repairing of vehicles on the roads or Lots within the Properties at any time.

Section 18. Utility Connection Costs: The Owner of each Lot shall pay all utilities and utility connection costs, including those for television cable and the cost of the water meter(s) utilized on each Lot, as allowed by the Montana Public Service Commission.

Section 19. Animals and Pets. No animals or fowl, domestic or wild, except cats, dogs or household birds, such as canaries, may be kept on any of the properties or in any of the structures thereon, and in no event are any animals or fowl be raised or cared for on a commercial basis, or to become a nuisance or annoyance to the neighbors. Any dogs and cats must be kept on their own Lot or on a leash and under the immediate control of its Owner.

Section 20. Wood Burning Devices. No wood burning devices of any type shall be permitted or used in any residential structure erected upon any Lot in the subdivision. This specifically includes, but is not limited to, fireplaces, wood burning stoves, pellet stoves, fireplace inserts, or similar devices.

Section 21. Water and Sewer Systems. No individual or private wells or water systems shall be permitted or allowed upon any Lot. No individual sewage disposal system shall be permitted on any Lot. The water, sewage and storm water systems shall not be modified or altered without approval by the Department of Health and Environmental Sciences (DHES) for the State of Montana and the Public Service Commission of the State of Montana and shall comply with all regulations imposed by any other governmental agencies having jurisdiction over such systems.

Section 22. Lawn and Garden Irrigation. Water available for lawn and garden irrigation may be limited given the quantity of water available for utilization by the Owners of the Properties.

The availability of water shall be governed by the regulations adopted by the water company as approved by the Public Service Commission.

Section 23. Firearms. The discharging of firearms or hunting on any Lot is strictly forbidden.

Section 24. Control of Hazardous Materials. There shall not be stored or maintained on any Lot more than ten (10) gallons of flammable or volatile liquid gas except for the storage of residential heating fuel or motor vehicle fuel contained in tanks which are a permanent part of the motor vehicles. No other materials of any kind constituting a fire hazard shall be stored or allowed to accumulate on any Lot.

Section 25. Mining. No mining or mineral removal activity, including the removal of gravel or sand except for landscaping purposes shall be permitted on any Lot or roadway within the subdivision.

Section 26. Resubdivision. No Lot designated on the plat may be resubdivided.

Section 27. Utilities, Wiring and Antennas. All utility service lines shall be located underground. Television or satellite monitoring devices located upon said premises are to be located so as to be as inconspicuous as possible. Television signal reception dishes may be located on the premises in locations to be as inconspicuous as possible. Television signal reception dishes shall be restricted to the rear yard and shall be located between the projections of the exterior walls of the dwelling to the rear Lot line. Such dishes shall not exceed thirty-six inches (36") in diameter. The location of all exposed utilities and television signal reception dishes shall be subject to the review and approval of the Architectural Control Committee. No external television or radio antennas other than television signal reception dishes specifically authorized herein shall be permitted to be mounted on any residential structure, garage, outbuilding or separately mounted on any Lot. This provision specifically prohibits the construction and erection of any short wave radio towers, ground plane or loop antennas.

Section 28. Building and Fire Codes. All construction shall comply with provisions of the following Codes: One and Two Family Dwelling Codes, Uniform Building Code, National Plumbing Code, Uniform Fire Code, National Electrical Code and any other applicable, established Codes.

Section 29. Motorcycles. No recreational use of motorcycles shall be permitted on the Properties except on designated roadways.

Section 30. Ingress and Egress. Declarants retain rights of ingress and egress to, upon, and from the Properties for purposes of locating, installing, erecting, constructing, maintaining, expanding or using waterlines, drains, sewer lines, electric lines, telephone lines and other utilities.

Notwithstanding the provisions of Article IX, this section shall not be amended or altered by the Association or Owners without the consent of the Declarants and the water and sewage companies providing services to the Properties.

Section 31. Protest of RSIDS or SIDS: Acceptance of a deed to a Lot or Lots and assessable land depicted on the plat of Linda Vista Eighth Supplement - Phase 1 shall constitute a waiver of the statutory right of protest to the creation of one or more City Special Improvement Districts or County Rural Special Improvement Districts created for the purpose of:

- (a) Improvements of Linda Vista Boulevard and upper and lower Miller Creek Roads;
- (b) The design and construction of a drainage system for the area affected by this subdivision;
- (c) The maintenance of fire hydrants;
- (d) The improvement of any future dedicated public parks in the S ½ of Section 12, T12N, R20W, P.M.M., Missoula County, Montana; and
- (e) The design and construction of a municipal sewer system to serve the subdivision.

Acceptance of a deed to lots and assessable land depicted on this plat shall also constitute a waiver of the right to protest any annexation proceedings by the City of Missoula, said waiver is contingent upon the provision of sewer service by the City of Missoula. The waiver shall run with the land and shall be binding on the land transferees, successors, and assigns of the owners of the land depicted hereon. All documents of conveyance shall contain a reference to the covenants and waivers contained herein.

Section 32. Weed Control. The Owner of each Lot shall be responsible for the control of noxious weeds and vegetation thereon. In the event he fails to provide such control, the Association is authorized to enter the Lot and provide such control at the expense of the Owner of the Lot concerned.

Section 33. Construction. All construction on or within the Properties shall be diligently completed and shall in any event be completed within twelve (12) months after commencement unless specific written extension is given by the Association. No construction shall at any time obstruct or interfere with pedestrian or vehicular traffic.

Section 34. Approval by Declarants. The approval by the Declarants provided for herein may be given by the Declarants, their duly authorized agent and successors or assigns or a committee appointed by the Declarants until the authority to give such approval shall be transferred by the Declarants, their successors, or assigns to the Association.

ARTICLE VIII

TERM OF DECLARATION

The provisions of this Declaration shall be covenants running with the land and shall be binding for a term of twenty (20) years from the date of this Declaration after which time the Declaration shall automatically be extended for successive periods of ten (10) years each unless there shall be recorded an instrument signed by all the Owners of the Lots who agree to terminate these Covenants.

The perpetual easements, rights, reservations and restrictions contained herein affecting the water and sewage companies, shall not be subject to a said term of years and may not be terminated by the Owners.

ARTICLE IX

WAIVER, ALTERATION, ABANDONMENT, TERMINATION OR AMENDMENT

This Declaration may be waived, altered, abandoned, terminated or amended by an instrument signed by seventy-five percent (75%) of the Owners of Lots of the Properties subject to this declaration; provided, however, that; (1) any such waiver, alteration, abandonment, termination or amendment which shall affect the Declaration and Covenants contained therein in whole or in part must be reviewed and approved by Missoula County Commissioners; and (2) any such waiver, alterations, abandonment, termination or amendment which shall affect the water and sewage systems must first be approved by the Department of Health and Environmental Sciences of the State of Montana, the Public Service Commission of the State of Montana and the Declarants.

The right to waive, alter, abandon, terminate or amend certain provisions in this Declaration has been restricted or eliminated notwithstanding any provision contained in this Article.

ARTICLE X

ENFORCEMENT

The Declarants or any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, easements, reservations, liens and charges now or hereinafter by the Declarants, the Association or any Owner to enforce any Covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

If any person entitled to do so shall bring legal action to enforce any provision of this agreement, the prevailing party to such action shall be entitled to recover from the other, in addition to any other damages or injunctive relief, reasonable attorney's fees and costs of the action.

ARTICLE XI

SEVERABILITY

Invalidation of any one of these Covenants or restrictions by judgment or court order shall in no way affect the remaining provisions which shall remain in full force and effect and in particular the invalidation of any separate paragraph of the provisions relating to building restrictions shall in no way affect the enforceability of any other paragraph.

ARTICLE XII

LIABILITY OF THE DECLARANTS

The Declarants shall have no liability for any of their actions or failures to act, or for any actions or failures to act of the Association or any Owners of the property within the Properties. The relationship between the Declarants, the Association and the property Owners shall be deemed to be that of independent contractors, and not that of principal and agent, partnership or joint venture. In addition, the Declarants shall have no liability or obligation under this Declaration to any person or entity except such liabilities and obligations as the Declarants may expressly assume herein.

IN WITNESS WHEREOF, the Declarants have executed the foregoing Declaration on the year and date first above written.

Scott A. Twite
Scott A. Twite

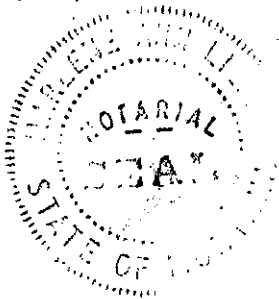
Joy E. Twite
Joy E. Twite

STATE OF MONTANA)
: SS.
County of Missoula)

This instrument was acknowledged before me on the 28th day of January, 1998, by Scott A. Twite and Joy E. Twite.

Margaret Ann Swinall
Notary Public for the State of Montana
Residing at:
My Commission Expires:

(Seal)



9802028

I RECEIVED AND FILED THIS INSTRUMENT FOR RECORD ON THE 29 DAY OF Jan 1998 AT 835 O'CLOCK A M AND IT IS RECORDED IN VOL 528 OF MICRO RECORDS OF THE COUNTY OF MISSOULA, STATE OF MONTANA, ON PAGE 1154 FEE 84 - PAID OK RETURN TO TRUVESTER JOHNSON + ANDERSON WITNESS MY HAND. VICKIE M. ZIEGLER COUNTY RECORDER ADDRESS MSIA MI BY Diana Steber DEPUTY DOC DM