

MILLER CREEK VIEW ADDITION — PHASE I

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration is made this 6th day of January, 1999, by the LLOYD A. TWITE FAMILY PARTNERSHIP, hereinafter referred to as "Declarant," which is the owner in fee simple of real property located in Missoula County, Montana, more particularly described as Lots 1 through 55, Block 1, Lots 1 through 19, Block 2 and Lots 1 through 7, Block 3, together with all parks, streets, utility lots and common areas as are all illustrated on the plat of the Miller Creek View Addition — Phase 1.

RECITALS:

WHEREAS, the Declarant has deemed it desirable to create covenants, easements, conditions, restrictions beneficial and necessary for the Miller Creek View Addition — Phase 1.

NOW THEREFORE, the Declarant hereby makes, declares and imposes 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 and with the duties as is described in Article VI.

Section 2. Homeowners' Association. "Homeowners' Association" shall mean and refer to the Declarant and/or the association, as is described in Article II.

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

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

Section 5. Declarant. "Declarant" shall mean the Lloyd A. Twite Family Partnership, its successors or assigns.

Section 6. Declaration. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Miller Creek View Addition — 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 plat map of the Properties, including both Single Family Lots and Multi-Family Lots, both of which shall be used exclusively for residential purposes.

A. Single Family Lot. "Single Family Lot" shall mean and refer to the Lots, which are designed as the sites for single family homes and are identified on the subdivision plat map, as follows:

| Block | Lots |
|-------|--------------|
| 1 | 1 through 55 |
| 2 | 1 through 19 |

B. Multi-Family Lot. "Multi-Family Lot" shall mean and refer to the Lots, which are designed as the sites for multi-family homes and are identified on the subdivision plat map, as follows:

| Block | Lots |
|-------|-------------|
| 3 | 1 through 7 |

Section 8. Owner. "Owner" shall mean and refer to every person or entity who is a record Owner of a fee, or undivided fee interest in any Lot which is subject to this Declaration.

A. Single Family Lot Owner. "Single Family Lot Owner" or "Single Family Owner" shall mean and refer to every person or entity who is a record Owner of a fee, or undivided fee interest in any Single Family Lot which is subject to this Declaration.

B. Multi-Family Lot Owner. "Multi-Family Lot Owner" or "Multi-

Family Owner" shall mean and refer to every person or entity who is a record Owner of a fee, or undivided fee interest in any Multi-Family Lot which is subject to this Declaration.

Section 9. Person. "Person" shall mean an individual, corporation, partnership, association, trust or other legal entity or combination thereof.

Section 10. Properties. "Properties" shall mean and refer to those Properties described herein as Lots 1 through 55, Block 1, Lots 1 through 19, Block 2 and Lots 1 through 7, Block 3, together with all parks, streets, utility lots and common areas as are all illustrated on the plat all of the Miller Creek View Addition — Phase 1.

Section 11. Up Hill Lot. "Up hill Lot" shall mean a Lot whose grade increases at a slope greater than ten percent from the street side of the Lot to the rear of the Lot (opposite side from the street side).

Section 12. Down Hill Lot. "Down hill Lot" shall mean a Lot whose elevation decreases at a slope greater than ten percent from the street side of the Lot to the rear of the Lot (opposite side from the street side).

Section 13. Condominium. "Condominium" shall mean a multi-family dwelling designed for ownership of the individual Dwelling Units contained within it.

Section 14. Dwelling Unit. "Dwelling Unit" or "Unit" shall mean any building or portion of a building providing complete, independent and permanent living and housekeeping facilities for one household.

Section 15. Condominium Unit Owner. "Condominium" shall mean and refer to every person or entity who is a record Owner of a fee, or undivided fee interest in any Dwelling Unit located in a Condominium, which is subject to this Declaration.

Section 16. Condominium Owners' Association. "Condominium Unit Owners' Association" shall mean any entity organized and designed for the purpose of as an association of Condominium Unit Owners and acting pursuant to a declaration of condominium, under the Unit Ownership Act, Montana Code Annotated Title 70, Chapter 23, as that Act may be subsequently amended.

///

///

///

ARTICLE II

HOMEOWNERS ASSOCIATION

Section 1. Homeowners' Association. Until such time as Lots are sold by the Declarant, Declarant shall act as the Homeowners Association. At such time as Lots are sold, Declarant, together with other Owners, shall act as the Homeowners Association. It is Declarant's intention that within six (6) months after Declarant sells the last Lot owned by the Declarant in the Properties, then the Declarant shall organize a non-profit corporation (the Miller Creek View Homeowners' Association, Inc.) to act as the Homeowners' Association which shall, upon its organization assume jurisdiction administering and enforcing the covenants as set forth herein. It is the Declarant's intent that such homeowners association, shall be designed to serve as the homeowners association for this and future phases of Miller Creek View.

Section 2. Homeowners' Association Duties. Among its other duties, the Homeowner's Association shall be responsible for the following:

A. Trail Maintenance. The Homeowners' Association shall be responsible for trail maintenance.

B. Street Cleaning. The public streets within the properties shall be cleaned by the Homeowners' Association each year when all of the following conditions are met:

- (i) The date is February 10th or later;
- (ii) The streets to be cleaned are free of snow and ice;
- (iii) The temperature is 32° Fahrenheit or warmer; and
- (iv) The chance of snow is less than 30% in the forecast issued by the National Weather Service.

Street cleaning shall be repeated a second time, if a snowfall occurs and streets are sanded within fifteen days of the initial cleaning.

C. Parks and Weed Control. The Homeowners' Association shall be responsible for park maintenance and weed control in the open areas of the Properties. The methods of weed control in the open areas shall be approved by the Missoula County Weed Supervisor and where applicable consistent with the terms of the Deed of Conservation Easement dated the 31st day of December, 1996, as recorded in Book 494 of Micro Records, at Page 804, records of the Missoula County, Montana Clerk and Recorder. In part that Conservation Easement permits the type of weed control, described as follows:

Use of biological or other weed and insect control agents as a noxious vegetation management strategy. The use of such agents shall be to allow the natural ecosystem process to proceed. All such use shall conform with all existing regulations.

Section 3. Condominium Unit Owners' Association. It is anticipated that Lots 1 through 7, Block 3 of the Properties, will be improved with multi-family dwellings. It is further anticipated that some or all of these multi-family dwellings may be designed as Condominiums, the individual Dwelling Units of which are intended for sale. The Owners of those Multi-Family Lots that are designed as Condominiums shall organize separate non-profit corporations as Condominium Unit Owners' Associations. Any Condominium and its Condominium Unit Owners' Association, in addition to other such terms and conditions as are appropriate shall conform to the following requirements.

A. Unit Ownership Act. The Condominium and its Condominium Unit Owners' Association shall be appropriately registered and organized so as to comply with the Unit Ownership Act, Title 70, Chapter 23 of the Montana Code Annotated, as the same exists at the time the Condominium and its Condominium Unit Owners' Association are developed and organized.

B. Membership and Voting. The Condominium Unit Owners' Association shall be organized so that no later than upon sale of all the individual Dwelling Units on a Multi-Family Lot, that the owner of each such Dwelling Unit shall be a full voting member in the corresponding Condominium Unit Owners' Association. The Condominium Unit Owners' Association shall be designated as the entity entitled to exercise the vote as a Lot Owner and Member, as is described in Article IV, Section 3.

C. Assessments. The Condominium Unit Owners' Association shall be organized so that no later than upon sale of all the individual Dwelling Units on a Multi-Family Lot, that the owner of each such Dwelling Unit shall become responsible for assessments levied against that Dwelling Unit based on a pro-rata share of the expenses of the Condominium Unit Owners' Association. The Condominium Unit Owners' Association shall be responsible for the assessments levied against the Multi-Family Lot by the Homeowners' Association.

D. Maintenance. The Condominium Unit Owners' Association shall be organized so that no later than upon sale of all the individual Dwelling Units on a Multi-Family Lot, that the Condominium Unit Owners' Association shall undertake responsibility for all upkeep, repair and maintenance of the Multi-Family Lot and the common elements of any building and improvements located on said Multi-Family Lot.

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 Lots 1 through 55, Block 1, Lots 1 through 19, Block 2 and Lots 1 through 7, Block 3, together with all parks, streets, utility lots and common areas as are all illustrated on the plat of the Miller Creek View Addition — 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, Declarant shall have the exclusive right, at its option, to subject additional property to this Declaration and/or to bring additional property within the jurisdiction of the Homeowners Association.

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, including any person or entity purchasing any such Lot under a contract. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation, including any person or entity who has sold or is selling a Lot under a contract. Membership shall be appurtenant to and may not be separated from ownership of the Lot which is subject to assessment by the Homeowners' Association. Ownership of such Lot shall be the sole qualification for membership. It is specifically intended that any owner of a Dwelling Unit, located in a Condominium upon a Multi-Family Lot shall be a member. 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 Homeowners' 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 Homeowners' 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 Homeowners' 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, including a Multi-Family Lot, all such persons shall be Members. However, the one vote for such Lot shall be exercised as the Owners of that Lot determine, but in no event shall more than one (1) vote be cast with respect to any Lot. It is specifically intended that each Multi-Family Lot will have but one (1) vote, to be exercised by its Owner(s) and if the Multi-Family Lot is configured as a Condominium, that its one (1) vote be exercised by the Condominium Unit Owners' Association.

Section 4. Procedures. The procedure concerning meetings, voting, quorums, and administration of the Homeowners' Association shall be established in its Articles and Bylaws.

ARTICLE V

ASSESSMENTS

Section 1. Purpose of Assessments. The assessments levied by the Homeowners' 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 Homeowners' Association. In addition to the purposes of the assessments as described above, the Homeowners' Association shall levy assessments for the specific purposes as follows:

A. Park Maintenance and Weed Control. The Homeowners' Association shall budget and use a minimum of 10% of the total assessments assessed and collected for park maintenance each year and to fund weed control in the open areas, as depicted on the plat of Miller Creek View Addition — Phase 1.

B. Street Cleaning. The Homeowners' Association shall levy assessments adequate to fund the street cleaning required of the Homeowners' Association, under Article II, Section 2 (B).

Section 2. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Single Family Lots and a uniform rate for all Multi-Family Lots, which rate shall equal the rate for a Single Family Lot multiplied by the number of individual Dwelling Units located upon that Multi-Family Lot. However, where one Owner is utilizing more than one (1) Lot as a single homesite, and has commenced construction of a residence thereon, the Board may, in its 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 Homeowners' Association shall be utilized to provide funds consistent with the purposes of the Homeowners' Association. The assessments may include, but shall not be limited to, the following:

A. Annual Assessment. An annual assessment for administration of the Homeowners' 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 Homeowners' 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 Homeowners' 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 computed 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 Homeowners' Association. The Board shall fix the amount of the assessment against each 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 Homeowners' 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 Lot 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 Lot, and its improvements, which lien 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 Homeowners' 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. Publicly Owned Properties. All Properties dedicated to and accepted by a public authority or agency;
- B. Charitable Organizations. 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; and
- C. Bare Lots. All Lots on which no improvements have been commenced.

ARTICLE VI

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Approval of Architectural Control Committee.

A. Approval of Construction Plans. No site clearing or preparation 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, colors 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.

B. Approval of Condominium Projects. In addition to the preceding requirements, no Multi-Family Lot Owner can commence the development or approval of a Condominium Project, until the complete plans, declaration for such Condominium have been submitted to and approved in writing by the Architectural Control Committee. Said plans and declaration shall include, but are not limited to the plans and specifications for the project, the proposed declaration of condominium, proposed restrictive covenants, proposed Articles of Incorporation for and Bylaws of the Condominium Owners' Association.

C. Fees for Approval. 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 or other 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, legal or aesthetic grounds.

Section 2. Appointment of Architectural Committee. The Properties and surrounding area have been created, designed and constructed by the Declarant 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 Declarant to the various governmental agencies and authorities for approval of the subdivision, Declarant has a vested interest in ensuring that the quality of the development in the area continue as planned. Accordingly, until such time as Declarant has sold a Lot in the Properties, Declarant shall constitute the Architectural Control Committee. When Lots are sold in the Properties, but the Declarant continues to own one (1) or more Lots, the Homeowners Association shall appoint to the Architectural Control Committee such representatives as requested by Declarant. At such time as Declarant no longer holds an ownership interest in any Lot in the Properties, covered by this Declaration, the Board of Directors will select from the existing Owners three (3) persons to serve on the Architectural Control Committee.

ARTICLE VII

RESTRICTIONS AND COVENANTS

Section 1. Purposes. These restrictions and 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. These restrictions and covenants found in this Article are organized into three sections, those applicable to both the Single Family Lots and the Multi-Family Lots (Section 2), those applicable solely to the Single Family Lots (Section 3), and those applicable solely to the Multi-Family Lots (Section 4).

Section 2. General Restrictions and Covenants. The restrictions and covenants appearing in this Section 2 are applicable to both the Single Family Lots and the Multi-Family Lots.

A. Uses and Zoning. All Lots within the Properties, shall be known and described as residential Lots and no 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 Declarant.

B. 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 Properties because of vibration, noise, dust, smoke or odor.

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

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

E. Easements. Easements for installation and maintenance of utilities and drainage facilities and drain ways are perpetually reserved by Declarant as shown on the recorded plat and site plan. Declarant shall have and does 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.

- F. **Trash and Garbage.** No trash, garbage or other refuse shall be thrown or dumped on any land within 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 Declarant. This shall not be construed to prohibit or deny the installation and use of barbecue pits.
- G. **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 Properties 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.
- H. **Signs.** No advertising signs, billboards or unsightly objects shall be erected, placed or permitted 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 Declarant shall be permitted to place signs within the Properties to promote the development of the Properties. As an additional exception, signs pertaining to any political campaign or issue may be placed upon a Lot, but only for a period of thirty (30) days prior to the election to which the sign pertains.
- I. **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 and the entire Lot to preclude weeds, underbrush and other unsightly objects to accumulate or remain on the grounds. The Owners shall further maintain the boulevard area adjacent to each such Owner's Lot, if any, including the sidewalk, grass and boulevard trees. The Owners shall further maintain the drainage ditch, if any, located on their respective Lots. Such drainage ditches, if any, shall not be filled in or blocked in any manner.
- J. **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 seed, plant and landscape the entire Lot to protect against erosion, in a manner as approved by the Architectural Control Committee.
- K. **Vehicles.** There shall be no repairing of vehicles on the roads or Lots within the Properties at any time.
- L. **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.

M. **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.

N. **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 Properties. This specifically includes, but is not limited to, fireplaces, wood burning stoves, pellet stoves, fireplace inserts, or similar devices.

O. **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.

P. **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.

Q. **Firearms.** The discharging of firearms or hunting on any Lot is strictly forbidden.

R. **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.

S. **Mining.** No mining or mineral removal activity, including the removal or gravel or sand except for landscaping purposes shall be permitted on any Lot or roadway within the Properties.

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

U. Ingress and Egress. Declarant retains 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 Homeowners' Association or Owners without the consent of the Declarant and the water and sewage companies providing services to the Properties.

V. Protest of RSIDS or SIDS. Acceptance of a deed to a Lot or Lots and assessable land depicted on the plat of Miller Creek View Addition — 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 any of the following purposes:

- (i) Financing any improvements to a drainage system, park improvements and/or fire hydrants;
- (ii) Financing any improvements to Miller Creek Road, Lower Miller Creek Road and all on-site roads, including but not limited to paving, dust abatement, sidewalk and road surface and easement widening.

W. Weed Control. The Owner of each Lot shall be responsible for the control of noxious weeds and vegetation on the entirety of such Owner's Lot. In the event an Owner fails to provide such control, the Homeowners' Association is authorized to enter the Lot and provide such control at the expense of the Owner of the Lot concerned.

X. Approval by Declarant. The approval by the Declarant provided for herein may be given by the Declarant, its duly authorized agent and successors or assigns or a committee appointed by the Declarant until the authority to give such approval shall be transferred by the Declarant, its successors, or assigns to the Homeowners' Association.

Y. Driveways. All Lots with slopes that exceed 10% for the building area shall have paved driveways graded from the street to the building setback line. Establishing driveway grades is essential for safety and convenience of future property Owners.

Section 3. Single Family Restrictions and Covenants. The restrictions and covenants appearing in this Section 3 are applicable solely to the Single Family Lots.

A. Type of Residential Structures. No residential structures shall be erected, altered, placed or permitted to remain on any Single Family 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 Single Family Lots only. No two (2) story residences will be permitted to be constructed or maintained on Down Hill Single Family 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.

B. Residential Structure Site. No Single Family Lot shall have more than one (1) residential structure located upon it except as provided in Section 2A. 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 Single Family Lots, when in its discretion such action is considered in the best interests of the Properties.

C. Residential Structure Size. The ground floor area of any main structure located on a Single Family Lot, exclusive of open porches and garages, shall be not less than 1,150 square feet for a one-story house and 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.

D. Setback Lines. Except for those Lots on which a building envelope is designated, each Single Family Lot herein described is subject to the following conditions and restrictions:

- (i) No house, appurtenance or outbuilding shall be less than fifteen feet (15') from the exterior to the side of any Single Family Lot.
- (ii) No portion of any house, appurtenance, or outbuilding shall be less than twenty-five feet (25') from any front Single Family Lot.

- (iii) Providing however that in the event any Owner utilizes two (2) or more contiguous Single Family Lots for the purpose of one (1) building site where a portion of the structure or any outbuilding would be built on both Single Family Lots, then in that event the above setback lines shall apply as though both Single Family Lots constituted one (1) building site without reference to the contiguous Single Family Lot lines.
- (iv) Each home located on a Single Family Lot shall have a paved driveway at least sixteen feet (16') wide.

E. 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.

G. Trash Receptacles. Each Owner of a Single Family Lot 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.

H. Trees. Within six (6) months of the completion or occupancy of any dwelling erected on any Lot, whichever occurs first, the builder shall supply and plant a minimum of four (4) trees (8' to 10' in height). The Owner 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 those the builder shall plant.

I. Re-Subdivision. No Single Family Lot designated on the plat may be re-subdivided.

J. 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 twenty-four inches (24") 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.

K. **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.

L. **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 Homeowners' Association. No construction shall at any time obstruct or interfere with pedestrian or vehicular traffic.

Section 4. **Multi-Family Restrictions and Covenants.** The restrictions and covenants appearing in this section 4 are applicable solely to the Multi-Family Lots.

A. **Type of Residential Structures.** No residential structures shall be erected, altered, placed or permitted to remain on any Multi-Family Lot other than one (1) Multi-Family Building, designed to include no more than twelve (12) individual Dwelling Units. No Outbuildings, including detached garages, and storage sheds may be constructed on any Multi-Family Lot.

B. **Residential Structure Site.** No Multi-Family Lot shall have more than one (1) Multi-Family Building located upon it.

C. **Residential Structure Size.** The floor area of any Multi-Family Unit, located on a Multi-Family Lot, exclusive of open porches and garages, shall be not less than 650 square feet.

D. **Property Lines.** Each Multi-Family Lot herein described shall be comprised of the area on which it is situated when completed and extend from the permanent foundation of said building a distance of ten (10) feet.

E. **Fences.** No fences or hedges shall be placed either within or upon any property lines of a Multi-Family Lot.

G. **Trash Receptacles.** Each Owner of a Multi-Family Lot shall provide one (1) suitable, community receptacle for the temporary storage and collection of refuse for use by all residents on that Multi-Family Lot. All such receptacles shall be screened from the public view and protected from disturbance.

H. Trees. No trees shall be allowed to grow upon a Multi-Family Lot in such a fashion as to interfere with the Multi-Family Building located on such Multi-Family Lot.

I. Re-subdivision. No Multi-Family Lot designated on the plat may be re-subdivided, except this shall not prohibit the establishment of a Condominium upon a Multi-Family Lot, as anticipated in this Declaration.

J. 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 those that do not exceed twenty-four inches (24") 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.

K. Building and Fire Codes. All construction shall comply with provisions of the following Codes: Multi-Family Dwelling Codes, Uniform Building Code, National Plumbing Code, Uniform Fire Code, National Electrical Code and any other applicable, established Codes.

L. 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 Homeowners' Association. No construction shall at any time obstruct or interfere with pedestrian or vehicular traffic.

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 waived, altered, abandoned, terminated or amended, in the manner as required by Article IX.

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 any part of this Declaration required as a condition of approval of Miller Creek View Addition — Phase 1 (including Article II, Section 2; Article V, Section 1(B); Article VII, Section 2 (I) and (Y); and Article X, Section 2) 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 Declarant. 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

Section 1. General Enforcement. The Declarant, the Homeowners' Association 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 arising under this Declaration. Failure by the Declarant, the Homeowners' 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.

Section 2. Enforcement by County. The Missoula County Commissioners may enforce the street cleaning requirements, imposed on the Homeowners' Association by Article II, Section 2(B).

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 DECLARANT

The Declarant shall have no liability for any of its actions or failures to act, or for any actions or failures to act of the Homeowners' Association or any Owners of the property within the Properties. The relationship between the Declarant, the Homeowners' 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 Declarant shall have no liability or obligation under this Declaration to any person or entity except such liabilities and obligations as the Declarant may expressly assume herein.

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

LLOYD A. TWITE FAMILY PARTNERSHIP

By Lloyd A Twite
Lloyd A. Twite, Managing Partner

STATE OF MONTANA)
 : ss.
County of Missoula)

'99 JAN 7 AM 8:25

This instrument was acknowledged before me on the 6th day of January, 1999, by Lloyd A. Twite, managing partner of the Lloyd A. Twite Family Partnership.

Margaret Charles
Notary Public for the State of Montana
Residing at: Missoula
My Commission Expires: 7-1-02



199900423

Declaration of Covenants, Conditions and Restrictions
Page — 20

I RECEIVED AND FILED THIS INSTRUMENT FOR RECORD ON THE 7 DAY OF Jan 1999 AT 8:25 O'CLOCK A M AND IT IS RECORDED IN VOL 568 OF MICRO RECORDS IN THE COUNTY OF MISSOULA STATE OF MONTANA BY DAVID WESTERN REC'D 113 PER 110 PAID 00
RETURN TO DAVID WESTERN COUNTY RECORDER
ADDRESS 3201 RUSSELL ST BY DAVID WESTERN COUNTY RECORDER
MJLA ALT 59801 DEPUTY DOC DM