

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
LINDA VISTA FIFTH SUPPLEMENT

THIS DECLARATION is made this 20<sup>th</sup> day of April, 1989 by LLOYD A. TWITE FAMILY PARTNERSHIP, hereinafter referred to as "Declarant", who is the owner in fee simple of real property located in Missoula County, Montana, more particularly described as Linda Vista Fifth Supplement.

WHEREAS, the Declarant has deemed it desirable to create a corporate entity to which will be delegated and assigned the powers of maintaining, administering, and enforcing the covenants, easements, conditions, restrictions, and charges hereinafter created; and

WHEREAS, Declarant has incorporated under the laws of the State of Montana, a nonprofit corporation known as LINDA VISTA FIFTH SUPPLEMENT HOMEOWNERS ASSOCIATION for the purposes of exercising the functions aforesaid;

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 is and shall be held, transferred, sold, conveyed and occupied subject to the restrictive and protective covenants, easements, charges and liens hereinafter 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. "Association" shall mean and refer to LINDA VISTA FIFTH SUPPLEMENT HOMEOWNERS ASSOCIATION, its successors and assigns.

Section 2. "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 Declarant as therein provided.

Section 3. "Bylaws" shall mean the Bylaws adopted by the Association as amended from time to time.

Section 4. "Common Area" shall mean any properties existing or possibly to exist in the future owned by the Association together with all facilities and improvements placed thereon; and any and all interest which the Association may acquire in adjacent lands, any easements granted to the Association and the Owners and, in general, all apparatus and installations existing for common use, including all open spaces, natural areas and park areas and be perpetual. Such common area shall exclude all facilities, improvements and easements associated with the sewage system operated by the Linda Vista Third Supplement Homeowners Association.

Section 5. "Common Area Expenses" shall mean the Owners' pro rata share of the general common expenses including, but not limited to, the maintenance, repairs, utility costs, management costs, reserves, capital improvements, assessments and all other charges of the Common Area which the Association may levy upon the Owners in accordance with this Declaration. Such expenses shall not be assessed against facilities, improvements or easement owned or operated by the entity operating or owning the sewer system.

Section 6. "Declarant" shall mean Lloyd A. Twite Family Partnership, their heirs, successors and assigns.

Section 7. "Declaration" shall mean this document of Declaration of Covenants, Conditions and Restrictions of Linda Vista Fifth Supplement, as may be amended from time to time.

Section 8. "Drainway" shall mean and refer to all swales, channels, water-courses, draws, depressions, ditches, whether or not any of these shall constitute recognizable ravines or gorges of any size, and whether natural or artificial, over and in which surface water flows or is meant to flow.

Section 9. "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 excepting therefrom any Common Area.

Section 10. "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 11. "Owner and Member" 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 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 12. "Person" shall mean an individual, corporation, partnership, association, trust or other legal entity or combination thereof.

Section 13. "Properties" shall mean and refer to that certain property described herein as Linda Vista Fifth Supplement. "Properties" shall also mean and refer to any addition of real properties as may hereafter be brought within the jurisdiction of the Association.

## ARTICLE II

HOMEOWNERS ASSOCIATION

Declarant has established a landowners association known as LINDA VISTA FIFTH SUPPLEMENT HOMEOWNERS ASSOCIATION. The voting members of such association shall be the owners as defined herein.

## 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 Fifth Supplement.

Section 2. Additional Property: The Declarant shall have the exclusive right, at their option, to subject additional property to this declaration provided such adjacent property for subdivision is approved by the Missoula County Commissioners and further provided that water and sewage disposal services for such additional property is first approved by the Department of Health and Environmental Sciences for the State of Montana.

## ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership: Every person or entity who is a record owner of a fee, or undivided fee, interest in any lot which is subject by covenants of record to assessments by the Association, shall be a member of the 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.

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, the voting rights and right to use of the Common Areas of such member may be suspended by the Board of Directors until such assessment has been paid. Such rights of a member may also be suspended, after notice and hearing, for a period not to exceed 30 days, for violation of any rules and regulations established by the Board of Directors governing the use of the Common Area.

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 any 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 vote be cast with respect to any lot.

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

#### ARTICLE V

##### PROPERTY RIGHTS IN THE COMMON AREA

Title to Common Area: The Declarant may retain the legal title to the common area until such time as it has completed improvements thereon and it desires and is of the opinion the Association is able to maintain the same. The Declarant covenants the title to the common area shall be perpetually conveyed to the Association subject to the rights, reservations and restrictions described in Article X.

#### ARTICLE VI

##### COMMON AREA

The Declarant hereby declares that the Association shall be the owner of the common area. The Declarant hereby covenants that they will transfer, convey and assign to the Association all of Declarant's right, title and interest in the Common Area, subject to the rights, reservations, easements and restrictions described in Article X.

The use, repair and maintenance of the common area shall be governed by the Association and such Association shall have the responsibility of maintaining all such common area, subject to the rights, easements, reservations and restrictions described in Article X.

The Common Area shall not be used by the general public even though it is owned by the Association. Such area shall be only for the private use of the Association, the owners, their families, their guests and Declarant.

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 improvement, operation and maintenance of the properties and common area.

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 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 reasonable fees to compensate the members of the Architectural Control Committee for their time and service, maintenance costs, property taxes on the common area segregated from any tax associated with or attributable to the property owned or utilized by any water and sewage company, 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.

(c) 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.

(d) Emergency Assessments: The Board of Directors is authorized to levy in any assessment year an emergency assessment, which shall not exceed four times the amount of the Annual Assessment for that year. Additional emergency assessments require the approval of a simple majority of the votes of 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 damages or a change of condition that must be remedied promptly to insure a safe and adequate continuation of facilities or services.

(e) 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 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. Assessments will be levied on only occupied lots, at the rate of \$50.00 per 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 to foreclose the lien against the residential structure 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 attorney's 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. Any common areas; and
- c. 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.

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 Board of Directors of the Association or by any Architectural Control Committee composed of three or more representatives appointed by the board. 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 Board of Directors of the Landowners Association 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 purely aesthetic grounds.

## ARTICLE IX

PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area subject to the restrictions, reservations, easements and rights reserved and described in Article X and such easement shall be appurtenant to and shall pass with the title to every assessed lot. Any member may delegate his rights of enjoyment of the Common Area to the members of his family, his guests or his tenants, who reside on the property. Such member shall notify the secretary in writing of the name of any such delegatee. The rights and privileges of such delegatee are subject to suspension to the same extent as those of the member. Each member's easement of enjoyment is, however, subject to the following provisions:

- (a) The right of the Association to limit the number of guests of members.
- (b) The right of the Association to charge reasonable admission and other fees for the use of the Common Area provided two-thirds (2/3) of each class of membership has approved the same.
- (c) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage said property.
- (d) The right of the Association to suspend the voting rights and right to use the Common Area by a member for any period during which any assessment against his lot remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.

(e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or public or private utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by members representing two-thirds (2/3) of the entire number of outstanding votes has been recorded, agreeing to such dedication or transfer, and also approved by the Missoula County Commissioners.

(f) The right of the Association, by resolution approved by two-thirds (2/3) of the members of the Board of Directors, and the Missoula County Commissioners to grant easements upon any Common Area to any public agency, authority, or public or private utility without charge.

#### ARTICLE X

##### 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 except the common areas 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 zoning restrictions of Missoula County, Montana as well as those of the Declarant. In the event of any conflict, Missoula County regulations shall prevail.

Section 3. Type of Residential Structures: No residential structures shall be erected, altered, placed or permitted to remain on any such lot other than one (1) single family residential structure not to exceed two (2) stories in height above grade line, and a private garage for not more than three (3) cars except as herein provided. Outbuildings including guest cabins, detached garages, and storage sheds may be constructed as 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 the 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-store house;
- (b) 900 square feet on the first floor for a two-story house; and
- (c) 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 15 feet from the exterior to the side of any lot.
- (b) No portion of any house, appurtenance, or outbuilding shall be less than 25 feet from any front lot.
- (c) No building shall be more than two stories in height.
- (d) Providing however, that in the event any owner of lots within said subdivision owns two or more contiguous lots for the purpose of one 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 building set without reference to the contiguous lot lines.
- (e) Each home shall have a paved driveway at least 16 feet 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 15 feet from the foundation of any structure.

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

Section 10. Easements: Easements for installation and maintenance of utilities and drainage facilities and drainways 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, sewerlines, electric lines, telephone lines, and other utilities, and to give or grant a right-of-way easement, not more than twenty (20) feet in width therefor (a) over any part of the Common Area, (b) over any part of any lot within the properties, and (c) 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 four feet 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 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 wood burning fireplaces or 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: No mobile homes, trailers, trucks exceeding one (1) ton capacity, or unsightly vehicles and equipment shall at any time be parked or allowed to remain upon any of said lots or along curbs. Any recreational vehicles shall be screened from the public view. Semi-tractor or trailers are strictly prohibited.

No vehicles shall at any time be parked or placed so as to impede, obstruct or interfere with pedestrian or vehicular travel along any road or right-of-way within the properties.

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 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.

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 owner's 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. When any structure or building shall be erected on any lot 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.

In addition the following shall apply:

- a. The builder shall supply and plant a minimum of 4 trees (8' to 10' in height) within 30 days of completion of home construction, or when weather conditions will allow for proper planting.
- b. The homeowner will supply and plant three trees per year for each of the first 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 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 costs 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 may 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. Restriction of Common Area: The utility lot in Linda Vista Third Supplement has been deeded to the Linda Vista Fifth Supplement Homeowners Association as common area. This common area will be maintained by the Linda Vista Fifth Homeowners Association, and is subject to an easement for a drainfield which is used by residences in Linda Vista Third Supplement.

The Common Area (utility lot) will be subject to the following conditions:

- (a) The use shall be restricted to passive activities (lawn, picnic area, etc.). No vehicle or motorcycle traffic, no equestrian activities and no other activity leading to compaction of the soil shall be permitted.
- (b) To protect the life of and access to the drainfield, no structure of any type shall be permitted on the lot.
- (c) The Linda Vista Fifth Homeowners Association shall maintain the lot as open space, in an aesthetic manner conforming in character with the surrounding neighborhood.
- (d) An easement is provided on the lot for the existing drainfield and a replacement area. Maintenance, repair, and replacement of the drainfield shall remain the sole obligation and expense of the Linda Vista Third Supplement Homeowners that are served by the drainfield. Reasonable access to the drainfield site shall be provided to the drainfield to allow for maintenance, repair and replacement. Linda Vista Third Supplement shall reseed grass if sewer is repaired.
- (e) Waterline easement to Linda Vista Water Company.

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 stormwater 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 or common area is strictly forbidden.

Section 24. Control of Hazardous Materials: There shall not be stored or maintained on any lot more than ten 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 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 utilities connected to the premises shall be underground. Television, radio and other antennas or satellite monitoring devices located upon said premises are to be located so as to be as inconspicuous as possible. Location to be approved by Architectural Control Committee.

Section 28. Building and Fire Codes: All construction shall comply with provisions of the following Codes: One and Two Family Dwelling Code, 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: 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, sewerlines, electric lines, telephone lines and other utilities. Notwithstanding the provisions of Article XII, this section shall not be amended or altered by the Association or owners without the consent of the Declarant and the water and sewage companies providing services to the properties.

Section 31. Protest of RSID: Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest an RSID and can be used in lieu of signature on an RSID petition for the improvement of Linda Vista Boulevard and Lower Miller Creek Road and for the design and construction of a drainage system for the area affected by this subdivision and for construction of or extension of municipal or community sewer.

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 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. Landscaping: The owner of each residential lot shall provide reasonable landscaping for his residential lot within six months after completion of the construction of the dwelling structures. Such landscaping may include lawn, shrubs and trees at the owners discretion.

Section 35. Approval by Declarant: The approvals 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 Association.

Section 36. Common Areas: All common areas as defined in this Declaration shall be perpetual.

#### ARTICLE XI

##### TERM OF DECLARATION

The provisions of this Declaration shall be covenants running with the land and shall be binding for a term of 20 years from the date of this Declaration after which time the Declaration shall automatically be extended for successive periods of 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 said term of years and may not be terminated by the owners.

#### ARTICLE XII

##### WAIVER, ALTERATION, ABANDONMENT, TERMINATION OR AMENDMENT

This Declaration may be waived, altered, abandoned, terminated or amended by an instrument signed by 75% of the privately owned land indicated within the boundaries of the properties; 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 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 XIII

ENFORCEMENT

The Declarant 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 Declarant, 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 formal legal action to enforce any provision of this Agreement, the prevailing party to such action shall be entitled to recover from the other party reasonable attorney's fees and costs of the action, and if the party alleging the violation shall prevail, the other party shall in addition to all other remedies, be entitled to the recovery of \$50.00.

ARTICLE XIV

SEVERABILITY

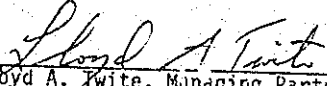
Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect the remaining provisions which shall remain in full force and effect and in particular the invalidation of any separate paragraph of the provisions relating to building restrictions shall in no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

ARTICLE XV

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 Association or any owners of the property within the properties. The relationship between the Declarant, 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 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, Managing Partner  
Lloyd A. Twite Family Partnership

MISSOULA, MT

I HEREBY CERTIFY THAT THE FOREGOING WAS RECORDED ON THE DAY OF May 1898 at 8:06 A.M.  
 and is recorded in Vol. 293 on Page 1139 Micro Records of the County of Missoula, State of  
 Montana. Witness my hand and the Seal of my Office, this 9 day of May 1898.  
 Notary Public for the State of Montana  
~~Starbuck Mungerton~~ Starbuck Mungerton

8906516

90 0 AM 0 06 '88



Notary Public for the State of Montana  
 Residing at Missoula, Montana  
 My Commission Expires: 23 19

*Evelyn E. Sawyer*

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

On this 20 day of April, 1989, before me, the under-  
 signed, a Notary Public for the State of Montana, personally appeared  
 Lloyd A. Twite, known to me to be the person whose name is subscribed to the  
 foregoing instrument and acknowledged to me that he executed the same.

STATE OF MONTANA  
County of Missoula