

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF WHISPERING SWAN COVE, A LAKE COUNTY SUBDIVISION**

The undersigned, being the declarant and owner of property submitted for subdivision in Lake County Montana, does hereby record, impose and restrict property for use under the terms and conditions of this declaration.

The property affected is located in Lake County Montana and is more particularly described as follows:

Government Lot 2, Section 24, Township 26 North, Range 19 West, P.M.M. Lake County, Montana, described as follows: Beginning at the Northwest corner of Government Lot 3 (Northeast corner Gov't. Lot 2), which is a found axle; thence, South 425.00 feet to the approximate mean-low-water-mark of Swan Lake; thence N. 80°24'29" W. along said M-L-W-M 1338.93 feet to a point on the West boundary of said Government Lot 2; thence, N. 00°09'46" E. along said West boundary 195.00 feet to a set iron pin and the Northwest corner of said Government Lot 2; thence N. 89°42'03" E. along the North boundary of said Gov't. Lot 2 a distance of 1319.68 feet to the point of beginning. Further identified as being Tract 1 on Certificate of Survey No. 5011, on file and of record in the office of the Clerk and Recorder of Lake County, Montana.

ACCESS AND ROAD MAINTENANCE

Covenant No. 1: There shall be a sixty-foot private road and utility easement identified as Swan Cove Drive, as described on the plat filed of record. Declarant hereby grants and reserves unto each lot, a permanent, private, easement appurtenant for use and maintenance of this roadway and right-of-way for egress, ingress and buried utilities. No owner, beneficiary or user of the easement shall block or obstruct the roadway in a fashion which at all interferes with another party's rights of beneficial use and enjoyment.

Covenant No. 2: All owners, upon commencement of construction of improvements to their property, shall be obligated to equally share in the maintenance and repair of Swan Cove Drive in good and passable condition year-round for automobile traffic. The owners may opt to form a Road Maintenance Association which shall maintain its own bank account and keep its accounts current. Each owner of property within this subdivision who has commenced improvements on his property, shall be obligated to pay their proportionate share of road maintenance expenses.

Covenant No. 3: In the event any party neglects or refuses to pay their share of the costs of maintenance and repair, a non-defaulting party may file a lien with the Lake County Clerk and Recorder against the property of the defaulting party, which lien shall contain a certified, acknowledged statement of the amount due, owing and unpaid, the place where payment shall be made and a statement that a true and correct copy of the lien has been mailed, prior to recording, to the defaulting party by certified or registered mail, return receipt requested. The non-defaulting party

shall similarly record a satisfaction of lien within thirty days of the date payment in full is made. A defaulting party shall additionally pay all costs and reasonable attorney's fees of the nondefaulting party for collecting delinquent assessments, including recording, enforcing and satisfying liens.

- Covenant No. 4: All utility lines shall be installed underground

RESIDENTIAL CONSTRUCTION

Covenant No. 5: All structures and improvements to be built on the property of this subdivision shall comply with the following requirements:

- a) No structure, including satellite antennas, shall be located on any tract closer than 25 feet to a property boundary, nor closer than fifty feet from the high water mark of Swan Lake.
- b) No structure shall be built except one single family dwelling with not less than 2,000 square feet finished ground floor living area, if the residence is a single story, ranch-style home. If the residence contains a loft or balcony, or a second story or full basement, then the finished ground floor living area shall not be less than 1,400 square feet. Living area does not include garage space.
- c) An owner may construct additional outbuildings located on each lot including but not limited to a garage, shop storage building or guest cottage.
- d) No galvanized or factory painted metal sidings or roofs shall be used on the exterior of permissible structures. Owners may install a metal roof provided it is dark and nonreflective in color. Wooden shake roofing on residential and appurtenant structures is prohibited.
- e) The architectural design of all structures erected or placed on the property shall be similar to and compatible with that of other structures on the property;
- f) Each dwelling shall be fully completed externally, including siding and/or masonry, paint and roof, ground rough graded, soffits, fascia, trim, windows, steps, sidewalk installed and building debris removed within one year from the time construction starts on such building. Plumbing fixtures and utilities must also be completed within this one year.
- g) No temporary building or partly finished building or structure, including basements, tents, trailers, camper trailers or truck-mounted campers shall be erected or placed upon the property or used as a permanent or temporary dwelling. No property owner shall install, bring onto the property, or reside in, temporarily or permanently, a trailer, mobile home, double-wide, or any other prefabricated structure designed to be hauled or moved on wheels, regardless of date of manufacture, number of sections or cost or design. This exclusion shall apply to all modular homes, regardless of design or manufacture.
- h) Placement or storage of recreational or camping vehicles or apparatus for use off the premises is allowed. However, none of the vehicles or dwellings mentioned in this subparagraph may be placed or stored on any vacant lot on which there is presently no residence
- i) No preconstructed or old building, whether intended to be used in whole or in part as the main residential structure or as a garage or other outbuilding shall be moved upon any lot. This does not preclude the use of some used materials in construction, such as used brick, previously used beams or other support structure, provided siding and finishing is otherwise new.

- j) An owner shall obtain a Building notification Permit from Lake County services prior to the construction or modification of any dwelling unit on the property.
- k) No fences shall be constructed or placed on the property, except that an owner may fence a tree or vegetable garden from damage by wildlife.
- l) Each owner shall maintain an "existing view corridor." That is, no property owner within this subdivision may obstruct another owner's view by construction of any improvement or by planting of any vegetation. Additionally, each owner shall maintain vegetation on their lot in order that existing view corridors to adjoining lots remains unobstructed. Only owners within this subdivision shall be beneficiaries to this covenant

Covenant No. 6: Fuel storage tanks are expressly prohibited, except steel or plastic containers of five gallons or less.

Covenant No. 7: No part of this property shall be used or maintained as a dumping or storage ground for rubbish, trash, garbage, old automobiles, automobile parts, or lumber (except for construction). All garbage and refuse shall be stored only in metal or plastic containers which are in good, secure condition and have a firmly secured lid. Owners shall dispose of garbage at regular intervals.

Covenant No. 8: Each owner of a lot on which there is a structure shall perform exterior maintenance to the property and buildings, including painting, repairing, maintaining the lawn and grounds to preclude weeds, underbrush and other unsightly growths, and not permitting refuse piles or other unsightly objects to accumulate or remain on the grounds. The building site areas on the lots and in the areas within the private road way right-of-way shall be subject to the Vegetation Reduction Guidelines of the Department of State Lands Fire Protection Guidelines for Wild Land Residential Interface Development. In the event any owner fails or neglects to provide such maintenance, any owner may notify such owners in writing, specifying the failure and demanding that it be remedied within thirty (30) days.

Covenant No. 9: Timber may be cut and removed ONLY IF trees are dead or diseased, if they are removed for construction of improvements, or to enhance view or for landscaping purposes.

Covenant No. 10: No individual sewage system shall be permitted unless such system is designed, located and constructed in accordance with requirements of the Montana State Board of Health and the Lake County Sanitarian.

PROPERTY USE

Covenant No. 11: The property shall be used for residential purposes only. No property owner shall carry on any business on their property, except as may be personally conducted entirely within the confines of a residence, by electronic telecommunication. Owners may rent or lease their property for intervals of not less than thirty days per tenant. Signage is prohibited, except to list a resident owner's name and address. "For rent" signs are prohibited. "For sale" signs are allowed.

Covenant No. 12: Owners will abide by the following requirements for the purpose of lessening the impact of this subdivision on present and future wildlife:

- (a) All outdoor garbage containers shall be bear proof.
- (b) No owner shall store food overnight, out of doors, in a refrigerator, cooler, or food chest. All foods, not in use, shall be promptly taken indoors.

- (c) Barbecue grills shall be cleaned and maintained after each use. Leftover cooking oils and grease shall be deposited into bear proof containers, or stored indoors as soon as possible.
- (d) Owners shall not store pet food out of doors, nor shall an owner leave unattended pet food out of doors for an extended period of time, nor overnight.
- (e) Owners shall not store or utilize any wildlife attractions such as salt blocks or hay.
- (f) Owners shall undertake to plant vegetation which is not attractive to herbivorous wildlife. Owners shall attempt to use native vegetation whenever possible, keeping berry-producing plants such as chokecherry, service berry, mountain ash, domestic fruit trees such as apples, cherries, and pears to a minimum. Owners may plant such trees, provided such vegetation is properly fenced or protected from wildlife.

Covenant No. 13: No livestock shall be permitted to be kept, bred or maintained on any property. Resident owners may keep domestic pets, such as dogs and cats. Owners should take reasonable precautions to insure that their pets do not become a nuisance to the neighborhood, or a nuisance or endangerment to wildlife. The property shall not be used for breeding or keeping of animals (i.e. kennels) for commercial purposes.

Covenant No. 14: Satellite dishes are permitted, provided they are digital satellites, AND are less than twenty-four inches in diameter, are black or gray in color and are obscured from public view. No satellite may be installed within fifty-five feet of the high water mark of Swan Lake.

Covenant No. 15: No noxious or offensive activity shall be undertaken by any property owner or their guests nor shall anything be allowed which may become an annoyance or nuisance to the neighborhood. No wrecked or disabled vehicles, boats or equipment may be stored upon any property.

ENFORCEMENT AND AMENDMENT

Covenant No. 16: The covenants may be enforced by proceeding at law or in equity against any person, firm or corporation violating, attempting to violate, or threatening to violate any of these covenants. The court may restrain violation of these restrictions and award damages. Any owner of property in the subdivision may commence appropriate judicial proceedings to enforce or prevent violation of these restrictions and recover damages.

If a court invalidates one or more of these covenants, the invalidation shall not affect the remaining covenants and restrictions. For any legal proceeding under these covenants, the prevailing party is entitled to their costs of suit and a reasonable attorney's fee.

Covenant No 17: Declarant reserves exclusive authority for enforcement of these covenant until two-thirds of the lots are sold. Declarant reserves the right to amend these covenants until such time as three-fourths (3/4) of the lots have been sold. Thereafter, these covenants may be amended if three of the four owners agree to an amendment, place it in writing, obtain the approval of the Lake County Commissioner's (and upon obtaining such approval) record the amendment with the Lake County Clerk and Recorder's office. No amendment of these covenants shall be valid without the written consent of the Lake County Commissioner's (or the successor political subdivision).

Covenant No 18: These covenants do not propose to form a Homeowners Association and, in as much as there is no common-area, a Homeowners Association is unnecessary. However, in the event all owners unanimously agree to form a Homeowners Association then such an association is not prohibited by these covenants.

These covenants do provide for a Road Maintenance Association. This association may elect officers, keep its own bank account and collect its accounts in the name of the association.

IN WITNESS WHEREOF, the Declarant has executed these covenants this 16th day of Dec., 1996.

BY: Clyde Potts
CLYDE POTTS

BY: Barbara Potts
BARBARA POTTS

STATE OF MONTANA)

:ss.

County of Flathead)

On this 16th day of December 1996, before me, the undersigned, a notary public for the State of Montana, personally appeared CLYDE POTTS AND BARBARA POTTS, known to me to be the persons whose names subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

Pamela m. Purcell
Notary Public for the State of Montana
Residing at: Bigfork
My commission expires: 5-2-99

(NOTARIAL SEAL)

STATE OF MONTANA, COUNTY OF LAKE

Recorded At 12:18 O'Clock P M. FEB 18 1997

Microfilm 380030 RUTH E. HODGES Recorder

Fees \$ 30⁰⁰ E7 Vicki Piele Deputy

Return:
Clyde Potts
78097 Mt. Hwy 83
Bigfork Mt 59911