

190098

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

OF

SWAN SITES NO. 1

THIS DECLARATION made this 20<sup>th</sup> day of June, 1969, by F. H. STOLTZE LAND & LUMBER COMPANY, a Corporation, hereinafter referred to as the Declarant,

WITNESSETH:

✓  
✓  
WHEREAS, the Declarant has filed a plat of certain lands in Lake County, Montana, known as "SWAN SITES NO. 1," with the Clerk and Recorder of said county, on the 22<sup>nd</sup> day of AUGUST, 1969, as Document Number 190066, in File Case 192 of Plats, as Abstract Number J-4049, and;

WHEREAS, the Declarant is the owner of all the lots in said Swan Sites No. 1 and desires to place covenants, conditions and restrictions upon said lots for the use and benefit of themselves, as present Owners, and for the future owners thereof;

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I: DEFINITIONS

Section 1. "Association" shall mean and refer to Swan Sites Homeowners Association, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain property described herein as Swan Sites No. 1. "Properties" shall also mean and refer to any addition of real properties as may hereafter be brought within the jurisdiction of the Association excepting that such reference shall in no way subject such additions to the Protective Covenants hereinafter set forth. All future additions to Swan Sites, although being a part of the Association, shall have their own Protective Covenants in keeping with Declarant's overall plan of development.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 5. "Members" shall mean and refer to every person or entity who is a member of the Association.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is a part of the Properties, including buyers under a Contract for Deed, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Declarant" shall mean and refer to F. H. Stoltze Land & Lumber Company, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 8. "Class A" members shall be all members except the Declarant and those who derive membership solely as members of the Board of Directors of the Declarant.

Section 9. "Class B" members shall be the Declarant and those who derive membership solely as members of the Board of Directors of the Declarant.

#### ARTICLE II: ANNEXATION

Section 1. Swan Sites Properties. If within twenty-five (25) years of the date of incorporation of the Association, the Declarant should develop additional lands within any of the area described as follows: Sections 11, 12, 13 and 14, all of Township 26 North, Range 19 West, M.P.M., Lake County, Montana, such additional lands shall be annexed to the Association (and thereby add to its membership), at the request of the Declarant and without the assent of the Class A members.

Although the development of such additional lands shall be in accordance with a general plan for the overall development of the Swan Sites area by the Declarant, each such additional area so developed shall be subject only to those Protective Covenants as may be made applicable to that area.

Section 2. Other Properties. The Association may, at any time, annex additional residential properties and common areas; and so add to its membership; providing that any such annexation shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

#### ARTICLE III. MEMBERSHIP

Section 1. Every person or entity who is a record owner of any Lot which is subject by covenants of record to assessment by the Association, whether in Swan Sites No. 1, or in any additions thereto, including buyers under a Contract for Deed, shall be a member of the Association.

Section 2. 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. All members of the Board of Directors of the Declarant shall be considered as landowners for purposes of Association membership, and shall therefore be members of the Association, so long as the Declarant owns one or more lots which are subject by covenants of record to assessment by the Association.

Section 3. Since Lot Nos. 128 through 180, inclusive, are lakeshore lots and therefore have access to Swan Lake, the Declarant hereby expressly excludes the owners of said Lot Nos. 128 through 180, inclusive, from automatic membership in the Association. Although said lots are subject to the Protective Covenants as set forth in Article VII hereof, the owners of said lots are not members of the Association merely by virtue of ownership, and therefore are not subject to assessment. The owners of any of said Lots 128 through 180, inclusive, are hereby given the right to become members of the Association, and thereby subject to assessment, by filing a written request for membership with the Directors of the Association and by paying all prior assessments to the date of the application, or such lesser sum as the Directors may designate.

#### ARTICLE IV: VOTING

Section 1. Class A. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest in any Lot, the vote for such Lot shall be exercised as such persons among themselves determine, but in no event shall more than one (1) Class A vote be cast with respect to any Lot.

Section 2. Class B. The Declarant shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership. Persons who derive their membership as members of the Board of Directors of the Declarant shall be entitled to one (1) vote per person.

Section 3. Single Class. The distinction between classes of membership shall terminate on the happening of either of the following events, whichever occurs earlier:

- a. When the total outstanding votes in Class A membership equal the total outstanding votes in Class B membership; or
- b. On January 1, 1980.

When such distinction of classes shall terminate, all members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest in any Lot, the vote for such Lot shall be exercised as such persons among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. However, so long as one of the members of the Board of Directors of the Declarant remains a member of the Association, they shall be entitled to one (1) vote per person because of such position as a director.

#### ARTICLE V: PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, 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 any recreational facility situated upon the Common Area.
- c. The right of the Association in accordance with its Articles and By-Laws, to borrow money for purpose of improving the Common Areas and facilities, and in aid thereof to mortgage said property, and the right of such mortgagee in said properties shall be subordinate to the right of the owners hereunder.
- d. The right of the Association to suspend the voting rights and right to use of the recreational facilities 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 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 each class of members has been recorded, agreeing to such dedication or transfer.
- f. The right of the Association, by resolution approved by two-thirds (2/3) of the members of the Board of Directors, to grant easements under any common area to any public agency, authority, or utility without charge.

Section 2. Delegation of Use. Any member may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs, and assigns, that it will convey, prior to the conveyance of the first Lot, title to the Common Areas to the Association, free and clear of all encumbrances and liens.

#### ARTICLE VI: ASSESSMENTS

Section 1. Creation of Personal Obligation. The Declarant, for each Lot owned within the Properties, (excepting Lot Nos. 128 through 180, inclusive, as set forth in Section 3, Article III,) covenants to; and each other Owner of any Lot by acceptance of a deed or contract for purchase of any lot within the Properties, whether or not it shall be so expressed in said deed or contract, is deemed to covenant and agree to; be a member of, and subject to the assessments and duly enacted By-Laws and other rules of the Association. Each assessment shall be the personal obligation of the Owner of each Lot as of the date of assessment. This personal obligation shall not pass to successors in title unless expressly assumed by them.

Section 2. 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 for the facilities devoted to the use and enjoyment of the Common Area.

Section 3. 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 dwelling thereon, the Directors may, in their discretion, elect to treat such Owner the same as a single Lot Owner for assessment purposes.

Section 4. Maximum "Annual" Assessment. Assessments shall be Annual or Special. Both the annual and the special (if any) assessments shall be fixed annually by the Board of Directors of the Association. Payment of all assessments shall be in periodic installments at such intervals as established by the Directors of the Association in keeping with the By-Laws thereof.

- a. Until January 1, 1971, the maximum "annual" assessment shall be Five (\$5.00) Dollars per year, per Lot.
- b. From and after January 1, 1971, the maximum "annual" assessment may be increased effective January 1 of each year without a vote of the membership in proportion to the annual rise, if any, in the Consumers Price Index as published for the preceding month of July by the United States Department of Labor.
- c. From and after January 1, 1971, the maximum "annual" assessment may be increased above that established by the Consumers Price Index formula, or decreased to a different basis (subject to subsequent adjustment by the Consumers Price Index formula), provided that any such change shall have the assent of two-thirds (2/3) of the Class A members, and two-thirds (2/3) of the Class B members, who are voting in person or by proxy at a meeting duly called for this purpose. These limitations shall not apply to any change in the assessments incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.
- d. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the "annual" assessment at an amount not in excess of the maximum allowable.

Section 5. Special Assessments. In addition to the "annual" assessment authorized above, the Association, through its Board of Directors, may levy in any assessment year, a "special" assessment applicable to that year only, which shall be in addition to the "annual" assessment. Such "special" assessment shall be exercised and levied only for the purpose of defraying, in whole or in part, the cost of any installation, construction, or reconstruction,

repair, or replacement of a described capital improvement upon the Common Areas and including the necessary fixtures and personal property related thereto, provided that before any such "special" assessment may be levied, it shall have the assent of two-thirds (2/3) of the total of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Quorum for Any Action Authorized Under Sections 4 and 5. At a meeting called for the purpose of increasing the "annual" assessment, as provided in Section 4 (c), above, or for levying a "special" assessment, as provided in Section 5, above, the presence at the meeting of members or of proxies, entitled to cast sixty per cent (60%) of all the votes of each class of membership, shall constitute a quorum. If the required quorum is not forthcoming at such meeting, another meeting may be called, subject to the notice, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Commencement of Assessments. The Board of Directors of the Association is authorized to make the first "annual" assessment at such time as it determines appropriate. Such first "annual" assessment shall be adjusted according to the number of months remaining in the calendar year. However, no assessment shall be made prior to the conveyance of the Common Area. The Board of Directors shall fix the amount of each "annual" or "special" assessment against each Lot at least thirty (30) days in advance of each "annual" assessment period. Written notice of the assessments shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. If the assessment is such as requires a vote of the members, this shall be done before the assessment becomes effective. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates.

Such certificate shall be conclusive evidence of payment by any assessment therein stated to have been paid.

Section 8. Nonpayment of Assessment. Any assessments, or installment payments on assessments, which are not paid when due shall be delinquent. If not paid within thirty (30) days after the due date, the amount shall bear interest from the date of delinquency at the rate of eight (8) per cent per annum. The Association may bring an action at law to collect the amount of the assessment, together with interest, costs, and reasonable attorneys' fees for such action.

Section 9. 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. The Common Area;
- 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 dwelling use shall be exempt from said assessments; and

- d. Lot Nos. 128 through 180, inclusive, unless and until the Owners of any of said Lots have made written application for membership and joined the Association.

#### ARTICLE VII: PROTECTIVE COVENANTS

The following Protective Covenants are designed to provide a uniform plan for the development of Swan Sites No. 1. They shall constitute a covenant running with the land for each Lot within said Swan Sites, except for the Common Areas.

Section 1. Single Family Dwelling. Except for the Lots herein-after identified and specifically excluded from this restriction, no building shall be erected, altered or placed or permitted to remain on said property, other than a single family dwelling, together with a guest house, a private garage, and outbuildings such as tool shed and barn.

- a. Lots 37 through 59, inclusive, being tracts of 3 acres or more, are hereby expressly excluded from Article VII, Section 1, Protective Covenants, but such Lots are expressly included in, and subject to, all other Covenants.

Section 2. Land Use. No Lot shall be used except for residential purposes, and no business, trade or manufacture shall be conducted on any Lot herein.

Section 3. Residence Only. Any building erected upon any Lot shall be used exclusively for private residence and no such buildings may be applied, used or occupied as apartments.

Section 4. Setback Lines. No building shall be located on any Lot closer than 10 feet to either side Lot line, or closer than 20 feet to the rear Lot line. Where more than one (1) Lot, as dedicated, is used as a single building site, the side Lot lines shall refer only to Lot lines bordering the adjoining property owners.

- a. No building shall be located on Lots 1 through 35, inclusive, or on Lots 128 through 165, inclusive, or on Lots 172 through 180, inclusive, closer than 50 feet to the front Lot line.
- b. No building shall be located on Lots 36 through 127, inclusive, or on Lots 166 through 171, inclusive, closer than 20 feet to the front Lot line.
- c. On those Lots which abut Swan Lake or the Swan River, the normal shore line or water's edge shall be considered the front Lot line. On all other Lots, that portion of the Lot which abuts a road shall be considered the front Lot line.

Section 5. Lake Lots. No structure or building, or any portion thereof, shall at any time be erected or placed on any Lot, which has frontage on Swan Lake or Swan River between the front setback line and the shore of Swan Lake, except for a dock, boathouse or pump house.

Section 6. Building Size.

- a. No main dwelling of less than 500 sq. feet of ground floor area, exclusive of porches and garages, shall be erected or placed on any lot or tract, except for house trailers and mobile homes as herein set forth.
- b. No guest house containing less than 200 sq. ft. of ground floor area, shall be erected on any lot.

Section 7. Time for Construction. Each dwelling erected, placed or permitted to remain on said property must have all exterior construction completed within two (2) years from the date such construction commences.

Section 8. Nuisances. No noxious or offensive activity shall be carried on or permitted upon any lot except for those lots herein-after expressly excluded, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

Section 9. Animals. No animals, livestock (other than horses) or poultry of any kind shall be raised, bred or kept upon any of said lots, except for those lots herein expressly excluded, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. No horses may be permanently kept or maintained on said property, excepting that an owner of a contiguous tract of land of more than 40,000 square feet may keep and maintain not to exceed one horse thereon for each 40,000 square feet of land.

- a. Any lot owner may pasture or keep horses on a temporary basis for up to, but not exceeding, thirty (30) days each calendar year.
- b. On Lots 128 through 189, inclusive, being lakeshore lots, no horses shall be pastured or permitted within 150 feet of the normal water's edge of Swan Lake.
- c. Lots numbered 37 through 59, inclusive, are hereby expressly excluded from the foregoing Protective Covenants No. 9, 9(a) and 9(b).
- d. No horses or other animals shall be pastured so as to permit them to water or bathe in Johnson Creek, Swan River or Swan Lake.

Section 10. Game Refuge. The Declarant does hereby designate all of Swan Sites No. 1, as a Bird and Game Refuge Area. The hunting or shooting at any birds or animals is strictly prohibited.

Section 11. Rubbish. No portion of said property shall be used or maintained as a dumping ground for rubbish. All trash, garbage, or other waste shall be kept in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 12. Sewage. No individual sewage disposal system shall be permitted on said property, unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of the Montana State Board of Health; and unless said

sewage disposal system consists of septic tank of proper size and with drain fields or dry wells as required and permitted by the Montana State Board of Health, and Lake County, Montana.

Section 13. No unsightly materials shall be allowed to accumulate on the property so as to impair the attractiveness of the property. Any automobile which remains immobile and not in running condition for a period of one year shall be deemed unsightly and constitute a nuisance.

Section 14. Temporary Structures. No trailer, basement, tent, shack, garage, or any structure of a temporary character, shall be used at any time on said property as a residence; excepting as follows:

- a. A commercial built trailer house, of not less than 500 square feet, may be used as a permanent year around residency if the undercarriage has been removed and the trailer rests on a foundation;
- b. All commercial built trailers which do not have the undercarriage removed, may be used as a temporary summer home but not to exceed a 90 day period each year;
- c. A temporary structure similar to a guest house may be occupied during the period of construction of the dwelling, but not to exceed a period of two (2) years;
- d. Any use of the property as hereinabove set forth shall be subject to the frontage and side-line restrictions as to location.

Section 15. Easements. Easements for roads, or the installation and maintenance of utilities, TV cables and drainage facilities are reserved to Declarant, its successors and assigns. No building of any kind shall be erected, placed or permitted to remain on such easements.

Section 16. Subdivision. Lots 37 through 59, inclusive, may be subdivided to the extent that not more than two (2) single family dwellings, as hereinabove defined, may be erected or placed upon said Lots:

Section 17. Water Rights. The Declarant reserves unto itself, its successors and assigns, all water rights appurtenant Johns on Creek, Swan River, Swan Lake, or any other waters arising upon or traversing the property.

Section 18. Mineral, Oil and Gas Rights. The Declarant reserves unto itself, its successors or assigns, all the mineral, oil and gas rights on the property, together with the right of ingress and egress to and from the lands for the purpose of exploiting such rights.

#### ARTICLE VIII: ENFORCEMENT

Section 1. Interested Parties. Any Owner shall have the option and right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, and charges now or

hereafter imposed by the provisions of this Declaration. The method of enforcement may include proceedings to enjoin the violation, to recover damages, or both. Failure by any Owner to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

ARTICLE IX: TERM

The provisions of this Declaration shall be binding for a term of ten (10) years from the date of this Declaration, after which time the Declaration shall be automatically extended for successive periods of five (5) years unless an instrument signed by the Owners of two-thirds (2/3) of the Lots in Swan Sites No. 1 has been recorded, agreeing to change this Declaration in whole or in part.

ARTICLE X: AMENDMENT

This Declaration may be amended by an instrument signed by the Owners of two-thirds (2/3) of the Lots in Swan Sites which has been recorded, agreeing to such amendment.

IN WITNESS WHEREOF, the Declarant has executed this instrument this 20th day of June, 1969.

F. H. STOLTZE LAND & LUMBER COMPANY

BY John R. Stoltze  
Chairman of the Board

W. James  
Secretary

STATE OF MONTANA, COUNTY OF LAKE  
RECORDED AT 16:52 INDEXED 5-26-69  
MICROFILM 190095 ETHEL M. HARDING  
7000 BY James R. Bent

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

On this 20th day of June, 1969, before me, the undersigned, a Notary Public in and for the State aforesaid, personally appeared John R. Stoltze and W. James known to me to be the Chairman of the Board and Secretary of F. H. Stoltze Land & Lumber Company that executed the within instrument, and acknowledged to me that such corporation executed the same.

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

Carol A. Lee  
Notary Public for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My Commission expires \_\_\_\_\_