

574788

DECLARATION
OF
COVENANTS AND CONDITIONS

THIS DECLARATION, made on the date hereinafter set forth by MILTON L. COULTER, TRUST, Developer, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Gillette, County of Campbell, State of Wyoming, which is more particularly described as:

Lot 2 of the resubdivision of Tracts B and C and Lots 3A, 4, 5, 6, 7 and 8 of the resubdivision of Lot 3 of the resubdivision of Tracts B and C of the Lakeside Subdivision, Campbell County, Wyoming.

AND WHEREAS, in order to establish a general plan for the maintenance and repair of the public access streets adjoining the Properties, Declarant desires to subject the Properties to certain conditions and covenants, upon the subject to which all of the Properties shall be held and conveyed.

AND WHEREAS, Declarant will convey the said Properties, subject to certain protective covenants, conditions, liens, and charges as hereinafter set forth;

NOW THEREFORE, Declarant hereby declares that all of the Properties described above shall be held, sold and conveyed subject to the following easements, covenants, and conditions, which are for the purpose of providing for the maintenance and

repair of streets adjoining the Properties, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1: The term "Association" shall mean and refer to LAKESIDE PROPERTY OWNERS ASSOCIATION, a non-profit corporation, its successors and assigns.

Section 2: The term "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3: The term "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4: The term "Lot" shall mean and refer to any of the building sites on which there is or will be improvements constructed, individually and separately owned.

Section 5: The term "covenants" as used herein, shall mean and refer collectively to the covenants, conditions, reservations, easements, liens, and charges imposed by or expressed in this Declaration.

Section 6: The term "Board of Directors" or "Board" as used herein, shall mean and refer to the duly elected Board of Directors of the Association.

ARTICLE II

NATURE AND PURPOSE OF COVENANTS

The covenants and conditions set forth in this Declaration constitute a general scheme for the repair and maintenance of the public access streets within the subdivision to enhance the value, desirability and attractiveness of the lots and private access easements for the benefit of all Owners of lots therein. These covenants and conditions are imposed upon Declarant and upon the Owners of all lots. Said covenants and conditions are for the benefit of all lots, and shall bind the Owners of all such lots. Such covenants and conditions shall be a burden upon and a benefit to not only the original Owner of each lot but also his successors and assigns. All such covenants and conditions are intended as and are hereby declared to be covenants running with the land or equitable servitudes upon the land, as the case may be.

Further, these Covenants and Conditions constitute assurance to the City of Gillette that the public access streets adjoining the properties will be maintained and repaired without cost to the City of Gillette.

ARTICLE III

PROPERTY RIGHTS

Section 1 Owner's Easements of Enjoyment: Every Owner shall have a right and easement of enjoyment in and to the public access streets which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a) The right of the Association to suspend the voting rights by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- b) Easements and rights of access for utility lines as shown on the plat of Lakeside Subdivision;
- c) The Association's Board of Directors retains full responsibility and authority over all public access roads;
- d) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the public access road.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1: Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot which is subject to assessment.

Section 2: All members shall be entitled to one (1) 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 among themselves determine but in no event shall more than one vote be cast with respect to any lot.

ARTICLE V

DECLARATION FOR STREET MAINTENANCE

Section 1 Construction and Maintenance of Streets. All public access streets adjoining the Properties shall be constructed by Declarant. Declarant shall maintain and keep all such streets in good repair until construction of all such streets is completed. Upon the first day of the month following the completion of construction of all such streets, a monthly charge shall be assessed to each Lot to provide for the maintenance and repair of such streets. This charge will continue to be assessed on the first day of each succeeding month. The amount of this monthly charge shall be determined by the Board of Directors of the Association and shall be in an amount reasonably calculated to generate sufficient proceeds to maintain and repair such streets in a reasonable, proper and safe condition.

Section 2 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association monthly assessments or charges, such assessments to be established and collected as hereinafter provided. The monthly assessments, together with interest, costs, and reasonable attorney fees, shall be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successor in title as personal obligation unless expressly assumed by such successor. Failure to pay such assessments shall, however, constitute a lien on the property in accordance with Section 5 of the nonpaying member.

Section 3 Purpose of Assessments: It shall be the duty of the Board of Directors of the Association to determine

the amount of the assessments levied by the Association. These assessments shall be used exclusively to maintain and repair the public access streets adjoining the Properties for the health, safety, and welfare of the businesses on the Properties.

Section 4 Uniform Rate of Monthly Assessments: Monthly assessments shall be fixed at a uniform rate for all Lots.

Section 5 Effect of Non-Payment of Assessments, Remedies of Association:

a) Delinquency: Any assessment provided for in this Declaration, which is not paid when due, shall be delinquent. With respect to each assessment not paid within fifteen (15) days after its due date, the Association may, at its election, require the Owner to pay a "late charge" in the sum to be determined by the Association, but not to exceed TWO and 50/100's DOLLARS (\$2.50) per each delinquent assessment, plus interest at the rate of ten percent (10%) per annum on such assessment.

b) Creation of Lien: The amount of all delinquent monthly assessments plus interest thereon and any expenses reasonably incurred in collecting and/or enforcing such assessments, including reasonable attorney's fees, shall be and become a lien upon the Lot so assessed, which shall attach to the Lot as of the time the Association causes to be recorded in the office of the County Clerk of Campbell County, Wyoming, a Notice of Assessment Lien, which shall state:

i) The amount of the delinquent assessment and such related charges as may be authorized by this Declaration;

ii) The name of the Owner of record or reputed Owner of the Lot;

iii) A description of the Lot against which the lien has been assessed.

The Notice shall be signed by two (2) officers of the Association. The assessment lien shall also be deemed to secure all of the foregoing items which shall become due and/or incurred relative to the Lot after the recordation of the Notice of Assessment Lien until the completion of the enforcement of the lien or the payment of the full amount secured by the lien, or other satisfaction to be made in connection therewith. No proceeding or action shall be instituted to foreclose the lien until notice of intention to proceed to foreclose the lien has been delivered by the Association to the Owner of the Lot

affected by the lien at least thirty (30) days prior to the commencement of any such action or proceeding. The assessment lien may be enforced by judicial foreclosure; provided, however, that said method of enforcement shall not be exclusive but shall be in addition to any other rights or remedies which the Owners of the association may have by law or otherwise. The Association shall also have the right to bid at any such foreclosure sale and to hold, lease, mortgage and convey such lot upon its purchase. Upon payment of the full amount secured by an assessment lien, including all authorized charges in accordance with the foregoing, or upon any other satisfaction duly made in connection therewith, the Association shall cause to be recorded a notice setting forth the fact of such payment and/or satisfaction and of the release of the assessment lien. Any assessment lien as to any Lot shall at all times be subject and subordinate to any mortgage or deed or trust on the Lot which is created in good faith and for value and which is duly recorded prior to the date of recordation of the notice of assessment lien. In the event any assessment lien is destroyed by reason of the foreclosure of any prior mortgage or deed of trust on a Lot, the interest in the Lot of the purchaser at the foreclosure sale may be subjected to a lien to secure assessments levied on the Lot in the same manner as provided above in this Article.

c) Curing of Default: Upon the timely curing of any default for which a notice of claims or lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment of the defaulting Owner, of a fee to be determined by the Association, but not to exceed FIFTEEN DOLLARS (\$15.00) to cover the costs of preparing and filing or recording such release, together with the payment of such other costs, interest or fees, as shall have been incurred.

d) Cumulative Remedies: The assessments lien and the rights to judicial foreclosure thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

e) Mortgage Protection Clause: No breach of the covenants or conditions herein contained, nor any lien created hereby, shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, and duly recorded prior to the date of recordation of the notice of assessment lien, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is deprived through foreclosure or trustee's sale, or otherwise.

Section 6 Subordination of the Lien to First

Mortgages: The lien of the assessments provided for herein and any lien of the City of Gillette pursuant to Article VIII shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect such liens. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or

any proceeding in lieu thereof regarding a first mortgage shall extinguish such liens as to payments which became due prior to such sale or transfer. No sale, transfer or mortgage foreclosure proceeding shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 7 Notification and Rights of the Holder of a Mortgage: Upon receipt of written notification to the Association of the existence of a mortgage on any Lot by the holder thereof, the Association shall notify such holder of a mortgage, at the last known address of the holder, of any default by the Owner of such Lot in the performance of the owner's obligations hereunder which is not cured within thirty (30) days.

ARTICLE VI

MANAGEMENT

1. All powers relating to management, cleaning, repair and maintenance of the public access streets adjoining the Properties shall be vested in the Association.

2. The specific and primary purposes and powers of the Association are to clean, repair and maintain the public access streets adjoining the Properties, and the enforcement of the provisions set forth in this Declaration of Covenants and Conditions, and the Association Articles and By-Laws.

3. The Association shall have the right and power to employ or engage a manager and other employees or agents and contract for such services, labor and materials as it may deem reasonably necessary to clean, repair and maintain the public access streets adjoining the Properties and the improvements

thereon and to discharge its other duties as herein provided. Any manager, agent or employee selected prior to the first annual election of the Board of Directors shall be employed to manage or work only until the first annual election of the Board of Directors, after initial organization, at which time the continuance of the same or the selection of a new manager or agent shall be determined by the Board of Directors elected at the first annual election. All contracts of the Association shall be limited in duration for a period of not more than one (1) year unless they contain reasonable cancellation provisions or have been approved by a vote of a majority of the members of the Association.

4. In addition to the duties and powers enumerated in its Articles of Incorporation and By-Laws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

- a) Pay the taxes and assessments which are or could become a lien on the public access streets adjoining the Properties or some portion thereof;
- b) Maintain and keep in force a policy of comprehensive public liability insurance insuring the Association against any liability arising out of the ownership, use, cleaning, repair or maintenance of the public access streets adjoining the Properties.

5. The Association may do any and all other acts and things that a nonprofit corporation is empowered to do, which may be necessary, convenient or desirable in the administration of its affairs for the specific and primary purposes and meet its duties as herein set forth.

6. The Association, through its Board of Directors, shall have the authority to delegate its powers to committees, officers of the Association or its employees.

ARTICLE VII

EASEMENTS

1. This Declaration of Covenants and Conditions shall be subject to all easements heretofore or hereafter granted by the Declarant or its successors and assigns for the installation and maintenance of utilities and drainage facilities that are reasonably necessary to the development of the Properties.

2. Easements through the Properties for installation and maintenance of utilities and drainage facilities are reserved as shown on the plats of the Properties. Within these easements no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of these facilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

3. Easements over Lots that are required in order that the Association may carry out its duties and powers as set forth in Article VI hereof are reserved by Declarant, its successors and assigns, for the benefit of the Association.

4. The rights and duties of the Owners of the Lots within the Properties with respect to sanitary sewer and water, electricity, gas and telephone and CATV lines and drainage facilities shall be governed by the following:

a) Wherever sanitary sewer connections and/or water connections or electricity, gas, or telephone and CATV lines or drainage facilities are installed within the Properties, which connections, lines or facilities, or any portion thereof, lie in or upon property owned by other than the Owner of a Lot served by said connections, lines or facilities, the Owner of each lot served by said connections shall have the right, and is hereby granted an easement to the full extent necessary therefore, to enter upon the Lots or Lot have utility companies enter upon the Lots within the Properties in or upon which said connections, lines or facilities, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below.

b) Wherever sanitary sewer connections and/or water connections or electricity, gas or telephone and CATV lines or drainage facilities are installed within the Properties, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his Lot.

5. Each Lot and its Owner within the Properties is hereby declared to have an easement, and the same is hereby granted by Declarant over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. There shall be easements for the maintenance of said encroachment, settling or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owner of each Lot agrees that minor encroachments over adjoining Lots shall be permitted as there shall be easements for the maintenance of said encroachments so long as they shall exist. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to the Lot being serviced and shall pass with each conveyance of said Lot.

6. The following provisions apply to the Properties, and none may be amended without the consent of at least two-thirds (2/3) of the first mortgagees:

a) Consent of Lenders Required: Unless two-thirds (2/3) of the institutional holders of first mortgages within the Properties have given their prior approval, the Association shall not be entitled to:

i) By act or omission seek to abandon, alienate, release, partition, hypothecate, subdivide, encumber, sell, or transfer any public access streets adjoining the Properties, directly or indirectly, by the Association for the benefit of the Lots; provided, however, the granting of easements for public utilities or for other public purposes consistent with the intended use of such access roads shall not be deemed a transfer within the meaning of this cause;

ii) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an owner;

iii) By act or omission change, waive, or abandon the system of regulations and enforcements established in this Declaration.

b) No Priority: No provision of this Declaration or the By-Laws gives or shall be construed as giving any owner or any other party priority over any rights of the first mortgagee of a Lot pursuant to its mortgage in the case of a distribution to such owner of insurance proceeds or condemnation awards for losses to or a taking of the public access streets adjoining the Properties.

c) Notice to Mortgagee: Notwithstanding anything contained herein which might otherwise be construed to the contrary, a first mortgagee, upon request designating such Lot, will be entitled to written notification from the Association of any default in the performance by any Owner of a Lot in which such mortgagee has an interest of any obligation under this Declaration, the By-Laws, or the Articles of Incorporation which is not cured within sixty (60) days.

d) Management Agreement
Limitations: Notwithstanding anything contained herein which might otherwise be construed to the contrary, any agreement for professional management of the public access streets adjoining the Properties, or any other agreement providing for services by the Declarant, may not exceed one (1) year and must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days or fewer written notice.

BREACH BY OWNERS

1. Breach of any of the covenants contained in this Declaration and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by any Owner, by the Association or the successors in interest of the Association.

2. The result of every act or omission whereby any of the covenants or conditions contained in this Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity applicable against every such result and may be exercised by any Owner, by the Association or its successors in interest.

3. The remedies herein provided for breach of the covenants or conditions contained in this Declaration shall be deemed cumulative and none of such remedies shall be deemed exclusive.

4. The failure of the Association to enforce any of the covenants or conditions contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

5. A breach of the covenants or conditions contained in this Declaration shall not affect or impair the lien or charge of any bona fide mortgage or deed of trust made in good faith, for value and recorded prior to the notice of assessment lien on any Lot to the improvements thereon, provided, however, that any subsequent Owner of such Lot shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

ARTICLE IX

NOTICES

In each instance in which notice is to be given to the Owner of a Lot, the same shall be in writing and may be delivered personally, in which case personal delivery of such notice to one of two or more co-owners of a Lot, to any general partner of a partnership owning such a Lot, shall be deemed delivered to all of the co-owners or to the partnership, as the case may be, and personal delivery of the notice to any officer or agent for the service of process of a corporation owning such Lot shall be deemed delivered to the corporation or such notice may be delivered by United States mail, certified or registered, postage prepaid, return receipt requested, addressed to the Owner of such Lot at the most recent address furnished to the Association by such Owner in writing for the purpose of giving notice or if no such address shall have been furnished, then to the street address of such Lot, and any notice so deposited in the mail within Campbell County, Wyoming, shall be deemed delivered to the Owner forty-eight (48) hours after such deposit. Any notice to be given to the Association shall be delivered by the United States mail, certified or registered, postage prepaid, return receipt requested, and any notice so deposited in the mail within Campbell County, Wyoming, shall be deemed delivered to the Association forty-eight (48) hours after such deposit.

ARTICLE X

EASEMENTS GRANTED TO THE CITY

Declarant hereby grants to the City of Gillette, easements over the public access streets adjoining the Properties for the

following purposes: installation and maintenance of public utility lines and facilities, and access for emergency and other vehicles associated with the various governmental services which will be furnished to the Properties by the City of Gillette.

ARTICLE XI

BREACH BY THE ASSOCIATION

In the event the Association fails to maintain or repair the public access streets adjoining the Properties in a reasonable, proper and safe condition, the Association will pay all necessary, reasonable and normal costs whatsoever, incurred by the City of Gillette in maintaining or repairing said streets.

Provided however: That the City of Gillette shall give thirty (30) days prior written notice to the Association that the City of Gillette intends to perform maintenance or repair on the public access streets adjoining the Properties and that said notice shall specify the maintenance or repair work to be done, its location and the nature of the unreasonable, improper or unsafe condition which necessitates the maintenance or repair. Said notice shall be sent to Association by registered mail before the City begins any work or incurs any cost unless an emergency situation occurs. The occurrence of an emergency shall be determined in the reasonable discretion of the Director of Public Works of the City of Gillette, and is declared to be an event which renders advance notice contrary to the health, safety or welfare of the residents of the City of Gillette. In case the Director of Public Works finds the existence of an emergency requiring immediate action he shall service notice to Association in the form above mentioned as soon as practical and shall

include an explanation of the state of affairs requiring emergency action.

Declarant and the City of Gillette agree and acknowledge that this agreement is the consideration for approval by the City of Gillette of the subdivision of the Properties.

Immediately upon receipt of the maintenance and repair bill from the City of Gillette, for maintenance or repair performed by the City of Gillette pursuant to this article, the Association shall pay such bill in full. If not paid in full within thirty (30) days of the Association's receipt of such bill, the City of Gillette shall have a lien upon the Properties for the full amount of the maintenance or repair bill upon filing in the real estate records of the Campbell County Clerk a notice of lien as to such properties after thirty (30) days prior written notice to the Association, the Owners and the first mortgagees of the Properties of its intent to file such a lien.

ARTICLE XII

CONFLICTS

In case of any conflict between this Declaration and the Articles of Incorporation or By-Laws of the Association this Declaration shall control.

ARTICLE XIII

GENERAL PROVISIONS

Section 1 Severability: Invalidation of any one of these covenants or conditions by judgment or court order shall in

no way effect any other provision which shall remain in full force and effect.

Section 2 Amendment: The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty-five (25) years from the date of this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than two-thirds (2/3) of the Lot Owners. Any amendment must be recorded. No amendment shall in any way abrogate or eliminate the obligation of the Association to maintain and repair the public access street adjoining the Properties in a reasonable, proper and safe condition.

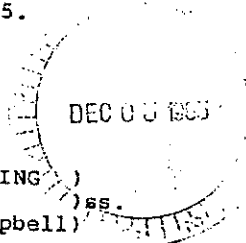
Section 3 Annexation: Additional property may be annexed to the Properties with the consent of two-thirds (2/3) of the members.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hands and seal this 26th day of November, 1985.

MILTON L. COULTER, TRUST

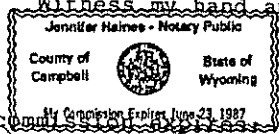
Milton L. Coulter
Milton L. Coulter, Trustee

STATE OF WYOMING)
) ss.
County of Campbell)



The foregoing instrument was acknowledged before me this 26th day of November, 1985 by Milton L. Coulter, Trustee of the MILTON L. COULTER, TRUST.

Witness my hand and official seal.



Jennifer Haines
Notary Public

STATE OF WYOMING)
Campbell County) ss.

Filed for record this 3rd day of December A.D. 19 85 at 11:54 o'clock a M. and recorded in Book 852

of Photos on page 398
Christine E. Addison
County Clerk and Ex-Officio Register of Deeds

RECORDED
ABSTRACTED
INDEXED
CHECKED

Fees \$ 36.00
By Margaret Addison
Deputy

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