

COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FESTIVAL SQUARE
GALLATIN COUNTY, Bozeman, MONTANA

COMES NOW the owners of the lands known herein as FESTIVAL SQUARE, hereafter called "FS", and more particularly described in FESTIVAL SQUARE PLANNED UNIT DEVELOPMENT PLAN filed in the Clerk and Recorder's Office, Gallatin County Courthouse, Montana on the ____ day of _____, 1985 as shown on Certificate Survey No. 227 and hereto made a part hereof by reference and;

WHEREAS, the owners of FS by and through the within covenants hereby place certain conditions, restrictions, limitations, covenants and regulations on, for and against the use of said lands. Said owners are sometimes hereinafter referred to as the "developers".

NOW, THEREFORE, the FS owners do hereby declare and establish upon the FS the following which shall run with the land and shall be binding upon and for the benefit of persons owning real property in the premises of FS, and all persons claiming under it and their successors, heirs and assigns. Said covenants shall be for the purpose of maintaining a uniform and stable value, character, architectural design, use and development of the FS properties. These Covenants shall apply to the entire premises, and to all improvements constructed, placed or erected thereon unless otherwise specifically excepted and shall be in existence and full force and effect until January 1, 2005, unless terminated by law or amended as herein provided.

I. USE

1. Permitted uses in FS for all lots, buildings or parcels now in existence or hereafter created within the P.U.D. within the premises shall be only those uses permitted by the P.U.D. designation for this site by the City of Bozeman. No entity or group shall have the power or authority to restrict the proposed use of a tract, building or parcel in FS providing that the proposed use is permitted by the P.U.D. designation for this site.
2. Individual buildings may be divided by declaration through the condominium laws for the State of Montana.
3. Use of lots, buildings or parcels in FS shall be in compliance with the terms contained in the conditions of approval or development guidelines imposed on the FS PLANNED UNIT DEVELOPMENT by the City of Bozeman. Use of lots in FS shall be reviewed by the Architectural Committee to determine substantial compliance to the Master Plan for FS.

4. Each owner shall equally own in common with all others the roads and other common lands as shown on the filed P.U.D. Plan for FS. See Paragraph XVI for the rights and responsibilities of the owners relating to common areas and parking.
5. All parcels in FS may be held, sold, transferred, assigned, leased or rented as the owners of record see fit providing that any such purchaser assigns, rents or lessee is subject to the conditions of these covenants.
6. P.U.D. Land Use Development Guidelines for Festival Square are herein made a part of these covenants.
7. In the event of any conflict or contradiction between these covenants and the P.U.D. - Land Development Guidelines for Festival Square, the Guidelines shall prevail.

II. EASEMENTS

1. Easements for roads, drainage, electricity, gas, telephone, lighting, water, sewer, drainage, and/or storm sewer, or any other utility are reserved hereby and shown on the FS P.U.D. Plan.
2. All easements established by and with the City of Bozeman as a condition of annexation, subdivision or zoning approval are in no way invalidated or altered by the conditions of these covenants.
3. All roads, access routes, driveways and parking lots shall include a corresponding easement for drainage, storm drains, gas, electricity, telephone, television, lighting, water, sewer, all other appropriate utilities; pedestrian and vehicular access.
4. No utility service line or pipe shall be installed or replaced without the prior approval of the BOARD OF DIRECTORS OF THE OWNERS ASSOCIATION.

III OWNERS ASSOCIATION

1. An Owners Association to be known as FESTIVAL SQUARE OWNERS ASSOCIATION, hereinafter called the Association, shall be formed. Membership in the Association is mandatory and automatic upon acquiring an ownership interest in FS. The owner or owners of each tract shall have one vote on voting matters put before the Association. In the event that any of the buildings in FS are condominiumized under the laws of Montana, the owners association of the building shall retain but one vote on voting matters. In the event that all buildings are condominiumized, then each and every condominium owner shall be deemed a voting member of the Association.



2. The Association shall be governed by a BOARD OF DIRECTORS hereinafter called the Board. The Board shall consist of three (3) members. The Board members shall be owners of lots or condominium units in FS. The members of the first Board shall be appointed by the developers, and the third member appointed for a one (1) year term, to provide for staggered terms. The first Board shall consist of Stephanie Volz, Norman Wallin and David Wallin who shall initially serve for five (5) years or until they resign and any vacancy shall be filled by the remaining Board members. After the five (5) year term of the first Board shall expire the next Board shall be elected by the owners as set forth and described above and which Board members shall be elected for a two (2) year term.

The Board shall have the following powers, authority and duties:

- a. To establish the by-laws for the operation and functioning of the Association. Said by-laws shall be adopted or rejected by a 75% majority vote of the Association members.
 - b. To prepare an annual operating budget for the functioning, operation and maintenance of the Association and the property in the P.U.D. including road and P.U.D. sign maintenance. Said budget will be approved by a 51% majority vote of the Association members.
 - c. To levy assessments to Association members for budgeted items.
 - d. To hire or retain as necessary managerial personnel, staff or contractors to operate, improve or maintain FS or to carry out the provisions of the annual budget.
 - e. To establish subcommittees to study or complete special assignments or programs.
 - f. To advertize and coordinate all annual and special Association meetings.
 - g. To pay insurance, taxes or special assessments on property held in common by the Association.
 - h. To levy assessments for common area maintenance, upkeep and repair for roads, common area parking and amenities, fences as well as common area insurance and taxes. (See also Paragraph XVI - 3).
3. Meetings of the Association shall be held annually at a date and place to be set by the Board. Special meetings of the Association may be called at any time by the Board.
 4. The Association may approve, upon a 75% majority vote, special assessments to the membership for special, promotional, unforeseen expenses or capital improvements to the premises of FS.

5. All assessments levied against owners shall be assigned according to the percentage of land owned in relation to the entire FS P.U.D..
6. Assessments, special or budgeted, shall be paid by the Association members on a monthly, quarterly, or annually basis as determined by the Board. The Association shall have the authority to impose reasonable interest and penalty charges on overdue assessments. Unpaid assessments upon notice thereof being duly filed of record, shall become a lien against the lot which such unpaid assessment was made. Such lien may be foreclosed upon in a like manner as a mortgage on real property, which foreclosure proceedings may include the addition of court costs, expenses and reasonable attorney's fees.
7. Assessments may not be made against undeveloped parcels for special or budgeted purposes when there is no clear benefit to the undeveloped lot or owner.

IV. ARCHITECTURAL COMMITTEE

1. There is hereby created a three (3) member Architectural Committee which is herein referred to as the Committee. The first three (3) member Committee shall be appointed by the developers. This Committee shall be empowered for five (5) years after initial appointment. Following this, a new Committee shall be elected by the owners with one vote for each owner.

In all cases, at least two of the members of the Architectural Committee shall also be members of the Board of Directors. The initial Board shall consist of Stephanie Volz, Norman Wallin and an Architect.

2. Duties and powers of the Committee shall consist of the following:
 - a. The Committee is directed to carry out the European theme, motif or design of the P.U.D. where possible.
 - b. Review of all new construction, rehabilitation work on existing building exteriors, landscaping improvements, signing, fencing, walls, or exhibits which may be built, erected, placed or constructed within FS for compliance with the Land Use Development Guidelines, prior to any required review by the City of Bozeman.
 - c. The Committee may establish such rules, by-laws, procedures or criteria as it deems necessary to carry out its functions. Such rules, by-laws, procedures or criteria may not be inconsistent with the Land Use Development Guidelines.

- d. The Committee may contract with any Architect, Engineer, Landscape Architect or other professional to aid in the review of any proposal brought before the Committee.
- e. A vote of any two (2) members of the Committee shall be necessary for approval of any proposal brought before the Committee.
- f. The Committee shall require that all construction complies with the provisions of the Building Codes and Amendments adopted by the City of Bozeman, the Zoning Code for the City of Bozeman, and all conditions of approval established for the FS P.U.D., and the Land Use Development Guidelines.
- g. Unless otherwise specified in these Covenants, the Committee shall designate height and appearance requirements for any structures as in it's discretion best suit the requirements of the premises.
- h. The Committee shall have the authority to reject materials, designs or colors submitted with plans or the plans themselves if they are not compatible, or are inappropriate with the construction and development of the rest of the premises and the Land Use Development Guidelines for FS.
- i. The Committee in conjunction with the Planning Director shall have the authority to grant variances when in its discretion, it believes the same to be necessary and where the same will not be injurious or inconsistent with the rest of the premises, improvements and buildings on the premises.
- j. All improvements, construction, re-construction, alterations, remodeling or any activity requiring the approval of the Committee must be completed in substantial compliance with the plans and specifications initially approved by the Committee. Such improvements not installed in compliance to the plans approved by the Committee shall be removed at the expense of person not in compliance.
- l. The Committee or individual members thereof may not be held liable by any person for any damages which may result from Committee action taken pursuant to these Covenants, including but not by way of limitation, damages which may result from correction, amendment, change or rejection of plans, the issuance approval or delays associated with such action on the part of the Committee.
- m. The Committee must act on any plans or request submitted to it within 30 days of the date they are submitted. Approval or disapproval of all plans shall be stated in writing by the Committee

within the 30 day period. Failure to act or respond in said 30 day period shall be deemed approval of such plans or request.

V. TRASH AND GARBAGE

No trash, waste, garbage, litter, junk or refuse shall be thrown, dumped or left on any portion of the premises and no open burning of the same shall be permitted. No incinerator or other device for burning of trash or garbage shall be installed or used except as may be approved by the Committee. Each owner shall provide suitable receptacles for the containment and collection of trash and garbage, which must be enclosed or screened or otherwise unexposed to public view. Gas or wood burning devices, stoves or fireplaces may however, be installed or used within the buildings erected on the lots. All wood storage areas must be fully enclosed or screened from public view.

VI. MANAGER

Each owner in the premises authorizes and empowers the Board to act as agent for the owners and the Association to negotiate and enter into a contract with a Manager for the purpose of carrying out any of the responsibilities or exercising any of the powers of the Board of Directors.

VII. UTILITIES

All utilities shall be buried, no overhead lines, wires or cables shall be allowed for power, telephone, cable television or other utility.

All utility meters shall be situated in the rear of the buildings which they service and be enclosed or otherwise aesthetically covered. All lighting shall be installed at the expense of the owner of the property for which such lighting is being provided.

VIII. SIGNS

All signs, billboards, posters, displays, advertisements or any structures relating thereto shall have received the approval of the Architectural Committee prior to installation, posting or use; which restrictions shall also include signs for identification of streets, and directional or location markers or signs. A common theme, design or motif will be established for all of the businesses in Festival Square by the developer or the Committee which will thereafter be carried out and followed by all such businesses to identify and associate them with Festival Square. Said theme is included in the Land Use Development Guidelines.

IX. CONSTRUCTION AND CARE

No construction materials may be kept or stored on any lot except during actual construction, and under no circumstances for a period in excess of nine (9) months. Each owner of a lot shall be responsible for the upkeep, care, replacement and repair of all improvements on his lot and the same shall be kept in good condition and not allowed to deteriorate or detract from the appearance and value of the other improvements situated elsewhere on the premises.

X. MINING

No mining, quarrying, excavation, oil drilling or development of any kind shall be allowed in or on the premises except for such excavation as may be necessary in connection with the construction or placing of improvements thereon in accordance with the terms and restrictions of these Covenants.

XI. TEMPORARY RESIDENTIAL STRUCTURES - STORAGE

No temporary structures, trailers, campers, tents, shacks or similar structures shall be used at anytime on the premises for temporary or interim habitation purposes except for construction and then only with the prior approval of the Architectural Committee and for a period not to exceed nine (9) months. Trailers, boats, mobile homes, campers, recreational vehicles, snowmobiles, or motorcycles or other similar articles may be kept or stored on the premises so long as they are stored inside when not in use and not parked in the common area and in accordance with Paragraph XVI-2 below.

XII. NUISANCE

No noxious or offensive use or activity shall be carried on within nor anything done or permitted on or in the premises which shall constitute a nuisance, either public or private.

XIII. MAINTENANCE AND REPAIR

Should any owner fail to maintain his or her property or commit any act of omission or commission which diminishes property values in the P.U.D., the Board may exercise the enforcement powers contained in these covenants to remedy or abate such condition or action.

XIV. ENFORCEMENT

1. In the event of any violation or threatened violation of these Covenants by any owner, lessee or tenant, including failure to pay any assessments, the Association or Board may enforce these Covenants. In association with such legal proceedings or as a separate remedy, such Association or

Manager may enter upon the property in question and remove, remedy or abate the violation or threatened violation after first having given proper notice and a reasonable opportunity for the violator to take action himself to comply with these covenants as set forth below. Such entry shall be made only after a hearing and right to be heard have been held as set forth below.

2. Notice of violation or threat of violation shall be in writing and shall be served on the person or entity concerned and shall specify the violation or threatened violation, identify the property, demand compliance with the terms and conditions of these Covenants and shall state the action which will be taken if the violation or threatened violation is not abated, remedied or satisfied and shall further set a date, time and place for a hearing at which time the owner may appear and answer the charges set forth in the notice. If such notice cannot be personally served after a reasonable effort to locate the person or entity to be served, service may be had by posting a copy of such notice at a conspicuous place on the property which is the subject of such violation and mailing a copy of the notice by certified mail, return receipt requested, to the last known address of the violator. Such notice must further provide for a period of 15 days from the date of personal service of such notice, or 30 days from the date of posting and mailing the same, within which a hearing can be had before any self-help, abatement, entry or commencement of litigation can be commenced.
3. The hearing shall provide an opportunity to be heard by all parties, the hearing shall be presided over by a hearing examiner who shall be an attorney licensed in Montana. At the hearing the parties shall have the right of cross examination of witnesses. At the conclusion, the hearing examiner shall forthwith make a finding and if a violation is found, the owner against whom the charges are brought shall have a specified period as determined by the examiner, but not to exceed 15 days, to remedy or abate the violation. If not so remedied or abated, the right of self-help or entry shall exist by the Association or Board to take whatever steps are necessary to correct the violation. In the event of a failure to respond or appear by the said owner of the property subject to the violation, the said hearing must nevertheless be held, and the hearing examiner must find a violation before any action can be taken or a lien filed. If the violation is for payment of annual assessments, no hearing need be held and a lien may be filed as soon as the assessments are in arrears. The hearing process shall not be required for the filing of the lien for assessments.
4. No owner or member of the Association, Board, Committee or Manager shall be liable to any person or entity for any entry, self-help or abatement of a violation or threatened violation of these Covenants and all owners or lessees of real property shall be deemed to have waived any and all

rights or claims to or for damages for any loss or injury resulting from action taken to abate, remedy or satisfy any violation of these Covenants. Exception to the above shall exist for loss, injury or damage for intentionally wrongful acts.

5. Actual costs, expenses and reasonable attorney's fees connected with correcting, remedying, abating, preventing or removing any violation or threatened violation of these Covenants incurred either through litigation, the holding of a hearing, entry or self-help and unpaid assessments shall constitute a claim by the Association or Manager initiating such action against the owner of the property which is the subject of such violation or threatened violation. Such claim shall not, however, exceed Five Thousand Dollars (\$5,000.00) for any one claim and shall be enforceable through appropriate court action. The Association or Board making such claim following a hearing or upon a court order may file a lien against the subject property in the amount of and for the collection of the claim by filing a verified statement of the lien with the office of the County Clerk and Recorder of Gallatin County, Montana. Such lien statement must set forth the names of the claimant and the owner of record of the property against which the lien is claimed, a description of the property, the amount of the claim, the date of the claim and a brief statement of the manner in which the amounts constituting the claim were incurred. Once filed, the lien shall remain on record as a claim against the property until paid in full or foreclosed in the manner otherwise provided by law, subject to rights of redemption.

XV. AMENDMENT - TERMINATION

These Covenants, or any portion thereof, may be amended, abandoned, terminated, modified or supplemented at any time by the written consent, duly recorded with the office of the Clerk and Recorder, Gallatin County, Montana, by a vote of 75% of the Association as such voting is defined in Paragraph III, 1 above. No amendments will be allowed which are contrary to, or in any way violate the conditions as set forth in the Land Use Development Guidelines.

XVI COMMON AREAS AND PARKING

1. Parking: The Association has the power to set rules and regulations concerning common area parking in general or parking lots served by common access and to deny parking on the access lanes if in their discretion such access parking becomes a nuisance, impedes traffic or detracts from the appearance to the area or is needed for traffic control. The Association shall have the authority to have cars towed away if any are found to be in violation of the parking rules and regulations. No parking shall be allowed along Belvedere.

2. The common areas shall consist of the roads, common area amenities and the parking areas for the P.U.D. except for the parking areas contained in the Phase I tract. The Phase I tract building, parking area, signs and landscape area upkeep maintenance and repairs shall be the responsibility of the owner of the Phase I tract. If the Phase I owner shall fail to adequately maintain keep up or repair the building, parking area, landscaping or sign on his tract, the Association may take such remedial action to correct such omission as provided in Paragraphs V, XII, XIII, XIV and XVI of these covenants.
3. The owner of the Phase I tract shall however, be subject to assessment for upkeep, taxes, insurance, maintenance and repair of the interior roads and other amenities of the P.U.D. and shall not be assessed for upkeep maintenance and repair of the remaining parking areas of the P.U.D. The Phase I owner may be assessed with the other P.U.D. owners for taxes, insurance, upkeep, maintenance and repair of the P.U.D. amenities, e.g. interior roads, fences, clock tower, flower boxes, benches and Kiosk areas.

XVII MISCELLANEOUS

1. The Board of Directors of the Association shall have the authority to promulgate and adopt reasonable rules and regulations for the upkeep, maintenance, repair and use of pedestrian ways, streets and any common areas in the premises. Such rules or any portion may be amended, altered, supplemented or terminated at any time by a majority vote of the members of the Association.
2. Any landscaping shall include the installation of underground, automatic systems, including inside flower and plant boxes, or planters.

XVIII. SEVERABILITY

A determination of invalidity of one or more of the Covenants or conditions hereof by judgment, order or decree of Court, shall not affect in any manner the other provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, owners of FESTIVAL SQUARE, has hereunto set its hand and seal to these covenants on the 10th day of September, A.D., 1985.

OWNERS: FESTIVAL SQUARE

Stephanie H. Volz
STEPHANIE H. VOLZ

Norman E. Wallin
NORMAN E. WALLIN
David A. Wallin
DAVID A. WALLIN

STATE OF MONTANA)
) ss.
COUNTY OF GALLATIN)

On this 10th day of September, A.D., 1985, before me, the under-
signed, a Notary Public in and for the State of Montana, personally appeared
STEPHANIE H. VOLZ, DAVID A. WALLIN and NORMAN E. WALLIN, known to me to be the
owners of FESTIVAL SQUARE, and whose names are subscribed to the within
instrument and they acknowledged to me that they executed the same.

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



David Peewell
Notary Public for the State of Montana
Residing at Bozeman, Montana
My Commission Expires: 9/21/88

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State of Montana }
County of Gallatin } ss.
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Gary W. Pringle
County Clerk & Recorder
By Shelley M. Cheney
Deputy
Fee \$ 55.00 PD

Rt: Stephanie Volz
P.O. Box 3045
Bozeman, MT 59772