

North By Bass

**DECLARATION OF RESTRICTIONS AND COVENANTS**

This DECLARATION, made this 10th day of March, 2000, by **TIMOTHY C. BAUMGARTNER** and **MARGARET L. BAUMGARTNER** hereinafter "Declarants."

**1. RECITALS**

Declarants are the owners of certain real property in Johnson County, Wyoming, described in **Exhibit "A" and "B"** which is attached hereto and by reference made a part hereof (hereinafter the "Property").

In order to establish a general plan for the improvement and development of the Property, Declarant desires to impose on it mutual, beneficial restrictions for the benefit of all the lands in the Property and for the benefit of Declarants.

In order to insure the proper development and use of the Property, to protect the owner of each parcel within the Property against improper development and use of parcels within the Property, Declarant desires to subject the Property and each parcel of the Property to certain covenants for the benefit of all. All of the property and each parcel within the Property shall be held, improved and conveyed subject to those covenants which shall be enforceable in accordance with this Declaration by Declarants and by each owner of a parcel or parcels of real property within the Property.

**2. GENERAL PROVISIONS**

**2.01 Establishment of Restrictions and Covenants**

Declarants, owners of the Property, hereby declare that the Property is now held, and shall be transferred, sold, leased, conveyed and occupied subject to the restrictions and covenants herein set forth, each and all of which is and are for and shall inure to the benefit of and pass with each and every parcel of the Property and apply to and bind the heirs, assignees and successors in interest of each and every owner of a parcel or parcels of the Property, and in particular the following uses shall be permitted on the Property:

1. Any use permitted in an R-3 District.
2. Any retail business.
3. A public garage or filling station.
4. Agriculture, gardening, and nursery for the propagation of plants.
5. Motels.

STATE OF WYOMING }  
COUNTY OF JOHNSON } 88

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This instrument was filed for record on 03-10-2000  
at 4:50 P.M. and was duly recorded in book 86A12 page  
539-548 for \$ 2400

BY Landy Holman ASST. Deputy

- 6. Shoe shop, tailor shop, barber shop, or beauty parlor.
- 7. Business or commercial school, studio.
- 8. Bakery, not employing more than five (5) persons in the preparing and making of its products.
- 9. Offices, theater, bank or restaurant.
- 10. Laundry or dry cleaning establishment employing not more than five (5) persons engaged in laundry and dry cleaning work.
- 11. Advertising signs, provided such sign advertise only service products or articles offered within the building located on the same premises where the sign is displayed.
- 12. Accessory buildings and uses customarily incidental to any of the above uses.
- 13. Mobile homes that are skirted and maintained in a clean and orderly condition.

2.02 Restrictions Operate as Covenants

Each purchaser of any parcel of the Property covenants and agrees with Declarants, their successors and assigns, to use the Property only in accordance with the restrictions herein set forth and to refrain from using the Property in any way inconsistent with or prohibited by the provisions of this Declaration.

2.03 Purpose of Restrictions and Covenants

It is the intent and purpose of these covenants and restrictions to:

- 1. Allow commerce activities, provided that such activities do not contribute excessive noise, dust, smoke or vibration to the surrounding environment nor contain a high hazard potential due to the nature of the products, material or processes involved or which shall constitute a violation of any law of the United States, the State or Wyoming, Johnson County, or The City of Buffalo, or any other regulation or ordinance promulgated thereunder.
- 2. Allow the Declarant, the individual real property or lot owner to enforce the covenants through an injunction in Court.

### **3. MAINTENANCE**

Each lot owner shall at all times keep his premises, buildings, improvements and appurtenances in a safe, clean, neat and sanitary condition and shall comply with all laws, ordinances and regulations pertaining to health and safety. Each lot owner shall provide for the removal of trash and rubbish from his premises.

### **4. COVENANTS RUN WITH LAND: ENFORCEABILITY**

#### 4.01 Subject Property

The covenants and restrictions specified herein shall run with, bind, and inure to the benefit of the parcel hereby conveyed and the land in the Property.

Said covenants and restrictions shall be jointly and severally enforceable by the Declarants and any other owner of the Property, their successors and assigns.

Provided further that any of the covenants, restrictions, or conditions contained herein which in the sole discretion of the Johnson County Board of County Commissioners or the Buffalo City Council if annexed, which may be in the public interest, may at the sole discretion of the Johnson County Board of County Commissioners or the Buffalo City Council if annexed, be enforced in the same manner and upon the same terms and conditions as any lot owner can seek to enforce the same in any proceeding of law or equity.

#### 4.02 Abatement and Suit

Violation or breach of any restriction and covenant herein contained shall give to Declarants, and every other owner of property for whose benefit these restrictions and covenants are expressly made, the right to enter upon the property upon or as to which said violation or breach exists and to summarily abate and remove, at the expense of the owner or lessee thereof, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof, or to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of these restrictions and covenants to enjoin or prevent them from doing so, to cause said violation to be remedied or to recover damages for said violation.

#### 4.03 Deemed to Constitute a Nuisance

The result of every action or omission whereby any restriction or covenant herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an owner, either public or private, shall be applicable against every such result and may be exercised by Declarants

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or by any owner of property for whose benefit these restrictions and covenants are made.

#### 4.04 Attorney's Fees

In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provision hereof, the losing party or parties shall pay the attorney's fees of the prevailing party or parties, in such amount as may be fixed by the Court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

#### 4.05 Inspection

Declarants may from time to time at any reasonable hour or hours, enter and inspect any property subject to these restrictions to ascertain compliance therewith.

#### 4.06 Waiver of Invalidation

Any waiver of failure to enforce any provision of these covenants and restrictions in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or a similar situation or of any other provision of these covenants and restrictions. Invalidation by Court adjudication of any provision of these covenants and restrictions shall not affect the validity of any other provision, and all other provisions thereof shall remain in full force and effect.

### **5. NOMINEES AND SUCCESSORS OF DECLARANTS**

The Declarants may from time to time delegate any or all of their rights, powers, discretion and duties hereunder to such agent or agents as they may nominate. They may also permanently assign any or all of its powers and duties (including discretionary powers and duties), obligations, rights, title, easements and estates reserved to them and the Declarants shall thereupon be released therefrom.

### **6. TERM, TERMINATION AND MODIFICATION**

#### 6.01 Term

This Declaration, every provision hereof and every covenant and restriction contained herein shall continue in full force and affect for a period of twenty-five (25) years from the date hereof, unless otherwise specifically provided. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument, signed by the then owners, terminating said Declarations has been filed and recorded, subject to the provisions and restrictions of Section 6.02.

## 6.02 Termination and Modification

This Declaration, or any provision hereof, or any covenant or restriction contained herein, may be terminated, extended, modified or amended, as to the whole of said property or any portion thereof, with the written consent of the owners of sixty-five percent (65%) of the property specified in Exhibits "A" and "B" hereto based on the number of square feet owned as compared to the total number of square feet so specified, provided, however, that so long as Declarants owns at least twenty percent (20%) of the property specified in Exhibits "A" and "B", hereto, no such termination, extension, modification or amendment shall be effective without the written approval of Declarant thereto.

No such termination, extension, modification or amendment shall be effective until a proper instrument in writing has been executed and acknowledged by the Johnson County Board of County Commissioners and recorded in the office of the Recorder of Johnson County, Wyoming. Provided further that if the property covered by these covenants is annexed into the City limits of Buffalo then the section relating to County acknowledgement shall no longer be valid and any such termination, extension, modification or amendment shall be effective with the acknowledgement of the Buffalo City Council.

## **7. MISCELLANEOUS PROVISIONS AND ADDITIONAL RESTRICTIONS**

### 7.01 Constructive Notice and Acceptance

Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of said property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in said property.

### 7.02 Rights of Mortgagees

All restrictions and other provisions herein contained shall be deemed subject and subordinate to all mortgages and deeds of trust now or hereafter executed upon land subject to these restrictions, and none of said restrictions shall supersede or in any way reduce the security or affect the validity of any such mortgage or deed of trust; provided, however, that if any portion of said property is sold under a foreclosure of any mortgage or under the provisions of any deed of trust, any purchaser of such sale, and his successors and assigns, shall hold any and all property so purchased subject to all of the restrictions, covenants and other provisions of this Declaration.



**EXHIBIT "A"**

A 3.273 acre tract of land located in the SW¼ of Section 26, T51N, R82W, of the 6<sup>th</sup> P.M., Johnson County, Wyoming, as shown on the Certificate of Survey attached to the Affidavit of Land Division filed in the Office of the Clerk of Johnson County, Wyoming, in Book 86A48, pages 564-565, said 3.273 acre tract of land being more particularly described as follows:

Commencing at an Iron Post marking the original northeast corner of the Ft. McKinney Military Reservation;

thence S44°37'58"E a distance of 605.52 feet to a point, said point being the point of intersection of the centerline of vacated Lobben Street and the North line of vacated Chaplines Addition (Plat of Vacation of Lands in Chaplines Addition filed in the Office of the Clerk of Johnson County, Wyoming, in Plat Book 2, page 12);

thence N89°20'08"E along said North line of said vacated Chaplines Addition a distance of 503.80 feet to a point, said point lying on the centerline of vacated Burritt Street of said vacated Chaplines Addition, and said point being the true point of beginning of said 3.273 acre tract of land;

thence S00°38'44"E along said centerline of said vacated Burritt Street of said vacated Chaplines Addition a distance of 434.27 feet to a point, said point lying on the centerline of vacated Shenandoah Street of said vacated Chaplines Addition;

thence N89°37'05"E along said centerline of said vacated Shenandoah Street of said vacated Chaplines Addition a distance of 200.10 feet to a point;

thence S00°39'43"E a distance of 205.59 feet to a point;

thence S88°49'06"W a distance of 200.16 feet to a point;

thence S89°37'33"W a distance of 192.96 feet to a point;

thence N03°10'56"W a distance of 248.62 feet to a point, said point lying on the southerly line of the Weeden Subdivision as filed in the Office of the Clerk of Johnson County, Wyoming, in Plat Book 2, page 98;

thence N85°47'10"E along said southerly line of said Weeden Subdivision a distance of 77.00 feet to a point;

thence N27°04'06"E along the easterly line of said Weeden Subdivision a distance of 152.79 feet to a point;

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thence continuing along said easterly line of said Weeden Subdivision, N36°38'23"W a distance of 220.45 feet to a point, said point being the point of beginning of a tangent circular curve to the left having a radius of 190.99 feet;

thence continuing along said easterly line of said Weeden Subdivision and along said tangent circular curve to the left, through a central angle of 42°24'28" a distance of 141.36 feet to a point, said point lying on said North line of said vacated Chaplines Addition;

thence N89°20'08"E along said North line of said vacated Chaplines Addition a distance of 301.75 feet to the true point of beginning.



**EXHIBIT B**

A 2.047 acre tract of land located in the SW¼ of Section 26, T51N, R82W, of the 6<sup>th</sup> P.M., Johnson County, Wyoming, as shown on the Certificate of Survey attached to the Affidavit of Land Division filed in the Office of the Clerk of Johnson County, Wyoming, in Book 86A48, pages 564-565, said 2.047 acre tract of land being more particularly described as follows:

Commencing at an Iron Post marking the original northeast corner of the Ft. McKinney Military Reservation;

thence S44°37'58"E a distance of 605.52 feet to a point, said point being the point of intersection of the centerline of vacated Lobban Street and the North line of vacated Chaplines Addition (Plat of Vacation of Lands in Chaplines Addition filed in the Office of the Clerk of Johnson County, Wyoming, in Plat Book 2, page 12);

thence N89°20'08"E along said North line of said vacated Chaplines Addition a distance of 503.80 feet to a point, said point lying on the centerline of vacated Burritt Street of said vacated Chaplines Addition, and said point being the true point of beginning of said 3.273 acre tract of land;

thence S00°38'44"E along said centerline of said vacated Burritt Street of said vacated Chaplines Addition a distance of 434.27 feet to a point, said point lying on the centerline of vacated Shenandoah Street of said vacated Chaplines Addition;

thence N89°37'05"E along said centerline of said vacated Shenandoah Street of said vacated Chaplines Addition a distance of 200.10 feet to a point;

thence S00°39'43"E a distance of 205.59 feet to a point;

thence S88°49'06"W a distance of 200.16 feet to a point;

thence S89°37'33"W a distance of 192.96 feet to a point;

thence N03°10'56"W a distance of 248.62 feet to a point, said point lying on the southerly line of the Weeden Subdivision as filed in the Office of the Clerk of Johnson County, Wyoming, in Plat Book 2, page 98;

thence N85°47'10"E along said southerly line of said Weeden Subdivision a distance of 77.00 feet to a point;

thence N27°04'06"E along the easterly line of said Weeden Subdivision a distance of 152.79 feet to a point;

thence continuing along said easterly line of said Weeden Subdivision, N36°38'23"W a distance of 220.45 feet to a point, said point being the point of beginning of a tangent circular curve to the left having a radius of 190.99 feet;

thence continuing along said easterly line of said Weeden Subdivision and along said tangent circular curve to the left, through a central angle of 42°24'28" a distance of 141.36 feet to a point, said point lying on said North line of said vacated Chaplines Addition;

thence N89°20'08"E along said North line of said vacated Chaplines Addition a distance of 301.75 feet to the true point of beginning.