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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**BUFFALO STAGE and BUFFALO SQUARE TOWNHOMES**

This declaration is this 11th. day of January, 1993, by the undersigned, Buffalo Chip Partnership, all of Kalispell, Montana, Herein after referred to as "Declarant"

**WITNESSETH:**

WHEREAS, Buffalo Chip Partnership are owners of the tract of real property to be known as BUFFALO STAGE subdivision, a plat or map whereof will be on file and of record in the office of the County Clerk and Recorder, Flathead county, Montana, and

WHEREAS, the Declarant is desirous of subjecting said real property to the covenants, conditions and restrictions herein-after set forth, each of which is and are for the benefit of said property and for each owner thereof, and shall inure to the benefit of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest and any owner thereof;

NOW, THEREFORE, Declarant hereby declares that the real property described in Article 1 is and shall be held, transferred sold and conveyed subject to the covenants, conditions and restrictions herein after set forth:

**ARTICLE 1**

**PROPERTY:** The real property which is and shall be held, transferred, sold and conveyed subject to the covenants, conditions, and restrictions hereinafter set forth is more particularly described as follows:

BUFFALO STAGE Phase 1 subdivision, according to the plat of map thereof on file and of record in the office of the County Clerk and Recorder, Flathead County, Montana:

**DEFINITIONS:**

"ASSOCIATION" shall mean the BUFFALO STAGE Homeowners Association, Inc. its successors and assigns.

"OWNER" shall mean the record owner of a fee simple title to any lot which is a part of the properties and shall include contract buyers.

"PROPERTY" shall mean the real property described in Article 1.

"COMMON AREA" shall mean all real property maintained by the Association for the common use and enjoyment of others, including but not limited to parks, conservation area, roadways, and other areas.

"LOT" shall mean any plot of land shown upon any recorded subdivision plat or map of the property with the exception of the Common Area.

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## **ARTICLE 2**

**PURPOSE.** The property is subject to the covenants condition and restrictions hereby declared to insure the best use and most appropriate development and improvement of each building site thereof; to protect the owners of building sites and to appreciate the value of their property; to preserve so far as is practicable the natural beauty of said property; to guard against the erection thereon of structures built of improper or unsuitable material; to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon; to adequately provide for a high quality of improvements of said property and thereby enhance the values of improvements made by purchasers of building sites thereof. These covenants are in addition to the requirements of the underlying zoning which is RA-1. This subdivision may be annexed into the City of Kallispell by the City of Kallispell when fifty percent of the lots have been sold.

## **ARTICLE 3**

**LAND USE AND BUILDING TYPE.** No business, trade, industrial or commercial enterprise of any kind shall be conducted thereon. No lot shall be subdivided in any manner except the owner of one lot may acquire, own, develop, resell and for all purposes treat as one lot an individual lot together with one half of a contiguous lot. The remaining one half cannot be developed as a half and must therefore, be combined with the contiguous whole lot on the opposite side with the result that two larger lots may be created from three smaller lots.

**DWELLING SITE.** No dwelling shall be permitted on any lot, the ground floor area of which is less than 1250 square feet of living area for a single story dwelling. Multiple story dwellings may not have less than 1400 square feet of total living area except for the Buffalo Square Townhomes which may be less. No dwelling shall have less than a two car enclosed garage nor larger than a three car enclosed garage. For the purpose of this paragraph, the basement, porch, steps and garage shall not be considered part of the living area.

**DWELLING CONSTRUCTION.** All dwellings shall be constructed on the lot and shall be permanent in nature. Only new materials may be used, except for used brick, beams, and the like if an integral part of the architecture of the building. All construction shall first be reviewed and approved pursuant to the provisions of Article 6 as set forth below.

**BUILDING LOCATION.** No building shall be located on any lot nearer than twenty five (25) feet to the front property line, twenty (20) feet to the rear property line, or nearer than ten (10) feet to any side lot line, five (5) feet on the Buffalo Square Townhomes lots. Buildings on corner lots shall maintain a twenty five (25) foot set back from both streets except the Townhome lots. Written exception to this requirement may be granted by the Architectural Control Committee.

**BUILDING EXCAVATION / FOUNDATIONS.** As much as possible of the excavated material created during building construction shall be used on the lot to establish proper site drainage and terrain for landscaping. The maximum exposed foundation above grade shall be eighteen (18) inches. All footings and foundations will be of poured concrete or concrete block construction.

**TEMPORARY STRUCTURES.** No trailer, basement, tent, shack, garage, barn or other such building erected or placed on any lot shall at any time be used as a residence, either temporarily or permanently.

**VEHICLES.** Mobile homes, motor homes, trailers, large trucks, unlicensed or unsightly vehicles shall not be parked or allowed to remain along roadways or on the property. Motor homes, trailers,

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**ANIMALS.** No animals of any kind shall be raised, bred or kept on any lot, excepting that dogs, cats and other domestic animals may be kept and raised but not for commercial purposes. Permitted animals must be confined to the lot of their owner and not permitted to run at large.

**GARBAGE.** No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in covered, reasonably airtight containers. Such containers must be kept in a garage or other enclosed area.

**FENCES.** Owners of lots may have fences between residences and along rear and side lot lines to the rear lot line. The maximum height is five (5) feet. Fences on the west and south boundary of the subdivision will be green vinyl chain link fencing. No fencing of any kind will be permitted on the street side of any lot from the front of the residence to the street property line. No fences are allowed in Buffalo Square Townhomes.

**LANDSCAPING.** No hedge, shrubs or other plantings, or any fence shall be permitted which unreasonably obstructs the view of an owner or motor vehicle drivers. All driveways shall be paved with portland cement within one year of occupancy. Driveways will be large enough to accommodate a minimum of two vehicles. Landscaping shall be completed within one year of occupancy.

**TELEVISION, RADIO ANTENNAS AND SATELLITE DISHES.** No exterior television antennas or satellite dishes will be allowed. No exterior radio antennas will be allowed on the premises, except that each premise will be allowed to install one exterior whip-type antenna not exceeding 9 feet in height. In any event, no mast or guy wire, or other operating material or structure shall be permitted, except base fastening mount.

**WATER SUPPLY.** No individual water supply system or systems shall be permitted on any building site. All water service must be furnished by public water connections. Individual lot owners are responsible to pay any connection charges.

**SEWAGE DISPOSAL.** No individual sewage disposal system shall be permitted. All sewage disposal shall be by connection to the North Village County Sewer District sewage disposal system. Individual lot owners are responsible to pay all connection and monthly service charges to the sewer district. Individual lot owners are also responsible to pay the annual district tax assessment. North Village County Sewer District has by creation of the district waived rights to protest annexation, under certain conditions, to the City of Kailspell for the entire subdivision and waived right to protest the creation of Special Improvement Districts after annexation for the sewerage improvements, water system, roads, walkways and sewer storm drains and street lighting, this is a covenant on the land and extends to each individual lot owner.

**COMMON AREA.** The common areas shall be controlled and maintained by the Association, provided that all or any part of said areas may be dedicated or transferred to any public authority.

**SIGNS.** Except for the Declarant or its agent, no signs shall be placed on any lot except name plates and one unlighted sign not exceeding three (3) square feet in surface area advertising the sale or lease of the lot or improvement thereon. News paper tubes (free standing at the curb) will not be allowed.

**NUISANCES.** No noxious or offensive activity shall be carried on or permitted upon any lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the neighborhood. By way of illustration and not of limitation, the discharge of fire arms and driving of motor cycles or snowmobiles on the common areas shall be a nuisance within the meaning thereof.

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**BURNING.** Open fires are not permitted on the property except for the normal burning of seasonal yard and garden clean up with proper permit if required from local authorities. Outdoor barbecues are not an open fire within the meaning hereof.

#### **ARTICLE 4**

##### **AGRICULTURAL COVENANTS AND RESTRICTIONS.**

1. Lot owners are advised that agricultural activities are conducted in the immediate vicinity which may produce odors, noise, dust, and involve the utilization of herbicides and pesticides, which can have an effect on this property. Adjacent farms will not be liable for odors, noise, herbicide and pesticide sprays that are necessary in good agricultural operations, providing such sprays are applied in conformance with approved standards by licensed applicators. Adjacent farms will not be liable for adverse ground water conditions caused by agricultural practices, including normal irrigation.
2. Any authorized representative of any governmental agency shall have the right at any reasonable time to inspect the grounds and gardens of any lots of disease-harboring plants, shrubs, or trees, and if found, to require disposal of same by the owner.
3. Each lot owner shall control or eliminate to the extent reasonably possible any noxious weeds as designated by state and federal law that may be growing upon their property.

#### **ARTICLE 5**

**ASSOCIATION.** The Association to be formed by Declarant shall have as members the owner of each lot. Membership shall be appurtenant to and shall not be separated from ownership of any lot. Members shall participate in the manner prescribed by the Articles and By-Laws of the Association, and resolutions of the Association's Board of Directors. The Association's purpose is to control, maintain, and improve the common area and provide services and facilities to the owners as it may determine.

**PROPERTY RIGHTS.** Every owner shall have a right and easement of enjoyment in and to the common area, which shall be appurtenant to and shall pass along with title to every lot subject to the following:

1. The right of the Association to charge reasonable admission and other fees for the use, care, maintenance, and improvement of the common area and the furnishing of providing other services to the property.
2. The right of the Association to suspend the use or enjoyment of the common area or facilities and services provided directly or indirectly by it for any period during which any fee or assessment against an owner's lot remains unpaid, or for the continued violation of the Articles and By-Laws of the Association or the resolutions of the Association's Board of Directors.
3. The right of the Association to dedicate or transfer all or part of the common area to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed to.
4. Any owner may delegate his right of enjoyment to the common area to members of his family, or contract purchasers who reside on the owner's lot.

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#### **ARTICLE 6**

**ARCHITECTURAL CONTROL COMMITTEE.** The Architectural Control Committee shall consist of the Declarant until such time as seventy-five (75) percent of the lots have been sold, at which time the duties and responsibilities of said Committee shall be assigned automatically to the Association. However, the Declarant may assign the duties and responsibilities of said Committee to the Association in writing any time prior thereto.

**ARCHITECTURAL CONTROL.** No building, fence, wall, or other structure shall be commenced, erected or maintained upon the property, nor shall any addition to or change or alteration therein be made until plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography and native vegetation by the Architectural Control Committee. In the event said Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with. Minimum plans for review will consist of Site Plan with proposed grading, Floor Plans, Exterior Elevations identifying all finish materials. None compliance with the approval of the Architectural Control Committee will not be allowed and the Committee may take any legal action necessary to assure compliance with the approval conditions.

#### **ARTICLE 7**

**TERM.** The covenants and restrictions of this Declaration shall run with and bind the property for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended at any time by an Instrument signed by not less the Seventy-five (75) percent of the lot owners and approved by the Board of Commissioners, Flathead County, Montana.

**ENFORCEMENT.** The Association, the Architectural Control Committee, or any owner shall have the right to enforce by any proceeding at law or in equity all covenants, conditions and restrictions now or hereafter imposed by the provisions of this Declaration. Failure by the Association, Architectural Control Committee or by any owner to enforce any covenant or restriction herein contained shall in no event be a waiver of the right to do so hereafter.

**SEVERABILITY.** Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any of the remaining provisions, which shall remain in full force and effect.

**ANNEXATION.** Additional property may be annexed to the property upon approval of fifty (50) percent of the individual lot owners.

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IN WITNESS WHEREOF, we, being all of the Directors of BUFFALO SQUARE TOWNHOMES ASSOCIATION, INC., have heretofore set our hands this 10th day of March, 1993.

ROGER D. JACOBSON

E. KITS SMITH

ARTHUR F. THOMPSON

JAMES J. THOMPSON

KENNETH YACHECHAK

STATE OF MONTANA)

ss.

County of Flathead)

On this 10th day of Jan, 1993, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Roger D. Jacobson, E. Kits Smith, Arthur F. Thompson, and James J. Thompson, and Kenneth Yachechak, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the

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

Notary Public for the State of Montana

Residing at Helena

My Commission expires 5/2/93

STATE OF MONTANA,

County of Flathead

Recorded at the request of SANDS SURV'G  
this 13 day of MAY 1993 at 9:00 o'clock AM and recorded in  
the records of Flathead County, State of Montana.

Fee \$ 36.00 Pd.

RECEPTION NO. 93133 09060

RETURN TO SANDS SURV'G  
1995 THIRD AVE, KAL., MT 59901-5736

Flathead County Clerk and Recorder

Deputy

96205 10380

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# WAIVER OF REQUIREMENT OF APPROVAL FOR AMENDMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS

1. The Declaration of Covenants, Conditions and Restrictions of Buffalo Stage and Buffalo Square Townhouses was recorded in the office of the Clerk and Recorder of Flathead County, Montana, on May 13, 1993, under Reception No. 9313309060. Article 7 of the Declaration provides, in part, as follows:

"This Declaration may be amended at any time by an instrument signed by not less than Seventy-five (75) percent of the lot owners and approved by the Board of Commissioners, Flathead County, Montana."

2. The above-described Declaration affects the following described real property:

*full* "BUFFALO STAGE Phase I subdivision, according to the plat or map thereof on file and of record in the office of the County Clerk and Recorder, Flathead County, Montana."

3. Since the recording of the Declaration, Buffalo Stage Phase I Subdivision has been annexed into the City of Kalispell.

4. The Board of Commissioners of Flathead County desire that the requirement of approval of the Board of Commissioners to amend the Declaration be removed from the Declaration.

THEREFORE, by their signatures below, the Board of Commissioners of Flathead County, Montana, hereby waives the requirement of approval of the Board of Commissioners, contained in Article 7 of the Declaration, for amendment of the Declaration.

BOARD OF COUNTY COMMISSIONERS  
Flathead County, Montana

By Not Available for Signature  
Sharon L. Stratton, Chairman

By *[Signature]*  
Howard W. Gipe, Member

By *[Signature]*  
Robert W. Watne, Member

ATTEST

Susan H. Haverfield, Clerk

By *[Signature]*  
Deputy

STATE OF MONTANA }

County of Flathead }

Recorded at the request of Ellingson Law Offices  
this 23 day of JULY, 19 96 at 10:38 o'clock AM and recorded in  
the records of Flathead County, State of Montana.

Fee \$ 6 - 00 P.L.

RECEPTION NO. 96205 10380

RETURN TO Ellingson Law Office  
33 2nd St. E. Kspsl, Mt  
59901-4562

Tripp's Printing

CLERK/REC

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0980700 Thru 0980725  
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