

M0277CCR



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RESTRICTIVE COVENANTS

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, WILLIAM E. MOCKWITZ and MARY SUE MOCKWITZ, husband and wife and PAUL M. PELHAM and MARGERY PELHAM, husband and wife, of McCall, Valley County, State of Idaho, do hereby certify and declare that all the lands embraced in VILLAGE SQUARE COMMERCIAL CENTER PLAT and any conveyance describing any lot, parcel or plot therein by reference to any number or designation on said plat of said subdivision shall be subject to the restrictions, covenants and conditions hereinafter expressed and that by the acceptance of any such conveyance the grantee or grantees herein, their and each of their heirs, executors, administrators or assigns, covenant and agree to and with the undersigned, and its assigns, as to such property described in such conveyance as follows:

SECTION 1. General Provisions: WILLIAM E. MOCKWITZ and MARY SUE MOCKWITZ, husband and wife and PAUL M. PELHAM and MARGERY PELHAM, husband and wife, the "Grantors" hereby declare that there is to be established in a general plan for the development, improvement, maintenance and protection of the real property embraced in VILLAGE SQUARE COMMERCIAL CENTER referred to herein as the "Plat", and the Grantors do hereby establish the Protective Restrictions and Covenants hereinafter called "Restrictions", as set forth in Sections 1 through 10, both inclusive hereof. The Protective Restrictions and Covenants shall attach to and shall pass with the real property hereinafore conveyed

to the Grantee, and shall bind all persons who may at any time hereinafter and from time to time own or claim any right, title or interest in and to said real property, and the successors in title and interest to said real property, whether acquired through voluntary act or through operation of law.

The "Grantors" wherever used herein shall refer to the persons named above or to any person or persons or corporation to whom the right of the Grantors as set forth in these Protective Restrictive Covenants shall be specifically transferred.

The term "Grantee" wherever used herein shall refer to any person, corporation or association who hereafter shall assert or claim any right, title, claim or interest in and to the said real property whether as successors in title or otherwise, and whether voluntary or by operation of law.

Should the Grantee violate or attempt to violate any of the provisions of these Restrictions, Covenants, or any other person or persons owning any real property located in the plot, at his or their option, shall have full power and authority to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any of the said Restrictions, and either to prevent him or them from so doing or to recover damages sustained by reason of such violation.

Invalidation of any provisions, sentence, or paragraph contained in these restrictions by judgment or court order shall in no wise affect or invalidate any of the other provisions, but they shall be and remain in full force and effect.

SECTION 2. Building Restrictions: A building site within the subdivision must never consist of an area of less than 3,000 sq. feet provided Grantors reserve the right to adjust the lines

and size of lots so long as it is permitted by the applicable county or city zoning ordinance.

All six stories shall have a natural wood or native stone exterior finish. No structure may exceed a height of 22 feet above grade.

No building shall have an exposed metal roof, whether painted or not. Any other manufactured roofing material shall be approved by the architectural committee.

Any and all sidewalks shall be constructed at the cost of the lot owner and should be constructed in such a manner as to not interfere with sidewalk development by adjoining lot owners. Plans for sidewalks to be constructed must be approved by the architectural committee.

SECTION 3. Signs: All signs, except those which are mounted flush with the building, must be a minimum of 7 feet 6 inches above grade or sidewalk level. And shall not exceed building height.

All signs shall be of a color according to the plan.

Flashing or rotating signs are expressly forbidden.

All signs must be of wood or metal construction and approved by the architectural committee before installation.

No sign shall exceed 20 sq. feet in area. Double faced signs shall be measured on one side only.

Signs, other than those identifying the subdivision, shall not protrude beyond the lot line of any lot.

SECTION 4. Occupancy: All lots shall have a special occupancy only.

There shall be no occupancy by an automotive repair or automotive business nor any business which would carry on its

services outside of a building within the platted subdivision.

No lot owner may store any materials within the platted subdivision outside of an actual building except during construction or remodeling.

No more than one of each type of business or occupation except for attorneys, medical doctors, dentists, optometrists, certified public accountants and retail food establishments may be carried on within the subdivision except with the consent of the first lot owner carrying on such business or occupation. If more than one business or occupation is carried on within the boundaries of an individual lot the owners or occupiers of such lot can only demand non-competitive protection for one of the businesses or occupations and they shall notify the Grantors in writing of their election. If no election is made within thirty (30) days of the commencement of final (or more) occupancy then it will be deemed that the non-competitive protection belongs to the first business or occupation established on the lot.

ARTICLE 5. Approval of Plans by Grantors: Plans of all buildings to be erected on any building sites embraced in the plat must be submitted to architectural committee, hereinafter called "Committee", which shall exercise the rights herein. Complete plans and specifications of all proposed buildings and structures, together with a detailed plan showing proposed location on the particular building site, shall be submitted to the Committee before construction or alteration is started and such construction or alteration shall not be commenced until written approval thereof is given by the Committee.

Grantee agrees that the actions of the Committee, in and for Countors shall be wholly discretionary with said Committee, which discretion shall be binding upon Grantee whether exercised or not, and said Committee shall not be deemed to have a duty to act in any particular instance. If said Committee does not approve or discharge said plans and specifications within thirty (30) days after the same have been submitted to it, such approval will not be required and the provisions of this section will be deemed to have been fully complied with.

As to all improvements, construction and alterations upon building sites, the Committee shall have the right to refuse to approve any design, plan, floor area or color for such improvements, construction or alterations, which is not suitable or desirable, in its opinion, for any reason, aesthetic or otherwise, and in so passing upon such design, the Committee shall have the privilege in its discretion to take into consideration the suitability of the proposed building or other structure, and the materials of which it is to be built and the exterior color scheme, to the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of the building or other structure or alterations thereon as planned on the outlook of the adjacent or neighboring property, and the effect or impairment that said structure will have on the view of surrounding building sites, and any and all other factors which, in the Committee's opinion, shall affect the desirability of such proposed structure, improvements or alterations. Actual construction shall comply substantially

with the plans and specifications as so approved.

Said Committee shall be composed of WILLIAM E. MCKWITZ and MARY SUE MCKWITZ, husband and wife and PAUL M. BELHAM and MARGERY BELHAM, husband and wife and their successors, which Committee shall in the future be appointed in the manner provided by a lot owners association to be found within a reasonable time after the commencing of the selling of lots and shall serve for the duration and on the conditions as the Grantors shall designate. Lessee specifically agrees with Grantors, in consideration of all the provisions of these restrictions and the grant made shall incur no liability for any violation or act by any of said above named parties under Section 5 of these restrictions. In the event of death or resignation of a member, the remaining members shall have full authority to act, and may appoint a replacement.

SECTION 6. Temporary Structures: No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding, shall be used within the subdivision at any time, except during construction when a trailer house may be kept upon the premises for no longer than 60 days with the approval of the committee.

SECTION 7. Refuse Disposal, Storage of Materials: No machinery, appliance or structure or unsightly material may be stored upon the real property, nor shall trash, garbage, ashes or other refuse be thrown, dumped, heaped or otherwise disposed of upon the real property. No building material of any kind shall be placed or stored upon a building site

until the Grantee is ready and able to commence construction, and then such materials shall be placed within the property line of the building site upon which the structure is to be erected, or within designated western erow removal area, not to exceed 60 days. The Grantors shall have the right to enter upon any vacant building site for the purpose of burning or removing weeds, brush, growth or refuse, at Grantee's cost.

SECTION 8. Restrictions Against Use Detrimental to Neighborhood: No part of any building site shall be used or occupied, so as to have any injurious effect upon the use, occupancy or value of any adjacent premises for the usual and customary purpose as established by the tensor of use in the general area. As to whether any use of occupancy violates the above provisions, Grantors may make such determination based upon any reason, aesthetic, or otherwise, including failure to maintain the premises, that any activity or use violates this provision.

SECTION 9. Term of Restrictions: These restrictions shall run with the land described herein and shall be binding upon the parties hereto and all successors in title or interest to said real property or any part thereof, until January 1, 1986, at which time said restrictions shall be automatically extended for successive periods of ten (10) years unless the owner or owners of the legal title to not less than two-thirds of the platted commercial tracts or platted lots, by an instrument or instruments in writing, duly signed and acknowledged by them, shall then terminate or amend said restrictions, and such termination or amendment shall become effective upon

the filing of such instrument or instruments for record in the office of the Recorder of Valley County, Idaho. Each instrument or instruments shall contain proper references by volume and page numbers to the record of the plats and the record of this deed in which these Protective Restrictions and Covenants are set forth, and all amendments thereof.

SECTION 10. Construction Required: The Grantors for itself, its licensees and assigns, does hereby reserve all right, title and interest in, and full power to vacate and relocate by instrument filed of record on platted land in Grantors' name, a right of way and easement for installation, maintenance and operation of utilities of any type and drainage and all incidents and appurtenances thereof, over, on and across the above described real property as shown on the plat or reserved in any deed of Grantors, together with all rights of ingress and egress necessary for the full and complete use, occupation and enjoyment of the easement hereby reserved, and all rights and privileges incident thereto, including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the use, occupation or enjoyment of the reserved easement and the operation, maintenance and repair of the electrical or telephone system. Grantors further reserve to itself, its licensees, successors and assigns, the right, and power to vacate and relocate, or to plat new streets, by instrument filed of record, any street or alley as long as the Grantors own each of the parcels which are adjacent to the street,

both vacated and relocated on the new and old right of way and provides an adequate roadway in place of any vacated. Provided, nevertheless, vacations and relocations of easements rights of way and streets allowed hereunder shall be made in accordance with the minimum standards of the State of Idaho, Valley County, and McCall, Idaho laws, ordinances and regulations thereunder in relation to platting in effect at the time of the construction of improvements. This provision shall not be deemed to include any provisions of statute giving any person the right to object to such vacations, relocations, vacations and dedications, and such rights of protest are transferred to the Grantors hereunder.

Where any restrictions, easement or dedication herein varies from the requirements of the subdivision or other ordinances of the city or county having jurisdiction and the requirements of the city or county ordinances relating to subdivision are more restrictive, said more restrictive requirements shall be deemed to be a part hereof as if set forth herein as part of these restrictive covenants. This limitation shall apply in particular to locations, public easements and ways where the same are particularly required by such ordinances but not set forth herein.

IN WITNESS WHEREOF, we have hereunto subscribed our names this _____ day of April, 1976.

William E. Smith & Paul M. Bellman
Mary L. Smith & Mary L. Bellman

STATE OF IDAHO)
) ss.
County of Valley)

On this *7th* day of *April*, 1976, before me, a Notary Public in and for the State of Idaho, personally appeared WILLIAM E. HOCKWITZ and MARY FEE HOCKWITZ, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereto set my hand and affixed my official seal, the day and year in this certificate first above written.

Wm. E. Hockwitz
Notary Public for Idaho
Residing at *McCall*, Idaho

STATE OF IDAHO)
) ss.
County of Valley)

On this *7th* day of *April*, 1976, before me, a Notary Public in and for the State of Idaho, personally appeared PAUL M. BRUNSM and MARGERY BRUNSM, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereto set my hand and affixed my official seal, the day and year in this certificate first above written.

Wm. E. Hockwitz
Notary Public for Idaho
Residing at *McCall*, Idaho

I hereby certify that this document was filed for record at the request of Frank W. Robinson

at 31 minutes past 3 o'clock P. M. This 6^o day of May 1926 in my office and duly recorded in Book 211 of Deeds

~~at~~ J. W. Carleton Ex-Officio Recorder

By R. L. ... Deputy

Fees \$ 11 none

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