

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
NORTH 40 DEVELOPMENT**

North 40 Development, Inc., hereinafter referred to as "Declarant" hereby adopts this Declaration of Protective Covenants, Conditions, and Restrictions for the North 40 Development.

This is a Declaration of Protective Covenants, Conditions, and Restrictions regulating and controlling the use and development of certain real property and is made effective this \_\_\_\_\_ of \_\_\_\_\_, 2008, by North 40 Development, Inc., a Montana Corporation, hereinafter referred to as "Declarant." Declarant shall also refer to successors and assigns collectively of North 40 Development, Inc.

Declarant is the present Owner in fee simple of real property located in Madison County, Montana, described as follows:

North 40 Development, as described on the final plat filed of record on \_\_\_\_\_, 2008, in the office of the Madison County Clerk and Recorder, in Book \_\_ of Plats, Page \_\_ and Book \_\_ of Plats, Page \_\_.

The acquisition of an Ownership interest in real property in North 40 signifies that the Owner accepts, ratifies and agrees to comply with these Covenants.

NOW, THEREFORE, Declarant declares as follows:

**I. ABBREVIATIONS**

The following abbreviations are used in this document:

1. This First Declaration of Protective Covenants, Conditions and Restrictions for North 40 is referred to as "the Covenants";
2. North 40 Development Company, Inc. is collectively referred to as "North 40";
3. The Final Plat for North 40, Ennis, Madison County, Montana, and filed of record on \_\_\_\_\_, 20\_\_ in the office of the Madison County Clerk and Recorder in Book \_\_ of Plats, Page \_\_\_\_ and Book \_\_ of Plats, Page \_\_, is referred to as the "Final Plat";
4. Design Review Guidelines is referred to as the "D.R.G."
5. Residential Board of Directors "RBOD".
6. Commercial Board of Directors "CBOD".

## II. DEFINITIONS

The following terms and phrases used in these Covenants shall be defined as follows:

1. "Easements" shall include all of the easements as shown on the Final Plat for North 40, Amended Plat for North 40, including but not limited to driveways which provide access to individual lots, utilities, hiking trails, recreation trails, and roads. Each easement shall include a right by Declarant or its successor to access, repair, maintain, improve, and reconstruct the easement and improvements thereto. Declarant may amend hiking and recreation trails and designate certain new hiking and recreation trails through North 40, provided such trails do not encroach on the building envelope designated for each lot.
2. "Fire Department" shall mean any fire service area, rural fire district, municipal fire department or other authorized entity that has authority under Montana law to provide firefighting and emergency response within the specified area of land in which the real property subject to these covenants exists. The Fire Department is specifically made a party to these fire protection covenants for purposes of enforcement and may take any action itself or any action in law or equity to compel the property owners subject to these covenants to enforce these fire protection covenants.
3. "Common Services" shall mean the maintenance of all easements for roads, driveways, including snow removal services, utility line maintenance or repair (excluding certain portions of the water and sewer lines as set forth below), and other services used by the Owners for their benefit.
4. "Owner" shall mean the record Owner of a lot, including a contract purchaser, but excluding anyone having an interest in a lot as security for the performance of an obligation. "Owner" shall also mean Condominium Homeowners Associations or any other Property Owners Association.
5. "Lots" or "Property" shall refer to lots for single family residences, multi family residences, commercial pads, commercial buildings, mixed use buildings and the real property upon which they are situated, as designated on the Final Plat. "Mixed Use" shall refer to the buildings containing both commercial and residential units.
6. "Rental Management Company" shall refer to the rental company designated by the Declarant to manage any rental of property in North 40, in the event an Owner elects to rent his or her Property.
7. "Design Review Committee" shall refer to a board or committee run for the first five years by Declarant and then shall be made up of elected owners.

8. "Common Elements" means the general common elements and the limited common elements which are described as follows:

A. General Common Elements:

AGeneral common elements@ means all those elements which are for the use of all the unit owners and their guests and invitees. The Declarant or the Association may add or delete common elements by amendments to this Declaration and/or by the method set forth in the Unit Ownership Act. The general common elements include, but are not limited to the following:

- 1) outside recreational areas (parks), common parking areas, if any, and pathways, sidewalks, and roads within the Subdivision;
- 2) the tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;
- 3) the premises for the lodging of janitors or caretakers of the property, if any; and
- 4) all other elements of property necessary or convenient to their maintenance and safety or normally in common use.
- 5) all general common elements shown on the site plan, including the road system and common utility easements and lines.

B. Limited Common Elements:

"Limited common elements" shall mean those common elements designated in this declaration, site plan, or by agreement of the lot owners which are reserved for the use of a certain lot or building or number of lots or buildings to the exclusion of the other lots or buildings. Specifically, designated or reserved parking spaces or lots, private walkways or building entrances within commercial lots containing privately owned commercial units or buildings.

9. The terms "common expenses" and AGeneral common expenses@ mean expenses of administration, maintenance, repair, replacement of common elements and services provided to the Residential or Commercial Associations, and expenses agreed upon as common by the Lot Owners, and other expenses declared common by this Declaration or the By-Laws.

10. The term ACondominium@ means the concept of ownership of single units with appurtenant common elements located on the a property submitted to the provisions of

the Unit Ownership Act and the rights and obligations associated with the ownership of the units, including the right to sell the individual units as a real estate unit.

### **III. PURPOSE**

This property is in a unique setting which has a natural and scenic value. These Covenants are adopted to preserve and maintain the recreation and wildlife values of the Property for the benefit of Owners of individual lots as well as the surrounding communities.

#### **1. PROTECTIVE COVENANTS**

North 40 is located in a unique setting which has a high natural and scenic value. These Covenants are adopted to protect the natural environment, the beautiful views, and surroundings of North 40 and to preserve and maintain the recreation and wildlife values of the Property for the benefit of Owners of individual units as well as the surrounding communities.

The overall project of North 40 Development is a long-term project and these Covenants reflect that philosophy.

These Covenants shall attach to and run with the land described above and shall constitute an equitable servitude upon the real property and every part of it, including all titles, interest and estates as may be held, conveyed, owned, claimed, devised, encumbered, used, occupied and improved. These Covenants are declared for the benefit of the entire property and every part of it and for the benefit of each Owner. They shall constitute benefits and burdens to Declarant and to all persons or entities hereafter acquiring any interest in the property. Each Owner shall have the right to the peaceful possession of his or her property subject to the terms and conditions set forth in these Covenants. Each provision of these Covenants shall apply to all Owners of property in North 40 unless specifically limited to the Owners of certain units.

These Covenants provide for the general restrictions while the D.R.G. provide appropriate details and guidelines in order to ensure compliance with these Covenants. The D.R.G. must be carefully consulted and followed and submittal to the DRC shall be made as set forth in Paragraph 12 hereinbelow to ensure the requirements of these Covenants are met.

#### **2. RESIDENTIAL & COMMERCIAL USE ONLY**

All properties which are regulated by these Covenants shall be used for residential and commercial use only. No more than one entity having not more than three ownership interests, or more than three individuals may have a deeded interest in the Property. It is the intent of these Covenants to preclude the formation of fractional ownership in the Property governed by these Covenants. By way of example, no lot or property may be used or held in fractional ownership, timeshare ownership, or interval

ownership. The foregoing list of prohibitions is meant to be illustrative, not limiting.

All Property will be used for private single family residential, multi-family, or commercial uses. No other structures or improvements of any kind (i.e., fire pits, dog kennels, fences and gardens) shall be allowed on any Property aside from the Building built on each Lot without express written consent by Declarant. Separate guest quarters or guest residences are not permitted.

Nothing contained in this section or these Covenants shall be construed to prohibit the employment of a caretaker(s) for the residence whether such caretaker(s) resides on the premises or off the premises.

North 40 retains the right of approval, at its sole discretion, of any third party developer's Unit Ownership Declarations for condominiums.

#### **IV. TOPOGRAPHY AND NATURAL FEATURES**

##### **1. MINING PROHIBITED**

No prospecting, mining, quarrying, tunneling, excavating, or drilling for any substance on or within the earth, including oil, gas, hydrocarbons, minerals, gravels, sand, rock, or earth shall be permitted.

##### **2. SITE PREPARATION, MAINTENANCE AND LANDSCAPING**

Landscaping at each Property shall initially be designed and constructed by Declarant.

Prior to any subsequent alterations, additions or improvements to landscaping, each Owner shall submit a complete and comprehensive landscape plan to the Declarant or its assigns. The Owner shall also submit with the landscape plan a review fee for review of all plans by the Declarant or its assigns. The review fee shall be established by the Declarant or its assigns to cover its costs and expenses in reviewing the proposed plan. Landscaping shall be done only as approved by the Declarant or its assigns and any and all alterations, additions or improvement at any time must also be submitted for written approval by Declarant prior to commencement of any work. On each Lot, the Owner shall control all noxious weeds and shall destroy them according to county standards. Re-vegetation as approved in advance shall be required for all disturbed areas. Natural and native species are encouraged; non-native species may be restricted or prohibited.

##### **3. DESIGN AND LIMITATIONS**

Mobile homes and house trailers, shall not be permitted, nor can any temporary or permanent buildings be moved onto the Property.

Prefabricated homes and modular homes may be permitted if:

- they meet or exceed current building codes for stick frame construction, are placed or constructed on a permanent, cement foundation; and
- they are in accordance with DRG and are approved by the DRC

Television and radio antennas, as well as satellite dishes and other receiving or transmitting devices not installed during construction of a Property according to specifications agreed on by Declarant and Owner, must be screened from view. Propane tanks must be buried.

#### 4. FIRE PRECAUTIONS

##### A. STATEMENT OF INTENT

The purpose of these provisions is to minimize the likelihood and effect of an uncontrolled fire within the Property.

##### B. TRIMMING OF GRASSES

Each Owner shall keep grass, shrubbery and trees trimmed in order to reduce the danger of fire within the Property and shall otherwise maintain the improvements and the general condition of the site to minimize fire hazards.

##### C. PRECAUTIONS FOR ALL OWNERS

All Owners shall:

i. Keep the roof, eaves and eaves troughs of the Owner's residence free from any debris such as leaves, pine needles or other materials which may be flammable.

ii. Not allow any burning barrels or pits of any sort. Fireworks are not permitted on any portion of North 40.

iii. Keep all chimneys free of creosote or other materials which may prove to be flammable.

iv. Not install a shake roof. All structures shall have a Class A roof covering or a Class A roof assembly. The space at the eave ends shall be fire stopped to preclude the entry of flames and embers for roof coverings where the profile allows a space between the roof covering and the roof decking.

v. Maintain smoke detectors in each residence.

vi. Maintain address numbering which is clearly visible outside the residence. The address shall face both travel directions of the primary access

roadway to the residence. The address shall be posted no less than three feet above the ground on a metal post.

vii. Keep all roads and driveways free of obstruction to ensure year round access by emergency vehicles. In the event of a social function at an Owner's residence, the Owner shall require parking on one side of any driveway or roads in order to provide adequate widths for access by emergency vehicles.

## 5. OUTBUILDINGS AND TEMPORARY STRUCTURES

No outbuildings shall be erected or maintained anywhere. No trailer, mobile home, basement, shack, garage or other outbuilding shall be erected anywhere for use as a temporary or permanent residence. Separate guest or caretakers' residences or quarters are prohibited.

## 6. MAINTENANCE

Owners shall maintain their Property and all improvements in good repair and appearance at all times. All landscaping improvements and Property shall be kept and maintained in good, clean, safe, sound, attractive, thriving and slightly condition and in good repair at all times.

## 7. EXTERIOR LIGHT

The source of any exterior light shall not be visible from adjacent residences. Mercury vapor lamps shall not be permitted. Down-lighting is strongly recommended.

## 8. CONSTRUCTION SCHEDULES

Any and all construction, alterations or improvements of an approved landscape project shall be submitted to Declarant in writing and in advance to any work initiated and must be diligently worked on to completion, and shall be completed within three (3) months following commencement. No aspect of construction shall at any time impede, obstruct or interfere with pedestrian or vehicular traffic or block the use of any easement. No materials shall be placed or stored on any lot or property, more than ten (10) days before commencement of construction or more than ten (10) days following completion of construction.

During any construction, the site shall be cleaned up daily and shall be maintained free of trash. The Owner shall be responsible to clean up wind blown debris both on and off the premises. Work on any construction site shall not commence before 7:00 a.m. and must terminate by 6:00 p.m.

9. PARKING SPACE

A. No recreational vehicles, boats, trailers, snowmobiles, or other rolling equipment other than automobiles and pick ups shall be stored in the open on any driveway, road or parking area.

B. No vehicles of any kind may park in alley ways unless specifically designated parking areas exist.

C. Parking in twenty foot alley ways shall not be permitted.

D. There are no designated parking spaces within the development.

10. FENCES

Fences are not allowed. Entryway gates to sites are not permitted.

11. ALTERATIONS TO EXISTING STRUCTURES, NEW CONSTRUCTION OR LAND

No alterations of any kind shall be made to the exterior of any building, property, or lot without prior written approval by Declarant. Alterations to the exterior include by example, but not by way of limitation, modifications to or construction of any of the following: fencing, dog kennels, changes in color to any portion of the exterior, siding, roofing material type or color, trim, decks, walkways, windows, chimneys, fascia, masonry or woodwork, lighting, foundation, driveways, texture or type of exterior finish or materials, roof lines, landscaping or any other changes or modifications which alter or modify the exterior of a Property or Lot in any way from original condition. Roof line maintenance such as painting or replacement of roofing materials or siding must be undertaken so that original colors and materials are replicated.

Any Property which is completely or partially destroyed or damaged must be immediately reconstructed using plans of the destroyed structure so that the exterior of the new structure matches the exterior of the structure that was destroyed. The new structure shall be constructed in compliance with the most current edition of applicable NFPA standards and fire protection standards set by the Fire Department. Any portion of a damaged or destroyed structure must be immediately demolished so as to prevent a nuisance to adjoining Owners.

12. DESIGN REVIEW COMMITTEE

A. There is hereby created a Design Review Committee, hereinafter referred to as "Committee" or "DRC", which shall consist of three (3) persons which may include a builder or architect. The Committee shall be initially appointed by the Developer and thereafter appointed by the Board of Directors of the Association when organized. The Committee shall act by majority vote.

B. Each member of the Committee shall serve until he or she resigns or is replaced by the Developer or the Board of Directors of the owners' Association.

C. The DRC or Board of Directors of the Association may adopt and establish design criteria, architectural guidelines, reasonable rules for construction, and adopt such procedures as it deems reasonable and necessary to carry out the DRC functions and comply with the intent of the provisions of these covenants as well as compliance with any zoning district regulations. The owners agree to be bound by the same.

D. No structure, dwelling, outbuilding, landscaping, parking, deck, sign, fence, wall, or other improvement shall be commenced, placed, constructed, erected, restored, reconstructed, altered, added to, or maintained on any lot until site plans, building plans and specifications, floor plans, elevations, use and such other information as the Committee may reasonably require, including without being limited to, size, shape, location, colors and building materials have been submitted to, reviewed and approved by a majority of the Committee and a written building permit is issued to the applicant by the proper governing body. The Committee may conditionally approve the plans, subject to the lot owner complying with the Committee's requirements. The attached Design Review Guidelines shall be utilized by the DRC, however, the DRC has the authority and discretion to vary from the guidelines.

E. The Committee shall have the authority to disapprove materials, locations, designs or plans if they are not in compliance with these Covenants, the design criteria or architectural guidelines adopted by the Board of Directors or prevailing standards of design and construction. The Committee may take into consideration compliance with any set zoning regulations and the view shed of other lot owners and previously built dwellings in determining whether the proposed location of the dwelling or other structures is appropriate.

F. A lot owner may apply for a variance from the Use and Building Covenants or design criteria or architectural guidelines in cases of minor deviations or in the case of unusual circumstances or hardship or in the cases of unique design, height or location issues. The Committee may, at its discretion, approve, disapprove, recommend, or conditionally approve variances to the Use and Building Covenants when it determines the same to be reasonable and will not be incompatible with the developing neighborhood and will not have a substantial affect upon the quality of living or view shed of neighbors. A written application for a variance must be made to the Committee. A majority of the Committee shall approve, conditionally approve or deny the variance in writing within ten (10) days after receipt of the application and all information required by the Committee. If a variance is not approved by the Committee, the lot owner may appeal the decision to the Board of Directors who may reconsider the variance established in accordance with the guidelines herein set forth.

G. All improvements, construction, re-construction, alterations, re-modeling, or any activity requiring the approval of the Committee must be completed in substantial compliance with the plans and specifications approved by the Committee.

H. The DRC or the Board of Directors shall have the power, authority, standing, and right to enforce the Committee's decision or the Use and Building Covenants in any court of law or equity when it reasonably appears that the same have been violated and shall have the authority to revoke or suspend building permits and/or order suspension, cessation or removal of any construction, improvements or work in violation of these Covenants or of any permit issued by the Committee and enforce the same in court.

I. The Committee may charge a reasonable administrative fee to be paid with the filing of plans and specifications and the issuance of building permits. The fee shall be paid to the Association and used to pay the costs of operating the Committee.

J. The Committee shall be governed by the following general guidelines in its consideration of site plans and floor plans specifications and information submitted for its approval:

i. A landscape plan must be provided for each residence constructed on a lot and completed within one (1) year of completion of construction. A yard area around the residence shall be landscaped and planted with grass, trees and other vegetation which shall be regularly mowed and maintained.

ii. In considering any plans or specifications, the Committee shall examine the suitability of same to the site, including the materials of which it is to be constructed as well as the relationship and view shed of the same to the neighborhood and to the adjacent properties and the compatibility with the other residences in the neighborhood.

iii. All plans and specifications shall be in full compliance with all of the terms and provisions of these Covenants and the architectural guidelines except for any variances which may be granted by the Committee for such plans and specifications.

iv. All plans and specifications shall be acted upon by the Committee within twenty (20) business days of the day they are submitted. If the Committee fails to timely act, the owner may submit the plans and specifications to the Board of Directors for review and approval. In any event, any construction or installation shall comply with the applicable provisions of these Covenants, the Covenants shown on the plat and any applicable laws and regulations.

v. The Committee may adopt written design and site review guidelines and, after approval by the Board of Directors, shall deliver or mail the same to the lot owners and make the written guidelines readily available to the lot owners.

From then on, the written guidelines for future construction or installation shall be effective and binding upon each lot owner.

K. The Committee or the individual members thereof may not be held liable by any person for any damages which may result from Committee action, or lack of action, taken pursuant to these Covenants, including, but not limited to, damages which may result from correction, amendment, change, or rejection of plans, the issuance of building permits, or any delays associated with such action on the part of the Committee.

L. The use of the lots and structures allowed shall be subject to applicable zoning regulations.

## **V. EASEMENTS AND UTILITIES**

North 40, Inc., reserves to itself, successors and assigns, a perpetual easement for, including but not limited to, utilities, driveways, parking, hiking trails and recreation trails over and across all areas shown on the Final Plat and Amended Plats for North 40 and/or any amendments thereto. With the exception of roads and easements for utilities, use of these easements by third parties or Owners of lots within North 40, shall occur only with written permission from North 40, Inc.

### **1. LOCATION AND RESERVATION OF EASEMENTS BY DECLARANT**

No improvements shall be constructed on easements shown on the plat or reserved by Declarant without written consent from Declarant. No gates or obstructions shall be placed upon or shall impede access to any easement within the Property. No Owner/HOA shall have the right to interfere with or obstruct usage of easements.

Easements shall extend across the entirety of each lot up to 5' from the building foundation or other parts of the building that extend from the foundation—decks, etc.

North 40 has granted Ownership of property up to the lot line for each individual Property, but has reserved easements on each lot outside of the Building Envelope (see note above), as well as the right to grant certain easements to Owners and third parties. All Owners shall be assessed annual fees for the maintenance, repair, and operation of said easements. Declarant reserves the right, for itself and/or its agents to enter onto any utility, or other easements across each individual Property for the purposes of maintaining and repairing such facilities.

The location and nature of easement may change from time-to-time, and from season-to-season. Determination of which activities occur or take precedence within easement areas falls within the sole discretion of the Declarant to the extent conflict may arise over competing or incompatible uses. No Owners shall have the right to use any easement in a way which conflicts with rights of usage by other Owners or

Declarant, or which has the effect of creating a benefit for one Owner at the expense of other Owners.

## 2. MAINTENANCE OF EASEMENTS AND FACILITIES

Easements retained or designated in the future by North 40 and facilities located therein or thereon shall be maintained by North 40 or its assignee. This includes but is not limited to utility easements as delineated on the Final Plat and Amended Plats, or any amendments thereto, access, recreation trails, and facilities which provide utilities and other services to the Property and other nearby private home sites, lots and residences. Owners within North 40 shall pay an annual fee to North 40 or its assignee for the operation and maintenance of such easements, trails, public areas, including those areas designated as parks, and facilities. Assessments shall not be increased by more than 10% per year without written consent of a majority of Owners. The annual fee for each Property will be assessed for the first time after the Property has been conveyed by North 40 to a third party with the first payment occurring on the date of conveyance.

New Construction includes a one-year construction warranty from the date of closing. However, after closing, the Owner (or a designated person for the Owner) must inspect their Property on a regular basis as part of a home maintenance plan or the construction warranty is void. The purpose of the regular inspection/home maintenance plan is to prevent non-construction related problems. Items which must be inspected and maintained include, but are not limited to: checking the level of propane in your tank and checking that the tank is operating properly, turning the heat on inside the Property during winter months to prevent pipes from freezing and breaking, closing foundation vents in the winter and opening the vents in the spring, checking for snow buildup on the roofs or decks and removing it as necessary in the winter months, and blowing out irrigation systems and draining hose bibs to prevent freezing of the line, etc. In addition to the construction warranty, any and all manufacturer's warranties shall transfer to Owner at closing.

## 3. INGRESS AND EGRESS

An Easement for general ingress and egress to each site shall exist over all roads within North 40.

## 4. ROAD AND UTILITIES ACCESS

Primary access to North 40 is from U.S. 287 in Ennis. North 40 shall grant to the Owners of the Property within North 40, a nonexclusive easement for ingress, egress, and utilities, from the Madison County Road located at the \_\_\_ line of \_\_\_, Township \_\_\_, Range \_\_\_, M.P.M.,

Owners shall share in the maintenance cost of those roads which provide access to North 40, which is included in the annual assessment.

5. **INSTALLATION AND MAINTENANCE OF UTILITIES BEYOND PROPERTY LINES**

The water supply and wastewater disposal shall be provided by Town of Ennis, pursuant to charges authorized by the Montana Public Service Commission. Town of Ennis shall own and operate the water and sewer service from the town water supply and sewer facilities to that point where the individual Properties connect to the main water and sewer lines. The individual Owner shall be responsible for the maintenance and repair of his or her water and sewer line from the main line hookup to their Property. Owners will be separately billed on a quarterly or monthly basis by Town of Ennis, for water and sewer service. Rates for these services may change over time.

Properties have utility, recreational easements on them. North 40, at its discretion and at any time, including after closing of this transaction, may put underground utilities across these properties. Owners acknowledge and accept that such activity could possibly result in visual and/or physical changes to the landscape. Such changes or modifications will only be done as needed and any disturbance will be kept to a minimum.

6. **TELEPHONE SERVICE**

Telephone service shall be provided to the Properties by a local telephone service provider.

**VI. USE OF THE LAND**

1. **USES**

All the area of North 40 shall be controlled by these Covenants which run with all the land for the benefit and use of Owners. No off-road motorized travel shall be permitted. ATVs, snowmobiles, motorcycles and other non-licensed vehicles will not be permitted. Declarant reserves the right to use ATV's, snowmobiles and other off-road vehicles as part of its normal development operations. Snowmobiles and other across the snow vehicles will not be permitted.

2. **NON-DEDICATION TO PUBLIC USE**

Nothing contained in these Covenants shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Property in North 40, to or for any public use or purpose whatsoever.

### 3. MINERAL AND WATER RIGHTS

In order to protect the scenic, recreational, and wildlife values of the area, no mineral or water rights owned by North 40 will be assigned or conveyed to individual Owners. North 40 covenants and agrees not to develop any owned minerals.

### 4. PRESERVATION OF WATER RESOURCES

The Owners of all property in North 40, their guests or employees shall at all times conduct their use and activities in a manner that will preserve the integrity of the ponds within the premises. The degradation or pollution of water quality will not be permitted. All applicable state, and local guidelines and standards must be followed.

### 5. WILDLIFE HABITAT, HUNTING AND FISHING

It is recognized by North 40 and Owners of North 40 property that wildlife species live on or migrate through the Property during various times of the year. The following limitations on use and development are intended, in addition to all other requirements of these Covenants, to protect, preserve and maintain the existing wildlife habitat on the Property and to minimize the adverse effects of development on the wildlife habitat.

A. No hunting of any type, trapping or discharging of guns is permitted in North 40.

B. No feeding or domestication of any wildlife shall be permitted. All rules, regulations, and laws established by the State of Montana, Fish, Wildlife, and Parks Department, or county or municipal governments must be followed. No salt licks, bird feeders, or other foods shall be placed upon any Property to entice wild animals to come upon the Property. Items such as horse feed, grains, and dog food shall be stored in bear-proof containers. Owners acknowledge that wildlife damage landscaping and accept this risk and agree not to file claims against the Declarant or other governing body for such damages.

C. No attempt shall be made by any Owner to domesticate any wild animals in North 40, or within any of the adjacent lands owned by North 40.

## VII. ANIMALS

### 1. LIMITATIONS

Only companion family pets shall be permitted. No swine, sheep, cattle, horses, goats, llamas or other similar livestock shall be allowed. All pets shall be controlled and restrained. Only house pets which are normally kept and maintained indoors shall be permitted on any Property. No animals shall be permitted which shall constitute a nuisance as determined by North 40. All animals shall be strictly controlled by their Owners to prevent any interference with wildlife or nuisance to other Owners or guests.

North 40 may also limit the number of domestic animals on a Property Lot, or elsewhere, and may withdraw permission for any domestic animal to remain on the premises from any Owner who, after due notice, violates the restrictions of this paragraph or whose animal is, or has become, a nuisance to wildlife, property, or other Owners, invitees or North 40 personnel.

## **VIII. NOXIOUS OFFENSIVE OR HAZARDOUS ACTIVITIES**

### **1. PROHIBITION**

No noxious, offensive, or hazardous activities shall be permitted upon any portion of North 40, nor shall anything be done on or placed upon any portion of the Property which is or may become a nuisance to others. No light shall be produced upon any structure or other portion of the Property which shall be unreasonably bright or cause unreasonable glare. No sound shall be produced on any Property which is unreasonably loud or annoying, including but not limited to speakers, horns, whistles, bells, music or television.

### **2. SIGNS**

Signs must be in accordance with D.R.G. and be approved by North 40 before installed or erected. An Owner may permit one realtor's sign to be placed upon the Property for purpose of the sale of such Owner's Property Lot.

## **IX. ENFORCEMENT**

### **1. NORTH 40**

The provisions of these Covenants may be enforced by individual Owners, or North 40.

### **2. RIGHT OF ACCESS**

A right of access is reserved by Declarant and shall be immediate for making of emergency repairs to any improvements or on any sites within North 40. These repairs may be needed to prevent property damage, personal injury or continued property damage.

### **3. ACTION**

A. In the event of violation or threatened violation of any of these Covenants or additional covenants and regulations adopted pursuant to the terms of these Covenants, legal proceedings may be brought in a Court of Law or equity for injunctive relief and damages. In addition, an Owner or Declarant or its successors or assigns may enforce these Covenants by serving notice in writing on the person or entity

violating these Covenants which notice shall specify the offense, identify the location and demand compliance with the terms and conditions of these Covenants. Such notice shall be personally served. In the event personal service cannot be obtained after reasonable efforts, notice shall be posted at a conspicuous place on the Property in question and a copy of the notice shall be mailed by certified mail, return receipt requested, to the last known address of the party or entity.

B. No Owner, North 40, the Declarant, or any party enforcing these Covenants or amendments thereto shall be liable to any person or entity for any entry, self help or abatement of a violation or threatened violation of these Covenants. All Owners, invitees and guests shall be deemed to have waived any and all rights or claims for damages for any loss or injury resulting from such action except for intentionally wrongful acts.

C. Enforcement of these Covenants shall be by proceedings either at law or in equity against any person or persons violating or attempting to violate these Covenants. Legal proceedings may be instituted to enjoin or restrain violation of the Covenants or to recover damages or to restore property to the condition required by these Covenants or any combination of the foregoing. In the event of action to enforce these Covenants, the prevailing party shall be entitled to costs and reasonable attorneys' fees to be set by the Court.

D. The Declarant and its successors or assigns may, without first obtaining a judgment or court order, place a recorded lien against the property of any Owner who has, after notice of the type described in paragraph 3(A) of this section, failed to correct or abate the offense within a reasonable time. The lien may be foreclosed in the manner set forth under Montana law for foreclosure of liens against real property. The lien shall entitle the Declarant to recover all costs expended in the enforcement of these Covenants, including but not limited to attorney's fees, costs, expert or consultant expenses, contractors, subcontractors and materialmen's expenses, and any and all other expenses incurred by Declarant in the course of rectifying the offense, or modifying or restoring the offending Owner's property to cause compliance with these Covenants. The lien may be amended or updated to include recovery of new expenses as they are incurred.

Any lien remaining unpaid thirty (30) days after recording shall accumulate interest from the date of recording at the prime rate of interest published in the *Wall Street Journal* on the date of recording plus 2.0%, or the maximum amount allowed under Montana's usury laws, whichever is less.

E. The failure by Declarant, its assigns or any subsequent Owner to enforce any Covenants or Restrictions contained herein shall in no event be deemed a waiver or in any way prejudice the right to enforce that Covenant at any time against any person breaking the Covenant or any other Covenant breached thereafter or to collect damages for any subsequent breach of Covenants.

F. Invalidation of any one of these Covenants by judgment or Court order shall in no way affect any of the other Covenants or provisions, all of which shall remain in full force and effect.

G. All of the real property described on page 1 of these Covenants shall be subject to the Covenants set forth herein whether or not there is a reference to the same in a deed or conveyance.

H. A breach of any of the foregoing Covenants or Restrictions shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon any site or portion of the real property or any improvements thereon. However, these Covenants shall be binding upon and inure to the benefit of any subsequent Owner who acquired by foreclosure, trustee sale or otherwise, title to property within North 40.

I. Jurisdiction and venue for any action arising from these Covenants, including but not limited to actions to enforce, interpret or contest these Covenants, or any lien created hereunder shall be in Madison County, Montana.

J. Montana law shall govern any action arising from these Covenants.

**X. RESIDENTIAL AND COMMERCIAL NON-PROFIT OWNERS' ASSOCIATIONS AND ASSESSMENTS**

It is the intention of the undersigned that two separate non-profit associations to be called " \_\_\_\_\_ Homeowners' Association" and " \_\_\_\_\_ Commercial Owners' Association" be and are hereby formed by the owners of the various tracts within the Subdivision to insure that these Covenants are complied with and to provide an entity to administer and enforce these Covenants and collect assessments for the benefit of the lot owners and to care for, protect and maintain the roads, boundary fences, parks, and open areas and general common elements which serve the Subdivision so as the same will be maintained for the benefit of the Subdivision and the owners of the individual tracts herein. The Homeowners' Association and Commercial Owners' Association shall together be responsible for maintaining roads and park areas free of noxious weeds.

All privileges, rights, powers, duties and authority of the Covenants shall thereupon vest in the Associations. Each lot owner shall have one vote per lot on all matters to come before vote of the lot owners, regardless of the number of owners per lot or whether the lot is residential or commercial.

All persons purchasing or owning property in the subdivision, do agree to the formation of a non-profit Homeowners' Association and non-profit Commercial Owners' Association. Each owner of a lot in the subdivision is automatically a member of the Homeowners' or Commercial Owners' Association. Further each owner agrees to contribute their pro rata share of the funds necessary to the performance of their

appurtenant Association's functions. The membership fee and assessments for each lot shall be in such sum as a majority of the Residential and Commercial Board of Directors shall separately determine to be equitable and necessary to fulfill the purposes of their separate Association. The membership fee and assessments of each lot shall be paid annually and shall become a lien upon the applicable lot when the purchaser thereof is billed. The Homeowners' Association and Commercial Owners' Association both have the option, in its sole discretion, to record a written statement of the lien with the Clerk and Recorder of Madison County, Montana; and if the amounts set forth in the lien are not paid, the Homeowners' Association and Commercial Owners' Association may collect the amounts owing by regular legal proceedings or may foreclose the lien by proceedings at law available under the Montana Statutes or in equity.

The Bylaws and Articles of Association of each of the two Associations may be adopted by two-thirds of the directors or by two-thirds of the members for the governing of the appurtenant Associations, but nothing contained therein shall modify, amend or invalidate any of these Protective Covenants unless amended pursuant to the Protective Covenants hereinafter provided for.

The residential lot owners and the commercial lot owners shall each elect a Board of Directors by a majority vote, which shall number not less than three nor more than five. The Directors of each Board shall elect a President and Secretary from among the Directors, except the Secretary need not be a Director but shall be a lot owner of the same type of lot. The number of directors and the election of the directors shall be based upon one vote per lot, whether the lot is residential or commercial. Once the number of directors is set, a number of willing lot owners may be nominated by one or more members. The directors receiving the most votes shall be deemed elected. Members may vote on any manner by giving a written proxy to another person or member to vote for them.

These Protective Covenants may be enforced by the Homeowners' Association and Commercial Owners' Association.

## **XI. AMENDMENT, VOTING AND ASSESSMENTS**

1. **AMENDMENT BY DECLARANT** For a period of five (5) years from the date these Covenants are recorded, and notwithstanding any other provision of these Covenants, Declarant may unilaterally amend this Declaration for any purpose, provided the amendment has no material adverse effect on the right of any Owner. Notwithstanding the above, so long as Declarant still owns property, Declarant may unilaterally amend these Covenants if such amendment is (a) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulations or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Properties; (c) required by an institutional or governmental lender or purchaser of mortgage loans to enable such lender or purchaser to make or purchase mortgage loans on the Properties; (d) necessary to

enable any governmental agency or reputable private insurance company to insure mortgage loans on the Properties; (e) otherwise necessary to satisfy the requirements of any governmental agency; or (f) necessary to correct any unsubstantial error in wording.

## 2. AMENDMENT BY OWNERS

After the five (5) year period from the date of recording these Covenants has expired, these Covenants may only be amended by the affirmative vote or written consent, or any combination thereof, of 75% of the votes eligible to be cast as described below.

Owners shall be entitled to one vote for each Property unit. When more than one person holds an interest in any such residence, such Owners shall designate a representative to speak for their particular interest on any issue affecting North 40. The vote for such interest shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to each property unit.

The Covenants, or any portion thereof, may be amended, terminated or supplemented, after the five (5) year period from the date of recording these Covenants has expired, by the execution of a written document containing the terms of the amendment, supplement or termination of any of the Covenants, duly acknowledged by a Notary Public, and recorded with the office of the Madison County Clerk and Recorder.

## 3. VOTING

In the event that any issues affecting North 40 need to be brought before all Owners for a vote, such vote will proceed as described in paragraph 1 above. Any issue brought before the Owners must receive the affirmative vote of 75% in order to pass, except where otherwise noted in these Covenants. Mail balloting shall be permitted. In the event a vote is taken at any meeting of the Owners, proxy voting shall be permitted.

## 4. ASSESSMENTS

A. The Declarant shall have the authority to levy general assessments on each Property or Lot and the Owner thereof for the purposes set forth in paragraph V.2. hereof and for such purposes as improvement, repair and maintenance of roads, easements, snow removal, administration, accounting and legal fees. The Declarant may also levy special assessments for such other purposes as may be approved by 51% of the total votes of the Owners/HOAs. Each Owner of any site, by the acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to these Covenants and to pay to the Declarant, such assessments as shall be levied by the Declarant on an annual basis and paid by Owner when billed on a semi-annual basis. No site shall be eligible for an assessment until the Declarant has conveyed it to a third party.

B. The annual assessment shall be a charge upon the site and shall be a continuing lien upon the land. The Declarant, through its designated rental agency, shall have the right to set off unpaid assessments with rental income from any unit rented by the Owner. An assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the then prevailing prime rate of interest as published in the *Wall Street Journal* plus two percent (2%), provided the same is not usurious under applicable law. The Declarant may bring an action against the Owner personally obligated to pay the same or may foreclose the lien against the Property.

C. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his or her property or because he or she believes that these Covenants are not being properly enforced. Upon delivery of the notice of assessment to the Owner, the assessment shall be a lien upon the Owner's property until paid. The Declarant may record a notice of the lien with the Clerk and Recorder of Madison County, Montana. In the event of non-payment within thirty (30) days after recording the notice of the lien, the Declarant may foreclose the lien in a manner set forth under Montana law for the foreclosure of liens against real property. The recording of the notice of lien shall be notice to all third parties of the assessment outstanding against the site. In the event of action to collect a past due assessment, the Declarant shall be entitled to recover its costs of filing the lien, interest, and the cost of action, reasonable attorneys fees in preparation and filing the lien and preparing and prosecuting the action in addition to the amount of the past due assessment.

D. The amount of the assessments for North 40, for each year for the estimated costs for the commencing year shall be based upon the budget. Each owner shall be obligated to pay assessments based on the square footage of said owners unit divided by the total square footage assessed. After the initial assessment is set, the general assessment against any site shall not be increased more than ten percent (10%) per year without the approval of 51% of the vote of the Owners.

E. The annual assessments provided for herein shall commence when Declarant has sold any site to a third party. At least thirty (30) days in advance of the due date of each annual assessment, written notice of the annual assessment and the due date shall be mailed to every Owner at their last known address. The due dates shall be established by the Declarant. The Declarant shall, upon demand, and for a reasonable charge, furnish a certificate signed by Declarant, setting forth whether the assessment of a specified site has been paid.

Each Owner shall register with the Declarant, a current mailing address and shall promptly notify the Declarant of any change. All notices, demands, and other communication to any Owner shall be sufficient for all purposes if personally served or if delivered by postage pre-paid United States Mail, Certified, Return Receipt requested, addressed to the Owner at the last mailing address registered with the Declarant.

## **XII. COMPLIANCE**

The Owners, residents, lessees, and tenants of the property in the Subdivision shall be in compliance with the laws, rules, and regulations of Madison County or other municipal or governmental entity having jurisdiction over the Subdivision.

## **XIII. INSURANCE**

### **1. REQUIREMENTS**

Because each Owner must replace a lost or damaged Property with the same building, each Owner of a Property shall purchase insurance from an insurance company authorized to do business in Montana with the following coverages:

A. Casualty: All residences constructed on all Property Lots, and improvements upon the land, together with their contents, shall be insured to any amount equal to the full insurable replacement value. Such coverage shall afford protection against:

- i. Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and
- ii. Specifically such other risks including flood and earthquake loss as from time-to-time shall customarily be covered with respect to buildings similar in construction, location and use as the building on the land; and
- iii. General liability coverage is also recommended.

B. Reconstruction:

- i. If a structure is found by the Declarant to be inhabitable or is destroyed after the casualty, the damaged property shall be reconstructed or rebuilt within eighteen (18) months of the casualty or loss.
- ii. Plans and Specifications: Any reconstruction or repair must be in accordance with the plans for specifications for the original improvements, or if not, then according to plans and specifications approved by the Declarant. In no event shall there be a greater number of single family residences, multifamily residences, commercial or retail spaces than existed on such site prior to the damage.

## **IXV. MISCELLANEOUS**

### **1. PERPETUITY**

These Covenants shall continue in full force and effect and shall run with land as legal and equitable servitude in perpetuity unless amended as set forth herein.

## 2. SEVERABILITY

Captions and paragraph headings are designated herein as a matter of convenience. A determination of invalidity of any portion of these Covenants shall not in any manner affect the other portions or provisions.

## 3. FIRE PROTECTION

Any action taken by the Fire Department to enforce fire protection covenants or requirements shall be at the expense of the property owner against who enforcement is sought. Absent a finding of responsibility by an individual property owner, the Declarant shall bear the cost of enforcement.

## **XV. RENTAL MANAGEMENT**

In the event that any Owner desires to undertake short-term rental of his or her Property, North 40, or its assigns has the option, at its sole discretion, to manage said Property for a minimum of five (5) years. The term "short-term rental" means a rental term shorter than six (6) months. This five-year rental management period shall begin upon the date of the first rental agreement contract regardless of the length of time which has transpired since the Owner's purchase of a Property Lot. In the event that any Owner sells his or her property to a third party, the third party shall be bound by the terms of this provision, and a new five (5) year time period will begin upon the date of the first rental agreement between such third party and the rental management company. North 40 or its assigns shall charge a management fee consistent with the property management fees at Ennis, Montana. In the event North 40 chooses not to property manage a short-term rental property, it shall still approve the property management company chosen by the Owner. As a clarification, all short-term rentals must either be managed by North 40 or a property management company approved by North 40. All rentals that are not short-term rentals do not require a management company.

North 40 or its assigns may also provide, at the Owners' discretion, home management services to provide maintenance, security, and other services that an Owner may desire, if an Owner elects not to rent his or her residence. Neither North 40 nor any of its sales representatives make any representations or promises concerning rental profits or income which may result from rentals of homes.

IN WITNESS WHEREOF, this instrument has been executed this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

NORTH 40 DEVELOPMENT COMPANY, INC.

BY: \_\_\_\_\_  
\_\_\_\_\_, as \_\_\_\_\_

BY: \_\_\_\_\_  
\_\_\_\_\_, as \_\_\_\_\_

STATE OF MONTANA            )  
  :SS.  
COUNTY OF MADISON        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008 before me, the undersigned officer, personally appeared JOSH VUJOVICH, known to me to be the person described in and who executed the foregoing instrument as Vice President of North 40, Inc., a corporation named therein, as Vice President in North 40 Limited Partnership, and acknowledged to me that he executed the same as such officer, in the name of and for and on behalf of said corporation as the Vice President in North 40 Development, Inc. for the purposes therein contained.

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

(SEAL)

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_