


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Northtown Covenants

December 18,

2018

**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR
NORTHTOWN MAJOR SUBDIVISION**

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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR
NORTHTOWN MAJOR SUBDIVISION

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR NORTHTOWN MAJOR SUBDIVISION ("Covenants") is made this 18th day of December, 2018, by Northtown Development Corp, a Montana corporation, ("Declarant").

These Covenants impose upon the Property (as defined in Article I below) mutually beneficial restrictions for the benefit of the owners of each portion of the Property, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Property.

All of the Property described in Exhibit A of these Covenants and any additional property subjected to these Covenants by Supplemental Covenants (as defined in Article I below) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of and which shall run with title to the real property subjected to these Covenants. These Covenants shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

Article I. DEFINITIONS

The terms in these covenants and the Exhibits to these covenants shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below:

1.1 Annual Meeting. The annual meeting of the Association shall occur on the first Tuesday in December. Any special meetings may be called by the President, or in the absence of the President, by the Vice-President. In addition, a special meeting shall be held upon call of fifty percent (50%) of the Owners. Special meetings shall require forty-eight (48) hours' notice, in writing. Notice of annual and special meetings shall be mailed to owners at the address for each Owner. The presence of members, in person or by written proxy, representing fifty-one percent (51%) of the total votes of the membership shall constitute a quorum.

1.2 Articles of Incorporation or Articles. The Articles of Incorporation of the Association, as filed with the State of the Montana, as they may be amended from time to time.

1.3 Association. Northtown Major Subdivision Property Owners Association, Inc., a Montana nonprofit corporation, its successors or assigns.

1.4 Base Assessment. Assessments levied in accordance with Section 10.02 of these Covenants.

1.5 Board of Directors or Board. The body responsible for administration of the Association, selected as provided in the By-Laws and serving as the board of directors under Montana corporate law.

1.6 Builder. Any Person which purchases one or more lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such Person's business and who is approved and designated in writing by the Declarant as a "Builder" under these Covenants.

1.7 By-Laws. The By-Laws of the Association, as amended from time to time.

1.8 Class "A". Class "A" Members shall be all Owners including the Declarant. Class "A" Members shall have one equal vote for each lot in which they hold the interest required for membership under Section 3.02 of these Covenants. There shall be only one vote per Lot. If there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

1.9 Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under these Covenants and the By-Laws, are specified elsewhere in the Covenants and the By-Laws. The Class "B" Member may appoint all of the members of the Board of Directors during the Class "B" Control Period, as specified in the By-Laws. The Class "B" Member shall be entitled to two (2) votes per each Lot owned.

The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of:

- (i) Ten years after the date of recording of this document; or
- (ii) When the Declarant determines in an instrument recorded in the records of the Park County, Montana, Clerk and Recorder that at least 90% of the potential Lots established by the overall phased plan have been sold ("Turnover Date").

1.10 Class "B" Control Period. The period of time during which the Class "B" Member is entitled to appoint the members of the Board of Directors as provided in the By-Laws.

1.11 Common Area. The Subdivision Roads and any other areas which by the terms of these Covenants, any written notice from the Declarant to the Association, or other applicable covenants, contract, or agreement with Park County, Montana, or the City of Livingston, Montana, relating to such areas become the responsibility of the Association.

1.12 Common Expenses. The actual and estimated expenses incurred in connection with the common areas, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to these

Covenants, the By-Laws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by a majority of the total Class "A" vote of the Association.

1.13 Community-Wide Standard. The standard of conduct, maintenance, or other activity generally prevailing throughout the Property. Such standard shall be more specifically determined from time to time by the DRC.

1.14 Declarant. Northtown Development Corp, or any successor, successor-in-title, or assign who is designated as the Declarant by Northtown Development Corp in a written instrument recorded in the records of the Park County, Montana, Clerk and Recorder. Persons and/or entities other than the Declarant, or any successor, successor-in-title, or assign of the Declarant, may with the consent of the Declarant, submit property to the terms of these Covenants.

1.15 Design Review Committee ("DRC"). The Committee appointed by the Board of Directors of the Association, consisting of three (3) members, with at least one (1) of such members having professional qualifications as an architect or landscape architect.

1.16 Directors. Directors shall mean the Board of Directors of the Property Owners Association, and shall initially consist of the Declarant.

1.17 Lot. A parcel in the Property as depicted on a final subdivision plat or certificate of survey recorded in the records of the Park County, Montana, Clerk and Recorder.

1.18 Member. A Person owning or purchasing a lot within the Northtown Major Subdivision. Each member agrees to abide and be bound by these Covenants, the Articles of Incorporation and the Bylaws and Resolutions of Association.

1.19 Mortgage. A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.20 Mortgagee. A beneficiary or holder of a Mortgage.

1.21 Mortgagor. Any Person who gives a Mortgage.

1.22 Owner. One or more Persons including the Declarant who hold record title to any Lot, and the Declarant with respect to its entitlements or the rights it holds to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

1.23 Person. A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.24 Property. The real property described in Exhibit A attached hereto, as supplemented from time to time in accordance with these Covenants.

1.25 Subdivision Roads. Street or roadways (excluding driveways), within the Property as depicted on a final subdivision plat or certificate of survey recorded in the records of the Park County, Montana, Clerk and Recorder.

1.26 Special Assessment. Assessments levied pursuant to Section 10.04 of these Covenants.

1.27 Supplemental Covenants. An amendment or supplement to these Covenants filed pursuant to Article IX which subjects additional property to these Covenants and/or imposes, expressly or by reference, additional restrictions and obligations on all of any portion or the Property.

1.28 Turnover Date. Shall have the meaning as defined within the "Class B" definition herein.

1.29 Use Guidelines and Restrictions. Guidelines and restrictions prepared by the Declarant, and implemented and managed by the Board, under the provisions of Article XII of these Covenants.

Article II. PROPERTY RIGHTS

Section 2.01 COMMON AREA

Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with title to every Lot, subject to the following:

These Covenants and any other applicable covenants;

Any restrictions or limitations contained in any recorded instrument affecting the relevant Common Area;

Dedication as a public right-of way for use by the public;

The right of the Board to adopt rules regulating the use and enjoyment of the Common Area;

The right of the Board to suspend the right of an Owner to use facilities within the Common Area (i) for any period during which any charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation, of the Covenants, the By-Laws, or rules of the Association after notice and a hearing pursuant to the By-Laws;

The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

The rights and obligations of the Association, acting through its Board, to perform its functions and responsibilities, if any, in any water augmentation system.

Article III. MEMBERSHIP AND VOTING RIGHTS

Section 3.01 BOARD OF DIRECTORS

The Association shall be governed by the Board of Directors. The initial Directors shall be the following individuals: Anthea George, individually, Matthew Faure, individually, and William

Muhlenfeld, individually, and each shall serve as the sole three (3) Directors until the Turnover Date. After the Turnover Date, the Association shall consist of five (5) Directors, four (4) of whom shall be appointed by the Declarant. The Declarant shall appoint two (2) of the Directors to one (1) year terms, and shall appoint two (2) Directors to two (2) year terms. The remaining Director shall be selected by a plurality vote of the members of the Association, and shall serve a term of three (3) years. Thereafter, each Director shall be elected by a plurality of members of the Association and shall each serve a term of three (3) years. For election years in which two (2) Directors will be elected, the two (2) persons receiving the two (2) highest number of member votes shall serve as Directors.

Section 3.02 MEMBERSHIP

Every Owner shall be a Member of the Association. No Owner, whether one or more Persons, shall have more than one membership per Lot owned.

Section 3.03 VOTING

The Association shall have two classes of membership, Class "A" and Class "B";

Upon and after the Turnover Date, each Class "B" Member shall be deemed to be a Class "A" Member entitled to one (1) vote for each Lot. At the annual member meeting following the Turnover Date, the Declarant shall advise the membership of the termination of the Class "B" status.

Article IV. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 4.01 COMMON AREA.

The Association, subject to the rights of the Owners set forth in these Covenants, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

Section 4.02 ASSOCIATION ENFORCEMENT

The Association shall have the following enforcement powers:

- (i) The Association may impose sanctions for violations of these Covenants, the By-Laws, or rules in accordance with procedures set forth in the By-Laws, including without limitation reasonable monetary fines and suspension of the right to vote and to use any facilities within the Common Area or elsewhere on the Property.
- (ii) The Association may exercise self-help to cure violations, and may suspend any services it provides to the Lot of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association.

- (iii) In the event a Member is delinquent in the payment of dues or assessments, or has failed to cure any default of its obligation under these Covenants, for a period of thirty (30) days after written notice thereof, the Board may file a lien against the Owner's Lot for any amounts due under these Covenants pursuant to Montana law.
- (iv) The Board may seek relief in any court for violations or to abate nuisances.
- (v) The Association, by contract or other agreement, may enforce applicable county and city regulations.

Section 4.03 IMPLIED RIGHTS

The Association may exercise any other right or privilege given to it expressly by these Covenants or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege.

Section 4.04 GOVERNMENTAL INTERESTS

For so long as the Declarant owns any Property, the Declarant may designate any sites it owns within the Property for fire, police, water and sewer facilities, parks, and other facilities.

Section 4.05 INDEMNIFICATION

The Association shall indemnify every officer, director, and committee member against all expenses, including without limitation attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available. In the sole discretion of the Board, the Association may agree to extend the indemnification provided in this paragraph to other associated agents or employees not otherwise covered by this indemnification, when appropriate.

Article V. MAINTENANCE

Section 5.01 ASSOCIATION'S MAINTENANCE OF THE COMMON AREA

The Association shall maintain and keep in good repair the Common Area, which shall include, but need not be limited to:

- (i) All landscaping and parks, structures, and improvements, including without limitation any Subdivision Roads, bike and pedestrian pathways/trails situated upon the Common Area;
- (ii) Landscaping within public rights-of-way within the Common Area, and landscaping and other flora within any utility easement within the Common Area (subject to the terms of any easement agreement relating thereto);
- (iii) Such portions of any additional property included within the Common Area as may be dictated by these Covenants or any Supplemental Covenants;
- (iv) All ponds, streams and/or wetlands located within the Common Area which serve as part of the drainage and storm water retention system for the Property; and
- (v) Any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Common Area and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

Section 5.02 SUBDIVISION ROADS AND OPEN AREA COMMON AREA

The Association is responsible for the cost of improvement, maintenance, repair and replacement of any Common Area with an easement for public use.

Section 5.03 COMMON AREA

The Common Area shall not be reduced by amendment of these Covenants or any other means except with the prior written approval of the Declarant. Such Common Areas shall be improved and maintained by the Association, with an easement for public use. In the event the Association does by contract or agreement transfer any maintenance responsibilities, the transfer may obligate the Association to pay for such maintenance in such manner as the Board determines is reasonable.

Section 5.04 COMMON EXPENSES

All Common Area costs associated with maintenance, repair and replacement of the Common Area shall be a Common Expense to be allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the Owners of, or other Persons

responsible for, certain portions of the Common Area pursuant to these Covenants, a covenant to share costs, other recorded covenants, or agreements with the Owners thereof. All costs associated with maintenance, repair and replacement of any Common Area that exclusively benefits specific Lots shall be assessed solely against such Lots notwithstanding that the Association may be responsible for performing such maintenance hereunder.

Section 5.05 OWNER'S RESPONSIBILITY

Each Owner shall maintain his or her Lot and all structures, parking areas, and other improvements comprising the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, unless, in the case of a Lot, such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Covenants or other declaration of covenants applicable to such Lot. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner by adding such cost to next annual assessment due from the non-conforming Owner.

The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when the Association determines in its sole discretion that entry is required due to an emergency situation.

Section 5.06 STANDARDS OF PERFORMANCE

Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association, and/or an Owner shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

Article VI. INSURANCE AND CASUALTY LOSSES

Section 6.01 ASSOCIATION INSURANCE

- (i) The Association, acting through its Board or its duly authorized agent, shall obtain appropriate insurance coverage for all Association real and personal property.
- (ii) The Association also shall obtain an appropriate commercial liability insurance policy on the Common Area and in connection with the Association's responsibility over the Areas of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf.

- (iii) Except as otherwise provided by the By-Laws, premiums for all insurance shall be Common Expenses and shall be included in the Base Assessment.
- (iv) The Association shall also obtain, as a Common Expense, workers compensation insurance if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, flood insurance, if advisable, and such other insurance coverage as reasonably determined by the Board.
- (v) The Association also may obtain, as a Common Expense, a fidelity bond or bonds, if generally available at reasonable cost, covering all persons responsible for handling Association funds. The Board shall determine the amount of fidelity coverage in its best business judgment but, if reasonably available, shall secure coverage equal to not less than one-sixth of the annual Base Assessments on all Lots plus reserves on hand.

Section 6.02 OWNERS INSURANCE

- (i) By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry blanket "risks of direct physical loss" property and liability insurance on any structures located on its Lot(s) providing full replacement cost coverage less a reasonable deductible.
- (ii) Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising a Lot, the Owner thereof shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with these Covenants. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

Section 6.03 DAMAGE AND DESTRUCTION

- (i) Immediately after damage or destruction to all or any part of the Property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the damaged or destroyed part of the Property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.
- (ii) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless at least seventy-five percent (75%) of the total Class "A" votes in the Association and the Declarant (as long as the Declarant owns any of the Property or has any right to annex

additional property into these Covenants) decide within sixty (60) days after the loss not to repair or reconstruct.

- (iii) If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee of a Lot shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.
- (iv) If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected part of the Property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association, as applicable, in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Section 6.04 DISBURSEMENT OF PROCEEDS

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate shall be retained by and for the benefit of the Association, and placed in a capital improvements account.

Section 6.05 REPAIR AND RECONSTRUCTION

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board shall, without a vote of the Members, levy Special Assessments against those Owners of the affected Lots to cover the costs of repair or reconstruction.

Article VII. NO PARTITION

- (i) Except as permitted in these Covenants, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the Property or such portion thereof have been removed from the provisions of these Covenants. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to these Covenants.
- (ii) The Declarant may partition, divide or subdivide any Lots or Open Space the Declarant owns, and vacate or adjust any lot line with respect to any Lots or Open Space the Declarant owns, without the consent of the Association or any Owner. Owners other than the Declarant may not partition, divide or subdivide their Lots, or vacate or adjust any lot line, without the prior written approval of the Declarant until 90% of the Lots have been conveyed to Owners other than the Declarant and Builders and, thereafter, shall not partition, divide or

subdivide their Lots, or vacate or adjust any lot line without the prior written approval of the Association.

Article VIII. CONDEMNATION

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the direction of a majority of the Class "A" votes present at a meeting duly held pursuant to the requirements of the By-Laws for such a meeting, and the written consent of the Declarant, as long as the Declarant owns any of the Property or has any right to annex additional property into these Covenants) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

- (i) If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns 10% of the Property or has any right to annex additional property into these Covenants, and at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Sections 6.03(iii) and 6.03(iv) regarding funds for the repair of damage or destruction shall apply.
- (ii) If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

Article IX. ANNEXATION AND WITHDRAWAL OF PROPERTY

Section 9.01 ANNEXATION WITHOUT APPROVAL OF MEMBERSHIP

- (i) Prior to the Turnover Date, the Declarant may from time to time unilaterally subject to the provisions of these Covenants all or any portion of any other property. The Declarant may transfer or assign this right to annex property, provided that such transfer is memorialized in a written instrument executed by the Declarant and recorded in the records of the Park County, Montana, Clerk and Recorder.
- (ii) Annexation shall be accomplished by recording Supplemental Covenants in the records of the Park County, Montana, Clerk and Recorder, annexing such property into Exhibit A to these Covenants. Supplemental Covenants annexing property into Exhibit A to these Covenants shall not require the consent of the Class "A" Members, but it shall require the

consent of the owner of such property being annexed. Any other person and/or entity with a property interest in any real property submitted to these Covenants shall not be a Declarant unless designated as the Declarant in an instrument signed by the preceding Declarant and recorded in the records of the Park County, Montana, Clerk and Recorder. Any annexation shall be effective upon the recording of a Supplemental Covenants in the records of the Park County, Montana, Clerk and Recorder unless otherwise provided therein.

Section 9.02 ANNEXATION WITH APPROVAL OF MEMBERSHIP

The Association may annex real property pursuant to the provisions of these Covenants with the consent of the owner of such property, the affirmative vote of a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant (so long as the Declarant owns property subject to these Covenants or which may become subject to these Covenants in accordance with Section 9.1). Annexation shall be accomplished by recording a Supplemental Covenants in the records of the Park County, Montana, Clerk and Recorder, annexing such property into Exhibit A to these Covenants. Any such Supplemental Covenants shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

Section 9.03 WITHDRAWAL OF PROPERTY

The Declarant reserves the right to amend these Covenants so long as it has a right to annex additional property pursuant to this Article IX, without prior notice and without the consent of any Person, for the purpose of removing property then owned by the Declarant, its affiliates, or the Association from the coverage of these Covenants, to the extent originally included in error or as a result of any changes in the Declarant's plans for the Property. Common Areas designated as Open Space on any final plat for the Property, as approved by Park County, Montana and recorded in the records of the Park County, Montana, Clerk and Recorder may be withdrawn only if restricted as permanent Open Area upon which future inconsistent development would not be permitted.

Section 9.04 ADDITIONAL COVENANTS AND EASEMENTS

The Declarant may unilaterally subject any portion of the Property submitted to these Covenants initially or by Supplemental Covenants to additional covenants and easements, including without limitation covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association. Such additional covenants and easements shall be set forth in a Supplemental Covenants filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant.

Section 9.05 AMENDMENT

This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any of the Property or has any right to annex additional property into these Covenants.

Article X. ASSESSMENTS

Section 10.01 CREATION OF ASSESSMENTS

- (i) There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be two types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots; and (b) Special Assessments as described in Section 10.04. Each Owner, by accepting a deed or recording a Notice of Purchaser's Interest for a contract for deed for any portion of the Property, is deemed to covenant and agree to pay these assessments.
- (ii) All assessments, together with interest at fifteen percent (15%) per annum (or, if such 15% interest violates Montana law, such lesser maximum amount permitted under Montana law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees (unless any of the foregoing are waived by the Association), shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Section 10.05. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees (unless waived), also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.
- (iii) Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessments shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.
- (iv) No Owner may exempt himself from liability for assessments, by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Section 10.02 COMPUTATION OF BASE ASSESSMENT

- (i) At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including without

limitation a capital contribution to establish a reserve fund in accordance with a budget separately prepared.

- (ii) The Base Assessment shall be allocated and levied against all Lots and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including without limitation reserves and administrative overhead. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment under Section 10.01 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.
- (iii) Prior to the Turnover Date, the Declarant may, but shall not be obligated to, subsidize the Association budget by contribution, advance, loan, or in any other manner the Declarant, in its sole discretion, chooses. Any such payment shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the Members. Such payment in any year shall under no circumstances obligate the Declarant to continue payment in the future years, unless otherwise provided in a written agreement between the Association and the Declarant.
- (iv) The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the upcoming year to the Members at least forty-five (45) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by at least seventy-five percent (75%) of the total Class "A" votes in the Association, and the Declarant (prior to the Turnover Date or during the period that Declarant has a right to annex additional property into these Covenants). There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Class "A" Members as provided for special meetings in the By-Laws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.
- (v) If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

Section 10.03 RESERVE BUDGET AND CAPITAL CONTRIBUTION

The Board shall annually prepare reserve budgets which take into account the number and nature of depreciable assets owned or provided for the use of the Association, the expected life of each asset, and their expected repair or replacement cost. The Board shall establish a capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments, over the budget period.

Section 10.04 SPECIAL ASSESSMENTS; COMMON EXPENSES

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in these Covenants, such Special Assessment shall be levied against the entire membership if such Special Assessment is for Common Expenses. Except as otherwise specifically provided in these Covenants, any Special Assessment for Common Expenses shall require the affirmative vote or written consent of a majority of the Class "A" votes present at a meeting duly held pursuant to the By-Laws, and the Declarant (as long as the Declarant owns at least 10% of the Property or has any right to annex additional property into these Covenants). Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

Section 10.05 LIENS FOR ASSESSMENTS

- (i) The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest, late charges (subject to limitations of Montana law), and costs of collection (including without limitation attorney's fees). Such lien shall be superior to all other liens, except the liens of all taxes, bonds, assessments, and other levies which by law would be superior. Such lien, when assessments are delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.
- (ii) The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on the Lot's behalf; (b) no assessment shall be levied on the Lot; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and costs without foreclosing or waiving the lien securing the same.
- (iii) The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of such first Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title, but the prior title holder shall remain personally liable for such assessments and any related interest, charges and costs identified in Section 10.02 above. Any assessments unpaid as the result of a foreclosure shall be deemed to be Common Expenses collectible from all Owners subject to assessment under Section 10.04, including without limitation such acquirer, its successors and assigns.

Section 10.06 DATE OF COMMENCEMENT OF ASSESSMENTS

The obligation to pay assessments shall commence as to each Lot on the first day following sale or transfer of the Lot from the Declarant to any Owner other than the Declarant or (where specifically so designated by the Declarant under Section 10.08) any Builder.

Section 10.07 FAILURE TO ASSESS

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

Section 10.08 EXEMPT PROPERTY

The Declarant is not obligated to pay Base Assessments or Special Assessments on any Lot owned by Declarant. The Declarant may likewise designate, in a written notice to the Board, any Builder as exempt from the obligation to pay Base Assessments or Special Assessments in connection with specific Lots owned by such Builder, in which case the designated Builder shall not be obligated to pay Base Assessments or Special Assessments in connection with such specified Lots, until sold as Lots to third parties, or such prior date established in the relevant designation. The Common Area and Open Space shall be exempt from payment of Base Assessments and Special Assessments.

Article XI. PROPERTY USE

Section 11.01 LOT TYPES

The Lots within the Northtown Major Subdivision shall be used only for single-family residential and related uses, subject to the requirements of the Park County zoning regulations and/or zoning regulations established by the City of Livingston.

Section 11.02 RESIDENTIAL LAND USES

One single-family residence shall be allowed per lot.

Each residence shall have an attached double garage being at least twenty-two (22) feet by twenty-two (22) feet in dimension.

The Owner may conduct a home occupation or hobby business out of a residence if the following conditions are met:

- a) The business use shall be clearly incidental and secondary to the residential use of the Lot.
- b) The business use shall be entirely within a dwelling, garage or storage shed.
- c) The business use shall not occupy more than four hundred (400) square feet total of the

- dwelling, garage and storage shed combined.
- d) No non-resident employees shall be permitted, nor shall excessive traffic, noise or pollution generation be allowed.
 - e) The business use may not constitute a nuisance to neighboring Lot Owners.

Section 11.03 PARKS, COMMON AREA AND TRAILS

The Association shall be responsible for the operation and maintenance and operation of all parks and common open space. The Association agrees that neither Park County nor the City of Livingston has any obligation to maintain the parks and open space. Title to the Common Space shall vest in the Association and be maintained and controlled by the Board of Directors of the Association. All parks, open spaces and trails shall perpetually remain in that use and be preserved and maintained for passive and active recreation, wildlife habitat, and protection of scenic, and unique or important natural features.

Section 11.04 CONTROL OF NOXIOUS WEEDS

The control of noxious weeds by the Association on those areas for which the Association is responsible and the control of noxious weeds by Owners of their respective Lots shall be as set forth and specified under the Montana Noxious Weed Control Act (MCA 7-22-2101 through 7-22-2153) and the rules and regulations of applicable government bodies. Both unimproved and improved Lots shall be managed for noxious weeds. In the event an Owner does not control noxious weeds after ten (10) days' notice, the Association may cause the weeds to be controlled. The expense of such weed control shall be assessed to the Lot and each assessment may become a lien if not paid within thirty (30) days of the mailing of such assessment.

Section 11.05 STORAGE OF EQUIPMENT

No Lot or adjacent roadway shall be used for the storage of any inoperable vehicle, machinery or equipment or unlicensed vehicle, machinery or equipment. No Lot shall be used for storage of any articles, vehicles, equipment or other personal property of any quantity in excess of the immediate needs and personal use of the Owner of a Lot or the occupants and guests thereof as the case may be, and shall not interfere with the use or enjoyment of neighboring Lots.

Section 11.06 COMMERCIAL VEHICLES

No Lot shall be used for the outside parking or storage of any commercial trucks, large commercial vehicles or other heavy equipment, except as may be necessary during reasonable periods of construction.

Section 11.07 RECREATIONAL EQUIPMENT STORAGE

In no event shall campers, trailers, motor homes, boats, and all other recreational equipment and the like be parked on the Owner's Lot such that they are visible from the road or adjacent lots for a period exceeding three (3) days in any thirty (30) day period. Storage or location of such equipment and vehicles, in excess of the requirements of this Section, shall occur in an enclosed garage or other screened area with such garage or screen having been pre-approved in writing by the DRC.

Section 11.08 ANIMALS

Only birds, dogs, cats or small in-house pets, are permitted. All dogs, cats and other pets shall be strictly controlled by their owners so as not to annoy or interfere with the use of property by the other owners in Northtown Major Subdivision. Pets shall be kept controlled by each owner and shall not be allowed to roam free. Artificial feeding of all wildlife and big game shall be prohibited, including any food, garbage or other attractant. Owners acknowledge that wildlife damage to landscaping and other property may occur. Owners shall accept the risk and shall not file claims against any governing body for such damages.

Section 11.09 OFFENSIVE ACTIVITY

No noxious odors or offensive activity shall take place upon any portion of the above-described property, nor shall anything be done thereon which may be, or may become, a nuisance to the neighborhood.

No fireworks of any kind may be bought, discharged or stored on the above-described property, unless approved by the Fire Chief of the City of Livingston Fire and Rescue Department.

No firearms shall be discharged on the above-described property. Any violation of applicable government regulations shall be a violation of these covenants and can be enforced by the Association or individual lot owners.

Section 11.10 RESTRICTION ON FURTHER SUBDIVISION

Except as the Declarant may elect to subdivide prior to the Turnover Date or while the Declarant still has the ability to subject additional land to these Covenants and the Association, further subdivision of any Lot, including the parks and open space areas, shall be prohibited.

Section 11.11 RESPONSIBILITY FOR SUBDIVISION ROADS

The Association shall be responsible for the operation and maintenance of all interior subdivision roads/parking areas, excluding driveways and parking pads on Lots.

Section 11.12 **SITE DRAINAGE**

Each residential lot within Northtown Major Subdivision shall be graded and landscaped in a manner that prevents drainage directly to neighboring Lots. Drainage and storm water features shall be reviewed by the DRC.

Article XII. USE GUIDELINES AND RESTRICTIONS.

Section 12.01 **PLAN OF DEVELOPMENT; APPLICABILITY; EFFECT**

- (i) Declarant has created the Property as a residential development and, in furtherance of its and every other Owner's interests, has established a general plan of development for the Property. The Property is subject to the Design Guidelines as set forth in Article XIII.
- (ii) All provisions of these Covenants and of any rules or regulations promulgated by the Board shall also apply to all occupants, tenants, guests and invitees of any Lot of any Owner other than the Declarant.
- (iii) Declarant has prepared the initial Use Guidelines and Regulations set forth herein and containing general provisions applicable to the Property, as well as specific provisions which vary within the Property depending upon the location, characteristics, and intended use set forth herein. Based upon these Use Guidelines and Restrictions the Board may adopt design rules from time to time that the Board may enforce and amend.
- (iv) Declarant promulgates the general plan of development for the Property in order to protect and enhance Owners' quality of life and collective interests, the aesthetics and environment within the Property, and the vitality of and sense of community within the Property, all subject to the Board's ability to respond to changes in circumstances, conditions, needs, and desires within the Property.

Section 12.02 **BOARD POWER**

- (i) Subject to these Covenants, the Board may modify, cancel, limit, create exceptions to or expand the Use Guidelines and Regulations by resolution. Prior to any such resolution, the Board shall conspicuously publish notice of the proposal at least five (5) business days prior to the Board meeting. Owners shall have a reasonable opportunity to be heard at a Board meeting prior to action being taken.
- (ii) The Board shall send a copy of any proposed new rule or amendment to each Owner and the Declarant at least thirty (30) days prior to its effective date. Any new rule or amendment to the Use Guidelines and Regulations adopted by the Board shall become effective unless disapproved in writing within such thirty (30) days by the Declarant, as long as the Declarant owns at least 10% of the Property or has any right to annex additional property into these

Covenants or, thereafter, by a majority of the total Class "A" votes present at a meeting duly held pursuant to the By-Laws. The Board shall have no obligation to hold a meeting to consider disapproval except upon petition of the Class "A" Members as required for special meetings in the By-Laws.

- (iii) The Board shall have all powers necessary and proper subject to its exercise of sound business judgment and reasonableness to affect the duties contained in this Section.
- (iv) The Board or DRC shall provide, without cost, a copy of the Design Guidelines, and any rules or resolutions then in effect to any requesting Member or Mortgagee.

Section 12.03 MEMBERS' POWER

The Class "A" Members, at a meeting duly called for such purpose, may adopt, repeal, modify, limit, and expand the Use Guidelines and Restrictions, and the Board's associated rules or resolutions, by a vote of a majority of the Class "A" votes present at a meeting duly held pursuant to the By-Laws, and (prior to the Turnover Date or as long as the Declarant has any right to annex additional property into these Covenants) the affirmative vote or written consent of the Declarant.

Section 12.04 OWNERS' ACKNOWLEDGMENT

All Owners are subject to the Use Guidelines and Restrictions and are given notice that (1) their ability to use their privately-owned property is limited thereby, and (2) the Board may add, delete, modify, create exceptions to, or amend the Use Guidelines and Restrictions in accordance with these Covenants. Each Owner by acceptance of a deed acknowledges and agrees that the use, enjoyment, and marketability of his or her property can be affected by this provision and that the Use Guidelines and Restrictions and rules may change from time to time.

Section 12.05 ACTIONS PROHIBITED BY THE BOARD

Neither the Board nor the Association may adopt any rule or take any action which violates any federal, state or local laws or regulations.

Section 12.06 INITIAL USE GUIDELINES AND RESTRICTIONS

The following Use Guidelines may be supplemented by the Board as herein provided:

(i) General.

The Property shall be used for residential dwellings, pursuant to applicable zoning, and as allowed by the Association (which may include without limitation, offices for any property manager retained by the Association or business offices, model homes and sales centers for the Declarant, and general office uses) and non-residential uses owned or operated by the Declarant or its successors, assigns, lessees or designees (which non-residential uses shall be consistent with the general nature and character of the scheme of development for the Property). Any Supplemental Covenants or additional

covenants imposed on the property within any area may impose stricter standards than those contained in this Article and the Association shall have standing and the power to enforce such standards.

(ii) Restricted Activities.

The following activities are prohibited within the Property, unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board:

- (iii) Any and all commercial uses not otherwise specifically permitted in these Covenants;
- (iv) Parking of recreational vehicles, motor homes, or other oversized vehicles, stored vehicles, or inoperable vehicles in places other than enclosed garages and no vehicle shall be parked upon or encroach upon the Common Area. The Association shall have the authority to promulgate safety rules and regulations regulating or restricting the types of vehicles which may be operated on Subdivision Roads, including but not limited to golf carts, motorcycles, motorbikes, and bicycles;
- (v) Hunting, capturing, trapping or killing of wildlife within the Property, except in circumstances posing an imminent threat to the safety of persons on the Property;
- (vi) Raising, breeding or keeping of animals, livestock, or poultry of any kind, except that dogs, cats or other usual and common household pets may be permitted in a Lot. Pets shall not be permitted to roam free within the Property. Pets must remain under the control of their owners at all times. Those pets which, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Lots shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet;
- (vii) Any activity which materially disturbs or destroys the vegetation, wildlife, or air quality within the Property or which uses excessive amounts of water or which results in unreasonable levels of sound or light pollution;
- (viii) Obstruction or re-channeling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owners' consent;
- (ix) Conversion of any carport, garage, attic or other unfinished space, other than a basement, to finished space for use as an apartment or other integral part of the living area on any Lot;
- (x) Use of any pedestrian or bicycling trails maintained by the Association for purposes other than the specific use for which the trail was created; and
- (xi) Any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that any Owner or occupant residing in a Lot may conduct business activities within the Lot so

long as: (a) the existence or operation of the business activity is undetectable to the senses of sight, sound, or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Lot; (c) the business activity may be carried out within the confines of the Lot and is free from regular visitation of the Lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property.

- (xii) Notwithstanding anything contained in these Covenants to the contrary, except with respect to any activity or business conducted by the Declarant or its successors, assigns, lessees or designees, the Board may prohibit any activity, business or otherwise, which, in the sole discretion of the Board, constitutes a nuisance, or a hazardous or offensive use, or threatens the security, safety, or quiet enjoyment of other residents of Property.

Article XIII. DESIGN GUIDELINES

Section 13.01 GENERAL

- (i) No structure shall be placed, erected, or installed upon any Lot, and no improvements (including without limitation staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article and approval of the DRC.
- (ii) Any Owner may remodel, paint or redecorate the interior of structures on his or her Lot without approval. No DRC approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.
- (iii) All dwellings constructed on any portion of the Property shall be designed by and built in accordance with the plans and specifications of a licensed architect.
- (iv) This Article shall not apply to the activities of the Declarant, to any Builder specifically designated by the Declarant as exempt from this Article in a written notice to the Board, nor to improvements to the Common Area by or on behalf of the Association.
- (v) This Article may not be amended without the Declarant's written consent so long as the Declarant owns any of the Property or has any right to annex additional property into these Covenants.

Section 13.02 DESIGN REVIEW

Responsibility for administration of the Design Guidelines, as defined below and review of all applications for construction and modifications under this Article shall be handled by the DRC. The

members of the DRC need not be Members of the Association or representatives of Members, and shall include at least one (1) architect, engineer or similar professional, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.

Section 13.03 DESIGN REVIEW COMMITTEE

The DRC shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction and remodeling on any portion of the Property. Prior to the Turnover Date and the date which the Declarant no longer has any right to annex additional property into these Covenants, the Declarant retains the right to appoint all members of the DRC who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board shall appoint the members of the DRC, who shall serve and may be removed in the Board's discretion.

Section 13.04 GUIDELINES AND PROCEDURES

- (i) The Declarant has prepared initial design guidelines and application and review procedures for the residential development dated of even herewith (collectively, the "Design Guidelines") which shall apply to all construction activities within the Property. The Design Guidelines may contain general provisions applicable to all of the Property, as well as specific provisions which vary from one portion of the Property to another depending upon the location, unique characteristics, and intended use. The Design Guidelines shall contain provisions requiring compliance with any fire management, or protection plan, weed management and revegetation plan. The location of dwellings shall be within the required setbacks for each Lot, as shown on the recorded subdivision plat. To the extent the Design Guidelines conflict with the terms of these Covenants, the terms of these Covenants shall govern.
- (ii) The DRC shall have sole and full authority to amend the Design Guidelines from time to time. Any amendments to the Design Guidelines shall apply to the construction of and modifications to permanent structures commenced after the date of such amendment only and shall not apply to modifications to or removal of permanent structures previously approved once the approved construction or modification has commenced. The term "permanent structures" shall not include landscaping or temporary structures, which shall be maintained consistently with the standards set forth in the Design Guidelines as applicable from time to time.
- (iii) The DRC shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Property and all such Persons shall conduct their activities in accordance with such Design Guidelines. It shall be each Owner's obligation to confirm with the DRC that the Owner has been provided with the current

version of the Design Guidelines. In the Declarant's discretion, such Design Guidelines may be recorded in the records of the Park County, Montana, Clerk and Recorder, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

- (iv) Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the DRC committee for review and approval (or disapproval). Information concerning irrigation systems, drainage, lighting, and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the committees may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. Additionally, all landscaping including without limitation the planting of new trees and other vegetation and the removal of existing trees and vegetation must receive DRC approval.
- (v) In the event that: (i) the DRC fails to approve or to disapprove any application within sixty (60) days after submission of all information and materials reasonably requested by the DRC; (ii) the Owner, after the expiration of such sixty (60) days, requests in writing that the DRC approve or to disapprove such application; and (iii) thirty (30) additional days have elapsed after such written request without the DRC approving or disapproving the application, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the DRC pursuant to Section 13.06.
- (vi) The DRC shall have complete and unfettered discretion to make all decisions regarding approval of plans for construction and remodeling. All decisions of the DRC, after the exhaustion of any appeal process provided under the Design Guidelines, are final.
- (vii) Owners should consult with the DRC and review the Design Guidelines thoroughly before purchasing a Lot or submitting building plans to the DRC for approval.

Section 13.05 NO WAIVER OF FUTURE APPROVALS

Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

Section 13.06 VARIANCE

The DRC in its sole and absolute discretion may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship,

or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to these Covenants; or (c) estop the DRC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 13.07 LIMITATION OF LIABILITY

Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the DRC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the DRC, any DRC committee, nor member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot.

Section 13.08 ENFORCEMENT

Any structure or improvement placed or made in violation of this Article shall be deemed to be non-conforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the non-conforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the violation. All costs, including without limitation attorney fees, together with the interest at the rate of up to fifteen percent (15%) per annum, may be assessed against the Lot so restored and collected as a Special Assessment. The DRC may also enforce compliance with the Design Guidelines and these Covenants by suit for specific performance, without the necessity of posting a bond. The prevailing party shall be entitled to an award of its attorney fees and costs at trial and on appeal.

Section 13.09 EXCLUSION

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Section and the Design Guidelines, other than the Declarant, may be excluded by the Board from the Property, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers, nor directors shall be held liable to any Person for exercising the rights granted by this paragraph.

Section 13.10 GENERAL

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Section and the decisions of the Board or the DRC.

Article XIV. STATUS OF DOCUMENTS

Except as set forth herein, all property covered by these Covenants is subject to construction regulation, design review and construction supervision, construction checklists, and such other design and building requirements as are from time to time adopted or amended by the DRC. All such documents and requirements are binding upon the parties subject to these Covenants.

Article XV. EASEMENTS

Section 15.01 EASEMENTS FOR UTILITIES, ETC.

There are hereby reserved unto the Declarant, as long as the Declarant owns any of the Property or has any right to annex additional property into these Covenants, the Association, and the designees of each (which may include, without limitation, the City of Livingston, Montana, or Park County, Montana and any utility) access and maintenance easements upon, across, over, and under all of the Property to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Property. The Declarant further hereby reserves for itself and its duly authorized agents, representatives, designees, successors and assigns, a perpetual nonexclusive easement for utilization, tapping into, tying into, extending and enlarging all utilities within the Property, and a perpetual nonexclusive easement hereunder over the Subdivision Roads for the purposes of ingress and egress to and from any improvements constructed or to be constructed by Declarant within the Property. The Declarant further hereby reserves an easement in favor of itself, the Association, and the designees of each upon, across, over, and under all of the Property for the creation, use, maintenance of trail systems, including, without limitation, pedestrian, bicycle, and for the creation, use, and maintenance of wildlife resistant landscape treatments and features. The foregoing easements may traverse any Lot; provided, however, an easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Lot, and any damage to a Lot resulting from the exercise of an easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of an easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Section 15.02 UTILITY EASEMENTS

The Declarant specifically reserves the right to convey to the local water supplier, electric company, natural gas supplier, and cable television or communications systems supplier easements across the Property for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Lot, nor shall any utilities be installed or relocated on the Property, except as approved by the Board or the Declarant.

Section 15.03 SPECIFIC EASEMENT

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Declarant and the Board shall have the right to grant such easement over the Property without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Property.

Section 15.04 EASEMENTS TO SERVE ADDITIONAL PROPERTY

The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, designees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, maintenance and development of any property which the Declarant may acquire an interest in that is adjacent to any of the Property, whether or not such property is made subject to these Covenants. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction and maintenance of roads and for connecting, installing and maintaining utilities on such property. The Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development or maintenance of such property. The Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to these Covenants, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property.

Article XVI. EROSION CONTROL MEASURES

Temporary erosion control measures, Best Management Practices (BMP's) shall be installed and continuously maintained for the duration of construction and shall include:

Section 16.01 NON-CONSTRUCTION AREAS

All non-construction areas shall be clearly marked and protected during construction by fencing or other identification;

Section 16.02 PROTECTION OF LOOSE PILES

The protection of loose piles of clay, debris, sand, silt, or other earthen material during periods of precipitation of runoff with filter fabric fence, hay bales, temporary gravel, and/or earthen or sand bag dikes;

Section 16.03 SOIL DISTURBANCE ACTIVITIES

All soil disturbance activities shall cease if adverse weather conditions exist. Adequate temporary erosion control measures shall be immediately installed during adverse weather conditions.

Article XVII. MORTGAGEE PROVISIONS

An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- (i) Any condemnation loss or any casualty loss which affects a material portion of the Common Area or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder.
- (ii) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Covenants or By-Laws relating to such Lot or the Owner or occupant which is not cured within sixty (60) days. Notwithstanding this provision, any Eligible Holder is entitled to written notice upon request from the Association of any default in the performance by an Owner of a Lot of any obligation under the Covenants or By-Laws which is not cured within sixty (60) days.
- (iii) Any lapse, or cancellation without renewal or replacement, or material adverse modification of any insurance policy maintained by the Association; or
- (iv) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

Article XVIII. DECLARANT'S RIGHTS

- (i) Any or all of the special rights and obligations of the Declarant set forth in these Covenants or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in these Covenants or the By-Laws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the records of the Park County, Montana, Clerk and Recorder.

- (ii) So long as construction and initial sales of Lots by the Declarant or Builders shall continue, the Declarant and Builders may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, and sales offices. The Declarant and Builders shall have easements for access to and use of such facilities.
- (iii) No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the records of the Park County, Montana, Clerk and Recorder.
- (iv) This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon recording by Declarant of a written statement in the records of the Park County, Montana, Clerk and Recorder that all sales activity has ceased.

Article XIX. GENERAL PROVISIONS

Section 19.01 TERM

These Covenants shall run with and bind the Property in perpetuity, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, unless and until an instrument in writing, signed by seventy percent (70%) of the then Owners, is recorded in the records of the Park County, Montana, Clerk and Recorder terminating these Covenants.

Section 19.02 AMENDMENT

- (i) By Declarant.

Declarant may unilaterally amend these Covenants for any purpose, provided the amendment has no material adverse effect on the right of any Owner. Notwithstanding the above, so long as the Declarant owns at least 10% of the Property or has any right to annex additional property into these Covenants, the Declarant may unilaterally amend these Covenants if such amendment is (i) necessary to bring any provision in compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to

insure mortgage loans on the Lots; (v) otherwise necessary to satisfy the requirements of any governmental agency; or (vi) necessary for Declarant to develop in accordance with its Northtown Major Subdivision Master Plan. However, any such amendment shall not adversely affect the title to any Lot unless the Owner of such Lot shall consent thereto in writing,

(ii) By Owners.

Thereafter and otherwise, these Covenants may be amended only by the affirmative vote or written consent, or any combination thereof of seventy percent (70%) of the total Class "A" votes present at a meeting duly held pursuant to the By-Laws, and the consent of the Declarant, as long as the Declarant owns at least 10% of the Property or has any right to annex additional property into these Covenants.

(iii) By Board of Directors.

In the alternative, the Board of Directors may adopt an amendment to the Covenants provided at least eighty percent (80%) of the Members of the Board vote in favor of the adoption.

(iv) Restriction on Amendment.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. To be effective, any amendment must be recorded in the records of the Park County, Montana, Clerk and Recorder. If an Owner consents to any amendment to these Covenants or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. No amendment may remove, revoke, or modify any right or privilege of the Declarant, or increase the Declarants' obligations, without the written consent of the Declarant or the assignee of such right or privilege.

Without the written consent of the Livingston City Planning Board, no such amendment may remove, revoke, or modify any Article, Section, Clause, or Statement in these Covenants required as a condition of subdivision approval.

Section 19.03 SEVERABILITY

Invalidation of any provision of these Covenants, in whole or in part, or any application of a provision of these Covenants by judgment or court order shall in no way affect other provisions or applications.

Section 19.04 PERPETUITIES

If any of the covenants, conditions, restrictions, or other provisions of these Covenants shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 19.05 **COMPLIANCE**

Every Owner and occupant of any Lot shall comply with these Covenants, the By-Laws, and the rules of the Association adopted from time to time. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Owner(s).

Section 19.06 **NOTICE OF SALE OR TRANSFER OF TITLE**

Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including without limitation assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

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IN WITNESS WHEREOF, the undersigned directors of Northtown Major Subdivision Property Owners Association, Inc., hereby certify that this Declaration of Protective Covenants, Conditions and Restrictions for the Northtown Major Subdivision has been unanimously approved and duly adopted by the Board of Directors of the Northtown Major Subdivision Property Owners Association, Inc. as of the date first written above.

Northtown Major Subdivision Property Owners Association, Inc.
a Montana nonprofit corporation

By: 
William Muhlenfeld, Director

IN WITNESS WHEREOF, Northtown Development Corp consents to the approval and adoption of this Declaration of Protective Covenants, Conditions and Restrictions for the Northtown Major Subdivision as of the date first written above.

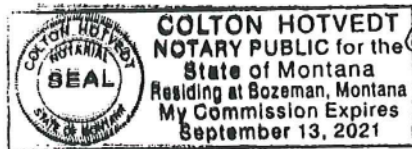
DECLARANT:
Northtown Development Corp
a Montana Corporation

By: 
William Muhlenfeld, President

STATE OF MONTANA)
 : ss
COUNTY OF GALLATIN)

This instrument was acknowledged before me on December 18, 2018, by William Muhlenfeld as Director of the Northtown Major Subdivision Property Owners Association, Inc., and as President of Northtown Development Corp.

(SEAL):





Notary Public for the State of Montana

EXHIBIT A

Northtown Subdivision, Phase 1, Subdivision Plat No. 617, Park County, Montana, according to the Official Plat thereof on file and of record in the Office of the County Clerk and Recorder of Park County, Montana. LESS AND EXCEPTING Tract A of Subdivision Plat No. 438, on file and of record in the Office of the County Clerk and Recorder of Park County, Montana.