

**MASTER DECLARATION OF  
PROTECTIVE COVENANTS,  
CONDITIONS  
AND RESTRICTIONS FOR**



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MASTER DECLARATION OF  
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
FARMSTEAD SUBDIVISION, BERTHOUD, CO

This Master Declaration of Covenants, Conditions and Restrictions for the Farmstead Subdivision (“**Covenants**”) is made as of this 27<sup>th</sup> Day of November 2019 by BERTHOUD HOMES, LLC, a Colorado limited liability company (“**Declarant**”).

ARTICLE 1  
GENERAL

1.1 The Property. Declarant is the owner of approximately 320 acres located in the Town of Berthoud, Larimer County, Colorado, more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference, together with any real property which may hereafter become subject to these Covenants by the execution and Recordation of an Amended Declaration (the “**Property**”).

1.2 Purposes of Declaration. Declarant has platted, subdivided and developed a portion of the Property as a residential planned community pursuant to the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq., as the same may be from time to time amended (the “**Act**”), known as the “The Farmstead Subdivision,” First Filing, County of Larimer, Town of Berthoud, Colorado, recorded on 4/1/2019, Reception No. 20190016179, excluding therefrom Lots 1 – 8, Block 1, Lots 1 – 5, Block 2, Lots 1 – 10, Block 3, Lots 1 – 5, Block 4, and Lots 1 – 8, Block 5, comprising of approximately 52 acres of the Property and also depicted on Exhibit A (the “**Subdivision**”). Declarant has or will cause “Farmstead Master Homeowners Association, Inc.,” a Colorado nonprofit corporation, to be incorporated under the laws of the State of Colorado, as an Owner’s Association, for the purpose of exercising the functions as herein set forth (the “**Association**”).

1.3 Intent of Declaration. Berthoud, Colorado is a close knit community with a rich history. From the days of its early settlement, Berthoud has been known as a farming and agricultural haven. Located at the foot of the Rocky Mountains along the Little Thompson River, away from big city noise and congestion, Berthoud offers direct and stunning views of Longs Peak and Mount Meeker. The combination of all of Berthoud’s unique qualities, defines its wonderful identity and makes Berthoud an ideal place to live. It is the intent of these Covenants that the Farmstead Subdivision preserves, promotes, and enhances Berthoud’s heritage with clean, modern, attainable, country farm living.

Further, it is the intent of these Covenants to guard against improvements of improper or unsuitable materials or with improper quality or methods of construction. These Covenants intend to encourage the construction of attractive permanent improvements of advanced architectural and engineering design to preserve the harmonious development of the Property in keeping with Berthoud’s farming heritage.

These Covenants are executed (a) in furtherance of a common and general plan for those portions of the Property which may become part of the Subdivision; (b) to protect and enhance the quality, value, desirability and attractiveness of all the Property which becomes part of the Subdivision; (c) to provide for an Association as a vehicle to perform functions for the benefit of Owners of Lots within the Subdivision; (d) to define the duties, powers and rights of such Association; and (e) to define certain duties, powers and rights of Owners of Lots within the Subdivision. The provisions of these Covenants are intended to and shall run with the land and, until their expiration or termination, shall bind, be a charge upon and inure to the mutual benefit of (a) all of the Property which becomes part of the Subdivision, (b) Declarant and its successors and assigns, (c) the Association and its successors and assigns, and (d) all Person having or acquiring any right, title or interest in any Property which becomes part of the Subdivision or any part or parcel thereof or any Improvement thereon, and their heirs, personal representatives, successors and assigns.

1.4 Declaration. Declarant, for itself, its successors and assigns, hereby declares that all the Property situated in the Subdivision (as described on Exhibit A), and all portions of the Property as may be subsequently added to the Subdivision, is hereby made subject to these Covenants and submitted to the Act. Declarant hereby declares that all portions of the Property that become part of the Subdivision which become subject to these Covenants in the manner hereinafter provided, and each part thereof, shall, from the date the same become subject to these Covenants, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in the Covenants, for the duration hereof, all of which are declared to be part of pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement, and protection of the Subdivision.

## ARTICLE 2 DEFINITIONS

Unless otherwise expressly provided herein, in addition to the terms defined above in Article 1, the following words and phrases when used in these Covenants shall have the following meanings:

2.1 Allocated Interest. “**Allocated Interest**” shall mean the undivided interest in the Common Elements, Common Assessment liability, and votes in the Association that is allocated to any Owner, including Declarant.

2.2 Amended Declaration. “**Amended Declaration**” shall mean a written instrument containing covenants, conditions, restrictions, reservations, easements or equitable servitudes, or any combination thereof, which may be Recorded against any portion of the Subdivision in accordance with Section 6.3.

2.3 Applicant. “**Applicant**” shall have the meaning set forth in Section 8.5.



2.4 Architectural Control Committee. “**Architectural Control Committee,**” the “**ACC,**” or the “**Committee,**” shall mean the committee created pursuant to Article 8 of these Covenants for the purposes of establishing and enforcing architectural and design guidelines.

2.5 Architectural Control Review. “**Architectural Control Review**” means the submittal and approval process for Improvements in the Subdivision. These are guidelines and rules relating to the procedures, applications, materials to be submitted, fees and additional factors which will be taken into consideration in connection with the review for approval of any proposed Improvement, as published and amended and supplemented from time to time by the Architectural Control Committee.

2.6 Architectural or Design Guidelines. “**Architectural Guidelines**” or “**Design Guidelines**” shall mean the collective reference to all design and development guidelines (including any and all guidelines set forth in these Covenants), policies and all architectural controls which shall apply to all construction activities within the Subdivision to insure the proper use and appropriate development and improvement of the Subdivision in accordance and in conformity with the intent of these Covenants. Architectural or Design Guidelines shall govern the construction, installation, repair, placement, replacement of any improvement of real or personal property within the Subdivision.

2.7 Articles of Incorporation. “**Articles of Incorporation**” shall mean the Articles of Incorporation of “**Farmstead Master Homeowners Association, Inc.,**” a Colorado nonprofit corporation which have been or will be filed in the office of the Secretary of State of the State of Colorado, as the same may be amended from time to time.

2.8 Assessment. “**Assessment**” shall mean the assessments (common, special, reimbursement, initial or otherwise) made for the purpose covering (a) the portion of the annual costs of operating the Association, including expenses incurred in connection with any authorized function of the Association, (b) large, single item expenditures of the Association, (c) insurance and overhead, (d) utilities, (e) maintenance of Common Elements, and (f) non-potable irrigation water usage and expenses, which are to be allocated to and paid by each Owner to the Association. Common Assessments may include, if applicable, a late charge, interest, fines and other costs of enforcement, including reasonable attorneys’ fees, in the amount as the court may determine, if an Owner defaults in the payment of a Common Assessment. Common Assessments shall not include any separate or individual obligations of Lot Owners.

2.9 Association. “**Association**” shall mean the “**Farmstead Master Homeowners Association, Inc.,**” a Colorado nonprofit corporation, its successors and assigns.

2.10 Board of Directors. “**Board of Directors**” or “**Board**” shall mean the board of directors of the Association.

2.11 Budget. “**Budget**” shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its function under these Covenants and prepared pursuant to Section 5.12.

2.12 Bylaws. “**Bylaws**” shall mean the Bylaws of the Association which have been or will be adopted by the Board of Directors of the Association, as the same may be amended from time to time.

2.13 Common Element. “**Common Element**” shall mean any and all real and personal property within the Subdivision designated or acquired, including Improvements, which the Association has a right to use or which the Association maintains, holds or uses for the common use and enjoyment of Members as provided herein and for other purposes as may be permitted by these Covenants. Common Elements may be designated on a recorded plat and in these Covenants as each may be amended or supplemented from time to time. General Common Elements and Limited Common Elements may be collectively referred to as Common Elements.

2.14 Covenants. “**Covenants**” shall mean this instrument and the provisions herein set forth as they may be amended from time to time.

2.15 Declarant’s Rights Period. “**Declarant’s Rights Period**” shall have the meaning set forth in Section 9.1.

2.16 Declarant. “**Declarant**” shall mean BERTHOUD HOMES, LLC, a Colorado limited liability company, its successors and assigns. A Person shall be deemed a “successor and assign” of Declarant only if specifically designated in a duly Recorded instrument as a successor or assign of Declarant under these Covenants, and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under these Covenants which are specifically designated in the written instrument and set forth on the plat referred to in Section 1.2 as amended. However, a successor to Declarant by consolidation or merger shall automatically be deemed a successor or assign of Declarant under these Covenants.

2.17 Design Guidelines. “**Design Guidelines**” shall be the standards, regulations, and guidelines that may be adopted and amended from time to time by the Declarant or the Architectural Control Committee that encourages all residential construction to be in conformity with the look and theme of the Subdivision.

2.18 Development Rights. “**Development Rights**” shall have the meaning set forth in Section 9.12.

2.19 Expansion Area. “**Expansion Area**” shall mean all or portions of the Property as shown on Exhibit A that may be included but has not yet been included in the Subdivision.

2.20 First Mortgagee. “**First Mortgagee**” shall mean a Mortgagee whose Mortgage has first priority over any other Mortgages encumbering the same property as is encumbered by such Mortgage.

2.21 General Common Element. “**General Common Element**” shall mean all real and personal property, including Improvements, acquired or designated on a recorded plat or from time to time by the Declarant or by the Association, which is for the common use and enjoyment of all of the owners as may be provided herein or in an Amended Declaration

covering such portion of the Subdivision. General Common Elements may be owned by the Association or by the Town of Berthoud where it is the Association's responsibility for maintenance and upkeep.

2.22 Governing Documents. "**Governing Documents**" shall mean the collective reference to those documents which govern the operation of the Association and the Subdivision, including: (a) its Article of Incorporation, (b) its Bylaws, (c) its rules and regulations (including the Design Guidelines), and (d) these Covenants, as one or more of the same may be amended from time to time. Each and every provision of the Governing Documents shall be incorporated herein by this reference as though set forth in full herein.

2.23 Improvement. "**Improvement**" shall mean any change, alteration, or addition to any property within the Subdivision that includes all structures and any appurtenances thereto of every type or kind, including, but not limited to, buildings, swimming pools, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, gazebos, pergolas, walkways, bicycle trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, playground equipment, basketball hoops, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, antennae, exterior tanks, solar equipment, exterior air conditioning and water softener fixtures.

2.24 Initial Assessment. "**Initial Assessment**" shall mean the one-time charge(s) against each Owner and his Lot, or Principal Builder, representing that shall be used to properly capitalize the Association and that also shall be used by Declarant/Developer to construct a community pool in the next phase of development. Initial Assessments are further defined in Section 5.6.

2.25 Limited Common Element. "**Limited Common Element**" shall mean any portion of the Subdivision designated by the Declarant as a Limited Common Element or by the Association, which is for the primary use and benefit of the Owners of certain Lots, tracts or other parcels of property, as may be provided herein or in an Amended Declaration covering such portion of the Subdivision. Such Limited Common Element may be owned (a) by the Association, or (b) a Sub-association in which all of such Members shall be entitled to membership, or (c) an undivided interest by such Sub-Association Members, or (d) separately by the Town of Berthoud or individual Owners over which the Association and/or Sub-association may have an easement for maintenance or other purposes.

2.26 Lot. "**Lot**" shall mean any unit or parcel of land, or townhome, or duplex unit, within the Subdivision which (a) is shown upon any Recorded plat map, or (b) may be sold or conveyed without violation of the provisions of Colorado law pertaining to the subdivision of land. The term "Lot" shall not include any property described in Section 6.8.

2.27 Manager. "**Manager**" shall mean any one or more persons employed by the Association as hereinafter provided, who is engaged to perform any of the duties, powers or functions of the Association.

2.28 Member and Membership. “**Member**” shall mean the Person, or if more than one, all Persons collectively, who constitute the Owner of a Lot within the Subdivision, including Declarant, and principal Builder(s). “**Membership**” shall have the meaning set forth in Section 3.3.

2.29 Owner. “**Owner**” shall mean the Person, including Declarant, any Principal Builder, and the Association, or if more than one, all Persons collectively, who hold fee simple title of record to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder.

2.30 Principal Builder. “**Principal Builder**” shall mean an Owner who is designated as a Principal Builder by the Declarant who acquires a portion of the Property or one or more vacant Lots for the purpose of construction of residences or dwelling units for resale to the ultimate home buyer/Owner.

2.31 Property. “**Property**” shall mean all of the contiguous property owned by the Declarant (shown on Exhibit A and described in Section 1.1) that includes the Subdivision and Expansion Areas in addition to other property owned by the Declarant that may or may not be subject to these Covenants.

2.32 Reimbursement Assessment. “**Reimbursement Assessment**” shall mean a charge against a particular Owner and his Lot for the purpose of reimbursing the Association for expenditures and other costs of the Association in curing any violation, directly attributable to the Owner, of these Covenants or the Rules and Regulations, pursuant to Section 5.17 hereof. Any Reimbursement Assessments may include, if applicable, a late charge, interest, fines and other costs of enforcement, including reasonable attorneys’ fees, in the amount as a court may determine, if an Owner defaults in the payment of a Reimbursement Assessment.

2.33 Special Assessment. “**Special Assessment**” shall mean a charge against each Owner and his Lot representing a portion of the costs to the Association for the purpose of funding major capital purchases, repairs, maintenance, replacements and Improvements, pursuant to Section 5.16, or for any other purpose designated herein. Any Special Assessments may include, if applicable, a late charge, interest, fines and other costs of enforcement, including reasonable attorneys’ fees, in the amount as the court may determine, if an Owner defaults in the payment of a Special Assessment.

2.34 Sub-association. “**Sub-association**” shall mean any Colorado nonprofit corporation or unincorporated Association, and its successors and assigns, organized and established or authorized pursuant to, or in connection with, one or more declarations pertaining to such Sub-association and of which the membership is composed of Owners of Lots within all or part of the area covered by these Covenants.

2.35 Subdivision. “**Subdivision**” shall mean all of the property (approximately 52 acres located within the Property) that, as of the date of these Covenants, has been platted and recorded with the Larimer County Clerk and Recorder on 4/1/2019 as the “The Farmstead Subdivision,” First Filing, County of Larimer, Town of Berthoud, Colorado, Reception No.

20190016179 (also more particularly described on Exhibit A and described in Section 1.2), and that, upon the date set forth herein, is immediately subject to these Covenants.

2.36 Tract. “Tract” shall mean a geographical area within the Property created and designated as a “Tract” by final plats approved by the Town of Berthoud. Typically, Tracts are areas of property on a plat that are specifically intended to be further developed in the future.

### ARTICLE 3 MASTER ASSOCIATION OPERATION

3.1 Association. The Association has been or shall be formed as a Colorado nonprofit corporation under the Nonprofit Corporations Act. The Association has been or shall be organized prior to the date that the first Lot in the Subdivision is conveyed to an Owner by Declarant. The Association shall have the duties, powers and rights set forth in these Covenants and in its Articles of Incorporation and Bylaws.

3.2 Association Board of Directors. The affairs of the Association shall be managed by the Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Articles of Incorporation or Bylaws. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers or the Association or to agents and employees of the Association, and may also elect or hire managers, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent or employee, or manager without a vote of Members, except as otherwise provided in these Covenants.

3.3 Membership in Association. Each Owner of a Lot within the Subdivision shall be a Member of the Association, including Declarant, but excluding the Association. There shall be one (1) membership in the Association for each Lot within the Subdivision, and Lots owned by multiple persons shall exercise their rights in common with each other. The Owner of a Lot shall automatically be the holder of the Membership appurtenant to that Lot, and the Membership appurtenant thereto shall automatically pass with fee simple title to the Lot. Declarant and any Principal Builder shall hold one (1) Membership in the Association for each Lot owned by them respectively. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot and no Owner shall be permitted to relieve himself of the responsibility for fulfillment of his obligations of a Member under these Covenants.

3.4 Election of Directors and Officers by Declarant. From date of formation of the Association until the termination of Declarant Control as provided below, Declarant shall have the right to appoint and remove directors of the Board and officers of the Association as hereinafter provided. The period of Declarant’s control of the Association (the “**Declarant’s Control Period**”) shall terminate no later than the earlier of sixty (60) days after conveyance of seventy-five percent (75%) of the maximum number of Lots that may be created within the Property and Expansion Area, six (6) years after the last conveyance of a Lot by Declarant in the

ordinary course of business, or twenty (20) years after recordation of these Covenants; provided, however, that the Declarant may voluntarily surrender Declarant Control with Board Approval.

Except as otherwise provided below, until the termination of Declarant's Control Period, Declarant shall have the sole right to elect all directors (collectively, the "**Declarant Directors**") and to remove any director with or without cause at any time and to fill all vacancies of all directors. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created within the Property to Owners other than the Declarant, at least one (1) director and not less than twenty-five percent (25%) of the directors of the Board of Directors shall be elected by Members other than the Declarant. Declarant shall have the sole right to appoint the remaining directors then sitting on the Board and to remove and fill vacancies of any such Declarant Director. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created within the Property to Owners other than the Declarant, not less than one third (1/3) of the members of the Board of Directors must be elected by Members other than the Declarant. Declarant shall have the sole right to appoint the remaining directors then sitting on the Board and to remove and fill vacancies of any such Declarant Director.

3.5 Election of Non-Declarant Directors. Each director elected pursuant to the provisions of this Section shall be referred to as a "**Non-Declarant Director.**" At such time as the provisions of Section 3.4 require that a Non-Declarant Director be elected, such Non-Declarant Director shall be elected by a majority vote of the Members at a duly convened meeting of the Association for such purpose. The Non-Declarant Directors shall be removed in accordance with the provisions of the Bylaws applicable to the removal of directors. Upon termination of the Declarant Control Period as provided in Section 3.4, the Board shall consist of at least three (3) directors but not more than nine (9), at least a majority of whom must be Members other than Declarant, and the Board shall elect the officers. The elected directors and officers shall take office upon election. Notwithstanding anything to the contrary contained herein, when and at such time as Members are entitled to elect Non-Declarant Directors to the Board, only Members whose voting rights are in good standing under the Bylaws shall be entitled to vote thereon. In accordance therewith, any and all provisions contained herein requiring the approval of a required percentage of Members, as set forth in the Bylaws, shall be deemed satisfied when the required percentage of Members entitled to vote has been met.

3.6 Voting Rights of Members. Each Member, including Declarant and any Principal Builder, but excluding the Association, shall have the right to cast one (1) vote for each Lot owned by such Member that is subject to these Covenants. The Bylaws shall provide for the manner, time, place, conduct, and voting procedures for Association meetings for the purposes of electing a Non-Declarant Director to the Board of Directors and any other matters upon which Members are required hereunder to vote. All agreements and determinations lawfully made by the Association in accordance with the voting procedures established herein, and in the Bylaws, shall be deemed to be binding on all Owners, and their successors and assigns. For meetings of the Association to approve material amendment(s) to these Covenants or extraordinary actions as may be necessary, at least twenty-five (25) days advance notice to all Members shall be required stating the purpose of the meeting, providing a summary of the material amendment or extraordinary action proposed, and containing a proxy that can be cast in lieu of attendance at the meeting. The Bylaws shall set forth the requirements for a quorum at an Association meeting

provided that a quorum shall not be less than five percent (5%) of the Members present at the beginning of a meeting, in person or by proxy.

3.7 Votes for Association Positions. Pursuant to C.R.S. Section 38-33.3-310, votes for positions on the Board shall be taken by secret ballot and, upon the request of one or more Members, a vote on any other matter affecting the common interest community on which all Members are entitled to vote shall be by secret ballot. Ballots shall be counted by a neutral third party or by a Member who is not a candidate, who attends the meeting at which the vote is held, and who is selected at random from a pool of two or more such Members. The results of the vote shall be reported without reference to names, addresses, or other identifying information.

3.8 Board Members and Conflicts of Interest. Pursuant to C.R.S. Section 38-33.310.5, if any contract, decision, or other action taken by or on behalf of the Board would financially benefit any member of the Board or any person who is a parent, grandparent, spouse, child, or sibling of a member of the Board or a parent or spouse of any of those persons, that member of the Board shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting, prior to any discussion or action on that issue. After making such declaration, the Member may participate in the discussion but shall not vote on that issue. Any contract entered into in violation of this section is void and unenforceable.

#### ARTICLE 4 DUTIES AND POWERS OF ASSOCIATION

4.1 General Duties and Powers of Association. The Association has been formed to advance and manage the common interests of the Owners. The Association, acting through the Board or persons to whom the Board has validly delegated such powers, shall have the duties and powers hereinafter set forth and, in general, the power to do anything not in violation of the Act that may be necessary or desirable to further the common interests of the Owners, to control, manage, maintain, improve and enhance Common Elements and to improve and enhance the attractiveness, and desirability of the Subdivision.

4.2 Duty to Accept Property and Facilities Transferred by Declarant. The Association shall accept property interests to any real property, including any Improvements thereon, and personal property transferred to the Association by Declarant, and equipment related thereto, together with the responsibility to perform any and all functions associated therewith, provided that such property and functions are not inconsistent with the terms these Covenants. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and licenses. Any property or interest in property transferred to the Association by Declarant shall be within the boundaries of the Subdivision and may be within any Expansion Area as Declarant may elect, in its sole discretion. Any property or interest in property transferred to the Association by Declarant shall be subject to the terms of these Covenants, the terms of any Amended Declaration affecting such property, any reserved Special Declarant Rights, and any other easements, covenants, conditions, restrictions and equitable servitudes or other encumbrances affecting such property prior to the time of conveyance thereof. Except as otherwise specifically approved by resolution of the Board of Directors, property or interest in property transferred to the Association by Declarant shall be free of

encumbrances and/or liens and shall not impose upon the Association any obligation to make monetary payments to Declarant or any affiliate of the Declarant, including, but not limited to, any purchase price, rent, charge or fee.

4.3 Duty to Manage and Care for Property. The Association shall manage, operate, care for, maintain and repair all General Common Elements under its control and keep the same in an attractive and desirable condition for the use and enjoyment of the Owners. The Association may also be required to manage, operate, care for, maintain and repair certain Limited Common Elements under its control and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Owners entitled to utilize such Limited Common Elements.

At the time of these Covenants, the General Common Elements are considered to include, but are not limited to, the following:

- (a) Open Areas and Pocket Parks, along with all trees, plantings, grass, fencing, picnic tables, and play equipment,
- (b) Detention Areas and general established drainage patterns,
- (c) Non-potable irrigation system from the point of Town water delivery to the individual Lots (includes pumps and pump houses),
- (d) Street Lights, and
- (e) Monument Signage.

Notwithstanding the foregoing, the Association shall have the right, but not the obligation, to delegate its powers and duties to manage, operate, care for, maintain and repair any General Common Elements or Limited Common Elements, or portions thereof, to any Sub-association within all or a part of the area covered by these Covenants. Any such delegation to a Sub-association shall be limited to those General Common Elements or Limited Common Elements within or adjacent to the area covered by the Declaration of any Sub-association or operated primarily for the benefit thereof as determined by the Board. Those General Common Elements and Limited Common Elements subject to delegation shall include, without limitation, the following: entry feature landscaping; peripheral landscaping along streets, connector roadways and arterial roadways; open space buffers; bike and pedestrian pathways; community amenities; active adult amenities; and community monumentation adjacent to or part of such Sub-association area. Any Sub-association shall be obligated to accept any such delegation and, upon such delegation, to manage, operate, care for, maintain and repair the General Common Element or Limited Common Element in the manner as required of the Association as elsewhere provided in this Declaration.

4.4 Duty to Pay Taxes. The Association shall pay all taxes and assessments (not including Assessments hereunder) levied upon Lots or Tracts owned by the Association, the General Common Elements, and any Limited Common Elements, and all taxes and assessments (not including Assessments hereunder) payable by the Association. The Association shall have the right to contest any such taxes or assessments, provided that the Association shall contest the same by appropriate legal proceedings which shall have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of any lien for such tax or assessment, and



provided that the Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties which may accrue with respect thereto, if the contest of such taxes is unsuccessful.

4.5 Duty to Maintain Casualty Insurance. The Association shall obtain and keep in full force and effect at all times from the time that Common Elements are completed, to the extent reasonably available, “all-risk” or “broad form” hazard insurance with respect to all insurable Lots or Tracts owned by the Association, Common Elements, Improvements and personal property owned by the Association. Such insurance shall, to the extent reasonably available, be for the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, and exclusive of land, excavation, foundations and other items normally excluded from property casualty policies.

4.6 Duty to Maintain Liability Insurance. The Association shall obtain and keep in force and effect at all times from the time that Common Elements are completed, to the extent reasonably obtainable, broad form comprehensive general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of any Lots or Tracts owned by the Association, Common Elements, and any Improvements thereon, and covering public liability for bodily injury and property damage. Such liability insurance, to the extent reasonably obtainable (a) have limits as determined by the Association from time to time; (b) insure the Board, the Association, the Architectural Control Committee, the Managers, if any, and their respective employees, agents and all persons acting as agents; (c) include Declarant as an additional insured in its capacity as Declarant, an Owner or director of the Board; (d) include the Owners as an additional insured, but only for claims and liabilities arising in connection with the ownership or use of the any Common Elements; (e) cover claims of one or more insured parties against other insured parties; (f) include a “severability of interest” clause or endorsement precluding the insurer’s denial of any affected person’s claims because of the negligent acts of the Board, the Association, the Architectural Control Committee, the Managers, if any, Declarant, and their respective employees, agents and all persons acting as agents, or of any other Owner; and (g) include any Sub-association as an additional insured, but only for claims and liabilities arising out of any delegation of duties with respect to Common Elements.

4.7 General Provisions Respecting Insurance. If the insurance described is not reasonably available, or if any policy of such insurance is cancelled or renewed without a replacement policy available therefore having been obtained by it, the Association shall promptly cause notice of that fact to be delivered to all Owners. The Association may carry any other type of insurance it considers appropriate in amounts it deems appropriate to insure the interests of the Association. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration for all deductibles paid by the Association as a Reimbursement Assessment. Insurance obtained by the Association shall, to the extent reasonably possible, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant and any person claiming by, through, or under Declarant. Insurance policies and insurance coverage shall be reviewed at least annually by the Board of Directors to ascertain

whether coverage under the policies is sufficient in light of the current values of the Common Elements and of the possible or potential liabilities of the Association. The aforementioned insurance may be provided under blanket policies covering the Common Elements, any Improvements thereon, and property of Declarant. In no event shall insurance coverage obtained or maintained by the Association be sought for contribution with insurance purchased by Owners, Related Users, or their Mortgagees for damage to their Lot.

4.8 Fidelity Bonds Required. The Association shall obtain and keep in force, at all times after the Declarant Control Period, a fidelity bond or bonds for any person handling funds of the Association including, but not limited to, a manager and employees of the manager. Each such bond shall name the Association as obligee and the amount of such bonds shall be determined by the Board. Each such bond shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of “employee” or similar expression. In the event the Association has delegated some or all of its responsibility for the handling of funds to a manager, the Association may require the manager to purchase, at its own expense, a fidelity bond which fully complies with the provisions of this Section.

4.9 Other Insurance and Bonds. The Association shall obtain such other insurance as may be required by law, including workers’ compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Association shall deem necessary or desirable.

4.10 Duty to Prepare Budgets. The Association shall prepare Budgets for the Association as provided in Article 5.

4.11 Duty to Levy and Collect Assessments. The Association shall levy and collect Assessments as provided in Article 5.

4.12 Duty to Amend Covenants Upon Declarant’s Exercise of Special Declarant Rights. The Association shall amend these Covenants upon the request of Declarant in connection with Declarant’s exercise of its Special Declarant Rights.

4.13 Duty to Provide Audit. The Association shall provide for audits or reviews as required in Section 5.5.

4.14 Duties with Respect to Architectural Approvals. The Association shall perform functions to assist the Architectural Control Committee as may be provided in Article 8.

4.15 Duties for Public Disclosure. The Association shall, pursuant to C.R.S. Section 38-33.3-209.4, at least once per calendar year, provide the Members a written notice stating the name of the Association; the name of the Association’s designated agent or management company, if any; and a valid physical address and telephone number for both the Association and the designated agent or management company, if any. The notice shall also include the name of the common interest community, the initial date of recording the declaration, and the reception number or book and page for the main document that constitutes the declaration. If the

Association's address, designated agent or management company changes, the Association shall provide all Owners with an amended notice within ninety (90) days after the change.

4.16 Duties for Disclosure After Expiration of Declarant's Control Period. The Association shall, pursuant to C.R.S. Section 38-33.3-209.4(2), within ninety (90) days after assuming control from the Declarant pursuant to Section 3.4, and within ninety days after the end of each fiscal year thereafter, make the following information available to the Owners, via internet, first-class mail, e-mail, the maintenance of a literature table or binder at the Association's principal place of business, or personal delivery: (1) the date on which the fiscal year commences; (2) the current fiscal-year operating budget; (3) a list, by type of Lot, of the Association's current regular and special assessments; (4) the annual financial statements; (5) the results of any financial audit for the preceding fiscal year; (6) a list of Association insurance policies; (7) the Association's bylaws, articles, and Rules and Regulations; (8) the minutes of Board and member meetings for the preceding fiscal year; and (9) the Rules and Regulations, and any other governance policies adopted and not already listed above.

4.17 Duty to Educate Owners and Annual Meeting Requirements. The Association shall, pursuant to C.R.S. Section 38-33.3-209.7, and at no cost to the Owners, provide to the Owners some form of annual education regarding the general operations of the Association and the rights and responsibilities of Owners, the Association, and its Board. Pursuant to C.R.S. 38-33.3-308 meetings of the Owners, as the members of the Association shall be held at least once each year. Special meetings of the Members may be called by the president, by a majority of the Board, or by Members having twenty percent (20%) of the votes in the Association. Not less than ten (10) nor more than fifty (50) days in advance of any meeting of the Members, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each Lot or to any other mailing address designated in writing by the Lot Owner. The notice of any meeting shall be physically posted in a conspicuous place, to the extent that such posting is feasible and practicable, in addition to providing notices in electronic form (via web site otherwise) when feasible. The notice shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove and officer or member of the Board.

4.18 Duty to Maintain Records. The Association shall, pursuant to C.R.S. Section 38-33.3-317, the Association shall keep financial records sufficiently detailed to enable the Association to comply with C.R.S. Section 38-33.3-316(8) concerning statements of unpaid assessments. The Association shall keep as permanent records, minutes of all meetings of Members and the Board, a record of all actions taken by the Members or Board by written ballot or written consent in lieu of a meeting, a record of all actions taken by a committee of the Board in place of the Board on behalf of the Association, and a record of all waivers of notices of meetings of Members and of the Board or any committee of the Board. The Association or its agent shall maintain a record of Owners in a form the permits preparation of a list of the names and addresses of all Owners, showing the number of votes each Lot owner is entitled to vote. The records required to be maintained under this Section shall be in written form, or in a form that allows conversion to written form in a reasonable time. All records shall be made reasonably available for examination and copying by any Lot Owner and such owner's

authorized agents. The Association may charge a fee not to exceed the Association's actual cost per page, for copies of Association records. As used in this section, "reasonably available" means available during normal business hours, upon notice of five business days, to the extent that the request is made in good faith and for a proper purpose, and the request describes with reasonable particularity the records sought and the purpose of the request, and the records are relevant to the purpose of the request.

4.19 Power to Acquire Property and Construct Improvements. The Association may acquire property or interests in property as a Common Element for the common benefit of all Owners or for particular Owners, as applicable, including Improvements and personal property. The Association may construct Improvements to Property and may demolish existing Improvements.

4.20 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce rules and regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of these Covenants, the operation of the Association, the use and enjoyment of Common Elements and the use of any other property within the Subdivision, including Lots. Any such rules and regulations shall be reasonable and uniformly applied. Such rules and regulations shall be effective only upon adoption by resolution of the Board of Directors. Notice of the adoption, amendment or repeal of any rule or regulation shall be given in writing to each Owner at the address for notices to Owners as elsewhere provided herein or the Bylaws, and copies of the currently effective rules and regulations shall be made available to each Owner upon request and payment of the reasonable expense of copying the same. Each Owner shall comply with such rules and regulations and shall see that persons claiming through such Owner comply with such rules and regulations. Such rules and regulations shall have the same force and effect as if they were set forth in and were part of these Covenants. In the event of a conflict between the rules and regulations and the provisions of these Covenants, the provisions of these Covenants shall prevail.

4.21 Power to Enforce Declaration and Rules and Regulations. The Association shall have the power to enforce the provisions of these Covenants and of rules and regulations it may adopt, and shall take such action as the Board deems necessary or desirable to cause such compliance by each Owner and each person claiming by, through or under such Owner ("**Related User**"). Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of these Covenants and the Rules and Regulations of the Association by any one or more of the following means; (a) by entry upon any Lot within the Subdivision after Notice and Hearing (unless a bona fide emergency exists), without liability to the Owner therefor, for the purpose of enforcement of causing compliance with these Covenants or the Rules and Regulations; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of these Covenants or the Rules and Regulations, by mandatory injunction or otherwise; (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of these Covenants or the Rules and Regulations; (d) by suspension, after Notice and Hearing, of any Owner or Related User from use of any recreational facilities on the Common Elements or Limited Common Elements maintained by the Association during and for up to sixty (60) days following any breach of these Covenants or such Rules and Regulations by such Owner or any Related User, unless the breach

is a continuing breach, in which case such suspension shall continue for so long as the breach continues; ( e) by suspension, after Notice and Hearing, of the voting rights of an Owner during and up to sixty (60) days following any breach by such Owner or a Related User of such Owner of these Covenants or such Rules and Regulations, unless the breach is a continuing breach, in which case such suspension shall continue for so long as such breach continues; (f) by levying and collecting, after Notice and Hearing, reasonable and uniformly applied fines and penalties, established in the Rules and Regulations, or by the Board from time to time, from any Owner or Related User for breach of these Covenants or such Rules and Regulations by such Owner or a Related User of such Owner.

4.22 Power to Provide Public Functions. The Association shall have the power to acquire, construct, operate, manage, maintain, repair and replace public facilities and to provide public functions as provided herein.

4.23 Power to Provide Services to Sub-Association(s). The Association shall have the power to provide services to Sub-association(s). Such services to any Sub-association shall be provided pursuant to an agreement in writing between the Association and such Sub-association which shall provide for the payment by such Sub-association to the Association of the reasonably estimated expenses of the Association incurred in providing such services to the Sub-association including a fair share of the overhead expenses of the Association. Services which may be provided to a Sub-association may include, without limitation, (a) the construction, care, operation, management, maintenance, repair and replacement of Improvements or Limited Common Elements owned by the Sub-association or certain of its members; (b) the providing of public functions to the area covered by the Sub-association; (c) the enforcement of the provisions of any Amended Declaration for, on behalf of, and in the name of the Sub-association; (d) the collection of assessments for, in the name of, and on behalf of the Sub-association; ( e) the payment of taxes for a Sub-association with funds of the Sub-association or of the Association; (f) the obtaining of insurance for a Sub-association; (g) the collection of charges for use of facilities or Limited Common Elements of a Sub-association or certain of its members; and (h) the appointment and supervision of a Manager or Managers for a Sub-association and/or its Limited Common Elements.

4.24 Power to Provide Special Services for Owners. The Association shall have the power to provide services to an Owner or group of Owners, including, without limitation, the construction, care, operation, management, maintenance, repair and replacement of Limited Common Elements to which such Owners are entitled to use. Any service or services to an Owner or group of Owners shall be provided pursuant to an agreement in writing, which shall provide for payment to the Association by such Owner or group of Owners of the reasonably estimated costs and expenses of the Association by providing such services, including a fair share of the overhead expenses of the Association and shall contain reasonable provisions assuring that the obligation to pay for such services shall be binding upon such Owner or group of Owners, and any heirs, personal representatives, successors and assigns of the Owner or group of Owners, and that the payment for such services shall be secured by a lien on the property of the Owner or group of Owners.

4.25 Power to Charge for Facilities and Services. The Association shall have the power to establish reasonable and uniformly applied charges for the use of facilities and services. The charges may include reasonable admission or other fees for any special or extraordinary use of property or facilities or services of the Association such as special parking privileges, special recreational facilities, conference rooms, instruction, day-care or child-care services, or similar uses beyond the ordinary use of Common Elements, facilities and services. Such charges or fees shall be set forth in schedules of charges and fees adopted from time to time by Board of Directors.

4.26 Power to Enter Lots and Grant Easements. The Association shall have the right to enter any Lot to perform emergency repairs or to do other work necessary for the maintenance of the Subdivision. The Association shall have the power to grant access, utility, drainage, water facility and other such easements, permits and licenses in, on, over or under Common Elements and the Association shall have the power to assume obligations in connection therewith. The Association shall have the power to designate portions of the General Common Elements as Limited Common Elements. Notwithstanding anything to the contrary contained in these Covenants, if any part of the General Common Elements encroaches or shall hereafter encroach upon a Lot, an easement for such encroachment and for the maintenance of the same, so long as it exists, shall be deemed to have been herewith granted. If any part of a Lot encroaches or shall hereafter encroach upon the Common Elements, or upon another Lot, the Owner of that Lot shall have an easement for such encroachment and for the maintenance of the same so long as it exists, shall be deemed to have been herewith granted. Such encroachments shall not be considered to be encumbrances either on the Common Elements or on a Lot for purposes of marketability of title or otherwise. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Improvement to Property, by error in the boundaries set forth in a plat map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of any Improvement to Property or any part thereof.

4.27 Power to Convey and Dedicate Property to Government Agencies. With the approval of Members holding at least eighty percent (80%) of the votes of the Association, including eighty percent (80%) of the votes of Members other than Declarant, the Association shall have the power to grant, convey, dedicate or transfer any Common Elements or facilities to any public or governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate. Any such conveyance shall be subject to the provisions elsewhere contained in these Covenants requiring approval of the same by Mortgagees, Government Mortgage Agencies, by Declarant, and by the Owners of Lots allocated any affected Limited Common Element.

4.28 Power to Borrow Money and Mortgage Property. The Association shall have the power to borrow money and to encumber Common Elements as security for such borrowing with the approval of Owners holding at least eighty percent (80%) of the votes of the Association, including eighty percent (80%) of the votes of Owners other than Declarant, to encumber Common Elements as security for such borrowing. Any such encumbrance shall be subject to the provisions elsewhere contained in these Covenants requiring approval of the same by Mortgagees, by Government Mortgage Agencies, by Declarant and by the Owners of Lots

allocated any affect Limited Common Element. An agreement to convey, or subject the Common Elements to a security interest in accordance with this Section shall be evidenced by the execution or ratification of an agreement by the required number of Owners hereinabove described, subject to the provisions elsewhere contained in these Covenants requiring approval of the same by Mortgagees, by Government Mortgage Agencies, by Declarant or by the Owners of Lots allocated any affected Limited Common Element. The agreement shall specify a date after which the agreement will be void unless it has theretofore been recorded. The agreement shall be effective upon Recordation.

4.29 Power to Employ Managers. The Association shall have the power to retain and pay for the services of a Manager to undertake any of the management or other functions for which the Association has responsibility under these Covenants to the extent deemed advisable by the Association. The Association may delegate any of its duties, powers or functions to any such Manager. Any contract or agreement with any such Manager shall be terminable by the Association for cause on no more than thirty (30) days' prior written notice, and shall be terminable by the Association without cause and without payment of a termination fee on no more than ninety (90) days prior written notice. Any such contract or agreement shall be for a term of no more than one (1) year but may be subject to renewal for succeeding terms of no more than one (1) year each. Notwithstanding any delegation to a Manager of any duties, powers or functions of the Association, the Association and its Board of Directors shall remain ultimately responsible for the performance and exercise of such duties, powers and functions. Any agreement or contract with a Manager shall contain any other provisions which are required to be contained therein by any Government Mortgage Agency.

4.30 Power to Engage Employees, Agents and Consultants. The Association shall have the power to hire and discharge employees and agents and to retain and pay for legal, consulting, engineering, architectural and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under these Covenants.

4.31 General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Nonprofit Corporations Act, including without limitation entering into partnership and other agreements, subject only to such limitations upon such powers as may be set forth herein or in the Articles of Incorporation or Bylaws. The Association shall also have the power to do any and all lawful things which may be authorized, required or permitted to be done hereunder or the Articles of Incorporation and Bylaws and to do and perform any and all acts which may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association hereunder and the Articles of Incorporation and Bylaws.

4.32 General Association Powers. In addition to the powers set forth in this Article 4, the Association shall have the full power to take and perform any and all actions which may be lawfully taken by the Association under the Colorado Nonprofit Corporation Act or any other applicable law.

ARTICLE 5  
ASSESSMENTS, BUDGETS AND FUNDS

5.1 Funds to be Established. The Association shall establish, for administering the Association and maintaining the Common Elements, a single fund or series of separate funds, as the Association may determine from time to time. The Association may establish other funds when needed; for example, a separate fund for the operation and maintenance of a community building and/or pool, or a fund for receipts and disbursements relating to services provided by the Association for a Sub-association, or a fund for receipts and disbursements relating to services provided by the Association for a particular Limited Common Element. Nothing herein shall limit, preclude or impair the authority of the Association to establish other funds for specified purposes authorized by these Covenants or by any Amended Declaration. If the Association establishes any additional funds, the Board shall designate an appropriate title for the fund to distinguish it from other funds maintained by the Association. Each of the funds shall be established as one or more trust savings or trust checking accounts at any financial institution in which deposits are insured by an agency of the federal government. Notwithstanding anything to the contrary contained herein, if there are any surplus funds of the Association remaining after payment of or provisions for the applicable Common Assessments, or any prepayment of or provision for reserves, the Association shall not be required to pay the surplus to each Owner or apply the same against any such Owners' future Common Assessments. Instead, the surplus may be retained by the Association in the applicable fund.

5.2 Accounting Method. Pursuant to C.R.S. Section 38-33.3-209.5(a), the Association shall maintain accounting records using Modified Cash Basis Accounting.

5.3 No Commingling of Funds. The Association shall not commingle any amounts deposited in any one fund with amounts deposited in any other fund.

5.4 Authority for Disbursements. The Board shall have the authority to make or to authorize an agent to make disbursements of any monies in the funds.

5.5 Audit or Review of Books and Records. Pursuant to C.R.S. Section 38-33.3-303(4)(b), the books and records of the Association shall be subject to an audit, using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, at least once every two years by a person selected by the Board. Such person need not be a certified public accountant except in the case of an audit. An audit shall not be required unless both of the following are met: (a) The Association's revenues or expenditures are at least \$250,000, and (b) and audit is requested by at least one-third (1/3) of the Members in the Association. Results of any Audit or Review shall be disclosed as provided in Section 4.18.

5.6 Initial Assessments. For the purposes of adequately capitalizing the Association's available funds, upon the sale of every home by a Principal Builder to an Owner, at Closing, the new Owner shall pay \$350 as an initial assessment to the Association. This initial assessment shall only be applied to the first sale of a Residence on a Lot from the Principal Builder to its first Owner. Should a Principal Builder not sell the Residence to an Owner for the period of one



year from the date of certificate of occupancy issued from the Town of Berthoud, that Principal Builder shall be responsible for payment of this Initial Assessment.

In addition to the Initial Assessment to capitalize the Association's funds as described above, there shall be an additional, one-time, "Park and Amenity" fee paid to directly to the Declarant at the Closing on sales of Residences on Lots from the Principal Builder to an Owner in the first Phase of the Subdivision. This Park and Amenity Fee shall in the amount of \$900 and will go to Declarant to fund future park, community house, and pool amenities that will be owned and operated by the Association.

**5.7 Common Assessments.** For each calendar year, the Association shall levy Common Assessments against Owners of the Lots based upon the annual budget adopted by the Association. Each Owner shall be obligated to pay the Common Assessments levied against, and allocated to, such Owner and the Lot of such Owner as hereinafter more particularly set forth. Notwithstanding anything to the contrary contained in this Article.

**5.8 Allocation of Common Assessments.** For the purpose of determining the Common Assessments allocated to each Owner, each Lot, Block, or Tract, improved or to be improved with a single family residence, duplex, or townhouse for each year shall constitute one (1) Lot per single family residence, duplex, or townhouse built on the Lot, Block, or Tract, regardless of the size, value, location or use of such residence, duplex, or townhouse. Each Lot, Block, or Tract improved or to be improved with a condominium Lot for each year shall be assigned one (1) Lot for every condominium unit located on such Lot, Block, or Tract. The amount of Common Assessments for any year payable by an Owner for its Lot, shall be computed by dividing the total amount to be raised by the Association by the total number of Lots in the Subdivision.

**5.9 Allocation of Assessments for Limited Common Elements.** No Owner shall be charged with any Assessment for a Limited Common Element unless these Covenants or an Amended Declaration covering such Lot provides that the Lot is entitled to use a Limited Common Element and specifies the number of Limited Common Element Assessment Lots allocated to that Limited Common Element. If the Owner is to be obligated to pay an Assessment with respect to any Limited Common Element the Amended Declaration covering the Lot shall: (a) identify the Limited Common Element, if existing, or describe the same in general terms, if proposed; (b) identify the Lots covered by these Covenants or the Amended Declaration which are entitled to use and which shall be obligated to pay Assessments with respect to such Limited Common Element; and (c) specify the number of Lots which shall be allocated to each Limited Common Element. Lots of Limited Common Element Assessments shall be allocated to each designated Lot. Lots of Limited Common Element Assessments shall be allocated in these Covenants or an Amended Declaration in accordance with the following provisions. If Lot and Owner is to be charged with an Assessment for a particular Limited Common Element, the amount of the Assessment for any year payable by such Owner for the Lot shall be computed by dividing the total amount to be raised by the Association for administering, maintaining, repairing or replacing the Limited Common Element for that year, as shown in the Association Budget for that year, by the number of Lots that are entitled to use the pertinent Limited Common Element.

5.10 Funding of Reserve Funds. The Board, in budgeting and levying assessments, shall endeavor, whenever possible, to fund reserves for any or all of its functions, by regularly scheduled payments, included as part of the Common Assessments, rather than by large Special Assessments. Unless the Board finds and determines that it is not necessary, as to a particular reserve fund in a given year, the Common Assessments shall include a component for funding of these reserve funds. Amounts in these reserve funds may be used in the discretion of the Board of Directors, from time to time, for any purpose for which a Common Assessment or Special Assessment may be used. Declarant shall not have any liability for any shortage in reserves occurring at any time or at the time of expiration of the Period of Declarant Control.

5.11 Supplemental Common Assessments. If the estimated sums for any particular fund prove inadequate for any reason, including nonpayment of any Owner's Common Assessment, the Board may, from time to time, levy a supplemental Common Assessment for any of such funds. Such supplemental Common Assessment shall be assessed against the Owner of each Lot, in the same manner Common Assessments are originally assessed each year by the Board with respect to the particular fund. Written notice of any change in the amount of any annual Common Assessment shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change.

5.12 Annual Budgets. The Board of Directors shall cause to be prepared prior to the commencement of each calendar year, a Budget for such calendar year, including a reasonable provision for contingencies and deposits into reserve funds ("**Budget**"). The Budget may show, in reasonable detail, the categories of expenses and the amount of expenses in each fund, and shall reflect any expected income of the Association for the coming calendar year and any expected surplus from the prior year and any existing surplus in any fund. The Budget may include an amount for contingencies and amounts deemed necessary or desirable for deposits to create, replenish or add to the proper reserve fund for major capital repairs, replacements and improvements for Common Elements.

The non-potable irrigation system and its use is a Common Element. As such, the Annual Budget shall include amounts estimated for usage of non-potable irrigation water. Said amount shall be calculated by using previous year's water usage, the anticipated rate for the Town of Berthoud's non-potable water, and any change in the irrigated space (new lots or increase in irrigated common elements). Amounts for the use of the non-potable irrigation system itself shall also be included in the annual budget. Said amount shall be calculated for the upkeep, maintenance, management, and policing the use of the system plus reasonable provisions for contingencies.

Pursuant to C.R.S. Section 38-33.3-303(4), within ninety (90) days after adoption of any proposed budget for the common interest community, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Association to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, as allowed for in the Bylaws, or the Association Rules and Regulations. The budget proposed by the Board does not require approval from the Members and it will be deemed approved by the Members unless at that meeting, the Budget is vetoed by at least sixty-seven (67%) of the votes in the Association,

whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Members must be continued until a subsequent budget proposed by the Board is not vetoed by the Members.

5.13 Commencement of Common Assessments. Common Assessments shall commence on the next quarterly assessment after a Lot has Closed from a Principal Builder to an Owner. A Principal Builder shall not be responsible for Common Assessments on any Lot it owns unless it has held title to that Lot for a two (2) year period and has not sold that Lot to an Owner.

5.14 Payment of Assessment. Common Assessments shall be due and payable in advance to the Association by the assessed Owner during the calendar year in four (4) quarterly installments, on or before January 15, April 15, July 15, and October 15 of each calendar year, or in such other manner and on such other dates as the Board of Directors may designate in its sole and absolute discretion. Notice of the amount of the Common Assessments shall be given to each Owner prior to January 15 of each year, except that notice of a Common Assessment shall be given as soon as possible in the year of Commencement as defined in Section 5.13.

5.15 Failure to Fix Assessment. The failure by the Board of Directors to levy an Assessment for any year shall not be deemed a waiver or modification with respect to any of the provisions of these Covenants or a release of the liability of any Owner to pay the Assessment, or any installment thereof, for that or any subsequent year. No reduction or offset of the Common Assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or Improvements to Common Elements, from any action take to comply with any law or any determination of the Board of Directors or for any other reason.

5.16 Special Assessments. In addition to Common Assessments, the Board of Directors may, subject to the provision hereof, levy Special Assessments for the purpose of raising funds, not otherwise provided under the Budget for Common Assessments, to construct or reconstruct, repair or replace Improvements upon Common Elements or Lots owned by the Association, including necessary personal property related thereto; to add to the Common Elements; to provide for necessary facilities and equipment to offer the services authorized in these Covenants; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in these Covenants. The Board of Directors shall not levy Special Assessments without the vote of at least two-thirds (2/3) of the Members entitled to vote, who are subject to the Special Assessment. Special Assessments for capital Improvements relating to a Limited Common Element shall be levied solely against the group of Owners who own Lots responsible for the Limited Common Element, and such Special Assessments shall be levied solely on the basis of, and in proportion to, the Lots of Limited Common Element Assessments allocated to such Lots. The Association shall notify Owners in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable, and the Owners shall pay any such Special Assessment in the manner so specified. A quorum for purposes of voting upon the foregoing shall be the presence at the beginning of the meeting, in person or by proxy, of Members entitled to cast at least sixty percent (60%) of the vote of the Members who are subject to the Special Assessment of the Association, whichever is less. Members present in person or by proxy at a duly organized

meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members so as to leave less than a quorum. IF the required quorum is not present in person or by proxy at the beginning of any such meetings of Members, another meeting may be called for purposes of voting upon the foregoing, subject to the notice requirements hereinabove specified. The presence, in person or by proxy, of Members entitled to cast at least thirty percent (30%) of the votes (a) of the Members who are subject to Special Assessment, or (b) which may be cast for the election of the Board, whichever is less, shall constitute a quorum at such subsequent meeting.

5.17 Reimbursement Assessments. The Declarant expects that ordinary costs and expenses incurred by the Association, including attorneys' fees, in enforcing these Covenants, the Articles of Incorporation, the Bylaws or the Rules and Regulations will be treated as part of the annual cost of operating the Association. However, in appropriate cases, the Board of Directors may levy an Assessment against an Owner if the willful or repeated failure of that Owner or a Related User to comply with these Covenants, the Articles of Incorporation, the Bylaws or the Rules and Regulations has resulted in the extraordinary expenditure of funds by the Association to cause such compliance. Such Assessment shall be known as a Reimbursement Assessment and shall be levied only after Notice and Hearing, and only if the Board determines that a Reimbursement Assessment is necessary to maintain community harmony. The Board shall give due consideration to not levying and/or waiving Reimbursement Assessments when compliance is ultimately achieved without resort to litigation, and in all cases shall waive Reimbursement Assessments when compliance is achieved within thirty (30) days of notice to the Owner following the levy of the Reimbursement Assessment. The amount of the Reimbursement Assessment shall be due and payable to the Association thirty (30) days after notice to the Owner of the decision of the Board of Directors that the Assessment is owing.

5.18 Late Charges, Interest and Fines. If any Common Assessment, Special Assessment or Reimbursement Assessment or any installment thereof is not paid within fifteen (15) days after it is due, the Owner obligated to pay the Assessment may be required to pay a reasonable late charge to be determined by the Board. Any Assessment or installment of an Assessment which is not paid within thirty (30) days after the date of any Notice of Default given under Section 5.19 shall be charged interest from the date such Assessment became due at eighteen percent (18%) per annum simple interest or such other rate as may be established by the Board from time to time. Following Notice and Hearing, the Owner obligated to pay the Assessment may be required to pay a reasonable fine to be imposed by the Board, and any costs, including reasonable attorneys' fees, incurred by the Association in connection therewith.

5.19 Notice of Default and Acceleration of Assessments. If any Common Assessment, Special Assessment or Reimbursement Assessment or any installment thereof is not paid within thirty (30) days after its due date, the Board of Directors may mail a notice of default (the "Notice of Default") to the Owner, and to each First Mortgagee of the Lot who has requested a copy thereof. The Notice of Default shall specify (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the Assessment or the installments of the Assessment for the then

current calendar year, and the filing and foreclosure of the lien for the Assessment against the Lot of the Owner. The notice shall further inform the Owner of any right to cure the default after acceleration and of any right to bring a court action to assert the nonexistence of a default or any other defense of the Owner. If the delinquent Assessment is not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further demand and may enforce the collection of the full Assessment thereon in any manner authorized by law in these Covenants, subject to the protection afforded to First Mortgagees under these Covenants.

5.20 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner or Owner against whom the same is assessed. In accordance with C.R.S. Section 38-33.3-123(1)(a), the Board may levy its collection costs and reasonable attorney fees as a Reimbursement Assessment as authorized under Section 5.17, without commencing a legal proceeding. In the event of a default in payment of any Assessment or installment thereof, the Board may, in addition to any other remedies provided under these Covenants or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided.

5.21 Lawsuit to Enforce Assessments. The Board may bring a suit at law to enforce any Assessment obligation. Any judgement rendered in such action shall include any late charge, interest, fines and other costs of enforcement, including any reasonable attorney fees, in the amount as the court may determine, against the defaulting Owner.

5.22 Lien to Enforce Assessments. Pursuant to and in accordance with the Act, the Association shall have a statutory lien on a Lot for any Assessment, or installment thereof, from the time that the Assessment, or installment thereof becomes due. All fees, interest, charges, fines, cost of collection, attorney fees and interest outstanding for time to time shall be included in such lien. Recording of the Covenants constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required. However, the Board of Directors or managing agent of the Association may prepare, and record in the county in which the applicable Lot is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a lien is filed, the costs and expenses thereof shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof. The Recording of a notice of lien shall not be a condition precedent to nor delay the attachment of a lien which shall attach as of the first day of any period for which any Assessment is levied. The Association's lien may be foreclosed in like manner as a mortgage on real estate. The Association shall have the power to bid at the foreclosure sale and to acquire and hold, lease, mortgage and convey the Lot. In accordance with the Act, the Association's lien shall constitute a lien on such Lot superior to all other liens and encumbrances, except; (a) liens for real estate taxes and other governmental assessments or charges against a Lot; (b) liens and encumbrances recorded prior to recordation of these Covenants; and (c) all sums unpaid under a Mortgage encumbering a Lot ("First Mortgage") that has first priority over any other Mortgage encumbering such Lot to the extent the Assessments became delinquent after the First Mortgage is recorded. A lien under this Section is also prior to a First Mortgage to the extent of an amount equal to the annual assessments based on a periodic budget adopted by the Association as provided above, which would have become due, in the

absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this Section of an action or nonjudicial foreclosure either to enforce or extinguish the lien. Unless these Covenants provides otherwise, if two or more Associations have liens for assessments created at any time on the same Lot, those liens shall have equal priority. This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the Association. As allowed under C.R.S. Section 38-33.3-316(2)(c), a lien under this Article is not subject to the provisions of Part 2 of Article 41 entitled "Homestead Exemptions" of Title 38, C.R.S. 1973, as amended, or to the provisions of Section 15-11-201, C.R.S. 1973, as amended. Notwithstanding anything herein to the contrary or anything in the Act to the contrary, if federal law applies, no liens for assessments shall be prior to the lien of a mortgage insured or guaranteed by the FHA, VA or other Government Mortgage Agency.

5.23 Statement of Assessments. The Association shall, upon written request of any Owner, Mortgagee or Person with, or intending to acquire, any right, title or interest in a Lot, furnish a certificate in writing signed by an officer or agent of the Association setting forth the amount of unpaid Assessments, if any, with respect to said Lot, the amount of the current annual Assessments for said Lot, the date that such annual Assessments become due and any credit for advance payments. A reasonable fee may be charged by the Board for the issuance of these certificates. Within fourteen (14) days from the receipt of such request and accompanying fee, the Association shall deliver such certificate. Such certificate shall, with respect to the Owner, Mortgagee or Person to whom it is issued, be conclusive against the Association, the Board and all other Owners for all Purposes, that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied. If, within such fourteen (14) day period, no such certificate is furnished to the inquiring party, either personally or by mail, the Association shall have no right to assert a lien upon the Lot for unpaid Assessments which were due at the date of the inquiry.

5.24 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under these Covenants.

## ARTICLE 6 COMMON ELEMENTS

6.1 Owners' Rights of Use and Enjoyment Generally. Subject to the right of the Association to regulate, convey and encumber the Common Elements, all Owners may use the General Common Elements. Each Owner shall have an easement (a) in the applicable General Common Elements for purposes of access to their Lots, and (b) to use the applicable General Common Elements or Limited Common Elements and all other real estate in the Subdivision and Expansion Areas that must become Common Elements for all other purposes specified herein and in any Amended Declaration.

6.2 Right of Association to Regulate Use. The Association, acting through the Board, shall have the power to regulate use of Common Elements by Owners entitled to use the same, and the public, to further enhance the overall rights of use and enjoyment of all Owners entitled to use the same, including imposing reasonable limits on the times of use and numbers of users permitted to use Common Elements.

6.3 Right of Association to Allow Public Use. The Association, acting through the Board, shall have the right to allow members of the general public to use the General Common Elements, subject to reasonable limitations, and provided that use by the general public does not unreasonably interfere with or impair the rights of use and enjoyment of Owners.

6.4 No Partition of Common Elements. No Owner shall have the right to partition or seek partition of the Common Elements or any part thereof.

6.5 Liability of Owners for Damage. Each Owner shall be liable to the Association for any damage to Common Elements or for any expense or liability incurred by the Association, to the extent not covered by insurance, which may be sustained by reason of the negligence or willful misconduct of such Owner or any Related User using the Common Elements through such Owner and for any violation by such Owner or any such Related User of these Covenants or any Rule or Regulation adopted by the Association. The Association shall have the power to levy and collect a Reimbursement Assessment against an Owner after Notice and Hearing to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of these Covenants or of the Rules and Regulations or for any increase in insurance premiums directly attributable to any such damage or any such violation.

6.6 Association Duties if Damage, Destruction, or Required Improvements. In the event of damage to Common Elements (or Limited Common Elements for which the Association has assumed responsibility in accordance with Section 4.23) by fire or other casualty or in the event any governmental authority shall require any repair, reconstruction or replacement of any Common Elements (or Limited Common Elements for which the Association has assumed responsibility in accordance with Section 4.23), the Association shall have the duty to repair, reconstruct or replace the same. Any insurance proceeds payable by reason of damage or destruction of Common Elements by fire or other casualty shall be paid to the Association and shall be used to the extent necessary, to pay the costs or repair, reconstruction or replacement. If funds from insurance proceeds or from reserves for replacement are insufficient to pay all costs of repair, reconstruction or replacement of Improvements damaged or destroyed, or if the Association is required to make repairs, reconstruction or replacements or Improvements by governmental authorities, the Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement or improvement, levy a Special Assessment in accordance with Section 5.16 or if an Owner or group of Owners is liable for such damage, levy a Reimbursement Assessment against the Owner or group of Owners responsible therefor, to provide the additional funds necessary as elsewhere provided in these Covenants. Repair, reconstruction or replacement of Common Elements shall be done under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction and replacement, the Association may deposit the excess proceeds

in the appropriate fund determined by the Board, as a reserve for future maintenance, repair, reconstruction or replacement of General Common Elements, or may be used for Improvements or additions to, or operation of, General Common Elements. If the insurance proceeds were paid as a result of damage to or destruction of a Limited Common Element, any excess proceeds shall be deposited in the applicable fund established for that Limited Common Element and applied solely to the particular Limited Common Element.

6.7 Association Powers in the Event of Condemnation. If any Common Elements or interests therein are taken, under the exercise of the power of eminent domain or by private purchase in lieu thereof, the award in condemnation or the price payable shall be paid to the Association, except to the extent payable to any other Person with an interest in such property, including any Owner of a Limited Common Element and any Mortgagee or such property. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners therein. Any award or funds by the Association shall be held by the Association in the appropriate fund determined by the Board, as a reserve for future maintenance, repair, reconstruction or replacement of Common Elements, or may be used for Improvements or additions to, or operation of, Common Elements. However, if any award is attributable to a Limited Common Element, then the award shall be used solely for the benefit of the Improvements in such Limited Common Element. No affected Person shall be entitled to participate as a party or otherwise in any condemnation proceedings, and each affected Person hereby appoints the Association as its attorney-in-fact for the purposes of this Section.

6.8 Title to Common Elements on Dissolution of Association. In the event of dissolution of the Association, the Common Elements shall, to the extent reasonably possible, be conveyed, dedicated, or transferred to an appropriate public or governmental agency or agencies or to a nonprofit corporation, Association, trust or other organization, to be used, in any such event, for the common benefit of Owners for similar purposes for which the particular Common Elements was held by the Association. To the extent the foregoing is not possible, the General Common Elements shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners in proportion to the number of Lots of Common Assessments allocated to each Owner, as determined in Section 5.7. The proceeds from the sale or disposition of any Improvements in a Limited Common Element shall be distributed to those Owners entitled to use such facility in proportion to the number of Lots of Limited Common Element Assessments allocated to such Owners.

6.9 Non-Potable Water Irrigation System. Non-potable water irrigation system has been established for the Subdivision. Each Lot and all common element landscaping shall be irrigated through the non-potable system. The Association shall be responsible for paying the monthly invoices from the Town of Berthoud for the Subdivision's use of non-potable water based on the Town of Berthoud's established water rates. The Board shall set the rules and regulations for Owner's use of the system. Said rules and regulations shall establish a system and schedule of usage of Owners whereby the Association shall monitor Owner's usage. Should any Owner violate the rules and regulations as adopted by the Board, the Board may levy and collect a Reimbursable Assessment as a "fine" for over usage pursuant to Section 5.17.



ARTICLE 7  
USE GUIDELINES AND RESTRICTIONS APPLICABLE TO THE SUBDIVISION

All real property within the Subdivision shall be held, used and enjoyed subject to the following limitations and restrictions, and subject to the reservations of Declarant set forth in these Covenants. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Architectural Control Committee if the modification or waiver is aligned with the intent of these Covenants and such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or be contained in the Design Guidelines or rules promulgated by the Architectural Control Committee. The Association may adopt Rules and Regulations under Section 4.20, in its sole discretion, to further define any provisions contained in these Covenants, or to add additional requirements and restrictions not specifically addressed herein.

7.1 Owner's Acknowledgment. All Owners are subject to these Covenants and by acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:

- (a) The ability of the Owners to use their Lots is limited by the provisions in the Governing Documents.
- (b) The Board and/or Declarant (pursuant to Article 8 herein) may, in its sole discretion, add, delete, modify, grant variances, create exceptions to, or amend this Article in accordance with these Covenants.
- (c) The Board may, from time to time, adopt and amend definitions of words, phrases and terms used in these Covenants and other Governing Documents.
- (d) The use, enjoyment and marketability of a Lot can be affected by this Article and that this Article may change from time to time.
- (e) The Declarant will enforce against each Owner or Related User such measures that are necessary to ensure the absolute right of Declarant, in Declarant's sole discretion, to continue to develop the Property and expand the Subdivision.

7.2 Maintenance of Property. No property within the Subdivision shall be permitted to fall into disrepair, and all property within the Subdivision, including the Lot itself and any Improvements and landscaping thereon, shall be kept and maintained in a clean, safe, attractive and sightly condition and in good repair. All Improvements must be and remain adequately painted or otherwise finished by the Owner before the surfacing becomes weather-beaten or worn off. Materials which are customarily left unfinished are permitted so long as in the opinion of the Architectural Control Committee they have not become unsightly. Maintenance, repair and upkeep of each Lot shall be the responsibility of the Owner of the Lot. Maintenance, repair and upkeep of General Common Elements (and any Limited Common Element for which the Association has assumed responsibility in accordance with Section 4.23) shall be the responsibility of the Association. Maintenance, repair and upkeep of Limited Common Elements

(the responsibility for which has not been assumed by the Association) shall be the responsibility of the Owners entitled to use such Limited Common Elements. In the event that the Owner of a Lot shall fail to maintain the Lot and Improvements thereon in a manner consistent with the requirements of these Covenants, Design Guidelines or any Amended Declaration, the Association, its management contractor, agents, contractors, and employees shall have the right, in addition to any other remedies, to enter upon the Lot and to repair, maintain, and restore the Lot, the exterior of the residence, and any other improvements on the Lot in the manner contemplated by these Covenants and any Amended Declaration. The Association shall have the right to levy and collect a Reimbursement Assessment against Owner for the cost of such maintenance, repair, and restoration.

7.3 Required Permitting for Improvements. Each Principal Builder or Purchaser that intends to improve a Lot it owns within the Subdivision agrees to obtain and maintain any and all required permits, licenses and approvals from any governmental authority having jurisdiction including, but not limited to, storm water runoff, sediment or erosion control, storm drainage, or any other water or sediment discharge (“**Storm Water Permit**”) which relate to the improvements, and, with respect to such improvements, to comply with any and all requirements, conditions, restrictions or other terms contained in any permit or Storm Water Permit, including, but not limited to, treatment requirements and discharge limitations. Each such Principal Builder or Purchaser further agrees to indemnify, hold harmless and defend Declarant from any claim, liability, loss or damage asserted against Declarant by reason of any failure of such Principal Builder or Purchaser to obtain, maintain or comply with, or fulfill its obligations under, any permit or Storm Water Permit required hereunder. Violation of this provision by a Principal Builder or Purchaser shall permit the Association, after Notice and Hearing, to enter on the property of such Principal Builder or Purchaser and cure the violation or cause compliance with this provision and to levy and collect a Reimbursement Assessment for the costs and expenses of the Association in so doing; provided, however that there shall be no entry into the interior of an Improvement intended for human occupancy without the consent of the Owner thereof unless a clear emergency exists.

7.4 Residential. The Lots are hereby restricted to residential use and uses related to the convenience and enjoyment of such residential use. No buildings or structures shall be premanufactured or moved from other locations onto the Lots or Common Area; and no Common Area or Lot Improvements other than those originally planned or installed by Declarant shall be erected or constructed on the Common Area or upon any Lot unless approved by the Architectural Control Committee or its designated representative. No shed or other out-building shall be used or permitted to be kept or stored on any portion of a Lot, either temporarily or permanently, unless approved by the Architectural Control Committee. Any such buildings shall be located within the applicable setbacks and shall be constructed of the same materials and have the same exterior color as the Residence and shall be subject to approval by the Architectural Control Committee.

7.5 Sales and Construction Facilities of Declarant. Notwithstanding any provision in Article 7, Declarant and participating Principal Builders, their agents, employees and contractors shall be permitted to maintain during the period of construction and sale of the homes in the

Subdivision upon such portion of the Subdivision as Declarant or participating Principal Builders may choose, such facilities as convenient, or incidental to the construction, sale or rental of Lots and homes including, but not limited to, construction and storage areas, construction trailers, model homes and business and sales offices located on any Lots in the Subdivision, lighting and temporary parking facilities for all employees of Declarant, provided, however, that the limit on Declarant's right to use the Property for sales purposes shall not limit its right to use the Property for construction or development purposes; provided further that these rights shall terminate no later than twenty (20) years after the effective date of this Declaration, and provided further, that such use shall not interfere in any way with the right of ingress or egress to any privately owned Lots and the use and enjoyment thereof as a private Residence, nor the rights or ingress or egress to the Common Areas and Improvements thereon, nor the use thereof for recreation or other proper purposes by the Owners and the Members, agents, and Officers of the Association.

7.6 Compliance with Laws. Nothing shall be done or kept on any property within the Subdivision in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction. Any residential structure or Improvement shall be required to conform to the applicable building code and ordinance of the Town of Berthoud. Any approvals of the Architectural Control Committee of plans submitted to them does not expressly or implicitly suggest compliance with any building code or ordinance. The Principal Builder and/or Owner shall be required to obtain any building permit from the Town of Berthoud and obtain the necessary inspections for Certificate of Occupancy to be issued by the Town of Berthoud.

7.7 Rules and Regulations. Rules and Regulations may be adopted by the Board of Directors, provided such Rules and Regulations shall be furnished to Owners prior to the time they are adopted and that Owners be notified as provided in the By-Laws of the Association that the Board of Directors will consider adoption of the Rules and Regulations so that Owners will have an opportunity to be heard or furnish input regarding the adoption and so that such Rules and Regulations shall be uniform and nondiscriminatory. After adoption, a copy of such Rules and Regulations shall be provided to all Owners. The Association may also adopt a fine system to impose monetary penalties for such infractions or take judicial action against any Owner to enforce compliance with such Rules, Regulations or other obligations, including injunctive relief or to obtain damages for noncompliance, all to the extent permitted by law. The Board of Directors may adopt and publish a fine schedule which shall list fines which shall be imposed for violations of this Declaration, the Association By-Laws, Articles of Incorporation, and any Rules and Regulations.

7.8 No Other Business. Lots shall be used for residential purposes only, including uses which are customarily incident thereto and shall not be used at any time for business, commercial or professional purposes; provided, however, that an Owner shall be entitled to conduct business activities from within his Lot, subject to the following restrictions: (i) there shall be no separate access or entrance to such business activity; (ii) the business activity shall be conducted from within the Lot and shall be conducted exclusively by the Owner, without the aid of assistants, employees or independent contractors; (iii) the business activity shall not include the commercial manufacture, creation, exchange, storage or sale of chattels, goods, wares or

merchandise; (iv) the existence or operation of the business activity is not apparent or observable from outside the Lot; (v) the business activity conforms to all zoning requirements for the Project; (vi) the business activity does not involve regular visits to the Lot by customers, patients, clients, suppliers or other business invitees or door-to-door solicitation of residents of the Project; (vii) the business activity does not have any time of signage; and (viii) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, a hazardous or offensive use, or a threat to the safety or security of the other residents of the Project. The term “business”, as used in this Section, shall have its ordinarily and generally accepted meaning and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether such activity is engaged in full or part time, such activity is intended to or does generate a profit or fee or a license is required. No other business activity of any kind shall be conducted in any Lot or on the Project, except that permitted by the Association or otherwise provided herein.

7.9 Setbacks. No portion of any Residence, garage, outbuilding, shed, or other building shall be located outside any applicable setback described in the applicable Town of Berthoud Building and Planning Codes, or in any Plat or other document approved by the governing municipality for the Subdivision.

7.10 Fencing. Fencing is not a requirement for any Lot in the Subdivision. However, any and all fencing in the Subdivision (whether in Common Areas, Limited Common Areas, or on any Lot) shall comply with the intent of these Covenants in that the fencing must compliment, encourage, and enhance the open and natural look and feel in a cohesive and harmonious manner.

**Prior to construction or installation of any fence, all precautions shall be made in order to not damage the non-potable water irrigation system that may run along Lot lines. All utility locations must be established prior to fencing installation. The Principal Builder or Owner who installs fencing shall be strictly liable for any damage to the non-potable irrigation system caused by the installation of fencing.**

Any and all fencing must be approved by the Architectural Control Committee. The specific design, specifications, and stain/coloring of permitted fencing shall be established and changed from time to time by the Architectural Control Committee. However, despite the forgoing, all fencing must comply with the standards set forth in these Covenants unless changed through an Amended Declaration.

All fencing of Lots situated on the same Block of the subdivision shall adhere to the same design specifications, materials, and stain. All fencing must be made of natural or natural composite materials, must have a “natural” look, and may not be painted but must be sealed with an approved preservative treatment. Vinyl or chain link fencing is prohibited. To avoid long

fenced wall corridors, back lot fencing for Lots that back up to an alley shall have a two foot (2') setback from the alley's finished surface. Lot Owners shall be responsible for the maintenance of the space between the alley finished surface and the back lot fence.

Lot fencing must compliment the Residence's exterior design. Each Lot may have (with the exception of certain lots described below) either "Open Space Picket Fencing" or "Privacy Fencing." Privacy Fencing shall have at least 1" (one inch) gap between pickets. To encourage the open feel and increase safety, a long fenced "wall" corridor must be avoided along the open space trail that runs from Fickel Farm Way east to Dorothy Drive on the north side of the Subdivision. As such, Privacy Fencing along the back Lot line is prohibited on Lots 1 through 8 (inclusive), Block 6, and Lots 1 through 9 (inclusive), Block 7, of the Subdivision's First Filing.

Privacy fencing is prohibited in the front yard area of any Lot. Any privacy fencing must be approved by the Architectural Control Committee, must not be taller than six feet (6') in height, must be made of natural or natural composite materials, and must compliment the Residence's exterior design. Security fences and fences for screening purposes are permitted in limited circumstances to screen small areas that are immediately contiguous to the residence (i.e. hot tub screening or minimal outdoor kitchen area screening).

Wing fences (fences that separate a lot's front yard from rear yard) must be a minimum of six feet behind the front face of the structure and a minimum of six feet behind the edge of a porch that wraps around the corner of the structure. At corner lots, the indicated six foot distances shall be increased to ten feet. Front yard fencing is prohibited throughout the Subdivision unless through an Amended Declaration.

Any fenced area in the back yard in which a dog is loose and unattended at any time is a "Dog Run." Dog Runs must be connected to the house and must be confined to the back yard area. Simple and aesthetically concealed wire fencing may be installed on the interior side of Lot fencing permitted in this Section to prevent the escape of loose dogs or pets. Pet fencing may also include any invisible fence on or within the perimeter boundary of an Owner's site per the above fencing standards.

Open, split rail fencing or open picket fencing is encouraged for open areas and common elements as long as the fencing adheres to the harmonious look of the surrounding areas in the Subdivision and is approved by the Committee.

The Architectural Control Committee may prohibit any fence which impairs the line of sight from any driveway to the street. No fence shall be installed which blocks or impedes established drainage ways. In reviewing any proposed construction of fences, the Architectural Control Committee shall apply the covenants and restrictions set forth in these Covenants or any Amended Declaration, and any additional Design Guidelines promulgated by the Architectural Control Committee for the Property as a whole or any particular Plat, or future phases in the Expansion Areas, and the reasonable discretion of the Architectural Control Committee.

Regular physical and aesthetic maintenance of fencing is required in order to keep fencing in good appearance and usability. All fences completed on a Lot shall be maintained, repaired, and replaced by the Lot Owner. Fences shall not be painted but must be sealed with an approved preservative treatment. In the event that the Owner of a Lot shall fail to maintain fencing in a manner consistent with the requirements of these Covenants, the Association shall have the right, in addition to any other remedies, to enter upon the Lot and to repair, maintain, replace or restore the fencing. The Association shall have the right to levy and collect a Reimbursement Assessment against Owner for the cost of such maintenance, repair, restoration, or replacement.

7.11 Antennas and Cell Phone Towers. Unless otherwise provided by law and except for any which may be erected at Declarant's option, no exterior radio or television antennas, poles, cell phone towers, aerials, transmitters or other type of receiving systems shall be erected or maintained without the prior written approval of the Architectural Control Committee. Small new and modern satellite dishes associated with satellite TV or internet services are permissible but must be placed on the rear side of the home away from public view to the greatest extent possible.

7.12 Reconstruction of Improvements. Any improvement which may be damaged or destroyed in whole or in part by fire, hail, windstorm, vandalism, or any other cause or act of God, shall be repaired or rebuilt to its original condition, or such other condition as may be approved in writing by the Architectural Control Committee in a timely manner, or the Owner shall cause the damaged or destroyed Improvement to be demolished and the Lot suitably landscaped so as not to render any such property or any portion thereof, in the opinion of the Board, unsanitary, unsightly, offensive or detrimental to any other property or to its occupants.

7.13 Nuisances. No noise or other nuisance shall be permitted to exist or operate upon any Lot so as to be, in the opinion of the Board, offensive or detrimental to any other property or its occupants. Without limiting the generality of any of the foregoing provisions, no exterior lights, speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any Lot without the prior written approval of the Board. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof, in the opinion of the Board, unsanitary, unsightly, offensive or detrimental to any other property or to its occupants.

7.14 Lighting. No bright lighting, spot lights, high wattage area lighting ("yard lights"), or other outdoor lighting that that is considered offensive, intrusive, or detrimental to any other property or its occupants and does not comply with "dark sky" requirements are permitted. Exterior lighting shall not be directed in such a manner so not to create an annoyance to adjoining properties. Illumination of roofs or features on roofs is prohibited. This does not apply to backyard "bistro" lighting and reasonable holiday lighting so long as holiday lighting is displayed and removed within a reasonable time frame surrounding the specific holiday. Except for "dark sky" compliant lighting to accent landscaping features, lights at entrance doors to

structures, lights at entrances to property, lights along paths or driveways, and motion activated security lighting all may be approved in writing by the Architectural Control Committee. Any permitted exterior lights shall be of attractive design and shall be as small in size as is reasonably practical and shall be placed or located as directed or approved in writing by the Architectural Control Committee or in the Design Guidelines.

7.15 Hazardous Activities. No activities shall be conducted, and no Improvements shall be constructed in the Subdivision which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged within the Subdivision and no open fires shall be lighted or permitted on any Lot, except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed gas fueled fireplace.

7.16 Unsightly Articles and Vehicle Storage. No unsightly article shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers of any kind, mobile homes, recreation vehicles, boats, tractors, campers, wagons, buses, sleighs, motorcycles, motor scooters, snowmobiles, snow removal equipment, garden and maintenance equipment, and commercial vehicles shall not be kept in a manner where they are visible from the public street and shall be kept at all times, except when in actual use, in an approved garage, out-building or in a storage facility located outside the Subdivision. No equipment, tools, lumber, grass trimmings, plant waste, shrub or tree clippings, metals, building materials or scrap shall be kept, stored or allowed to accumulate on any Lot. No lawn or yard art shall be allowed on any Lot without prior approval of the Architectural Control Committee.

After Notice and Hearing, the Association shall have the right to enter upon any Lot in order to remove the vehicle or other unsightly article located upon any Lot in violation of this Section and store the vehicle or article in a storage facility outside the Subdivision. The Association may levy and collect a Reimbursement Assessment to the Owner for any and all costs or expenses, including attorney fees, incurred by the Association for valid removal, transportation and storage of unsightly articles described in this Section. Except for short-term use by guests or invitees of the Owner, no more than four (4) vehicles shall be kept on any Lot. The Owner shall be entitled to park three (3) passenger cars and/or pickup trucks or utility vehicles outside an attached garage on the Lot on an occasional basis for a period which shall not exceed twenty-four (24) consecutive hours. To the extent an Owner utilizes space in the attached garage for other than storing vehicles, the Owner shall be permitted to keep one (1) less vehicle for each garage space so utilized. Without limiting the generality of the foregoing:

- (i) No commercial-type vehicles, other than pickup trucks not in excess of one (1) ton classification as defined by the Colorado Motor Vehicle Department, shall be allowed on the Common Area, any Lot, or any street or driveway within the Project except while engaged in transport to and from any Building or Lot.

- (ii) All vehicles stored or parked on any portion of the Subdivision for any period of time must be properly licensed by the State of Colorado, except those vehicles belonging to visitors or guests of an Owner.
- (iii) No recreational vehicles may be parked or stored on any portion of the Subdivision at any time, except during transport to or from a Building or Lot, or for purposes of loading or unloading, for a period not to exceed twenty-four (24) hours. Notwithstanding the preceding sentence, upon prior written approval of the Architectural Control Committee, a recreational vehicle owned by an Owner's visitor or guest may be parked on the Owner's Lot or an adjacent street or drive for a period not to exceed seventy-two (72) hours. Golf carts, and small personal all-terrain vehicles must be stored within a garage when not in use. Any and all parking is only permitted on designated paved or concrete parking areas. There shall be no parking permitted of any kind (especially recreational vehicles or trailers) along the sides of the garages or dwelling units.
- (iv) No trailers of any kind shall be allowed on any portion of the Subdivision except while directly engaged in transport to or from a Building or Lot.
- (v) No abandoned or inoperative vehicles of any kind shall be parked or stored on any portion of the Subdivision, except in an approved garage or out-building. An "abandoned or inoperative vehicle" shall be defined as any vehicle which is not currently licensed or has not been driven under its own propulsion for a period of seven (7) days or longer; provided, however, that this definition will not include vehicles parked by Owners while on vacation or traveling. The Association may cause a written notice describing the "abandoned or inoperative vehicle" and requesting removal thereof to be served on the Owner in possession of the vehicle or Lot on which the vehicle is located or posted on the vehicle itself. If the vehicle shall not have been removed within twenty-four (24) hours after service or posting of that notice, the Association shall have the right to enter the Lot, if necessary, and to remove the vehicle from the Subdivision and store the vehicle off-site without any liability to the Association. The Association may levy and collect a Reimbursement Assessment to the Owner for any and all costs or expenses, including attorney fees, incurred by the Association for valid removal, transportation and storage of any "abandoned or inoperative vehicle" under this Section.

7.17 Storage and Sheds. No Lot shall be used as storage or work space for repairing, rebuilding or refurbishing any motor or other vehicles, unless such work is performed entirely within an approved garage with the door kept closed at all times (except under such



circumstances in which a closed door would create a health or safety hazard); provided, however, that no vehicle under repair shall be permitted to become an unsightly article or nuisance. No Lot shall be used for the storage of explosives, gasoline or other volatile, inflammatory or incendiary materials or devices. Gasoline, oil, propane or other fuel used in the operation of a snow blower, lawnmower, barbecue grill or the like may be kept within an attached garage if stored in a safe manner in a container designed for the purpose of storing such materials, and which will prevent accidental spills and fires. The Owner shall be solely responsible for maintaining any fuel or other volatile substances in compliance with all applicable laws, any Rules and Regulations imposed by the Association and any requirements imposed by any underwriter of any insurance policy maintained by the Association.

Small storage sheds are permissible if placed in the back yard area, they do not interfere with established drainage patterns, and compliment the look, colors, and exterior materials of the residence. Storage sheds that have an area of more than 100 sq/ft must be approved through the Architectural Control Committee. Storage sheds must be used for storage and may not be occupied by persons or animals. Playhouses shall meet the same requirements as storage sheds. All storage sheds and playhouses (excluding small enclosures part of play yard equipment) must not exceed the height of the first level of the primary residence.

7.18 Signs and Flags. No sign or flag of any kind shall be displayed to the public view on any Lot except for flags of the United States, domestic States, or University flags that are of common and reasonable size. It is strongly encouraged that displaying of flags be off the home but one reasonably sized flag pole is permitted. Smaller seasonal, sales, or event flagging is permissible but only on a temporary basis. Signs shall be solely for advertising the Residence for sale or lease or indicating that the Residence has been “sold” for a period of two weeks after closing. Signs and flags used for sale, administration and directional purposes by Declarant during development of the Project will be permitted without the consent of any Owner or the Association.

7.19 Single-Family Use Only. No Lot and no Residence on any Lot shall be used for any purpose other than for a one single-family residence. However, nothing in this Declaration shall prevent the lease of a Lot by the Owner thereof for residential purposes; provided that such lease shall be in writing and for a minimum term of six (6) months. Short term renting/leasing of homes (such as renting through sites like Airbnb) is prohibited. No commune, co-operative or similar type living arrangement shall be permitted on any Lot.

7.20 Garage Sales. No garage, patio, porch or lawn sale shall be held on any Lot, except that the Owner of any Lot may conduct such sale if the items sold are only his own furniture and furnishings, not acquired for purposes of resale; if such sale is held at such time and in such manner as not to disturb any other resident of the area; and if such sale is held in full compliance with all applicable governmental ordinances, statues, resolutions, rules and regulations, on an infrequent, occasional basis. Owners should take all reasonable steps to

coordinate with other Owners the timing of such sales so as to minimize the frequency of individual sales.

7.21 New Construction. All Residences shall be of new construction and no existing Residences shall be moved onto any Lot. No buildings (excluding permissible or approved playhouses and storage sheds) may be moved onto a Lot without the prior written approval of the Architectural Control Committee and without compliance with the restrictions set forth in this Article 7.

7.22 Storage of Building Materials. No building materials shall be stored on any Lot except temporarily during continuous construction of an Improvement or its approved alteration or Improvement.

7.23 Temporary Structures. No trailer, mobile home, tent or shack or other temporary building, improvement or structure shall be placed upon any Lot, except that temporary structures necessary for storage of tools and equipment and for office space for architects, builders and foremen during actual construction may be maintained by Declarant or Principal Builders, or by an Owner with the prior approval of Architectural Control Committee, such approval to include the nature, size and location of such structure.

7.24 Basketball Hoops and Play Equipment. Certain basketball hoops may be installed with portable base or on a free standing pole along the driveway between the sidewalk and the Residence (caution, there are underground electric, gas, communication, water, and sewer lines). No basketball hoops may be attached to the front of the house or garage.

All play equipment must be located in the backyard area and must be not be of extremely garish, loud or bright colors. All play equipment must not exceed 20% of the backyard area and must not be taller than ten feet 10' in height unless otherwise approved by the Committee.

7.25 Landscaping. All landscaping shall be irrigated by the non-potable water irrigation system. All portions of a Lot not improved with the Residence, driveway, walkways, patios or decks (referred to as the unimproved area of a Lot) shall be landscaped by the Owner thereof; provided, however, that this obligation shall not apply to any Lots owned by Declarant and held for sale. All landscaping shall be installed within a reasonable time from the completion of construction of the Residence (weather permitting) but in no case shall be shall be installed later than six (6) months after a certificate of occupancy has been issued from the Town of Berthoud. Initial Lot landscaping requires Architectural Control Committee approval. All landscaping shall be installed in accordance with landscaping plans submitted to and approved by the Architectural Control Committee which shall be drawn to scale and set forth the location of landscaping, type of landscape materials, and be in accord with the requirements of this paragraph and other provisions of these Covenants.

A minimum of sixty percent (60%) of the unimproved area of each Lot shall be landscaped utilizing "long lived" ground cover such as low maintenance, draught tolerant, lawn grass, fescues, shrubs and trees. Water conservation is a priority for all yard landscaping. The Architectural Control Committee reserves the right to regulate and limit the types of grasses permitted within the Subdivision. A maximum of forty percent (40%) of the unimproved area of each Lot may be landscaped with a combination of non-living durable landscape materials and short lived landscape materials.

The landscaping plan shall include an adequate underground sprinkler system which shall be installed at the time of the initial landscaping and that shall connect to the Subdivision's non-potable water irrigation system.

The space between the detached sidewalk and the curb is defined as the "tree lawn." All tree lawns shall be made of the "long lived" ground cover described above. It is the responsibility of Owners to maintain the tree lawn (including trees) directly adjacent to their Lot.

No landscape materials located within five feet (5') from the back of the curb shall exceed twenty-four inches (24") at mature height. No trees or other landscape material shall be permitted to cause sight distance problems with vehicles entering the adjoining street from driveways or nearby intersections. All disputes regarding sight distance shall be governed by Town of Berthoud sight regulations, if any, which shall be conclusive and binding on all parties. The landscaping of each Lot having once been installed shall be maintained in a neat, attractive, slightly and well-kept condition, which shall include lawns mowed, hedges, shrubs and trees pruned and trimmed, adequate watering, replacement of dead, diseased or unsightly materials, and removal of weeds and debris.

**7.26 Vegetable Garden.** Vegetable gardens must be submitted and approved by the Committee and are only permissible in screened, back yard areas. In no case shall a vegetable garden be larger than 30% of a back yard area.

**7.27 Livestock, Poultry, and Pets.** No animals or pets other than domesticated dogs, cats, and other common household pets shall be allowed in the Subdivision. Raising or keeping livestock such as horses, cows, sheep, goats, poultry, pigs, swine and the like is prohibited. No Owner shall keep more than three (3) common household pets on any Lot at any time, provided that they do not create a nuisance or violate restrictions on noise set forth herein and are not kept, bred or maintained for any commercial purpose. All common household pets shall be allowed upon any Lot subject to any applicable ordinances imposed by any governmental entity having jurisdiction over the Property. All household pets shall be controlled by their owners at all times, and shall not be allowed off their Owner's Lot except when properly leashed and accompanied by the pet owner or a representative thereof. Each Owner of a Lot shall be financially responsible for any damage caused by a household pet kept on the Owner's Lot. The Association shall have the right to repair any damage caused by any such household pet, and the

Association may levy and collect a Reimbursement Assessment from the responsible Owner for the costs associated with any such repairs.

7.28 Roofing. In single-family residential areas, all roofs shall be covered with tile, shingles or other similar high-quality materials which are hail resistant, and as specifically approved by the Architectural Control Committee. Cement tile and metal roofing may be approved, provided they are all necessary to the architectural style of the residence. All non-structural projections from the surface of the roof shall be finished in a compatible or neutral color matching the color of the roof (e.g., exhaust vents or hoods).

7.29 Exterior Design and Colors. All exterior designs and colors must be approved by the Architectural Control Committee. All Improvements shall be designed to fit in with the overall concept and theme of the Subdivision that is overly simplified as “modern country or rural farm living.” Larger front porches that may or may not wrap around the residence are encouraged. Higher roof pitches are encouraged. Prominent front facing garages that significantly protrude from the living quarter footprint are discouraged. Any residential plans should be designed to look attractive from all four sides. All exterior painting or staining shall be of colors in harmony with the other existing homes in the neighborhood or of colors similar to those originally employed in the Subdivision. Colors that emulate historic farm house looks (such as brick reds, denim blues, soft yellows, and white with black features) are generally preferred over plain or bland beiges and light grey colors. Garish, loud, or radical colors (such as bright pink or purples) are not allowed. In general, only those areas that were stained originally shall be re-stained; unpainted surfaces and unstained areas, such as brick or stone, shall not be painted or stained unless specifically approved by the Architectural Control Committee. Further exterior standards may be adopted by the Declarant or the Architectural Control Committee through Design Guidelines.

7.30 Windows. All windows shall have painted or stained wood, vinyl or non-reflective metal frames and dividers. Reflective glass and reflective window tinting are not permitted.

7.31 Window Coverings. All windows shall be covered with curtains, drapes, or other acceptable coverings within no more than six months of occupancy. Window coverings visible from the exterior shall be compatible with the architectural character of the residence. Reflective shades or film type window coverings are specifically prohibited.

7.32 Solar Panels and Windmills. Any solar panels and related appurtenances and equipment, whether included in the original construction or added at a later date, shall be designed and constructed so as to appear as an integrated part of the building architecture. This shall generally mean that the panels shall be roof mounted so that the top surface is flush with the roof surface, with all appurtenances recessed into the structure’s attic. When solar orientation prohibits this approach, the roof shall be altered so that the panels appear to be “built-in”, i.e., shall not be visible. If panels are ground or wall mounted, they shall be integrated into the

structure using compatible materials so that the panels appear as a natural extension of the house. Windmills for the generation of electricity are not permissible on home Lots.

No vegetation or other Improvements (except for Improvements constructed upon a Lot by Declarant or other Improvements that have received the prior approval of the Architectural Control Committee) shall be planted, constructed or maintained by any Lot in the Subdivision in such location or of such height as to unreasonably obstruct the operation of any previously existing solar energy installation. In the event of a dispute between Owners in the Subdivision as to the obstruction of operation of a solar energy installation, such dispute shall be resolved in accordance with the provisions for Notice and Hearing contained in the Bylaws of the Association. Any such obstruction shall, upon request of the Board of Directors of the Association, be removed or otherwise altered to the satisfaction of the Board of Directors.

7.33 Garages. Residences within the Subdivision shall have garages with the capacity for at least two (2) cars. No garages (or combination of garages or covered parking areas) shall have the capacity for more than four (4) cars. Due to the size of the Lots, possibilities for detached garages, and uniqueness of the architecture of the structure(s), variances may be granted by the Architectural Control Committee, especially for Lots 1, 2, 6, 7, 8, 9, and 10, Block 14, of the first phase of the Subdivision.

7.34 Swimming Pools/Hot Tubs. Any swimming pools, spas, hot tubs, Jacuzzis, and the like shall be screened from view of adjacent Lots and rights of way, by screening materials and methods approved by the Architectural Control Committee.

7.35 Mechanical Equipment/Utilities. All utilities shall be installed underground. On-grade utility appurtenances, such as electrical transformers, utility meters, etc., shall be screened using approved means. Mechanical equipment, such as air conditioners, heating equipment, etc., shall be installed as an integral part of the architecture whenever possible. Under no circumstances shall these items be roof mounted or located in such a way that they are visible from neighboring properties or public streets.

7.36 Dog Houses/Pet Shelters. Dog houses, pet shelters, and kennels shall be completely screened from the view of adjacent public or private properties and streets, and shall be built from materials compatible with the Residence.

7.37 Play Equipment. Play equipment may be erected within a fenced or screened area, but shall require the approval of the Architectural Control Committee prior to installation. Play equipment shall be of an appropriate scale and approved materials and color. Equipment utilizing natural materials (wood vs. metal) is preferred.

7.38 Driveways. Any modification of a driveway shall require the approval of the Architectural Control Committee prior to construction or installation. In no case shall the width

of the driveway at the curb be widened. Any widening inbound of the curb shall be smoothly transitioned back to the curb.

7.39 Retaining Walls. Any retaining walls shall require approval of the Architectural Control Committee prior to construction or installation. Retaining walls which divert water onto other properties or otherwise substantially alter existing drainage patterns are prohibited.

7.40 Site Grading. The approved drainage plans for the Project are on file with the Town of Berthoud. There shall be no alteration of or interference with the established drainage pattern over any Lot within the Subdivision except as approved in writing by the Architectural Control Committee and to the extent required, the Town of Berthoud. The final grade of all Lots shall be at least six inches (6") below any exterior siding on a Residence. No new grading shall divert water onto other properties or otherwise alter established drainage patterns. Care shall be taken to keep water away from foundations. Downspouts shall discharge onto splash blocks or other devices to prevent saturation of soils at foundations. Irrigation of plant material shall be kept away from foundation. Patios, lawn areas, shrub beds, etc., shall be slopes positively away from foundations to prevent puddling of water.

7.41 Alleyways. No one shall obstruct or block the alleyways in any way including, but not limited to; general storage, parking, storage of vehicles, trailers, campers, any type of structure, garbage not left for collection, landscaping, dirt or natural refuse. Alleys are not intended to be used as vehicle thoroughfares.

Homes that are constructed on Lots 1 through 9 (inclusive), Block 18, and Lots 1 through 9, Block 21, of the first phase of the Subdivision shall be alley loaded. Homes that are constructed on Lots 1 through 7 (inclusive), Block 8, Lots 1 and 2, Block 19, Lots 1 and 2, Block 20, and Lots 1 through 7 (inclusive), Block 11 of the first phase of the Subdivision may be either alley loaded or front loaded but may not be both.

If a home is alley loaded, the entry of the alley loaded garage shall have a minimum setback of ten feet (10') from the side of the finished alleyway.

7.42 Further Subdivision of Lots. Following any subdivision caused by Declarant in compliance with all of the provisions of these Covenants, no Lot or residence thereon in the Subdivision may be further subdivided, nor may any easement or other interest therein less than the whole (including nay time-share estate) be conveyed by the Owner thereof (including the Association, but excluding Declarant) without the prior written approval of the Architectural Control Committee and Declarant. Nothing in this Section shall be deemed to prevent an Owner from, or require the approval of the Architectural Control Committee or Declarant for (a) selling or leasing of a Lot, (b) transferring or selling any Lot to more than one Person to be held by them as tenants in common, joint tenants or tenants by the entirety; provided, however, that any lease or rental agreement must be in writing and be subject to the requirements of any Town Ordinance, these Covenants, the Articles of Incorporation, the Bylaws, the Design Guidelines, the Rules and Regulations, and be subject to any other requirements of the Association.

7.43 Casualty Insurance for Improvements. Each Owner within the Subdivision shall be obligated to obtain and keep in full force and effect at all times casualty insurance with respect to all insurable Improvements on the Lot for the full replacement value thereof, including coverage for fire and extended coverage, vandalism and malicious mischief and, if available and if deemed appropriate by the Association as evidenced by a resolution of the Board of Directors, including flood risk. In the event of damage or destruction to any insured Improvements, the proceeds of such insurance shall be applied by the Owner thereof, to the extent necessary, to cause the damage or destroyed Improvements to be restored or replaced to its original condition or such other condition as may be approved in writing by the Architectural Control Committee, or to cause the damaged or destroyed Improvement to be demolished and the Lot to be suitably landscaped so as to present a pleasing and attractive appearance.

7.44 Construction Activities. Normal and legally permitted construction activities carried out in the regular course of business by the Declarant of a Principal Builder within the Subdivision shall not be deemed a violation of any of the provisions of contained in these Covenants.

## ARTICLE 8 ARCHITECTURAL APPROVAL

8.1 Approval of Improvements Required. The approval of the Architectural Control Committee shall be required for any Improvement to Property on any Lot, except (a) for any Improvement to Property made by Declarant or a designated a Principal Builder who has received written approval for such Improvement to Property from the Declarant, or (b) for any Improvement to Property which may be exempted in writing or under the Design Guidelines, because approval in such case is not reasonably required to carry out the purposes of these Covenants.

8.2 Improvement of Property Defined. “**Improvement**” to Lot(s) requiring approval of the Architectural Control Committee, shall mean and include, without limitation: (a) the construction, installation, erection or expansion of any building, structure or other Improvement, including utility facilities; (b) the demolition or destruction, by voluntary action, of any building, structure or other Improvement; (c) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed; (d) landscaping, planting, clearing or removing of tree, shrubs, grass or plants; and (e ) any change or alteration of any previously approved Improvement, including any change of exterior appearance, color or texture.

8.3 Membership of Committee. The Architectural Control Committee shall initially consist of three (3) members, all of whom shall be appointed by Declarant. Declarant shall have the continuing right to appoint three (3) members during the Declarant Control Period of the Property. The Association shall have the right to appoint all of such members after the expiration of the Declarant Control Period or in Declarant’s sole and absolute discretion, Declarant relinquishes such right.

Members of the Architectural Control Committee may but shall not necessarily be Owners. Members of the Architectural Control Committee appointed by Declarant may be removed at any time by Declarant and shall serve until resignation or removal by Declarant. During the Declarant Control Period, Declarant shall give written notice to the Association of the appointment or removal of any member of the Committee. After the Declarant Control Period, the Association may at any time, and from time to time, hire paid professionals to be Members of the Architectural Control Committee and may change the authorized number of members of the Architectural Control Committee, but the number of members shall always be an odd number and shall not be less than three (3). After the Declarant Control Period, members of the Architectural Control Committee shall be appointed and removed in the manner set forth in the Bylaws.

8.4 Address of Committee. The address of the Architectural Control Committee shall be at the principal office of the Association.

8.5 Submission of Plans. Prior to commencement of work to accomplish any proposed Improvement, the person or entity proposing to make such Improvement (the "Applicant") shall submit to the Architectural Control Committee at its offices such descriptions, surveys, architectural drawings, landscape drawings, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the Architectural Control Committee shall reasonably request showing the nature, kind, shape, height, width, color, materials and location of the proposed Improvement. The Applicant shall be entitled to receive a receipt for the same from the Architectural Control Committee or its authorized agent. The Architectural Control Committee may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvement. Until receipt by the Architectural Control Committee of all required materials in connection with the proposed Improvement, the Architectural Control Committee may postpone review of any materials submitted for approval. The Architectural Control Committee shall not be responsible for the approval and/or validation of engineering that may be required for any Improvement. In no way shall any provision contained in these Covenants supersede or replace any requirement for approvals from any relevant government entities having jurisdiction or approvals required from the Town of Berthoud.

8.6 Criteria for Approval. The Architectural Control Committee shall approve any proposed Improvement only if it deems, in its reasonable discretion, that the in the location indicated will not be detrimental to the appearance of the surrounding areas of the Subdivision as a whole; that the Improvement will not detract or interfere from the reasonable use and enjoyment of neighboring Lots; that the appearance of the proposed Improvement will be in harmony with the surrounding areas of the Subdivisions; that the Improvement to Property will not detract from the beauty, wholesomeness and attractiveness of the Subdivision as a planned residential community or the enjoyment thereof by Owners; that the upkeep and maintenance of the proposed Improvement will not become a burden on the Association; and that the Improvement is in keeping with the Design Guidelines. The Architectural Control Committee may condition its approval of any proposed Improvement upon the making of such changes therein as the Architectural Control Committee may deem appropriate.



8.7 Design Guidelines. The Architectural Control Committee shall issue Residential Improvement Development Guidelines and Site Restrictions (the “**Design Guidelines**”). The Design Guidelines shall not be recorded.

8.8 Design Review Fee. In the Design Guidelines, the Architectural Control Committee may provide for the payment of a fee to accompany each request for approval of any proposed Improvement. The Architectural Control Committee may provide that the amount of such fee shall be uniform for similar types of proposed Improvements or that the fee shall be determined in any other reasonable manner, such as based upon the estimated amount of time for review. The design review fee may also include professional consultant fees reasonably incurred by the Architectural Control Committee in reviewing any proposed Improvement.

8.9 Decision of Committee. The decision of the Architectural Control Committee shall be made within thirty (30) days after receipt by the Architectural Control Committee of all materials required by the Architectural Control Committee, unless such time period is extended by mutual agreement. Additional information and materials may be requested by the Committee whereas the Applicant shall respond and provide such additional information within thirty (30) days of written request thereof. The decision shall be in writing and if the decision is not to approve a proposed Improvement, the reasons therefor shall be stated. The decision of the Architectural Control Committee shall be promptly transmitted to the Applicant the at address furnished by the Applicant to the Architectural Control Committee.

8.10 Appeal to Association Board. If the Architectural Control Committee denies, imposes conditions on, or refuses approval of a proposed Improvement, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Association and the Architectural Control Committee within twenty (20) days after such denial or refusal. The Board or a tribunal appointed by the Board pursuant to the rules and regulations shall hear the appeal in accordance to the provisions of the rules and regulations for Notice and Hearing, and the Board shall decide whether or not the proposed Improvement or the conditions imposed by the Architectural Control Committee shall be approved, disapproved or modified.

8.11 Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement shall be deemed approved, unless disapproval or a request for additional information or materials is transmitted to the Applicant by the Architectural Control Committee within thirty (30) days after the date of receipt by the Architectural Control Committee of all required materials.

8.12 Prosecution of Work After Approval. After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Improvement, any materials submitted to the Architectural Control Committee in connection with the proposed Improvement and any conditions imposed by the Architectural Control Committee. All landscaping associated with the Improvement shall be completed within thirty (30) days (weather permitting) from the substantial completion of the Improvement. Failure to complete the proposed Improvement within one (1) year after the date of approval, or within such longer period as may be approved in writing by the Architectural Control Committee, or to complete the

Improvement in accordance with the description and materials furnished to, and the conditions imposed by, the Architectural Control Committee, shall constitute noncompliance with the requirements for approval of Improvement. The Committee and the Applicant may agree in writing to alternative timelines and deadlines

8.13 Notice of Completion. Upon completion of the Improvement to Property, the Applicant shall give written Notice of Completion to the Architectural Control Committee. Until the date of receipt of such a Notice of Completion, the Architectural Control Committee shall not be deemed to have notice of completion of such Improvement to Property.

8.14 Inspection of Work. The Architectural Control Committee or its duly authorized representative shall have the right, to inspect any Improvement to Property prior to or after completion, provided that the right of inspection shall terminate sixty (60) days after the Architectural Control Committee shall have received a Notice of Completion from the Applicant.

8.15 Notice of Noncompliance. If, as a result of an inspection or otherwise, the Architectural Control Committee finds that any Improvement (a) has been done without obtaining the approval of the Architectural Control Committee, (b) was not done in substantial compliance with the description and materials furnished to, and any conditions imposed by, the Architectural Control Committee, or (c) was not completed within one (1) year after the date of approval by the Architectural Control Committee, or within such longer period as may have been approved in writing by the Architectural Control Committee, the Architectural Control Committee shall notify the Applicant in writing of the noncompliance; which notice shall be given, in any event, within sixty (60) days after the Architectural Control Committee receives a Notice of Completion from the Applicant. The notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

8.16 Failure of Committee to Act After Completion. If, for any reason other than the Applicant's act or neglect, the Architectural Control Committee fails to notify the Applicant of any noncompliance within sixty (60) days after receipt by the Architectural Control Committee of written Notice of Completion from the Applicant, the Improvement shall be deemed in compliance if the Improvement was, in fact, completed as to the date of Notice of Completion and is, in fact, compliant with the plain written provisions herein.

8.17 Appeal to Association Board of Finding of Noncompliance. If the Architectural Control Committee gives any notice of noncompliance, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Board and the Architectural Control Committee within twenty (20) days after receipt of the notice of noncompliance by the Applicant, if, after a notice of noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Architectural Control Committee shall request a finding of noncompliance by the Board of Directors by giving written notice of such request to the Association and the Applicant within thirty (30) days after delivery to the Applicant of a notice of noncompliance from the Architectural Control Committee. In either event, the Board of Directors or a tribunal appointed by the Board pursuant to the rules and regulations shall hear the matter in accordance with the provisions of the rules and regulations for Notice and Hearing, and

the Board shall decide whether or not there has been such noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same.

**8.18 Correction of Noncompliance.** If the Board of Directors determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of receipt by the Applicant of the ruling of the Board of Directors. If the Applicant does not comply with the Board ruling within such period, the Board may, at its option, record a notice of noncompliance against the real property on which the noncompliance exists, may enter upon such property and remove the noncomplying Improvement, or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred therewith. If such expenses are not promptly repaid by the Applicant or owner of an affected Lot to the Association, the Board may levy a Reimbursement Assessment against the affected Owner of such Lot for such costs and expenses. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or under these Covenants. Neither the Applicant nor the affected Owner of such Lot shall have a claim for damages or otherwise on account of the Association's entry upon the real property and removal of the noncomplying Improvement.

**8.19 No Implied Waiver or Estoppel.** No action or failure to act by the Architectural Control Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Architectural Control Committee or the Board of Directors with respect to any Improvement. Specifically, the approval by the Architectural Control Committee of any Improvement shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvements or any similar proposals, plans, specifications or other materials submitted with respect to any other Improvement.

**8.20 Committee Power to Grant Variances.** The Architectural Control Committee may authorize variances from compliance with any of the provisions of these Covenants or any Amended Declaration, including restrictions upon height, size, floor area or placement of structures or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Architectural Control Committee. If any such variance is granted, no violation of the provisions of these Covenants or any Amended Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of these Covenants or any Amended Declaration for any purpose except as to the particular Lot and particular provision hereof covered by the variance, nor shall the granting of any variance affect the jurisdiction of any Architectural Control Committee of a Sub-association or committee created by any Amended Declaration, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, the zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction.

8.21 Compensation of Members. Members of the Architectural Control Committee may receive compensation for services rendered including reimbursement of out of pocket expenses incurred by them in the performance of their duties hereunder. Such compensation shall be determined by the Board of Directors from time to time and shall be a Common Assessment of the Association.

8.22 Meetings of Committee. The Architectural Control Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Control Committee may, from time to time, by resolution in writing adopted by a majority of the members, designate a representative (the “**Committee Representative**”), who may, but need not, be one of its Members, to take any action, or perform any duties for or on behalf of the Architectural Control Committee, except the granting of approval to any Improvement and granting of variances. The action of such Committee Representative within the authority of such Committee Representative or the written consent or the vote of a majority of the Members of the Architectural Control Committee shall constitute action of the Architectural Control Committee.

8.23 Records of Actions. The Architectural Control Committee shall report in writing to the Board of Directors all final actions of the Architectural Control Committee and the Architectural Control Committee shall keep a permanent record of such reported actions.

8.24 Estoppel Certificates. The Board of Directors shall, upon the reasonable request of any interested party and after confirming necessary facts with the Architectural Control Committee, furnish a certificate with respect to the approval or disapproval of any Improvement or with respect to whether any Improvement was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

8.25 Nonliability for Committee Action. There shall be no liability imposed on the Architectural Control Committee, any member of the Committee, any Committee Representative, the Association, any member of the Board of Directors, or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Architectural Control Committee unless due to the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Architectural Control Committee shall not be responsible for reviewing, nor shall its approval of an Improvement be deemed approval of the Improvement from the standpoint of safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations.

8.26 Construction Period Exception. During the course of actual construction of any permitted structure or Improvement, and provided construction is proceeding with due diligence, the Architectural Control Committee shall temporarily suspend the provisions contained in these Covenants as to the property upon which the construction is taking place to the extent necessary to permit such construction; provided that, during the course of any such construction, nothing is done which will (a) result in violation of any of the provisions of these Covenants upon completion of construction, (b) not be in compliance with the descriptions and materials furnished to, or any conditions imposed by, the Architectural Control Committees or (c)

constitute a nuisance or unreasonable interference with the use and enjoyment of other property in the Subdivision.

## ARTICLE 9 SPECIAL DECLARANT RIGHTS AND RESERVATIONS

9.1 Period of Declarant's Special Rights and Reservations. Declarant shall have and does hereby retain and reserve those certain rights and easements set forth in this Article and elsewhere in these Covenants (collectively, the "**Special Declarant Rights**") with respect to the Subdivision, the Association, the Common Elements and each Lot from the date hereof, until the first to occur of (i) the date which is fifteen (15) years after Recordation of these Covenants, (ii) two years after the time that the last Lot within the Property has been conveyed to a Purchaser, Principal Builder and certificates of occupancy have been issued for the residences, constructed thereon, or (iii) at such time as Declarant, in its sole and absolute discretion, relinquishes such rights and reservations upon the Recordation of an instrument evidencing such relinquishment (the "**Declarant's Rights Period**"). Notwithstanding the lapse or relinquishment of the Declarant's Rights Period, each of the Special Declarant's Rights may be extended as permitted by law or may be reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Board may impose on Declarant's exercise of the Special Declarant Rights. Except as may be set forth to the contrary herein or in any Amended Declaration, the consent of the then existing Owners or Mortgagees shall not be required for Declarant's exercise of any such Special Declarant Rights, and Declarant may proceed therewith without limitation, at its sole option. The Special Declarant Rights shall be deemed accepted and reserved in each deed or other instrument of conveyance or encumbrance of property within the Subdivision made subject to these Covenants, whether or not specifically stated therein. The Special Declarant Rights shall be prior and superior to any other provisions of these Covenants and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of these Covenants. Declarant's consent to any one such amendment shall not be construed as consent to any other or subsequent amendment. Each Special Declarant Right may be transferred or encumbered by Declarant to or for the benefit of any Person by a Recorded instrument describing the right or easement being transferred. Such instrument shall be executed by Declarant and the transferee.

9.2 Right to Expand Subdivision. Declarant shall have and hereby reserves the unilateral right, but not the obligation, to expand the Subdivision to include all or any portion of the Property. In accordance therewith, each Owner hereby grants to Declarant the right to expand the Subdivision and to modify such Owner's rights in and to the Subdivision accordingly. Any developmental right may be exercised with respect to different parcels of real estate at different times.

9.3 Manner of Expansion. Expansion within the Property shall become part of the Subdivision and subject to these Covenants, effective upon the Recordation of an Amended Declaration meeting the requirements hereinafter set forth, together with any supplemental plats applicable thereto. An Amended Declaration may provide for phased expansion so that the Expansion Area may be made subject to the Amended Declaration and these Covenants at different times. An Amended Declaration (a) shall be executed and acknowledged by Declarant

in accordance with Section 10.2, and by the owner of the Expansion Area described therein, if other than Declarant; (b) shall contain an adequate legal description of the Expansion Area, including legal descriptions of Lots and Common Elements; (c) shall contain a reference to these Covenants which shall state its date, its date of Recordation and the book and page of the records of the county clerk and recorder's office where these Covenants is Recorded; (d) shall contain a statement that the Expansion Area is declared to be part of the Subdivision under these Covenants and that the Expansion Area shall be subject to these Covenants; (e) shall state whether the Owners of any Lots therein or other Persons shall be authorized to use any Limited Common Element; (f) shall designate in which Tract or Parcel the Expansion Area is located; (g) shall provide that Lots therein shall be subject to the jurisdiction of a Sub-association or shall not be subject to the jurisdiction of a Sub-association; (h) and may include such other provisions as Declarant deems necessary or appropriate. A deed by which Declarant conveys a parcel of property to another Person may constitute an Amended Declaration if it meets the foregoing requirements. An Amended Declaration may impose on the Expansion Area described therein covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions in addition to those set forth in these Covenants, taking into account the unique and particular aspects of the proposed development of the Expansion Area covered thereby. An Amended Declaration may provide for a Sub-association of Owners within the property described in the Amended Declaration and for the right of the Sub-association to assess such Owners. Upon Recordation of an Amended Declaration, the Expansion Area shall be subject to all of the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in these Covenants.

9.4 Effect of Expansion. In the event any of the Expansion Area is added to the Subdivision as provided herein, the definitions used in these Covenants shall automatically encompass and refer to the Subdivision as expanded; e.g. "**Subdivision**" shall mean the real property described herein plus any additional real property added thereto; similarly, "**Common Element**" and "**Lots**" shall include those areas as described herein as well as those that may be so designated on any Amended Declaration or supplemental plat relating to any real property which is annexed pursuant to Section 9.3. Every Owner of a Lot in the Annexable Area annexed to the Subdivision shall, by virtue of ownership of a Lot within such Annexed Property and upon Recordation of the Amended Declaration, be a Member of the Association and shall be entitled to the same rights and privileges and subject to the same duties and obligations as any other Member. The Recordation of the Amended Declaration shall operate automatically to grant, transfer, and convey to all Owners of Lots located within the Subdivision, and Owners of Lots within the Expanded Area, their respective, appurtenant, undivided rights, titles, interests, privileges, duties and obligations in and to both the existing, appurtenant Common Elements and any additional Common Elements added to the existing Common Elements by virtue of such annexation, if any. Common Assessments for Lots within the Expansion Area shall commence as of the date determined in accordance with Section 5.13. Upon Recordation of the Amended Declaration and any supplemental plat, the additional Lots and Common Elements shall be subject to the terms and provisions of these Covenants. Recordation of the Amended Declaration and any supplemental plat shall automatically vest in each existing Owner the reallocated Allocated Interests appurtenant to its Lot, and vest in each Mortgagee a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Lot.

9.5 Withdrawal of Property by Declarant. Declarant shall have and hereby reserves the unilateral right, but not the obligation to withdraw from any separately described parcel of the Property all or any portion of real property subjected hereby to these Covenants, as applicable, in accordance with the terms and conditions of this Section. Such withdrawal of the real property from the portion of the Property separately described or the Expansion Area, as applicable, may be accomplished by the execution, acknowledgement and Recordation of an instrument entitled “**Notice of Withdrawal**” provided that no Lot within the portion of the Subdivision separately described or the Expansion Area, as applicable, has been conveyed to Purchaser. The Notice of Withdrawal (a) shall be executed and acknowledged by Declarant, and by the owner of the Property, if other than Declarant; (b) shall contain an adequate legal description of the withdrawn property; (c) shall contain a reference to these Covenants and the Amended Declaration for the Annexed Property, if applicable, which reference shall state the date thereof, the date of Recordation thereof and the book and page of the records in the office of the clerk and recorder of the Colorado county where these Covenants and Amended Declaration is recorded; and (d) shall contain a statement and declaration that the withdrawn property is withdrawn from the Expansion Area and shall not be thereafter subject to these Covenants or the Amended Declaration for the Expansion Area, if applicable. The withdrawal shall be effective upon Recording of the Notice of Withdrawal and, upon Recording of the Notice of Withdrawal, the withdrawn property described therein shall no longer be part of the Subdivision or subject to these Covenants or to the Amended Declaration for the Expansion Area, if applicable.

9.6 Withdrawal of Property by Mortgagee. If any Mortgagee has a lien or encumbrance against any portion of the Subdivision prior to the Recordation of these Covenants, or against any portion of the Expansion Area prior to the Recordation of any Amended Declaration applicable to such property, and the lien or encumbrance has not been released, such Mortgagee, upon foreclosing of its lien or encumbrance against such property, may record a Notice of Withdrawal excluding the affected real property from the Subdivision. In such instance, the Board shall reallocate the Allocated Interests as if the foreclosed property were taken by eminent domain by an Amended Declaration prepared, executed and recorded by the Association.

9.7 Expansion or Contraction of the Expansion Area. Subject to any limitations contained herein, Declarant shall have and hereby reserves the unilateral right, but not the obligation, to expand or contract the Expansion Area or to add thereto or delete therefrom real property effective upon the Recordation of a written instrument, executed by Declarant, describing such real property and declaring that such real property shall thereafter be added to or deleted from the Expansion Area.

9.8 Miscellaneous Declarant Developmental Rights Within Subdivision. Declarant shall have and hereby reserves the unilateral right, but not the obligation, to construct or create additional Tracts, Lots or Common Elements, to subdivide Lots, to convert Lots into Common Elements, and to allocate portions of the Common Elements as Limited Common Elements, on all or any portion of the Subdivision. In the event of a conversion of a Lot into a Common Element, the Board shall reallocate the Allocated Interests as if the converted property were taken by eminent domain by an Amended Declaration prepared, executed and recorded by the Association. In the event of a subdivision of a Lot, the Board shall reallocate the Allocated

Interests in any reasonable manner prescribed by Declarant by an Amended Declaration prepared, executed and recorded by the Association. Declarant makes no assurances as to the boundaries, extent or order of the Subdivision upon which Declarant shall exercise any of its Development Rights. The exercise of a Development Right with respect to any one portion of the Subdivision shall not require the exercise of such Development Right or any other Development Right with respect to such portion or any other portion of the Subdivision, the Property or the Expansion Area.

9.9 Reservation and Exercise of Development Rights on Expansion Area. Declarant may from time to time, in its sole discretion, exercise any of the Development Rights on all, any or no portion of the Expansion Area, in whatever order Declarant determines. Declarant makes no assurances as to the boundaries, extent or order of the Expansion Area upon which Declarant may exercise any of its Development Rights. The exercise of a Development Right with respect to one portion of the Expansion Area shall not require the exercise of such Development Right or any other Development Right with respect to any other portion of the Expansion Area, the Subdivision, or the Property.

9.10 Right to Construct Additional Improvements on Common Elements. Declarant shall have and hereby reserves the unilateral right, but not the obligation, to construct additional improvements on Common Elements at any time and from time to time in accordance with these Covenants for the improvement and enhancement thereof and for the benefit of the Association and Owners. Declarant shall convey or transfer such Improvements to the Association and the Association shall be obligated to accept title to, care for and maintain the same as elsewhere provided in these Covenants.

9.11 Declarant's Rights to Use Common Elements in Promotion and Marketing of the Subdivision. During the Declarant's Rights Period, Declarant shall have and hereby reserves the right to reasonable use of Common Elements (including any community amenity located thereon), Lots owned by Declarant or Principal Builder and of services offered by the Association in connection with the promotion and marketing of property within the boundaries of the Subdivision. Without limiting the generality of the foregoing, Declarant may erect, maintain and relocate within and upon any part of the Common Elements (including any community amenity located thereon) and Lots owned by Declarant or a Principal Builder as many signs, temporary buildings and other structures, including without limitation, model homes, offices for construction, sales or leasing purposes of similar facilities, as Declarant may reasonably deem necessary or proper in connection with the promotion, development and marketing of real property within the Subdivision, the number, location and size of which shall only be subject to applicable State or local laws; may use vehicles and equipment on Common Elements and Lots owned by Declarant or a Principal Builder for promotional purposes; and may permit real estate brokers/agents, who are not Owners, to use Common Elements at reasonable times and in reasonable numbers; and may refer to the Association and to the Common Elements any services offered by the Association in connection with the development, promotion and marketing of property within the boundaries of the Subdivision.

9.12 Declarant's Rights to Complete Development of Property. No provision of these Covenants shall be construed to prevent or limit the unfettered rights of Declarant to complete



development of the Property; to construct or alter Improvements on any property owned by Declarant within the Subdivision; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned or maintained by the Association within the Subdivision; or to post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Subdivision. Nothing contained in these Covenants shall limit the right of Declarant or require Declarant to obtain approvals (a) to excavate, cut, fill or grade any property owned by Declarant or to construct, alter, demolish or any replace any Improvements on any property owned by Declarant, or (b) to use any structure on any property owned by Declarant or the Association as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Subdivision, or (c) to require Declarant to seek or obtain the approval of the Architectural Control Committee or of the Association for any such activity or Improvement to Property by Declarant on any property owned by Declarant. Nothing in these Covenants shall limit or impair the Special Declarant Rights of Declarant as elsewhere provided in these Covenants.

9.13 Declarant's Rights to Grant, Create and Use Easements. Declarant shall have and hereby reserves the right to grant, create and use temporary or permanent easements in, on, under, over and across any Lot and any Common Elements for the benefit of any other portion of the Subdivision, whether or not such benefited portion is or will become Subdivision, for access, utilities, drainage, water and any other purposes incident to development and sale of the Subdivision or incident to the exercise by Declarant of any of its Special Declarant Rights.

9.14 Declarant's Rights to Convey Additional Property to Association. Declarant shall have and hereby reserves the right, but shall not be obligated to, convey additional real property and Improvements thereon the Association at any time and from time to time in accordance with these Covenants.

## ARTICLE 10 MISCELLANEOUS

10.1 Term of Declaration. Unless amended as herein provided, all other provisions, covenants, conditions, restrictions and equitable servitudes contained in these Covenants shall be effective until December 31, 2039 and, thereafter, shall be automatically extended for successive periods of ten (10) years each unless terminated by the vote, by written ballot, of Members holding at least ninety-five percent (95%) of the votes of the Association, and the vote of at least ninety-five percent (95%) or the Eligible First Mortgagees (based upon one vote for each Mortgage owned) of Lots in the Association. The termination of these Covenants shall be effective upon the Recording of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Association stating that these Covenants have been terminated by the vote of Members as provided herein.

10.2 Amendment of Covenants by Declarant. Until Recordation of a deed conveying the first Lot subject to these Covenants to a Purchaser or Principal Builder, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in these Covenants may be amended or terminated by Declarant by the Recordation of a written instrument, executed by

Declarant, setting forth such amendment or termination. Within the Declarant's Rights Period, Declarant's exercise of any of its Development Rights hereunder may be exercised by Declarant by the Recordation of a written instrument, executed by Declarant, setting forth such exercised Development Rights. Further, any provision, covenant, condition, restriction or equitable servitude contained in these Covenants, the Articles of Incorporation or the Bylaws which any Government Mortgage Agency requires to be amended or repealed may be amended or repealed solely by Declarant, and no approval, consent or vote of any other person or entity shall be required. Any such amendment or repeal shall be effective upon Recordation of a certificate, executed by the President or Vice President and the Secretary or an Assistant Secretary of the Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been requested or approved by Declarant as herein provided.

10.3 Amendment of Covenants by Association. Upon any of the events described in these Covenants requiring the amendment by the Association of these Covenants, the Association shall amend these Covenants accordingly. The Amended Declaration shall be effective upon the Recording of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Association. Notwithstanding anything to the contrary herein contained, any amendment to this Declaration made during the Declarant's Rights Period affecting any Special Declarant Right or any Development Right that Declarant may exercise during such period, or any amendment to this Declaration made during the Declarant's Control Period affecting a right that Declarant may exercise during such period, or an obligation of Declarant must in each case be approved in writing by Declarant prior to becoming effective.

10.4 Amendment of Covenants by Members. Except as otherwise provided in these Covenants, and subject to provisions elsewhere contained in these Covenants requiring the consent of Eligible First Mortgagees, any provision, covenant, condition, restriction or equitable servitude contained in these Covenants (except as otherwise provided below) may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Members holding at least sixty-seven percent (67%) of the votes of the Association. Any Section of these Covenants pertaining solely to the rights and obligations of Owners entitled to use a particular Limited Common Element, may be amended or repealed at any time and from time to time only upon approval of the amendment or repeal by all Owners entitled to use such Limited Common Element and any reallocation of Limited Common Elements shall be in accordance with the Act. The amendment or repeal shall be effective upon Recordation of a certificate, executed by the President or a Vice President and Secretary or an Assistant Secretary of the Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved by the required number of Owners. Notwithstanding anything to the contrary herein contained, any amendment to this Declaration made during the Declarant's Rights Period affecting any Special Declarant Right or any Development Right that Declarant may exercise during such period or affecting any obligation of Declarant during such period, or any amendment to this Declaration made during the Declarant's Control Period affecting a right that Declarant may exercise during such period or affecting any obligation of Declarant during such period, must in each case be approved in writing by Declarant before becoming effective.

10.5 Amendment of Articles and Bylaws. The Articles of Incorporation and Bylaws may be amended in accordance with the provision set forth in such instrument or, in the absence of such provisions, in accordance with the applicable provisions of the Nonprofit Corporations Act.

10.6 Priority of First Mortgage Over Assessments. Except as otherwise provided in the Act, each First Mortgagee of a Mortgage encumbering a Lot who obtains title to such Lot pursuant to the remedies provided in the Mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such holder acquires title to such Lot.

10.7 Association Right to Mortgage Information. Each Owner hereby authorizes any First Mortgagee holding a Mortgage on such Owner's Lot to furnish information to the Association concerning the status of such First Mortgage and the loan which it secures.

10.8 Notices. Any notice permitted or required to be given under these Covenants shall be in writing and may be given personally or by mail, facsimile or e-mail. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Lot of such Person if no address has been given to the Association and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time in writing to the Association.

10.9 Persons Entitled to Enforce Declaration. The Association, acting by authority of the Board, Declarant, or Principal Builder, or other Owner, and any other Person adversely affected by the failure of another Person to comply with the provisions of these Covenants, any Amended Declaration, the Articles of Incorporation or the Bylaws, shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in these Covenants against such Person. The right of enforcement shall include the right to bring an action for damages as well as an action to enjoin any violation of any provision of these Covenants.

10.10 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in these Covenants, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of these Covenants.

10.11 Enforcement by Self Help. Declarant or the Association, or any authorized agent of either of them, may enforce by self help any of the provisions, covenants, conditions, restrictions or equitable servitudes contained in these Covenants, provided such self help is preceded by Notice and Hearing as set forth in the Bylaws.

10.12 Violations of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Subdivision is hereby declared to be a violation of these Covenants and shall be subject to any and all of the enforcement procedures set forth in these Covenants.

10.13 Remedies Cumulative. Each remedy provided under these Covenants is cumulative and not exclusive.

10.14 Cost and Attorneys' Fees. In any action or proceeding under these Covenants, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees.

10.15 Limitation on Liability. The Association, the Board of Directors, the Architectural Control Committee, Declarant and any member, agent or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

10.16 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Subdivision or Property, or any Improvement thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

10.17 Liberal Interpretation. The provisions of these Covenants shall be liberally construed as a whole to effectuate the purpose of these Covenants.

10.18 Governing Law. These Covenants shall be construed and governed under the laws of the State of Colorado.

10.19 Colorado Common Interest Ownership Act. In the event that any of the terms and conditions of these Covenants are in conflict or inconsistent with the terms and conditions of the Act, the Act shall control. All terms and provisions contained herein, to the extent possible, shall be construed in accordance with the Act.

10.20 Severability. Each of the provisions of these Covenants shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial enforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

10.21 Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

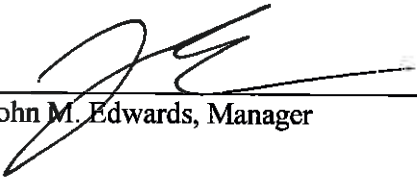
10.22 Captions for Convenience. The titles, headings and captions used in these Covenants are intended solely for the convenience of reference and shall not be considered in construing any of the provisions of these Covenants.

10.23 Mergers or Consolidations. Upon a merger or consolidation of the Association with another Association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated Association or, alternatively, the properties, rights and obligations of another Association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated Association may administer and enforce the covenants, conditions and restrictions established by these Covenants governing the property, together with the covenants and restrictions established upon any other property, as one plan.

10.24 Disclaimer Regarding Safety. Declarant and the Association hereby disclaim any obligation regarding the security of any persons or property within the Subdivision. By accepting a deed to property within the Subdivision, each Owner acknowledges that Declarant and the Association are only obligated to do those acts specifically enumerated herein, or in the Articles of Incorporation, Bylaws and Rules and Regulations, and are not obligated to do any other acts with respect to the safety or protection of persons or property within the Subdivision.

IN WITNESS WHEREOF, Declarant has executed these Covenants the 27<sup>th</sup> day of November 2019.

**Berthoud Homes, LLC**  
A Colorado limited liability company

By:   
John M. Edwards, Manager

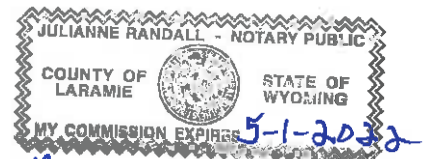
STATE OF WYOMING     )  
  ) §  
COUNTY OF LARAMIE    )

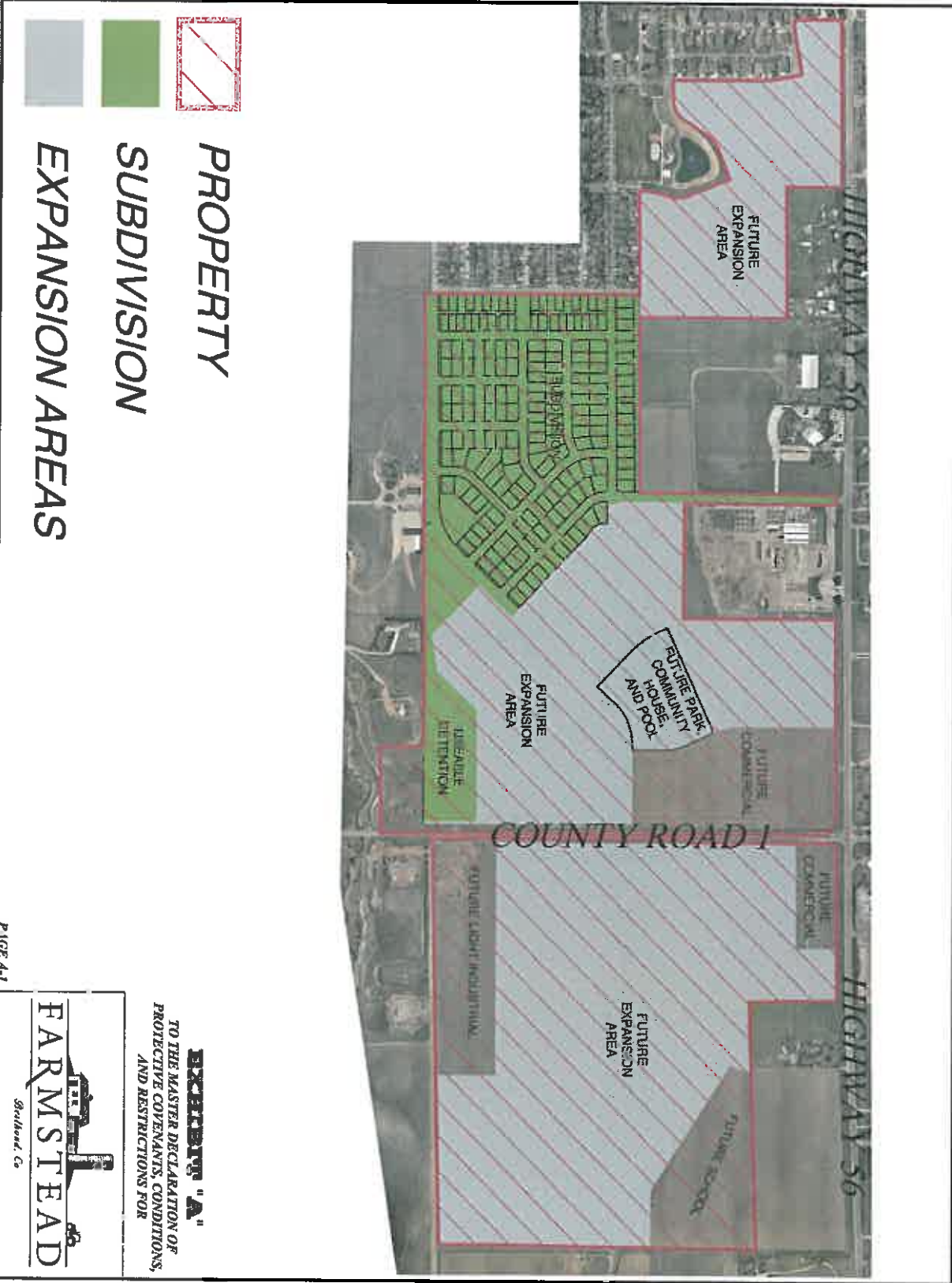
This instrument was acknowledged before me on the 27<sup>th</sup> day of November 2019 by John M. Edwards, as Manager of Berthoud Homes, llc and that he executed this Master Declaration of Protective Covenants, Conditions and Restrictions and acknowledged this instrument to be the free and voluntary act and deed of Berthoud Homes, llc for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute this instrument and, in fact, executed this Master Declaration of Protective Covenants, Conditions and Restrictions on behalf of Berthoud Homes, llc.

WITNESS MY HAND AND OFFICIAL SEAL

My Commission Expires: 5-1-2022

  
Notary Public





**PROPERTY**

**SUBDIVISION**

**EXPANSION AREAS**

PAGE A-1

**FARMSTEAD**  
Berthoud, Co

**EXHIBIT "A"**  
TO THE MASTER DECLARATION OF  
PROTECTIVE COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR