

DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
HERON LAKES COMMUNITY

Declarant: Heron Lakes Investments, LLC, a Colorado Limited Liability Company
Declarant: Waterfront Development, Inc., a Colorado Corporation
Metropolitan District: Berthoud-Heritage Metropolitan District No. 1

When recorded, return to:
BERTHOUD-HERITAGE METROPOLITAN DISTRICTS
1627 East 18th Street
Loveland, CO 80538

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EXHIBIT C: GOLF COURSE DISCLOSURE, RELEASE AND EASEMENT

**DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR BERTHOUD-HERITAGE SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR HERON LAKES (the "Declaration") is made and entered into to be effective as of the 31st day of March, 2017 by HERON LAKES INVESTMENTS, LLC, a Colorado limited liability company and WATERFRONT DEVELOPMENT, INC. ("Declarant"), upon the following terms and conditions:

RECITALS

WHEREAS, Declarant is the owner of that certain real property located in Larimer County, Colorado, within the Town of Berthoud, generally defined as the property within the "Heron Lakes Community" as more particularly described in Exhibit A attached hereto and incorporated herein by this reference, as supplemented and amended from time to time, (the "Property"); and

WHEREAS, Declarant desires to create a system of covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges to protect and enhance the quality, value, aesthetics, desirability, and attractiveness of the Property and Improvements to be developed thereon, which shall be known as Heron Lakes Community (the "Development"); and

WHEREAS, the covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, and other charges set forth herein are in addition to the laws of any and all applicable governmental entities with jurisdiction over the Property, including but not limited to the Town of Berthoud and Larimer County, Colorado; and

WHEREAS, Declarant desires that all Property shall be improved, held, used, occupied, leased, sold, and/or conveyed subject to this Declaration; and

WHEREAS, the Berthoud Heritage Metropolitan Districts Nos.1, 2, 3, 4, 5, 6, 7, 8 and 9 (collectively, the "District") was formed pursuant to Colorado Revised Statutes §32-1-101 *et seq.*, as amended, by order of the District Court for Larimer County, Colorado, and after approval," as hereinafter more fully defined) was organized under the laws of the State of Colorado and approved by eligible electors of the District at a regular election held on May 6, 2008, for the purpose of assisting in the financing and development of the area defined by the Service Plan, as amended from time to time within the boundaries of the Town of Berthoud, Colorado pursuant to the Service Plan for the District and approved by the Board of Trustees of the Town of Berthoud, Larimer County, Colorado (the "Town") by Resolution 03-08 on February 12, 2008, as amended by the First Amendment to the Consolidated Service Plan by Resolution No. 10-15 approved on May 26, 2015 (collectively, the "Service Plan"). Pursuant to Section 32-1-1004(8) of the Colorado Revised Statutes, the District is authorized to enforce the covenants, conditions, restrictions, easements, and provide design review services as set forth

herein, for the Property and Improvements; and

WHEREAS, the representatives of the Districts submitted to the Town Board of Trustees a Service Plan for the Districts which granted authority to the Districts to construct some or all of the public improvements, which may be provided in accordance with an Approved Development Plan or other agreement with the Town; and

WHEREAS, this Declaration shall run with the land and be binding on and inure to the benefit of all parties having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-kind, and assigns; and

WHEREAS, Declarant further hereby states that the Metropolitan District shall maintain, care for and manage the Metropolitan District owned portions of the Property and related Metropolitan District Improvements from time to time, and perform certain functions for the benefit of the Owners as further described herein and within the Service Plan. This Declaration shall also define certain duties, powers, and rights of the Owners, Declarant, and Metropolitan District; and

WHEREAS, this Declaration does not create a Common Interest Community, as defined by the Colorado Common Interest Ownership Act at C.R.S. §38-33.3-103(8), as amended; therefore, this Declaration shall not be governed by the Colorado Common Interest Ownership Act or any provisions thereof.

NOW, THEREFORE, in addition to the foregoing, the Declarant for itself, its successors and assigns, and for and on behalf of all existing Owners, hereby declares that the Property and any Future Parcels which are annexed to this Declaration in the manner provided for herein shall, from the date they become annexed, be owned, held, transferred, conveyed, sold, leased, rented, encumbered, used, occupied, maintained, altered and improved subject to the following covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, and other provisions set forth above and herein, as the same may be amended and/or supplemented from time to time.

ARTICLE 1. DEFINITIONS

Section 1.1 Definitions. When used in this Declaration, unless the context clearly indicates otherwise, capitalized terms not otherwise defined in the Plat of the Property shall have the meanings provided in the following sections of this Article:

1.1.1 "**Affiliate**" means any and all partnerships, ventures, limited liability companies or other entities in which the Declarant owns or any of the entities comprising the Declarant owns, either directly or indirectly, a controlling interest.

1.1.2 "**Agent**" means a person, firm, corporation or other entity employed or engaged as an independent contractor by the Declarant or Metropolitan District.

1.1.3 "**Annexed Property**" means any Future Parcels, or portion thereof, which are annexed to this Declaration by means of a Supplemental Declaration.

1.1.4 "**Architectural Control Committee**" or "**ACC**" shall mean and refer to the committee created pursuant to the terms of this Declaration established to review and approve plans for the construction or alteration of Improvements on Lots as set forth in **Article 2** of this Declaration.

1.1.5 "**Board of Directors**" or "**Board**" means the Board of Directors of the Berthoud-Heritage Metropolitan District No. 1, its successors and assigns.

1.1.6 "**Covenants**" means the covenants, conditions, restrictions and easements of the Heron Lakes Community contained in this Declaration, as amended and supplemented from time to time.

1.1.7 "**Declarant**" means Heron Lakes Investments, LLC, a Colorado limited liability and Waterfront Development, Inc., and/or any other Person to whom the Declarant may, at any time from time to time, assign one or more of the Declarant's rights (which shall be the extent of the Declarant's rights to which such assignee succeeds); provided, that no assignment of any Declarant rights shall be effective unless such assignment is duly executed by the assignor Declarant and recorded in Larimer County, Colorado. The term "Declarant" as used herein includes any entity that results from reorganization or restructuring of the existing entity or the conversion thereof to another form of entity. For purposes of determining which Lots or Future Parcels are owned by Declarant, "Declarant" shall automatically be deemed to include "Affiliates" as that term is defined in this **Article 1**.

1.1.8 "**Declaration**" shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Heron Lakes Community, as amended and supplemented from time to time.

1.1.9 "**Dedicated Easements**" shall mean the utility and/or drainage easements granted through the Property to the appropriate governmental entity or public utility for providing utility service or drainage facilities to the Property.

1.1.10 "**Development**" shall mean the Heron Lakes Community development subject to this Declaration, consisting of the Property described in **Exhibit A** attached hereto and incorporated herein by this reference, as supplemented and amended from time to time. The Development is intended to be the property within the boundaries of the Heron Lakes Community the Berthoud Heritage Metropolitan Districts and all future Annexed Property.

1.1.11 "**District Properties**" means all real and personal property including any Improvements, common areas, facilities and related appurtenances, now or hereafter owned by the Metropolitan District, or with respect to which the Metropolitan District holds an easement for the use, care or maintenance thereof held for the common use and enjoyment of the general public, as the case may be, and for other purposes as may be permitted hereunder.

1.1.12 "**Future Parcels**" means and refers to any real property adjacent to the Property or in its vicinity which the Declarant identifies as annexable to this Declaration or included into the Development, in any recorded document executed by it which refers to this Declaration, as hereafter provided. Future Parcels need not be owned by Declarant so long as the owner thereof consents to the potential annexation of such real estate to this Declaration. Future Parcels may be added to this Declaration by the Declarant, provided such Future Parcels are properly annexed to the Town of Berthoud, included within the Metropolitan District, and provided such inclusion is in accordance with law and any Service Plan or Town requirements.

1.1.13 "**Golf Facilities**" means that portion of the Property (more particularly describe on **Exhibit B** attached hereto) on which an eighteen (18) hole golf course, driving range(s), and those Improvements related to the operation of a golf course, including (without implied limitation) clubhouses, golf learning facilities, pro shops, vending/snack facilities, pedestrian and golf cart paths, maintenance facilities and areas, golf cart repair and parking areas will be located.

1.1.14 "**Golf Facility Permitted Uses**" means the construction, operation and maintenance of the Golf Facilities. In addition to standard golf course operation and practices, this definition shall also include the use of the Golf Facilities for professional and non-professional golf tournaments and other special events.

1.1.15 "**Governing Board**" means the governing board of the Metropolitan District.

1.1.16 "**Guidelines**" shall mean the guidelines and rules published, and as amended and supplemented from time to time in accordance with the terms therein, by the Governing Board.

1.1.17 "**Heron Lakes Community**" shall mean as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference, as supplemented and amended from time to time (the "Property").

1.1.18 "**Improvement(s)**" shall mean and include the following: (a) the construction, installation, alteration, demolition in whole or in part, or expansion of any exterior improvement, building, structure, appurtenance, or other improvements, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sidewalks, trails, bridges, sprinkler systems, garages, driveways, parking areas, fences, including gates in fences, basketball backboards and hoops, swing-sets or other play structures, lawn art, screening walls, retaining walls, stairs, decks, exterior light fixtures, poles, signs, exterior tanks, utilities, facilities, pipes, lines, and exterior air conditioning, cooling, heating and water softening equipment, if any; (b) the staking, clearing, grading, excavation, filling or similar disturbance to the surface of the land, including without limitation any change of grade, change of ground level, change of drainage pattern, or change of stream bed or course, ditch improvements, drainage, retention and detention ponds or facilities, storm sewer and other collection facilities; (c) all initial planting of and subsequent material modifications to landscaping, hedges, windbreaks, berming, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, and all

planting, clearing or removing of trees, shrubs, grass or perennial plants, but in each instance excluding removal of dead or diseased plants and trees and excluding any replacement that is substantially similar to the item being replaced; (d) any change or alteration to the exterior appearance of Improvements previously approved by the ACC, including any change in finish material, color or texture; (e) the repainting and resurfacing of exterior surfaces of structures, including roofing materials, gutters, downspouts, drainspouts, exterior siding or stucco finish, entry doors, windows, trim around doors and windows, surfaces of garage doors, external vents and flues and glass surfaces, exclusive of any replacement that is substantially identical to the item being repainted or resurfaced; and (f) reconstruction of any structures.

1.1.19 "**Lot**" means each platted lot that is now or hereafter included in the real estate described on the attached **Exhibit A**, as the same may be subdivided or replatted from time to time (and "Lot" shall include all lots created as a result of such subdivision or replatting), as well as any other platted lots now or hereafter included in any real estate annexed to this Declaration.

1.1.20 "**Metropolitan District**" means the Berthoud Heritage Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado, its successors or assigns, and/or any other metropolitan district(s) to whom the then Metropolitan District may, from time to time, transfer or assign any or all of the rights, duties, obligations, and responsibilities delineated in this Declaration. Each such assignment or transfer, if any, shall be effective upon recording in Larimer County, Colorado, of a document of transfer or assignment, duly executed by the then Metropolitan District. In the event that the Metropolitan District ceases to exist, Declarant may appoint a successor entity to serve as enforcer of this Declaration, which entity shall assume all rights and responsibilities of the Metropolitan District under this Declaration.

1.1.21 "**Owner**" means each fee simple title holder of a Lot, including without limitation the Declarant or any other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation.

1.1.22 "**Period of Declarant Control**" shall mean that period of time in which the Declarant is entitled to enforce, amend, revise and/or supplement this Declaration, and promulgate rules and regulations subject to this Declaration. The Period of Declarant Control will continue to run from the date of the recording of this Declaration and will end thirty (30) years from the date of recordation hereof.

1.1.23 "**Person**" means a natural person, a corporation, a limited liability company, a partnership, a trust, a joint venture, an unincorporated association, or any other entity or any combination thereof and includes, without limitation, each Owner, Builder, and the Declarant.

1.1.24 "**Plat**" or "**Plats**" means the Heron Lakes PUD First Filing Final Plat, Heron Lakes Second Filing, Heron Lakes Third Filing, Heron Lakes Fourth Filing, Heron Lakes Fifth Filing and Heron Lakes First Addition all approved by the Town of Berthoud and recorded in the real property records of Larimer County, State of Colorado.

1.1.25 "**Project Documents**" means this Declaration, rules and regulations, Guidelines and any documents now or hereafter adopted by or for the Metropolitan District, as amended or supplemented from time to time.

1.1.26 "**Property**" means the real estate described on the attached Exhibit A, and any Future Parcels, or portion thereof, which have been annexed hereto by a Supplemental Declaration or otherwise as provided herein; all of which may be supplemented and amended from time to time, as the same may now or hereafter be improved, and as the Declarant may now or hereafter subdivide or resubdivide any portion thereof; provided, however, that the Property shall include any real estate and Improvements that are annexed and shall not include any real estate or Improvements that have been withdrawn, as provided in this Declaration.

1.1.27 "**Supplemental Declaration**" shall mean a declaration or covenants recorded by Declarant, with respect to any Future Parcel or portion thereof, which annexes such parcel to the terms of this Declaration. A Supplemental Declaration may establish additional covenants, conditions and restrictions applicable to such portion real property, and may contain exceptions, deletions or modifications from the covenants, conditions, restrictions and easements contained herein applicable to such portion of real property. Any recorded document which establishes or creates a declaration or covenant shall be deemed to be a Supplemental Declaration for the purposes of this Declaration, whether or not it is labeled or identified as such.

1.1.28 "**Town**" shall mean the Town of Berthoud, Colorado.

1.1.29 "**Utility Easements**" shall mean the reciprocal, nonexclusive easements for the purpose of providing utility easements granted pursuant to this Declaration or which may be created and identified as such in a Supplemental Declaration or other recorded document executed by Declarant and the then Owner of a Lot.

Section 1.2 Other Terms in Declaration. Other terms in this Declaration may be defined in specific provisions contained herein and shall have the meaning assigned by such definition.

ARTICLE 2. DESIGN AND/OR ARCHITECTURAL REVIEW

Section 2.1 Appointment of Members to ACC. The members of the Architectural Control Committee shall be appointed by the Governing Board. There shall initially be three (3) members of the ACC, namely JON TURNER, JIM BIRDSALL, and LIZ BIRDSALL. Members of the ACC may be, but need not be, directors of the Governing Board.

Section 2.2 Term. Each member of the ACC shall serve at the pleasure of the Governing Board. In the event of the death, incapacity, or resignation of any member of the ACC, the Governing Board shall appoint a successor.

Section 2.3 Design Review Requirements. No Improvements shall be constructed, erected, placed, altered, planted, applied or installed upon any Lot unless said Improvements are in full compliance with the provisions of the Project Documents and unless at least two (2) sets of complete plans and specifications therefor (said plans and specifications to show exterior design, height, dimensions, roof slopes, materials, color, location, setbacks, and both elevation (vertical) and plan (horizontal) views of the Improvements, and, as applicable, the location and size of driveways, location, size, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the ACC, shall have been first submitted to and approved in writing by the ACC.

2.3.1 The ACC shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures. In its review of such plans, specifications and other materials and information, the ACC may require as a condition to its considering an approval request that the applicant(s) pay or reimburse the ACC for the expenses incurred by the ACC in the review process.

2.3.2 In addition to the foregoing review and approvals, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by the applicable governmental entity, if required, shall be a precondition to commencement of any construction of, alteration of, addition to or change in any Improvement.

2.3.3 The Governing Board of the Metropolitan District may at any time, from time to time, appoint a representative to act on its behalf. If the Governing Board does so, then the actions of such representative shall be the actions of the Governing Board, subject to the right of appeal as provided below. However, if such a representative is appointed by the Governing Board, then the Governing Board shall have full power over such representative, including without limitation the power to at any time withdraw from such representative any of such representative's authority to act on behalf of the Governing Board and the power to at any time remove or replace such representative.

2.3.4 In addition to the foregoing Sections, the ACC shall have the power to delegate the responsibility for reviewing any application submitted to the ACC to a professional architect, landscape architect, engineer, or other professional Person who is qualified to review the issues raised in the application. The ACC shall also have the power to require that the applicant pay the fees reasonably incurred by the ACC in retaining such professional to review the application submitted.

Section 2.4 Guidelines. The Governing Board of the Metropolitan District is authorized to promulgate design and/or architectural standards, rules, regulations and/or guidelines (collectively the "Guidelines"). Any such Guidelines may be included in rules and regulations promulgated by the Metropolitan District as set forth in Section 6.1 of this Declaration ("Rules and Regulations"). Without limiting the generality of the foregoing, such

Guidelines may contain provisions to clarify the designs and materials that may be considered in design approval, may state requirements for submissions, may state procedural requirements, or may specify acceptable Improvement(s) that may be installed without the prior approval of the ACC. By way of example, and not by way of limitation, such provisions may state that a certain type of screen door will be acceptable and will not require approval, or may state that only one or more types of fences are acceptable and no other types will be approved. All Improvements proposed to be constructed, and any Guidelines that are adopted, shall be done and used in accordance with this Declaration.

Section 2.5 Procedures. The ACC shall approve or disapprove all requests for approval within thirty (30) days after the complete submission of all plans, specifications, and other materials and information which the ACC may require in conjunction therewith. A stamped or printed notation, initialed by a member of the ACC, affixed to any of the plans and specifications, shall be deemed sufficient writing. However, the ACC shall not be required to maintain records of plans, specifications or other documents or information that have been submitted to it for approval. Approval by the ACC shall be conclusive evidence of compliance with this Article 2, provided that the Improvements are constructed in compliance with the plans and specifications as approved. Failure to approve the plans and specifications within thirty (30) days shall be deemed disapproval.

Section 2.6 Voting and Appeals. A majority vote of the ACC is required to approve a request for architectural approval or any other matter to be acted on by the ACC, unless the ACC has appointed a professional representative to act for it, in which case the decision of such professional representative shall control. In the event a professional representative acting on behalf of the ACC decides a request for architectural approval which is adverse to the applicant, then the applicant shall have the right to an appeal of such decision to the full ACC, upon a written request therefor submitted to the ACC within ten (10) days after such decision by the ACC's professional representative. In the event the ACC decides a request for architectural approval which is adverse to the applicant, then the applicant shall have the right to an appeal of such decision to the full Governing Board, if different than the ACC, upon a written request therefor submitted to the Governing Board within ten (10) days after such decision by the ACC. Notwithstanding anything to the contrary in this Declaration, the Governing Board may intercede of its own volition in matters of architectural approval by the ACC, and the Governing Board may reverse, alter, amend, adjust, change, or otherwise modify any decisions of the ACC at any time, so long as any one or more Owners are not unduly prejudiced thereby.

Section 2.7 Prosecution of Work After Approval. After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and diligently as reasonably possible and in complete conformity with all conditions and requirements of the approval. Failure to complete the proposed Improvement within one (1) year after the date of approval of the application or to complete the Improvement in complete conformance with the conditions and requirements of the approval, shall constitute noncompliance with the requirement that approval for Improvements be obtained from the ACC; provided, however, the ACC, in its discretion, may grant extensions of time for completion of any proposed Improvements.

Section 2.8 Notice of Completion. Upon the completion of any Improvement, the applicant for approval of the same shall give a written "Notice of Completion" to the ACC. Until the date of receipt of such Notice of Completion, the ACC shall not be deemed to have notice of completion of any Improvement on which approval has been sought and granted as provided in this Article.

Section 2.9 Inspection of Work. The ACC or its duly authorized professional representative shall have the right to inspect any Improvement prior to or after completion in order to determine whether the proposed Improvement is being completed or has been completed in compliance with the approval granted pursuant to this Article; provided, however, that the right of inspection shall terminate sixty (60) days after the ACC shall have received a Notice of Completion from the applicant.

Section 2.10 Notice of Noncompliance. If, as a result of inspections or otherwise, the ACC finds that any Improvement has been done without obtaining the approval of the ACC, or was not done in substantial compliance with the approval that was granted, or was not completed within one (1) year after the date of approval, subject to any extensions of time granted pursuant to **Section 2.7** hereof, the ACC shall notify the applicant in writing of the noncompliance; which notice of noncompliance shall be given, in any event, within sixty (60) days after the ACC receives a Notice of Completion from the applicant. The notice of noncompliance shall specify the particulars of the noncompliance.

Section 2.11 Correction of Noncompliance. If the ACC determines that a noncompliance exists, the Person responsible for such noncompliance shall remedy or remove the same (and return the subject real estate and/or Improvements or structure to its original condition) within a period of not more than forty-five (45) days from the date of receipt of the notice of noncompliance. If such Person does not comply with the ruling within such period, the ACC may, at its option, record a notice of noncompliance against the Lot on which the noncompliance exists, may remove the non-complying Improvement or may otherwise remedy the noncompliance, and the Person responsible for such noncompliance shall reimburse the ACC, upon demand, for all costs and expenses incurred with respect thereto.

Section 2.12 Cooperation and Delegation. The Governing Board shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with, and/or delegate to, any other architectural review committees, or one or more other boards or committees, in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Governing Board in its discretion. The costs and expenses for all such matters, if any, shall be shared or apportioned between such other boards or committees and the Metropolitan District, as the Governing Board may determine in its discretion from time to time. Additionally, the Governing Board shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with, and/or delegate to, other architectural review committees, or one or more other boards or committees, to collect fees, charges, or other amounts which may be due to such entity and to permit any such entity to collect fees, charges, or other amounts which may be due to the

Metropolitan District; in any such instance, the Governing Board shall provide for remittance to such entity of any amounts collected by the Governing Board or to the Metropolitan District of any amounts collected by such entity.

Section 2.13 Access Easement. Each Lot is subject to an easement in favor of the ACC and the Metropolitan District, including their agents, representatives, employees and contractors thereof, for performing any of the actions contemplated in this Declaration, including without limitation Sections 2.9 and 2.11 hereof; and/or for and incidental to investigation and/or enforcement of any term or provision of any of the Project Documents. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on any of the Property, including without limitation any Lot, the Owner responsible for the damage or expense to avoid damage, or the Metropolitan District if it is responsible, is liable for the cost of prompt repair and remediation. Further, the rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive matter; and except that in emergency situations entry upon a Lot may be made at any time provided that the Owner(s) or occupant(s) of each affected Lot shall be notified of emergency entry as early as is reasonably possible. The interior of any residence located on a Lot shall not be subject to the easements provided for in this Section.

Section 2.14 No Liability. The Metropolitan District, the Governing Board, the ACC, and the members thereof, as well as any professional representative of the Metropolitan District, the Governing Board and the ACC appointed to act on its behalf, shall not be liable in equity or damages to any Person submitting requests for approval or to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, in regard to any matter within its jurisdiction hereunder. In reviewing any matter, the Metropolitan District, the Governing Board, and the ACC shall not be responsible for the safety, whether structural or otherwise, of the Improvements submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, nor compliance with any other standards or regulations, and any approval of an Improvement by the Metropolitan District, the Governing Board, or the ACC shall not be deemed an approval of any such matters. No Owner or other Person shall be a third-party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by the Metropolitan District, the Governing Board, or the ACC.

Section 2.15 Variance. The ACC, in its sole discretion, may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other real estate and Improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

Section 2.16 Waivers; No Precedent. The approval or consent of the ACC, or any representative thereof, to any application for approval shall not be deemed to constitute a waiver

of any right to withhold or deny approval or consent by the ACC or any professional representative thereof, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter.

ARTICLE 3. RESTRICTIONS

Section 3.1 Restrictions Imposed. The Property is subject to all requirements, covenants, restrictions and other matters stated on the recorded plats of the Property, or any portion thereof, as well as all other applicable documents. In addition, the Declarant declares that all of the Property shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration. In addition, no unlawful use shall be permitted or made of the Property or any portion thereof. All laws, ordinances and regulations of all governmental bodies having jurisdiction over the Property, or any portion thereof, shall be observed.

Section 3.2 Golf Facility Acknowledgement, Uses Restrictions; Golf Tournaments; Adjacent Lot Disclosures.

3.2.1 The Golf Facility shall be managed by the Golf Course Owner, Agents, Successors or Assigns, or Designees and shall be used for only Golf Facility Permitted Uses. Only golf cars and vehicles used or authorized by the Golf Facility Owner or its Designees to improve, maintain, repair or operate the Golf Facility or in association with Owner approve golf purposes, including, but limited to a golf/tournament or event. No other, non-approved or authorized motorized vehicles designed primarily for off-road use shall be permitted on the Golf Facilities.

3.2.2 Each Lot owner acknowledges that, in connection with any golf tournament held at the Golf Facility from time to time to which members of the public will be invited as spectators or participants, there may be certain inconveniences in association therewith. Such inconveniences may include, by way of example and not limitation, construction by the Golf Facility Owner, tournament operators, sponsor and television partners which may be visible from a Lot, an increase in traffic (including semi-trucks) within the Development, potential for traffic flow interference, use of unbuilt Lots for parking, and additional noise from the buildout, operation and breakdown of the tournament. Each Owner, including Owners of Lots adjacent to any Golf Facility, further acknowledges that no representations are made by Declarant, the Golf Facility Owner, or any other entity that Owners will be afforded any rights to view or attend such tournaments or functions other than such rights as are afforded members of the general public.

3.2.3 Residential Lots that are near or adjacent to the Golf Facility shall be subject to the following the terms and limitations of that certain Golf Course Disclosure, Release and Easement Heron Lakes Golf Course Subdivision, Larimer County, Colorado (attached hereto as Exhibit C).

Section 3.3 Residential Use; Professional or Home Occupation. Residential Lots shall be used for residential use only, including uses which are customarily incidental thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, Owners may conduct business activities within their homes provided that all of the following conditions are satisfied:

3.3.1 the business conducted is clearly secondary to the residential use of the home and is conducted entirely within the home;

3.3.2 the existence or operation of the business is not detectable from outside of the home by sight, sound, smell or otherwise, or by the existence of one or more signs indicating that a business is being operated;

3.3.3 the business does not result in an undue volume of traffic or parking within the Property;

3.3.4 the business conforms to all zoning requirements and is lawful in nature; and

3.3.5 the business conforms to this Declaration and the Guidelines, as well as any rules and regulations that may be imposed by the Metropolitan District, the Governing Board or the ACC from time to time.

Section 3.4 Household Pets. No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in the Property; provided, however, that the Owners and residents of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats or other domestic animals), so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Property. Without limiting the authority of the ACC to determine the existence of a nuisance, an Owner may keep no more household pets than are allowed by applicable law or any Rules and Regulations on a Lot at any one time. All household pets shall be controlled by their Owner and shall not be allowed off the Owner's Lot except when properly leashed and accompanied by the Owner or his or her representative, who shall be responsible for collecting and properly disposing of any animal waste. The ACC shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; or that an Owner or resident is in violation of the leash laws of the applicable jurisdiction or other applicable governmental laws, ordinances, or other provisions related to household pets; or that an Owner or resident is otherwise in violation of the provisions of this Section. In any such case, the ACC may take such action(s) as it may deem appropriate. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred as a result of such pets. All Household Pets must be kept and their care shall be in compliance with and shall meet the Town Code Requirements. It shall be the responsibility of the Owners to verify and check local and current Town Codes and maintain their compliance with any and all applicable Ordinances, Rules and Regulations related thereto.

Section 3.5 Temporary Structures; Unsightly Conditions. Except as hereinafter provided, no structure of a temporary character, including, but not limited to, a tent, shack, storage shed (except as approved by the ACC in accordance with the Guidelines), or outbuilding, shall be placed or erected; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary temporary structures for storage of materials may be erected and maintained by the Person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be so located on the Property as to be visible from a street or any other portion of the Property. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant, its agents, employees, and contractors, or a builder with the express written approval of the Declarant, to maintain during the period of construction and sale of any Lots, upon such portion of the Property as Declarant may choose, such facilities as in its sole opinion may be reasonably required, convenient or incidental to the construction and sale or rental of Lots, including, without limitation, a business office, storage area, construction yard, signs, model homes, sales office, construction office, parking areas, and lighting.

Section 3.6 Nuisances. No nuisance shall be permitted which is visible within or otherwise affects any portion of the Property, nor any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of any Lot, or any portion thereof, by its residents. As used herein, the term "nuisance" shall include each violation of any of the Project Documents, but shall not include any activities of the Declarant, or a builder with the express written consent of the Declarant. No noxious or offensive activity shall be carried on, nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.

Section 3.7 No Hazardous Activities; No Hazardous Materials or Chemicals. No activities shall be conducted which are or might be unsafe or hazardous to any Person, real estate or Improvements. Without limiting the generality of the foregoing, no firearms shall be discharged and no open fires shall be lighted or permitted except in a contained barbecue unit while attended and in use for cooking purposes or within a fireplace or a fire pit. Further, no hazardous materials or chemicals shall at any time be located, kept or stored except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to Person, real estate or Improvements.

Section 3.8 No Annoying Light, Sounds or Odors. No light shall be emitted which is unreasonably bright or causes unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be permitted which is noxious or offensive to others. Further, no annoying light, sound or odor shall be permitted which may be seen, heard or smelled from any Lot.

Section 3.9 Restrictions on Trash and Materials. No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside the residence on any Lot nor shall such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup. Further, no trash or materials shall be permitted to accumulate in such a manner as to be visible from any Lot. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be stored or maintained kept in an exposed or unsightly manner.

Section 3.10 Lots to be Maintained. Subject to Section 3.4 hereof, each Lot shall at all times be kept in a clean, Mowed and sightly condition by the Owner(s) thereof.

Section 3.11 Leases. The term "lease," as used herein, shall include any agreement for the leasing or rental of a Lot, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Any Owner shall have the right to lease his Lot, or any portion thereof, as long as all leases provide that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to the provisions of the Project Documents; and that any failure by the lessee to comply with any of the Project Documents, in any respect, shall be a default under the lease. Leases with a time period of less than one month are prohibited, unless approved, in writing, by the Metropolitan District.

Section 3.12 Completion of Landscaping. Within the time frames as hereinafter provided, the Owner (other than the Declarant, or a builder with the express written approval of the Declarant) of each Lot shall install landscaping on all of the Lot which is not covered or enclosed by a building, fence or other structure, and shall thereafter maintain such landscaping in a neat and attractive condition, including periodic and horticulturally correct pruning, removal of weeds, and replacement of landscaping. The Owner of each Lot (other than Declarant, or a builder with the express written approval of the Declarant) shall install all landscape improvements within ninety(90)days of occupancy or by special approval from the ACC. In the case of occupancy in the winter months, from October 1st to March 1st all landscaping must be completed by June. Landscaping plans and other required documents shall be in accordance with the Guidelines, and shall be submitted to the ACC for review and approval prior to the installation of landscaping, except where installed by the Declarant, or a builder with the express written approval of the Declarant. If any Owner fails to comply with this Section, or with the requirements of the ACC in installation or maintenance of landscaping, the Metropolitan District or the ACC may, at the direction of the Governing Board, enter upon such Lot and install or maintain landscaping for which the Owner shall be obligated to pay.

Section 3.13 Maintenance of and Non-Interference with Grade and Drainage; Irrigation Recommendations Around Foundations and Slabs.

3.13.1 Each Owner shall maintain the grading upon Owner's Lot (including grading around the building foundation) at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage. Each Owner agrees that the Owner will not in any way interfere with the established drainage

pattern over the Owner's Lot. In the event that it is necessary or desirable to change the established drainage over any Lot, then the Owner thereof shall submit a plan to the ACC for its review and approval, in accordance with the provisions of **Article 2** of this Declaration and any such change shall also be made in accordance with all laws, regulations and resolutions of any applicable governmental entities. Further, each Owner acknowledges that any such change may affect or void any warranties. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading of a Lot by the builder is completed and accepted by the Town of Berthoud.

ARTICLE 4. RESERVATION OF DEVELOPMENT RIGHTS

Section 4.1 Declarant Exemption. Notwithstanding anything to the contrary contained in any of the Project Documents, the Declarant shall be exempt from the Project Documents, including without limitation the requirement to obtain design approval from the ACC and any covenants or restrictions. Notwithstanding the foregoing, neither the Declarant nor any builder shall be exempt from the requirement to obtain approval from all governmental entities with jurisdiction over the Property.

Section 4.2 General Provisions. Declarant, for a period of thirty (30) years from and after the recording of this Declaration in the real estate records of Larimer County, Colorado, will have the following development rights (collectively, the "Development Rights") with respect to all of the Property.

4.2.1 Period of Declarant Control. Declarant shall have the right to maintain its position as Declarant hereunder and shall have the right to exercise any and all rights, duties and powers granted herein to the Metropolitan District at any time during the Period of Declarant Control. Such right, duty or power shall be automatic, without any need for formal action being taken to evidence the same. Accordingly, all reference herein to the Metropolitan District shall, to the extent appropriate, be construed to mean and refer equally to Declarant during the Period of Declarant Control. Notwithstanding anything set forth herein to the contrary, Declarant shall have all rights of an Owner hereunder.

4.2.2 Completion of Improvements. Declarant shall have the right to complete or make Improvements as indicated on any Plat filed with respect to the Property.

4.2.3 Annexation. Declarant shall have the right at any time, from time to time, to annex to the Property additional real estate and Improvements, including without limitation any real estate and Improvements which may previously have been withdrawn from the Property. By each such annexation, if any, the Declarant shall be deemed to have amended the term "Property" to include such annexed real estate and Improvements. Each such annexation, if any, shall be accomplished by recording of a Supplemental Declaration adding such Future Parcel, recorded in the real property records of the Clerk and Recorder of the County where the Property is located. Such Supplemental Declaration will expressly and unequivocally provide that the real estate and Improvements described therein shall be subject to this Declaration and all terms and provisions hereof. Any such annexation may include provisions which, as to the real estate and

Improvements described therein, adds to or changes the rights, responsibilities and other requirements of this Declaration.

4.2.4 Create Lots. Declarant shall have the right to create Lots on the Property.

4.2.5 Subdivide Lots. Declarant shall have the right to subdivide Lots on any part of the Property, and the right to relocate boundaries between Lots.

4.2.6 Common Areas. Declarant shall have the right to create additional common areas, to convert Lots into common areas, or to convert common areas into Lots, on all or any portion of the Property.

4.2.7 Withdrawal. Declarant shall have the right to withdraw the Property, or any portion thereof, from this Declaration so long as the Declarant owns the portion of the Property to be withdrawn. By each such withdrawal, if any, the Declarant shall be deemed to have amended the term "Property" to exclude such withdrawn real estate and Improvements. The right to withdraw any portion(s) of the Property includes the right to withdraw one or more Lots, or other portion(s) of the Property, at different times and from time to time. Each withdrawal, if any, may be effected by the Declarant recording a withdrawal document in the office of the Clerk and Recorder of the county in which such withdrawn real estate and Improvements are located. A withdrawal as contained in this paragraph constitutes a divestiture, withdrawal, and de-annexation of the withdrawn real estate and Improvements from this Declaration so that, from and after the date of recording a withdrawal document, the real estate and Improvements so withdrawn shall not be part of the Property. If real estate is withdrawn from the Property ("Withdrawn Property"):

(a) The owner(s) of the Withdrawn Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the common areas within the Property.

(b) The owner(s) within the Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the common areas within the Withdrawn Property.

(c) Declarant shall prepare and record in the real property records of the county where the applicable real estate is located whatever documents are necessary to evidence such easements. Such recorded easement(s) shall specify that the owners of the Withdrawn Property and the owners of the Property shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section shall conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

4.2.8 Merger. The right to merge or consolidate the Property with another community

of the same form of ownership.

4.2.9 Sales and Construction Activities. Declarant shall have the right, for Declarant and any builder (but only with the express written consent of the Declarant), and their employees, agents, and contractors to perform, from time to time, and to maintain upon portions of the Lots, such activities and materials as Declarant or such builder deems necessary or incidental to the construction and sale of Lots and development and construction of Improvements. The foregoing includes, without limitation, locating, maintaining and relocating management offices, construction trailers, construction offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations as it determines in its discretion from time to time. Further, nothing contained in any of the Project Documents shall limit the rights of Declarant or a builder, with Declarant's express written approval:

(a) to excavate, cut, fill or grade any real estate (with the consent of the Owner thereof) or to construct, alter, demolish or replace any Improvements;

(b) to use any Improvements on any real estate (with the consent of the Owner thereof) as a construction, management, sales or leasing office or model home in connection with the development, construction or sale of any real estate and/or Improvements; and/or

(c) to seek or obtain any approvals under any of the Project Documents for any other activity.

4.2.10 Master Association. Declarant shall have the right to make the Property subject to a master association.

4.2.11 Dedications. Declarant shall have the right to establish, from time to time, by dedication or otherwise, public streets, utility and other easements for purposes including, but not limited to, public access, access, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions.

4.2.12 Use Agreements. Declarant shall have the right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of parking and/or recreational facilities and/or common area, which may or may not be a part of the Property.

4.2.13 Site Plan Modification/Expansion. Nothing in this Declaration shall preclude the Declarant from modifying any Site Plan, subject to the approval of the required governmental authorities, including but not limited to the purpose of expanding the square footage of Improvements permitted to be constructed on the Lots owned by Declarant, provided that such modification does not have a material and adverse impact on any Lot not owned by Declarant, and does not violate any then-existing zoning, land use, or other requirements of the Town or County in which the Property is located or any other governmental entity having jurisdiction.

Section 4.3 Supplemental Provisions Regarding Development Rights. Without limiting the generality of the foregoing, certain of these Development Rights are explained more fully in this Article below. Further, Declarant reserves the right to amend this Declaration and any Plat in connection with the exercise of any Development Rights, and Declarant also reserves the additional rights retained for the benefit of Declarant in this Article and in other provisions of this Declaration.

Section 4.4 Utility Easements. Declarant hereby reserves for itself and its successors and assigns a general easement upon, across, over, in, and under the Property for ingress and egress and for installation, replacement, repair and maintenance of all utilities and fencing, including, but not limited to, water, sewer, gas, telephone, and electrical, cable and other communications systems. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such services to install and maintain necessary equipment, wires, circuits, and conduits under and over the Property. No water, sewer, gas, telephone, electrical, communications or other utility or service lines, systems or facilities may be installed or relocated on the surface of the Property, unless approved by the ACC. These items may be temporarily installed above ground during construction, if approved by the ACC, subject to the requirements, if any, of any governmental authority having jurisdiction over the Property.

Section 4.5 Drainage Easements. Declarant reserves for itself and its successors and assigns an easement to enter on any portion of the Property for the purpose of modifying the grade of any drainage channels on the Property to improve the drainage of water. Every Lot shall be burdened with easements for natural drainage of storm water runoff from the other portions of the Property; provided, no Person shall alter the natural drainage on any Lot so as to materially increase the drainage of water onto adjacent portions of the Property without the consent of the ACC and the Owner of the affected property. Additionally, Declarant reserves for itself and the Golf Facility Owner and their successors and assigns an easement on the Property for natural drainage of storm water runoff from the Golf Facility.

Section 4.6 General Provision. Any Person using these general easements provided under **Sections 4.4 and 4.5** above shall use its best efforts to install and maintain the easements for utilities or drainage without disturbing the uses of the Owners and the Declarant; shall prosecute its installation and maintenance activities as promptly as reasonably possible; and in the case of utility work, shall restore the surface to its original condition as soon as possible after completion of its work, and shall comply with all requirements of the Guidelines and the ACC. Should any Person furnishing a service covered by these general easements request a specific easement by separate recordable document, Declarant shall have, and is hereby given the right and authority, with the prior approval of the ACC, to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms of this Declaration. This general easement shall in no way affect, void, extinguish, or modify any other recorded easement affecting the Property.

Section 4.7 Reservation for Construction. Declarant hereby reserves for itself and its successors and assigns a perpetual easement and right-of-way over, upon and across the Property for construction, utilities, drainage, and ingress and egress. The location of these easements and

rights-of-way may be made certain by Declarant, with the prior approval of the ACC, by instruments recorded in the real estate records of Larimer County, Colorado. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, reservations, exceptions and exclusions necessary or convenient for the development, use and operation of any other property of Declarant, as long as such action is approved by the ACC and does not hamper the enjoyment of the Property by the Owners.

Section 4.8 Rights Incidental to the Construction Easement. Declarant expressly reserves the right to perform construction work and to store materials in secure areas, in Lots owned by it and in the common areas and the future right to control such work and repairs, and the right of access thereto, until its completion. All work may be performed by Declarant without the consent or approval of any Owner or mortgagee. Declarant reserves an easement through the common areas as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's Development Rights reserved in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the land not designated as reserved for future development in this Declaration or on any Plat for the purpose of furnishing utility and other services to the property so reserved for future development. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey Improvements within those easements anywhere in the common areas.

Section 4.9 Maintenance Easement. A blanket easement is hereby reserved to Declarant for the benefit of the Declarant, Declarant's affiliates, successors and specific assigns, and granted to the Metropolitan District and any member of the Governing Board or ACC, and their respective officers, agents, employees, contractors and assigns, upon, across, over, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to make repairs or to perform the duties, obligations, functions and maintenance which the Metropolitan District, the Governing Board, or the ACC are obligated or permitted to perform pursuant to the Project Documents, including the right to enter upon any Lot for the purpose of performing maintenance and repair thereon, as required by this Declaration, together with the right of access, ingress and egress necessary for such installation, maintenance, operation, repair, replacement and upkeep.

Section 4.10 Golf Facility Easements. The Golf Facility Owner, its respective agents, employees, and contractors, successors, and assigns, shall have a perpetual non-exclusive easement, to the extent reasonably necessary, over the Golf Facilities and Golf Course Property, but not under or through any buildings, for the installation, operation, maintenance, repair, replacement, monitoring, and controlling of irrigation systems and equipment, including without limitation, well, pumps, and pipelines, serving all or portions of any Golf Facility. Each property owner immediately adjacent to the Golf Facilities is hereby advised that the Golf Facilities may spray water from the irrigation system serving the Golf Facilities to the extent reasonably required for the maintenance of such Golf Facility. Declarant, its respective agents, successors, and assigns, employees, and contractors shall have a perpetual, non-exclusive easement to the extent reasonably necessary, over the Property (but not under or through any buildings) for the installation, maintenance, repair, replacement, and monitoring of utility lines, wires, drainage

swales, pipelines and structures serving all or portions of the irrigation water system and golf course facilities.

Section 4.11 Operations and Maintenance Services and Costs. The Declarant hereby authorizes the Metropolitan District to provide certain operations and maintenance services to the Property in lieu of a homeowners' association (as may be authorized or limited by law and the Service Plan for the Metropolitan District), which services may include, operation and maintenance of any Metropolitan District pools, clubhouse, recreation center or recreation facilities, open space, common areas, greenbelts, landscaped medians, monuments, entry features, fencing, landscape buffers and setbacks, ponds, lakes, trails, paths and walkways, non-potable irrigation water facilities and improvements, detention ponds and drainage facilities, covenant enforcement and architectural/design review services, and operations and maintenance services for public facilities and improvements not otherwise dedicated to the Town in accordance with Approved Development Plan. Each Lot Owner may be charged an annual fee, for operation and maintenance services provided by the Metropolitan District as described herein. The annual fee shall be subject to adjustment at the discretion of and as determined by the Governing Board of the Metropolitan District based upon the Metropolitan District's annual budget, and amendments thereto from time to time. The Governing Board of the Metropolitan District shall not be liable for any omission or improper exercise by any agent or independent contractor of any duty, power or function so delegated by written instrument executed by or on behalf of the Governing Board of the Metropolitan District. In accordance with C.R.S. § 32-1-1004(8), any service furnished by the Metropolitan District as contemplated herein shall be funded from revenues derived from within the Property.

Section 4.12 Recorded Easements. In addition to all easements and rights-of-way of record at or before the recording of this Declaration, the Property, and all portions thereof, shall be subject to the easements as shown on any recorded Plat of the Property, or any portion thereof, and the easements established in this Declaration.

Section 4.13 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or Persons to enter upon all streets and upon the Property in the proper performance of their duties.

Section 4.14 Easements Deemed Appurtenant. Any and all conveyances made by Declarant to any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. The easements and rights created herein for an Owner shall be deemed appurtenant to the Lot owned by such Owner. All conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights of way as provided herein, as though set forth in said document in full, even though no specific reference to such easements or rights of way appear.

Section 4.15 Order of Exercise of Development Rights. The fact that Declarant may exercise one or more of Declarant's Development Rights on one portion of the Property will not operate to require Declarant to exercise a Development Right with respect to any other portion of

the Property. The Declarant may exercise its Development Rights on all or any portion of the Property in whatever order of development the Declarant, in its sole discretion, determines.

Section 4.16 Rights Transferable. Any Development Rights created or reserved under this Article or elsewhere in this Declaration for the benefit of the Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in the real estate records of Larimer County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE 5. RELEASE, WAIVER AND CERTAIN DISCLOSURES

Section 5.1 Minor Violations of Setback Restrictions. If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Lot immediately adjoining the structure which is in violation of the setback, and such waiver shall be binding upon all other Owners. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of the Declaration or the Guidelines, if any. A "minor violation," for the purpose of this Section, is a violation of not more than one (1) foot beyond the required setback lines or lot lines. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to, or replacements of, any of such structures. Any variances to setback lines or lot lines as maybe approved by the Declarant, the Metropolitan District, the Governing Board, the ACC will not supersede the Town of Berthoud's setback requirements and/or enforcement of violations to Town Code.

Section 5.2 Limitation on Liability. The Declarant, the Metropolitan District, the Governing Board, the ACC, and their directors, officers, shareholders, partners, members, agents and employees, shall not be liable to any Person for any action or for any failure to act arising out of this Declaration or the Project Documents, unless the action or failure to act was not in good faith and was done or withheld with malice.

Section 5.3 No Representations, Guaranties or Warranties. No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by the Declarant, the Metropolitan District, the Governing Board, the ACC or by any of their officers, directors, shareholders, members, partners, agents or employees, in connection with any portion of the Property, or any Improvement, its physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as specifically set forth in writing.

Section 5.4 Disclaimer Regarding Safety. THE DECLARANT, THE DEVELOPER, THE METROPOLITAN DISTRICT, THE GOVERNING BOARD, THE ACC, AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE PROPERTY, BY ACCEPTING A DEED TO A LOT WITHIN THE PROPERTY, EACH OWNER ACKNOWLEDGES THAT THE

DECLARANT, THE DEVELOPER, THE METROPOLITAN DISTRICT, THE GOVERNING BOARD, THE ACC, AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE OBLIGATED TO DO ONLY THOSE ACTS SPECIFICALLY ENUMERATED HEREIN OR IN THE DECLARATION AND GUIDELINES, IF ANY, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE PROPERTY. THE RELEASE AND WAIVER SET FORTH IN SECTION 5.6 (WAIVER) SHALL APPLY TO THIS SECTION.

Section 5.5 Development Within and Surrounding the Property. Each Owner acknowledges that development within and surrounding the Property may continue for an indefinite period, and that plans for the density, type and location of Improvements, developments or land uses may change over time. Such development may entail changes to or alterations in the access to the Property, view of or from the Property or the Lots, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other off-site aspects or amenities. Development also may entail noise, odors, unsightliness, dust and other inconveniences or disruptions. By accepting a deed to a Lot, each Owner accepts title to such Lot subject to the foregoing, and waives and releases any claim against the Declarant, the Developer, the Metropolitan District, the Governing Board, the ACC, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, arising out of or associated with any of the foregoing.

Section 5.6 Waiver. By acceptance of a deed to a Lot, each Owner hereby releases, waives, and discharges the Declarant, the Developer, the Metropolitan District, the Governing Board, the ACC, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth in this Declaration, and any Guidelines, rules and regulations, and other documents now or hereafter adopted by or for the Metropolitan District, including without limitation, those contained in Sections 5.1 through 5.5 of this Declaration.

Section 5.7 Colorado Governmental Immunity Act. Notwithstanding anything to the contrary, the parties hereto understand and agree that liability for claims for injuries to Persons, real estate or Improvements arising out of the negligence of the Metropolitan District, its Governing Board, officials, and employees, is controlled and limited by the provisions of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq. and C.R.S. §24-30-1501, et seq. Any provision of this Declaration, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the Metropolitan District to the above cited laws.

ARTICLE 6. GENERAL PROVISIONS

Section 6.1 Rules and Regulations. Rules and regulations concerning and governing the Property may be adopted, enacted, modified, amended, repealed, and re-enacted from time to time by the Governing Board. Any such rules and regulations may be included in Guidelines

promulgated by the Governing Board as set forth in Section 2.4 herein. Such rules and regulations are incorporated into this Declaration. The rules and regulations may state procedural requirements, interpretations, clarifications and applications of this Declaration and law, including without limitation, blanket requirements, blanket interpretations, and blanket applications. The Governing Board has the authority to adopt or vary one or more rules and regulations that are different for different types of Lots, if any. Any rules and regulations that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration.

Section 6.2 Enforcement.

6.2.1 Enforcement of the covenants, conditions, restrictions, easements, reservations, and other provisions contained in this Declaration, as amended, may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. The Metropolitan District, the Governing Board, the ACC, and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings. No remedy shall be exclusive of other remedies that may be available. In any action instituted or maintained under this Declaration or any other Project Documents, the prevailing party shall recover its costs and attorney fees incurred in asserting or defending the claim, as well as any and all other sums. Failure by the Metropolitan District, the Governing Board, the ACC, or any Owner (including without limitation the Declarant) to enforce any covenant, restriction or other provision shall in no event be deemed a waiver of the right to do so thereafter.

6.2.2 Without limiting the generality of the foregoing, the Metropolitan District, the Governing Board, and/or the ACC shall have the right to send demand letters and notices, to levy and collect fines, to negotiate, settle and to take any and all other actions with respect to any violation(s) or alleged violation(s) of any of the Project Documents.

6.2.3 The decision of the Metropolitan District, the Governing Board or the ACC to pursue enforcement action in any particular case shall be left to their discretion, subject to the duty to exercise judgment and be reasonable, and further restricted in that the Metropolitan District, the Governing Board or the ACC shall not be arbitrary or capricious in taking enforcement action. A decision of the Metropolitan District, the Governing Board or the ACC not to pursue enforcement action shall not be construed as a waiver of their right to enforce such provisions at a later time under other circumstances or preclude them from enforcing any other covenant, restriction or rule. Without limiting the generality of the foregoing, the Metropolitan District, the Governing Board or the ACC may determine that, under the circumstances of a particular case:

(a) the Metropolitan District's, the Governing Board's or the ACC's legal position is not strong enough to justify taking any or further action;

(b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(c) that it is not in the Metropolitan District's, the Governing Board's or the ACC's best interest, based upon hardship, expense, limited effect on other Owners or other reasonable criteria, to pursue enforcement action.

Section 6.3 Duration, Amendment and Supplement.

6.3.1 Each and every provision of this Declaration shall run with and bind the Property perpetually from the date of recording of this Declaration. Subject to subsection 6.3.2 of this Section, this Declaration may be amended and/or supplemented by the affirmative vote or agreement of the Owners of sixty-seven percent (67%) of the Lots. Notwithstanding the foregoing, the Metropolitan District shall not be required to comply with or enforce any such Owner adopted amendments or supplements to this Declaration until such time as the Metropolitan District receives a recorded copy of such amendment and/or supplement in compliance with Section 6.5 of this Declaration (Notices).

6.3.2 Notwithstanding anything to the contrary, until thirty (30) years after conveyance of all the Property to the first Owners thereof other than the Declarant, no amendment or supplement of this Declaration shall be effective without the prior written approval of the Declarant.

6.3.3 Notwithstanding anything to the contrary, this Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, the Metropolitan District, or any other Person, in order to comply with the requirements, standards, or guidelines of any recognized secondary mortgage markets, the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association, or the federal national mortgage association.

6.3.4 Notwithstanding anything to the contrary, this Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, the Metropolitan District, or any other Person, in order to correct any clerical, typographical or technical errors in this Declaration or to clarify any provision of this Declaration.

6.3.5 Notwithstanding anything to the contrary, this Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, the Metropolitan District, or any other Person, in order to comply with the requirements of any applicable law in the event any provision contained herein does not so comply.

6.3.6 Subsections 6.3.2, 6.3.3, 6.3.4 and 6.3.5 of this Section shall not be amended or deleted without the prior written approval of the Declarant.

Section 6.4 Severability. All provisions of this Declaration are severable. Invalidation of any provision of this Declaration by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 6.5 Notices. Any notice permitted or required in this Declaration shall be deemed to have been given and received upon the earlier to occur of (a) personal delivery upon the Person to whom such notice is to be given; or (b) two (2) days after deposit in the United States mail, registered or certified mail, postage prepaid, return receipt requested, addressed to the Owner at the address for such Owner's Lot.

Section 6.6 Headings. The Article, Section and subsection headings in this Declaration are inserted for convenience of reference only, do not constitute a part of this Declaration, and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions hereof.

Section 6.7 Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular and the use of any gender shall be applicable to all genders.

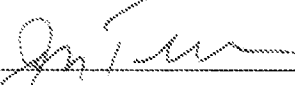
Section 6.8 Runs with the Land; Binding Upon Successors. The benefits, burdens, and all other provisions contained in this Declaration shall be covenants running with and binding upon the Property and all Improvements which are now or hereafter become a part of the Property and any Future Parcel(s). The benefits, burdens, and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Metropolitan District, the Developer, the Declarant, and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein has hereunto set its hand this 21st Day of March, 2017.

DECLARANT:

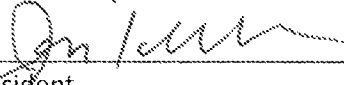
HERON LAKES INVESTMENTS, LLC,
a Colorado limited liability company

Heron Lakes Investments, LLC

By: 
Its: Manager

WATERFRONT DEVELOPMENT, INC.,
a Colorado Corporation

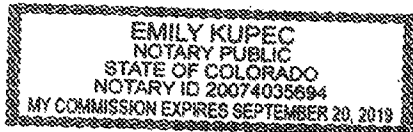
Waterfront Development Inc.

By: 
Its: President

State of Colorado)
) ss.
County of Larimer)

Subscribed and sworn to before me this 21 day of March, 2017,
By Jon A. Turner, as Manager of Heron Lakes Investment, LLC and
By Jon A. Turner, as President of Waterfront Development Inc.

My Commission Expires: 9/20/2019



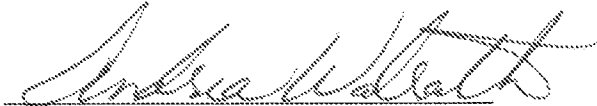

Notary Public

**LENDER'S CONSENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR HERON LAKES COMMUNITY**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned, as the lender holding a security interest via a deed of trust encumbering some or all of the Property under this Declaration, hereby consents to subjection of the Property to this Declaration and all the terms and provisions hereof.

Executed this 24 day of March, 2017

Great Western Bank

By: 

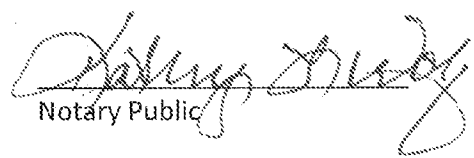
Its: Vice President

State of Colorado)
) ss.
County of Larimer)



Subscribed and sworn to before me this 24th day of March, 2017,
By Andrea K. Blatt as Vice President of Great Western Bank.

My Commission Expires: 6/29/17


Notary Public

**METROPOLITAN DISTRICT'S CONSENT TO DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR HERON LAKES COMMUNITY.**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned, as the Metropolitan District charged with covenant enforcement and architectural review services under this Declaration, hereby consent to subjection of the Property to this Declaration and all the terms and provisions hereof

Executed this 21st day of March 2017

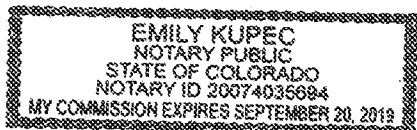
Berthoud Heritage Metropolitan District No. 1

By: *Jon Turner*
President

State of Colorado)
) ss.
County of Larimer)

Subscribed and sworn to before me this 21 day of March, 2017,
By Jon A. Turner, as President of Berthoud Heritage Metropolitan District
No.1.

My Commission Expires: 9/20/2019



Emily Kupec
Notary Public

EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
HERON LAKES COMMUNITY

Legal Description of the Property

All of Blocks 53 through 72, Inclusive and Tracts AA, BB, CC, DD, EE, FF, II, JJ, KK and PP of
Heron Lakes PUD First Filing
and
Heron Lakes Second Filing
and
Heron Lakes First Addition less Tracts K and L
Located in Sections 3, 4, 9, 10 and 15, Township 4 North, Range 69 West of the 6th Principal
Meridian within the Town of Berthoud, County of Larimer, State of Colorado

Tracts of land located in Sections 3, 4, 9, 10 and 15

EXHIBIT B
TO
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
HERON LAKES COMMUNITY

Legal Description of the Golf Facility

Tracts C, G-1, G-2, G-3, G-4, and G-5 of Heron Lakes Second Filing, a replat of Heron Lakes PUD First Filing located in Sections 3, 4, 9, and 10, T 4 N, R 69 W of the 6th PM, Town of Berthoud, County of Larimer, State of Colorado.

EXHIBIT C
TO
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
HERON LAKES COMMUNITY

Golf Course Disclosure, Release and Easement
Heron Lakes Golf Course Subdivision
Larimer County, Colorado

**GOLF COURSE DISCLOSURE, RELEASE AND EASEMENT
HERON LAKES GOLF COURSE SUBDIVISION
LARIMER COUNTY, COLORADO**

All property within the Heron Lakes Subdivision ("Heron Lakes"), including the property within the Berthoud-Heritage Metropolitan Districts Nos. 1-9 (the "Districts") is near or adjacent to the 18-hole Heron Lakes Golf Course (the "Golf Course"), in the Town of Berthoud, Colorado.

By acceptance of a deed to a parcel of property within Heron Lakes or the property adjacent to the Golf Course (a "Site"), or by occupancy of any building or residence upon a Site, each Owner and/or occupant recognizes and assumes the risks of owning or occupying property near or adjacent to a golf course. Such risks include, without limitation, injury or damage to person and/or property arising out of, or resulting from, the design, construction, operation, maintenance and/or use of the Golf Course; noise associated with the Golf Course; golf balls including errant golf balls; carts, maintenance vehicles, and mowers; trespass; acts or omissions of persons using or otherwise on the Golf Course and/or Heron Lakes; ; overspray of chemicals or irrigation; and/or the existence of water hazards, ponds and/or lakes on the Golf Course itself (collectively the "Golf Course Risks").

By acceptance of a deed to a Site, each Owner and/or occupant, and their respective heirs, affiliates, subsidiaries, successors and assigns, acknowledges and agrees that if the Site is adjacent to a golf course, it shall be subject to an easement for errant golf balls, and, by acceptance of a deed to the Site, assumes all risks associated with the Golf Course Risks, including, but not limited to errant golf balls and covenants not to make any claim or institute any action whatsoever against the owner of the Golf Course, any operator or sanctioning body for tournaments held at the Golf Course, Heron Lakes Golf Course, LLC, the Berthoud-Heritage Metropolitan Districts Nos. 1-9, Grantor, or their heirs, successors or assigns, as a result of errant golf balls or any damage which may be caused thereby.

Each Owner and their respective heirs, affiliates, subsidiaries, successors and assigns, hereby releases, waives, and discharges the owner of the Golf Course, any operator or sanctioning body for tournaments held at the Golf Course, Heron Lakes Golf Course, LLC, the Berthoud-Heritage Metropolitan Districts Nos. 1-9, Grantor, the operator of the golf course, the golf course designer, contractors and other consultants of the Owner, or their heirs, successors or assigns and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any Golf Course Risks.

Each Owner is advised that their recourse for any noise, injury or damage to person and/or property arising out of and related to the use of the Golf Course is limited to the golfer and then the Owner/Occupants own homeowner's policy.

**ACKNOWLEDGEMENT TO
GOLF COURSE DISCLOSURE, RELEASE AND EASEMENT
FOR
HERON LAKES GOLF COURSE SUBDIVISION
LARIMER COUNTY, COLORADO**

This is a general acknowledgement regarding the Golf Course Disclosure, Release and Easement for Heron Lakes Subdivision, Larimer County, Colorado (the "Disclosure, Release and Easement").

You, the Buyer, acknowledge that you have received a copy of the Disclosure, Release and Easement, have reviewed the provisions and restrictions applicable to Heron Lakes, and by your execution of these documents, you acknowledge and agree that the lot or lots which are being purchased will be subject to the Disclosure, Release and Easement, and all burdens, obligations and restrictions set forth therein.

You have been advised that you should obtain independent legal counsel in connection with the execution of this Acknowledgement.

You, your heirs, successors, affiliates and assigns agree to be bound by the terms and conditions contained within the Disclosure.

I, _____, as _____ for _____
_____ hereby acknowledge that I have received and read this Golf Course Disclosure, Release and Easement for Heron Lakes Subdivision, Larimer County, Colorado and am duly authorized to execute this acknowledgment on behalf of Buyer(s).

Property: Lot __, Block __, Filing __; Address _____

Buyer Email

Buyer Email

Buyer Email

Date: _____