

**BOX ELDER ESTATES
HOMESITE SUBDIVISION
(BEEHS)**

**Master Declaration
of
Covenants, Conditions and Restrictions**

**MARCH 2004
REVISED COVENANTS**

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**MASTER DECLARATION
OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF
BOX ELDER ESTATES HOMESITES
SUBDIVISION (BEEHS)**

This MASTER DECLARATION of Covenants, Conditions and Restrictions of BOX ELDER ESTATES HOMESITES SUBDIVISION FILING NO. 1 is made this ____ day of, 2004 by Box Elder Estates Homesites Subdivision Limited Liability Company (LLC), hereafter "Grantor".

RECITALS

A. Grantor is the owner of certain real property (the "Property") in the County of Adams, State of Colorado, more particularly described as BOX ELDER ESTATES HOMESITE SUBDIVISION FILING - NO.1 ("BEEHS). In addition, Grantor or an entity granted written permission by the Grantor, without the necessity of approval of any other lot or property owner, may also record a "Notice of Applicability" of this Master Declaration with a legal description of the additional property that the Grantor intends to be subject to this Master Declaration. Any Outlot Area(s) on any Final Plat(s) subsequently designated for conveyance to the Association for open space and/or other purposes shall be accepted by the Association, subject to any improvements required in the Outlot A area being installed by the Grantor, or an entity granted written permission by the Grantor, prior to such conveyance.

B. BEEHS is an area of unique natural beauty, featuring distinctive terrain. It is the desire and intent of Grantor to create a community in which such beauty shall be substantially preserved and, for the enjoyment and convenience of the persons living on the property. These covenants, conditions and restrictions, all of which are hereinafter included in the term "Master Declaration," are intended to secure such objectives.

DECLARATION

NOW, THEREFORE, Grantor hereby declares that BEEHS is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the following uniform covenants, conditions, restrictions and equitable servitudes in furtherance of, and the same shall constitute, a general plan for the subdivision, ownership, improvement, sale, use and occupancy of the Property, and to enhance the value, desirability and attractiveness of the Property. This Master Declaration shall run with the Property, and all parts thereof including all subsequent included property, shall be binding upon all persons having or acquiring any interest in the Property or any part thereof; shall inure to the benefit of and be binding upon every part of the Property and every interest therein; and shall inure to the benefit of, be binding upon, and be enforceable by Grantor, its successors in interest, each Owner and his successors in interest, and the Association and its successors in interest.

**ARTICLE I
DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Master Declaration shall have the meanings hereinafter specified.

ARCHITECTURAL COMMITTEE (AND ANIMAL CONTROL COMMITTEE), hereinafter sometimes "Committee", shall mean the committee created pursuant to Article VIII hereof. The Grantor shall appoint the "Committee" until more than 30 of the lots are occupied by homes owned by persons other than the Grantor. For any area added under the "Notice of Applicability" provisions provided for in the **RECITALS**, the Grantor shall designate the Architectural Committee for said area, until there are more than 75% occupied residences on the lots platted on lands set forth in an Exhibit "A" legal description attached to the "Notice of

Applicability”.

ARCHITECTURAL COMMITTEE RULES, hereinafter sometimes "Committee Rules", shall mean the rules adopted by the Architectural Committee pursuant to Section 8.03 hereof.

ARTICLES shall mean the Articles of Incorporation of the Box Elder Estates Homesite Subdivision Homeowners Association, which have been or will be filed in the office of the Secretary of the State of Colorado, as the same may from time to time be amended.

ASSESSMENTS shall mean assessments of the Association and includes both regular and special assessments. An ASSESSMENT shall have the meaning set forth in Section 6.06A hereof.

ASSOCIATION, herein sometimes referred to as the "Association", "Homeowners Association", or "HOA", shall mean Box Elder Estates Homesite Subdivision Association, the nonprofit Colorado corporation described in Article VI hereof, and its successors

ASSOCIATION PROPERTY shall mean all real and personal property now or hereafter owned by or leased to the Association, including the irrigation water system, the external fencing along Lanewood Street, and the brick entrance sign.

BEEHS shall mean all real property described on Exhibit "A" to this Master Declaration and a property for which a "Notice of Inclusion" has been filed.

BEEHS MAINTENANCE FUND shall mean the fund created for the receipts and disbursements of the Association, pursuant to Section 9.01 hereof.

BEEHS RESTRICTIONS shall mean this Master Declaration together with any and all Supplemental Declarations which may be recorded pursuant to Article II hereof as this Master Declaration or said Supplemental Declarations may be amended from time to time, together with the BEEHS Rules from time to time in effect, and the Articles and Bylaws of the Association from time to time in effect.

BEEHS RULES shall mean the rules adopted by the Board pursuant to Section 6.05F hereof and

as they may be amended from time to time.

BENEFICIARY shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be.

BOARD shall mean the Board of Directors of the Association.

BYLAWS shall mean the Bylaws of the Association which may be adopted by the Board; as such Bylaws may be amended from time to time.

DEED OF TRUST shall mean a mortgage or a deed of trust, as the case may be.

DEVELOPER shall mean any person or persons designated as such by Grantor.

GRANTOR shall mean Box Elder Estates Homesites Subdivision Limited Liability Company (LLC) and its successors by corporate merger or dissolution.

IMPROVEMENT shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, patios, tennis courts, swimming pools, garages, doghouses, mailboxes, aerials, antennas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting, planted trees and shrubs, poles, signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

ISDS shall mean an "individual sewage disposal system" designed and installed to provide sewage disposal on a lot within the subdivision, including septic tanks, leach fields, piping, and any other appurtenances to such a system, as defined by Tri-County Health Department (TCHD) regulations.

IRRIGATION WATER SYSTEM shall mean the water system installed by the Grantor to serve specifically designated lots within the subdivision with a supplemental limited outside irrigation water supply. The Association shall provide limited maintenance services, and charge separate

fees to each lot owner for utilizing the irrigation water system. The Association's maintenance of the irrigation water system does not include a guarantee of water quality and/or quantity.

LOT shall mean any unit of land which is designated on any recorded Subdivision plat, whether or not improved, for a single-family residence.

MANAGER shall mean the person, firm or corporation employed by the Association pursuant to Section 6.06G and delegated the duties, powers or functions of the Association pursuant to said Section.

MASTER DECLARATION (herein sometimes "Declaration") shall mean this instrument as it may be amended from time to time.

MEMBER shall mean any person who is a member of the Association pursuant to Section 6.02 hereof.

MORTGAGE shall mean any mortgage or deed of trust given to secure the payment of a debt.

NOTICE AND HEARING shall mean ten days written notice given as provided for in Section 8.07 for a public hearing, provided at which the person to whom the notice is directed shall have the opportunity to be heard in person or by counsel at his expense.

OCCUPANCY shall be defined as upon receipt of Certificate Of Occupancy from Adams County.

OUTLOT shall mean an area designated on any recorded subdivision plat intended for future resubdivision into lots for single family homes and utilized before future resubdivision for accessory golf course and equestrian facilities by way of example but not limited to clubhouse, watchman's quarters, maintenance and storage buildings and sheds, parking and driveway areas, and corrals, areas to provide for emergency and secondary access which may be conveyed to the County in the future, and/or areas designated for a private trail, drainage or other purposes for the benefit of the owners.

An outlot may be owned by the Grantor, by the Owner(s) of other properties utilizing the relevant outlot for access, drainage, or other purposes, by

the Association with all Owners in the Association being entitled to use of the outlot, and/or by the Association (with all Owners being entitled to use of the outlot) as a partial Tenant in Common owner with the Grantor and/or the Owner(s) of other properties utilizing the relevant outlot for access, drainage, or other purposes.

Any outlot area wholly owned by the Association shall be held by the Association for the benefit of all members and/or other Owner(s), and access and use of any outlot area owned by the Association may be limited to dues paying members and other Owner(s), subject to fees, other charges and/or other conditions or restrictions as deemed appropriate by the Board. Such areas may be made available to non-members on such terms and conditions as the Board may determine. Other Owner(s) who utilize an outlot wholly owned by the Association may be charged by the Association for the proportionate use of the outlot.

Any outlot area partially owned by the Association as a Tenant in Common with other Owner(s) shall be held by the Association for the benefit of the other Owner(s) and all members of the Association, and access and use of any outlot area partially owned by the Association as Tenant in Common with other Owner(s) may be limited to the other Owner(s) and dues paying members of the Association, subject to fees, other charges, and/or other conditions or restrictions deemed appropriate by the Board and the other Owner(s). Such areas may be made available to non-members on such terms and conditions as the Board and other Owner(s) may determine. Charges for maintenance to the Association and to other Owner(s) shall be based on the proportionate for use of the outlot by members of the Association and other Owner(s). Other Owner(s) who wholly own an outlot may charge the Association for the proportionate use of the outlot by members of the Association.

OWNER shall mean (1) the person or persons, including Grantor, holding an aggregate fee simple interest in a unit of land, or (2) the purchaser of an aggregate fee simple interest in a

unit of land under an executory contract sale.

PERSON shall mean a natural individual or any other entity with the legal right to hold title to real property.

PLANS AND SPECIFICATIONS shall mean any and all documents designated to guide or control the Improvement or other proposal in question, including but not limited to those indicating size, shape, configuration or materials, all site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to the Improvement or proposal in question.

RECORD, RECORDED, AND RECORDATION shall mean, with respect to any document, the recordation of such document in the office of the Clerk and Recorder of the County wherein the land lies.

SUBDIVISION shall mean a parcel of land which has been shown on a final and recorded subdivision plat pursuant to law.

SUPPLEMENTAL DECLARATION shall mean any declaration of covenants, conditions and restrictions which may be hereafter recorded by Grantor.

TCHD shall mean the Tri-County Health Department, which is the local County Health Department charged with regulating the installation and maintenance of Individual Sewage Disposal Systems (ISDSs).

**ARTICLE II
DEVELOPMENT OF BOX ELDER
ESTATES HOMESITE AREA SUBDIVISION**

SECTION 2.01 Subdivision and Development by Grantor. Grantor intends to divide BEEHS into several areas for single family homes with paved County maintained internal roadways, an area for accessory golf course and equestrian uses that may be divided in the future for single family homes, and areas for private trail and drainage

uses as well secondary and emergency access areas that may be conveyed to the County in the future in accordance with a master plan for the Property. It is contemplated that the Property will be developed pursuant to such master plan, which may from time to time be amended or modified and property may be added to the master plan area. With development of, and restrictions upon, each portion thereof will benefit each other portion and the whole thereof.

SECTION 2.02 Irrigation Water System Installed by Grantor. The irrigation water system installed by the Grantor provides supplemental irrigation water from an existing irrigation well to the 43 lots within the Box Elder Estates Homesite Subdivision Filing No. 1 and the 52 lots within the Box Elder North Homesite Subdivision Filings No. 1, 2, 3, 4 and 5. The Association is responsible for the system and may assess costs associated with operating, replacing and repairing the irrigation water system, including costs necessary to obtain, secure, and protect water rights associated with the irrigation water system. The Association may impose restrictions on each lot's use of the irrigation water system and the square footage of outside irrigation area served by the irrigation water system. Nothing in this section shall restrict individual lot owners from using their on-lot non-tributary individual well water for outside water irrigation in accordance with the well permit for an individual non-tributary well water well on a lot.

SECTION 2.03 Irrigation Water System Maintenance/Reserve Fund Fees. The Association shall bill in advance every quarter a fee for maintenance of the well, internal lines, pumps and costs necessary to obtain, secure and protect water rights associated with the irrigation water system. The initial fee shall be \$30/quarter for a vacant lot. The initial fee shall be collected at closing to the end of the quarter plus the next quarter in advance. When a lot is occupied with a home, this fee shall be raised to \$90/quarter. The

raised occupied lot fee shall begin being paid in the quarter after the quarter in which the home's construction is initiated. These fees are subject to modification as deemed appropriate to cover actual costs and a reasonable reserve by the Members of the Association at any Annual Meeting or at any Special Meeting of the Association of the Members. The Association may also supplement or replace these fees with a volume usage fee to cover expenses and conservation of the irrigation water by individual lot owners. These funds shall be paid at the same time other fees for general operations of the Association are collected per SECTION 9.01. At the Board's discretion, these funds may be deposited in a special separate account, or may be deposited in the Association's general account along with other funds collected by the Association

SECTION 2.04 External Fencing Installed by Grantor and Maintenance. Grantor shall install external fencing of a matching kind surrounding the area known as BEEHS and any and all additional property subject to the Master Declaration of Covenants, Conditions and Restrictions of BEEHS. After installation, fencing shall become property of the Association. The Association shall be responsible for maintenance of external fencing except for damage as described in Section 3.14.

ARTICLE III GENERAL RESTRICTIONS

All real property within BEEHS shall be owned, held, conveyed, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

SECTION 3.01 Antennas. No exterior radio or television antenna or aerial shall be erected or maintained in BEEHS without the prior written approval of the Architectural Committee.

SECTION 3.02 Insurance Rates. Nothing shall be

done or kept in BEEHS which will increase the rate of insurance on any Association Property without the approval of the Board, nor shall anything be done or kept in the BEEHS which would result in the cancellation of insurance on any Association Property or which would be in violation of any law.

SECTION 3.03 No Further Subdividing. Except for resubdivision of Block 3 into three Lots, no Lot shall be further divided or subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Committee; provided, further, that nothing herein shall be deemed to require the approval of the Architectural Committee for the transfer or sale of any Lot, including Improvements thereon, to more than one person to be held by them as tenants in common or joint tenants, or for the granting of any mortgage or deed of trust. The provisions of this section shall not be applicable to property added under the "Notice of Applicability" provisions as provided for in the **RECITALS** for the initial filing of a subdivision plat on the included property. After filing of the initial subdivision plat on the included property, the provisions of this Section shall apply.

SECTION 3.04 Signs. No sign of any kind shall be displayed to the public view without the approval of the Architectural Committee; provided, however, that signs not more than three feet by two feet may be displayed on or from a residence advertising the residence for sale or lease. No flashing or moving signs shall be permitted within BEEHS.

SECTION 3.05 Nuisances. No rubbish, or junked or inoperable vehicle, or debris of any kind shall be placed or permitted to accumulate upon any property within BEEHS and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other

Property or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior 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 such property without the prior written approval of the Board.

SECTION 3.06 Repair of Buildings. No Improvement hereafter constructed upon any land within BEEHS shall be permitted to fall into disrepair, and each such Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof.

SECTION 3.07 Improvements and Alterations. There shall be no construction, other than repairs pursuant to Section 3.06 above, excavation, alteration which in any way alters the exterior appearance of any Improvement, or removal of any Improvement without the prior approval of the Architectural Committee.

SECTION 3.08 Violation of BEEHS Rules. There shall be no violation of the BEEHS Rules once adopted by the Board and made available to the Persons affected thereby. If any Owner or his family or any guest, licensee, lessee or invitee of such owner or his family violates the BEEHS Rules, the Board may invoke any one or more of the following remedies:

A. Impose a Fine. Impose a special charge upon such Owner per incident/violation a minimum of \$50 plus 10% of the cost to remedy for the first 30 days of noncompliance. Fines will be raised to \$150 plus 10% of the cost to remedy at 60 days, to \$350 plus 10% of the cost to remedy at 90 days that Owner remains in violation of the BEEHS covenants and remedial action is not completed to the

satisfaction of the Board. Unpaid fines, the cost of collecting the same, including reasonable attorneys' fees, and the cost of actions taken by the Association to correct the violation can be a lien upon such Lot and the Improvements thereon. The actual fine can be determined by the Board;

B. Suspension of Use. Suspend the right of such Owner and his family, guests, licensees, lessees and invitees to use Association Property under such conditions as the Board may specify, for a period of not to exceed thirty days for each violation;

C. Charges to Cure Violation. Cause the violation to be cured and charge the cost thereof to such Owner; and

D. Injunctive Relief. Obtain injunctive relief against the continuance of such violation.

Before invoking any such remedy, the Board shall give such Owner, a Notice and Hearing as provided for in Section 8.07, except that the Board may suspend the right of any owner and his family, guests, licensees, lessees and invitees without Notice and Hearing for any period during which any Assessment owed by such Owner is past due and unpaid. Any assessment or charge imposed under this Section 3.08 which remains unpaid for a period of thirty days or more, shall become a lien upon the owner's land upon its inclusion in a recorded notice thereof and may be collected as provided in Article IX below for the collection of other Assessments.

SECTION 3.09 Drainage, There shall be no interference with the established drainage patterns over any property within BEEHS, except by Grantor, unless adequate provision is made for proper drainage and approved by the Architectural Committee.

SECTION 3.10 Required ISDS Maintenance by Homeowner. Septic tanks shall be inspected

every two (2) years, and shall be pumped a minimum of every 4 years. Disposal field shall be inspected monthly. If ponded water is observed, the septic tank shall be inspected, and pumped, repaired, and/or replaced as needed. No fences, driveways, walkways, horse or stock pens, buildings, or irrigated landscaping shall be placed or planted over disposal field areas. A non-irrigated grass vegetative cover shall be planted over disposal field areas. Failure to perform the required maintenance will be considered a violation of Section 3.08 **Violation of BEEHS Rules**, and if necessary, the Board may have performed any necessary inspection, pumping, repair, and/or replacement of an ISDS system and charge the homeowner the cost of such actions as well as levy the appropriate special charges. The Board may adopt other rules and regulations relating to septic system maintenance, including arranging for the every two year inspections and every four year pumping for all lots, and levy the appropriate charges to each homeowner for these services.

SECTION 3.11 No Hazardous Activities. No activities shall be conducted and no Improvements constructed on any property 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 upon any property; and no open fires shall be ignited or permitted on any property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed fireplace.

SECTION 3.12 No Temporary Structures. No tent or shack or other temporary building, improvement or structure shall be placed upon any property, except that, subject to the BEEHS Rules, tents may be used for overnight recreational camping on the rear of the lots; and 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 with the

prior approval of Architectural Control Committee, such approval to include the nature, size and location of such structure.

SECTION 3.13 Noise Restriction.

Noxious noises created by construction, building, mowing and other noisy activity shall cease after 9 P.M. and not begin before 7 A. M. all days of the week.

SECTION 3.14 Damage to External Fence and/or Brick Entrance Signage, and Lot Maintenance.

Any lot owner on a lot abutting the external fence and/or the brick entrance signage causing damage or allowing damage to be caused by a resident, visitor, and/or animals on the premises of said lot shall be responsible for payment to repair said damage. The Committee in approval of the Review of Proposed Construction process, and the Board after a home is occupied, may also require internal fencing to prevent damage by animals on the said lot.

On all lots, lawns must be mowed if height exceeds 6". All other weeds and grasses must be mowed if height exceeds 12". Any and all blowing trash must be picked up immediately. Fines will be assessed for noncompliance as set forth in Article III, Section 3.08A.

SECTION 3.15 Animals. The keeping of all household Pets and all other animals shall be in conformance with the requirements of the applicable zoning laws. All animals shall be contained on the lot premises or under control of the resident and/or owner of the lot at all times, The Boarding of any animal other than those owned by the resident and/or owner of the lot is prohibited. All animal food and wastes shall be handled and disposed of in a sanitary manner and shall not cause an annoyance or nuisance to any adjacent lot resident and/or owner. Violation of this covenant shall subject the violator to a fine imposed by the Board as set forth in Article III, Section 3.08A. The location, design, exterior appearance, and other features of all barns, pens,

runs, and any other construction or operational features related to the keeping of animals outside a home is subject to approval of the Architectural (Animal Control) Committee.

SECTION 3.16 Vehicle Storage. Only homeowner vehicles may be stored on a lot. Any such stored vehicle shall be located in a fenced and enclosed area of the lot. Any vehicle not owned by a homeowner shall be removed from a lot within 24 hours.

SECTION 3.17 No Mining and Drilling. Except for the East ½ of Block 2 - Lot 11, where continued exploration and production of oil and gas hydrocarbons are allowed and a tank battery on a portion of Block 2 - Lot 15, no property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth, except that Grantor or the Association may, by appropriate written permit, grant, license or easement, allow the drilling of wells and the installation of infiltration galleries for the extraction of water; and except that Grantor or the Association may, by appropriate written permit, grant, license or easement, allow any of the forgoing activities to the extent permitted by applicable zoning; and except those oil and gas rights leased previous to this document.

SECTION 3.18 Irrigation Water System Usage. Usage of the irrigation water system may be limited by the Board. The Board may impose restrictions on each lot's allocation of the irrigation water and/or the square footage of outside irrigation area served by the irrigation water system. For each 2 large animals kept and watered on a lot, that lot's allowed irrigation area usage shall be reduced by 1,000 square feet. Exceeding the restrictions would be considered a violation of Section 3.08 Violation of BEEHS Rules, and if necessary, the Board may have physical restrictions placed on the connection to the lot to ensure conformance with these

restrictions and charge the homeowner the cost of such actions as well levy the appropriate special charges. Nothing in this section shall restrict individual lot owners from using their on-lot non-tributary individual well water for outside water irrigation in accordance with the well permit for an individual non-tributary well water well on a lot.

SECTION 3.19 Vehicles. The use of all vehicles, including but not limited to helicopters, gliders, trucks, automobiles, graders, boats, tractors, pickups, mobile homes, trailers, buses, campers, recreational vehicles, bicycles, motorcycles, motor scooters, wagons, sleighs and snowmobiles, shall be subject to the BEEHS Rules, which may prohibit or limit the use thereof within specified parts of BEEHS and may also provide parking regulations and adopt other rules regulating the same.

SECTION 3.20 Construction Activities. This Master Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by any Owner (including Grantor) upon property within BEEHS, provided that when completed, such Improvements shall in all ways conform to this Master Declaration. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Master Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence, is in compliance with applicable federal, state and local laws and ordinances and any rules and regulations adopted pursuant hereto, and conforms to usual construction practices in the area.

In the event of any dispute, a temporary waiver of the applicable provision, including but not limited to any provision prohibiting temporary structures, may be granted by the Architectural Committee, provided that such waiver shall be only for the

reasonable period of such construction. Such waiver may, but need not, be recorded or in recordable form.

SECTION 3.21 Exemption of Grantor. Notwithstanding anything in this Master Declaration to the contrary, neither Grantor nor any of Grantor's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Committee. Without in any way limiting the generality of the preceding sentence, this Master Declaration shall not prevent or limit the right of Grantor to excavate and grade, to construct and alter drainage patterns and facilities, to construct any and all other types of Improvements, to maintain model homes and construction, sales and leasing offices and similar facilities and to post signs incidental to construction, sales and leasing, anywhere on the Property.

SECTION 3.22 Assignment by Grantor. Any other provision of this master Declaration to the contrary notwithstanding, Grantor may assign in whole or in part any of its privileges, exemptions, rights and duties under this Master Declaration to any other Person and may permit the participation in whole or in part by any other Person in any of its privileges, exemptions, rights and duties hereunder. Without in any way limiting the generality of the preceding sentence, Grantor may exempt any Person from the control and jurisdiction of the Architectural Committee.

**ARTICLE IV
PERMITTED USES AND RESTRICTIONS
RESIDENTIAL AREAS**

SECTION 4.01 Residential and Accessory Golf Course/Equestrian Areas. Except for Outlots and Streets, all property shall be improved and used solely for residential use. Block 3 - Outlot B may be utilized for accessory golf course and equestrian uses. When and if Block 3 - Outlot B is resubdivided into three residential lots, these accessory uses shall terminate and these lots shall

be utilized solely for residential use. Outlot A areas are utilized for access, drainage, and recreational purposes for the primary benefit of the owners and occupants of residential lots and the users of the Golf Course and Sporting Clay facilities. Block 1 - Outlot A may also be utilized for a sales office location.

SECTION 4.02 Improvements and Use. Except as provided in Section 4.01 hereof, no lot shall be improved or used except by a dwelling or structure designed to accommodate no more than a single-family and its servants and occasional guest, plus a garage, fencing and such other Improvements as are necessary or customarily incidental to a residence; provided, however, that separate guest houses, and servants' quarters, and barns, stables and corrals may be erected on any lot as permitted by the appropriate authority and the applicable zoning.

SECTION 4.03 Residential Use; Rentals. Except for caretaker residences on Block 3 - Outlot B until resubdivided into three lots, no residence on any Lot shall be used for any purpose other than single-family residential purposes. However, nothing in this Declaration shall prevent the rental of property within a residential area by the Owner thereof for residential purposes, on either a short or long-term basis subject to all the provisions of the BEEHS Restrictions. No commune, cooperative or similar type living arrangement shall be permitted anywhere on BEEHS.

SECTION 4.04 Animals. No commercial kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be kept on any Lot.

SECTION 4.05 Unsightly Article. No unsightly article shall be permitted to remain in any lot so as to be visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing: trailers, mobile homes, recreation vehicles, graders, trucks other than pickups, boats, tractors, campers, wagons,

buses, sleighs, motorcycles, motor scooters, snowmobiles, snow removal equipment and garden and maintenance equipment shall be kept at all times, except when in actual use, in an enclosed structure or screened from view by some combination of fencing, trees and/or shrubs, as approved by the Architectural Control Committee, and no repair or maintenance work shall be done on any of the foregoing, or on any automobile, other than minor emergency repairs, except in an enclosed garage or other structure; refuse, garbage and trash shall be kept at all times in a covered noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view; service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view; no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse or trash shall be kept, sorted or allowed to accumulate on any property except within an enclosed structure or appropriately screened from view; and liquid propane gas, oil and other exterior tanks shall be kept within an enclosed structure or permanently screened from view.

**ARTICLE V
PERMITTED USES AND RESTRICTIONS
OTHER AREAS**

SECTION 5.01 Outlot A Areas. Regardless of any other provision of this Master Declaration to the contrary, no land within any Outlot A area shall be improved by any Improvement, used or occupied except in such manner as shall have been approved by Grantor in its sole and absolute discretion until all grading and improvements required by the County in all Outlot A areas have been fully approved by the County. Such required approval shall extend to the nature and type of use, occupancy and Improvement. After approval of required grading and improvements in all Outlot A areas by the County, the Grantor may convey, lease, or delegate its right to grant such approvals to the Board on all or portions of Outlot

A areas, subject to whatever conditions are applicable to allow future development of adjacent properties that might be affected or might require improvements to be constructed in Outlot A areas. Said conveyance, lease, or delegation may require or be subject to future dedication of all or portions of Outlot A areas to the County. No approval shall be granted which would be in contravention of the zoning then in effect for the area in question.

**ARTICLE VI
BOX ELDER ESTATES SUBDIVISION
ASSOCIATION**

SECTION 6.01 Organization. The Association is a nonprofit Colorado corporation created for the purposes, charged with the duties, and invested with the powers prescribed by law or set forth in the Articles and Bylaws or in this Master Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Master Declaration.

SECTION 6.02 Membership. Only the owners defined in subparagraph (1) of Section 6.03A below and Grantor shall be Members of the Association; provided, however, that no Person shall be a Member by reason of ownership of lands used for public schools or governmental or quasi-governmental purposes, or by reason of ownership of any park, public land, road, easement, right of way, mineral interest, mortgage or deed of trust. Each Owner as defined in the preceding sentence, including the Owners of Lots in property added under the "Notice of Applicability" provisions as provided for in the **RECITALS**, shall automatically be a Member of the Association without the necessity of any further action on his part, and Association membership shall be appurtenant to and shall run with the property interest ownership of which qualifies the Owner thereof to membership. Membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated

except together with the title to the property interest, ownership of which qualifies the Owner thereof to membership, and then only to the transferee of title to said property interest, Any attempt to make a prohibited severance transfer, pledge, mortgage or alienation shall be void.

SECTION 6.03 Voting Rights.

A. Entitlement. The right to cast votes, and the number of votes which may be cast, for election of members to the Board of Directors of the Association and on all other matters to be voted on by the Members shall be calculated as follows:

(1) The Owner (including Grantor) of a single-family residence, constructed upon any lot and for which a certificate of occupancy has been issued by the appropriate governmental authorities, shall have one vote for each such residence. The owner of Block 3 - Outlot B shall be entitled one (1) vote. Upon resubdivision of Block 3 - Outlot B into three lots, each owner of the three Lots shall each be entitled to a vote.

(2) In addition to the votes to which it is entitled by reason of subparagraph (1) of this Section 6.03A for every one vote outstanding in favor of any other person Grantor shall have three (3) votes until there are 30 occupied residences on the 40 lots described in subparagraph (1) of this Section 6.03A that are owned by persons other than Grantor on lands within BOX ELDER ESTATES HOMESITE SUBDIVISION - FILING NO. 1. Thereafter Grantor shall have only the votes, if any, to which it is entitled under said subparagraph (1) of this Section 6.03A. Grantor may at its option relinquish at any time part or all of the votes to which it is entitled under this subparagraph (2) of Section 6.03A.

(3) For any area added under the "Notice of Applicability" provisions provided for in the

RECITALS, the Grantor shall have three (3) votes for each lot platted on lands as set forth in an Exhibit "A" legal description attached to a "Notice of Applicability" until there are more than 75% occupied residences on lots owned by persons other than the Grantor.

B. Joint or Common Ownership. If any property interest, ownership of which entitles the Owner thereof to vote, is held jointly or in common by more than one Person, the vote or votes to which such property interest is entitled shall also be held jointly or in common in the same manner. However, the vote or votes for such property interest shall be cast, if at all, as a unit, and neither fractional votes nor split votes shall be allowed. In the event that such joint or common Owners are unable to agree among themselves as to how their vote or votes shall be cast as a unit, they shall lose their right to cast their vote or votes on the matter in question. Any joint or common Owner shall be entitled to cast the vote or votes belonging to the joint or common Owners unless another joint or common Owner shall have delivered to the Secretary of the Association prior to the election a written statement to the effect that the Owner wishing to cast the vote or votes has not been authorized to do so by the other joint or common Owner or Owners.

C. Proxy Voting. Any Owner, including Grantor, may give a revocable written proxy to any person authorizing the latter to cast the Owner's votes on any matter. Such written proxy shall be in such form as may be prescribed by the Bylaws of the Association.

D. Cumulative Voting. The cumulative system of voting shall not be used for any purpose.

SECTION 6.04 Meeting of Members. There shall be an annual regular meeting of the Members of the Association on the first Tuesday in March of each year at 10:00 a.m. at the

principal office of the Association. Except as in the next sentence provided, no notice need be given of said annual regular meeting. Said annual regular meeting may be held at such other reasonable place or time (not more than 30 days before or after the aforesaid date) as may be designated by notice of the Board given to the Members not less than ten nor more than fifty days prior to the date fixed for said regular meeting. Special meetings of the Members may be called at any reasonable time and place by notice by the Board or by notice by Members having one-fifth of the total votes, delivered not less than ten or mailed not less than fifteen days prior to the date fixed for said special meeting, to all Members if given by the Board and to all other Members if given by said Members. All notices of meetings shall be addressed to each Member as his address appears on the books of the Association.

The presence at any meeting, in person or by proxy, of Members entitled to vote at least a majority of the total votes outstanding shall constitute a quorum. If any meeting cannot be held because a quorum is not present, the Members present, either in person or by proxy, may adjourn the meeting to a time not less than 48 hours nor more than 30 days from the time set for the original meeting, at which adjourned meeting the quorum requirement shall be the Members entitled to vote 25% of the total votes.

The President, or in his absence the Vice President, shall call meetings of Members to order and act as chairman of such meetings. In the absence of both of said officers, any Member entitled to vote there or any proxy of any such Member may call the meeting to order, and a chairman of the meeting shall be elected. The Secretary of the Association, or in his absence the Assistant Secretary, shall act as secretary of the meeting. In the absence of both the Secretary and the Assistant Secretary, a secretary shall be selected in the manner aforesaid for selecting a chairman of the meeting. Except as provided

otherwise in the Master Declaration, any action may be taken at any legally convened meeting of the Members upon the affirmative vote of the Members having a majority of the total votes present at such meeting in person or by proxy.

SECTION 6.05 Duties of the Association. Subject to and in accordance with the BEEHS Restrictions, the Association acting by and through its Board shall have and perform each of the following duties for the benefit of the Members of the Association.

A. Outlot A Association Property. To accept, own, operate and maintain all Outlot A areas which may be conveyed, leased, delegated authority over to it by Grantor together with all Improvements of whatever kind and for whatever purpose which may be located in said areas; and to accept, own, operate and maintain all other property, real and personal, or leased to the Association.

B. Title to Property Upon Dissolution. To pay over or convey, upon dissolution of the Association, the assets of the Association to one or more exempt organizations of the kind described in section 501 (c) of the Internal Revenue Code of 1954, as amended from time to time.

C. Repair and Maintenance of Association Property, ISDSs, Irrigation Water System, and Drainage Channels. To maintain in good repair and condition all lands, Improvements, ISDS if necessary, Drainage Channels, and/or other Association Property owned by or leased to the Association.

D. Payment of Taxes. To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased (if obligated by the lease) to the Association, to the extent that such taxes and assessments are not levied directly upon the Members. The Association

shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

E. Insurance. To obtain and maintain in effect policies of insurance adequate, in the opinion of the Board, in kind and amount. Without limiting the generality of the preceding sentence, such policies of insurance shall include:

(1) Fire and extended coverage insurance on all Improvements owned by or leased to the Association, the amount of such insurance to be not less than 90% of the aggregate full insurable value, meaning actual replacement cost exclusive of the costs of excavations, foundations and footings. Such insurance shall insure the Association and the mortgagees, as their interests may appear. As to each such policy which will not be thereby voided or impaired, the Association hereby waives and releases all claims against the Board and Grantor, and the officers agents and employees of each thereof, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

If the foregoing exculpatory clause is held to be invalid, then the liability of the insurance company shall be primary, and the liability of the Board, Grantor, and the officer's agents and employees of the Board and of Grantor shall be secondary.

(2) Bodily injury liability insurance, with limits of not less than \$500,000 per person and \$1, 000,000 per occurrence and property damage liability insurance of not less than \$50,000 per occurrence, insuring against liability for death, bodily injury or property damage arising from activities of the Association or with respect to property under

its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The liability insurance policies referred to above may name as separately protected insured, the Grantor, the Association, the Board and each of its members, the Architectural Committee and each of its members, the Manager, and all of the respective officers, employees and agents of the foregoing.

(3) Workmen's Compensation Insurance to the extent necessary to comply with all applicable laws.

(4) Such other insurance, including indemnity and other bonds, as the Board shall deem necessary or expedient to carrying out the Association's functions.

The Association shall be deemed trustee of the interests of all Members in all insurance proceeds, and shall have full power to receive and to deal with such proceeds.

F. BEEHS Rules. To make, establish and promulgate, and in its discretion to amend or repeal and reenact, such BEEHS Rules, not in contradiction of this Master Declaration, as it deems proper covering any and all aspects of its functions, including the use and occupancy of Association Property. Without limiting the generality of the foregoing sentence, such Rules may set dues and fees and prescribe the regulations governing the operation of Association Property. Each Member shall be entitled to examine such rules at any time during normal working hours at the principal office of the Association.

G. Architectural Committee. To appoint and remove Members of the Architectural Committee as provided in Section 8.02 hereof, and to insure that at all reasonable times there is available a duly constituted and appointed Architectural Committee.

H. Enforcement Hereof. To enforce, in its own behalf and in behalf of all owners, all of the covenants, conditions and restrictions set forth in this Master Declaration, under an irrevocable agency (hereby granted) coupled with an interest, as beneficiary of said covenants, conditions and restrictions), or when an assignee of Grantor; and to perform all other acts, whether or not anywhere expressly authorized, as may be reasonably necessary to enforce any of the provisions of the BEEHS Restrictions or of the Architectural Committee Rules.

I. Long-Term Financing. To execute mortgages and deeds of trust, both construction and permanent, for construction of facilities, including Improvements on property owned by or leased to the Association, and to accept lands in Outlot A areas, whether or not improved, from Grantor subject to such mortgages and deeds of trust. Such financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner as may be deemed appropriate by the borrower, whether that be Grantor or the Association. The mortgage, deed of trust, or other security interest given to secure repayment of such debt may consist of a first lien or a second or other junior lien, as shall be deemed appropriate by such borrower, whether that be Grantor or the Association on the Improvement or other facility to be constructed, together with such underlying and surrounding lands as Grantor or the Association, as the case may be, deems appropriate. The debt secured by such mortgage, deed of trust or other security instrument may be retired from revenues generated by dues, use fees, assessment of the Members of the Association, or any combination thereof, as may be deemed appropriate by Grantor or the Association, as the case may be, subject to the limitations imposed by this Declaration.

J. Audit. To provide an annual audit by an independent certified public accountant of the accounts of the Association and to make a copy of such audit available to each Member during normal business hours at the principal office of the Association. Any Member may at any time and at his own expense cause an audit or inspection to be made of the books and records of the Association by a certified public accountant provided that such audit or inspection is made during normal business hours and without unnecessary interference with the operations of the Association.

K. Election. To elect a Board of Directors at such time as deemed necessary by the Association and in the absence of an elected Board perform all duties of the Board as set forth in the BEEHS Restrictions, the Articles or Bylaws of the Association. The Board shall consist always of not less than three nor more than five members and a majority of the Board is necessary for all decisions.

L. Other. To carry out all duties of the Master Association set forth in the BEEHS Restrictions, or the Articles or Bylaws of the Association.

SECTION 6.06 Powers and Authority of the Association. The Association shall have all of the powers of a Colorado non-profit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Master Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Colorado or by this Master Declaration. Without in any way limiting the generality of the two preceding sentences, the Association acting by and through it's Board shall have the power and authority at all times to:

A. Assessments. To levy Assessments in this Section 6.06A provided. An Assessment is

defined for purposes of this Section 6.06A as that sum which must be levied in the manner and against the property set forth below in this Section 6.06A in order to raise the total amount for which the levy in question is being made, and each individual Assessment shall be equal to each other individual Assessment, The Association shall have the authority to levy:

(1) Assessments against each single-family residence constructed upon a Lot and for which a certificate of occupancy has been issued by the appropriate governmental authorities.

To the extent that a certificate of occupancy is not required for any single-family residence at the time of completion of construction thereof, Assessments shall be levied under subparagraph (1) of this Section 6.06A at the time of completion of construction notwithstanding that no certificate of occupancy has been issued. Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated, as of the date when said obligation first arose, in proportion to the amount of the assessment year or other period remaining after said date. The fee owner shall be personally liable for an Assessment, and the same shall become a lien against each such Lot and all Improvements thereon and the land upon which the same is situated. The Association may enforce payment of such Assessments in accordance with the provisions of Article IX below.

B. Right of Entry and Enforcement in the Event of An Emergency. For emergency repairs to the irrigation water system, the Association shall have the authority to enter upon any lot to perform said repairs. The Association shall also have the right to repair an ISDS or correct a drainage condition causing immediate damage to other property, after 24 hours written notice being left on property of the defective ISDS or of the

drainage problem. The Association shall also have the power on it's own behalf, or in the name of and on behalf of any Lot Owner who consents thereto, to commence and maintain actions requiring correction of non-emergency conditions causing damages to others, and suits to enforce by mandatory injunction or otherwise, or to restrain and enjoin any breach or threatened breach of, the BEEHS Restrictions.

C. Conveyances. To grant and convey to any person real property and interests therein, including fee title, leasehold estates, easements, rights of way, mortgages and deeds of trust, out of, in, on, over, or under any Association Property for the purpose of constructing, erecting, operating or maintaining thereon, therein, or thereunder: roads, streets, walks, driveways, trails, paths, lines, cables, wires, conduits, pipelines, other devices for utility purposes, water systems, storm water drainage systems, sprinkler systems, gas/oil pipelines, and any similar public, quasi-public, or private improvements or facilities. Nothing above contained, however, shall be construed to permit use or occupancy of any land, Improvement or other facility in a way which would violate applicable zoning or use and occupancy restrictions imposed thereon by other provisions of this Master Declaration.

D. Security Services. To provide watchmen, guards and police at points of entry onto BEEHS for Association Property and at such other places and for such other purposes as the Board shall determine.

E. Association Property Services. To pay for water, sewer, garbage removal, electricity, telephone, gas, snow removal, landscaping gardening, and all other utilities, services and maintenance for the Property of the Association.

F. **Other Areas.** To maintain and repair easements, roads, roadways, rights of way, parks, parkways, median strips, sidewalks paths, trails, ponds, lakes, entry details, guardhouses, and other areas of BEEHS owned by or leased to the Association.

G. **Manager.** To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Association, including its Property, to the extent deemed advisable by the Board, together with such other personnel as the Board shall determine advisable for the operation of the Association, the conduct of its business, and the management of its Property. Such personnel may be employed by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any of their duties, powers and functions to the Manager. The Owners release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegate.

H. **Legal and Accounting Services.** To retain and pay for legal and accounting services necessary or proper in the operation of the Association, the operation and management of its Property, the enforcement of the BEEHS Restrictions, or in the performance of any other duty, right, power or authority of the Association.

I. **Recreational Facilities.** To own and operate any and all types of facilities for both active and passive recreation deemed desirable by the Association, both on and off the Property, including, not limited to: tennis courts and related facilities, swimming pools, ice rinks, community clubs, equestrian facilities, campgrounds and picnic areas, parks and playgrounds, rifle, pistol, and archery ranges, facilities for skeet and trapshooting, trails for hiking, bicycles and horseback riding,

lakes and ponds for swimming, water skiing, fishing and other water sports, and other similar and dissimilar recreational facilities.

J. **Other Services and Properties.** To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of the BEEHS Restrictions, this Master Declaration, or the Articles or Bylaws of the Association.

K. **Construction on Association Property.** To construct new Improvements or additions to Association properties, or demolish existing Association Improvements, subject to the approval of the Architectural Committee as in this Master Declaration required.

L. **Contracts.** To enter into contracts with Grantor and other Persons on such terms and provisions as the Board shall determine, to operate and maintain any Outlot A or other facility or area, or to provide any service or perform any function on behalf of Grantor or other Person.

M. **Permits and Licenses.** To obtain and hold any and all types of permits and licenses.

N. **Land Acquisition/Disposition/Leasing.** To acquire and own and to dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.

O. **Diseased Trees.** To enter upon any part of BEEHS at any time to inspect for, prevent and control diseased trees and other plant life and insect infestation of trees and other plant life, If any diseased or insect infested trees or other plant life are found, the Association may spray, remove diseased trees and other plant life, and take such other remedial measures as it deems expedient. The cost thereof applicable to privately owned property may be levied by the Master Association as a specific assessment

against such property.

P. Response to Tax Code Changes. If it shall ever be ruled or held that an exemption under the Internal Revenue Code is unavailable to the Association because of one or more rights, powers, duties, obligations or functions given to the Association by the Master Declaration of the Association, the Association may create a subsidiary or other association to perform the rights, powers, duties, obligations or functions which prevent the obtaining of the tax exemption; or, alternatively, the Association may retain the rights, powers, duties, obligations and functions which prevent the obtaining of the tax exemption and transfer some or all of its other right, powers, duties, obligations and functions to such subsidiary or other association.

SECTION 6.07 **Indemnification.**

A. Third Party Actions. The Association may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Master Declaration) by reason of the fact that he is or was a director, officer, employee, servant or agent of the Association against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption: (i) that the person did not act in

good faith or not in a manner which he reasonably believed to be in or not opposed to the best interests of the Association; or (ii) with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

B. Derivative Actions. The Association may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, servant or agent of the Association, against expenses (including attorney's fees) actually and reasonably incurred by him in connection with the defense or settlement of such action, proceeding or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action, proceeding or suit was brought shall determine upon application that, despite the adjudication of liability and in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

C. Payment in Advance. Expenses incurred in defending a civil or criminal action, suit or proceeding may, in the discretion of the Board, be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board as provided in paragraph C of this Section 6.07 upon receipt of an undertaking by or on behalf of the director, officer, employee, servant or agent to repay such amount unless it shall ultimately be determined that he is entitled to

be indemnified by the Association as authorized in this Section 6.07.

D. Insurance. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, servant, or agent of the Association, against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise.

E. Determination. Any indemnification which the Association has elected to provide under paragraph A or B of Section 6.07 (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the officer, director, employee, servant or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraph A or B of Section 6.07. Such determination shall be made:

(1) By the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or;

(2) If a quorum is not obtainable, or even if obtainable, if the majority of disinterested directors directs, by independent legal counsel's written opinion; provided, however, that if a director, officer, employee, servant or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in paragraph A or B of Section 6.07, or in defense of any claim, issue or matter therein, then he shall automatically be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith without the necessity of any such determination that he has met the applicable conduct standards set forth in paragraph A or B of Section 6.07.

F. Other Coverage. The indemnification provided by this Section 6.07 shall not be deemed exclusive of any other rights to which anyone indemnified may be entitled under this Master Declaration, agreement, vote of the Members, vote of disinterested directors, Colorado law, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and may continue as to a person who has ceased to be a director, officer, employee, servant or agent and may inure to the benefit of the heirs and personal representatives of such a person.

SECTION 6.08 Right of Access to Maintain, Repair, and/or Replace ISDSs, Irrigation Water System, Improvements on any Outlot Owned by the Association, Drainage Channels, External Fence and Landscaping, and/or Brick Entrance Signage and Landscaping. The Association may enter upon any Lot or Outlot of the BEEHS at any time to inspect any ISDS, Irrigation Water System, Improvements on any Outlot A Owned by the Association, Drainage Channels, External Fence and Landscaping, and/or Brick Entrance Signage and Landscaping, and if necessary as determined by the Association, perform maintenance, repair, and/or replace any ISDS, Irrigation Water System, Improvements on any Outlot A Owned by the Association, Drainage Channels, External Fence and Landscaping, and/or Brick Entrance Signage and Landscaping.

ARTICLE VII ASSOCIATION PROPERTY

SECTION 7.01 Use. Each Member of the Association who resides on the property and the members of his family and his guests who reside with him shall be entitled to use the Property of the Association.

SECTION 7.02 Damages. Each Member described above in Section 7.01 shall be liable to the Association for damages, inspection, repair, and/or replacement, including any payment by the

Association to any other person or persons for any damages, inspection, repair, and/or replacement, which, may be sustained by reason of the negligent or intentional misconduct of such person or his family, guests, lessees, or invitees. The amounts incurred by the Association in relation to said damages, inspection, repair, and/or replacement shall be assessed against such person's real and personal property on or within the Property, including the leasehold estate of any lessee, and may be collected as provided in Article IX below for the collection of Assessments.

ARTICLE VIII ARCHITECTURAL COMMITTEE

SECTION 8.01 Members of Committee. The Architectural (Animal Control) Committee is the Architectural Control Committee referred to in these BEEHS Restrictions as provided for and constituted in **ARTICLE I DEFINITIONS**. It shall consist always of not less than three nor more than five members and a majority of the Committee is necessary for all decisions. The following persons are hereby designated as the initial members of the Committee:

Patricia Fleming
Thomas B. Lofton
Martin J. Shoeneman

Each member of the Committee shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided in **ARTICLE I DEFINITIONS** herein and Section 8.02 below.

SECTION 8.02 Grantors Rights of Appointment and Initial Association Appointed Committee. The Board shall have the right to appoint and remove members of the Committee, but so long as Grantor is entitled to three (3) votes for every one (1) vote pursuant to Section 6.03A (2), Grantor shall have the right to approve or disapprove all members proposed for

appointment by the Board. Thereafter, the Board shall have the right to appoint and remove all members of the Committee without cause or Grantor's consent. The Board members shall constitute the initial committee members, after the Grantor's special rights of appointment pursuant to Section 6.03A (2) have expired. The Board may then elect to have all or some of the Board members remain on the Committee.

SECTION 8.03 Review of Proposed Construction. Whenever in this Master Declaration the approval of the Architectural Committee is required, it shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts which in its sole discretion are relevant, Except as provided in Section 3.17, 3.20, and 3.21 and as specifically provided for in Section 3.07 above, prior to commencement of any construction of any Improvement on BEEHS, the Plans and Specifications accompanied by a completed Application for Approval of Building/Improvement Plans therefore shall be submitted to the Architectural Committee, and construction thereof may not commence unless and until the Committee has approved such Plans and SpecificationS in writing. The Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Master Declaration, and perform such other duties assigned to it by this Master Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Committee. The Committee shall approve Plans and Specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the surrounding area of BEEHS as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures, The Committee may condition its approval of Plans and Specifications on such changes therein as it deems

appropriate, and may require submission of additional Plans and Specifications or other information prior to approving or disapproving the material submitted. All members of the Association have the right to appeal the decision(s) of the Architectural Control Committee. Upon receiving a written request to appeal a committee decision, the Association Board shall hear such appeals within thirty (30) days from date of request. Notice shall be given to all adjacent landowners of the date, time and place of said meeting. Upon the appeal, the Boards conclusions shall be final and binding upon both the Architectural Control Committee and the homeowner. The Committee may also issue Rules or guidelines, subject to the approval of the Association Board, regarding anything relevant to its function, including but not limited to minimum standards and procedures for the submission of Plans and Specifications for approval. The Committee may require a reasonable fee to accompany each application for approval.

SECTION 8.04 Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder, The Committee may from time to time by unanimously designate in writing one of its members to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 8.09. In the absence of such designation, the vote of a majority of all of the members of the Committee, or the written consent of a majority of all of the members of the Committee taken without a meeting, shall constitute an act of the Committee. All Association members shall have the right to attend any Committee meeting. Members will attend without voice and may not vote at these meetings.

SECTION 8.05 No Waiver of Future Approvals. The approval or consent of the Committee to any Plans or Specifications for any work done or proposed or in connection with any

other matter requiring the approval or consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans or Specifications or other matter whatever subsequently or additionally submitted for approval or consent by the same or a different Person.

SECTION 8.06 Compensation of Members. The members of the Committee shall be entitled to reasonable compensation from the Association for services rendered, together with reimbursement for expenses incurred by them in the performance of their duties hereunder. Such compensation shall be determined by Grantor while it has the right to approve or disapprove the members of the Committee pursuant to Section 8.02 above and thereafter by the Board.

SECTION 8.07 Inspection of Work.

A. Completion of Work. Inspection of completed work and correction of defects therein shall proceed as follows:

(1) Upon the completion of any Improvement for which approved Plans or Specifications are required under this Master Declaration, the Owner shall give written notice of completion to the Committee.

(2) Within such reasonable time as the Committee may set in its Rules but not to exceed fifteen days thereafter, the Committee or its duly authorized representative may inspect such Improvement. If the Committee finds that such work was not done in strict compliance with all approved Plans and Specifications submitted or required to be submitted for its prior approval, it shall notify the Owner in writing of such noncompliance within 10 days after such inspection specifying in reasonable detail the particulars of noncompliance, and shall require the Owner to remedy the same.

(3) If upon the expiration of thirty days from the date of such notification the owner shall have failed to remedy such noncompliance, the

Committee shall notify the Board in writing of such failure. Upon Notice and Hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five days from the date of announcement of the Board ruling. If the Owner does not comply with the Board's ruling within such period, the Board, at its option, may either remove the noncomplying Improvement or otherwise remedy the noncompliance, and the Owner shall reimburse the Association upon demand for all expenses incurred in connection therewith, If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an assessment against such Owner and the Improvement in question and the land upon which the same is situated for reimbursement and the same shall constitute a lien upon such land and Improvement and be enforced as in this Master Declaration provided.

(4) If for any reason after receipt of said written notice of completion from the Owner, the Committee fails to notify the owner of any noncompliance within the period provided above in subparagraph (2) of Section 8.07A, the Improvement shall be deemed to be in accordance with said approved Plans and Specifications.

B. Work in Progress. The committee may inspect all work in progress and give notice of noncompliance as provided above in subparagraph (2) of Section 8.07A. If the Owner denies that such noncompliance exists, the procedures set out in subparagraph (3) of Section 8.07A shall be followed, except that no further work shall be done, pending resolution of the dispute, which would hamper correction of the noncompliance if the Board shall find that such noncompliance exists.

SECTION 8.08 Nonliability of Committee Members. Neither the Committee nor any member thereof nor the Board nor any member thereof shall be liable to the Association or to any Owner or to any other Person for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's or the Board's respective duties under this Master Declaration unless due to the willful misconduct or bad faith of the Committee or its member or the Board or its member, as the case may be. The Committee shall review and approve or disapprove all Plans and Specifications submitted to it for any proposed Improvement, including the construction, alteration or addition thereof or thereto, on the basis of aesthetic considerations and the overall benefit or detriment which would result to the surrounding area and BEEHS generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any Plans or Specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building or other codes.

SECTION 8.09 Variances. The Committee may authorize variances from compliance with any of the architectural provisions of this Master Declaration, including restrictions upon height, bulk, size, shape, floor area, land area, placement of structures, set-backs, building envelopes, colors, materials, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental consideration may, in its sole and absolute discretion, warrant. Such variances must be evidenced in writing and must be signed by at least a majority of all of the members of the Committee. If such a variance is granted, no violation of the covenants, conditions or restrictions contained in this Master Declaration shall be deemed to have occurred with respect to

the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Master Declaration for any purpose except as to the particular property and particular provision and in the particular instance covered by the variance, nor shall the granting of such variance be construed to affect in any way any applicable zoning or other land use laws.

SECTION 8.10 Obligations with Respect to Zoning and Subdivision Regulations. The Architectural Committee shall require all Persons to comply fully with the Planning and Zoning Department Regulations enacted by the County of Adams insofar as the same are applicable and as the same may hereafter be amended, except as modified by the BOX ELDER ESTATES HOMESITES SUBDIVISION - FILING NO. 1 and FINAL PUD PLAN NO. 1 for this subdivision, and any subdivision Final Plat and Final PUD for any area added under the "Notice of Applicability" provisions as provided for in **RECITALS**.

**ARTICLE IX
FUNDS AND ASSESSMENTS**

SECTION 9.01 BEEHS General Fund. The Board shall establish a general fund (the "BEEHS General Fund") into which shall be deposited all moneys paid to the Association and from which disbursements shall be made in performing the functions of the Association under the BEEHS Restrictions other than those associated with the irrigation water system. These funds of the Association must be used solely for purposes related to the areas and Improvements owned by or leased to the Association other than related to the irrigation water system, for general operating expenses of the Association not related to the irrigation water system, or for other purposes authorized by the BEEHS Restrictions not related to the irrigation water system as they may from time to time be amended. The Grantor has set this fee initially at \$10/quarter for vacant lot, and

\$30/quarter for each lot with a home or a where home is under construction. This fee shall also be charged on any additional vacant lots created by resubdivision of Block 3 - Outlot B, created by a subdivision of up to 6 lots in Section 24, and/or any other lots in other property added under the "Notice of Applicability" provisions as provided for in **RECITALS**. Collection of said fee shall begin in advance for the next quarter, after the first lot is sold to someone other than the Grantor. After the first year, these fees are subject to modification by the Association acting by and through it's Board.

SECTION 9.02 BEEHS Irrigation Water System Fund. The Board shall establish a fund (the "BEEHS Water Fund") into which shall be deposited all moneys paid to the Association and from which disbursements shall be made in performing the functions of the Association for maintenance, expenses, and reserves funds of the Irrigation Water System as outlined In Section 2.02.

SECTION 9.03 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses for both the irrigation water system and other general expenses to be incurred by the Association during such year in performing its functions under the BEEHS, including a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Uniform and equal Assessments sufficient to pay such estimated net charges shall then be levied as in Section 6.06A provided. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association acting by and through it's Board may at any time and from time to time levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association during the fiscal year in equal quarterly installments on or before the first day of January, April, July, and October or in

such other manner as the Board may designate in this sole and absolute discretion.

SECTION 9.04 Special Assessments. In addition to the regular annual Assessments provided for above in Section 9.03, the Board shall levy special Assessments, upon the property and in the manner set forth in Section 6.06A, whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the mandatory functions of the Association under the BEEHS Restrictions, and the Board may levy such special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the optional functions of the Association under the BEEHS Restrictions.

SECTION 9.05 Late Charge. If any Assessment, whether regular or special, is not paid within fifteen days after it is due, the Owner may be required by the Board to pay a late charge at such rate as the Board may designate from time to time.

SECTION 9.06 Unpaid Assessments as Liens. The amount of any delinquent Assessment, whether regular or special, assessed against any property and any late payment charge attributable thereto, plus interest on such Assessment and charge at a rate of ten percent per annum simple interest (or such higher rate as the Board may designate from time to time), and the costs of collecting the same, including reasonable attorneys' fees, shall be a lien upon such Lot and the Improvements thereon. Such lien shall be prior to any declaration of homestead. Such lien may be foreclosed in the same manner as is provided in the laws of Colorado for the foreclosure of mortgages on real property. A certificate executed and acknowledged by any two members of the Board stating the indebtedness secured by such lien shall be conclusive upon the Association as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith, and such certificate shall be furnished to any Owner upon

request. The fee charged to provide this certificate shall initially be \$25.00 per certificate (Section 11.06). After the first year, this fee is subject to modification by the Association acting by and through its Board.

SECTION 9.07 Mortgage Protection. Notwithstanding any other provision of the BEEHS Restrictions, no lien created under this Article IX or under any other Article of this Master Declaration, nor any lien arising-by reason of any breach of the BEEHS Restrictions, nor the enforcement of any provision of this Master Declaration shall defeat or render invalid the rights of the Beneficiary under any recorded Mortgage or Deed of Trust of first and senior priority now or hereafter upon any lot and improvements thereon, made in good faith and for value.

However, after the foreclosure of any such 1st Mortgage or Deed of Trust or after any conveyance in lieu of foreclosure, such Lot and improvements thereon shall remain subject to the BEEHS Restrictions and shall be liable for all regular Assessments and all special Assessments levied subsequent to completion of such foreclosure or delivery of such conveyance in lieu of foreclosure, and to all installments of all regular and special Assessments levied prior to completion of such foreclosure or delivery of such conveyance but falling due after such completion or such delivery, unless otherwise prohibited by law.

SECTION 9.08 Effect of Amendments on Mortgages. Notwithstanding the provisions of Section 11.02, no amendment of Section 9.07 of this Master Declaration shall affect the rights of any Beneficiary whose Mortgage or Deed of Trust has the first and senior priority as in Section 9.07 provided and who does not join in the execution thereof, provided that his Mortgage or Deed of Trust is recorded in the real property records of the County prior to the recordation of such amendment; provided, however, that after

foreclosure or conveyance in lieu of foreclosure the property which was subject to such Mortgage or Deed of Trust shall be subject to such amendment, unless otherwise prohibited by law.

SECTION 9.09 Subordination. By subordination agreement executed by the Association, the benefits of Section 9.07 and 9.08 above may, in the sole and absolute discretion of the Board, be extended to beneficiaries not otherwise entitled thereto.

ARTICLE X STRUCTURES AND LAND USE

SECTION 10.01 House Size and Parking on Public Right-of-Way.

A.(1) Box Elder Estates Homesite Subdivision. A minimum house size of a ranch house or a raised ranch house shall be 2,400 square feet on the main floor. Two story homes shall have 1,600 square feet finished minimum on the first floor, and 2,600 square feet total finished minimum including an upper or lower level that is more than 50% above ground level. Multi-level homes shall have 2,000 square feet finished on two adjacent levels, and 2,600 square feet total finished minimum on all levels that are more than 50% above ground level. Porches, decks, garages, patios, breezeways, and/or basements shall not be utilized in the calculating of square feet requirements. All homes shall have an attached 3-car garage of at least 600 square feet with additional off street parking space for at least two other vehicles.

A.(2) Box Elder North Estates Homesite Subdivision. A minimum house size of a ranch house or a raised ranch house shall be 1,800 square feet on the main floor. Two story homes shall have 1,200 square feet finished minimum on the first floor, and 2,000 square feet total finished minimum including an upper or lower level that is more than 50% above

ground level. Multi-level homes shall have 1,400 square feet finished on two adjacent levels, and 2,000 square feet total finished minimum on all levels that are more than 50% above ground level. Porches, decks, garages, patios, breezeways, and/or basements shall not be utilized in the calculating of square feet requirements. All homes shall have an attached 3-car garage of at least 600 square feet with additional off street parking space for at least two other vehicles.

B. Trailers and Vehicles Prohibited From Being Parked on Streets Longer than 72 Hours. No trailers, tractor trailers, boats, fifth wheel trailers, motor homes, horse trailers, boat trailers, camping trailers, equipment, farm equipment, recreational vehicles, vehicles in excess of 3/4 ton capacity, tractor trailer cab units, or any other vehicles, equipment, items of similar size or length may be parked or left on public right-of-way at any time, nor shall any other vehicle, equipment, or item be parked or left on public right-of-way in excess of 72 hours.

SECTION 10.02 Colors. Colors on exterior surfaces shall be approved by the Architectural Control Committee along with blueprint review.

SECTION 10.03 Fencing. All fencing bordering the paved roads and individual lots throughout the development shall be 3 rail, white, PVC fencing, to match existing fencing provided by Grantor. No fencing utilizing metal posts or metal framing can be used, however, a neutral colored stranded wire or wire fabric fencing to be installed inside plastic PVC fencing will be allowed. All fencing must be approved by the Architectural Control Committee prior to installation.

SECTION 10.04 Exterior Surface. Brick, stone, or stucco shall be a minimum of 40% of the square footage of the surface of all exterior walls

(square footage of windows, gables, doors, and garages shall be included in this calculation) for homes of modern design. For homes based on historical models (Victorian, etc.), the Committee may waive or reduce the requirement of this section.

SECTION 10.05 Roofs. Rooflines shall have a minimum 5/12 pitch and a minimum of 12" overhang from vertical wall surface. Roofs may be slate, tile, dimensional asphalt, or material of similar quality. All roofing material shall have a minimum 40-year guarantee and a weight of 320 lbs./100 sq. ft. Roofing materials such as firefree shake; woodruf, three-tab or T-lock asphalt shingles are prohibited.

SECTION 10.06 Driveways. All driveways from the paved surface of the County road to the garage of the home shall be defined and completed in typical road design construction, and be covered with gravel, recycled asphalt, concrete, brick, or other material that prevents the tracking of mud onto the County road. All driveways must be improved with at least a temporary all weather surface prior to the start of home construction activity.

SECTION 10.07 Height Restrictions. Residences shall not exceed 35 feet in height from the finished grade at the front of the home. No outbuilding shall exceed 25 feet in height. This provision does not apply at the rear of the home with lots that slope below the street elevation for a walkout basement.

SECTION 10.08 Mailbox and House. Each residence shall install and maintain a mailbox in the front of the residence along the street. House numbers shall be placed on either the mailbox, the residence, or both.

SECTION 10.09 Setback Requirements. Homes shall have minimum building setback requirements of: 30 feet from any front or side street, 25 feet on one side from one side boundary

or 5 feet from attached garage, and 25 feet from the other side boundary, and 20 feet from any rear boundary (50 feet from Lanewood Street).

SECTION 10.10 Requirement for Front Yard and Street Side Landscaping and Location of Animal Pens or Runs. Except for driveway areas, all residences shall have a landscaped and irrigated front yard side and side yard abutting a street side to the street. At no time shall permanent horse or animal pens or runs be allowed in the front yard or on a side yard abutting a side street. Grantor is furnishing two (2) trees of 2 inch caliper or larger and four (4) shrubs in 5 gallon or larger containers for each street frontage that a Lot has for planting along street frontages by the Lot owner. These trees and shrubs and the required front and side yard abutting a street side landscaping shall be installed within nine (9) months of occupancy of the home on a lot and thereafter maintained in live, weed free, condition.

SECTION 10.11 Outbuildings. Not counting two allowed small storage sheds (Section 10.14), there shall be not more than two (2) outbuildings per lot (one of which may be a barn). Setback requirements for all outbuildings are as follows: 30 feet or equal to the front plane of the house, whichever is greater, 25 feet from any side street, 25 feet from any other side lot line and 20 feet from rear lot line. Not counting small storage sheds that shall total 170 square feet or less and be 2 or less in number, permanent outbuildings may not exceed 1,000 square foot/acre combined on any one lot, except by variance from Adams County and the consent of the Committee. Not withstanding any of the following guidelines, it is expressly understood a pole barn shall not be accepted as any type of outbuilding. Outbuildings shall be defined as any structure over 170 square feet in size and shall conform to the following:

- A. Guidelines for Outbuildings and Garages.
 - (1) Foundation is to be concrete, either monolithic or stem wall construction.

- (2) Interior Slab is to be concrete.
- (3) Wall framing is to be wood, metal studs, concrete or masonry.
- (4) Wall, soffit, and exterior finishes (color, type, and design) are to match the house finish on the front and street sides. Walls on non-street sides and the back may be stucco, stucco board, or lap siding if it is on the house. If the house is all brick, stucco or stone then the front must be all brick, stucco or stone or all exterior walls must have a minimum 40% brick finish.
- (5) If the structure is on a corner lot near the street then the three sides that are in view must match the house (i.e., brick, brick wainscoting, stucco, or a combination of these materials).
- (6) The roof pitch shall match the house and be of matching shingles. There must be a minimum 12" overhang. Height is restricted to 25' above the floor to the highest point. No metal roofs are allowed.
- (7) Overhead doors must match the house.
- (8) Exterior walk doors are to match the secondary exterior doors of the house.
- (9) Driveways are to be a defined path of base coarse and gravel, concrete, or asphalt.
- (10) The location on the property is subject to review by the Architectural Control Committee and all adjacent landowners to ensure unrestricted site lines.

B. Guidelines for Barns.

- (1) Foundation is to be concrete, either monolithic or stem wall construction.
- (2) Interior Slab may be concrete or dirt.
- (3) Wall framing is to be wood, metal studs, concrete, masonry or an approved metal structure.
- (4) Wall exterior finishes (color, type, and design) are to match the house on street sides. Walls on non-street sides and the back may be stucco, stucco board, or metal siding with 3'-0" wainscoting, if approved. If the house is all brick, stucco or stone then the front face must be all brick, stucco or stone or all exterior walls must have a minimum 40% brick finish. Real brick, real brick veneer (1/2" min), or real brick

veneer board may be used.

- (5) If the structure is on a corner lot near the street then the three sides that are in view must match the house (i.e., brick, brick wainscoting, stucco, or a combination of these materials).
- (6) The roof pitch shall match the house and be of matching shingles. There must be a minimum 12" overhang. Height is restricted to 25' above the floor to the highest point. No metal roofs are allowed.
- (7) Overhead doors must match the house. Sliding doors are permissible if approved.
- (8) Exterior walk doors are to match the secondary exterior doors of the house.
- (9) Driveways are to be a defined path of base coarse and gravel, concrete, or asphalt.
- (10) The location on the property is subject to review by the Architectural Control Committee and all adjacent landowners to ensure unrestricted site lines.

SECTION 10.12 Structures not Allowed.

Mobile homes, earthen homes, domes, A-frames, and all other styles deemed by the Architectural Control Committee to be untypical and incompatible with the community are prohibited.

SECTION 10.13 Homes and Outbuildings Other Design Review Criteria.

In addition to those applicable standards already outlined in these CC&R's, the following shall be utilized in evaluating the compatibility of homes and outbuildings for construction and/or placement on lots.

- A. A home should be displayed to the street and surrounding properties in a compatible and harmonious manner through the location of windows, changes and variety of elevation, varied roof lines, porches, other architectural features, orientation on the lot, exterior color and/or materials, and/or landscaping. Wherever possible, homes on a series of adjacent lots should not be of the same floor plan. Where repetitive floor plans are utilized on adjacent lots, additional features (not limited to those outlined above) may be

required.

B. All outbuildings and small storage sheds should match the appearance of the existing home, wherever possible. Where proposed outbuildings don't match the appearance of the home, the design, color, orientation, and placement on the lot shall be as unobtrusive to adjacent properties as possible.

C. All site and/or yard lighting plans must be submitted for review and approval to the Architectural Control Committee.

SECTION 10.14 Small Storage Sheds. Two prefab or kit type small storage sheds a total maximum of 170 square feet or less shall be allowed in addition to the allowed outbuildings. The exterior color scheme and color of roofs of sheds shall match or be complementary to the existing color scheme of the home and follow the setback requirements for outbuildings. Small storage sheds are subject to approval by the Architectural Control Committee.

SECTION 10.15 Temporary Housing No temporary housing can be erected or moved on, to be lived in and occupied on any Lot. By approval of the Committee and Adams County, the temporary use of camper trailers or similar temporary housing may be allowed during construction of a home on a Lot for security purposes. A san-o-let and bottled water will be required and a bond shall be posted or cash collateral in an amount determined by the Committee to guarantee removal of the temporary housing unit. The temporary housing shall be removed no later than 30 days after the date the Certificate of Occupancy for the home is issued.

SECTION 10.16 Building Approval The Committee plan approval form must be signed and approved before the placement, installation, or construction of any building or buildings on any lot. Violation of this covenant shall subject the violator to a fine imposed by the Board as set

forth in Article III, Section 3.08A.

SECTION 10.17 Outlot A's. All Outlot A's in BEEHS will remain in a natural state and not be redesigned or cultivated in any way. Trees and shrubs planted in any Outlot A areas must be authorized by the Architectural Control Committee, before their planting. General maintenance of the Outlot A's shall be authorized and arranged by the Association or the Grantor as needed.

SECTION 10.18 Builders Requirements and Posting Collateral to Guarantee Compliance with Builder Requirements. Prior to issuance of a building permit for a home's construction on any lot conveyed from the Declarant/Grantor to a Successor Owner, a \$500 deposit shall be deposit with the Association for:

A. Removal of construction debris and trash left on the lot and/or on adjacent properties or public right-of-way, and as payment for repair and replacement for any damage to streets, landscaping, adjacent properties, public improvements, utility structures, fencing, or other improvements caused by construction activities of a home on a Lot, as determined by the Association. By way of example, all or part of the \$500 surety funds may be utilized to pay for any of the below items:

- (1) Repair any damage which may occur to improvements in place or utility services caused by subcontractors, or caused by delivery vehicles or construction vehicles.
- (2) Replacement of any lot corner and boundary pins.
- (3) Regrading to correct any grading changes caused by the home's construction on a Lot to ensure drainage water from a Lot does not adversely affect other property or public right-of-way.

(4) Rental and maintenance of wind stable san-o-lets.

(5) Removal and disposal off-site of any material from the cleaning out of trucks, debris, trash, and other material that is disposed on other property or public right-of-way from activities involved in a home's construction on a Lot.

(6) Removal and clean up any mud tracked from a home's construction on a Lot onto the public right-of-way.

At such time as 30 occupied residences of the 40 lots within BOX ELDER ESTATES SUBDIVISION - FILING NO. 1 are owned by persons other than the Grantor, the Grantor shall relinquish authority to the Association for the area within the BOX ELDER ESTATES HOMESITES SUBDIVISION - FILING NO. 1. At such time as at least 75% of the homes in any area added under the "Notice of Applicability" provisions provided for in the **RECITALS** are owned by persons other the Grantor, the Grantor shall relinquish authority to the Association within the area as set forth in the Exhibit "A" area accompanying the "Notice of Applicability". The Grantor may also waive this requirement for any builder who can demonstrate the high probability of compliance with this provision.

B. In Addition, a fine may be levied by the Association for each incident that violates any of the above condition and/or for violation of any of the below standards as set forth in Article III, Section 3.08A:

(1) Allowing construction vehicles or employees or subcontractors to be parked on any public right-of-way over night or on weekends.

(2) Allowing construction activities which create noise, bright lights and/or so some other

nuisance between the hours of 9:00 P.M. and 7:00 A.M.

During a home's construction, the Grantor, or Association when the Grantor relinquishes this authority, may utilize the funds to correct any items subject to the notice provisions as outlined in Section 6.06 (B) and Section 11.03. After the home construction is completed, a request in writing may be submitted for release of the \$500 within ten (10) days after issuance of a Certificate of Occupancy for a home on a Lot.

Any remaining amount shall be returned within 30 days after the funds expended in fines and for corrective actions. If applicable, an itemized written list shall be provided of further corrections that need to be completed by the lot owner within 30 days of the issuance of such a list. At the end of the 30 day period for completion of said corrections, any remaining funds necessary to complete said corrections may be expended, and any remaining balance shall then be returned along with an itemization of any additional funds expended.

ARTICLE XI MISCELLANEOUS

SECTION 11.01 Term. This Master Declaration, including all of the covenants, conditions and restrictions hereof, shall be effective upon recording, and shall be automatically extended for successive periods of ten years each, unless amended or extinguished by a written instrument executed by at least three-fourths of the Owners in BEEHS and recorded in the Adams County real property records.

SECTION 11.02 Amendment. No amendment of this Master Declaration shall be effective until executed and recorded in the real property records of the County in the manner hereinafter provided.

A. **Special Provisions.** No amendment of Section 9.07 shall be effective as to any Beneficiary who does not join in the execution

thereof provided that his mortgage or Deed of Trust is recorded in the real property records of the County prior to the recordation of such amendment. Subject to the preceding sentence, no amendment of Section 11.02 shall be effective unless adopted by 75% or more of the total number of votes entitled to be cast pursuant to Section 6.03A above at the time of the proposed amendment.

B. By Grantor. Except as provided in Section 11.02A and to the extent not prohibited by law, this Master Declaration may be amended only by Grantor so long as Grantor is entitled to three (3) votes for every one (1) vote to which any other person is entitled as provided in Section 6.03A(2). However, no such amendment proposed by Grantor shall be affective, until written notice of the proposed amendment is delivered to the owners of all lots owned by others than the Grantor. If, within 10 days after delivery of said written notice, written notice is delivered to the Grantor objecting to said amendment by at least 75% of the owners of all lots owned by other than the Grantor, the amendment proposed by Grantor shall not be effective and not be recorded. .

C. By Owners. Except as provided in Sections 11.02A and 11.02B. This Master Declaration may be amended by the recording in the county real property records of an instrument executed and acknowledged by the president and secretary of the Board, setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least 67% of the number of votes entitled to be cast pursuant to Section 6.03A. Any Owner may indicate his approval of such proposed amendment either by consenting thereto in writing or by affirmative vote at a duly convened regular or special meeting of the Association. However, no Owners amendment shall be affective without the consent of the Grantor in any area as set

forth in the Exhibit "A" area added under the "Notice of Applicability" provisions provided for in the **RECITALS**, until at least 75% of occupied homes on lots are owned by persons other the Grantor.

SECTION 11.03 Notices. Any notice permitted or required to be given by the Master Declaration shall be in writing and may be delivered either personally or left personally on the property by attachment to some object on the property, or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or a legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Person at the address given by such Person to the Association for the purpose of service of notices, or to the residence of such Person if no address has been given to the Association. An address may be changed by notice in writing given by such Person to the Association.

SECTION 11.04 Interpretation.

A. Liberal Interpretation. The provisions of this Master Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development and operation of BEEHS and of promoting and effectuating the fundamental concepts of BEEHS as set forth in the **RECITALS** and **DECLARATION** of this Master Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

B. Restrictions Severable. Notwithstanding the provisions of the foregoing Section 11.04A, each of the provisions of the BEEHS Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of

any other provision, and notwithstanding any provision herein to the contrary, this Declaration shall be subject to all requirements of law.

C. Singular Includes Plural. 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.

D. Captions. All captions and titles used in this Master Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs, Sections or Articles hereof.

SECTION 11.05 Nonwaiver. The failure of Grantor to enforce any of the conditions, covenants restrictions or reservations herein contained shall in no event be deemed to be a waiver of the right to do so for subsequent violations or of the right to enforce any other conditions, covenants, restrictions or reservations, and Grantor shall not be liable therefor.

SECTION 11.06 Certificate of Compliance. Upon payment of a reasonable fee and upon written request of any owner, mortgagee, prospective Owner of any property covered by these covenants, Grantor shall issue an acknowledged certificate in recordable form setting forth the amount of any unpaid assessments, if any, and setting forth generally whether or not to the best of the Grantor's knowledge said Owner is in violation of any of the terms and conditions of these covenants. Said written statement shall be conclusive upon Grantor in favor of the persons who rely thereon in good faith. Such statement shall be furnished by Grantor within a reasonable time, but not to exceed ten (10) business days from receipt of a written request for such written statement. The fee charged to provide this certificate shall initially be

\$25.00 per certificate. After the first year, this fee is subject to modification by the Association acting by and through it's Board and shall be executed and acknowledged by at least two members of the Board.

SECTION 11.07 Violation of law. Any violation of any Federal, State, or local law, ordinance or regulation pertaining to the ownership, occupancy or use of any property within BEEHS is hereby declared to be a violation of the BEEHS Restrictions and subject to all of the enforcement procedures set forth herein.

SECTION 11.08 Remedies Cumulative. Each remedy provided by the BEEHS Restrictions is cumulative and not exclusive.

SECTION 11.09 Irrigation Water Usage. The Board shall adopt the rules and regulations pertaining to the usage of the irrigation water by the Lot residence/owners. Formulation and adoption of rules and regulations on usage of the irrigation water shall take place within 1 year of ownership of at least 30 Lots by other than the Grantor.

SECTION 11.10 Rules on Usage of Outlot A Areas. Except for any restriction on use of part of Block 1 - Outlot A for use as Sales Office, the Board may adopt rules and regulations pertaining to usage of any Outlot A area owned or leased by the Association within 1 year of ownership of at least 30 Lots by other than the Grantor. The rules initially adopted by the Grantor are as follows:

- A. No motorized vehicles of any kind, except for maintenance purposes, shall be permitted; and
- B. No activities shall be permitted on any Outlot A area owned or leased by the Association between 9:00 P.M. and 7:00 A.M. except by specific written permission.

ARTICLE XII

