**Legend:**

**~~XXXXXXXX :~~ Red Strikethroughs are original Covenant Language being removed**

XXXXXXXX : Blue text is new language added to Covenant Document

Black text – current Covenant language

**AMENDED AND RESTATED DECLARATION**

**FOR**

**BANNOCKBURN HOMEOWNERS ASSOCIATION, INC.**

This instrument contains the effective Protective Covenants of Bannockburn, Filings 1 through 6, inclusive, Douglas County, Colorado.

THIS DECLARATION is effective when recorded in the real property records for Douglas County, Colorado.

## **RECITALS**

1. On that certain “Bannockburn Protective Covenants,” executed by the declarant named therein, was recorded at Reception in the real property records for Douglas County, Colorado (the “Original Declaration”).

1. The Original Declaration created a common interest community (a planned community) pursuant and subject to CRS 38-33.3-101 *et seq.* (the “Act”) on the real property described on Exhibit A (the “Real Estate”) under the name of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

1. The Original Declaration was recorded to create a desirable and attractive residential neighborhood, free from nuisances and with structures which are compatible in architectural design and appearance, for the mutual benefit and protection of the owners of property within the Real Estate.

 ~~On or about, the First Amended and Restated Declaration of~~ ~~Covenants, Conditions and Restrictions for was adopted and recorded to create a~~ ~~desirable and attractive residential neighborhood, free from nuisances and with structures~~ ~~which are compatible in architectural design and appearance, for the mutual benefit and~~ ~~protection of the owners of property within the Real Estate.~~

1. The Owners and the Association desire to amend and restate all provisions of the Bannockburn Protective Covenants by virtue of this Amended and Restated Declaration for Bannockburn Homeowners Association, Inc. (the "Declaration"), and intend, upon the recording of this Declaration, that all Declarations shall be superseded entirely by this Declaration.

1. The requirements set forth in the Original Declaration for amendment, set forth in CRS § 38-33.3-217, have been satisfied.

NOW THEREFORE, the Declaration is amended and restated in its entirety to read as follows, subject only to those items of record shown on the Original Declaration.

The Real Estate shall be held, sold, and conveyed subject to the Covenants for the purpose of protecting the value and desirability of the Real Estate and any other related purposes; and all Covenants shall continue to run with the Real Estate and shall be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof and the Association.

## **ARTICLE I – PURPOSE OF THE COVENANTS**

General Requirements. It is the intention of the Bannockburn Homeowners Association, expressed by its execution of this instrument, that the lands shall be developed and maintained as a highly desirable rural residential area. It is the purpose of these covenants that the present natural beauty, growth, native setting and surroundings shall he protected insofar as possible in connection with the uses and structures permitted by this instrument.

## **ARTICLE II – DEFINITIONS**

1. Bannockburn. The word "Bannockburn" as used herein shall mean the lands included within the Bannockburn Subdivision, Filings 1 through 6, according to the plat thereof filed for record in the records of the Clerk and Recorder of Douglas County, Colorado.
2. Bannockburn Homeowners Association. The Bannockburn Homeowners Association, Inc. (hereinafter called the "Bannockburn Homeowners Association") is a Colorado corporation, not-for-profit, formed in accordance with the Articles of Incorporation filed with the Colorado Secretary of State.
3. Board. The Association's governing body, the Board of Directors, which is referred in the Act as the “Executive Board."

1. Bylaws. The Amended and Restated Bylaws of the Association, as the same may be amended from time to time.

1. Common Expenses. In addition to the definition included in the Act, these terms shall include the following items levied against a particular Owner or Lot: (i) the Owner's Allocated Interest in the Common Expenses (the “Common Expense Liability”), subject to reapportionment pursuant to Article III, Section 11; (ii) late charges, attorneys' fees, fines, and interest charged by the Association at the rate as determined by the Board; (iii) charges levied against all Owners pursuant to Article III, Section 13 ("Special Assessments"); (iv) charges levied against a particular Owner or Owners and their Lot or Lots pursuant to Article III, Section 14 ("Special Lot Assessment"); and (v) any other sums permitted by the Governing Documents or the Act to be assessed against a particular Owner or Lot.

1. Common Expense Assessment(s) As used in this Declaration, this term includes all charges levied by and for the benefit of the Association pursuant to the Governing Documents, including, but not limited to: (i) annual costs and expenses of the Association resulting from owning, leasing, using, maintaining, or otherwise controlling any real or personal property and the Common Elements; (ii) expenses incurred by the Association pursuant to Article III, Section 10; (iii) expenditures of the Association for which a Special Assessment is levied; and (iv) amounts necessary to fund reserves pursuant to Article III, Section 16 below.

1. Covenants. Collective term for all promises, restrictions, reservations, conditions, terms, easements and rights-of-way specifically set forth or referenced in this Declaration and set forth in the Governing Documents, as the same may be adopted and amended from time to time.

1. Declaration. This Declaration, and any and all duly executed amendments, supplements, or additions to this Declaration recorded in the office of the Clerk and Recorder for Douglas County, Colorado, and including plats recorded in connection therewith.

1. First mortgage. A mortgage, deed of trust, deed to secure a debt, or any other form of security instrument affecting title to a Lot (collectively, "Mortgage"), which is subject only to governmental liens, the lien for real property taxes, a portion of the Common Expense Assessment, and other liens made superior by Colorado law. The holders, insurers, and guarantors of a First Mortgage are collectively referred to as "First Mortgagees."

1. Governing Documents. Collective reference to those documents which govern the operation of the Association and the Community, including: (i) the Articles of Incorporation; (ii) the Bylaws; (iii) the Rules; (iv) Board Resolutions; (v) Board Policies (including the Responsible Governance Policies adopted pursuant to the Act); (vi) the Plat; and (vii) this Declaration, as one or more of the same may be amended from time to time. Each and every provision of the Governing Documents shall be given the force and effect as if set forth in this Declaration. However, if there is any conflict between the provisions of this Declaration and the provisions of any of the other Governing Documents, the provisions of this Declaration shall govern and control.

1. Improvements. All items installed within, or placed or constructed upon, any Lot. Including, but not limited to: dwellings, structures, buildings, outbuildings, temporary structures, improvements within or effecting the roadways, or facilities constructed. Pursuant to Article VI all such Improvements made by Owners must be approved by the Board and be in accordance with this Declaration.
2. Member. Every person or entity that holds membership in the Association.
3. Member in Good Standing. All Members of the Association who have paid all accrued dues and fees, past and present, due and owing to the Bannockburn Homeowners Association

1. Owner. One (1) or more natural persons or legal entities recognized in the state of Colorado who hold title to a Lot and excluding those having such interest merely as security for the performance of an obligation. Where an Owner is a legal entity (e.g., a legal trust, corporation or limited liability company) such legal entity shall designate one natural person who owns an equity interest in such Owner to represent the Owner (the “Owner Representative”) in all matters under these Governing Documents. An Owner that is a non-natural person may change its Owner Representative once annually or at any time upon the death or disability of the representative or where such designated natural person no longer has an ownership interest in the Owner.
2. Plat. That certain Survey Plat of Bannockburn recorded on \_\_\_\_\_\_\_\_\_\_\_\_\_ in Book \_\_\_ at Page \_\_\_, under Reception No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_, as amended, in the real property records of Douglas County, Colorado, and that certain Survey Plat of Bannockburn recorded on \_\_\_\_\_\_\_\_\_\_\_\_\_ under Reception No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in the real property records of Douglas County, Colorado*.* Any "Notes" on the various sheets comprising the Plat are incorporated by this reference and shall be fully enforceable as though set forth in this Declaration.
3. Resident Owners. All Owners whose principal place of residence is in Bannockburn shall be a "Resident Owner".

1. Residential Lots. All of the subdivision lots designated on Filings l through 6, inclusive, recorded plat of the subdivision by block and lot number shall be residential tracts (hereinafter "Residential Lots").

1. Rules. Collective term for all rules, regulations, policies, procedures and guidelines of the Association, in general, as the same may be adopted, amended and repealed from time to time by the Board pursuant to the Act, this Declaration and the Bylaws.

**ARTICLE III – BANNOCKBURN HOMEOWNERS ASSOCIATION FILINGS 1 - 6**

1. Membership in Bannockburn Homeowners Association. All persons or associations who own or acquire title in fee simple to any of the residential lots within Bannockburn, by whatever means acquired, shall automatically become a "Member" of Bannockburn Homeowners Association and shall be required to pay, by March 31 of each year, annual dues in the amount of twenty-five dollars ($25.00) or in such amount as may be determined from time to time by the Bannockburn Homeowners Association ~~at an annual or special meeting~~ in accordance with Article III, Section 12.

1. Voting. Only Bannockburn Homeowners Association members who are ~~Resident Owner~~ Members in Good Standing, as defined above, shall be entitled to vote on matters related to these covenants. Each ~~Resident Owner~~ Member in Good Standing shall be entitled to a single vote.

3, Membership and Voting**.** Every Owner of any Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from fee simple ownership of any Lot, and fee simple ownership of a Lot shall be the sole qualification for such membership. Where more than one (1) person holds an interest in any Lot, all such persons shall be members of the Association, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. Each Lot is allocated one (1) vote in the affairs of the Association and the Community, all votes shall be cast in accordance with the Bylaws (provided, however, that in no event shall more than one (1) vote be cast with respect to any Lot, or no less than one (1) vote be cast with respect to any Lot, and the vote cannot be split in any manner).

1. Address of the Association. The current address of the Association is PO Box 211, Franktown, CO 80116 and may be changed at any time by recording any written supplemental information to this Declaration for the purpose of providing notice of the Association’s address.
2. General Purposes and Powers**.**  The Association, acting in all instances through its Board unless otherwise required by the Act or this Declaration, shall perform such functions and manage and operate the Community and the Real Estate as provided in the Governing Documents or as may be necessary or desirable to effectuate such purposes as may be described in the Governing Documents. All Owners shall be deemed to have assented to, ratified and approved such designation of rights, duties, and authority. Without limitation, the Association shall have the following specific powers:

* 1. Association shall have all of the powers and authority permitted pursuant to the Act and the Colorado Revised Nonprofit Corporation Act, C.R.S. 7-121-101 *et seq*, including but not limited to: (1) adopting and amending Bylaws and Rules and Regulations; (2) adopting and amending budgets; (3) instituting, defending or intervening in litigation on its own behalf or on behalf of two or more owners; (4) making contracts and incurring liability; (5) granting easements and licenses; (6) acquiring, holding, encumbering and conveying in the name of the Association any right, title or interest to real or personal property, except that Common Elements may be conveyed or subjected to a security interest only if (a) Members entitled to cast at least sixty-seven percent (67%) of the votes agree to that action, (b) the provisions of Article III Section 15 are followed with respect to approval or notice of First Mortgages, and (c) if all Owners of Lots to which any Limited Common Element is allocated agree in order to convey that Limited Common Element or subject it to a security interest; (7) imposing late fees and fines for assessments and covenant violations.

* 1. The Association shall have all of the powers and authority necessary and proper to manage the business affairs of the Community.

* 1. The Association shall have all of the powers and authority necessary and proper to own, operate, manage, lease, encumber, maintain (i.e., to reconstruct, construct, demolish, remove, replace, and to provide regular or extraordinary maintenance) and otherwise deal with the Common Elements, including the right to acquire additional Common Elements and to make improvements thereon.

* 1. The Association shall be responsible for maintenance and removal of any diseased trees or vegetation in any Common Elements.

* 1. The Association shall have complete authority and control to issue and amend restrictions on use and occupancy of the Lots in addition to those contained in this Declaration. However, the Association may not change the Community from a residential-use Community to a commercial-use Community.

1. Indemnifications and Waivers**.**

* 1. General Indemnifications. As more particularly set forth in the Bylaws, to the fullest extent permitted by law, individuals who serve as officers and Board members of the Association shall be and are hereby indemnified by the Owners and the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer or member of the Board, or any settlements thereof, whether or not they are an officer or Board member the time such expenses are incurred; except in such cases where such individual is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her other duties.

* 1. Indemnification Related to Common Elements, including but not limited to the Roadway. Each Owner for themselves and their Authorized Users and all persons deriving Common Element use privileges through such Owner and Authorized Users, acknowledge that the use of the Common Elements, including but not limited to the Roadway Easements and any of its facilities have inherent and latent risks and that the Authorized Users and all persons deriving Common Element use privileges through Owner or such Authorized Users use such amenities at their own risk. Accordingly, the Owners for themselves, their Authorized Users and all persons deriving Common Element use privileges through such Owner and Authorized Users (the “Indemnifying Parties”) hold any other Owner, the Association and its Directors and Officers, representatives, agents, committee members (“collectively, the “Indemnified Parties”) harmless from any and all loss, cost, claims for injury to persons, damage to property or liability for these sustained or incurred by him or her resulting from, or in any way related to, the use of the Common Elements and any act or omission (without regard to negligence) of any Indemnified Parties. All Owners and their Authorized Users and all persons deriving Common Element use privileges through such Owner and Authorized Users waive any claims for injury to persons or damage to property, in connection with the use of the Common Elements, including but not limited to the Roadway Easements or its facilities. The Indemnifying Parties shall be liable to the Indemnified Parties for all costs and expenses incurred by it in the defense of such suit, including court costs, expert witness fees and attorney's fees, and through all appellate proceedings.

* 1. Waivers. Without limiting anything contained in this Declaration, each Owner, on behalf of themselves and their Authorized Users and all persons deriving Common Element use privileges through such Owner and Authorized Users, acknowledge, covenant and agree that they have waived their right to recover and forever release the Association and any other Owner from any and all claims, damage, loss or costs related to the use or access to the Common Elements. Further, each Owner acknowledges that they know and understand the inherent risks of the Common Elements, including but not limited to the Roadway Easements, and that the Indemnified Parties have recommended that all persons using or accessing such Common Elements have their own insurance to cover any activity or use on or around the Common Elements. Each Owner, Authorized User and all persons deriving Common Element use privileges through such Owner and Authorized Users, assume sole responsibility for his or her personal property. The Association shall not be responsible for any loss or damage to any private property.

1. Enforcement**.** All Owners shall be responsible for the actions and failure to act by such Owners, their Authorized Users, their Authorized Guests, persons deriving use privileges through such Owner and Authorized Users by virtue of this Declaration or the Rules, or any other person who may enter upon the Community by, through or at the request of such Owner or Authorized User. Any owner who is in violation of the Declaration or the Rules shall be considered “not in good standing”. The Association shall have the power to enforce provisions in its Governing Documents. Costs and fees, including attorney fees, shall be awarded to the prevailing party. The Board shall take such action as the Board deems desirable to cause such compliance by each Owner, and each Authorized User, by any of the following means:

* 1. By entry upon any Lot after notice and an opportunity to be heard (unless a bona fide emergency exists and, in that event, notice and an opportunity to be heard are not required), without liability to the Owner thereof, for the purpose of enforcement or causing compliance including by curing said violation;

* 1. By commencing and maintaining actions and suits in law or equity or both; (i) to recover damages, or (ii) to restrain and enjoin any violation or threatened violation of, or compel compliance with, provisions of the Governing Documents by mandatory injunction or otherwise;

* 1. By levying and collecting, after notice and an opportunity to be heard, fines against any Owner for violation by such Owner, or an Authorized User, or any other person described in this Article III, as a Common Expense Assessment to be secured by a continuing lien, from the date it is levied, and by foreclosure of such lien.
	2. Any Owner not in good standing shall not be entitled to vote.

* 1. Failure of Association or owner to enforce compliance with any Association Document provision shall not be deemed waiver of the right to future enforcement.

1. Right to Notice and Comment**.** Pursuant to C.R.S. §38-33.3-205(1)(o), before the Board amends the Bylaws or adopts or amends Rules, or whenever the Governing Documents require that an action be taken after "Notice and Comment," and at any other time the Board determines, the Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Further, any Owner may give "Notice and Comment" to the Owners of any matter affecting the Community, and Owners shall then have the right to comment, orally or in writing, on the matter. Notice shall be given to each Owner in writing, delivered personally, delivered via e-mail, delivered via first-class postage prepaid mail or expedited delivery service, or by posting the information on the Association’s web site, if any, or by mail to all Owners at such address as appears in the records of the Association, or notice shall be published in a newsletter or similar publication which is routinely circulated to all Owners. The Notice shall be given not less than three (3) days before the proposed action is to be taken. The Notice shall invite comment to the Board or an Owner, orally or in writing before the scheduled time of any meeting.
2. Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments**.** Each Owner, by acceptance of a deed to a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay Assessments to the Association pursuant to the Governing Documents and the Act. Such Assessments shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges became due. The Assessments shall be a charge on each Lot and shall be secured by a continuing lien against the charged Lot. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. All Assessments shall be payable in the amounts specified in the levy thereof, including without limitation, any claim that the Association or the Board is not properly exercising its duties and powers under this Declaration. All Assessments described in this Article III shall be considered “Common Expense Assessments” as defined by the Act, without regard to how they are titled in this Declaration.
3. Purpose of Assessments**.** In addition to such other purposes as set forth in the Act, Assessments shall be used for the purposes of promoting the health, safety, and welfare of Owners and Authorized Users, and including but not limited to, in particular:

* 1. To enforce all provisions of the Governing Documents;

* 1. To exercise all rights and powers and to discharge all duties and obligations pursuant to the Act and the Governing Documents;

* 1. To discharge all expenses incurred by the Association in the alteration, improvement, construction, reconstruction, repair, maintenance or replacement of the Common Elements and all Improvements located thereon, generally;

* 1. To discharge all expenses incurred by the Association in connection with the Roadways, and any related easements;

* 1. To pay all premiums for insurance policies obtained and kept in full force and effect pursuant to Article X;

* 1. To pay the costs of providing utilities to and within the Real Estate;
	2. To fund any operating deficit or reserves the Association deems necessary to meet its financial obligations.

1. Apportionment of Common Expenses**.** Except as provided below and elsewhere in this Declaration, all Common Expense Assessments shall be assessed against all Lots in accordance with the formula for allocating the liability for the Common Expenses as set forth in Article II, Section 6 of this Declaration:

* 1. Any Common Expense for services provided by the Association to an individual Lot pursuant to the Governing Documents generally or at the request of the Owner may be assessed against that Lot.

* 1. Fees, charges, taxes, impositions, late charges, fines, collection costs and interest charged against an Owner are enforceable as Common Expense Assessments, as are all legal fees and costs incurred by the Association enforcing the Governing Documents, to be paid by the Owner against whom such enforcement is sought.

* 1. If a Common Expense is caused by the actions, failure to act, or misconduct of an Owner, their Authorized Guests, persons deriving use privileges through such Owner and/or Authorized Users by virtue of this Declaration or the Rules, or any other person who may enter upon the Community by, through or at the request of such Owner or Authorized User, the Association may assess that expense exclusively against that Owner and that Lot.

1. Annual Assessments**.** The Common Expense Assessment shall be made on an annual basis against all Lots based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year (“Annual Assessments”). (Administrative expense examples include, but are not limited to, association communications and ballot publishing and mailing, insurance policy payments, legal services for advisement and defense of the association.) The budget shall be submitted to the Owners, pursuant to Section 303(4) of the Act and the Bylaws. Common Expense Assessments shall be due and payable annually or as otherwise decided by the Board. The omission or failure of the Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay. This budget will be deemed in full force and effect unless the Owners representing a majority of Members in Good Standing veto the proposed budget, the budget is ratified, and shall be collectible as a Common Expense Assessment.

1. Special Assessments**.** The Board shall have the right to propose a special assessment for such purpose or purposes as may be necessary or appropriate to maintain the Community to such standard as the Board deems appropriate ("Special Assessment"). Special Assessments may include, without limitation, assessments for the cost of any construction of new Common Elements and reconstruction, repair or replacement of any existing Common Elements, including fixtures and personal property, to the extent such cost is in excess of the amount contemplated by the approved budget for the calendar year in which the Special Assessment is levied. (Common Elements examples include, but are not limited to, building, erecting or maintaining Bannockburn Entrance Signage, paving the roadways). Special assessments shall require approval by 66 2/3 percent of the Members in Good Standing.

1. Special Lot Assessments**.** The Association shall have the right to levy and collect a Special Lot Assessment against a particular Owner or Lot or against one (1) or more but fewer than all Owners and their Lots (which shall also be a personal obligation of such Owners assessed), any expense described below (“Special Lot Assessment*”)*:

* 1. To cure any violation of the Governing Documents;

* 1. To reimburse the Association for costs incurred in bringing an Owner, an Authorized Guest or Authorized User and his or her Lot into compliance with the provisions of the Governing Documents;

* 1. To reimburse the Association for an expense incurred on behalf of an Owner or Owners under the Governing Documents, which may be assessed against one (1) or more Lots;

* 1. To reimburse the Association for any expense which is incurred by the Association for maintenance of any portion of the Community which is caused by or in any way results from the actions or failure to act of an Owner or such Owner's Authorized Users or Authorized Guests;

* 1. To levy fines and other penalties and charges pursuant to the Governing Documents;

* 1. To reimburse the Association for an expense incurred on behalf of an Owner under the Governing Documents which benefits one (1) or more, but less than all Owners and which is not otherwise a Common Expense allocated pursuant to Article III, Section 10 above; or

* 1. To reimburse the Association for an expense incurred in providing such insurance on behalf of an Owner as provided in Section 10.4 below, in the event that an Owner fails to prove insurance coverage as required by the Governing Documents.

1. Lien Priority**.** The lien of the Association under this Article III is prior to all other liens and encumbrances on a Lot except: (i) liens for real estate taxes and other governmental assessments or charges against the Lot; (ii) liens and encumbrances Recorded before the recordation of the Original Declaration; and (iii) a First Mortgage on the Lot (except as allowed by the Act with regard to the Association's limited lien priority). This section does not affect the priority of mechanics or materialmens' liens. The lien of the Association under this Article is not subject to the provisions of any Homestead exemption as allowed by state or federal law. Sale or transfer of any Lot shall not affect the lien for said Assessments except that the sale or transfer of any Lot pursuant to foreclosure of any First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment as provided by applicable law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due nor from the lien thereof.
2. Reserves/Surplus**.** The Association, if deemed necessary, may establish a reserve fund for the maintenance, repair and replacement of those Common Elements that must be periodically maintained, repaired or replaced. Such reserve fund shall be funded through the annual Common Expense Assessments. Any surplus funds derived from Assessments shall be transferred to the reserve fund or maintained in an Association general purpose account, or used for Association operations, in the Board of Director’s sole discretion, and by acceptance of a deed to a Lot each Owner hereby directs the Board to make this determination each year.

1. Effect of Non-Payment of Assessments**.** In addition to any right of enforcement set forth specifically in this Declaration or elsewhere in the Governing Documents, any Assessment provided for in this Declaration, or any installment thereof, which is not fully paid within thirty (30) days after the due date, the Association may also assess a monthly late charge thereon. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, or any monthly or other installment thereof, may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefore. The Association's costs of suit, expenses and reasonable attorneys' fees incurred simply by virtue of the failure of the Owner to timely pay Assessments when due, including attorneys' fees and costs for preparing and Recording any lien notice, and the Association's costs of suit, expenses and reasonable attorneys' fees incurred for any such action and/or foreclosure proceedings, shall be taxed by the court as a part of the costs of any such action or foreclosure proceeding and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Lot. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessments, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, and cast the votes appurtenant to such Lot, and to convey or otherwise deal with the same. The grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid Assessments against the Lot which accrued prior to the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee. Whether or not the Association forecloses its lien, it may apply for and be entitled to, the appointment of a receiver, *ex parte*, for a Lot, and the Owner of such Lot shall be liable for all costs and expenses in securing and maintaining this appointment, including receiver's fees, attorneys’ fees and costs.
2. An owner who has not paid assessments in accordance with this section shall be considerd “not in good standing” and subject to all the enforcement actions and penalties provided for in this Declaration.

1. No Waiver or Abandonment**.** No Owner may be exempt from liability for payment of the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Lot against which the Assessments are made.

1. Recording of the Original Declaration was Notice**.** Recording of the Original Declaration constituted Record notice and perfection of the Association’s lien. No further recordation of any claim of lien for Assessment is required, except a notice of delinquent Assessment must be recorded before commencement of foreclosure. Additionally, at its election, the Board may prepare and record a written notice setting forth the amount of any unpaid indebtedness at any particular time, the name of the Owner, and a description of the Lot.

## **ARTICLE IV – ENVIRONMENTAL COMMITTEE AND PROCEDURES**

1. General**.** Any exterior changes or replacements, including exterior color changes or replacements, to an existing structure or new structure on any lot must have approval of the Board.
2. No Waiver of Future Approvals**.** Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.
3. Enforcement**.** In addition to any specific provisions in the Association’s Enforcement Policies and Procedures, any Improvement placed or made in violation of this Article shall be deemed to be nonconforming unless submitted to and approved by the Environmental Committee.
	1. Any contractor, subcontractor, agent, employee, invitee of the Owner or such Owner’s Authorized User who fails to comply with the terms and provisions of this Article may be excluded by the Board from working within the Community upon notice and an opportunity to be heard.
	2. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article, including but not limited to, the levying fines, costs and other charges, and to collect such amounts as an Assessment pursuant to Article III, Section 14 above.
4. Notice of Noncompliance**.** If, as a result of inspections or otherwise, the Board finds that any Improvement has been done without obtaining the approval of the Board, or was not done in substantial compliance with the description and materials furnished to, and any conditions imposed by it, the Board shall provide notice of the particulars of the noncompliance and shall require the Owner of the Lot upon which such improvements have been made to take such action as may be necessary to remedy the noncompliance. At the sole election of the Board, if such noncompliance is not remedied within ninety (90) days of the date set forth on the notice, the notice may be Recorded.
5. Environmental Committee. The Committee shall mean the Board of Directors of Bannockburn Homeowners Association as said Board of Directors is presently constituted and shall be constituted from time to time in the future. Said Committee shall have and exercise all the powers, duties and responsibilities set forth in this instrument.
6. Variances. Requests for a variance to the Bannockburn Protective Covenants may be made by submitting a copy of the request to the Environmental Committee by the second Wednesday of the month. The Environmental Committee, upon agreement of the majority of its members, may propose to accept the request for variance. Notice of the proposed variance must be mailed to each Resident Owner by the fourth Wednesday of the month. Resident Owners shall have until the second Wednesday of the following month to respond to the proposed variance. If fifteen (15) Resident Owners present written objection to the proposal to the Environmental Committee in that period, the variance shall not be approved unless and until subsequent approval of the variance by a two-thirds (2/3) vote of all Resident Owners at an annual or special meeting of the Bannockburn Homeowners Association.
	1. An approval of any variance shall not be constituted as a change of covenants or requirements and will not be interpreted as establishing a precedent for any future consideration.
	2. The Environmental Committee has full authority to approve or deny any variance request strictly on purely aesthetic grounds based solely on their judgment.
	3. The Environmental Committee shall record the reasons for approval or disapproval of all requests for variance. ~~These written records shall be permanently retained as required by paragraph 10 of this article.~~
7. General Requirements. The Environmental Committee shall require that all construction, landscape improvements and alterations within Bannockburn be complementary to the natural surroundings. The Committee shall protect the seclusion of each home from others insofar as possible.
8. Preliminary Approvals. Persons or associations who anticipate constructing improvements within Bannockburn, owning land in Bannockburn, or who contemplate the purchase of land, may submit a preliminary design of improvements to the Environmental Committee for informal review until final design plans are submitted and approved or disapproved.
9. Bannockburn Homeowners Association and its Agents not Liable. ~~Environmental Committee not Liable.~~ The Association will use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Association, its Environmental Committee, nor any individual Board member will be liable to any person for any official act of the Association in connection with submitted plans and specifications, except to the extent the Association or any individual Association member acted with malice or intentional wrongful acts. Notwithstanding that the Association has approved plans and specifications, neither the Association nor any of its members will be responsible or liable to any Owner, developer, contractor, adjacent Lot Owner, or any other Owners affected by such requested improvements with respect to any loss, liability, claim or expense which may arise by reason of such approval or the construction of the improvements. Approval by the Association does not necessarily assure approval by the appropriate governmental body of Douglas County. Neither the Board, the Association, nor any agent thereof, nor Declarant, nor any of its partners, employees, agents or consultants will be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Governing Documents, nor for any structural or other defects in any work done according to such plans and specifications. ~~The Environmental~~ ~~Committee shall not be liable in damages to any person or association submitting any~~ ~~plans for approval or to any Owner or Owners of lands within Bannockburn by reason of~~ ~~any action, failure to act, approval, disapproval, or failure to approve or disapprove, with~~ ~~regard to such plans. Any person or association acquiring the title to property in~~ ~~Bannockburn, or any person or association submitting plans to the Committee for~~ ~~approval, by so doing does agree and covenant that he or it will not bring any action or~~ ~~suit to recover damages against the Committee or committee members as individuals,~~ ~~advisors, employees, agents or developers.~~
10. ~~Written Records. The Environmental Committee shall keep written records for a period five (5) years of all applications, architectural plans, decisions and reasons for decisions, copies of notices sent to homeowners and homeowners responses, and other documents submitted to or generated by the Committee; and of all other actions taken by the Committee under the provisions of this instrument. In addition, all variances granted shall be filed with the Douglas County Clerk and Recorder.~~

## **ARTICLE V – GENERAL RESTRICTIONS ON ALL LOTS AND TRACTS**

1. Plan of Development; Applicability; Effect**.** Pursuant to the Original Declaration, the Covenants are to protect the Owners' collective interests, health, safety, welfare, and the aesthetics and environment within the Community. In furtherance of that general plan, this Declaration establishes affirmative and negative Covenants, easements, and restrictions within the Community, subject to certain rights vested in the Board and the Owners to enable them to respond to changes in circumstances, conditions, needs, and desires within the Community. Each Lot shall be used only for residential purposes (including without limitation home office use) in compliance with the applicable building and zoning regulations of Douglas County, Colorado, including but not limited to height, floor area ratio, and setback requirements.
2. Owners' Acknowledgment**.** All Owners and Authorized Users are given notice that use of their Lots is limited by provisions of the Governing Documents as they may be amended, expanded and otherwise modified hereunder. For example, all Owners understand and agree that the specific restrictions, Community-wide regulations and other provisions which do restrict Owners’ and Authorized Users’ freedom are now, and will be, set forth in the Rules. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected by this provision and that all restrictions upon the use and occupancy of a Lot may change from time to time.
3. Rights of Owners**.** Because many of the activities within the Community will be governed by the Rules and other Governing Documents outside this Declaration, the Board shall not adopt any Rule in violation of the following provisions:
	1. Equal Treatment. Similarly situated Owners and Authorized Users shall be treated similarly.
	2. Abridging Existing Rights. If any Rule would otherwise require Owners or Authorized Users to dispose of personal property which they owned at the time they acquired their interest in the Lot and such ownership was in compliance with all Rules in force at that time, such Rule shall not apply to any such Owners without their written consent. However, all subsequent Owners and Authorized Users of that Lot shall comply with such Rule.

1. Initial Use Restrictions**.** The following activities are regulated, restricted or prohibited, as set forth below, within the Community unless expressly authorized (and, in such case, subject to such conditions as may be imposed) by the Board:
	1. Zoning Regulations. No land within Bannockburn shall be occupied, used by, or for, any structure or purpose which is contrary to the zoning regulations of Douglas County, Colorado.
	2. Signs. Commercial signage shall be limited to two "For Rent" or "For Sale” signs. No other permanent commercial signage shall be permitted unless required by law~~.~~
	3. Animals. The following list of animals may be maintained on each residential lot subject to the conditions of this Section. A combined total of all animals, except chickens and household pets, shall be limited to five. Non-conforming Resident Homeowners, who currently have more than five horses, shall be permitted (grandfathered) to retain their total number of horses until the sale, death or removal of the existing horses, but may not replace, or add to, the existing number of horses, with horses or with any other allowed animal, unless the combined maximum number of allowed animals (excluding chickens) does not exceed a total of five. The allowed animals may be kept on any lot provided said animals are kept in a corral not larger than 3000 square feet and are provided with supplementary feed. Under no circumstances will any commercial breeding or raising of animals be allowed. All animals will remain under control of their owners and will not be allowed to run at large or constitute a nuisance to other landowners.
		1. Horses
		2. Donkeys.
		3. Alpacas.
		4. One Beef animal
		5. Chickens. Chickens shall not exceed the maximum number of ten, provided adequate shelter is provided and built according to the Bannockburn Protective Covenants. No Roosters shall be permitted. No other fowl shall be permitted.
		6. Goats. Goats shall not exceed the maximum number of 2.
	4. No Re-subdivision. No tract described on the recorded plat shall be re-subdivided.
	5. Refuse and Rubbish. Rubbish, garbage or other waste shall be kept and disposed of in a sanitary manner. Rubbish is included to mean any items piled or stored in an unsightly manner which infringes visually upon the native and natural environment of Bannockburn. Examples include, but are not limited to, broken concrete, slash piles, waste lumber, and construction debris. No tract or easement shall be used or maintained as a dumping ground for rubbish. No trash, litter or junk shall be permitted to remain exposed or visible from public roads or adjoining or nearby Residential Lots. All rubbish, refuse and trash shall be removed from all lots and tracts and shall not be allowed to accumulate. Burning of trash will not be permitted. Animal-proof trash containers may be placed at the driveway entrance no sooner than the evening before the day of pickup and shall be removed on the day of pickup. Trash containers which are not animal-proof may be placed at the driveway entrance no sooner than the day of pickup and shall be removed on the day of pickup.
	6. Underground Utility Lines. All utility lines, water, gas, telephone lines, electricity lines, etc. within the limits of Bannockburn must be underground and may not be above ground, except transformers, meters or light standards.
	7. Garden. A family garden not to exceed 2500 sq. ft. is permissible; no additional ground to be used for farming purposes.
	8. Fencing. Existing fences shall be maintained in good structural and upright condition.

New fencing must be of new construction. All fences within 25 feet or less on road frontages, must be one of the following materials, or subject to the following limitations:

* + 1. Stone
		2. Split rail (wooden), with either two or three rails, and a maximum post spacing of ten feet.
		3. Post and pole (wooden), including doweled post and pole construction, with either two or three poles. Poles must have a nominal diameter or thickness a minimum of three inches or greater and posts must have a nominal diameter or thickness a minimum of four inches or greater. Maximum post spacing shall be ten feet.
		4. Post and rail (wooden) with either two or three rails. Rails must have a nominal thickness of two inches or greater and a nominal width of six inches or greater. Posts must have a minimum diameter or thickness of four inches. Maximum post spacing shall be eight feet for rails less than eight inches wide and ten feet for rails with a minimum width of eight inches or more.
		5. White or earth toned/natural colored Vinyl Ranch Style fencing with posts and rails to be of rigid construction and two, three or four rails that are separated and independent between posts. Plastic tension strip fencing and privacy fencing are prohibited.
		6. Privacy fencing is prohibited within 25 feet or less along road frontages. Privacy fencing is defined as higher than four feet tall, and/or more than 4 rails.
		7. The Environmental Committee shall have the authority to allow or disallow other proposed materials for their proposed use, without the need for a Variance, based strictly upon whether the proposed materials meet the aesthetic intent of this Declaration.

Fencing within 25 feet or less from other Residential Lot boundaries must be one of the following materials, or subject to the following limitations:

* + 1. A type of fence approved for fences on road frontage as described above.
		2. Woven wire with a maximum post spacing of sixteen feet (one rod).
		3. Barbless wire with a minimum of four strands and a maximum post spacing of sixteen feet (one rod).
		4. No electrical fences will be permitted unless attached to the inside of an otherwise approved fence.
		5. The Environmental Committee shall have the authority to allow or disallow other proposed materials for their proposed use, without the need for a Variance, based strictly upon whether the proposed materials meet the aesthetic intent of this Declaration.
	1. Vehicles. All motorized vehicles are specifically excluded from Bannockburn unless mufflers in good working order are attached to the exhaust systems. All vehicles are to be confined to subdivision roads and Owner's lots only.
	2. Businesses. No commercial businesses of any kind shall be permitted in Bannockburn except those defined as Class I or Class 2 Home Occupations by Douglas County Zoning Resolution, Part II, Section 23, dated October 13, l993 (10/13/92).
	3. Nuisances. Any use, activity, or practice which is the source of, or unreasonably interferes with the peaceful enjoyment or possession of a Lot or any portion of the Common Elements or any portion of the Community. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed and may be enforced by the Association as if the same were contained in the Governing Documents.
	4. Single Family Use Only. No Lot and no Residence on any Lot shall be used for any purpose other than for single-family Residence. However, nothing in the Declaration shall prevent the rental of a Lot by the Owner thereof for residential purposes. No commune, co-operative or similar living arrangement shall be permitted on any Lot.
	5. No Noxious or Offensive activity. No noxious or offensive activity shall be carried on upon any property within the project, nor shall anything be done or placed thereon which is or may become a nuisance or cause unreasonable embarrassment, disturbance or annoyance to others as determined by the Board.
	6. No Annoying Sounds or Odors. No sound or odor shall be emitted from any property or Improvements within the Project, which is noxious or unreasonably offensive to others. Without limiting the generality of the foregoing, horns, whistles, bells or other sound devices, other than security devices used exclusively for security purposes, shall not be located or used on any property except with the prior written approval of the Board.
	7. No Hazardous Activities. No activities shall be conducted on any Lot and no Improvements shall be constructed on any Lot, 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 Lot, except in defense of family or property and no open fires shall be lighted or permitted on any Lot, except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed fireplace.

## **ARTICLE VI – RESTRICTIONS ON RESIDENTIAL TRACTS**

1. Approvals. Whether or not provision therefore is specifically stated in any conveyance of acceptance of title thereto or by taking possession, the Owner covenants and agrees that no building, wall, swimming pool, aerial, antenna, greenhouse or other structure shall be placed upon said tract unless and until the plans and specifications and the plot plans have been approved in writing by the Environmental Committee. Each such building, wall, swimming pool, aerial, antenna, greenhouse or other structure shall be placed on the premises only in accordance with the plans and specifications and plot so approved. Refusal or approval of plans and specifications by the Environmental Committee may be based upon grounds, including purely aesthetic grounds, which in its sole discretion the Committee shall deem sufficient. No alteration in the exterior appearance of a building or structure shall be made without approval.

Should the Environmental Committee fail to approve or disapprove the plans and specifications submitted to it by the Owner of a tract or tracts within the subdivision within Thirty (30) days after written request, then such approval shall not be required, provided, however, that no building or other structure shall be erected or be allowed to remain in any tract which violates any of the covenants or restrictions herein contained. The issuance of a building permit or license, which may be in contravention of these protective covenants, shall not prevent the Environmental Committee from enforcing these provisions.

1. Number of Buildings. One detached single-family dwelling and two other out buildings shall be permitted on each lot.

1. Out Buildings. An out building is defined as, but not limited to, a detached barn, garage, workshop, or storage building, not intended for human habitation. Shipping or storage container-type structures are expressly not permitted. Outbuildings less than 100 SF in size (e.g. chicken coops, children’s playhouses, small greenhouses) are not considered outbuildings and are excluded from the out building’s definition and limitations, but are limited to two (2) in number. All buildings on a Residential Lot shall be complementary in appearance but need not be of identical construction or materials. Total combined ground level square footage of out buildings may not exceed 3000 square feet.
2. Maintenance of Building(s). Each Owner of each Residential Lot shall maintain the building or buildings upon each Residential Lot such Owner owns in good aesthetic condition, making all appropriate repairs and replacements as often as the same shall become necessary.

1. Dwelling House to be Constructed First. A dwelling is defined as one or more connected rooms constituting a separate, independent housekeeping unit for permanent residential occupancy by a single family and containing at least one kitchen facility. Construction of the dwelling shall begin before construction of out buildings on the same lot. Construction of each building shall be completed within twelve (12) months of the date of the Douglas County building permit. The exterior construction of all buildings must be completed, including treating and painting of wood, before occupancy.

1. Dwelling Size. For new construction in filings 1 through 6 (1-6), the ground or main floor area of each dwelling, exclusive of porches and garages, shall not be less than 2000 square feet for one story. If there is one and one-half (1 & 1/2) or more stories to the homes, the total floor space, exclusive of basement, porches, and garages must be not less than 2400 square feet.

1. Building Location. ~~Building locations and any other improvement locations on a tract shall be approved by the Environmental Committee so as no neighboring site will be interfered with as to view of mountains or other prime views wherever possible.~~ All dwellings will be set back at least 100 feet from all property lines. Out buildings shall be set back a minimum of 25 feet from all property lines and a minimum of 50 feet from road frontages.

Additional location considerations for building locations and any other improvement locations on a tract include, but are not limited to:

* 1. Existing grades
	2. Topography
	3. Lot controls, e.g. Utilities, Well and Septic Systems, Easements
	4. Preserve existing trees and vegetation where possible
	5. Respect existing views or view corridors where possible

1. Tract Landscape Development. All disturbed (bare) ground shall be reseeded with grass within one (1) year from beginning of construction.

1. Clotheslines and Exterior Tanks. No property Owner shall place upon his premises clotheslines, swimming pool filter tanks, fuel tanks, or the like which may be visible from the street. All tanks must be enclosed or otherwise appropriately screened so that they will not be visible from the street or from adjoining tracts. Protective enclosures to screen the above must be approved by the Committee as a part of the improvements to be located on the property.

1. Temporary Structures. No temporary house, trailer or pre-fabricated dwelling shall be allowed on any residential tract. No dwelling shall be occupied in any manner prior to its completion per specifications or plans approved by the Environmental Committee. Outside storage of recreational vehicles owned by Bannockburn residents is permitted on resident‘s lot.

1. Exterior Lighting. No exterior lighting shall be permitted wherein any direct lighting or glare falls beyond the lot line.

1. Off-Street Parking. Each dwelling shall be constructed with adequate off-street parking area for at least two (2) automobiles per residence. No parking shall be allowed within the road right-of-way.

1. Foundation Exposure. No more than twelve inches of foundation cinderblock or concrete shall be exposed.

1. Construction. Only new construction will be allowed (no used buildings of any type). Pre-fabricated mobile homes are not permitted for a single-family dwelling. Dwellings should be built on-site with material conforming with the restrictions in this Article. Dwellings that are built in part off-site, in component parts or in transportable sections are allowed as long as they conform to the limitations of square footage, acceptable building materials, and exterior appearance as determined by the Environmental Committee. Pre-fabricated buildings may be used for out building structures. Roofing and siding materials for prefabricated structures must comply with covenant restrictions. ~~Pre-fabricated buildings are not~~ ~~permitted.~~ In the case of additions or repairs to existing dwellings or buildings, the roofing and siding exterior finish materials may match pre-existing materials for conformity, regardless of whether or not such materials are permitted for new construction. Non-conforming roofing and exterior finish materials used and in place on dwellings and buildings completed before 12/1/94 shall be permitted (grandfathered) for use on those dwellings and buildings only. Fire resistant materials are strongly encouraged.

The use of Cedar wood shake shingles is prohibited for all new construction and the reroofing of existing dwellings and outbuildings. Existing dwellings and outbuildings as of September 18, 2012 utilizing cedar wood shake roof shingles is a permitted covering. However, if a change in covering occurs, a different and acceptable shingle will be required.

Roofing on all dwellings must be one of the following materials:

* 1. Slate, ceramic or cement tile shingles
	2. Laminated three-dimensional asphalt or asphalt/fiberglass shingles provided that they have a minimum 30-year warranty from the manufacturer. For aesthetic reasons, standard "three-tab" and interlocking "T" shingles are prohibited regardless of weight or warranty.
	3. ~~Classic rib~~ Metal roofing panels made from steel with the following characteristics:
		1. Have a minimum forty (40) year manufacturer warranty covering materials and paint/finish
		2. ~~A minimum thickness of 26 gauge~~
		3. ~~Have minimum ¾” trapezoidal ribs on 9” centers.~~
		4. Non-glare metal roofing must be Class 4 impact resistant, certified to 115 mph wind gusts, and must have rust inhibitive prime paint or baked enamel finish.
	4. Composite roofing materials must be Class 4 impact resistant, Class A fire resistant, certified to 115 mph wind gusts, a solid product with color throughout (no cavity on back), and ¾” standard thickness.
	5. The Environmental Committee shall have the authority to allow or disallow other proposed materials for their proposed use, without the need for a Variance, based strictly upon whether the proposed materials meet the aesthetic intent of this Declaration.

Exterior finish siding on all dwellings must be one of the following materials:

1. Brick
2. Natural redwood, cedar or other natural wood boards with a width not exceeding twelve inches (12"), and treated with preservative, paint or stain
3. Natural stone
4. Natural wood logs
5. Manmade (pre-cast) rock or stone veneer products made with Portland cement and having a natural stone appearance.
6. Fiber-cement lap siding with a minimum 25-year manufacturer's warranty, a minimum thickness of 5/16" and a minimum weight of 2.3 lbs. per square.
7. Vinyl lap siding with a minimum thickness of .042", a minimum of ½" profile, a low gloss with color clear through, and a minimum 25-year warranty.
8. Traditional cement-based stucco.
9. Multilayered synthetic stucco siding with foam insulation board (typically polystyrene), a coat of the synthetic stucco, fiberglass mesh, and then a top coat.
10. The Environmental Committee shall have the authority to allow or disallow other proposed materials for their proposed use, without the need for a Variance, based strictly upon whether the proposed materials meet the aesthetic intent of this Declaration.

Roofing on all out buildings must be one of the following materials:

1. A material approved for dwellings

Exterior finish siding on all out buildings must be one of the following materials:

1. A material approved for dwellings or
2. Aluminum, steel, stainless steel, and copper metal lap siding. Siding must include shop applied coatings and sealant replacement must be greater than ten (10) years. Durable finishes shall include fluoropolymer, powder, or anodized coatings.
3. Roofing and siding panels for greenhouses shall be non-glare with a clear surface and made of polycarbonate, acrylic or fiberglass materials.
4. The Environmental Committee shall have the authority to allow or disallow other proposed materials for their proposed use, without the need for a Variance, based strictly upon whether the proposed materials meet the aesthetic intent of this Declaration.
5. Fireplaces, Chimneys, Barbecues. All fireplace, chimneys, and barbecues shall be equipped and maintained with spark arresting screens.

1. Driveways. Culverts shall be a minimum of 15 inches in diameter or that allowed for merging driveways into County approved roads and across road barrow pits.

1. Natural Gas. Intentionally left blank.

1. Land Uses. No improvements, nor any noxious activity, shall be permitted on any residential lot which is or might become a nuisance to adjoining residential tracts. Also, no open fires will be permitted and no hunting will be permitted within Bannockburn Subdivision. No discharging of firearms of any kind except for defense of family or property shall be allowed in Bannockburn.

1. Single Family Dwellings. Multiple family dwellings and multiple families living under one roof are expressly forbidden.

1. Commercial Vehicle. ~~No commercial type vehicles, buses or trucks, excepting vehicles~~ ~~commonly known as pick-up trucks, shall be stored or parked on any lot.~~  A commercial motor vehicle (CMV) is defined in Colorado Law as “… any self-propelled or towed vehicle bearing an apportioned plate or having a manufacturer’s gross vehicle weight rating (GVWR) or gross combination rating (GCWR) of sixteen thousand one pounds or more, which vehicle is used in commerce on the public highways of this state or is designed to transport sixteen or more passengers including the driver : and (II) Any motor vehicle designed or equipped to transport other motor vehicles from place to place by means of winches, cables, pulleys, or other equipment for towing, pulling, or lifting, when such motor vehicle is used in commerce on the public highways of this state.”

Vehicles defined as Commercial Vehicles herein, excepting vehicles commonly known as pick-up trucks, are not allowed to be parked overnight on any lot or road within Bannockburn. This includes but is not limited to:

* 1. School Buses
	2. Semi-tractor rigs, with or without trailers
	3. Panel vans with sides greater than fifty (50) square feet

Commercial Vehicles that are enclosed in a permanent structure are not considered in violation of this restriction.

##  **ARTICLE VII – RESTRICTIONS ON COMMON OPEN AREAS AND COMMUNITY TRACTS**

1. Improvements. Improvements may be constructed and allowed on common areas provided that such improvements are approved by sixty-six and two-thirds percent (66 2/3%) of the Resident Owners.

1. Common Area Landscape Development. Native trees or brush growing on common areas shall not be removed, cleared nor native rocks removed, or extensive grading be performed on any common area unless first approved in writing by the Environmental Committee.

1. Exterior Lighting. Intentionally left blank.

1. Leasing of Common Area. No part of the common area may ever be leased to any person or association other than the Bannockburn Homeowners Association.

## **ARTICLE VIII - EASEMENTS**

1. No Easements on Private Land. The Bannockburn Homeowners Association hereby forfeits all rights and claims to any easements on private property previously granted to or claimed by the Bannockburn Homeowners Association and returns all such rights to title respective property Owners.

1. Irrigation and Drainage Easements and Rights of Way. Intentionally left blank.

1. Easements on Common Area for Private Roads or Lanes. Bannockburn Homeowners Association hereby reserves to itself, its successors and assigns, perpetual easements across all common areas in the Bannockburn Subdivision. Private roads or lanes shall not be constructed or used without the prior written permission of the Environmental Committee.

## **~~ARTICLE IX – ENFORCEMENT~~**

1. ~~Enforcement Actions. The Bannockburn Homeowners Association shall, on behalf of itself and all or part of the Bannockburn land owners, have the right to prosecute any action, to enforce the provisions of all covenants by injunctive relief, and to recover reasonable attorney fees, court costs and other costs as may be allowed by law. In addition, each land Owner shall have the right to prosecute for injunctive relief, to recover damages actual and punitive and to recover reasonable attorney fees, court costs and other costs, as may be allowed by law, by reason of any covenant violation.~~
2. ~~Limitations on Actions. In the event any construction, alteration or site landscape work is commenced upon any portion of Bannockburn in violation of these covenants and no action is commenced within one hundred eighty (180) days thereafter to restrain such violation, then injunctive or equitable relief shall be denied, but an action for damages shall still be available to any party aggrieved. Said 180 day limitation shall not apply to injunctive or equitable relief against other violations of these covenants.~~

# **ARTICLE IX – INSURANCE/CONDEMNATION**

1. Insurance Policies – General**.** Insurance policies required to be carried by either the Association shall be obtained, to the extent possible, from responsible companies duly authorized and licensed to do insurance business in the State of Colorado, and shall:
	1. To the extent possible, contain a severability of interest clause that the insurance cannot be canceled, invalidated or suspended because of the negligent or intentional acts of the Association, its officers, directors, and agents.
	2. Coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.
	3. All policies, to the extent possible, of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner.
	4. Provide that the policy of insurance shall not be terminated, canceled or substantially modified with no less than thirty (30) days prior written notice to the Association.
2. Association Insurance - General**.** The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth in this Article X, and shall comply with C.R.S. §38-33.3-313 and all other provisions of the Act regarding insurance, as follows:
	1. Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice. Any loss falling within the deductible portion of a policy may, at the option of the Board, be borne by the Owner of the property damaged or the party suffering the loss. The cost and expense of all insurance obtained by the Association shall be paid for out of Association funds collected by Assessments and otherwise as provided in this Declaration.
	2. Application of insurance proceeds and procedures of adjustment must be made pursuant to the Act.
	3. The Rules may include nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment.

* 1. Any portion of the Community for which insurance is required under the Act which is damaged or destroyed must be repaired or replaced promptly pursuant to, and as required by, the Act.
	2. The Association and the managing agent, if any, must obtain policies of fidelity insurance in amounts and under the circumstances prescribed by the Act.
	3. All costs and expenses borne by the Association in compliance with or as may be permitted by the Act, including, but not limited to, insurance premiums, and all costs and expenses borne by the Association in connection with insured and uninsured losses to persons or property within the Community, repairs and replacement of insured and uninsured property, and claims settlement or adjustment shall be considered Common Expenses.
1. Association’s Specific Policies**.** The Association shall obtain and maintain in full force and effect the following types of insurance:
	1. Public Liability and Casualty to Property. The Association shall obtain and maintain in full force and effect, at all times, all necessary and appropriate insurance coverage and obtain a comprehensive policy of public liability insurance and property damage liability insurance covering all of the Common Elements and easement rights of the Owners, in such limits as the Board from time to time may determine, but not in any amount less than Two Million Dollars ($2,000,000.00) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles or boats on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Common Easements. All liability insurance shall name the Association as the insured, with the Board or managing agent, if any, the officers of the Association and Owners as additional insureds as provided in this Declaration.
	2. Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the part of its officers, members of the Board of Directors, and managing agents and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, members of the Board, and trustees.
	3. Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.
	4. Officers' and Directors' Liability Insurance. The Association shall obtain and keep in full force and effect, officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association. The term "officers" or the term "directors" shall include any officer, director, or agent of the Association and all members of committees of the Board. Additionally, such coverage shall include language that insures these persons up to a Board of twelve (12), who may then also be all Owners; i.e., shall specifically include coverage for all Owners but only during the time such a person is specifically acting as a director or officer.
	5. Other Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.
2. Owners’ Insurance Coverage**.** Each Owner shall obtain and keep in full force and effect, property and casualty insurance.
3. Condemnation**.** Condemnation of all or any portion of the Community shall be governed by applicable provisions of the Act.

## **ARTICLE XI – GENERAL PROVISIONS**

1. Prior Amendments. This document supersedes all previous versions of the Bannockburn Protective Covenants and amendments thereto for Bannockburn Subdivision filings one through six (1-6).

1. Severability. Should any part or parts of these covenants be declared invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining covenants.

1. Effect and Duration of Covenants. The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of and binding upon each tract in Bannockburn, and each Owner of property therein, his successors, representatives and assigns and shall continue in full force and effect until December 31, 1999, at which time they shall be automatically extended for five (5) successive terms of ten (10) years each, unless amended as provided below.

1. Amendment. The conditions, restrictions, stipulations, agreements and covenants contained herein shall not be waived, abandoned, terminated, or amended except by written consent of sixty-six and two- thirds percent (66 2/3%) of the Resident Owners of the privately owned land included within the boundaries of Bannockburn, as the same may then be shown by the plat on file in the office of the Clerk and Recorder of Douglas County, Colorado.

1. Manner of Voting. Voting on matters related to these Covenants shall be done in person or by written proxy at an annual or special meeting of the Bannockburn Homeowners Association at which a quorum is present, provided that only Members in Good Standing shall be eligible and permitted to vote. No proxy shall be valid after eleven months from its date of execution.

Any vote which would normally be conducted at an annual or special meeting of the Bannockburn Homeowners Association may also be conducted by written ballot through the United States Postal Service or by internet voting. Each Resident Owner shall be allowed to opt-in or opt-out of internet voting.

In order to utilize a written ballot in lieu of a meeting, the matter or resolution to be considered shall be described in a written ballot and shall be personally delivered or mailed by the Secretary of the Corporation to each Owner by first-class United States mail, postage prepaid, addressed to such Owner at the mailing address registered by such Owner with the Secretary of the Corporation or, if no address has been so registered, then to the address for the Residential Lot owned by such Owner. The Owners shall have 21 days from the date of delivery or deposit into the United States mail system, whichever first occurs, within which to return such ballot to the Secretary of the Corporation evidencing such Resident Owners vote in favor or against the matter or resolution proposed.

In order to utilize an electronic ballot in lieu of a meeting, the matter or resolution to be considered shall be described in an electronic ballot and shall be delivered by the Secretary of the Corporation to each Resident Owner by email, addressed to such Resident Owner at the email address registered by such Resident Owner with the Secretary of the Corporation or, if no email address has been so registered, then to the email address for the Residential Lot owned by such Resident Owner. The Resident Owners shall have 21 days from the date of sent email, within which to submit the electronic ballot via an internet voting system evidencing such Resident Owner’s vote in favor or against the matter or resolution proposed. Only such ballots as are executed by Members in Good Standing ~~Resident Owners~~ and are actually received by the Secretary within such 21-day time period shall be valid and counted. The Environmental Committee shall have the sole authority to determine if a ballot has been properly executed and timely voted, and the decision of the Environmental Committee shall be final and binding, not subject to contention.

BY SIGNATURE BELOW AS OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ THE PRESIDENT ACKNOWLEDGES THAT TWO THIRDS OF ALL OWNERS HAVE EXECUTED THE WRITTEN CONSENTS ATTACHED.

 BANNOCKBURN HOMEOWNERS ASSOCIATION,

INC.,

a Colorado nonprofit corporation

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ President

STATE OF COLORADO )

) ss.

COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as President of Bannockburn Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_

Notary Public