

Blumenau Homeowners' Association Declaration of Protective Covenants

DECLARATION OF PROTECTIVE COVENANTS (DPC) FOR BLUMENAU SUBDIVISION, FILINGS 1 & 2
ORIGINALLY FILED IN CUSTER COUNTY ON NOVEMBER 6, 1973, IN BOOK 168 ON PAGE 160; AND ARE
HEREBY **AMENDED AS OF March 22, 2018** AS FOLLOWS:

THIS DECLARATION is made the 22nd day of March 2018, by the Blumenau Homeowners' Association (BHA), a Colorado Non-Profit Corporation, having its principal address at P.O. Box 368, in the Town of Westcliffe, County of Custer, State of Colorado.

WITNESSETH: Whereas, the BHA represents the real property owners within Blumenau Subdivision, Filings 1 and 2, as depicted on plat maps numbers 108524 and 109522 on file in the County Assessor's Office, Custer County, State of Colorado.

WHEREAS, the State of Colorado Water Court Decree W-4062 (aka the Water Augmentation Plan) dated July 2, 1979, directed the organization of the BHA and its compliance with the requirements and findings of the Decree including these covenants and all restrictions thereto.

1. **HOMEOWNERS' ASSOCIATION:** The Blumenau Homeowners' Association (Association), a Colorado non-profit corporation, or its successor in interest, shall regulate, administer and enforce this Declaration of Protective Covenants. Its duties shall include, without limitation, maintenance of signs and property, administration and enforcement of the Water Augmentation Plan, and the general administration and control of the Subdivision. Each and every lot owner, in accepting a deed or contract for any lot in the Subdivision, agrees to and shall be a member of the Association and be subject to the duties and obligations created by the duly enacted Bylaws and Articles of Incorporation of the Association. By purchasing a lot in the Subdivision, the owner agrees to be subject to such assessments as may from time to time be levied on such owner by the Association. Nonpayment of such assessments may result in a recorded lien to be placed against such owner's lot(s). The Association shall operate as a non-profit corporation. All books, records, Articles of Incorporation, Bylaws and Resolutions of the Association shall be available for inspection by any prospective purchaser of a lot or any owner of a lot at any reasonable time.
2. **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION:**
 - A. **MEMBERSHIP:** Every person or organization who is a record owner of title to any lot which is subject by this Declaration to assessment by the BHA, shall be a Member of the BHA.
 - B. **VOTING RIGHTS:** Members, in "good standing" (see Bylaws), of the BHA shall be entitled to vote in person or by proxy: one (1) vote for each lot for which title is held or portion thereof.

3. **ASSESSMENTS:** The Association shall have the power and authority to impose assessments against its members from time to time. Such assessments and payment thereof shall be made in accordance with the Articles of Incorporation and Bylaws of the Association. The Association may impose assessments for the maintenance of signs, for the administration of the Water Augmentation Plan, for legal fees, for the construction and maintenance of any property, real or personal, owned, controlled or managed by the Association and for any other purpose authorized by the Association. Payment of such assessments may be secured by a lien upon all property in the Subdivision owned by the member liable for such assessment. The Association may bring an action under Colorado law to foreclose the lien on such property.
4. **ARCHITECTURAL CONTROL :** No structure, including walls and fences, shall be erected, converted, placed, added to, or altered, on any lot until the plans and specifications of the nature, kind, shape, height, materials and locations, have been submitted to and approved in writing by the Board of Directors of the BHA. If action to approve or disapprove plans as submitted is not taken with thirty (30) days, approval is automatic. **For Your Information:** The BHA approval letter will be required by Custer County Zoning before a building permit will be issued.
5. **BUILDING SIZE, TYPE AND USE:** All lots designated on the Plats for Blumenau Subdivision, Filings 1 and 2 are designated for and restricted to residential use, either for vacation or year round dwellings. Such structures shall be one single family dwelling of not less than six hundred (600) square feet on the ground level, (exclusive of garages, carports, open porches, patios, decks or court areas). All structures must be securely attached to a slab on grade or other type of permanent foundation. Not more than one main dwelling shall be erected or placed on any one lot. Accessory buildings or structures, usual to a residence, may be erected or placed thereon, included is a private stable, shed or animal shelter. These structures require no minimum dimensions, however, use of any structure for commercial purposes is prohibited. Installation of mobile homes, trailers, or other non-permanent homes for the main dwelling is prohibited. Prefabricated or modular homes (aka factory built homes), if approved by the Architectural Committee, must have the wheels removed and be installed on a permanent foundation. The height limit for all structures is twenty-five (25) feet.
6. **BUILDING LOCATION:** No building shall be erected nearer than fifty (50) feet to a street boundary, or closer than fifty (50) feet to any other lot boundary. In cases of a single ownership of one or more adjacent lots, this restriction applies to tracts as a whole. For the purpose of the covenant, eaves and open porches or decks shall be considered part of the building's extreme dimensions.
7. **TIME FOR CONSTRUCTION:** Once construction is started, the exterior of the building must be enclosed within eighteen (18) months.

8. **TEMPORARY RESIDENCES:** No basement, shed, tent, trailer or trailer house, or structure of a temporary nature may be used as permanent living quarters. Temporary residency shall be permitted on site during the allowable construction period of eighteen (18) months as identified in paragraph 7. Portable chemical toilets approved by the county zoning ordinances may be used on site during the eighteen (18) months construction period also. This covenant does not preclude vacation camping in tents, trailers, or campers for a period not to exceed thirty (30) continuous days.
9. **FENCING:** Fencing which is constructed on lot lines contiguous to road right of ways as shown on the recorded plat of Blumenau Subdivision, Filings 1 and 2 must be placed no further outward from the center of any lot than the interior easement line which is indicted by notes on said plats. Fences may be constructed on interior lot lines in contradiction of paragraph 10 of these covenants except that in such cases the lot owner shall be liable for expenses of damage, repair, and replacement of such fencing as may be incurred by the installation of any utility systems. Any utility entity, either public or private, shall have the right to breach any fencing or other obstructions located on a utility easement for purpose of construction and servicing without incurring any liability for damage thereto.
10. **EASEMENTS:** Easements for installation and maintenance of utilities, roadways, bridle paths, hiking trails and such other purposes incident to development of the property as reserved and shown by notes on the recorded plats of Blumenau Subdivision, Filings 1 and 2, will be kept open and readily accessible for use, service and maintenance.
11. **OBSTRUCTIONS TO VISION AT INTERSECTIONS:** No fence, wall, hedge, tree, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner tract within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property line extended. The same sight line limitation shall apply on any tract within ten (10) feet from the intersection of a street property line with the edge of a driveway or access road on any tract.
12. **NUISANCES:** Nothing shall be done or permitted on any tract which may be or become an annoyance or nuisance to the neighborhood. No noxious or offensive activities shall be carried on upon any tract. These types of events are those which would be in violation of local and state laws and ordinances and which would be enforced by local authorities.

13. **GARBAGE AND REFUSE DISPOSAL:** No part of the property, above or below ground, shall be used or maintained as a dumping ground for rubbish, trash, garbage, debris or other waste. The property shall always be maintained in a sanitary condition. Reasonable preventions shall be taken against fire hazards. Only the following types of outdoor open burning shall be allowed: (1) campfires, (2) burn barrels/incinerators with ash control, and (3) burning of brush/fire control refuse is permitted only when there is at least three (3) inches or more of solid snow cover on the ground. **For Your Information:** Prior to doing a burn of any kind you **must** call and report your burn to the Custer County Sheriff's office at **783-2270**. If you do not call, the smoke may alarm your neighbors and may also cause the unnecessary call out of the volunteer fire department.
14. **SIGNS:** All signs displayed upon any of the premises or tracts must be first approved by the BHA. This covenant does not preclude the display of builders or realty type signs, or small professional signs not to exceed one (1) square foot in area. The BHA reserves the right, however, to require modifications or removal of such signs if they are deemed not to be in keeping with the area and subdivision standards.
15. **WATER DECREE REQUIREMENTS:**
- A. **WATER USE:** All well water is for domestic, in-house use and purposes only except for horses and other authorized domestic pets. All wells in use will require a meter to measure the volume of water used annually. Irrigation is prohibited.
- B. **SEWAGE:** All water wells and sewage disposal systems placed upon any tract shall comply with the zoning requirements of Custer County and the State of Colorado Health Department. No sewage tank or field system shall be nearer than fifty (50) feet to any tract line except with the consent of the appropriate health official or the State, and no sewage, waste water, trash, garbage or debris shall be emptied, discharged, or permitted to drain into any body of water in or adjacent to the subdivision. No permanent outside toilets or privies shall be permitted on any tract. All toilet facilities must be a part of the residence or garage and shall be of a modern flush type and connected to a proper sewage tank disposal system. Sewage disposal systems of the Evapo-Transpiration type is prohibited.

16. **ANIMALS:** No animals, livestock or poultry of any kind shall be housed, raised or kept on any tract or property either temporarily or permanently, except that commonly accepted domestic pets may be kept provided they are not kept or maintained for any commercial purposes and except that one or two horses for each two acres of land owned may be kept for recreational purposes. No stables, corrals, or any structure for the housing or feeding of horses shall be located or placed closer than twenty-five (25) feet to any adjoining lot line nor closer than one hundred (100) feet to a public street. All stables, corrals or any structure for the housing or feeding of horses shall be approved as to location and design by the BHA Board of Directors and shall be maintained in compliance with all lawful sanitary regulations. In case of single ownership of more than one adjacent lot, then the setback restrictions of this covenant concerning horses shall apply to the tract as a whole. Horses, pets or any other animals as authorized under this covenant, shall not have free rein of the subdivision known as Blumenau Subdivision, Filings 1 and 2, and shall be kept on the property of their owner.
- A. **CUSTER COUNTY YOUTH 4-H/ FFA PROJECTS:** A project must meet the approved guidelines set forth by the Board of Directors (BOD) prior to approval. One project is defined as a "Supervised Animal Agricultural Project". **Project approval will extend approximately twelve weeks and will terminate no later than July 25th.** The project will be subject to random inspections by two BOD members throughout the duration of the project. If at any time the project poses a verifiable nuisance to a property located within one-half mile radius, the BOD will temporarily or permanently rescind project approval.
[16A guidelines can be found at blumenauhoa.com.]
17. **CHIMNEYS AND FIREPLACES:** All chimneys and fireplaces shall have a protective wire screen inside the chimney near the top to prevent any burning particles from escaping from said chimney or fireplace.
18. **MINING OPERATIONS:** No oil, gas, coal, sand, gravel, or other mineral development, drilling, refining, quarrying, mining crushing manufacturing, or processing operations of any kind shall be permitted upon or in any portion of the property; nor shall oil or gas wells, tanks, tunnels, mineral excavations or shafts be permitted. The foregoing shall not be construed to prevent the drilling of water wells to serve the premises for domestic in-house use purposes.
19. **PRESERVATION OF NATURAL TIMBER:** Live trees shall not be removed or damaged, except as required for on-site construction, conservation, disease control, soil erosion, and fire safety zone purposes. Zone 1 is fifteen (15) feet from any structure. See complete guidelines in the County Zoning Office.
20. **HUNTING AND USE OF FIREARMS:** No hunting of any kind shall be permitted in any of the areas covered by these covenants. Further, no use of or discharge of firearms, except to protect one's life or property, shall be permitted within any of the land area herein covered.

21. **FIREWORKS:** The use of or discharge of fireworks of any kind in the area covered by these covenants shall be expressly forbidden.
22. **DRIVEWAYS:** Culverts as prescribed by the Custer County Department of Roads (at least fifteen (15) inches in diameter and twenty (20) feet long, must be installed at road entrance driveways in all instances in which proper drainage would otherwise be obstructed. County permits are required.
23. **DRAINAGE:** Nothing shall be done on any lot which shall obstruct or prevent the natural and/or proper flow of drainage. No building shall be constructed in such a way as to intrude into any drainage area as specified on the Blumenau Drainage Plan. No ponds may be created.

24. **OPEN STORAGE:**

A. No open storage of personal property or vehicles on vacant lots is permitted. Vacant lots are defined as those lots with no permanent structures on them. The intent is that vacant lots not be turned into a place to openly store junk, broken down vehicles, equipment and other property items that could be considered an eyesore by other owners. Full-time and part-time residents may store property, vehicles and other equipment in operating condition, like boats, RVs, trailers, motorcycles, tractors, heavy equipment vehicles, four-wheelers, ATVs, snow plows, etc. openly or in structures like barns, garages and sheds. Full-time residents are those that live in Blumenau in BHA approved permanent living structures year around. Part-time residents are those that have BHA approved permanent living structures on their lots and occupy those structures less than full-time such as those that leave here in the winter or those that spend only weekends or vacation time here. Vacant lots with a barn or other structures like garages and sheds may be used to store any legal property items and vehicles inside those structures. The intent of this covenant restriction is to preclude the open and permanent storage of personal property, vehicles, equipment or temporary living structures like, trailers, camper shells, RVs and tents on vacant lots. These restrictions would not apply to vacationing or periods of temporary full-time occupancy of less than 120 days.

B. Building materials intended for use in the erection or remodeling of a building or auxiliary structure on the premises may be kept in the open during the construction period, but not to exceed eighteen (18) months in any event.

C. No lot owner may openly store a motor vehicle or equipment of any type on the property in a non-operating condition for more than thirty (30) days in any calendar year. Any such vehicle which does not display current and valid license plates and safety inspection sticker, where required by law, shall be deemed to be in a "non-operating condition".

25. **RIGHTS OF THE BLUMENAU HOMEOWNERS' ASSOCIATION:** The BHA expressly reserves the right:
- A. From time to time to amend or revoke any restrictive covenants then in existence, but no such amendment or revocation shall apply to covenants without the written consent of a majority of the membership. No Amendment to these protective covenants shall be made inconsistent with the terms of the Water Decree absent further order of the court.
 - B. To undertake necessary maintenance and repair by BHA occasioned by member's neglect. No lot owner will permit the lot, dwelling, auxiliary buildings or any improvements thereon to be otherwise maintained than in good repair and in a safe, neat, and attractive condition, so as to prevent damage to neighboring properties or to eliminate any existing dangerous conditions that may affect the surrounding property or persons. If, in the judgment of the BHA's Board of Directors, a member neglects proper maintenance, the owner of the lot will be notified to rectify the condition within thirty (30) days, otherwise the cost to the BHA to correct the condition will be assessed to the lot owner.
 - C. To enforce these covenants by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. The BHA further reserves the right, whenever there shall have been an obvious violation of one or more of the provisions of these covenants, to enter upon the property, with the proper authorities, where such violation exists and summarily abate or remove the same at the expense of the owner and such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction, or condition contained herein, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restriction here in contained shall not in any way affect any of the other restrictions but they shall remain in full force and effect.
26. **TERM OF THESE COVENANTS:** These covenants and restrictions are to run with the land and shall remain in full force and effect for twenty (20) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument, approved by a majority of the BHA membership has been received, changing said covenants in whole or part.

27. **PRIOR DECLARATIONS:** This Declaration hereby replaces and supersedes any and all prior protective covenants filed for record or established with respect to the real estate included in the Subdivision. All such prior protective covenants are considered void and of no effect.

The Association, having on file a majority of approving votes/proxies of the members in good standing, submit these amended Protective Covenants to be duly adopted and recorded:

EXECUTED this 22 day of March, A.D., 2018.

Blumenau Homeowners' Association (BHA 1 & 2)

By: Donald Pinnella
Donald Pinnella
President, BHA 1 & 2

Attest:

By: Bonnie Mowry
Bonnie Mowry
Secretary/Treasurer

State of Colorado) ss.
County of Custer)

The foregoing Declaration of Protective Covenants for Blumenau Subdivision, Filings 1 & 2 was acknowledged and signed before me this 22nd day of March, 2018, by Don Pinnella, President and Bonnie Mowry, Secretary/Treasurer, authorized officers of the above Association.

WITNESS my hand and official seal:

Lori Louise Bistodeau

Notary Public

My commission expires: May 20 2018

Address: 205 South 6th St. W.C. Co 81202

LORI LOUISE BISTODEAU
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20144020415
MY COMMISSION EXPIRES MAY 20, 2018

Filed in the Custer County Courthouse on March 22 2018.

