

Exhibit 11 | Filing 2 Draft Subdivision Improvements Agreement



**LAKE SPRINGS RANCH, FILING 2
SUBDIVISION IMPROVEMENTS AGREEMENT**

THIS SUBDIVISION Improvements AGREEMENT ("Agreement") for Lake Springs Ranch, Filing 2, is made and entered into this ___ day of _____ 20___, by and between THE BERKELEY FAMILY LIMITED LIABILITY LIMITED PARTNERSHIP ("Owner") and the BOARD OF COUNTY COMMISSIONERS OF GARFIELD COUNTY, COLORADO (referred to in this Agreement as the "Board" or "County").

WITNESSETH:

WHEREAS, Owner is the developer of a parcel of real property known as Lake Springs Ranch PUD, Filing 2, which property is depicted on the Final Plat of Lake Springs Ranch PUD, Filing 2 ("Final Plat"), which Final Plat also includes 76.179 acres of land to be included in the "Conserved Parcel" which is land that has been conserved in the past but had not been included in any previously recorded final plat.

WHEREAS, on June 18, 1979, the Board approved a PUD Zoning for Lake Springs Ranch PUD (Resolution No. 79-64), which zoning would allow 195 single-family residential lots, 3 multi-family residential cluster housing units and Agricultural Reserve/common area parcels; and

WHEREAS, on December 10, 1979, the Board approved a modification to the PUD Zoning for Lake Springs Ranch PUD (Resolution No. 79-153) to change the uses to include 194 single-family residential lots, 4 multi-family residential cluster housing units and Agricultural Reserve/common area parcels; and

WHEREAS, on November 12, 2002, the Board approved a Preliminary Plan for Lake Springs Ranch PUD (Resolution No. 02-109) which, among other things, would create 194 single-family residential lots, 4 multi-family residential cluster housing units and Agricultural Reserve/common area parcels; and

WHEREAS, in August 2003, the Board approved an extension of the time to file the first Final Plat to November 12, 2004; and

WHEREAS, on September 7, 2004, the Board approved a modification to the PUD Zoning for Lake Springs Ranch PUD (Resolution No. 79-64) allowing the first Final Plat required by the PUD plan to contain not less than 10% of the 194 single-family residential lots (Resolution No. 2004-110); and

WHEREAS, on September 4, 2012, the Board approved Preliminary Plan and PUD amendments as described in Resolution 2012-80. The amended preliminary plan included 118 single-family lots and 18 multi-family units, which reflects the number of lots remaining after a portion of the Lake Springs Ranch PUD had been sterilized through conservation easements. The Planned Unit Development (PUD) amendment modified the PUD zoning adding the existing sod farm as a permitted use in the Residential/Single-Family (R/SF) zone district and creating a new zone district called Agricultural Preserve (AG/P), which encompassed the lands contained in the Agricultural Reserve area established in the original PUD (Resolution No. 79-64); and

WHEREAS, on April 15, 2013, the Board approved a one-year extension of the time to file a final plat pursuant to the Amended Preliminary Plan of Lake Springs Ranch PUD (Resolution 2012-80) to April 16, 2014; and

WHEREAS, on March 24, 2014, the Board approved a further two-year extension of the time to file a final plat pursuant to the Amended Preliminary Plan of Lake Springs Ranch PUD (Resolution 2012-80) to April 16, 2016; and

WHEREAS, on April 11, 2016, the Board approved Preliminary Plan and PUD amendments as described in Resolution 2016-35. The Preliminary Plan amendments included the following:

- a. Amend the drainage plan to utilize more of the valley floor for temporary stormwater storage in order to minimize impacts on conserved land;
- b. Eliminate Condition 15 of Resolution 2012-80 since the stormwater impoundment will not be necessary according to the revised drainage analysis;
- c. Redesign lots 8, 9, 11 and 13 of Filing 2 to allow cul-de-sacs to be removed from conserved areas;
- d. Revise the language of Condition 14 of Resolution 2012-80 to clarify that the central water system must be reviewed under the CDPHE regulations for "community" water systems;
- e. Amend the Preliminary Plan and Phasing Plan to show the unplatted portions of conserved lands, those lands located outside of final plat of Filing 1, as "Conserved Lands" and to eliminate the lot lines indicated on the previously-approved Preliminary Plan. This is necessary for the future final plat to remain consistent with the Preliminary Plan.

The PUD amendments included the following:

- a. Redesign Lots 8, 9, 11 and 13 of Filing 2 to allow cul-de-sacs to be

- removed from conserved areas;
- b. Amend the Phasing Plan:
 - i. Move required improvements to CR114 from Phase 2 to Phase 3;
 - ii. Shift 9 lots from Phase 4 to Phase 3;
 - iii. Remove those approved lots located in what is now conserved lands area.
- c. Decrease the required affordable housing to be provided by the development from 15% as required under the Unified Land Use Resolution of 2008 as amended, to the 10% as currently required under the 2013 Land Use and Development Code, as amended.

A revised PUD Plan was also approved by Resolution 2016-36; and

WHEREAS, on April 3, 2017, the Board approved an extension of the time to file a final plat pursuant to the Second Amended Preliminary Plan of Lake Springs Ranch PUD (Resolution 2016-35) to April 11, 2018; and

WHEREAS, as a condition of approval of the Final Plat for Lake Springs Ranch, Filing 2, submitted to the County for its approval as required by the laws of the State of Colorado, Owner wishes to enter into this Subdivision Improvements Agreement with the County; and

Whereas, Owner has agreed to an absolute prohibition on the advertisement, reservation, sale, lease, conveyance, or other transfer of any individual lot within Lake Springs Ranch, Filing 2, prior to completion and acceptance by the County of all subdivision improvements as described herein and has otherwise agreed to certain restrictions and conditions regarding the issuance of building permits, certificates of occupancy and sale of properties, all as more fully set forth below in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. **FINAL PLAT APPROVAL.** The County hereby accepts and approves the Final Plat for Lake Springs Ranch, Filing 2, subject to the terms and conditions of this Agreement, the Second Amended Preliminary Plan Approval (Resolution 2016-35) and PUD approval (Resolution 79-64 as amended by Resolution 79-153, Resolution 2004-110, 2012-80 and 2016-35) hereinafter referred to collectively as Lake Springs Ranch PUD, and the requirements of the Garfield County Zoning and Subdivision Regulations.
2. **OWNER'S PERFORMANCE.** Owner has constructed and installed, or shall cause to be constructed and installed, at its own expense, those subdivision Improvements ("Improvements") related to the Final Plat for

Lake Springs Ranch, Filing 2, which are required to be constructed under the Second Amended Preliminary Plan Approval, this Agreement, the Final Plat for Lake Springs Ranch, Filing 2, all Garfield County zoning and subdivision regulations, and the zone district text for Lake Springs Ranch PUD. Owner shall comply with the following:

- a. All Plat documents submitted prior to or at the time of final plat approval, as well as all terms and conditions set forth on the Final Plat for Lake Springs Ranch, Filing 2, all of which are incorporated herein by this reference.
- b. All requirements of the Second Amended Preliminary Plan Approval, including all zone district regulations approved by Garfield County for the Lake Springs Ranch PUD and all Garfield County zoning and subdivision Regulations applicable to this project.
- c. All laws, regulations, orders and resolutions of the State of Colorado, the County of Garfield, and any and all special districts within which the Lake Springs Ranch PUD may be located.
- d. All designs, specifications, drawings, maps, sketches, and other materials submitted by Owner and its engineers in furtherance of the application for the approval of Lake Springs Ranch, Filing 2, as heretofore approved by the County, including all improvements shown on the Lake Springs Ranch, Filing 2, Construction Plans prepared by High Country Engineering, Inc. dated January 18, 2018, and as submitted to Garfield County (hereinafter "Development Plans"). Said improvements include roads, water distribution lines, sewer collection lines, drainage structures, electric, telephone, cable television and gas lines as shown on Exhibit A, Engineer's Estimate attached.
- e. Payment of all fees required by the County and/or such other government authority or special district with jurisdiction, as may be required for installation of the improvements.

All such improvements shall be completed on or before April 16, 2021.

The County agrees that if all required improvements are installed in accordance with this Agreement, the Final Plat documents, the as-built drawings to be submitted upon completion of the improvements and the requirements of the Garfield County Land Use and Development Code

and the Lake Springs Ranch PUD, all other requirements of this Agreement, and the requirements of the Second Amended Preliminary Plan Approval, then the Owner shall be deemed to have satisfied all terms and conditions of the Zoning Regulations for the Lake Springs Ranch PUD and Zoning and Subdivision Regulations of Garfield County, Colorado, with respect to the installation of improvements.

3. SECURITY FOR IMPROVEMENTS.

- a. Absolute Prohibition on Sale of Lots. No lots within Lake Springs Ranch PUD, Filing 2, may be separately advertised, contracted, reserved, leased, conveyed, sold or otherwise transferred by the Owner prior to completion and acceptance by the County of all subdivision improvements as described herein.
- b. County Authorized to Sell Lots. In the event the Owner commences with the improvements described herein and does not complete the improvements as required in this Subdivision Improvements Agreement, the County is authorized to sell the lots in Filing 2 to raise the necessary funds to complete the improvements.
- c. Owner to Provide Letter of Credit or Performance Bond. The Owner will provide the County with a letter of credit or performance bond to be used in the event the subdivision improvements described herein are not completed as required. The amount of the funds available under the letter of credit/performance bond will be determined by deducting the value of the 14 lots contained in Filing 2 from the cost of improvements contained in the Engineer's Final Estimate of the Cost of Subdivision Improvements for Filing 2 (attached).
- d. Absolute Prohibition on Additional Final Plats. Until all subdivision improvements as described herein for Lake Springs Ranch PUD, Filing 2, have been completed and accepted by the County, Owner shall be prohibited from submitting any further final plat applications for any other portion of Lake Springs Ranch PUD.
- e. Certification of Completion. Certification of completion of Improvements adequate for release of the sale prohibition must be submitted by a licensed or registered engineer. Such certification authorizing release of security shall certify that the improvements have been constructed in accordance with the requirements of this Agreement, including all plans submitted to obtain approval of the

Final Plat.

- i. Upon submission of a Certification of Completion of improvements by the Owner and copies of recorded instruments evidencing the conveyance of all property and interests required to be conveyed to the Lake Springs Ranch Owners Association, the County may inspect and review the improvements certified as complete, to determine whether or not said improvements have been constructed in compliance with the relevant specifications. If the County determines that all or a portion of the improvements certified as complete are not in compliance with the relevant specifications, the County shall furnish a letter of potential deficiencies to the Owner within fifteen (15) days specifying which improvements are potentially deficient. If no letter of potential deficiency is furnished within the said fifteen (15) day period, all improvements certified as complete shall be deemed accepted and the County shall release the appropriate security as it relates to the improvements that were certified as complete. If a letter of potential deficiencies is issued which identifies a portion of the certified improvement as potentially deficient, then all Improvements not so identified in the letter of potential deficiencies shall be deemed accepted and the County shall release the appropriate security as such relates to the certified improvements that are not identified as potentially deficient in the letter.
- ii. When all improvements are certified as complete by the Owner that are identified as potentially deficient in a letter of potential deficiencies as provided in this paragraph, the County shall have thirty (30) days from the date of the letter of potential deficiencies to complete its investigation and provide written confirmation of deficiency to Owner. If the County finds that the improvements are acceptable, then a release of the sale prohibition shall be given to the Owner within ten (10) days after completion of such investigation. In the event the improvements are not accepted by the County, the Board shall make a written finding prior to such determination requesting the Owner cure any deficiency and if not so cured to vacate the Final Plat. Additionally, the County shall provide the Owner a reasonable period of time to cure any deficiency prior to acting to vacate the Final Plat.

- iii. Upon completion of all improvements, Owner shall submit to the Board as-built drawings bearing the stamp of Owner's professional engineer certifying that all improvements have been constructed in accordance with the requirements of this Agreement, including all Final Plat plans.

~~e.f.~~ A plat note shall reflect this absolute prohibition on individual lot sales as set forth in subsections (a) and (b) above (see Notes 11 and 12 on Sheet 1 Lake Springs Ranch PUD, Filing 2 Final Plat).

4. WATER SUPPLY AND WASTEWATER COLLECTION. Prior to issuance of any certificates of occupancy by the County for any homes to be located upon Lake Springs Ranch PUD, Filing 2, Owner shall install a water distribution system for potable water and fire protection. The Owner shall also install a wastewater collection system in accordance with plans and specifications approved by the Spring Valley Sanitation District. All easements and rights of way necessary for installation, operation, service and maintenance of such water supply and distribution system and wastewater collection system shall be established as shown on the Final Plat for Lake Springs Ranch PUD, Filing 2. Said water supply and distribution system and wastewater collection system shall be conveyed in its entirety to Lake Springs Ranch Owners Association, a Colorado nonprofit corporation, on or before termination of the Declarant Control Period as defined in the Second Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Lake Springs Ranch PUD.

5. ROADS.

- a. All roads within Lake Springs Ranch PUD, Filing 2, shall be dedicated to the public as public rights-of-way. The Lake Springs Ranch Owners Association shall be solely responsible for the maintenance, repair and upkeep of all roads except County Road 114. The County shall not be obligated to maintain any roads within the subdivision other than County Road 114.
- b. All roadwork on County Road 119 (Spring Valley Road) as depicted and described in the Development Plans will be completed by the Owner. Upon completion, the revised roadway will be dedicated to Garfield County, ~~and the old roadway vacated.~~

6. INDEMNITY. To the extent allowed by law, the Owner agrees to indemnify and hold the County harmless and defend the County from all claims which may arise as a result of the Owner's installation of the improvements

required pursuant to this Agreement. However, the Owner does not indemnify the County for claims made asserting that the standards imposed by the County are improper or the cause of the injury asserted. The County shall be required to notify the Owner of receipt of a notice of claim, or a notice of intent to sue, and shall afford the Owner the option of defending any such claim or action. Failure to notify and provide such written option to the Owner shall extinguish the County's rights under this paragraph. Nothing herein shall be interpreted to require the Owner to indemnify the County from claims which may arise from the negligent acts or omissions of the County or its employees.

7. **TRAFFIC IMPACT FEES.** Pursuant to Section 7-405 of the Garfield County LUDC, and Resolution No. 2016-35, Lake Springs Ranch, Filing 2, would require a Traffic Impact Fee. Pursuant to Section 7-405(A)(1) of the LUDC the appropriate fees will be collected at the time of building permit applications for each lot within Filing 2. If for any reason, none of the lots within Filing 2 are developed no road impact fees will be required.
8. **CONVEYANCE OF AGRICULTURAL RESERVE.** Upon the mutual execution of this Agreement, Owner shall execute and deliver into escrow deeds of conveyance for the Agricultural Reserve parcel and Utility Easements reflected on the Filing 2 Final Plat (collectively, the "Deeds") to Lake Springs Ranch Owners Association, a Colorado nonprofit corporation. The Deeds shall be deposited into escrow, pursuant to an Escrow Agreement to be executed by Owner, the Board and the Escrow Agent, providing that the Escrow Agent shall hold the Deeds until the earlier of (i) receipt of a written notice signed only by Owner notifying Escrow Agent that the work required of the Owner under this Agreement has been completed and accepted by the Board; or (ii) receipt of a written notice signed only by the Board stating that Owner has failed to comply with the terms and conditions of this Agreement; or (iii) April 16, 2021. Upon the first to occur of the foregoing events, Escrow Agent shall cause the Deeds to be recorded in the records of the Garfield County Clerk and Recorder.
9. **SALE OF LOTS.** No lots within Lake Springs Ranch PUD, Filing 2, may be separately advertised, contracted, reserved, leased, conveyed, sold or otherwise transferred by the Owner prior to recording of a Final Plat for Lake Springs Ranch PUD, Filing 2, in the records for the Garfield County Clerk & Recorder and prior to completion and acceptance by the County of all subdivision Improvements as described herein.
10. **ISSUANCE OF BUILDING PERMITS.** As one remedy for breach of this Agreement, the County may withhold issuance of any building permits or certificates of occupancy for any structure to be built upon Lots 1 through

14, Lake Springs Ranch PUD, Filing 2. The parties agree that no building permit shall be issued unless the Owner demonstrates to the satisfaction of the Carbondale & Rural Fire Protection District ("District") that there is adequate water available to the construction site for the District's purposes and all applicable District fees have been paid to the District. The parties also agree that no certificates of occupancy for residences upon any lot within Lake Springs Ranch PUD, Filing 2, shall be issued until all Improvements (as defined above) have been completed as required by this Agreement. Finally, the Owner agrees that, prior to conveyance of any lot, it will provide the purchaser of that lot with a signed copy of the form attached as Exhibit B concerning the issuance of building permits and certificates of occupancy.

- 11. CONSERVATION EASEMENTS.** Even though not required by any condition of approval of this land use application, the PUD or the Preliminary or Final Plat, if a conservation easement is granted and conveyed by Owner and accepted by a qualified holder thereof on any portion of the area included in the Filing 2 Final Plat, which has not already been included in a prior deed of conservation easement, all physical subdivision Improvements required for such portion will be suspended and any security to guarantee completion of such Improvements shall be released, except for the prohibition on sale of lots as described herein, for so long as the conservation easement remains in place. Upon the grant of such a conservation easement, the Board agrees to acknowledge the grant of such conservation easement and by further instrument acknowledge the suspension of physical subdivision improvements and release of such security and agrees to credit any development fees specified by the preliminary plat approval and paid on account of any lot which lot is hereafter made subject to a conservation easement, to be credited to future lots in the Lake Springs Ranch PUD but only to the extent creditable by the Board. However, If for any reason any such conservation easement were ever released or terminated for any reason, the obligations for all subdivision Improvements and the security for such Improvements will be reinstated subject to such revisions as may be required by the Board, including, without limitation, cost estimates and security at then-current values, and, failing such reinstatement and further compliance, the County may vacate the Final Plat of Lake Springs Ranch, Filing 2, in accordance with paragraph 13 below.
- 12. ENFORCEMENT.** In addition to any rights which may be proved by Colorado statute, it is mutually agreed that the County or any purchaser of any lot shall have the authority to bring an action in the Garfield County District Court to compel enforcement of this Agreement.

- 13. CONSENT TO VACATE PLAT.** In the event the Owner fails to comply with the terms of this Agreement, including the terms of the Preliminary Plan, the County shall have the ability to vacate the Final Plat for Lake Springs Ranch, Filing 1, as it pertains to any lots for which building permits have not been issued. As to any such lots for which building permits have been issued, the plat shall not be vacated and shall remain valid. In such event, the Owner shall provide a survey and complete legal description with a map showing the location of any portion of the plat so vacated.
- 14. RECORDING OF AGREEMENT.** This Agreement shall be recorded and shall be a covenant running with title to all lots within Lake Springs Ranch PUD, Filing 2, and shall constitute notice to prospective purchasers or other interested parties as to the terms and provisions hereof.
- 15. BINDING EFFECT.** This Agreement shall be a covenant running with the title to the land within the Final Plat for Lake Springs Ranch PUD, Filing 2, and the rights and obligations as contained herein shall be binding upon and inure to the benefit of Owner, its successors and assigns.
- 16. NOTICES.** All notices required or permitted by this Agreement shall be in writing and shall be deemed effective when received by the recipient party via personal delivery, facsimile transmission, United States certified mail, postage prepaid, return receipt requested, by messenger or by overnight delivery service, in all cases addressed to the person for who it is intended at their address and facsimile numbers(s) set forth below or to such other address as a party shall have designated by notice in writing to the other party in the manner provided by this paragraph:
- If to the Owner: The Berkeley Family Limited Partnership
 Miriam M. Berkeley
 4001 County Road 114
 Glenwood Springs, Colorado, 81601
- If to the County: Board of County Commissioners
 Sheryl Bower, Garfield County Community Development Director
 108 Eighth Street, Suite 401
 Glenwood Springs, CO 81601
- 17. AMENDMENT.** This agreement may be amended or modified from time to time, but only in writing signed by the parties hereto.
- 18. VENUE AND JURISDICTION.** Venue and jurisdiction for any cause arising out of, or related to, this Agreement shall lie with the District Court for Garfield County, Colorado, and this Agreement shall be construed

according to the laws of the State of Colorado.

IN WITNESS WHEREOF, the parties have signed this Agreement to be effective upon the date first set forth above.

THE BERKELEY FAMILY LIMITED PARTNERSHIP

By: _____
Miriam M. Berkeley, General Partner

**BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF GARFIELD, STATE OF COLORADO**

By: _____
John Martin, Chairman

ATTEST:

Jean Alberico, Clerk & Recorder
Garfield County, Colorado

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

Subscribed and sworn to before me by Miriam M. Berkeley as General Partner of The Berkeley Family Limited Liability Limited Partnership (LLLP) this ____ day of _____ 2018.

WITNESS my hand and official seal.

My commission expires:

Notary Public

EXHIBIT "B"
SUBDIVISION IMPROVEMENTS AGREEMENT
LAKE SPRINGS RANCH, FILING 1
LAKE SPRINGS RANCH PUD

NOTICE REGARDING BUILDING PERMITS

TO: ALL PURCHASERS OF HOME SITES WITHIN
LAKE SPRINGS RANCH, Filing 2
LAKE SPRINGS RANCH PUD SUBDIVISION

YOU ARE HEREBY NOTIFIED under applicable Garfield County Regulations, you may not commence construction of a residence within unincorporated Garfield County, including Lake Springs Ranch, Filing 2, Subdivision, prior to issuance of a building permit by Garfield County.

Under the terms of the Subdivision Improvements Agreement between Garfield County and Berkeley Family Limited Liability Limited Partnership, Garfield County will not issue building permits for property in Lake Springs Ranch, Filing 2, until:

1. The Owner/Developer has demonstrated to the satisfaction of the Carbondale & Rural Fire Protection District that adequate water is available to the construction site for the Fire District's purpose.
2. A site-specific geotechnical study, completed by a registered Geo-Technical Engineer, has been presented to the Garfield County Community Development Department for review, along with a registered design professional's certification that the structure design is based on the site-specific study.
3. Pursuant to Section 7-405.A.1 of the Garfield County Land Use and Development Code, as amended, the required traffic impact fee for each lot shall be payable by the party seeking a building permit and due prior to building permit approval.

Additionally, Garfield County will not issue Certificates of Occupancy for any structures within Lake Springs Ranch, Filing 2, until all of the subdivision improvements have been completed and are operational in accordance with the Subdivision Improvements Agreement between Garfield County and Berkeley Family Limited Liability Limited Partnership.

OWNER/SUBDIVIDER:

Berkeley Family Limited Liability Limited Partnership
By: _____

The foregoing Notice was read and understood by the undersigned Purchaser of a home site within Lake Springs Ranch, Filing 2, this day of 20__.

PURCHASER:

(Type Name)

(Type Address)