

**TOWN OF BERTHOUD
LARIMER COUNTY, COLORADO**

RESOLUTION NO. 2018-32

**A RESOLUTION APPROVING THE SECOND AMENDMENT TO THE
CONSOLIDATED SERVICE PLAN FOR BERTHOUD-HERITAGE
METROPOLITAN DISTRICT NOS. 1 - 17**

WHEREAS, the Town of Berthoud, Colorado (the “Town”), is a municipality duly organized and existing under Title 31 of the Colorado Statutes; and

WHEREAS, the members of the Board of Trustees for the Town of Berthoud, Larimer County, Colorado (the “Board of Trustees”) have been duly elected, chosen and qualified; and

WHEREAS, pursuant to the provisions of the “Special District Control Act”, Part 2 of Article 1, Title 32, C.R.S., representatives of the Berthoud-Heritage Metropolitan Districts No. 1, No. 2, No. 3, No. 4, No. 5, No. 6, No. 7, No. 8 and No. 9 (“District Nos. 1-9”) submitted to the Board of Trustees a Consolidated Service Plan dated November 7, 2007, which was revised and resubmitted February 6, 2008 (“Service Plan”), which outlined the terms and conditions under which the District Nos. 1-9 would be authorized to exist and was approved by the Town by Resolution No. 3-08 on February 12, 2008; and

WHEREAS, pursuant to provisions of Title 32, Article 1, C.R.S., as amended, material modifications to a service plan may be made to the governing body for approval; and

WHEREAS, representatives of District Nos. 1-9 submitted to the Board of Trustees a First Amendment to the Service Plan and resubmitted on May 7, 2015 (“First Amendment”), which was approved by the Town by Resolution No. 10-15 on May 26, 2015; and

WHEREAS, District Nos. 1-9 have submitted to the Board of Trustees a Second Amendment to Consolidated Service Plan for Berthoud-Heritage Metropolitan District 1, No. 2, No. 3, No. 4, No. 5, No. 6, No. 7, No. 8, No. 9, No. 10, No. 11, No. 12, No. 13, No. 14, No. 15, No. 16 and No. 17 (collectively “District Nos. 1-17”) (the “Second Amendment”), which modifies the Service Plan previously approved by the Board of Trustees, as amended by the First Amendment; and

WHEREAS, pursuant to Sections 32-1-204.5 and 32-1-207 C.R.S., as amended, the Second Amendment has been reviewed and recommended for approval, subject to the requirements set forth in this Resolution, by the Town Attorney, Town Administrator, Special Legal Counsel to the Town, and Town Planning Department, and has now been submitted to the Board of Trustees for its final approval; and

WHEREAS, pursuant to the provisions of Title 32, Article 1, C.R.S., as amended, the Town introduced and considered the approval of this Resolution at a public hearing of the Board

of Trustees held on October 9, 2018, regarding the Second Amendment filed in the office of the Town Clerk on or about September 26, 2018, as revised and resubmitted on or about October 5, 2018, a true copy of which is attached to this Resolution as Exhibit A; and

WHEREAS, notice of the date, time and location and purpose of the hearing was published in agenda of the Town of Berthoud and duly posted by the Town as required by the Town Code; and

WHEREAS, the District Nos. 1-17 lie wholly within the corporate limits of the Town; and

WHEREAS, Sections 32-1-204.5(1), 32-1-205(1) and 32-1-207(2)(a), C.R.S. require that any material modification to a service plan of a special district, pursuant to the Act, which is confined exclusively within the boundaries of any municipality, shall be approved by the governing body of the municipality, which approval will be based upon the presentation of the modification of the service plan defining the powers and authorities of the special district; and

WHEREAS, prior to taking final action on this Resolution, the Board of Trustees did on October 9, 2018 permit public comments on this Resolution, considered the Second Amendment and all other testimony and evidence presented at the hearing, and held a vote to adopt this Resolution and take such other action as it deems appropriate; and

WHEREAS, the Board of Trustees' approval of the Second Amendment is subject to and based upon those conditions and limitations contained in this Resolution; and

WHEREAS, the Board of Trustees further finds that it is in the best interests of the citizens of the Town of Berthoud to authorize the appropriate Town officials to enter into any revised Intergovernmental Agreement with the District Nos. 1-17, as necessary to relative rights and responsibilities between the Town and District Nos. 1-17 with respect to certain functions, operations, and obligations of the District Nos. 1-17.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO, AS FOLLOWS:

1. The above and foregoing recitals are incorporated herein by reference and are adopted as findings and determinations of the Board of Trustees.

2. The Board of Trustees further finds and determines that all of the jurisdictional and other requirements of Section 32-1-202(2) and 32-1-204.5(1), 32-1-207 C.R.S., the proposed Resolution, and the Town Code have been fulfilled, including those relating to the filing and form of the Second Amendment and that notice of the public meeting on this Resolution was given in the time and manner required by law and the Town Code.

3. The Board of Trustees further determines that all pertinent facts, matters and issues were submitted at the public hearing regarding this Resolution; that all interested parties were heard or had the opportunity to be heard; and that evidence satisfactory to the Board of Trustees was presented.

4. The Board of Trustees hereby grants and approves by this Resolution the Second Amendment, in the form attached hereto as Exhibit A.

5. Subsequent to the formation of Berthoud-Heritage Metropolitan Districts No. 10, No. 11, No. 12, No. 13, No. 14, No. 15, No. 16 and No. 17 ("District Nos. 10-17"), District Nos. 10-17 are prohibited from issuing or incurring any debt, imposing a mill levy or any fee, rate, toll, or charge of any kind on any property, or undertaking to construct any improvements within the District Nos. 10-17 until an amended and restated Consolidated Service Plan for District Nos. 1-17 is filed with the Town and approved by the Board of Trustees. District Nos. 1-9 shall not be limited in continuing to operate pursuant to the terms and conditions of the Service Plan, First Amendment, and Second Amendment; however, District No. 1 shall not have the authority to issue debt in excess of the limits set forth in the Service Plan and First Amendment until the amended and restated Consolidated Service Place for District Nos. 1-17 is filed with the Town and approved by the Board of Trustees.

6. The Town Clerk is hereby directed to file a certified copy of this Resolution in the records of the Town and submit a certified copy of this Resolution to the representatives of the District Nos. 1-17 for filing in the District Court of Larimer County, Colorado.

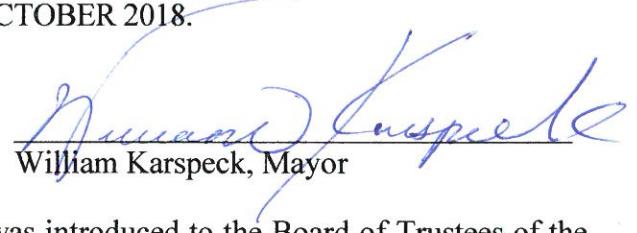
7. All acts, orders, resolutions, or parts thereof, of the Town that are inconsistent or in conflict with this Resolution, are hereby repealed to the extent only of such inconsistency or conflict.

8. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

9. This Resolution shall be in full force and effect upon its passage and approval.

INTRODUCED, READ, AND ADOPTED BY THE TOWN BOARD OF THE TOWN OF BERTHOUD, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS MEETING HELD ON THE 9th DAY OF OCTOBER 2018.

By:


William Karspeck, Mayor

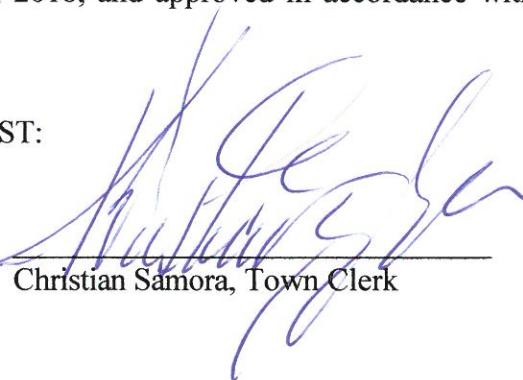
I hereby certify that the above Resolution was introduced to the Board of Trustees of the Town of Berthoud at its meeting of October 9th, 2018, and approved in accordance with the Town Code on October 9th, 2018.

SEAL



ATTEST:

By:


Christian Samora, Town Clerk

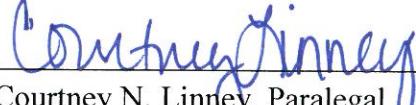
STATE OF COLORADO, COUNTY OF LARIMER, TOWN OF BERTHOUD

CERTIFICATE OF PUBLICATION AND PUBLICATION OF NOTICE OF HEARING

IN RE THE SECOND AMENDMENT TO CONSOLIDATED SERVICE PLAN FOR THE BERTHOUD-HERITAGE METROPOLITAN DISTRICT NOS. 1-17, TOWN OF BERTHOUD, COUNTY OF LARIMER, COLORADO

The undersigned does hereby certify that the NOTICE OF HEARING for Second Amendment to Consolidated Service Plan for the Berthoud-Heritage Metropolitan District Nos. 1-17, as shown in **Exhibit A** attached hereto and incorporated herein by this reference, was mailed by first-class mail on October 2, 2018, to the owners of record of all property within the District, as such owners of record are listed on the records of the County Assessor and shown in **Exhibit B** attached hereto and incorporated herein by this reference.

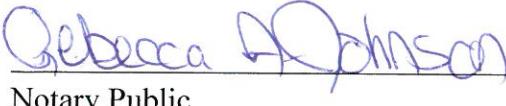
The undersigned further certifies that the Notice of Public Hearing was also published in the *Loveland Reporter-Herald* on October 4, 2018. An email confirmation of the publication is attached hereto as **Exhibit C** and the Affidavit of Publication will be attached upon receipt.


Courtney N. Linney, Paralegal
Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, Colorado 80203

STATE OF COLORADO)
CITY AND COUNTY OF DENVER)

Subscribed and sworn to before me this 8th day of October, 2018, by Courtney Linney, paralegal.

Witness my hand and official seal.
(S E A L)


Notary Public

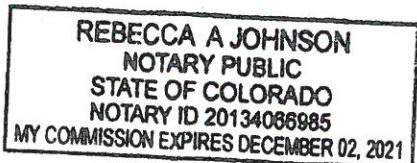


EXHIBIT A
(Notice of Hearing)

NOTICE OF HEARING

IN RE THE SECOND AMENDMENT TO CONSOLIDATED SERVICE PLAN FOR THE BERTHOUD-HERITAGE METROPOLITAN DISTRICT NOS. 1-17, TOWN OF BERTHOUD, COUNTY OF LARIMER, COLORADO

PUBLIC NOTICE IS HEREBY GIVEN that there was filed with the Town Clerk, Town of Berthoud, Larimer County, Colorado, a Second Amendment to Consolidated Service Plan (“Second Amendment”) for Berthoud-Heritage Metropolitan District Nos. 1-17 (the “Districts”). The Second Amendment to the Service Plan is now on file with the Town Clerk at Berthoud Town Hall, 328 Massachusetts Avenue, Berthoud, Colorado 80513, and is available for public inspection.

NOTICE IS FURTHER GIVEN that a Public Hearing on said Second Amendment to the Service Plan will be held by the Board of Trustees of the Town of Berthoud, Larimer County, Colorado, at 6:30 p.m. at the Berthoud Town Hall, 328 Massachusetts Avenue, Berthoud, Colorado 80513, on Tuesday, the 9th day of October, 2018.

The purpose of the Hearing shall be to consider the Second Amendment to the Service Plan and to form a basis for adopting a Resolution approving, conditionally approving, or disapproving the Second Amendment to Service Plan. The Second Amendment to the Service Plan is being submitted for approval to expand the boundaries of the current District Nos. 1-9 to include additional property to be contained within District Nos. 10-17 and provide for additional amenities, including, but not limited to a golf course, club house, marina, pool and workout facilities, development within District Nos. 6-11 with updated capital plans, and to redefine and update the property descriptions within the boundaries of the Districts to reflect current zoning and development plans, and to revise limitations on the Districts pursuant to current needs and projected development.

Following the Second Amendment to the Service Plan, the Districts will consist of approximately One Thousand Thirty-One and 453/1000 (1,031.453) acres initially and up to one thousand sixty-seven and 873/1000 (1,067.873) acres upon full build out and is generally located between Weld County Road 14 on the North, County Road 17 on the East, County Road 6 to the South, and County Road 21 to the West, entirely within the Town of Berthoud, Larimer County, Colorado. A precise description of the boundaries of the Districts is on file in the office of the Town Clerk, Town of Berthoud, Colorado.

NOTICE IS FURTHER GIVEN that any owner of real property within the Districts may file an objection with the Board of Trustees of the Town of Berthoud, Colorado. All protests and objections must be submitted in writing at or prior to the public hearing or any continuance or postponement thereof in order to be considered.

/s/ Spencer Fane LLP
Counsel to the Berthoud-Heritage Metropolitan District Nos. 1-17

Published On: October 4, 2018

Published In: Loveland Reporter Herald

EXHIBIT B
(Property Owners)

ALC V - Berthoud LLC
8678 Carey Court
Stockton, CA 95212

Heron Lakes Investments LLC
444 Mountain Ave.
Berthoud, CO 80513-1252

EXHIBIT C
(Email Confirmation of Publication
& Affidavit of Publication (to be supplemented upon receipt))

Linney, Courtney

From: snajera@prairiemountainmedia.com on behalf of Classifieds Main
<classifieds@prairiemountainmedia.com>
Sent: Tuesday, October 2, 2018 3:49 PM
To: Linney, Courtney
Subject: Re: For Publication on 10/4 - Notice of Hearing - Berthoud Heritage MD 1-17

Courtney,

This notice has been scheduled to run in the Reporter-Herald on 10/4/18 ad#1518580 cost \$126.48

Shayla

On Tue, Oct 2, 2018 at 3:31 PM Linney, Courtney <clinney@spencerfane.com> wrote:

Good Afternoon,

Please publish the attached Notice of Hearing in the Loveland Reporter-Herald on October 4, 2018. Please confirm receipt of this request and send the affidavit of publication and invoice to our office once complete.

Billing Reference: 5022200.2300

Thank you,

Courtney Linney Paralegal
Spencer Fane LLP

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O 303.839.3778
clinney@spencerfane.com | spencerfane.com