

**DECLARATION OF COVENANTS IMPOSING AND
IMPLEMENTING FIRING FEES**

THIS DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING FIRING FEES ("Declaration") is made this 14 day of December, 2018, by BAREFOOT LLC, a Colorado limited liability company, hereinafter referred to as the "Declarant", for the benefit of ST. VRAIN LAKES METROPOLITAN DISTRICT NOS. 1 - 4, quasi-municipal corporations and political subdivisions of the State of Colorado, (hereinafter collectively referred to as the "SVLMD").

RECITALS

- A. The Declarant is the owner of certain real property located in the Town of Firestone, Weld County, Colorado, and more particularly described on the attached **Exhibit A** (the "**Property**").
- B. The Property contains, or will contain, certain single family detached homes (individually, an "**SFD Lot**" and collectively the "**SFD Lots**") and may contain certain single family attached homes (individually, an "**SFA Lot**" and collectively the "**SFA Lots**").
- C. The term "**Lot**" as used herein shall mean and include an SFD Lot and an SFA Lot, and the term "**Lots**" as used herein shall mean and include the SFD Lots and the SFA Lots. The term "**Owner**" as used herein means an individual or entity that owns a fee interest in any Lot.
- D. For the benefit of the Property as a whole as well as each respective Lot to be sold to future owners, Declarant has incurred substantial costs to provide for the delivery of water to the Property, including incurring the obligation to fund a portion of the construction of infrastructure as part of the Windy Gap Firing Project, which is a collaboration among municipalities, water districts and a power provider to construct the Chimney Hollow Reservoir in Larimer County, Colorado (the "**Windy Gap Project**").
- E. Declarant is party to that certain Amended and Restated Agreement for Water Extensions dated February 12th, 2015, and amended by the First Amendment to Amended and Restated Agreement for Water Extensions, with an effective date of January 31, 2016, and amended by the Addendum B dated May 16, 2017 (collectively the "**Water Extension Agreement**") by and between Little Thompson Water District and Barefoot, LLC.
- F. The Declarant desires to impose certain charges ("**Firing Fees**") upon the Lots, to be paid to SVLMD, or to such agent designated by SVLMD or Declarant, whereby a portion of the costs related to the Windy Gap Project are to be paid by the Owners of the Lots in monthly, quarterly or annual installments (except as expressly provided otherwise herein) over a period of twenty (20) years.
- G. Each such installment is hereinafter referred to individually as a "**Firing Fee**" and collectively as the "**Firing Fees**", and such terms shall also be deemed to refer to all

applicable interest, costs, late fees and attorneys' fees. The term "**Builder**" as used herein shall mean and refer to any person or entity that acquires one or more "**unimproved Building Sites**" (as defined below) from the Declarant, its successors, transferees and assigns, for the purpose of constructing residential dwelling units on such unimproved Building Sites for sale to others. The term "**unimproved Building Sites**" as used herein shall mean and refer to any subdivided lot and/or parcel of record within the Property prior to substantial completion of a residential dwelling unit on such lot and/or parcel, which shall be deemed to occur no later than the first issuance of a final inspection and/or a certificate of use and occupancy (as applicable) for the dwelling unit or units on such lot and/or parcel by applicable governmental authorities or agencies.

DECLARATION

NOW, THEREFORE, the Declarant hereby declares that all of the Lots now or hereafter included within the Property shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, occupied and used subject to the covenants, conditions, restrictions, obligations and charges set forth in this Declaration, which are for the purpose of funding the cost of the Windy Gap Project, and which shall run with such Lots and be binding on all parties having any right, title or interest in all or any portion of such Lots, their respective heirs, personal representatives, successors, transferees and assigns, and which shall inure to the benefit of the Declarant, SVLMD, and their successors, transferees and assigns:

1. AMOUNT AND PAYMENT OF CHARGES.

a. The Firming Fees (exclusive of interest, costs, late fees, and attorneys' fees) shall be payable annually, quarterly or monthly by each Owner to SVLMD, or to such agent designated by SVLMD or Declarant, over a period of twenty (20) years, in the amount of **Five Hundred Dollars (\$500.00) per year** for each Lot (or \$125 per quarter or \$41.67 per month, with the determination of the installment period set at the discretion of SVLMD).

b. The Firming Fees described herein shall commence (the "**Commencement Date**") with respect to each Lot upon the first to occur of:

- i. the date of conveyance of such Lot from the Declarant or any Builder to any other Owner, other than the Declarant or any Builder,
- ii. the date upon which the dwelling unit located upon such Lot is first occupied or used for residential purposes, whether pursuant to a lease of such dwelling unit or otherwise, by any person or entity, including, without limitation, by any Builder, or
- iii. the date that is six (6) years after the date this Declaration is recorded in the real estate records of Weld County, Colorado.

c. Annual installments of Firming Fees shall be paid each June 1st (the "**Payment Date**") and shall continue until the total amount of the Firming Fees for a particular Lot are paid in full. Should SVLMD elect to charge Firming Fees in quarterly or monthly installments, the Payment Date shall be the first day of each quarter or month, as the case

may be. Unless sooner paid in full as provided below, the Firming Fees for each Lot shall cease to be payable (except as to any unpaid Firming Fees, including, without limitation, interest, costs, late fees and attorneys' fees) on the first Payment Date that is at least twenty (20) years after the Commencement Date (the "**Termination Date**").

d. Nothing in this Declaration shall be deemed to excuse the payment of any Firming Fees which accrue through and remain unpaid as of the Termination Date, including, without limitation, interest, costs, late fees and attorneys' fees, and the obligation to pay such sums shall survive the Termination Date.

e. The initial installment of Firming Fees for each Lot (the "**Initial Payment**") shall be due and payable on the first Payment Date following the Commencement Date and shall continue for a period of twenty (20) years.

f. The final installment of the Firming Fees for each Lot (the "**Final Payment**") shall be due and payable the final Payment Date in the 20th year.

g. Notwithstanding the foregoing, SVLMD, in its sole and absolute discretion, may allow or can require (i) any Owner to pay the annual Firming Fees in monthly, quarterly or bi-annual installments as determined by SVLMD, and (ii) any Owner's mortgagee to escrow and pay to SVLMD the Firming Fees.

h. Any Firming Fees not paid within fifteen (15) days after the due date shall bear interest from the due date until paid at the rate of 8 percent per annum and not to exceed the maximum rate permitted by law. In addition to bearing interest, for any installment of Firming Fees which is fifteen (15) or more days' delinquent, SVLMD may elect to collect a late fee in an amount equivalent to ten percent (10%) of the installment of the Firming Fee due for each month that any installment remains outstanding (up to a maximum of three (3) such monthly late fees). No Owner may escape liability for the Firming Fees provided for herein by non-use of the Water System or abandonment of a Lot.

2. **BILLING STATEMENT.** All Firming Fees, interest, costs, late fees and attorneys' fees payable in accordance with this Declaration shall be payable to SVLMD, its successors, transferees and assigns, in accordance with such billing statements issued by SVLMD, or its designee, and shall be sent to address as SVLMD shall notify the Owners in writing. Except as may be limited by law, failure to receive a bill for the Firming Fees shall not relieve any Owner of such Owner's liability to pay any Firming Fees, interest, costs, late fees, or attorneys' fees due hereunder.

3. **FINAL PAYMENT AND RELEASE.** Within 60 days following receipt of the Final Payment for a Lot; provided, however, that the Owner of such Lot is not then in default under this Declaration and has paid of all then due installments of the Firming Fees (including, without limitation, all interest, costs, late fees and attorneys' fees). With respect to such Lot, the Owner shall receive a full release hereunder, in the form attached hereto as **Exhibit B** (the "**Release**"), from SVLMD certifying that all payments hereunder have been paid.

4. **ESTABLISHMENT OF LIEN AND PERSONAL OBLIGATION.** Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, (a) covenants and agrees to pay to SVLMD all Firming Fees assessed against that Lot hereby which are due and

unpaid as of the date such Owner accepts title to such Lot, (b) covenants and agrees to pay to SVLMD all future Firming Fees assessed against that Lot hereby for as long as such Owner shall be a record owner of a fee simple interest in such Lot, (c) grants to Declarant a lien to secure payment of the aforesaid Firming Fees upon the Lot against which the aforesaid Firming Fees are assessed, and (d) grants to Declarant a power of sale, and assents to the entry of a decree and order for the sale of that Lot upon a default by the Owner under this Declaration. Each such Firming Fee shall also be the personal obligation of the Owner of the Lot as of the time when the Firming Fee is assessed. In the event that any Owner shall fail to pay the Firming Fees applicable to that Owner's Lot in accordance with this Declaration, Declarant shall be entitled to all legal and equitable relief as may be available under applicable law, including, without limitation, the following Remedies:

a. REMEDIES. If an Owner shall fail to pay Firming Fees when assessed, such event shall be referred to as a "**Default.**" The occurrence of a Default shall allow Declarant to exercise all available legal or equitable remedies including, the following: (a) recording a notice of Default against the Lot on which the Default exists; (b) removing, correcting or otherwise remedying any Default in any manner Declarant deems appropriate; (c) levying fines for such Default; and (d) exercising any rights or remedies otherwise contained herein.

b. FORECLOSURE. In the event of a Default, and in addition to other remedies otherwise contained herein, Declarant may accelerate and declare to be immediately due and payable the full amount of all Firming Fees; bring an action at law against any Owner personally obligated to pay the Firming Fees; or foreclose on the lien against the Lot or Lots then belonging to said Owner in the manner now or hereafter provided for the foreclosure of mortgages.

5. LIEN PRIORITY. The lien established under this Declaration shall be prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of this Declaration; (2) a first mortgage or deed of trust, or any other form of security instrument affecting title to a Lot (collectively, a "**First Mortgage**"), which is subject only to governmental liens, the lien for real property taxes, and any other liens made senior to such First Mortgage by Colorado law; and (3) liens for real estate taxes and other governmental assessments or charges against the Lot by the State of Colorado, Weld County, the Town of Firestone or any political subdivision of any such governmental authority. This Section does not affect the priority of mechanic's or materialmen's liens. The lien established under this Article is not subject to the provisions of any homestead exemption allowed by state or federal law, and all such homestead exemptions shall be deemed waived by an Owner upon such Owner's acceptance of a deed or other conveyance of fee title to such Owner's Lot. Sale or transfer of any Lot shall not affect the lien for said Firming Fees, except that the transfer of any Lot as a result of the foreclosure of any First Mortgage, or any proceeding in lieu thereof, shall extinguish the Firming Fee lien as to any amounts that were due and payable prior to the effective date of transfer resulting from such foreclosure or deed in lieu thereof. No transfer resulting from any such foreclosure or proceeding in lieu thereof, however, will relieve any Lot from continuing liability for any Firming Fees thereafter becoming due, nor from the lien thereof.

6. REQUIRED NOTICES. If an Owner of a Lot sells, assigns, conveys, transfers or otherwise disposes of such Lot, the Owner shall (i) provide notice to its successor in title, in any purchase

agreement consistent with the laws of the State of Colorado and the Town of Firestone and in any deed of the terms and conditions of this Declaration, and (ii) require that the same notice be included in any future agreement of sale, deed, assignment, conveyance, transfer or other disposition of the Lot. If any such Owner fails to comply with the conditions set forth in this paragraph, that Owner shall be jointly responsible, with the new Owner of the Lot, for payment of the full amount of the Firming Fees pertaining to the Lot to the full extent that such Firming Fees are not timely paid by the subsequent Owner in the event that such non-payment is due, in whole or in part, to the failure to give such required notice.

7. ASSIGNMENT; TRANSFER. All or any portion of the rights, reservations, interests, exemptions, powers, and privileges of the Declarant and SVLMD hereunder may be assigned and transferred (exclusively or non-exclusively) by the Declarant or SVLMD to any other individual or entity, without the consent of the Owner(s), and upon assumption of the rights and obligations of the Declarant or SVLMD to an assignee, the original party shall be released from further liability or obligations under this Declaration. The Declarant and SVLMD, and their successors in interest shall have the right, without consent of the Owners, to transfer, assign, pledge, or in any other fashion encumber its right to any or all of the Firming Fees, interest, costs, late fees and attorneys' fees due hereunder. Upon an assignment, the assignee shall notify the Owners that the right to collect the Firming Fees has been assigned, and the notice shall include the full name and address of the assignee, the date of assignment, and the outstanding balance owed on the Firming Fees.

8. ANNEXATION OR WITHDRAWAL. The Declarant may annex other additional real property to, or withdraw any Lot from, the operation and effect of this Declaration for a period of thirty (30) years from the date of recordation of this Declaration, without the consent of the Owners or any other individual or entity. Any withdrawn Lot shall no longer be subject to the covenants, conditions, restrictions, obligations and charges of this Declaration except for (i) any rights, reservations, interests, exemptions, powers, or privileges reserved to the Declarant pursuant to this Declaration which affect the withdrawn Lot, and (ii) any other rights, reservations, interests, exemptions, powers, or privileges which are expressly reserved to the Declarant in the instrument effectuating such withdrawal. Such withdrawal shall be made by recording a Supplementary Declaration in the real estate records of Weld County, Colorado, withdrawing the effect of the covenants, conditions, restrictions, obligations and charges of this Declaration from the withdrawn Lot. Any such annexation of additional real property shall be effected by the recordation of a Supplementary Declaration. Such Supplementary Declaration may contain such complementary additions and modifications to the covenants and restrictions set forth in the within Declaration as may be necessary to reflect the different character or use, if any, of such annexed property or a different Firming Fee that may then be applicable to the Lot or Lots being subjected at such time and the terms of such supplementary declaration shall be controlling over any contradictory terms within this Declaration.

9. AMENDMENT TO DECLARATION. This Declaration may be amended by the Declarant without notice to or consent of the Owners, provided that such amendment does not materially and adversely affect the property rights of any Owner.

10. DECLARANT'S POWER OF ATTORNEY. The Declarant hereby reserves for itself (and its successors, transferees and assigns to whom such right has been specifically assigned by the Declarant in writing), for a period of thirty (30) years from the date of the recordation of this

Declaration, the right, but not the obligation, to execute on behalf of all contract purchasers, Owners, mortgagees, and other lienholders or parties claiming a legal or equitable interest in all or any portion of the Property any such agreements, documents, amendments and supplements to this Declaration which may be required by the Federal National Mortgage Association, the Federal Housing Administration, the Department of Veterans Affairs, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, Weld County, Colorado, the Town of Firestone, any district, governmental or quasi-governmental agency or authority having regulatory jurisdiction over the Property, any public or private utility company designated by the Declarant, any institutional lender or title insurance company designated by the Declarant, or as may be required to comply with any applicable laws or regulations.

a. By acceptance of a deed to all or any portion of the Property, or by the acceptance of any other legal or equitable interest in all or any portion of the Property, each and every such contract purchaser, Owner, mortgagee and other lienholder or party having a legal or equitable interest in all or any portion of the Property does automatically and irrevocably name, constitute, appoint and confirm the Declarant (and its successors, transferees and assigns to whom such right has been specifically assigned by the Declarant in writing) as attorney-in-fact for the purpose of executing such agreement, document, amendment, supplement and other instrument(s) necessary to effect the foregoing subject to the limitations set forth herein.

b. No such agreement, document, amendment, supplement or other instrument which materially and adversely affects the value of the Property, or any portion thereof, or substantially increases the financial obligations of an Owner, shall be made without the prior written consent of the affected Owner(s) and all owners of any mortgage(s) encumbering the portion of the Property owned by the affected Owner(s). Any such agreement, document, amendment, supplement or instrument which materially and adversely affects the priority or validity of any mortgage which encumbers the Property, or any portion thereof, shall not be made without the prior written consent of the owners of all such mortgages.

c. The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to all and any portion of the Property, and be binding upon the heirs, personal representatives, successors, transferees and assigns of any of the foregoing parties. Further, said power of attorney shall not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to said power of attorney. Said power of attorney shall be vested in the Declarant (and its successors, transferees and assigns to whom such right has been specifically assigned by the Declarant in writing) until the expiration of same.

11. **WAIVER.** No restriction, condition, obligation or provision of this Declaration shall be deemed to have been abrogated or waived because of any failure or failures to enforce the same.

12. **SEVERABILITY.** The terms and provisions of this Declaration are severable and in the event that any term or provision of this Declaration is invalid or unenforceable for any reason, the remaining terms and provisions hereof shall remain in full force and effect.

13. RUN WITH THE LAND. All provisions of this Declaration, including the benefits and burdens, shall touch, concern and run with the land, shall be binding upon the Owners and their respective heirs, personal representatives, successors, transferees and assigns, and shall inure to the benefit of the Declarant, and its successors, transferees and assigns.

14. CAPTIONS AND GENDER. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male or female shall include all genders and the singular shall include the plural.

15. ENFORCEMENT AND RECORDATION. This Declaration shall be construed and enforced in accordance with the laws of the State of Colorado, and shall be effective upon recordation among the Land Records.

16. INCORPORATION OF RECITALS. The recitals set forth above are hereby incorporated in and made a material part of this Declaration.

DECLARANT

BAREFOOT LLC

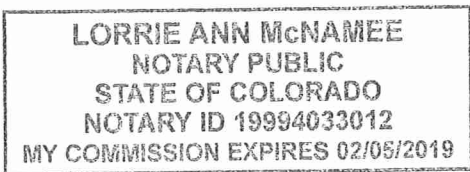
By [Signature]
Name: Richard J. Dengler
Title: President, Colorado

By [Signature]
Name: Ashley Taruffelli
Title: CFO

STATE OF COLORADO)
) ss
COUNTY OF ARAPAHOE

Subscribed and sworn to before me this 14TH day of DECEMBER, 2018 by RICHARD U. DENGLER, as PRESIDENT, COLORADO of Barefoot LLC and by ASHLEY TARUFFELLI, as CFO of Barefoot LLC.

Witness my hand and official seal.



[Signature]
Notary Public

Exhibit A

Property

[ATTACH LEGAL OF LOTS UPON CONVEYANCE TO BUILDER]

