

## ACCESS AND MAINTENANCE EASEMENT AGREEMENT

(Landscape and Hardscape Improvements – Barefoot Lakes Filing No. 3)

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This ACCESS AND MAINTENANCE EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of this 27th day of August, 2019, by and between BAREFOOT LLC, a Nevada limited liability company (the “**Grantor**”) and ST. VRAIN LAKES METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado, (the “**District**”).

### RECITALS

A. Grantor owns that certain real property located in the Weld County, Colorado as more particularly described as:

Lots 1 through 39, Block 1  
Lots 1 through 16, Block 2  
Lots 1 through 28, Block 3  
Lots 1 through 24, Block 4  
Barefoot Lakes – Filing No. 3  
Weld County, Colorado  
Recorded August 13, 2018 at Reception No. 4422565  
(each a “**Lot**” and collectively, the “**Lots**”).

B. Grantor has constructed or installed or will construct or install on, under, over and through the Easement Area (as defined below) on the Lots certain improvements within the Easement Area on the Lots, including: (1) landscape improvements, which may include, but are not limited to, plantings, trees, shrubs, grass, ground cover, irrigation lines and sprinkler systems and other landscape features, and including any such improvements that may be installed or constructed by a subsequent owner of the Lot(s) (the “**Landscape Improvements**”); and (2) sidewalks extending from the public sidewalks onto and across the front porch to the front entrance of the residence constructed on the Lot (the “**Lot Sidewalk Improvements**” and together with the Landscape Improvements, the “**Improvements**”).

C. Grantor desires to grant to the District a non-exclusive, perpetual easement for the purpose of accessing the Easement Area (defined in Section 1 below) to provide the Services (as described in Section 3 below) upon terms and conditions set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and the District covenant and agree as follows:

1. Grant of Easement. Grantor hereby grants, sells, bargains and conveys to the District, its successors and assigns, and agents, employees, contractors, and licensees, a permanent,

perpetual, non-exclusive easement, together with all rights and privileges as or incidental to the District's full use and enjoyment of its easement rights, on, over, above, under, across, and through each Lot, but exclusive of any residential dwelling constructed on each Lot (the "**Easement Area**") for the purpose of providing the Services. Notwithstanding anything herein to the contrary, the District acknowledges and agrees that nothing in this Agreement grants to the District any right to enter into or upon a residential dwelling, or any patio or porch attached thereto located on any Lot except as is necessary to provide the Services (as described in Section 3 below). The District, at its sole cost and expense, shall promptly repair any damages to the Lot or the Improvements on the Lot caused by the District or its agents, employees, contractors, or licensees.

2. Turnover Date. Grantor shall, at its sole cost and expense, construct, install and maintain the Improvements on each Lot until the earlier of (i) such time as a Lot is conveyed by the Grantor to a third-party homebuyer (a "**Homeowner**") or (ii) the issuance of a certificate of occupancy to the owner of a Lot (the "**Turnover Date**"). Commencing at the Turnover Date, the District shall be authorized to begin accessing and maintaining the Improvements, as provided in Section 3 below. Subsequent to the Turnover Date for any particular Lot by the District, the Grantor shall have no obligation to operate, maintain, repair or replace the Improvements located within the Easement Area on such Lot.

3. District Services. Commencing on the Turnover Date for a particular Lot, the District shall perform the following services (the "**Services**"), subject to taxes, fees and charges that may be imposed upon such Lots by the District in connection with the provision of such Services.

A. Landscape Maintenance.

(I) Weekly Services: Once a week, from approximately May to October, depending on the growing season, the District shall (i) mow the grass, perform string trimming within the grass and remove trash and debris from the grass areas within in the areas listed in the Legend and shown on Exhibit A attached hereto as "Landscape 5" and (ii) blow/remove debris due to the services described in this sentence from the Lot Sidewalk Improvements.

(II) Monthly Services: Once a month, from approximately May to October, depending on the growing season, the District shall edge the grass at curb lines and sidewalks in the areas listed in the Legend and shown on Exhibit A as "Landscape 5".

(III) Annual Services: The District shall perform aeration of the grass in the Spring, remove leaves accumulated on in the grass areas in the Fall, and apply fertilizer and weed control two times per year on the grass in the areas listed in the Legend and shown on Exhibit A as "Landscape 5".

B. Snow Removal.

(I) Duplex Lots. "**Duplex Lots**" means the properties more specifically described as lots 1-28 in block 1 and lots 1-24 in block 3, Barefoot Lakes – Filing No. 3, Weld

County, Colorado, Recorded August 13, 2018 at Reception No. 4422565. For Duplex Lots, in the event of snow accumulations of two (2) inches or more on the Lot Sidewalk Improvements after a storm event, the District, shall remove the snow from the Lot Sidewalk Improvements (labeled as number 14 and shown on Exhibit A) and the public sidewalks adjoining the Easement Area. The District shall not provide snow removal services on any other portion of the Lots.

(II) Single Family Detached Lots. “**Single Family Detached Lots**” means the properties more specifically described as lots 1-16 in block 2 and lots 1-24 in block 4, Barefoot Lakes – Filing No. 3, Weld County, Colorado, Recorded August 13, 2018 at Reception No. 4422565. For Single Family Detached Lots, in the event of snow accumulations of two (2) inches or more on the Lot Sidewalk Improvements after a storm event, the District shall remove the snow from the Lot Sidewalk Improvements and the driveway on the Lot (both labeled as number 14 and shown on Exhibit A) and the public sidewalks adjoining the Easement Area. The District shall not provide snow removal services for on any other portion of the Lots. If there are any vehicles parked in the driveway or any other obstructions within the driveway, the District shall only remove snow from the unobstructed portion of the driveway. Each Homeowner of a Single Family Detached Lot waives any and all claims against the District for any damages to vehicles or other items that are located on the driveway as a result of the District’s performance of snow removal on the driveway except for damages caused by District’s negligence in performing snow removal from the driveway.

4. Homeowner Obligations.

A. Maintenance, Repair and Replacement of the Improvements. Except for the Services provided by the District, each Homeowner shall, at its cost, maintain, repair and replace the Landscape Improvements on its Lot so that the Landscape Improvements are in a good and healthy condition, including, without limitation, maintenance, repair and replacement of irrigation systems (including winterizing of the irrigation system), landscaped beds, shrubs, bushes and trees on the Lot. The Homeowner shall water the grass on the Lot so that the grass remains in good and healthy condition. The Homeowner shall, at its expense, maintain, repair and/or replace the Lot Sidewalk Improvements so that the Lot Sidewalk Improvements are in a good and safe condition. Following the Turnover Date, the Homeowner shall not make any alterations to the grass on its Lot in the area listed in the Legend and shown on Exhibit A as “Landscape 5” or to the Lot Sidewalk Improvements without the District’s prior written consent which consent shall not be unreasonably withheld, conditioned or delayed.

B. Payment for the Services. From and after the Turnover Date, the owner of a Lot shall be responsible for payment of any and all taxes, fees and charges imposed by the District for the Services, which taxes, fees and charges may be increased by the District from time to time. Such fees and charges may be imposed by the District upon each Lot, commencing from and after the Turnover Date, and shall be invoiced by the District, and due and payable thereafter by each such Homeowner, on a quarterly or more frequent basis with such fees and charges based upon an annual schedule of fees and charges adopted by the District. Any fee or charge imposed by the District on a Homeowner for the provision of the Services on such Homeowner’s Lot shall, until paid, constitute a perpetual lien on and against such Lot, and any such lien may be foreclosed in the manner as provided by the laws of the State of Colorado for the foreclosure of mechanic’s

liens, pursuant to § 32-1-1001(1)(j), C.R.S. Any such liens of the District imposed and attaching to a Lot hereunder shall be in a senior position as against all other liens of record affecting such Lot so served or benefited, or to be served or benefited by the Improvements, and shall run with the land and remain in effect as to any portion of such Lot as to which the appropriate fee has not been paid, except as specifically provided for by state or federal law. All such liens contemplated herein may be foreclosed in any manner authorized by law and pursuant to the policies and procedures of the District, at such time as the District may determine that fees or charges imposed for the Services have not been timely paid.

5. Subject to Annual Appropriation and Budget. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of all financial obligations of the District under this Agreement are subject to annual appropriation, budgeting, and availability of funds to discharge such obligations. Nothing in this Agreement constitutes a pledge of the District's credit or faith, directly or indirectly, to the Grantor. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by the District, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the District or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or create a lien on any class or source of District funds.

6. Inurement. This Agreement shall run with the land and each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the parties, their respective legal representatives, heirs, successors and assigns.

7. No Third-Party Beneficiaries. This Agreement is not intended nor shall it be construed to create any third-party beneficiary rights in any person who is not expressly referenced herein as a party benefited or burdened hereby.

8. Subjacent and Lateral Support. The District shall have and exercise the right of subjacent and lateral support to whatever extent is necessary or convenient for the District's full use and enjoyment of the Easement Area.

9. Subject to Matters of Record. This Agreement and the rights granted hereunder shall be subject to any existing liens and/or encumbrances affecting the Easement Property.

10. Attorneys' Fees. Should any legal proceeding be brought in connection with this Agreement, including without limitation, actions based on contract, tort or statute, the prevailing party in such action shall be awarded all costs and expenses incurred in connection with such action, including reasonable attorneys' fees. The provisions of this Section 10 shall survive the expiration or the termination of the Agreement.

11. Captions. The captions of this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope, meaning, or intent of this Agreement.

12. Entire Agreement. This Agreement (including the exhibits attached hereto, which are incorporated herein) constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all negotiations or previous understandings or agreements between the parties with respect to all or any part of the subject matter hereof.

13. Governmental Immunity. Nothing in this Agreement shall be construed to limit, modify, or otherwise constitute a waiver, in whole or in part, of any governmental immunity that may be available by law to the District, its respective officials, employees, contractors or agents, and in particular, the District's rights and protections under the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended from time to time.

14. Governing Law. This Agreement, including all questions concerning the construction, validity and interpretation of this Agreement, and the exhibits hereto, and all claims or controversies arising out of or relating to this Agreement, shall be governed and construed under the applicable laws of the State of Colorado, without regard to conflict of law principals that would result in the application of any law other than the law of the State of Colorado. Venue for all actions arising from this Agreement shall be in the District Court in and for Weld County. The parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including, but not limited to, *forum non-conveniens* or otherwise.

15. Severability. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

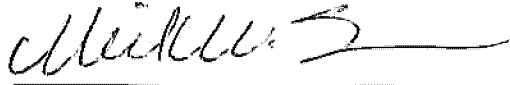
16. Recording. This Agreement shall be recorded in the real property records of Weld County, Colorado.

17. Grantor Authority. Grantor covenants and agrees with the District that the Grantor has full power and lawful authority to grant, bargain, declare and convey the easement granted herein to the District. The Grantor further promises and agrees to warrant and forever defend the District in the exercise of the District's rights hereunder against any defect in the Grantor's title to the Easement Area due to the actions of Grantor and the Grantor's right to make the grant described herein, except matters of record.

18. Counterparts. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, included the rules of evidence applicable to court proceedings.

*[Signature page follows]*

**ST. VRAIN LAKES METROPOLITAN  
DISTRICT NO. 1**, a quasi-municipal corporation  
and political subdivision of the State of Colorado

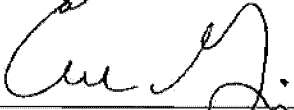
By:   
\_\_\_\_\_  
Officer

Attest:

  
\_\_\_\_\_

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law

  
\_\_\_\_\_  
General Counsel to the District

*[Signature Page to Access and Maintenance Easement Agreement]*

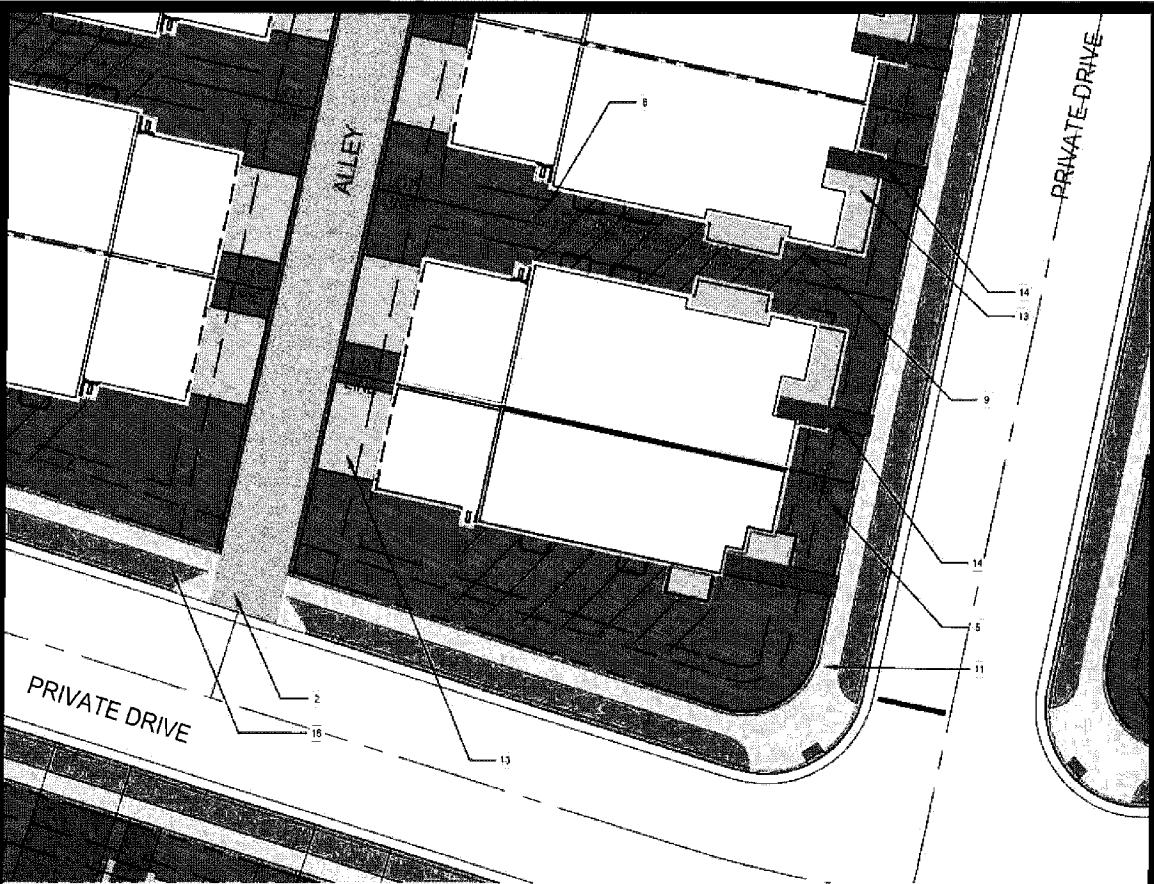


**EXHIBIT A**





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**LEGEND**

**Streets & Alleys**

	Ownership	Installed By	Maintained By	Snow Removal
1	Town	Developer	Town	Town
2	District	Developer	District	District

**Landscape**

	Ownership	Installed By	Maintained By
	Homeowner	Builder	District*
	Homeowner	Homeowner	Homeowner
	Town	Builder	District*

\*District maintenance to be limited to lawn mowing, edging, & fertilization

**Irrigation**

	Ownership	Installed By	Maintained By
	Homeowner	Builder	Homeowner
	Homeowner	Homeowner	Homeowner
	Homeowner	Builder	Homeowner

**Sidewalks, Patios, & Driveways**

	Ownership	Installed By	Maintained By	Snow Removal
11	Town	Developer	Homeowner	District
13	Homeowner	Builder	Homeowner	Homeowner
	Homeowner	Builder	Homeowner	District

**Fence**

	Ownership	Installed By	Maintained By
9	Homeowner	Builder	Homeowner



**BAREFOOT LAKES - FILING 3  
TYPICAL LOT - DUPLEX UNIT**

**OWNERSHIP & MAINTENANCE  
RESPONSIBILITY**

DENVER

COLORADO

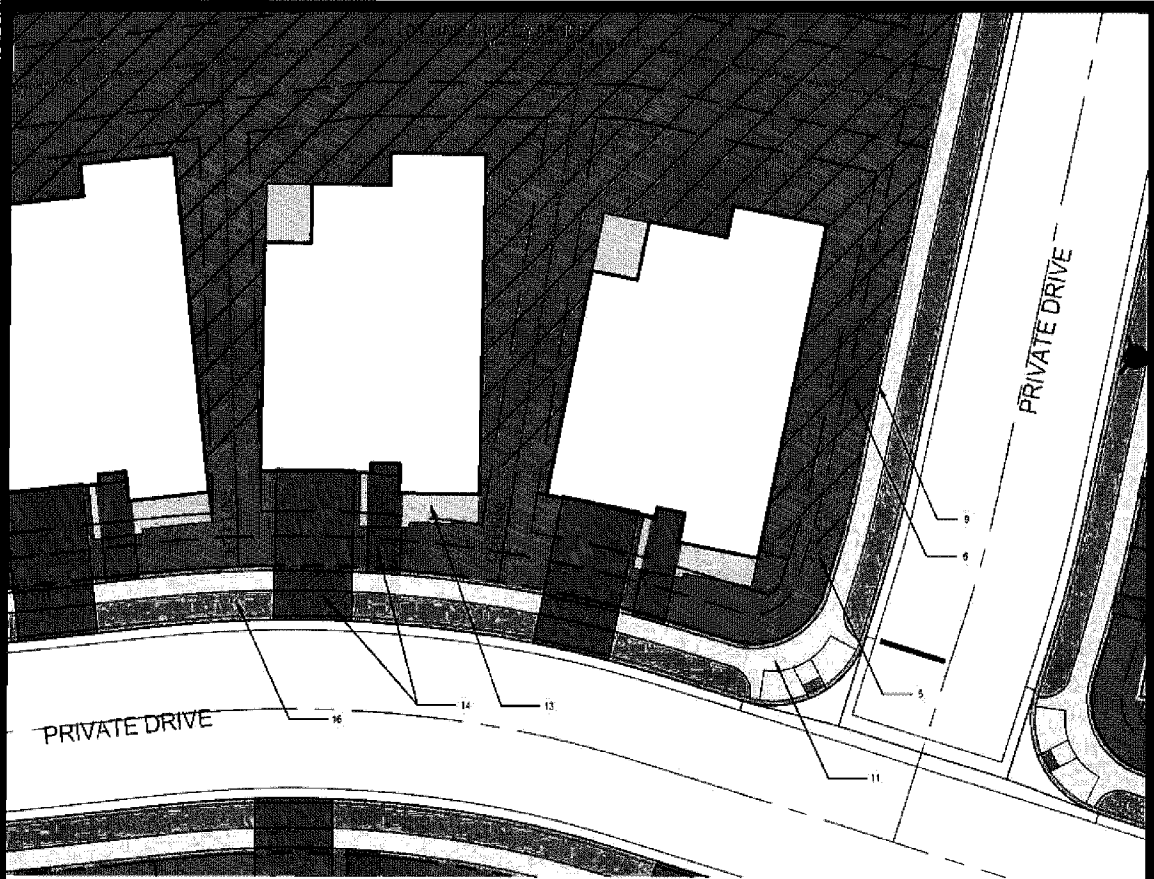
DATE 08-27-2019

PROJ. NO. 08001.14

SHEET

**1 of 1**

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**LEGEND**

**Streets & Alleys**

	Ownership	Installed By	Maintained By	Snow Removal
1	Town	Developer	Town	Town

**Landscape**

	Ownership	Installed By	Maintained By
[Hatched]	Homeowner	Builder	District*
[Hatched]	Homeowner	Homeowner	Homeowner
[Hatched]	Town	Builder	District*

\*District maintenance to be limited to lawn mowing, edging, & fertilization

**Irrigation**

	Ownership	Installed By	Maintained By
[Hatched]	Homeowner	Builder	Homeowner
[Hatched]	Homeowner	Homeowner	Homeowner
[Hatched]	Homeowner	Builder	Homeowner

**Sidewalks, Patios, & Driveways**

	Ownership	Installed By	Maintained By	Snow Removal
11	Town	Developer	Homeowner	District
13	Homeowner	Builder	Homeowner	Homeowner
[Hatched]	Homeowner	Builder	Homeowner	District

**Fence**

	Ownership	Installed By	Maintained By
[Hatched]	Homeowner	Builder	Homeowner



**BAREFOOT LAKES - FILING 3  
TYPICAL LOT - DETACHED UNIT**

**OWNERSHIP & MAINTENANCE  
RESPONSIBILITY**

DENVER

COLORADO

DATE 08-27-2019

PROJ. NO. 08001.14

SHEET

**1 OF 1**