

WATER SUPPLY AGREEMENT

This Water Supply Agreement for Non-Potable Water ("Supply Agreement") is made and entered into to be effective as of August 15, 2018 by and among the **HUNTERS OVERLOOK METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the state of Colorado ("HOMD"), and **SEVERANCE SHORES METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the state of Colorado ("SSMD"). Collectively, HOMD and SSMD are referred to herein as the "Parties" or the "Districts".

RECITALS

WHEREAS, the Districts were organized to coordinate the financing, construction, installation, operations and maintenance, and provision of the capital facilities, public improvements, and services including, but not limited to addressing of current and future long-term non-potable water demands of the Districts its constituents, taxpayers and adjacent properties of the Hunters Crossing, Overlook and Severance Shores developments (as applicable and appropriate)(the "Development") located within the approved service area of each of the Districts (the "District's Service Area") within the Town of Severance, County of Weld, State of Colorado as contemplated in the applicable District's Service Plan and as permitted by law; and

WHEREAS, HOMD is the owner or holder of a lease purchase agreement for the necessary non-potable water and is in the process of constructing, financing and/or acquiring the irrigation water system to serve the Hunters Crossing and Overlook Subdivisions within the Hunters Overlook Metropolitan District Nos. 1-8 development within the Town of Severance, County of Weld Colorado. HOMD has entered contracts and agreements for the use of certain water rights, including but not limited to ditch water rights, a plan for augmentation and associated facilities and appurtenances (hereinafter the "Irrigation Water"), as well as the construction and acquisition of a reservoir, pumphouse, pressurization and distribution system which HOMD contemplates and has the right under its agreements to lease, acquire and manage sufficient non-potable water for the provision of irrigation water service to its constituents and end users which tap into and utilize the HOMD or its water enterprises water system including, but not limited to agreements to contract with third parties for their ability to use the Irrigation Water within the proposed reservoir, storage and irrigation water system; and

WHEREAS, HOMD is or will be the owner and/or operator of elements of a non-potable irrigation water system necessary to provide a system of distribution, service, water conveyance and storage systems, pump stations and related equipment and facilities and appurtenances to provide non-potable water to all or a portion of the HOMD Development within the District's Service Area for the use and benefit of its residents, property owners, constituents and the Districts (hereinafter the "District System"); and

WHEREAS, HOMD is or will be the owner and/or operator of certain facilities, equipment and appurtenances for the drilling, production, distribution, storage and delivery of non-potable water including a pumping system which is needed by the HOMD to deliver pressurized water for the use and benefit of property owners and users of Irrigation Water and for the Districts (hereinafter the "HOMD System") which system is owned, operated and maintained by HOMD No. 1, the HOMD Water Activity Enterprise, or its affiliates and assigns up to the

point of connection to the District System and/or meter; and

WHEREAS, SSMD needs to provide the same or similar services to its constituents and does not currently have the plans or ability to provide non-potable irrigation water or service to the SSMD constituents without connecting to another system or constructing its own. In order to provide the most cost effective and efficient use of resources, SSMD and HOMD Boards of Directors have negotiated the terms of this Water Supply Agreement so as to preserve the ability and the efficiency of providing a non-potable water system and irrigation water to its constituents and conserve water, resources and capital for its constituents; and

WHEREAS, without connection to the HOMD System, SSMD could not provide a commitment to serve the SSMD development and meet the non-potable water demands of the SSMD development and its constituents, taxpayers and adjacent properties of the Severance Shores Development without significant investment at this time; and

WHEREAS, without connection to the HOMD System and service by the HOMD of the Severance Shores Development, SSMD could not meet its development needs; and

WHEREAS, HOMD has sufficient water or can acquire sufficient water and will agree to allow SSMD to connect to the HOMD Non-Potable Irrigation Water System, and HOMD desires to supply Irrigation Water to SSMD and provide the SSMD the pumping and pressurization necessary to fulfill the projected capacity requirements of Severance Shores community in accordance with and provided that SSMD agrees to implement an Irrigation Water System Fee as discussed in the non-potable fee proposal between the Districts. Connection to the HOMD System and supply of Irrigation Water to SSMD by HOMD will allow the SSMD to provide water for outside irrigation, through a non-potable irrigation water system, to service the greenbelts, landscaped areas, parks and open space and other non-potable water uses and needs within and appurtenant to the SSMD District's service area (collectively the "Common Areas") located within or adjacent to the boundaries of the Severance Shores Metropolitan Districts Nos. 1-4 (collectively the "Districts"). The HOMD Districts also have the authority to extend the non-potable irrigation water system to serve the lots within the Districts and have or will obtain the authority, permits, license and/or procedural requirements of any applicable Town, County, District, Water Authority or state or local laws (as applicable) in order to provide an extension of service to SSMD; and

WHEREAS, pursuant to § 32-1-1001(d)(I) C.R.S., the Districts are empowered to enter into contracts and agreements affecting the affairs of the Districts; and

WHEREAS, until SSMD has sufficient funds available to purchase the water and improvements, SSMD and HOMD have a common interest and desire to enter into this Supply Agreement to provide a structure and procedure to address the current needs of each set of the District's Service Areas for Irrigation Water, to ensure the construction and operation of the Irrigation Water System which has the ability to serve the Districts' constituents and to provide access to a pumping system which will provide the pressurization necessary for the District Irrigation Water System to provide Irrigation Water to the SSMD and HOMD Service Area; and

WHEREAS, HOMD and SSMD wish to enter into this Supply Agreement to set out the terms and conditions under which HOMD will supply the Irrigation Water to the SSMD for

service of SSMD and its constituents; and

WHEREAS, in entering into and complying with this Supply Agreement, the SSMD is relying upon the HOMD to provide the quantity of water specified herein and pressure on a long term basis, and HOMD is relying upon the SSMD to impose, collect and pay all fees, charges and expenses as set forth herein, including all connection fees and user fees attributable to the water reserved for the SSMD and to be provided to the District's constituents in accordance with the current Rules and Regulations of the HOMD and/or SSMD as applicable; and

WHEREAS, the execution of this Supply Agreement will serve a public purpose and promote the health, safety, prosperity, and general welfare of the Districts and their present and future constituents by providing for the planned and orderly extension of public facilities and Irrigation Water in the interests of the taxpayers, residents and property owners; and

WHEREAS, in consideration of the HOMD lease/purchase of a large quantity of water, and extension of the infrastructure necessary to serve SSMD and its constituents, HOMD has agreed to provide Irrigation Water at a rate and for an annual District Irrigation Water Fee which will allow the HOMD to lease, purchase and provide the water needed to serve the SSMD Service Area over time, according to non-potable fee proposal and volume requirements of the SSMD development; and

WHEREAS, in order to allow HOMD to maintain its function of providing services with certainty to all the properties and constituents within HOMD and SSMD, the Parties desire to set forth their understanding with respect to the purchase of water, water infrastructure, and construct, acquire, install and finance the public improvements, acquire the easements and access to distribution and pump/pressurization systems improvements, and the provision of non-potable water service by HOMD as referenced in this Supply Agreement to help to ensure the HOMD and SSMD ongoing financial viability and provision of Irrigation Water within SSMD.

NOW THEREFORE, in consideration of the mutual covenants and stipulations contained herein, the Parties hereto hereby agree as follows:

AGREEMENT

1. Supply of Non-Potable Water. In accordance with all of the terms of this Supply Agreement, HOMD hereby agrees to provide to SSMD, and SSMD hereby agrees to pay for the provision from HOMD, Irrigation Water for the purpose of watering for outside irrigation through the District Irrigation Water System for the Common Areas within SSMD and for supply of Irrigation Water to the SSMD non-potable water users within SSMD or its service area, in the amounts described in Exhibit A. The non-potable water to be provided to the District under this Supply Agreement shall include the water which comprises the physical supply for such non-potable uses, as augmented in accordance with Colorado law and the requirements of the any applicable water rights, water decrees or augmentation plans (as applicable).

2. Term of Supply Agreement. The initial term of the Supply Agreement shall begin on the date referenced above, and shall terminate at the end of the District's then-current fiscal year ("Original Term"). This Supply Agreement shall automatically renew for consecutive one-year terms coinciding with the fiscal year of the District ("Renewal Term") at the end of the

Original Term and each Renewal Term unless terminated as provided herein.

This Supply Agreement will terminate in whole or in part upon the earliest of any of the following events:

- a. The expiration of the Original Term or any Renewal Term and the failure of District to appropriate funds needed to continue supplying the Irrigation Water for the ensuing Renewal Term;
- b. Default by District, and (i) failure to cure any such default within thirty (30) days of written notice of such default, or (ii) failure to commence within thirty (30) days of written notice of default a cure that requires more than 30 days to effect and a failure thereafter to effect the cure within a reasonable time, and HOMD's election to terminate this Supply Agreement as provided herein; or
- c. Mutual agreement of the Parties.

During the Original Term and each Renewal Term, the President of each of the Districts shall request the required appropriation from District's governing body for the ensuing Renewal Term and exhaust all available administrative reviews and appeals in the event such portion of the budget is not approved. This budget review and approval shall also set, on an annual basis the District Irrigation Water System Fee for the property based upon consultation with HOMD regarding the rates and revenue required to extend or continue to extend non-potable irrigation water service to SSMD

HOMD and SSMD acknowledge and agree that the obligation of SSMD and its constituents to pay water supply payments and District Irrigation Water Fee revenue hereunder constitutes a current obligation of the SSMD payable exclusively from current and legally available funds and shall not in any way be construed to be an indebtedness or multiple fiscal-year obligation of SSMD within the meaning of the provision of any constitutional or statutory limitation or requirement applicable to the SSMD. SSMD has not hereby pledged the credit of the District to the payment of the water supply payments. Provided, however, SSMD shall be required to assess and collect, on an annual basis the SSMD District Irrigation Water Fee established by Resolution of the Boards of Directors of the Districts and agreed upon as a material term to this Supply Agreement. The term of the water supply hereunder shall be perpetual, subject to annual appropriations and/or termination pursuant to the terms and conditions of this Supply Agreement.

3. Nonappropriation of Funds. If the President of the District periodically requests from its governing body funds to be appropriated for payment to HOMD under to this Supply Agreement and, notwithstanding the making in good faith of such request in accordance with appropriate procedures and with the exercise of reasonable care and diligence, such governing body does not approve funds to be paid to HOMD for the Irrigation Water, then the Supply Agreement shall not be renewed for the period for which funds have not been appropriated and/or for the period for which SSMD fails or refuses to impose the requisite District Irrigation Water Fee.

4. Right of SSMD Regarding Requested Water Capacity. SSMD shall allow HOMD

the right to provide the Irrigation Water requested and required by District. To the extent HOMD either cannot or will not provide the Irrigation Water requested, SSMD shall be permitted to seek additional water supplies for the SSMD as permitted by this Agreement.

5. Fee for Water. SSMD shall pay HOMD a fee for use of the Irrigation Water based on the amount of water used by District, for Irrigation Water used. In the event that HOMD changes its rate structure for the sale of Irrigation Water so that the fee formula is no longer equitable or the HOMD ceases to sell non-potable water, the parties shall in good faith negotiate a revised fee. SSMD and HOMD agree to provide for, adopt and approve and implement and collect a District Irrigation Water Fee for the provision of water service to its respective constituents. Such District Irrigation Water Fee shall be collected and remitted to HOMD as a precondition to continued provision of Irrigation Water and Service to SSMD.

The Parties acknowledge and agree that the Irrigation Water Fee is reasonably calculated to reimburse HOMD for the impact of the costs of the extension of services outlined herein to SSMD, recognizing that the extension of services by the HOMD may require that HOMD allocate portions of or expand the capacity of its service systems, presently or in the future, as a result of HOMD's extension of services to the SSMD service area and provide for the Irrigation Water and pressurization outlined herein to SSMD.

6. Water Quality. The parties expressly recognize and agree that water received from HOMD is non-potable (irrigation water) and is not intended for human or animal consumption. HOMD makes no warranty or representation to SSMD regarding the quality of the water provided. SSMD expressly accepts any and all risk regarding the use of the irrigation water for any purpose.

7. Warranty of Title and Right to Water Supply. HOMD covenants and warrants that it is the owner, licensee, lessee or other qualified owner or user of the water rights and the augmentation plan required to fulfill HOMD's commitments herein. HOMD is the owner of the Districts' non-potable irrigation water system, and owner, lessee or other qualified user all of appropriate and required Non-Potable Water System components that will provide non-potable water service to some or all of the areas within SSMD as described herein and in the Service Plan of the Districts.

8. Representations and Warranties. In addition to the other representations, warranties and covenants made by the Parties herein, each Party represents and warrants to the other Party that:

8.1. it has the full right, power and authority to enter into, execute, deliver, perform and observe this Supply Agreement;

8.2. it has taken all requisite action to approve the execution, delivery and performance of this Supply Agreement, including its obligations hereunder;

8.3. this Supply Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms, subject to bankruptcy, insolvency, creditor's rights and general equitable principles; and

8.4. its execution of and performance under this Supply Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court or body, and shall not conflict with or result in a breach of any terms, conditions, or provisions of, or constitute a default under, or result in the imposition of any prohibited lien, charge, or encumbrance of any nature under any agreement, instrument, indenture, or any judgment, order, or decree to which it is a party or by which it is bound; and

8.5. The Parties shall keep and perform all of the covenants and agreements contained herein and shall take no action which could have the effect of rendering this Supply Agreement unenforceable in any manner; and

8.6 The non-potable fee proposal specifically indicates that HOMD has at its disposal the amount of acre feet of water rights, which are either perfected for such use or are in the process of the same, in order to fulfill such projected Irrigation Water needs of SSMD. Upon execution of this Supply Agreement, HOMD shall provide Irrigation Water for which appropriate District Irrigation Water Fees and any capital payments agreed upon which have or will be paid by SSMD in accordance with this Supply Agreement.

9. Default. Each and every term and condition hereof shall be deemed to be a material element of this agreement. In the event either party should fail or refuse to perform according to the material terms of this agreement, the other party may declare such party in default thereof by a written notice.

10. Remedies. In the event a party has been declared in default hereof, such defaulting party shall be allowed a period of thirty (30) days within which to correct, or commence correcting, said default. In the event that the default has not been corrected or begun to be corrected, or the defaulting party has ceased to pursue the correction with due diligence, the party declaring default may elect to (a) terminate the agreement and seek damages; (b) treat the agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity. In the event of default hereunder by either party, which shall result in litigation, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

11. Independent Contractor. Nothing herein shall be construed to make either party an agent or employee of the other party. District shall in all respects be an independent contractor of the HOMD in its performance of its obligations under this Supply Agreement. Neither party shall represent itself to third parties as an agent or employee of the other party.

12. Laws, Regulations and Permits. HOMD shall comply with all applicable federal, state and local codes, statutes, rules, regulations, ordinances, permits and orders in its operation, maintenance, repair and replacement of the Irrigation Water and District System under this Supply Agreement.

13. Assignment. Each Party hereto shall not assign any of its rights or obligations under this Supply Agreement to any other person or firm without the prior written approval of the other Party. This Supply Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. This Supply Agreement is intended to benefit only the parties hereto and no other person or entity is intended by the parties hereto to be a third party beneficiary of this Supply Agreement.

14. Notice. All notices required to be given under this Supply Agreement shall be in writing, and shall be deemed to have been duly given (a) when delivered personally to the other party to whom addressed or (b) upon receipt when sent by United States mail, postage prepaid, as certified or registered mail, properly addressed as follows or (c) upon confirmation when sent by facsimile transmission and receipt is confirmed by return facsimile transmission:

Notices to SSMD: Severance Shores Metropolitan District No. 1
c/o Fromm & Company LLC
9227 E. Lincoln Ave #200
Lone Tree, CO 80124

With a copy to: Spencer Fane LLP
c/o David S. O'Leary, Esq.
1700 Lincoln Street, Suite 2000
Denver, Colorado 80203
(303) 839-3838 (fax)

To the Developer: Severance Shores Investments, LLC
c/o Larry Buckendorf, Manager
7251 W. 20th Street, L-200
Greeley, CO 80634

Notices to HOMD: Hunters Overlook Metropolitan District No. 1
c/o Fromm & Company LLC
9227 E. Lincoln Ave #200
Lone Tree, CO 80124

With a copy to: Spencer Fane LLP
c/o David S. O'Leary, Esq.
1700 Lincoln Street, Suite 2000
Denver, Colorado 80203
(303) 839-3838 (fax)

or to such other persons or addresses as the foregoing addressees may have designated by written notice.

15. Entire Agreement. This Supply Agreement constitutes the entire agreement between SSMD and HOMD regarding the subject matter hereof and replaces all prior written or oral agreements and understandings. It may be altered, amended, or repealed only by a duly executed written instrument.

16. Governing Law. The terms, conditions, and provisions of this Agreement shall be interpreted in accordance with, and be governed by, the laws of the State of Colorado.

17. Severability. If any provision of this Supply Agreement shall be held invalid or unenforceable, the remainder of this Supply Agreement shall not be affected thereby, and there shall be deemed substituted for the affected provision, a valid and enforceable provision as

similar as possible to the affected provision.

18. Headings for Convenience. The headings and captions in this Supply Agreement are for convenience only and shall not be considered in interpreting the provisions hereof.

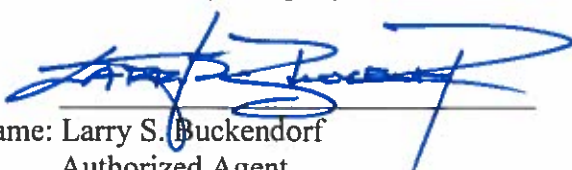
19. Successors and Assigns. The terms, conditions, and provision of this Supply Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Supply Agreement to be effective as of the day and year first above written.

**SEVERANCE SHORES
METROPOLITAN DISTRICT NO. 1**

By: 
Robert L. Eck, II, President

**SEVERANCE SHORES INVESTMENTS, LLC
A Colorado limited liability company**

By: 
Printed Name: Larry S. Buckendorf
Its: Authorized Agent

**HUNTERS OVERLOOK
METROPOLITAN DISTRICT NO. 1**

By: 
Larry S. Buckendorf, President

EXHIBIT A

Non-Potable Fee Proposal