

FIRST AMENDMENT TO THE DECLARATION OF FLORIDA RIVER ESTATES HOMEOWNERS' ASSOCIATION, INC. REGARDING WATER REGULATIONS

THIS FIRST AMENDMENT TO THE DECLARATION OF FLORIDA RIVER ESTATES HOMEOWNERS' ASSOCIATION, INC. REGARDING WATER REGULATIONS (the "First Amendment") is made and entered into this ___ day of _____, 2019, by the undersigned, who is duly authorized to execute this document on behalf of the Florida River Estates Homeowners' Association, Inc. ("FREHOA"); Robert W. Coons and Jill Coons (collectively, "Coons"); and Benjamin A. Breed and Minda L. Breed (collectively, "Breed").

RECITALS

A. The Declaration of Florida River Estates Homeowners' Association, Inc. Regarding Water Regulations (the "Declaration") was recorded May 25, 1993 as Reception No. 646875 in the La Plata County Clerk and Recorder's Office.

B. FREHOA, in accordance with the Declaration, Articles of Incorporation and Bylaws (collectively, the "Governing Documents") and Colorado law, submitted a written ballot to its members, which asked the question of whether the members approved the contents of this First Amendment. The vote resulted in greater than 50% of the Allocated Interests in FREHOA voting to approve this Second Amendment. The Secretary of FREHOA certified the vote as set forth in Exhibit A, attached hereto and incorporated herein.

C. Coons and Breed own property that was not described in the Declaration, but have been receiving water services from FREHOA.

D. To the extent not inconsistent with the First Amendment, all other terms and conditions of the Governing Documents shall remain the same and shall be incorporated herein by reference.

NOW THEREFORE, FREHOA, Coons, and Breed hereby agree as follows:

AGREEMENT

1. Section 1.3. The following shall hereby amend and replace Section 1.3 of the Declaration:

The Declaration may be amended at any time by approval of Owners holding greater than 50% of the votes allocated in FREHOA. All amendments shall be consistent with the provisions of Section 217 of CCIOA, as amended.

2. Sections 2.3, 2.9, and 2.10. The following shall hereby amend and replace the

specified subsections of Section II in the Declaration:

2.3 “**Customer**” or “**Owner**” shall mean the Person or Persons holding record fee simple title to a Lot.

2.9 “**Capital Account Fee**” shall mean the fee charged to an Owner for the purpose of expending on a capital project, saving for a future capital project, retiring debt associated with a capital project, or any other extraordinary expense.

2.10 “**Service Fee**” shall mean the regular monthly water fee charged to a Customer based on their Allocated Interest. Service Fee shall include all expenses of the Association that are not Capital Account Fees, including but not limited to the costs of administering, servicing, conserving, managing, maintaining, repairing, or replacing the water system.

3. Sections 2.18, 2.19, and 2.20. The following shall hereby be added to Section II of the Declaration:

2.18 “**Allocated Interest**” means the Service Fee and the Capital Account Fee liability and the votes in FREHOA allocated to each Lot as follows:

(a) Service Fee liability shall be split equally between each Lot that has a Tap. A Lot without a Tap or that is vacant shall not be liable for the Service Fee.

(b) Capital Account Fee liability shall be split as follows:

(i) Each Lot with a Tap and each Lot that is vacant shall pay an equal amount; and

(ii) Each Lot that is without a Tap or vacant, and the Owner has withdrawn their interest in a Tap and water service pursuant to Section 6.2.6 herein for said Lot shall not be liable for the Capital Account Fee.

(b) One (1) vote in FREHOA is allocated to each Lot in FRE that has a Tap or is vacant, whose Owner has not withdrawn their interest in a Tap and water service pursuant to Section 6.2.6 herein as of the date of the calculation.

2.19 “**Board**” or “**Board of Directors**” means the governing body of FREHOA.

2.20 “**CCIOA**” shall mean the Colorado Common Interest Ownership Act, §§ 38-33.3-101, *et seq.*

2.21 “**Lot**” means the subdivided parcels of land designated by number within

Florida River Estates and designated for separate ownership or occupancy. In addition, Lot shall include the property that is more particularly described in Exhibit B attached hereto and incorporated herein. "Lot" shall further have the same meaning as "Unit" under CCIOA.

4. Section 6.2.6. The following shall hereby amend and replace Section 6.2.6. in its entirety:

If an Owner who owns a Tap no longer desires to have water service provided by the Association or does not intend to have future water service provided by the Association, the Owner may agree in writing approved by the Board and recorded with the La Plata County Clerk and Recorder's Office, to waive, disclaim, and quitclaim his right, if any, to water service for a Lot. Any such Lot may later seek water service from the Association, but the Association shall include past unpaid Capital Account Fees, along with any other consideration, when determining the Tap Fee. Nothing herein shall be construed to obligate the Association to make available a tap to such Owner in the future.

5. Section 10.2. The following shall hereby amend and replace Section 10.2. of the Declaration in its entirety:

Any Owner desiring water service may apply for water service from the Association by submitting an application to the Association. The Association shall provide water service to an Owner who has not withdrawn their interest in a Tap and water service pursuant to Section 6.2.6 herein, and who is not in default on their Capital Account Fee; unless, there is not adequate water availability or if providing water service would be contrary to local, state, or federal law, or the Declaration and this Amendment. At the time of application, the Owner shall pay a Tap Fee and Meter Appliance Fee. As a condition of water service, an Owner hereby grants to the Association an easement, as reasonably necessary for the construction or repair of any water line, water meter, and other equipment.

6. Section 11.1. The following shall hereby amend and replace the last sentence of Section 11.1 of the Declaration:

Temporary discontinuance of water service does not relieve a Customer from Capital Account Fees and Service Fees.

7. Section 12.2. The following shall hereby amend and replace the last sentence of Section 12.2 of the Declaration:

The Water Consumption Rate shall be determined by the Board.

8. Section 12.2.1. The following shall hereby amend and replace Section 12.2.1 of the Declaration:

All active Owners are responsible for paying the cost of the metered water

amount via the Water Consumption Charge.

9. Section 12.2.4. The following shall hereby be added as new sentences of Section 12.2.4 of the Declaration:

The notice required by this subsection shall be provided within fourteen (14) days of the receipt of the disputed bill or the Customer shall be deemed to have accepted the bill as valid. Compliance with this subsection is a required precondition to protesting accordance to Section XIV.

10. Sections 12.5, 12.6, and 12.7. Sections 12.5, 12.6, and 12.7 of the Declaration shall hereby be deleted in their entirety and replaced with the following new Section 12.5, Fees and Charges:

All Owners covenant and agree, and each Owner by acceptance of a deed to a Lot, including public trustee or sheriff's deed, is deemed to covenant and agree, to pay FREHOA the Service Fee, Capital Account Fee, Meter Appliance Fee, Water Consumption Charge and Default Charge, all such fees and charges to be established and collected as hereinafter provided. The Service Fee, Capital Account Fee, Meter Appliance Fee, Water Consumption Charge and Default Charge, together with interest, costs and reasonable attorney's fees, shall be secured by a lien (the "Assessment Lien") on the Lot to which they relate in favor of FREHOA, which shall be a continuing servitude and lien upon the Lot against which each such fee or charge is made. The Assessment Lien, including, but not limited to, its enforcement and priorities, shall be consistent with, and shall contain, all of the provisions set forth in Section 316 of CCIOA. The Assessment Lien shall be the personal obligation of the Owner of a Lot. Where there is more than one (1) Owner, each shall be jointly and severally liable for all fees and charges. FREHOA shall be entitled to purchase a Lot at any Assessment Lien foreclosure sale.

12.5.1.

(a) On an annual basis, the Board shall adopt a proposed annual budget for FREHOA for the following year that sets forth:

(i) the Board's estimates of operating costs for the next fiscal year;

(ii) the amount of funds for such operating costs that the Board proposes to raise through the Service Fee;

(iii) the amount that the Board proposes to raise through the Capital Account Fee; and

(iv) the amount of reserves necessary, as determined by a reserve study commissioned not more than once every five (5) years by the Board, to reasonably

pay for future maintenance and capital expenditures.

(b) Within thirty (30) days after adopting a proposed budget, the Board shall deliver a summary of the proposed budget to the Owners and set a date for a meeting of the Owners to consider ratification of the proposed budget. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed budget to the Owners. Unless at that meeting a majority of the votes allocated to all Lots, whether or not a quorum is present, rejects the proposed budget, the proposed budget shall be deemed ratified. If the proposed budget is rejected, the annual budget last ratified by the Owners shall be deemed renewed for the next calendar year and shall remain in full force and effect until such time as the Owners ratify a subsequent budget proposed by the Board.

(c) If the Board deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under this Section the Board may adopt a proposed amendment to the annual budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed amendment. Unless at that meeting a majority of the votes allocated to all Lots, whether or not a quorum is present, rejects the proposed amendment, the proposed amendment shall be deemed ratified.

12.5.2. In addition to the Service Fee authorized above, FREHOA may levy, a Capital Account Fee. The Capital Account Fee shall not be increased by more than 20% over the previous year's Capital Account Fee without approval of 50% of all votes allocated to the Owners. Such vote may occur by mailed ballot without a meeting pursuant to the Colorado Nonprofit Corporation Act, CCIOA, and the Governing Documents. In the event of an emergency, FREHOA may increase the Capital Account Fee by more than 20% over the previous year's Capital Account Fee without a vote of the Owners.

12.5.3. All monetary fines assessed against an Owner pursuant to the Declaration and this First Amendment, or any expense of FREHOA, which is the obligation of an Owner or which is incurred by FREHOA on behalf of the Owner pursuant to the Declaration and this First Amendment, shall be a Default Fee and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in the Declaration and this First Amendment. Notice of the amount and due date of such Default Fee shall be sent to the Owner subject to such assessment at least ten (10) days prior to the due date.

12.5.4. The Service Fee and Capital Account Fee shall be fixed in accordance with the Allocated Interests. All fees and charges shall be collected by FREHOA on a monthly, quarterly, or annual basis, as determined by the Board.

12.5.5. The period for which the Service Fee and the Water Rate is to be levied (the "Assessment Period") shall be annual, with the starting period determined by the Board in its sole discretion. The Board shall fix the Service Fee and Water Rate against each Lot

at least thirty (30) days in advance of the end of each Assessment Period. Written notice of the Service Fee and Water Rate shall be sent to each Owner. Failure of FREHOA timely to fix the Service Fee and Water Rate or to send a bill to any Owner shall not relieve the Owner of liability for payment of any fee or charge. The due dates for payment of any fee or charge shall be established by the Board.

12.5.6. Any fee, charge or installment thereof, not paid when due, shall be deemed delinquent. Fees, charges, late charges, attorney's fees, fines and interest shall be applicable to such delinquent fee or charge pursuant to the provisions of Section 316 of CCIOA. The Board may, but shall not be required to, record a Notice against any Lot as to which a fee or charge is delinquent. Such notice shall be executed by an officer of the Board, shall set forth the amount of the unpaid fee or charge, the name of the delinquent Owner(s), and a description of the Lot. FREHOA may bring an action at law against the Owner(s) obligated to pay the delinquent fee or charge and/or may foreclose the Assessment Lien in conformance with the provisions of Section 316 of CCIOA.

12.5.7. The priority of an Assessment Lien shall be consistent with the provisions of Section 316 of CCIOA.

12.5.8. Upon written request and payment of such reasonable fee as may be set by the FREHOA, FREHOA shall issue a written statement to any grantee or First Lienor verifying the status of all fees or charges affecting the Lot. Any statement as to the existence or amount of any delinquencies shall, absent manifest error, conclusively bind FREHOA.

12.5.9. In the event of any tort liability against FREHOA which is not covered completely by insurance, each Owner shall contribute for the payment of such liability as a Capital Account Fee. FREHOA may, however, require a larger contribution from fewer than all Owners under any legal or equitable principles regarding liability for negligent or willful acts or omissions.

11. Section XIII. Section XIII of the Declaration is hereby deleted in its entirety and replaced with the following new section titled ASSOCIATION MATTERS:

13.1 Neither the Articles nor Bylaws of FREHOA shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

13.2 The affairs of FREHOA shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with its Articles and Bylaws as the same may be amended from time to time. FREHOA, by and through the Board: (i) shall govern and manage the Water System; (ii) shall enforce the provisions of the Declaration and this First Amendment; and (iii) shall comply with the requirements for management of a common interest community set forth in CCIOA. The Board shall be composed of five (5) Members. The Board may also appoint various committees.

13.3 FREHOA may, by a majority vote of the Board, adopt, amend and repeal rules and regulations to be known as the FREHOA “Rules and Regulations”. The purpose of the Rules and Regulations shall be to implement, supplement or otherwise carry out the purposes and intentions of the Declaration and this First Amendment; provided such Rules and Regulations must be consistent with the Declaration and this First amendment, as amended from time to time.

13.4 Consistent with the provisions of Section 303 of CCIOA, in the performance of their duties, the officers and members of the Board are required to exercise the care required of a fiduciary of the Owners and no member shall be liable for actions taken or omissions made in performance of such member’s duties, except for wanton and willful acts or omissions. Actions taken by officers or members of the Board upon the advice of legal counsel, certified public accountants, registered or licensed engineers, architects or surveyors shall conclusively be deemed to be in good faith and to have met the care required under CCIOA.

13.5 FREHOA shall be a membership association without certificates or shares of stock. The members of FREHOA shall be those persons or entities, who are the Owners, from time to time, of Lots. Membership in FREHOA shall automatically terminate when a member ceases to be an Owner of a Lot. There shall be one class of membership that is a voting membership by Owners of Lots.

13.6 A member shall have one (1) vote for each Lot owned. Except as otherwise provided herein, the affirmative vote of a majority of the Owners of Lots entitled to vote on any matter shall constitute approval of such matter. Where there are multiple Owners of a Lot, there shall remain only one (1) vote for each Lot. If only one (1) of the multiple Owners of a Lot are present at a meeting of FREHOA, such Owner shall be entitled to cast the vote allocated to such Lot. If more than one (1) of the multiple Owners are present, the vote allocated to the Lot may be cast only in accordance with the agreement of a majority in interest of the Owners of such Lot. The provisions of Section 310 of CCIOA regarding voting shall apply to Lots with multiple Owners. For the election of Board Members, those candidates receiving the highest number of votes shall be deemed elected. Lessees of Lots shall have no voting rights.

13.7 FREHOA shall have the right and power to bring suit in its name for legal or equitable relief for the failure to comply with any provision of the Declaration, this First Amendment, or rules promulgated by the Board. In addition, FREHOA shall have the right to impose on any Owner monetary fines for any lack of compliance with provisions of the Declaration, this First Amendment, or rules promulgated by the Board and where such fines are not paid within the time provided, such fines may be collected as an Assessment Lien. The failure of FREHOA to insist upon the strict performance of any such provisions or to exercise any right or option available to it, or to serve any notice or to institute any action, shall not be a waiver or relinquishment for the future of any such provision or the enforcement thereof. Any Owner aggrieved by a lack of compliance by another Owner may also bring suit for legal and equitable remedies. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in the Declaration and this First Amendment, the prevailing

party shall be entitled to reimbursement of its costs and expenses, including reasonable attorney's fees, in connection therewith.

13.8 Each Owner agrees that FREHOA has all the powers granted to it by the Colorado Revised Nonprofit Corporation Act and CCIOA, and any amendments thereto or replacements thereof. Such powers shall include, without limitation, levying fees and charges against Owners, imposing a lien on Lots for any unpaid or uncollected fees, charges, or penalties, and foreclosing any such liens, enforcing any deed restrictions, the Declaration and this First Amendment, acquiring, holding, owning, leasing, mortgaging and disposing of property (except as such disposition of property may be limited in accordance with provisions herein), the adoption of Rules and Regulations, the defending, prosecuting or intervention in litigation on behalf of all members, the borrowing of monies for FREHOA purposes, the right to pledge future income in order to secure such borrowings and the establishment of a reasonable transfer fee to be assessed upon the transfer of a Lot. The term "pledge of future income" shall include the right to impose a Capital Account Fee for repayment of such borrowings and to assign such Capital Account Fee, or portion thereof, (and all lien and collection rights appurtenant thereto) to any lender as security for repayment thereof. FREHOA may exercise any other right, power or privilege, given to it by the Declaration, this First Amendment, the Articles and Bylaws of the Association, or by law.

13.9 An Owner shall immediately report to FREHOA, in writing, the need for any maintenance, repair or replacement that is FREHOA's responsibility to provide. In the event of any disagreement as to the need for or the responsibility of the FREHOA to provide the said maintenance, repair or replacement, the good faith decision of the Board shall be final.

13.10 FREHOA may employ or contract for the services of a manager to whom the Board may delegate certain powers, functions or duties of FREHOA, as provided in the Bylaws. The manager shall not have the authority to make expenditures except upon prior approval and discretion by the Board.

13.11 The Water System shall be owned by FREHOA and shall, at all times, be owned, managed, operated and maintained by FREHOA consistent with the provisions of the Declaration, this First Amendment, and in trust for the use, benefit, and enjoyment of all or some of the Owners of Lots, together with their family members, permitted guests and permitted invitees. Conveyancing or encumbrance of Water System can only occur consistent with the provisions of Section 312 of CCIOA.

12. Additional Provisions.

A. Definitions. All definitions contained herein that are not defined shall have the same definition as specified in the Declaration.

B. Governing Documents. To the extent not inconsistent with this First Amendment, all other terms and conditions of the Declaration shall remain the same and shall be

STATE OF)
) ss.
COUNTY OF)

The forgoing instrument acknowledged before me this ____ day of _____
_____, 2019, by Benjamin A. Breed and Minda L. Breed.

My commission expires: _____

Exhibit B
LEGAL DESCRIPTION OF ADDITIONAL LOTS

All that part of the following described tract of land lying and being within the SE1/4NW1/4 of Section 8, Township 35 North, Range 8 West, N.M.P.M., and being more particularly described as follows, to wit:

BEGINNING at the Northeast corner of Lot 2, Block 5, Florida River Estates Resubdivision; Thence running from said point of beginning; along the arc of an 18° 12' curve to the left a distance of 102.1 feet;

- “ “ North 1° 17' East a distance of 241.8 feet;
- “ “ along the arc of a 67° 44' curve to the left a distance of 81.4 feet to a point lying 10 feet Easterly of the centerline of the Abling-Cash Ditch;
- “ “ parallel to and 10 feet Easterly from the centerline of the said Abling-Cash Ditch along the following courses and distances:
 - South 50° 09' West, 135.8 feet;
 - South 41° 14' West, 74.0 feet;
 - South 21° 07' West, 80.1 feet;
 - South 1° 18' East, a distance of 93.0 feet, more or less, to a point on the North boundary line of Lot 2, Block 5, Florida River Estates Resubdivision;
- “ “ South 61° 57' East, along the said North boundary line of Lot 2, a distance of 215.9 feet, more or less, to the point of beginning.

Less and Except that portion of the above mentioned tract which lies within the NE1.4NW1/4 of said Section 8, Township 35 North, Range 8 West, N.M.P.M.

AND

A tract of land lying and being in the SE1/4SE1/4 of Section 7, Township 35 North, Range 8 West, N.M.P.M., and being more particularly described as follows, to wit:

BEGINNING at the Northeast corner of said tract, said NE corner being a point on the South right of way line of the County Road as now constructed, whence the accepted NE corner of said SE1/4SE1/4 of Section 7 bears North 62°01' East, 993.57 feet;

Thence running from said point of beginning along the centerline of the old abandoned County Road, the following courses and distances:

- “ “ South 24° 34' East, 181.9 feet;
- “ “ South 18° 37' West, 57.6 feet;
- “ “ South 37° 57' West, 46.67 feet;
- “ “ South 74° 20' West, 47.77 feet;
- “ “ North 68° 20' West, 54.0 feet;
- “ “ North 45° 46' West, 220.24 feet;
- “ “ North 49° 27' West, 138.0 feet;
- “ “ North 62° 17' West, 113.3 feet to the South right of way line of the present County Road;
- “ “ along said South right of way line of the County Road, South 83°53' East, 433.16 feet to the NE corner, the point of beginning.