

AGREEMENT FOR WATER ACQUISITION FEES

THIS AGREEMENT is made and entered into this ____ day of _____, 2015 by and between the City of Commerce City, a Colorado municipal corporation (the City is referred to herein as "Commerce City") and Shea Homes Limited Partnership, a California limited partnership (Shea Homes Limited Partnership is referred to herein as "Shea"). Commerce City and Shea may also be referred to herein as a "Party" and collectively as "Parties".

RECITALS

WHEREAS, Shea is building homes in Commerce City which will require the payment of Commerce City's water acquisition fee, which is currently set at \$1,298.19 per home for 2015; and

WHEREAS, Commerce City and Shea desire to exchange certain ERU water credits and option fee credits (collectively FRICO ERU credits) which it owns for credits towards water acquisition fees which will be due to Commerce City upon development of said homes; and

WHEREAS, said lots to be developed are set forth in Exhibit A attached hereto and incorporated by reference herein; and

WHEREAS, there are a total of 225 lots set forth in Exhibit A which would have water acquisition fees of a total of \$292,092.75 based upon the 2015 water acquisition fee; and

WHEREAS, Shea desires to convey to Commerce City 58.42 FRICO ERU's valued at \$5,000 per ERU in exchange for the water acquisition fees that would be due and owing on said 225 lots.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants and stipulations expressed herein, the sufficiency of which is hereby acknowledged, Commerce City and Shea hereby agree as follows:

1. WATER ACQUISITION FEES. Water acquisition fees in the amount of \$292,092.75 would be payable for the development of the 225 lots listed in Exhibit A ("Property") based upon Commerce City's water acquisition fee for 2015 of \$1,298.19 per home. Commerce City shall provide credits for said water acquisition fees pursuant to the terms hereof upon closing hereunder.

2. FRICO ERU's. Shea owns numerous FRICO ERU's and hereby agrees to convey 58.42 ERU's to Commerce City in exchange for the City providing credits for the water acquisition fees for the 225 lots listed in Exhibit A.

3. DOCUMENTATION FOR CONVEYANCE OF WATER ACQUISITION FEE CREDITS. The Parties agree that the water acquisition fee credits shall be conveyed to Shea pursuant to a Water Acquisition Fee Certificate ("Certificate") substantially in the form of Exhibit B, attached hereto and incorporated by reference herein. As set forth in said Certificate, the water acquisition fees shall remain at the 2015 price for purposes of said credits until July 1, 2020. After July 1, 2020, the credits shall continue to apply, but Shea shall pay the difference between the 2015 water acquisition fee and the water acquisition fee in effect at the time that said fees would be due for any remaining lots set forth in Exhibit A.

4. DOCUMENTATION FOR CONVEYANCE OF FRICO ERU's. The FRICO ERU's shall be conveyed from Shea to Commerce City at closing pursuant to an Assignment and Bill of Sale substantially in the form of Exhibit C attached hereto and incorporated by reference herein.

5. EVIDENCE OF TITLE. On or before closing (Title Deadline), Shea shall cause to be furnished to Commerce City, at Shea's expense, an updated Ownership and Encumbrance Report or Title Commitment to the 225 lots set forth in Exhibit A and a Uniform Commercial Code Report (UCC Report) for Shea, which documentation shall be updated prior to closing. Commerce City may require of Shea that copies of instruments listed in the Ownership and Encumbrance Report also be furnished to Commerce City at Shea's expense. This requirement shall pertain only to instruments shown of record in the Office of the Clerk and Recorder of the designated county or counties and the Colorado Secretary of State. The Ownership and Encumbrance Report and UCC Report, together with any copies of instruments furnished pursuant to this Section 5 constitute the title documents (Title Documents). Commerce City, or Commerce City's designee, must request Shea, in writing, to furnish copies of instruments listed in the Ownership and Encumbrance Report no later than closing, after the Ownership and Encumbrance Report or Title Commitment is delivered.

6. TITLE.

(a) Title Review. Commerce City shall have the right to inspect the Title Documents. Written notice by Commerce City of unmerchantability of title or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of Commerce City and given to Shea on or before closing. If Shea does not receive Commerce City's said notice, Commerce City accepts the condition of title as disclosed by the Title Documents as satisfactory.

(b) Matters Not Shown by the Public Records. Shea shall deliver to Commerce City, on or before the Title Deadline set forth in Section 5, true copies of all records in Shea's possession pertaining to ERUs and shall disclose to Commerce City all liens or other title matters not shown by the public records of which Shea has actual knowledge. Written notice of any unsatisfactory condition(s) disclosed by Shea or revealed by such inspection shall be signed by or on behalf of Commerce City and given to Shea on or before closing. If Shea does not receive Commerce City's notice by said date, Commerce City accepts title to such rights, if any, of third parties of which Commerce City has actual knowledge.

(c) Right to Cure. If Shea receives notice of unmerchantability of title or any other unsatisfactory title condition(s) as provided in subsection (a) or (b) above, Shea shall use reasonable effort to correct said unsatisfactory title condition(s) prior to the date of closing. If Shea fails to correct said unsatisfactory title condition(s) on or before the date of closing, this Agreement shall then terminate; provided, however, Commerce City may, by written notice received by Shea, on or before closing, waive objection to said unsatisfactory title condition(s).

7. INVESTIGATIONS OF ERU WATER AND OPTION CREDITS. Commerce City will utilize the ERUs for use within its municipal boundaries through the South Adams County Water & Sanitation District's facilities ("SACWSD"). Commerce City and SACWSD shall have the right to investigate the status of said ERUs and Shea shall cooperate, at no expense to Shea, in said investigations. Said cooperation shall include the delivery to Commerce City of all documentation held by Shea regarding said ERUs. Written notice by Commerce City of unsuitability of said ERUs, at Commerce City's sole discretion, shall be signed by or on behalf of Commerce City and given to Shea on or before closing. Upon receipt of said notice on or before closing, this Agreement shall then terminate all obligations and rights hereunder shall be null and void.

8. APPROVALS. This Agreement is expressly contingent upon acknowledgement of the FRICO ERU credits and written consent by SACWSD of the Assignment from Shea to Commerce City which are satisfactory to Commerce City, at Commerce City's sole discretion. If said acknowledgement and approval are not received by Commerce City prior to closing, Commerce City shall notify Shea and this Agreement shall terminate unless a written extension is executed by Commerce City and Shea.

If this Agreement is terminated pursuant to this Section 8, all further rights and obligations under this Agreement shall terminate.

9. DATE OF CLOSING. The date of closing shall be _____. 2015, unless changed or extended in writing by Shea and Commerce City. The hour and place of closing shall be as designated by Shea and Commerce City.

10. TRANSFER OF TITLE. Subject to compliance by Commerce City and Shea with the other terms and provisions hereof, Shea shall execute and deliver a fully executed Assignment and Bill of Sale for the FRICO ERUs substantially in the form of the Assignment and Bill of Sale attached hereto as Exhibit C, at closing, conveying said FRICO ERUs free and clear of all liens, encumbrances and past assessments and warranting title to said ERUs. Shea shall also endorse such other documentation as may be reasonably required by SACWSD to effect said transfer.

Shea shall provide original executed documentation satisfactory to Commerce City and SACWSD that any representative signing any documents on behalf of Shea is authorized to sign said documents on behalf of Shea. Commerce City shall pay any fee required to transfer the shares on the books and records of SACWSD and FRICO.

Subject to compliance by Commerce City and Shea with the other terms and provisions hereof, Commerce City shall execute and deliver a fully executed Water Acquisition Fee Certificate substantially in the form of the Certificate attached hereto as Exhibit B.

11. PAYMENT OF ENCUMBRANCES. Any encumbrance required to be paid shall be paid at or before closing from the proceeds of this transaction or from any other source.

12. ASSIGNMENTS. Shea shall have the right to assign water acquisition fee credits under the Water Acquisition Fee Certificate on a lot by lot basis to any subsequent purchaser of any of the lots identified in Exhibit A attached hereto and incorporated by reference herein. Use of said water acquisition fee credits shall be limited to the lots identified in Exhibit A and shall not be transferrable to other property. The transfer of said water acquisition fee credits to any subsequent purchaser shall also be subject to Section 3 hereof.

13. SHEA'S WARRANTY. Shea hereby warrants that it is fully authorized to convey said ERUs to Commerce City. Said warranty shall survive the closing hereof and the transfer of the ERUs from Shea to Commerce City.

14. CLOSING COSTS, DOCUMENTS AND SERVICES. Commerce City shall pay all closing costs for this conveyance, exclusive of Shea's legal fees.

15. TIME OF ESSENCE/REMEDIES. Time is of the essence hereof. If any obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

(a) If Commerce City is in Default:

Shea may elect to treat this Agreement as canceled, in which case all payments and things of value received hereunder shall be forfeited and retained on behalf of Shea, and Shea may recover such damages as may be proper, or Shea may elect to treat this Agreement as being in full force and effect and Shea shall have the right to specific performance or damages, or both.

(b) If Shea is in Default:

Commerce City may elect to treat this Agreement as canceled, in which case all payments and things of value received hereunder shall be returned and Commerce City may recover such damages as may be proper, or Commerce City may elect to treat this Agreement as being in full force and effect and Commerce City shall have the right to specific performance or damages, or both.

(c) Costs and Expenses.

Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation arising out of this Agreement, the arbitrator or court shall award to the prevailing Party all reasonable costs and expenses, including attorney fees.

16. RECOMMENDATION OF LEGAL COUNSEL. By signing this document, Commerce City and Shea acknowledge that this document has important legal consequences and that the examination of title and consultation with legal and tax or other counsel is recommended before signing this Agreement.

17. TERMINATION. In the event this Agreement is terminated, all rights granted hereunder shall be null and void and the Parties shall be relieved of all obligations hereunder.

18. NOTICE TO COMMERCE CITY. Any notice to Commerce City shall be effective when received by Commerce City or three (3) days after having been sent by U.S. Mail with postage prepaid to the address of Commerce City given below.

19. NOTICE TO SHEA. Any notice to Shea shall be effective when received by Shea or three (3) days after having been sent by U.S. Mail with postage prepaid to the address of Shea given below.

20. MODIFICATION OF THIS AGREEMENT. No subsequent modification of any of the terms of this Agreement shall be valid, binding upon the Parties, or enforceable unless made in writing and signed by the Parties.

21. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the Parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement.

CITY OF COMMERCE CITY

By: _____
Name: _____
Title: _____

Date of Commerce City's Signature: _____

Commerce City's Address: 7887 E. 60th Avenue, Commerce City, CO 80022

APPROVED AS TO FORM AND CONTENT:

City Attorney

SHEA HOMES LIMITED PARTNERSHIP

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Date of Shea's Signature: _____

Shea's Address:

Shea Homes Limited Partnership
Attn: Legal Department
1805 Shea Center Drive, Suite 450
Highlands Ranch, CO 80129

EXHIBIT A

Lots for PrePaid Water Acquisition Fees

			Shea	Other
Reunion Filing No. 22				
Lots 76 - 90	Shea Homes	15	15	
Lots 01 - 22	Shea Homes	22	22	
Reunion Filing No. 19, 3rd Amendment				
Lots 01- 43	Other Homebuilder	43		43
Reunion Filing No. 25 (Pending)				
Lots 1-12	Shea Homes	12	12	
Lots 13-37	Other Homebuilder	25		25
Lots 38-48	Shea Homes	11	11	
Lots 49-76	Other Homebuilder	28		28
Lots 77-94	Shea Homes	18	18	
Lots 95 - 145	Other Homebuilder	51		51
Total Lots		225	78	147
			225	

EXHIBIT B

WATER ACQUISITION FEE CERTIFICATE

COMES NOW the City of Commerce City, a Colorado Municipal Corporation ("Commerce City") on this ____ day of _____, 2015, and hereby certifies that SHEA HOMES LIMITED PARTNERSHIP, a California Limited Partnership ("Shea") has acquired 225 Water Acquisition Fee Credits pursuant to the Agreement for Water Acquisition Fees dated _____, 2015 which shall be applied to the 225 lots set forth in Exhibit 1 attached hereto and incorporated by reference herein.

The Water Acquisition Fee Credits are subject to the Agreement for Water Acquisition Fees dated _____, 2015 and all terms and conditions therein. Said Water Acquisition Fee Credits are certified to Shea by Commerce City pursuant to this Water Acquisition Fee Certificate ("Certificate").

Shea shall have the right to assign the Water Acquisition Fee Credits under this Water Acquisition Fee Certificate on a lot by lot basis to any subsequent purchaser of any of the lots identified in Exhibit 1 attached hereto and incorporated by reference herein. Use of said Water Acquisition Fee Credits shall be limited to the lots identified in Exhibit 1 and shall not be transferrable to other property. The transfer of said Water Acquisition Fee Credits to any subsequent purchaser shall specifically be subject to Section 3 of the Agreement for Water Acquisition Fees and all other terms and conditions therein.

As Shea and any assignees use the Water Acquisition Fee Credits for lots set forth in Exhibit 1, Commerce City will debit Credits used from this Certificate thereby reducing the amount of Water Acquisition Fee Credits for future use.

The Water Acquisition Fee Credits may not be encumbered and this Certificate may not be encumbered in any manner, and Commerce City does not and will not recognize any encumbrances, including but not limited to liens, financing statements, rights of first refusal or use of this Certificate as collateral.

CITY OF COMMERCE CITY

By: _____

Name: _____

Title: _____

Date of Commerce City's Signature: _____

EXHIBIT B

Commerce City's Address: 7887 East 60th Avenue, Commerce City, CO 80022

APPROVED AS TO FORM AND CONTENT:

City Attorney

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____ as _____ of _____.

Witness my hand and official seal.

My Commission Expires:_____.

(SEAL)

Notary Public

EXHIBIT 1
TO
WATER ACQUISITION FEE CERTIFICATE

Lots for PrePaid Water Acquisition Fees

			Shea	Other
Reunion Filing No. 22				
Lots 76 - 90	Shea Homes	15	15	
Lots 01 - 22	Shea Homes	22	22	
Reunion Filing No. 19, 3rd Amendment				
Lots 01- 43	Other Homebuilder	43		43
Reunion Filing No. 25 (Pending)				
Lots 1-12	Shea Homes	12	12	
Lots 13-37	Other Homebuilder	25		25
Lots 38-48	Shea Homes	11	11	
Lots 49-76	Other Homebuilder	28		28
Lots 77-94	Shea Homes	18	18	
Lots 95 - 145	Other Homebuilder	51		51
Total Lots		<u>225</u>	<u>78</u>	<u>147</u>
			<u>225</u>	

EXHIBIT C

ASSIGNMENT AND BILL OF SALE (FRICO ERU Water Credits and ERU Water Connections)

THIS ASSIGNMENT AND BILL OF SALE ("Assignment") is made the ____ day of _____, 2014, by Shea Homes Limited Partnership, a California limited liability partnership ("Assignor"), in favor of the City of Commerce City, a Colorado municipality, whose address is 7887 E. 60th Avenue, Commerce City, CO 80022 ("Assignee").

RECITALS:

A. Assignor is a party to that certain Revised Plan B Project Participant Water Resources Agreement dated _____ ("Revised Water Resources Agreement (15 Year Plan)") between Assignor, and the South Adams County Water and Sanitation District ("District") wherein Assignor has purchased certain ERU Water Credits and Option Fee Credits (collectively "FRICO ERU Credits") which provide the opportunity to purchase ERU Water Connections to be used in connection with certain lands within the District as described in Exhibit A to the Water Resources Agreement and the Revised Water Resources Agreement.

B. Revised Water Resources Agreement (15 Year Plan) allocates to the Assignor the right to receive ____ Optioned FRICO ERU Water Credits and to purchase corresponding ERU Water Connections, which right is available to Assignor under the terms of the Water Resources Agreement, and the Revised Water Resources Agreement (15 Year Plan).

C. Assignor currently has ____ ERU Water Credits available under the ____ Optioned FRICO ERU Water Credits which have been recorded in the District's financial records for its payments to date under the Revised Water Resources Agreement (15 Year Plan) and has the opportunity to purchase corresponding ERU Water Connections. Assignor also currently has ____ Option Fee Credits under the Revised Water Resources Agreement (15 Year Plan) which has been recorded in the District's financial records as a result of payment under said Agreements.

D. On or about _____, 2015 Assignor and Assignee entered into an Agreement for Acquisition Fees ("Purchase Agreement"), relating to the purchase of FRICO ERU Credits.

E. Assignee is the owner of the property described in Exhibit A attached hereto ("City Property"). The City Property is generally located within the lands described in Exhibit A to the Revised Water Resource Agreement. At the time of

acquiring the City Property, Assignee anticipated that it would acquire interests in FRICO ERU Water Credits available under various Revised Plan B Project Participant Water Resources Agreements that the District has entered into with several landowners within the District for the provision of water supplies to the City Property.

F. The City Property has been annexed into the City of Commerce City, has been included within the boundaries of the District by Order of the Adams County District Court, and is within the Denver Regional Council of Governments' urban growth boundaries.

G. Assignor desires to assign its right, title, interest, in and to 58.42 ERU Water Credits available under the ____ Optioned FRICO ERU Water Credits and corresponding 58.42 Option Fee Credits available under the Revised Water Resources Agreement (15 Year Plan) already received under those Agreements for use on the City Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Capitalized Terms. All capitalized terms that are used herein but not defined herein shall have the meaning ascribed to such terms in the Revised Water Resources Agreement, which are incorporated herein by this reference.

2. Assignment. Assignor hereby grants, bargains, sells and conveys to Assignee all of its right, title and interest in and to the following (collectively, "Transferred Participation Amount"):

Fifty-eight and Forty-two Hundredths (58.42) ERU Water Credits available under the ____ Optioned FRICO ERU Water Credits recorded in Assignor's favor in the District's financial records and the right to purchase corresponding ERU Water Connections, which right is available under the terms of the Revised Water Resources Agreement (15 Year Plan).

Fifty-eight and Forty-two Hundredths (58.42) ERU Option Fee Credits recorded in Assignor's favor in the District's financial records pursuant to the Revised Water Resources Agreement (15 Year Plan).

Assignor warrants that it has not made any prior conveyance of any of the Transferred Participation Amount and further warrants that the Transferred Participation Amount is free and clear of all liens and encumbrances, which warranties shall survive the

assignment herein. Assignor acknowledges and agrees that it shall remain obligated to make all annual Installment and Option Payments as required in Paragraph 2.6(c) of the Revised Water Resources Agreements. Assignor further acknowledges and agrees that it shall remain obligated to make all annual Installment and Option Payments as contained in Schedule 2 of the Revised Water Resources Agreement.

Assignee acknowledges and agrees that it shall be required to pay any normal and customary tap fees, connection charges and any and all other fees or payments payable to the District with respect to the purchase of ERU Water Connections in the same manner as is normally charged by the District relating to such ERU Water Connections.

3. Provisions Relating to Allocations by the District. Under the terms of the Revised Water Resources Agreement and the Resolution of the Board of Directors of South Adams County Water and Sanitation District Regarding Allocation of ERUs to FRICO Participants adopted August 28, 2001 ("FRICO Resolution"), under certain circumstances, the District will allocate ERU Water Connections among Plan B Project participants ("Tap Allocations"). In particular, the District has the right to impose Tap Allocations among Plan B Project participants if (i) utilization of new ERU Water Connections within the District has exceeded an average of 1,800 ERU Water Connections per year between January 1, 2002 and the date on which the anticipated regional wastewater treatment plant becomes operational, or (ii) utilization of new ERU Water Connections in the District in any one year has exceeded or will exceed 2,266 ERU Water Connections. The District's issuance of ERU Water Connections, which are the subject of this Assignment, is subject to: (a) the terms of the FRICO Resolution; and (b) the terms and conditions of the Revised Water Resources Agreement.

4. Reservation. This Assignment shall be limited to a transfer of the FRICO ERU Water Credits described in Section 2 of this Assignment.

5. Consent of the District. The District's consent to this Assignment, which will not be granted without receipt of payment for the District's transfer fee, and entry of this Assignment on the District's books is required before this Assignment is effective.

6. Indemnification, Release and Hold Harmless. Assignor and, to the extent permitted by law, Assignee agree to defend, indemnify and hold harmless the District from and against any and all liability, claims, losses, damages or expenses, including, without limitation, court costs and attorney fees that arise out of or are in any way related to the District's consent to this Assignment. In addition, Assignor and Assignee agree to release the District from and waive any and all claims, losses or causes of action that may result from the District's consent to this Assignment.

7. No Modifications. Nothing in this Assignment shall be deemed to modify any of the terms and conditions of the Revised Water Resources Agreement or the FRICO Resolution.

IN WITNESS WHEREOF, the Parties have executed this Assignment on the day and year first above written.

ASSIGNOR:
SHEA HOMES LIMITED
PARTNERSHIP

By:_____

Title:

ASSIGNEE:
CITY OF COMMERCE CITY

By:_____

Title: