

FALCON VISTA
1/31/01

AGREEMENT PROVIDING FOR WATER
SERVICE TO LAND LOCATED OUTSIDE THE BOUNDARIES
OF THE WOODMEN HILLS METROPOLITAN DISTRICT

WHEREAS: The undersigned property owner ("Owner") is the Owner of the real property located in El Paso County, Colorado, as shown on the attached sketch map (8 1/2" x 11" paper) and as described on the attached legal description, made a part hereof (the "Property") and,

WHEREAS, if applicable, the Property is subject to a deed of trust for which the undersigned financial institution is the beneficiary, recorded at Book N/A, Page N/A, and/or reception number N/A of the records of El Paso County, Colorado; and

WHEREAS, the Owner desires to construct certain improvements on the Property and for this reason has requested water service from Woodmen Hills Metropolitan District (the "District"); and

WHEREAS, the District has determined that it is not in the best interest of the District to annex said Property; and,

WHEREAS, the District is the Owner of the water treatment facility and

WHEREAS, the District's water capacity would enable it to serve the Property although the District is under no obligation to do so; and

WHEREAS, the District is agreeable to furnishing water service to the Property under the terms and conditions as contained herein.

NOW THEREFORE, in consideration of the benefits accruing to the District and the Owner, the District and Owner have entered into this Agreement providing for water service to the Property under the following terms and conditions:

1. It is specifically understood that the water services to be furnished by the District shall be in conformity with the regulations, ordinances, and policies of the District as now existing or subsequently amended except to the extent that such compliance would be unlawful under any applicable regulation, code, or law of El Paso County, the State of Colorado, the Federal Government, or other governmental entity having jurisdiction over the Property. Specifically, the Owner acknowledges that connection to the water system is subject to and regulated by certain ordinances and standards that are in conformity with Federal and State Law.
2. The Owner understands and agrees that the District imposes a tap fee and monthly user fees for water service and that said fees are higher for service provided outside the District boundaries. In addition thereto, the District will impose fees to cover any extraordinary repairs as a result of any non-compliance by the Owner with the rules and regulations of the District. The owner further understands that this commitment by the District to serve does not entitle the owner, its tenants or agents, to use the recreational facilities, including Club Houses, of the District.
3. The extension of service will consist of storage, treatment, transmission & collection (Improvement #1), construction of main line distribution from the District to user or service area (Improvement #2), and water resource development, interdistrict water support and transmission lines to transport the water to the District (Improvement #3).
 - a) Improvement #1 will be paid by the owner via a "Line Extension Fee" and will cost \$106,000.00.
 - b) The Owners will pay a percentage of Improvement #2 more specifically referred to as "Aid in Construction." Aid in Construction costs particular to this agreement are estimated to be \$232,935.00. Aid in Construction may be subject to reimbursement and credit as hereafter set forth.
 - c) Improvement #3 is entitled to a "Water Replacement Fee" and will cost \$174,900.00*.
*Note: This fee is subject to a discount of up to 40% for the use of existing well water for irrigation purposes. Total costs for Improvements #1, #2, and #3 with a reserve for contingencies are estimated to be \$513,835.00.
 - Tap fees will be paid at the time of service connection.
 - d) Both Owner and District agree to the payment schedule attached hereto as Exhibit A.
4. If the Owner, or Owner's successors in interest, desires to put the Property to a use other than that contemplated at the time of the execution of this Agreement, a request shall be made to the District and such request, if granted, shall be upon such terms and conditions as may be imposed by the District.
5. The Owner understands that the District has a policy of not reserving water: and the same is supplied on a first - come first - served basis.
6. The Owner at the Owner's expense, will extend water service to the Property in accordance with the ordinances, regulations, policies, and guidelines of the District. If required by the District, said extensions will be oversized to handle water service to other properties. To the extent oversizing occurs, the Owner shall be entitled to enter into a water recovery agreement whereby the Owner will be reimbursed for the cost of oversizing on a proportionate basis from other property owners. Any reimbursement agreement shall be in accordance and under the terms and conditions of the District's policies and guidelines now in effect and as may be amended.
7. The Owner agrees to grant in perpetuity to the District the sole and exclusive right to use of that portion of the Property necessary for the water extension and any and all related equipment. In addition, if necessary, at the expense of the Owner (including acquisition costs, appraisal, fees, expert fees, costs, and attorney fees) the District may, but is not required to, use its powers of eminent domain to acquire necessary right of way for the construction of water improvements on properties not owned by the Owner but which are necessary for the extensions. The obtaining and/or granting of necessary easements shall be a prerequisite to the providing of any service by the District. The Owner further agrees to transfer, assign, and quitclaim to the District all water in the Denver Basin formations underlying the

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[Signature]

Property which transfer, assignment, and quitclaim will be in the form requested by the District and which will be recorded in the real property records of El Paso County.

- 8. The covenants and agreements hereinabove set forth shall run with the Property and shall extend to and be binding upon heirs, successors, assigns, and legal representatives of the Owners and shall be recorded in the real property records of El Paso County.
- 9. In the event of disconnection from District services, this Agreement shall terminate provided that there shall be no refunds of fees or rates paid to the District.
- 10. Nothing in this Agreement shall abridge or shall be construed as limitations on the authority of the District to adopt different ordinances, rules, regulations, resolutions, policies, codes, or ordinances that apply to the Property.
- 11. Extensions of water service to the Property is for the sole benefit of the Property and its Owner and shall not be construed to create any rights in third party beneficiaries or constitute the determination by the District of any policy pertaining to the extension of water service to any other properties.
- 12. The District shall use all reasonable diligence in providing constant and uninterrupted service to the Owner. However, the District reserves the right to temporarily interrupt or reduce the delivery of service under this Agreement when the District determines that such interruption or reduction is necessary or desirable in case of system emergencies or in order to make inspections of, perform maintenance work on, or make repairs, replacements or changes in its equipment on or off the premises of the Owners Property. Except in the cases of emergency, the District shall give reasonable notice to the Owner of any such interruption or reduction, stating the reason for, and the probable duration of the interruption or reduction to the extent of the District's knowledge.
- 13. The owner acknowledges that the District rules, regulations, and policies prohibit the introduction of substances into the water system. Owner agrees as a condition of service by the District that the owner will provide the necessary information on types and locations of back-flow prevention devices.
- 14. Wherein as used herein, the term "Owner" shall also mean any of the heirs, successors, executors, personal representatives, transferees or assigns of the Owner.
- 15. The undersigned financial institution (s), by executing this Agreement, agrees that in the event it should become the Owner of the Property through foreclosure or otherwise that it is bound by the terms and conditions of this Agreement to the same extent that the Owner is subject to terms of this Agreement and that in the event the financial institution becomes the Owner of the property, any provisions in the deed trust or other agreements shall be subordinate to and superseded by the provisions of this Agreement.
- 16. The parties to this agreement agree that for a breach of any covenant, term, or condition of this Agreement by any Owner, damages are not to be considered an adequate or exclusive remedy and the District, in addition to damages, may have specific performance for the enforcement of any covenant, term, or condition of this Agreement.
- 17. If a court of competent jurisdiction declares any part of this Agreement void, it is agreed that such void provision shall not affect the remainder of this Agreement, which shall remain in full force and effect.

IN WITNESS WHEREOF, The parties have caused this Agreement to be executed this 31st day of January, 2001

WOODMEN HILLS METROPOLITAN DISTRICT

BY: 

ATTEST:

BY: Jacqueline C. Gendreau

STATE OF COLORADO)
) ss:
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 31st day of January, 2001 by Benjamin I. Green as vice president and by me as Notary Public on behalf of Woodmen Hills Metropolitan District.

Witness my hand and official seal.

My commission expires: March 25, 2004

(SEAL)

LAURA J. LAMBERT
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires March 25, 2004


Notary Public

Ray Powers
Falcon Vista LLC

Falcon Vista LLC

STATE OF COLORADO)
) ss:
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 31st day of January, 2000 by Ray Powers as President and by NA as _____ on behalf of the Falcon Vista LLC.

Witness my hand and official seal.

My commission expires: March 25, 2004

(SEAL)

LAURA J. LAMBERT
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires March 25, 2004

Laura J. Lambert
Notary Public

Financial Institution

BY: _____
Title

STATE OF COLORADO)
) ss:
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this _____ day of _____, 2000 by _____ as _____ and by _____ as _____ on behalf of the Financial Institution.

Witness my hand and official seal.

My commission expires: _____

(SEAL)

Notary Public

**EXHIBIT A
PAYMENT SCHEDULE
FALCON VISTA LLC**


Total Fees Owed:

Line Extension Fee	\$106,000.00
Water Replacement Fee	\$174,900.00
Water Replacement Credit	\$ -75,000.00
Aid in Construction Fee	<u>\$232,935.00</u>
TOTAL	\$438,835.00


To Be Paid As Follows:

25% of total fees due upon signing agreement. 25% of total fees due six months from date of agreement. ~~50% of total fees due upon District completion of water services.~~ *50% of total fees due in one year from the date of this contract.* R.P.
Tap fees are due and payable upon request of tap.

These payment arrangements are agreed upon by the "District" and the "Owner".



Woodmeadows Hills Metropolitan District



Falcon Vista LLC

Woodmen Hills Metropolitan District

Out-of-District Tap Fee Schedule

Tap Size	Water Tap Fee
¾"	\$7,500.00
1"	\$15,000.00
1 ½"	\$30,000.00
2"	\$60,000.00
3"	\$120,000.00

- Larger Tap fees will be figured at the time of the request.

Out-of-District Water Usage Fees

Water \$9.30/1000 gallons
Irrigation \$9.30/1000 gallons

- * These rates are subject to change at any time without notice.