

FALCON VISTA

AGREEMENT PROVIDING FOR WASTEWATER 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,

Not applicable

WHEREAS, if applicable, the Property is subject to a deed of trust for which the undersigned financial institution is the beneficiary, recorded at Book _____, Page _____, and/or reception number _____, of the records of El Paso County, Colorado; and *There is no lien on the land*

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

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

WHEREAS, the District is the joint owner, together with the Paint Brush Hills Metropolitan District, of a regional wastewater treatment plant ("WWTP"); and,

WHEREAS, the District's share of capacity in the WWTP 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 wastewater 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 the Owner have entered into this Agreement providing for wastewater service to the Property under the following terms and conditions:

1. It is specifically understood that the wastewater 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

specify # of taps + types of usage

the Property. Specifically, the Owner acknowledges that discharge into the WWTP is subject to and regulated by certain pretreatment 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 wastewater service and that said fees are higher for services 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.

3. The extension of service will consist of a lift station #2 and force mains ("Improvements #1") and lift station #3 and connecting force mains ("Improvements #2"). Improvements #1 will cost \$960,165.00 will be paid by the Owner via:

- line extension fee of \$69,540.00
- treatment plant investment fee of \$178,125.00
- tap fees of \$712,500.00 (based on estimated units, to be paid at time of connection).

These Improvement #1 fees will not be subject to later reimbursement or credit.

The Owner's percentage of Improvement #2 costs are estimated to be \$345,047.00 and will be subject to reimbursement and credit as hereinafter set forth. With a reserve for contingencies, the total Improvement #1 and Improvement #2 costs are estimated to be \$1,305,212.00.

4. If the Owner, or the 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 on 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 WWTP capacity; and the same is supplied on a first-come, first-served basis.

6. The Owner, at the Owner's expense, will extend wastewater service lines 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 wastewater service to other properties. To the extent oversizing occurs, the Owner shall be entitled to enter into a wastewater 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 sewer extensions 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 wastewater 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.

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 Owner 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 any 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. Extension of wastewater 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 wastewater 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 reductions 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 Owner. Except in 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 storm water runoff and other drainage into the WWTP and related systems. Owner agrees as

a condition of service by the District that the Owner will provide the necessary drainage facilities for the Property.

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.

Not applicable

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 provision in the deed of trust or other agreements relating to the Property in conflict with this Agreement shall be subordinate to and superseded by the provisions of this Agreement.

There are no liens on the land

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 any part of this Agreement is declared void by a court of competent jurisdiction, 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 30 day of March 1999.

WOODMEN HILLS METROPOLITAN DISTRICT

BY: *[Signature]*

ATTEST:

BY: _____

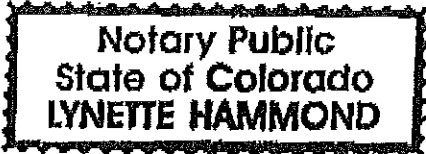
STATE OF COLORADO)
) ss:
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 8th day of March, 1999 by Ray Powers as Managing Member Falcon Vista LLC and by _____ on behalf of Woodmen Hills Metropolitan District.

Witness my hand and official seal.

My commission expires: October 13, 2002.

(SEAL)



Lynette Hammond
Notary Public

Ray Powers ³⁻⁸⁻⁹⁹ Managing Member
Falcon Vista LLC
Property Owner

Property Owner

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

The foregoing instrument was acknowledged before me this 30 day of March, 1999 by Benjamin I. Green and by _____

Witness my hand and official seal.

Notary for
← Woodmen Hills Metropolitan District
(SEAL)

My commission expires: 12-10-99.

Benjamin I. Green
Notary Public

Not applicable - Falcon Vista, LLC owns the land free and clear of any liens or financing. There is no financial institution involved.

BY: _____
 Title: _____

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

The foregoing instrument was acknowledged before me this _____ day of _____, 19____ by _____ as _____ and by _____ as _____ on behalf of _____

Witness my hand and official seal.

My commission expires: _____

(SEAL)

 Notary Public