

**AMENDMENT TO INCLUSION AGREEMENT  
(Woodmen Hills Metropolitan District/Houtchens)**

THIS AMENDMENT TO INCLUSION AGREEMENT (this "Amendment") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the Woodmen Hills Metropolitan District ("Woodmen"), the Bent Grass Metropolitan District ("Bent Grass"), and Long Hope Joint Venture, LLP, a Colorado limited liability partnership, Marksheffel-Woodmen Investments, LLC, a Colorado limited liability company, B.T. Long, an individual, International Development Company, a Colorado corporation, Lena Gail Case and Randle W. Case II, as co-personal representatives of the estate of R.W. Case, deceased, Falcon Storage Partners, LLLP, a Colorado limited liability limited partnership, James W. Buller aka James Buller, an individual, Dave Buller, an individual, the M.D. McAllister Trust, a trust, R.W. Case II, an individual, Randall L. DeYoung, an individual, Lena Gail Case aka L.G. Case, an individual, the Eric Vernie Houtchens and Neva Ann Houtchens Revocable Living Trust, a trust, and Land First, Inc., a Colorado corporation, (collectively, the "Current Owners" as further defined in paragraph G below). Woodmen, Bent Grass and the Current Owners are sometimes referred to in this Amendment individually as a "Party" and jointly as the "Parties."

**RECITALS**

A. Woodmen and Bent Grass are quasi-municipal corporations and political subdivisions of the State of Colorado formed pursuant to Title 32 of the Colorado Revised Statutes.

B. Woodmen entered into a September 18, 2003 Inclusion Agreement (Woodmen Hills Metropolitan District/Houtchens) (the "Inclusion Agreement") with the then owners of 228.2 acres of real property that were within the boundaries of Bent Grass. Under the Inclusion Agreement, that real property was included within Woodmen for the purpose of Woodmen providing water and wastewater service subject to compliance with the terms of the Inclusion Agreement.

C. In paragraph 3 of the Inclusion Agreement, the landowners, defined as the "Developer" and "Owners," agreed, among other things, "to design, construct and install, at their sole expense, all on-site municipal infrastructure . . . including the construction and drilling of sufficient wells to serve the Real Property."

D. Neither the Developer and Owners, nor their successors, have constructed any such water wells, but the parties have determined that, due to the declining groundwater yields within Bent Grass, it would be in both Parties' best interest for Woodmen to waive the obligation for Bent Grass (and the Developer and Owners) to construct such wells and instead, for the current owners of property within Bent Grass instead to pay water acquisition fees ("WAFs") to Woodmen, which would provide financial resources for Woodmen to acquire and develop alternative water resources that would do more to enhance the reliability of Woodmen's water supplies than would constructing groundwater wells within Bent Grass.

E. WAFs are to be paid on a single-family-equivalent (“SFE”) basis. As used in this Amendment, an SFE means the amount of water needed to serve a single family dwelling.

F. By letters dated May 5, 2014, and June 3, 2014, Woodmen committed to provide water service to 104 residential lots within Bent Grass, as well as to Lots 1, 2 and 3 of Filing 2, to Bent Grass East Commercial Filing 1 and to Lot 1 Latigo Business Center Filing 1 (collectively, the “Committed Areas”). Bent Grass’s obligation to pay WAFs under this Amendment relates solely to the real property within Bent Grass located outside of the Committed Areas, which real property is described on the attached **Exhibit A** (the “WAF Area”).

G. This Amendment is between Woodmen, Bent Grass, and all of the owners of the WAF Area (the “Current Owners”), which Current Owners have agreed to be parties to and sign this Amendment and to subject their properties to the obligations under this Amendment in order to receive water service from Woodmen without the need to construct the water wells required under paragraph 3 of the Inclusion Agreement.

H. Woodmen and Bent Grass are authorized to enter into governmental agreements pursuant to the provisions of Section 18(2) of Article XIV of the Colorado Constitution and C.R.S. § 29-1-203.

I. This Amendment is not intended to be a purchase of water or waterrights by Bent Grass, but is a remedy for the inability of Bent Grass to finance and construct municipal wells in an area of declining water tables.

NOW, THEREFORE, in consideration of the covenants and mutual agreements contained in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **AGREEMENT**

1. Waiver of Bent Grass’s Obligation to Construct Water Wells; Well-Site Easements. In consideration of Bent Grass’s covenants and agreement under this Amendment, and the Current Owners’ agreement to be bound by the same, Woodmen hereby waives and terminates Bent Grass’s and the Current Owners’ obligation under Paragraph 3 of the Inclusion Agreement to construct water wells to withdraw groundwater beneath Bent Grass, and the Inclusion Agreement is hereby amended to eliminate that obligation. Nonetheless, Bent Grass or the Current Owners, as the case may be, shall include in the final plats for the WAF Area easements for a total of three (3) well sites, approximately ¼ acre in size, spaced more or less uniformly throughout the Bent Grass development, and associated pipeline easements from those well sites to Woodmen’s existing water pipelines, for the benefit of Woodmen, to allow Woodmen to construct and access groundwater wells and pipelines at its discretion and at its cost in the future.

2. Prepayment of WAFs.

(a) Within thirty (30) days of the full execution of this Amendment, Bent Grass or the Current Owners shall pay to Woodmen \$1.3 million, in immediately available good

funds, as WAFs for the first 200 SFEs of development within the WAF Area. Subject to the following paragraph 2(b), Woodmen shall not require the payment of any additional WAFs associated with said 200 SFEs. For commercial and industrial uses within the WAF Area, Woodmen shall determine the appropriate number of SFEs and corresponding WAFs based on the reasonable professional judgment of Woodmen's District Engineer with respect to how the quantity of water used by a typical single family dwelling compares to the proposed commercial and industrial uses. Payment of WAFs shall be in addition to water and sewer tap fees, plant investment fees and other fees that may be charged by Woodmen for connections to and service by Woodmen's water and wastewater systems.

(b) Woodmen will track the available number of prepaid WAFs and allocate the available prepaid WAFs to lots within the WAF Area as sewer and water tap rights are acquired, on a first come, first served basis, until the 200 prepaid WAFs are exhausted, without regard to the identity of the owner of such lots. Woodmen shall have no responsibility for tracking the allocation of WAFs to particular lots or to the particular Current Owner(s) who contributed to the \$1.3 million payment. The Current Owners hereby indemnify and hold harmless Woodmen from any claims of any kind arising out of Woodmen's allocation of available prepaid WAFs on a first come, first basis without regard to the identity of the owners of the lots to which the WAFs were allocated.

(c) In the event said \$1.3 million payment is not timely made, then this Amendment shall automatically terminate in its entirety and be of no further force or effect and all of the Inclusion Agreement terms and conditions shall apply.

(d) In the event not all of the 200 SFEs for which WAFs have been paid have been connected to the District's water system within ten (10) years from the date of this Agreement, then Bent Grass shall pay an additional increment of WAF for each SFE that has not been so connected equal to the difference between the then current WAF charged by Woodmen as a condition of inclusion into the District and the \$6,500 per SFE prepaid under this Amendment. By way of example, if, within ten years from the date of this Amendment, 190 SFEs of the 200 SFEs for which WAFs have been prepaid have been connected to Woodmen's water system, then the remaining 10 SFEs each will require the payment at the time of the issuance of building permits of the additional increment of WAF to reflect the then current WAF charged by Woodmen. The current WAF charged by Woodmen for inclusion equals \$8,825 per SFE, calculated by taking the estimated cost to acquire and develop a water supply, which is \$25,000 per acre-foot, multiplied by Woodmen's planning water demand per SFE of .353 acre-feet. Woodmen may adjust its WAFs from time to time to reflect the increased cost of acquiring and developing water supplies and any modifications to the per-SFE planning water demand to account for actual water use within Woodmen.

3. Subsequent WAFs. For any and all SFEs developed within the WAF Area beyond the 200 SFEs for which WAFs were prepaid, Bent Grass or the Current Owners, or their successors and assigns in the WAF Area, shall pay to Woodmen the then current WAF for each and every one of the SFEs at the time a building permit is issued for each SFE. The maximum number of SFEs within the WAF Area for which Woodmen is obligated to provide water and wastewater service under the Inclusion Agreement and this Amendment is 500, which are in addition to the SFEs already served within the Committed Areas.

4. WAFs Exclusive to WAF Area. The payment of WAFs shall only benefit the real property within the WAF Area and the benefit from and rights associated with them may not be transferred to any SFEs outside of the WAF Area.

5. Will-Serve Letters. At the request of the Current Owners, or their successors or assigns in the WAF Area, for a will-serve commitment letter from Woodmen in support of each application for plat approval within the WAF Area, Woodmen shall issue a will-serve letter committing to provide water service for the number of SFEs in the proposed plat but only upon receipt of a letter signed by the then owner(s) of the land for which the plat is sought, agreeing to pay the applicable WAF at the time of issuance of each building permit issued for the development within the approved plat and acknowledging the existence of a lien on the land within such plat in favor of Woodmen to secure payment of the WAFs, consistent with paragraph 6 below.

6. Lien Rights. Bent Grass and the Current Owners hereby agree that Woodmen shall have a lien upon any platted lots within the WAF Area for any unpaid WAFs. Notwithstanding the issuance of any will-serve letters, Woodmen shall have the right to withhold water and wastewater service from any such lot for which the WAF is not timely paid.

7. Inclusion Agreement. Except as otherwise amended by this Amendment, the terms of the Inclusion Agreement remain unchanged and are binding on the Parties.

8. Authority. The undersigned warrant and affirm that they are lawfully authorized to execute this Amendment and to bind the Parties and persons for whom they are signing to this Amendment.

Not a Multiple Fiscal Year Obligation. No rights or obligations in this Amendment between Woodmen and Bent Grass will be construed as a multiple fiscal year obligation as described by Article X, Section 20 of the Colorado Constitution.

9. Miscellaneous.

(a) Governing Law. The validity, meaning and effect of this Amendment shall be determined in accordance with the laws of the State of Colorado.

(b) Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) Captions. The captions in this Amendment are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Amendment or any of the provisions hereof.

(d) Assignability. None of the Parties may assign its rights under this Amendment without the prior written consent of the other.

(e) Binding Effect. This Amendment shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and permitted assigns.

(f) Modifications; Waiver. No waiver, modification, amendment, discharge or change of this Amendment shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is sought.

(g) Entire Amendment. This Amendment, together with the Inclusion Agreement, contains the entire agreement between the Parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded hereby.

(h) Partial Invalidity. Any provision of this Amendment which is unenforceable or invalid or the inclusion of which would impair the validity, legality or enforcement of this Amendment shall be of no effect, but all the remaining provisions of this Amendment shall remain in full force and effect.

(i) No Third Party Rights. Nothing in this Amendment, express or implied, is intended to confer upon any person, other than the Parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Amendment.

(j) Attorneys' Fees. In the event of any controversy, claim or dispute between any of the Parties affecting or relating to the subject matter or performance of this Amendment, the prevailing party shall be entitled to recover from the non-prevailing party all of its reasonable attorneys' fees and costs incurred in such action.

(k) Dispute Resolution. The Parties agree that should any dispute arise over this Amendment, the same shall be resolved by binding arbitration to be held in El Paso County, Colorado, before one mutually-agreed to arbitrator who shall make all decisions concerning procedure and discovery. Should the Parties in dispute be unable to agree upon said arbitrator, the same shall be appointed by an El Paso County District Court Judge. The cost of the arbitrator shall be paid equally by the Parties to the arbitration.

(l) Joint Drafting. The Parties agree and acknowledge that this Amendment was drafted jointly by them and that, in interpreting this Amendment, no adverse presumption or inference against any one of them shall apply.

(m) Running Covenant; Recording. This Amendment is a covenant that touches and concerns the WAF Area and its benefits and burdens run with title to the WAF Area. This Amendment may be recorded in the real property records of El Paso County.





CURRENT OWNERS – LONG HOPE JOINT VENTURE, LLP

Long Hope Joint Venture, LLP,  
a Colorado limited liability partnership

\_\_\_\_\_  
By: Bryan T. Long  
Title: Managing Partner

STATE OF COLORADO        )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Bryan T. Long, Managing Partner of Long Hope Joint Venture, LLP, a Colorado limited liability partnership.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

(Seal)

\_\_\_\_\_  
Notary Public



CURRENT OWNERS – MARKSHEFFEL-WOODMEN INVESTMENTS, LLC

Marksheffel-Woodmen Investement, LLC,  
a Colorado limited liability company

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, as Co-Manager of Marksheffel-Woodmen Investments, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

(Seal)

\_\_\_\_\_  
Notary Public

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

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, as Co-Manager of Marksheffel-Woodmen Investments, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

(Seal)

\_\_\_\_\_  
Notary Public

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

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, as a Member of Marksheffel-Woodmen Investments, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

(Seal)

\_\_\_\_\_  
Notary Public

CURRENT OWNERS – B.T. LONG

\_\_\_\_\_  
By: B. T. Long, an individual

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2019, by B. T. Long, an individual.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

(Seal)

\_\_\_\_\_  
Notary Public

CURRENT OWNERS – INTERNATIONAL DEVELOPMENT COMPANY

International Development Company,  
a Colorado corporation,

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_ as \_\_\_\_\_ of International Development Comany.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

(Seal)

Notary Public

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CURRENT OWNERS – Lena Gail Case and Randle W. Case II, as co-personal representatives of the estate of R.W. Case, deceased

\_\_\_\_\_  
Lena Gail Case, co-personal representative  
of the estate of R. W. Case, deceased

\_\_\_\_\_  
Randle W. Case II, as co-personal representative  
of the estate of R. W. Case, deceased

STATE OF COLORADO        )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Lena Gail Case and Randle W. Case, co-personal representatives of the estate of R. W. Case, deceased.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

(Seal)

\_\_\_\_\_  
Notary Public

CURRENT OWNERS – FALCON STORAGE PARTNERS, LLLP

Falcon Storage Partners, LLLP,  
a Colorado limited liability limited partnership

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO        )  
  ) ss.  
COUNTY OF \_\_\_\_\_  )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
2019, by \_\_\_\_\_, as \_\_\_\_\_ of Falcon Storage Partners, LLLP, a Colorado  
limited liability limited partnership.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

(Seal)

\_\_\_\_\_  
Notary Public

CURRENT OWNERS – JAMES W. BULLER AKA JAMES BULLER

\_\_\_\_\_  
By: James W. Buller aka James Buller,  
an individual

STATE OF COLORADO         )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by James W. Buller aka James Buller, an individual.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

(Seal)

\_\_\_\_\_  
Notary Public

CURRENT OWNERS – DAVE BULLER

\_\_\_\_\_  
By: Dave Buller, an individual

STATE OF COLORADO        )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Dave Buller, an individual.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

(Seal)

\_\_\_\_\_  
Notary Public



CURRENT OWNERS – M.D. McALLISTER TRUST

M.D. McAllister Trust

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: Trustee

STATE OF COLORADO        )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2019, by \_\_\_\_\_, as trustee of the M.D. McAllister Trust.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

(Seal)

\_\_\_\_\_  
Notary Public









CURRENT OWNERS – LAND FIRST, INC.

Land First, Inc., a Colorado corporation

\_\_\_\_\_  
By: Ronald Waldthausen  
Title: President

STATE OF COLORADO        )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Ronald Waldthausen, as president of Land First, Inc., a Colorado corporation.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_