

Recorded at 252 o'clock P M JAN 31 1995  
RECEPTION No. 473966 MILDRED ALSOPF, DEK JUDGE  
BARFIELD COUNTY, COLORADO

BOOK 0930 PAGE 297

### WATER TAP AGREEMENT

THIS AGREEMENT, entered into by and between the TOWN OF NEW CASTLE, COLORADO (hereinafter the "Town") and THREE ELK RUN, LLC (hereinafter "Three Elk Run");

### WITNESSETH:

WHEREAS, the Town operate a municipal water supply system and by ordinance may supply water available to water users located outside of the Town limits; and

WHEREAS, Three Elk Run desires to obtain water service from the Town for a subdivision consisting of fourteen (14) lots which will be located on the property as described in Exhibit A which is attached hereto and incorporated herein by this reference (hereinafter "Three Elk Run Subdivision") which is located outside of the boundaries of the Town; and

WHEREAS, the parties desire to express their agreement on the payment of water tap fees, the installation of a tap to the Town's water system, and the Town's regulation and requirements surrounding such tap and water service.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Warranties, Covenants and Representations. Three Elk Run makes the following representations, covenants and warranties to the Town:

A. Three Elk Run is the fee owner of the property and has good, marketable and indefeasible title to the property, subject to any mortgage, covenants, deeds of trust or easements now or hereafter affecting the property.

B. Three Elk Run has the full right, power and authority to enter into, perform and observe this Agreement.

C. To the best of Three Elk Run's knowledge, neither the execution of this Agreement, the consummation of the transactions contemplated hereunder, nor the fulfillment of or the compliance with the terms and conditions of this Agreement by Three Elk Run will conflict with, or result in, a breach of any terms, conditions or provisions of, or constitute a default under, or result in the imposition of any prohibited lien, charge or encumbrance of any nature under any agreement, instrument, indenture or judgment, order or decree of any court to which Three

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recording note: per exhibit A - 1-31-95

Three Elk Run  
Jan 1995

Elk Run is a party or by which Three Elk Run or the property are bound.

D. The covenants, obligations, terms, conditions and provisions set forth in this Agreement shall be construed as and during the term of this Agreement shall remain, covenants running with the property.

E. Subject to the provisions of this Agreement, if Three Elk Run fails to satisfy, keep or perform any obligation, covenant or agreement contained in this Agreement according to its terms, the Town may take or cause to be taken such action as it deems necessary to enforce the performance of such covenants and agreements, and any sums advanced or expenses incurred by the Town in connection therewith, including attorneys' fees, shall become due immediately without notice and shall bear interest at an annual percentage rate equal to two percent (2%) above the net effective interest rate then paid by the Town on its outstanding bond indebtedness.

2. Purchase of Tap. Three Elk Run shall purchase fourteen (14) water taps from the Town's municipal water supply system in order to obtain water service for its residence(s). Three Elk Run agrees to pay all applicable tap fees as established by Town ordinance in effect upon execution of this Agreement in the amount of \$2,500.00, which amount shall remain fixed for a period of three (3) years and at the expiration of the three (3) year period, the tap fees shall reflect the current rate; without additional tap fee payment to the Town to maintain, operate, use, repair, enhance or replace its water supply system or to acquire additional water rights, water storage diversion or delivery structures, other than the construction made by Three Elk Run to the Elk Creek Area Water System, as provided under separate contract between the parties.

3. Use of Water. The Town agrees to provide water service to Three Elk Run for the residences subject to the terms and conditions as more fully set forth herein. Three Elk Run agrees that all water supplied to it through the Town's municipal water supply system shall be for ordinary residential uses only, including outside lawn and garden irrigation of an area not to exceed 3,000 square feet per lot. Three Elk Run further agrees that it shall not use water supplied under this Agreement for watering of livestock or domestic animals other than those domestic animals allowed by Town ordinance for a single family residence located within Town boundaries. Violation of this restriction shall subject the Purchaser to penalties as established by the Town ordinances then in effect.

4. Meters and Water Fees. Three Elk Run shall install at its own cost and expense a water meter to the specifications acceptable to the Town at the time of connection of each lot to the

Town's water system. Three Elk Run shall maintain such in good working order at all times. Three Elk Run shall pay fees and charges for the use of water as established by Town ordinances from time to time, and according to payment schedules contained therein.

5. Connection Charges. Notwithstanding payment by Three Elk Run for the system development fees required to be paid hereunder, the Town may, prior to Three Elk Run making physical connection of any such tap to the water system, impose reasonable charges for any labor and materials supplied by the Town that may be required to make such physical connection.

6. Water Rationing. In the event of shortage, Three Elk Run hereby acknowledges and agrees that the water supply to the subdivision may be rationed or curtailed by the Town. Three Elk Run also acknowledges that, in the event of shortage, its water supply may be subject to rationing first, before residents of the Town are so rationed, and to curtailment first, before residents of the Town are rationed and/or curtailed, both as deemed necessary by the Town in its sole discretion to satisfy the requirements of the Town and Town residents residing within the Town's municipal limits. By this Agreement, the Town is making no statement, guaranty or warranty that sufficient water will be available to Three Elk Run to satisfy the ordinary residential needs of Three Elk Run at all times. Three Elk Run specifically acknowledges that water service may be interrupted on a temporary basis with no advance warning or notice. Three Elk Run specifically waives any and all claims it may otherwise have against the Town which may arise from water rationing or curtailment.

7. Tap Connection. Three Elk Run shall install, maintain, operate, repair and replace, at its own cost and expense, all facilities associated with its tap connections to and use of the Town's Elk Creek Area Water System. Three Elk Run shall connect to the Town's Elk Creek Area water main using materials which are acceptable to the Town. Additional requirements for installation may be imposed on Three Elk Run at the time of installation. By setting such specifications, the Town makes no guaranty or warranty that installation pursuant to these minimum specifications will be adequate for the continuous and uninterrupted delivery of water to the residences. Three Elk Run shall be solely responsible for such connection and installation to ensure that such is made according to accepted engineering and construction principles and guidelines. Any failure of such system shall be the sole responsibility of Three Elk Run and in the event that a failure affects the Town water delivery system to other users, Three Elk Run shall be liable to the Town for cost of any repair or replacement resulting therefrom or for damages incurred. Three Elk Run agrees to promptly upgrade any such connection or pipeline connecting to the Town's system to meet any additional specifications as may be deemed necessary by the Town for the

efficient and prompt delivery of water to the property in the future.

8. Administration of Rates, Fees and Charges. The Town shall establish all rates, fees and charges for the use of its facilities. Such rates, fees and charges shall be applicable to all users of the Town's facilities, but may provide for different rates, fees and charges for in-Town and out-of-Town users. Unless expressly provided to the contrary herein, services to Three Elk Run lots shall be subject to all duly promulgated rates, policies and rules and regulations of the Town.

9. Remedies Upon Default. Upon the occurrence of any event of default as specified in this Agreement, the Town shall have the following rights and remedies which shall be cumulative and which may be exercised with or without notice, unless otherwise specified herein, and which may be exercised separately, concurrently or repeatedly and without any election of remedies to be deemed made:

A. To declare by written notice any or all of the rates, charges or fees be immediately due and payable in full, subject to the limitations of Subparagraph D.

B. To shut off or discontinue water service to any defaulting user, that the Town shall have all rights against such third party who may acquire the residence in the event of default of such third party.

C. To perfect and foreclose any and all lien rights which the Town may have under and in the manner specified by applicable law.

D. To enforce any provisions of this Agreement by appropriate legal proceeding for the specific performance of any covenant or agreement contained herein or for the enforcement of other appropriate legal or equitable remedy or for the recovery of damages caused by breach of this Agreement, including attorneys' fees and all other costs and expenses incurred in enforcing this Agreement. In the event of the Town's default under this Agreement, Three Elk Run may assert any available legal or equitable remedy and shall be entitled to recover reasonable attorneys' fees and all other costs and expenses incurred in enforcing this Agreement.

10. Indemnity. Three Elk Run hereby agrees to indemnify and hold the Town harmless for any and all losses resulting from any actions taken in the implementation of this Agreement and for injuries resulting from Three Elk Run's use of Town water. Furthermore, it is the understanding of the parties that this indemnification shall include actual attorneys' fees, damages, costs and expenses incurred by the Town in the event that any party

brings an action against the Town specifically relating to injury, property damage, or other damages caused by Three Elk Run's purchase, installation, use, maintenance or operation of the facilities or by interruption of water service under this Agreement.

11. Term. This Agreement shall remain in full force and effect until this Agreement is otherwise terminated in accordance with the provisions hereof.

12. Successors and Assigns. The covenants, obligations, terms, conditions, and provisions contained herein and all amendments of this Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto and shall also be a covenant running with the property.

13. Remedies. The remedies provided to the Town hereunder are cumulative and are not intended to be exclusive of any other remedy to which the Town may be lawfully entitled. None of the remedies provided to either party under this Agreement shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which it may then be entitled. Every obligation assumed by or imposed upon either party hereto shall be enforceable by any appropriate action, petition or proceeding at law or in equity and may be initiated by the Town, separately or jointly. In addition to any other remedy provided by law, this Agreement shall be specifically enforceable. This Agreement shall be construed in accordance with the laws of the State of Colorado.

14. Statutory Requirements. It is the express intention of the parties that all charges, assessments, fees or rates to be paid hereunder shall constitute a perpetual lien on and against the property until paid. It is the further intention of the parties that unpaid fees hereunder shall be considered to be fees within the meaning of the applicable statutes of the State of Colorado authorizing the Town to certify the unpaid fees as general property taxes to the Garfield County Treasurer.

15. Future Ordinances. Three Elk Run acknowledges that the Town may adopt ordinances and resolutions from time to time concerning regulations of the continued delivery of water to users located outside of the Town limits. By entering into this Agreement, Three Elk Run is agreeing to be bound by such future regulation.

16. Scope of Agreement. No additional rights as may be established by Town ordinance or resolution for residences of the Town are implied or created on behalf of Three Elk Run by entry into this Agreement.

17. Amendment. This Agreement constitutes the full agreement between the parties and may be amended only by a writing signed by the parties.

18. Binding Effect. This Agreement is binding upon and shall inure to the benefit of the parties, their heirs, successors and assigns. Specifically, Three Elk Run may assign its rights and obligations hereunder proportionately among the owners of the individual lots within the Three Elk Run Subdivision.

19. Recording. This Agreement shall be recorded with the Garfield County Clerk and Recorder, at the expense of Three Elk Run, in the amount of \$ 1800, which expense shall be paid simultaneously with the execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in duplicate originals on the day and year first above written.

TOWN OF NEW CASTLE, COLORADO

By: [Signature]  
Mayor 1-20-95

ATTEST:

[Signature]  
Clerk

THREE ELK RUN, LLC

By: [Signature]  
Manager

By: [Signature]  
Manager

