

**PONY
WATER COOPERATIVE AGREEMENT
PLACITAS, NEW MEXICO**

RG-84288

This AGREEMENT is made this 31st day of January, 2005, by and between the undersigned Developers and Owners of the real property described in Exhibit A attached hereto. Whereas it is the desire and intent to establish a cooperative entity and the rules and regulations for the operation of a well and water system located on the property described in the aforementioned Exhibit A attached hereto.

1. **NAME:** The name under which this Cooperative will own and operate the well and water system and conduct business shall be the **PONY WATER CO-OP**.
2. **MEMBERSHIP/ONE VOTE PER LOT:** The owner(s) of the lots described in Exhibit A shall be members of the Co-op. The owner(s)/member(s) shall be entitled to one vote for each lot owned.
3. **DEVELOPERS:** The undersigned developers, High Mesa General Partnership, shall construct the water facilities and initially complete the system so that it operates to provide water to each member's property.
4. **PURPOSE:** The purpose of the Co-op is to provide water for reasonable uses to the property described in Exhibit A.
5. **SYSTEM:** The system shall include all wells, equipment, tanks, distribution lines, meters, valves, materials, supplies and property which is owned by the Co-op. Said system shall end at the location of the water meter on each lot.
6. **OWNERSHIP:** The system will be owned, operated, maintained and utilized by the Co-op.
7. **DURATION:** The Co-op will continue as long as its facilities are used to supply water to its members unless it is terminated with the consent of all members.
8. **TRANSFER OF OWNERSHIP:** Sale or transfer of the possessory interest in any member's property shall act to terminate the membership of the Seller and to make the new owner of the possessory interest a member who shall thereupon be bound by this Agreement. The rights and obligations provided in this Agreement shall run with the land. Transfer of an interest in the Co-op will not affect or change any existing or accrued obligations, and such new interest holder will not be liable for such obligations unless otherwise provided in this Agreement. The Co-op, however, does not have to provide the new member service until all fees, charges and assessments incurred for serving the property transferred are brought current.

9. **ANNUAL MEETING:** The Co-op Manager shall call an Annual Meeting of the members, to be held in January or February. At this meeting: a report will be given regarding the financial matters of the Co-op. A report on the status of all equipment will be made. A discussion of operations and maintenance will be conducted. A decision will be made regarding the water rates and assessments to be charged to each member during the upcoming year. The Co-op Manager will be elected for the coming year. Notice will be mailed or delivered to all members at least thirty days prior to the holding of the Annual Meeting. The meeting will be held in Placitas, New Mexico.
10. **SPECIAL MEETINGS:** Special Meetings of the membership of the Co-op may be held at any time upon the call of the Co-op Manager or any member of the Co-op. Notice and purpose of such Special Meeting shall be given at least three days prior to such meeting.
11. **CO-OP MANAGER:** The Co-op Manager will be a member of the Co-op, and will be elected at the Annual Meeting or any Special meeting called for the purpose of electing the Co-op Manager. The Co-op Manager will be elected by a majority vote of the members attending a meeting where the Co-op Manager is to be elected, and each member will be entitled to one vote for each membership which he, she or they own. At a Special Meeting of the Co-op, the Co-op Manager may be removed by a vote of the majority of the members. Initially the Co-op Manager shall be David W. Harper.
12. **DUTIES OF THE CO-OP MANAGER:** The Co-op Manager shall carry on the normal business of the Co-op. The Co-op Manager shall be authorized to enter into contracts on behalf of the Co-op for the purpose of maintaining or replacing parts of the water system and keeping the water system operational. He or she shall cause, or cause to be made, all billings and State reports, shall maintain the books and records and make (or cause to be made) necessary meter readings. The Co-op Manager shall perform all the other duties necessary to conduct the business of the Co-op. The Co-op may require that the Co-op Manager be bonded for a sum deemed prudent. The Co-op Manager may also be compensated in a manner approved by the membership.
13. **EASEMENTS:** Each member hereby grants the Co-op an easement upon and over his or her property for power and water lines, pump stations, storage tanks and the general distribution system necessary to serve the Co-op members. In locating the well(s), storage tank(s), pump house and distribution lines, the Co-op will try to locate such facilities so that they will not interfere with member's use of his or her property. Care shall be taken so that the needs of the Co-op and the property owner/member can be accommodated to the greatest extent possible. The well to be utilized by the Co-op shall be located on Lot 5, situated approximately 15' north and 10' east of the southwest road easement corner. Easements for well and well

equipment and utilities are also granted as shown on the attached Exhibit B. Each member agrees that he or she will not place their septic tank nearer than fifty feet (100') or drain field nearer than one hundred feet (200') from any well operated by the Co-op.

15. **BANK ACCOUNTS:** The Co-op shall maintain such bank accounts as are necessary for the proper conduct of its business. All funds of the Co-op shall be deposited in a bank selected by the Co-op Manager or approved by the membership.
16. **OPERATING COSTS:** Operating costs are those usual costs incurred for routine maintenance, utility costs, insurance, supplies, water testing, purification, accounting, administrative and other miscellaneous expenses.
17. **MAJOR MAINTENANCE:** Major maintenance are those expenses and costs associated with the replacement of or major repair of any equipment or property of the Co-op. They also include alterations or improvements which might be made to the system. If it becomes necessary to incur such an expense and if such maintenance or repair are not urgent, the Co-op Manager will send a letter to all members advising them of the necessity and expense to be incurred, and give them five (5) days in which to respond. If no response is received within such time, the Co-op Manager will take the action he or she recommends in the letter. If such maintenance or repairs are urgent, the Co-op Manager shall incur such costs and then notify the members that he or she has incurred such expenses.
18. **LIMITATION ON WATER PUMPED: WATER USE PER LOT PER YEAR IS STRICTLY LIMITED TO 122,194 GALLONS:** It is understood that the Co-op is utilizing a well for which the State Engineer's Office has given a domestic well permit. This permit allows and limits the amount of water pumped to three (3) acre feet per year or 977,554 gallons per year. Each lot shall therefore be entitled to three eighths (3/8) acre feet per year per lot or 122,194 gallons per year. Any member(s) whose lot exceeds this allocation may be subject to restricted consumption to bring the annual usage in line with the entitled amount and the Co-op Manager may also impose a penalty of up to \$1,000.00. Members should keep in mind that this is a desert environment. Swimming pools should be initially filled from sources other than the water system, i.e. water hauling. Outdoor use shall not exceed the irrigation of 1/8 acre of non-commercial trees, lawn, and garden.

Each member shall be limited to a maximum of 160 gallons per day per person plus 132 gallons per day for outdoor landscaping. Any member exceeding this allocation may be subject to restricted consumption to bring the annual usage in line with the entitled amount and the membership may also impose a surcharge not to exceed triple the amount of the current quarterly charges.

The more restrictive of the above shall apply.

19. **WATER CONSERVATION MEASURES:** The only land use permissible is residential use. Agricultural uses are not permitted. Commercial use is not permitted except home occupations of the lot owner if conducted in the home or studio and in compliance with rules and regulations of any state or local government having jurisdiction over the subdivision.

The members of the association shall follow water conservation standards required by Appendix A to Land Subdivision Regulations of Sandoval County, and section 6 of the Water Conservation and Quantification of Water Demands in Subdivisions: a guidance manual for public officials and developers, Brian C. Wilson, P.E., New Mexico State Engineer Office, Technical Report 48, February 1996. Those standards include but not limited to requirements for use of low water plumbing fixtures and appliances and limitations on landscaping.

20. **MONITORING WATER USE:** To monitor water consumption each shared well will be metered and a meter will be placed on each lot. The water co-op shall monitor each user for compliance with restrictions on consumption. The water co-op shall assess a penalty for households which exceed the combined indoor and outdoor domestic use. The penalty shall be based on a sliding scale with the penalty becoming more severe the more water is used. Funds collected as penalties shall be used to implement an education program aimed specifically at the user offenders and in aiding offenders in achieving compliance.

21. **FEES:** Each member not yet using water from the system, excluding the Developers, shall pay the Co-op \$30.00 (Stand-by Fee) quarterly. Each member using water from the system shall pay the Co-op a fee (User Fee) quarterly based on the following rates:

UP TO 30,000 GALLONS	\$90.00/QUARTER USER FEE
30,001-40,000 GALLONS	\$120.00/QUARTER USER FEE
40,001-50,000 GALLONS	\$150.00/QUARTER USER FEE
50,001-60,000 GALLONS	\$180.00/QUARTER USER FEE
60,001-70,000 GALLONS	\$280.00/QUARTER USER FEE
70,001-80,000 GALLONS	\$400.00/QUARTER USER FEE
80,001-90,000 GALLONS	\$540.00/QUARTER USER FEE
90,001-100,000 GALLONS	\$700.00/QUARTER USER FEE
Over 100,001 GALLONS	\$1000.00/QUARTER USER FEE

22. **METER READINGS/RESERVE FUND:** Water meters shall be read on or about the following dates: January 1st, April 1st, July 1st and October 1st. Initially, the fees will be established so that they will pay for operating costs and will build up a reserve fund of \$20,000.00. The fees will be applied first to normal Operating and Maintenance Costs and the balance to the reserve fund. When the reserve fund reaches the sum of \$20,000.00, the User Fees may be adjusted to meet only those expenses of operating the system. All Fees will be billed on a quarterly basis and shall be due within thirty (30) days of the date of billing. A reserve fund of not less than \$20,000.00 shall be

maintained, or as determined by a majority vote of the membership.

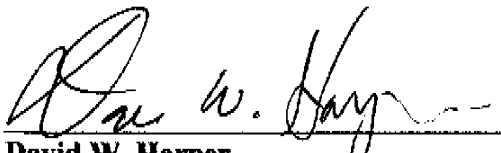
23. **EMERGENCY ASSESSMENTS:** In addition to the fees authorized above, the Co-op may levy emergency assessments to pay the cost of any construction, reconstruction, repair or replacement of the system or for such other purposes as the owners may request. Provided that any such assessment shall have the affirmative vote of a majority of all the eligible votes cast in person or by proxy, at a meeting duly called for this purpose.
24. **DELINQUENCIES:** If any statement is not paid within thirty (30) days of billing, it shall be delinquent, and the Co-op Manager shall then send the member a notice of delinquency. All delinquent bills shall accrue interest from the due date at a rate of 18% per annum. If the amount due is not paid within thirty (30) days thereafter, the Co-op Manager shall have the option to turn off the water supply of the delinquent user. Under such circumstances any reinstatement of service shall include a minimum service fee of \$100.00. All fees or charges to any member shall, if not paid, become lien upon the land and subordinate only to the lien of any mortgage of the property.
25. **PERSONAL OBLIGATION:** All fees, together with interest, costs, and reasonable attorney's fees, shall be charged to the land and shall be a continuing lien upon the property against which each fee is levied. All fees, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title, unless expressly assumed by them.
26. **ACCOUNTING:** The Co-op Manager shall prepare or cause to be prepared an annual report and financial statement of the Co-op which shall be mailed or delivered to each member.
27. **AMENDMENTS:** This Co-operative Agreement may be amended by recording a notarized document signed by all of the members of the Co-op.
28. **WITHDRAWAL:** Any member may voluntarily withdraw from the force and effect of this agreement (except for any existing easements) by relinquishing all right title and interest to water allocation and property of Co-op. A signed and notarized letter to this effect shall be delivered to the Co-op Manager.
29. **INGRESS & EGRESS:** The Co-op shall have the right of ingress and egress upon any property to repair and maintain the Co-op system. The Co-op shall exercise care in so doing and return the property to as near the same condition as practicable.
30. **TAX STATUS:** The Co-op has been organized to operate the water system and shall be considered only as the collective body of the members and not as a separate legal entity. Payments to the Co-op will not be considered as payments for services rendered but will

be considered only as pro rata payments for the costs of operating and maintaining the system.


- 31. **LIMITATION OF WARRANTIES:** The Developers warrant the system against any equipment or line failure for a period of one year from the date of this Agreement. This excludes damage that may result from improper operation or external forces such as damage caused by others or acts of God. The Developers do not guarantee water quantity or quality.
- 32. **SEVERABILITY** If any provision or provisions of this Agreement are determined to be invalid by any judgment, order or finding of any court or other governmental agency having competent jurisdiction over the Association, then such determination will in no way affect the validity of any other provisions of this Agreement which will remain in full force and effect.
- 33. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties and shall be binding upon the parties hereto, their heirs, successors and assigns.

This agreement shall run with the land and shall be binding upon all parties and future owners, successors, assigns and heirs of the properties.

IN WITNESS WHEREOF, the parties have hereunto executed this agreement.



 David W. Harper
 High Mesa General Partner




 Jon S. McCallister
 High Mesa General Partner

State of New Mexico }
 }
 County of Sandoval } ss.

The foregoing instrument was acknowledged before me this 31st day of January, 2005, by David W. Harper and Jon S McCallister.

My commission expires: 8-11-07



 Notary Public

EXHIBIT A

LOTS 1, 2, 3, 4, 5, 6, 7 AND 8 OF MUSTANG MESA, as the same are shown and designated on the plat entitled "CLAIM OF EXEMPTION, LOT LINE ADJUSTMENT PLAT, LOTS 1 THRU 14 & TRACT A, MUSTANG MESA, Section 19, T.13N., R.5e., N.M.P.M., SANDOVAL COUNTY, NEW MEXICO, AUGUST 2004", filed in the office of the County Clerk of Sandoval County, New Mexico on December 22, 2004, in Volume 3, folio 2486-A.

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EXHIBIT B

LOT 4

1.0120 AC GROSS
0.9000 AC. NET

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1.02
1.00

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9
GROSS
NET

198.13'
WEST

8
AC. GROSS
AC. NET

40' ACCESS &
UTILITY EASEMENT
(granted by this plot)

LOT 5
1.1655 AC. GROSS
0.9000 AC. NET

PALOMINO RD.

Well Site & Utility
Easement

PONY CT.

55°12'22" E
245.41'

WELL
LOCATION

LOT 7
72 AC. GROSS
130 AC. NET

40' ACCESS &
UTILITY EASEMENT
(granted by this plot)

LOT 6

234.41
N 09°20'2"