

Rio Rancho 19233 mgl

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#9 HOMESTEADS ROAD WATER COOPERATIVE AGREEMENT

RG-72457

THIS AGREEMENT is made this 24th day of August, 2000, by and between the undersigned Developers and Owners of the real property described in Exhibit "A" attached hereto, to establish a cooperative entry and the rules and regulations for the operation of a well and water system to be 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 #9 Homesteads Road Water Co-op.
2. MEMBERSHIP/ONE VOTE PER LOT: The owner(s) of the lots described in Exhibit A (east half of Lot 4-C and west half of Lot 4-C) shall be members of the Co-op. The owner(s)/member(s) shall be entitled to one vote for each lot owned.
3. DEVELOPER: The undersigned developers have constructed the water facilities and initially completed the system so that it operates to make water available to each member's property.
4. PURPOSE: The purpose of the Co-op is to provide water to the property described in Exhibit "A" attached hereto.
5. SYSTEM: The system shall include all wells, equipment, tanks, distribution lines, meters, valves, easements, 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 of its 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, and 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 give 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 will hold an Annual Meeting of the members which will be called by the Co-op Manager. 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

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upcoming year, and 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, and the meeting will be held in Sandoval County, 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-operative, 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. The Co-op Manager may be removed by a vote of a majority of the members at any Special meeting of the Co-op.

12. DUTIES OF THE CO-OP MANAGER: The Co-op Manager shall carry on the normal business of the Co-op and shall be authorized to enter into contracts on behalf of the Co-op and only for the purpose of maintaining or replacing parts of the water system. He or she shall cause all billings, maintain the books and records, make necessary meter readings and 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 shall grant 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, pump house and distribution lines, the Co-op will try to locate such facilities so that they will not interfere with the 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. Each member agrees that he or she will not place their septic tank or drain field nearer than one hundred feet (100') from any well operated by the Co-op.

14. 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.

15. 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.

16. 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 alteration 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 giving 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.

17. **FEES:** Each member using water from the system, excluding the Developer, shall pay the Co-op a \$90.00 fee (User Fee) quarterly. Each member not yet using water from the system, excluding the Developer, shall pay the Co-op a \$30.00 fee (Stand-by Fee) quarterly. Initially, the fees will be established so that it will pay for operating costs and will build up a reserve fund of \$5,000. 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 \$5,000, the User Fee shall be adjusted to meet only those expenses of operating the system and shall be divided among the users. The Stand-by Fee shall remain \$30.00 per quarter. 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 \$5,000, shall then be maintained or as determined by a majority vote of the membership.

18. **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 such 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 a lien upon his land and subordinate only to the lien of any mortgage of the property.

19. **LIMITATION ON WATER PUMPED:** 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 member(s) is entitled to 488,777 gallons per lot 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 membership may also impose a surcharge not to exceed triple the amount of the current quarterly charges.

20. **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 to each member.

21. **AMENDMENTS:** This Co-operative Agreement may be amended by unanimous vote of the Co-op at any regular or special meeting.

22. **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 the Co-op. A signed letter to this effect shall be delivered the Co-op manager.

23. **INGRESS & EGRESS:** The Co-op shall have the right of ingress and egress upon any member's 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.

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24. 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 maintenance of the system.

25. LIMITATION OF WARRANTIES: The Developer warrants 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.

26. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the parties and shall be binding upon the parties hereto, their heirs, successors and assigns.

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

Phillip Baxter
Phillip Baxter, Developer
Owner of West 1/2 of Lot 4-C

Robert Healey
Robert Healey, Developer
Owner of West 1/2 of Lot 4-C

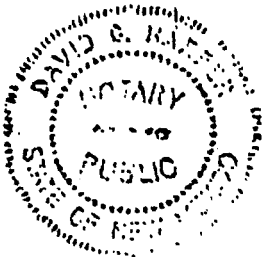
Sara R. Swindell, by Philip T. Perkins, her attorney-in-fact
Sara R. Swindell, by Philip T. Perkins, her Attorney-in-Fact
Owner of East 1/2 of Lot 4-C

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

The foregoing instrument was acknowledged before me this 24th day of August, 2000, by Sara R. Swindell/Phillip Baxter and Robert Healey, by Philip T. Perkins, her Attorney-in-Fact

My commission expires: Aug. 27, 2001

[Signature]
Notary Public



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