

**WATER ASSOCIATION AGREEMENT
FOR
LOTS 18A through D
LA MESA ROJA SUBDIVISION**

THIS AGREEMENT is made this _____ day of _____ by and between the undersigned Developers and Owners of the real property described in Exhibit "A" attached hereto, to establish a Water Association 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 Association will own and operate the well and water system and conduct business shall be the La Mesa Roja Water Association

1. MEMBERSHIP

The Association will consist of the property attached as Exhibit "A". Members shall be presumed to have accepted the terms and conditions of this Agreement unless they notify the Association Manager in writing of their intent to withdraw from the Association.

1. DEVELOPER

The undersigned developers will have the responsibility and authority to design and construct the water facilities, enter into contracts on behalf of the Association, and do all things necessary to initially complete the system so that it operates to make water available to each member's property.

1. PURPOSE

The purpose of the Association is to provide water to the property described in Exhibit "A" attached hereto.

1. SYSTEM

The system shall include all wells, equipment, tanks, distribution lines, meters, valves, easements, materials, supplies and property which is owned by the Association. Said system shall end at the location of the water meter on each Lot.

1. CONSTRUCTION

The system will be constructed by the Developer and placed in operation. Thereafter, the system will be owned, operated, maintained and utilized by the Association.

1. DURATION

The Association will continue as long as its facilities are used to supply water to its members unless it is terminated with the consent of all its members.

1. **TRANSFER OF OWNERSHIP**

Sale or transfer of the possessory interest in any parcel of the property described in Exhibit "A" hereto 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 described in Exhibit "A". Transfer of an interest in the Association will not be liable for such obligations unless otherwise provided in this Agreement. The Association, 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.

1. **ANNUAL MEETING**

The Association will hold an Annual Meeting of the members which will be called by the Association Manager. At this meeting; a report will be given regarding the financial matter of the Association, 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, and the Association Manager will be elected for the coming year. Notice will be mailed or delivered to all members at least one week prior to the holding of the Annual Meeting, and the meeting will be held in Sandoval County, New Mexico.

1. **SPECIAL MEETINGS**

Special Meetings of the membership of the Association may be held at any time upon the call of the Association Manager or any two of the members of the Association. Notice and purpose of such Special Meeting shall be given at least three business days prior to such meeting.

1. **ASSOCIATION MANAGER**

The Association Manager will be a member of the Association, and will be elected at the Annual Meeting or any Special Meeting called for the purpose of electing the Association Manager. The Association Manager will be elected by a majority vote of the members attending a meeting where the Association Manager is to be elected, and each member will be entitled to one vote for each membership that he, she or they own. Members may vote by valid proxy. The Association Manager may be removed by a vote of a majority of the member at any Special meeting of the Association.

1. **DUTIES OF THE ASSOCIATION MANAGER**

The Association Manager shall carry on the normal business of the Association and shall be authorized to enter into contracts on behalf of the Association 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 Association. The Association may require that the Association Manager be bonded for a sum deemed prudent. The Association Manager may also be compensated in a manner approved by the membership.

1. **EASEMENTS**

Each member shall grant the Association 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 Association members. In locating the well, pump house 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 Association 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 within one hundred (100) feet of any well operated by the Association.

1. **BANK ACCOUNTS**

The Association shall maintain such bank accounts as are necessary for the proper conduct of its business. All funds of the Association shall be deposited in a bank selected by the Association Manager or approved by the membership.

1. **OPERATING COSTS**

Operating costs are those usual normal costs incurred for routine maintenance, utility costs, insurance, supplies, water testing, purification, accounting, administrative and other miscellaneous expenses.

1. **MAJOR MAINTENANCE**

Major Maintenance are those expenses and costs associated with the replacement of or major repair or any equipment or property of the Association. 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 repairs are not urgent, the Association Manager will send a letter to all members advising them of the necessity and expense to be incurred, and giving them five (5) business days in which to respond. If no response is received within such time, the Association manager will take the action he or see recommends in the letter. If such maintenance or repairs are urgent, the Association Manager shall incur such costs and then notify the members that he or she has incurred such expenses.

1. **FEES**

Each member using water from the system, excluding the Developer, shall pay the Association a \$90.00 fee (User fee) quarterly. Each member not yet using water from the system, excluding the Developer, shall pay the Association a \$30.00 (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 \$10,000. 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 410,000, 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 \$10,000 shall then be maintained or as determined by a majority vote of the membership.

1. **DELINQUENCIES**

If any statement is not paid within thirty (30) days of billing, it shall be delinquent, and the Association 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 with thirty (30) days thereafter, the Association 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. Any filing or legal fees associated with such lien shall be the responsibility of the delinquent member.

1. **LIMITATION ON WATER PUMPED**

It is understood that the Association 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 of 977,544 gallons per year. Each member shall therefore be entitled to six tenths (6/10) acre feet per year or 195,510 gallons per year.

AND

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.

20. **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 requirements for use of low water plumbing fixtures and appliances and limitations on landscaping.

21. **MONITORING WATER USE**

To monitor water consumption, each shared well will be metered and a meter will be placed

on each lot. The Water Association shall monitor each user for compliance with restrictions on consumption. The Water Association 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 offender in achieving compliance.

21. **ACCOUNTING**

The Association Manager shall prepare or cause to be prepared an annual report and financial statement of the Association which shall be mailed to each member.

21. **AMENDMENTS**

This Association Agreement may be amended by a majority of the Association at any regular or special meeting. However, paragraph 2 and paragraph 19 shall not be amended.

21. **WITHDRAWAL**

Any member may voluntarily withdraw from the force and effect of this Agreement, except for any existing easements, by relinquishing all title rights and interest to water allocation and property of the Association. A signed letter to this effect shall be delivered to the Association Manager.

21. **INGRESS & EGRESS**

The Association shall have the right of ingress and egress upon any member's property to repair and maintain the Association system. The Association shall exercise care in so doing as to return the property to as near the same condition as practicable.

21. **TAX STATUS**

The Association 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 Association 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.

21. **LIMITATION OF WARRANTIES**

The Developer warrants the system against any equipment or line failure for a period of one (1) 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.

21. **SEVERABILITY**

If any provision or provisions of the 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.

21. **ENTIRE AGREEMENT**

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