

22 JAN 1993

new

AMENDMENT OF AUGUST 19, 1991, AGREEMENT BETWEEN
SANTA FE COUNTY AND LAS CAMPANAS LIMITED PARTNERSHIP

Background to the Agreement

On August 19, 1991, the Santa Fe County Board of County Commissioners ratified the approval by the County Development and Review Committee ("CDRC") of June 27, 1991. The 23 conditions of approval imposed by the CDRC required that Las Campanas form a publicly regulated water utility to serve that portion of the Project not served by Sangre de Cristo Water Company. The 23 conditions were a comprehensive plan of approval for the east golf course; the conditions also specified water supply requirements for the 3,548-acre tract of the Las Campanas development (the "Project"). The final conditions were contained in a letter from Gilbert Chavez to Michael Baird dated September 10, 1991. The "Las Campanas Acreage," for purposes of this Agreement, includes Estates I, Estates II, and the 3,548 acres covered by the Master Plan.

To meet the public utility condition, Las Campanas proposed to form Northwest Water Company, and an Application for a Certificate of Public Convenience and Necessity was submitted to the Public Service Commission ("PSC") on behalf of Northwest.

Northwest's Application is being opposed by the PSC staff, which has caused numerous delays and unexpected difficulties in the proceedings before the PSC.

Elements of the Agreement
Allowing the Water Co-op Alternative

1. The parties hereby agree that:

The conditions of approval for the Agreement between the County of Santa Fe and Las Campanas Limited Partnership ("Las Campanas"), successor in interest to Dutch

Meadows Limited Partnership, of August 19, 1991, concerning water requirements for the Project be amended as follows:

In lieu of the condition in ¶16(a) of a letter from Gilbert Chavez to Michael Baird dated September 10, 1991, that a publicly regulated water utility be formed, Las Campanas shall form a water cooperative association under New Mexico law to serve the lots within the Project.

2. Las Campanas agrees that the Water Cooperative Association (the "Water Co-op" or the "Co-op") will be structured to be economically viable to enable it to provide water to its proposed service area, and it will provide the same quality of service as a publicly regulated utility.

3. Las Campanas agrees that the Water Co-op will be structured to be bound by the County requirements and Metropolitan Water Board recommendations with regard to water supply and conservation, as contained in the letter from Gilbert Chavez to Michael Baird dated September 10, 1991, and the Report to the Santa Fe Metropolitan Water Board dated November 22, 1991. Further, the formation of a water co-op will in no way release Las Campanas from its duty to comply with all County-imposed conditions of approval.

4. Las Campanas agrees that if within 20 years of the date of execution of the Contingent Water System Transfer Agreement or at full build-out of the Las Campanas project water system infrastructure, whichever is later, the County forms a water utility which has the capability of serving the Project, then the Water Co-op will transfer all right, title, and interest to the Co-op's "Water System" (defined below) and "Co-op's Water Rights"

(defined below) to the County for \$1.00 and other good and valuable consideration. The Co-op's Water System is the backbone system and the distribution system, as defined in the Agreement to Construct and Transfer Water Improvements between Las Campanas and the Water Co-op. The Co-op agrees that this provision will inure to its successors and assigns. The Co-op agrees to hold all right, title, and interest in the Water System until this Agreement expires, or until the Water System is acquired by the County. The Co-op also will transfer to the County the Co-op's Water Rights, which are all water rights that the Co-op owns, and the rights so transferred will be irrevocably committed to serve this Project, irrespective of ownership, provided that any surplus permanent water rights could be made available to Santa Fe County for other uses as permitted by New Mexico law, contracts relating to the water rights and permits, and principles of beneficial use.

5. Las Campanas will continue to acquire permanent water rights for the benefit of the Project to meet future demand within the Project at the time of platting or by June 27, 2002, as required by the letter from Gilbert Chavez to Michael Baird dated September 10, 1991. The water rights so acquired for this Project will be irrevocably committed to serve this Project, irrespective of ownership. Prior to the County's exercise of its option to acquire the Co-op, Co-op shall lease back to Las Campanas on an annual basis any surplus water rights that Co-op does not require under State Engineer requirements for pumping the Buckman Wetland for the following year, which rights Las Campanas may lease to other users consistent with New Mexico law. The County shall be granted a right of first refusal for any leases that Las Campanas offers to a third party. Any leases made by the Co-op shall be for one-year terms only, with no automatic renewal option. If the

County exercises its option to acquire the Co-op, it will not abrogate any lease then in effect, and the lease will be allowed to expire according to its terms.

6. Las Campanas and the County agree and covenant to take no action, nor to refrain from taking necessary action, which would violate the lease of Buckman Facilities or the Management Agreement for Leased Buckman Facilities from Sangre de Cristo Water Company ("Buckman Lease").

7. Las Campanas agrees that it will defend at any time any challenge to the Buckman Lease as needed to obtain a final, unappealable decision from a Court of competent jurisdiction that the Buckman Lease is valid. If the Buckman Lease is ultimately found to be invalid in a final, unappealable decision, then Las Campanas will provide an alternative to replace the service provided under the Buckman Lease, which service is required under the Water Supply Agreement between Las Campanas and the Co-op. The alternatives include seeking approval of the Buckman Lease from the Public Service Commission and/or renegotiating the Buckman Lease. If the County has acquired the assets of the Co-op at the time the Buckman Lease is found to be invalid, then Las Campanas will still be obliged to provide an alternative to the services provided under the Water Supply Agreement. Las Campanas agrees to warrant its performance under the following terms of the Buckman Lease: Rental Payments (¶6 of the Buckman Lease), Pro Rata Maintenance Payments (¶11), Sharing Shortages and Emergency Hook-Up (¶12), Points of Diversion (¶16), Assignments and Liquidation (¶18), and Default (¶22).

8. Las Campanas agrees that on the County's approval of the water cooperative amendment set out in Paragraph 1 of this Agreement, Las Campanas will file a motion to

withdraw its application for a certificate of convenience and necessity for Northwest Water Company.

9. Las Campanas agrees to provide the County with an opinion letter from counsel confirming that the Co-op members are bound by the Contingent Water System Transfer Agreement between the Co-op and the County.

10. Las Campanas' plans for initial capitalization and operation of the Water Co-op have been provided to the County and have been independently reviewed and approved, and Las Campanas has agreed to reimburse the County for any reasonable costs incurred in this review.

11. The County agrees that if the County exercises its option to acquire the assets of the Co-op, then the County shall assume the rights, duties and responsibilities of the Co-op in the Water Supply Agreement and the Agreement to Construct and Transfer, and in particular the County shall assume the duties to pay Las Campanas for the bulk water supply to satisfy paragraph 6 of the Buckman Lease, to provide water to former Co-op members, and to inspect and accept Improvements.

12. Upon the County Commission's approval of (1) the Amended Master Plan, (2) the water cooperative amendment set out in Paragraph 1 of this Agreement, and (3) the final plat of Estates III at its January 21, 1993, meeting, Las Campanas agrees to contribute the sum of two million dollars (\$2,000,000.00) for the County's incipient affordable housing program (hereafter the "Affordable Housing Contribution"). The parties agree that this amount shall be paid into escrow subject to the Escrow Letter attached as Exhibit "A." This amount shall be contributed on the following payment schedule:

* \$500,000.00 payable prior to recording the final plat for Estates III, but in no event later than the end of January 1993;

* \$500,000.00 payable by the end of December 1993;

* \$333,000.00 payable by the end of December 1994;

* \$333,000.00 payable by the end of December 1995; and

* \$334,000.00 payable by the end of December 1996.

The County agrees that the Affordable Housing Contribution satisfies Las Campanas' contribution requirements for that program for the Las Campanas Acreage. No further affordable housing contributions shall be required of Las Campanas for the Las Campanas Acreage under any circumstances including, but not limited to, future passage of an affordable housing ordinance or subsequent requests for amendment of the Master Plan .

The County agrees that, other than the Affordable Housing Contribution and the other contributions referenced in the Master Development Plan Agreement, the County shall not require additional payments of any kind from Las Campanas for the Las Campanas Acreage unless required by a County ordinance or Code amendment.

13. The County agrees that:

a) Las Campanas is in conformance with the water agreement previously entered into between the County and Las Campanas, which became part of the Master Plan, regarding the acquisition of water rights and in all other respects as of January 21, 1993, subject to the requirements as to the acquisition of additional water rights beyond those attributable to Estates III.

b) Las Campanas has presently conformed to all conditions of the Master Plan except the boundary surveys and other items specifically required to be delivered under the terms of the existing Master Plan in connection with phases of development beyond Estates III.

c) The Co-op is authorized to serve all of the 3,548-acre tract covered by the Master Plan.

14. The County agrees that all subsequent applications that conform with the Master Plan, including future residential plats, amenities, commercial buildings and the wastewater treatment system, will not be required to meet conditions other than those set forth in the Santa Fe County Land Development Code ("Code") and Extraterritorial Zoning Regulations ("Regulations") in effect at that time and will be subject only to normal compliance review under the Code and Regulations.

15. The County agrees that the \$2,000,000.00 Affordable Housing Contribution will be earmarked for that use only and that Las Campanas management will be offered the opportunity to participate in any task force or committee regarding the affordable housing program. The County further agrees that it shall provide to Las Campanas an accounting of the affordable housing funds at least yearly.

16. Las Campanas volunteers to provide some of its management expertise to assist the County in the research and development of an affordable housing program, at no cost to the County.

17. Las Campanas agrees to defend any bona fide challenge by a third party to the existence of the Co-op as a cooperative association pursuant to NMSA 1978 53-4-1, et

seq. In the event of a challenge to the existence of the Co-op, the County agrees that it will not use such challenge as a basis for denial of subsequent phases of the Project unless and until there is a judicial determination that the Co-op was not properly formed and is not in existence.

DATE: January 22, 1993

COUNTY OF SANTA FE, NEW MEXICO,
a political subdivision of the State of New Mexico

BY SANTA FE COUNTY BOARD OF COMMISSIONERS

By: Raymond Chavez
RAYMOND CHAVEZ, Chairperson

Attest:

Jona Armijo
Jona Armijo, County Clerk

Terrance Brennen
Terrance Brennen
County Attorney

LAS CAMPANAS LIMITED PARTNERSHIP,
a Delaware limited partnership

By: LAS CAMPANAS CORPORATION,
a New Mexico corporation
General Partner

By: John Nye
JOHN NYE,
Vice President of Operations

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