

218/44

WATER COOPERATIVE AGREEMENT
CEDAR CREEK WATER USERS CO-OP

WELL NUMBER A-1

THIS AGREEMENT is made this 28th day of April, 1988, by and between the Developer and the owners of the real property described in Exhibit "A" attached hereto, to establish a co-operative entity and the rules and regulations for the operation of a well and water system to be located on the property described as the "Site" in the aforementioned Exhibit "A" attached hereto.

1. Name. The name under which this Co-operative will own and operate the well and water system and conduct business shall be Cedar Creek WATER USERS CO-OP.

2. Membership. Persons now owning or hereafter acquiring a possessory interest in any parcel of the property described in Exhibit "A", shall be entitled to membership in the Co-op, and shall be presumed to have accepted the terms and conditions of this Agreement unless they notify the Co-op Manager in writing of their intent to withdraw from the Co-op.

3. Developer. Any member or other person may act as the Developer. The Developer will have the responsibility and authority to design and construct the water facilities, enter into contracts on behalf of the Co-op, establish the Co-op, and do all things necessary to complete the system so that it operates to make water available to each member's property. For his or her services as the Developer, the Developer may be compensated through the sales of memberships in the Co-op or on such basis as may be approved by the membership.

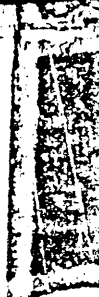
4. Purpose. The purpose of the Cedar Creek Water Users Co-op is to provide water to the property described in Exhibit "A" attached hereto.

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.

6. 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 Co-op.

7. Duration. The Co-op will continue as long as its

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facilities are used to supply water to its members unless it is terminated with the consent of all of its members.

8. **Sale of Memberships.** The Developer will design and construct the water and distribution system, drill the well, initially acquire any additional water rights necessary to meet all governmental annual allocations and establish the Co-op as an operating entity. The Developer may sell memberships and interests in the Coop on such terms and conditions as it may from time to time determine. Upon the sale of such membership, the new member will either execute this Agreement, or a Certificate that he/she has read this Agreement and has agreed to abide by and be bound by its terms and conditions, and will subject the parcel of property which they own or are purchasing to the easements and restrictions created in this Agreement. Upon the sale by the Developer of all memberships in the Co-op, or before, in the discretion of the Developer, this Developer will turn over the administration and operation of the Co-op and water system to the Co-op. Each membership is subject to a \$700.00 meter installation fee, prior to use of the water system, in addition to all periodic fees and other expenses.

9. **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 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 transferring the interest in the Co-op; provided, however, that the Co-op does not have to give the new member service until all fees, charges and assessments incurred for serving the property transferred are brought current.

10. **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: (1) a report will be given regarding the financial matters of the Co-op; (2) a report on the status of all equipment will be made; (3) a discussion of operations and maintenance will be conducted; (4) a decision will be made regarding the water rates and assessments to be charged to each member during the upcoming year; and (5) the Co-op Manager will be elected for the coming year. Notice will be mailed or delivered to all members at least one (1) week prior to the holding of the Annual Meeting, and the meeting will be held in Bernalillo County or Sandoval County, New Mexico.

11. **Special Meetings.** Special Meetings of the membership of the Co-op may be held at any time in Bernalillo or Sandoval County, New Mexico, upon the call of the Co-op Manager or any

All photographs taken of documents in this file are for the purpose of making a permanent record of the same. These photographs are not to be used for any other purpose without the written consent of the undersigned. This is a permanent record of the original document.

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two (2) of the members of the Co-op. Notice and purpose of such Special Meetings shall be given at least three (3) days prior to such Special Meetings.

12. Co-op Manager. The Co-op Manager will be a members 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 (1) vote for each membership which he/she/they own. The Co-op Manager may be removed by a vote of a majority of the members at any Special or Annual Meeting of the Co-op.

13. Duties of the Co-op Manager. The Co-op Manager shall carry on the normal business of the Co-op but shall not be authorized to enter into contracts on behalf of the Co-op. He or she shall: (1) cause all billings and assessments to be sent out; (2) maintain the books and records of the Co-op; (3) make necessary meter readings; and (4) perform all other duties necessary to conduct the business of the Co-op. The Co-op may require that the Co-op Manager be bonded for at least \$2,000.00 and may be compensated in a manner approved by the membership.

14. Easements. Each member shall grant the Co-op an easement upon his or her property for: (1) any power lines necessary to serve the well and the pump station; (2) a pump station and storage tank; and/or (3) a water distribution system. Each member agrees that he or she will not place their septic tank or drain field nearer than two hundred feet (200') of the well.

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 in locating the well, and the members owning property within two hundred feet (200') of the well will be consulted so that the needs of the Co-op and the property owner can be accommodated to the greatest extent possible.

15. Bank Accounts. The Co-op shall maintain such bank accounts as are necessary for the proper conduct of its business. The funds of the Co-op shall be deposited in a bank selected by the Co-op Manager or approved by the membership, and the Co-op shall build up to a minimum of \$1,000 to be utilized for any major repairs or replacement of equipment.

16. 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 day-to-day type expenses.

Notarization on file at this office. Notarization of an individual document file.

Paula P. Miller
5-2-78
P.P.

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 alteration or improvements which might be made to the system.

If it becomes necessary to incur any major maintenance, and if such maintenance or repairs 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 expense.

18. Initial Costs. Initial costs are any costs or expenses associated with designing, drilling, constructing, installing, initially acquiring additional water rights necessary to meet any governmental annual usage requirements for number of users on each well system, and creating the water system, including, but not limited to, the wells, pumping facilities, pumps, controls, tanks, purification devise, distribution lines, and all other parts of the system, including the administrative, legal and accounting services necessary to establish the Co-op.

19. Periodic Fees. Each member shall pay the Co-op a quarterly fee. Initially, this fee will be established so that it will pay for all operating costs and will build up a reserve of \$2,000.00 for major maintenance and repair expenses over a three-year period. This periodic fee will be divided into three portions: (1) a portion to cover major maintenance and repair costs to be initially allocated at the rate of \$30.00 per quarter until a reserve of \$2,000.00 has been established, unless otherwise approved by a majority of the members; (2) an administrative charge of \$20.00 per quarter for each member; and (3) an additional use charge of \$30.00 per quarter for each member using water from the system for the first year of such use. Provided, however, that after the first year all expenses of operating the system will be divided among the members using water in proportion to the rate at which the members used water during the previous year. Developer is and will be exempt from these fees.

Members using water will pay all three parts of the periodic fees, but members not using water will pay only the maintenance and administrative portions of the periodic fees.

20. Payment of Periodic Fees. All periodic fees will be paid on a quarterly basis as determined by the membership, and they shall be due within thirty (30) days of the date that the bills are sent out.

22. Delinquencies. If any statement is not paid within thirty (30) days from the date that it has been mailed to a

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member, it shall be delinquent, and the Co-op Manager shall then send such member a notice of delinquency, and if said statement is not paid within twenty (20) days thereafter, the Co-op Manager shall cause the member's water to be turned off, and charge said member a minimum fee of \$100.00 for reinstatement of service. If any member uses water after his water has been turned off, the hookup line will be removed, and said member will forfeit all rights of membership and all right, title and interest in himself, his successors and assigns in the Co-op and its property. The fees or charges charged to any member shall, if not paid, become a lien upon his land subordinate only to the lien of the Developers who sold the member or his predecessor in interest the property or to the lien of any first mortgagee of the property.

In the event that a member is not using water and he fails to pay the periodic fee or assessment due within twenty (20) days after being mailed the notice of delinquency, he shall forfeit all rights of membership and all right, title and interest in the Co-op or any of its property. No water will be supplied to any person or lot until all charges, costs, delinquencies and accrued fees for the parcel being transferred have been paid, including any costs and attorney's fees associated with such matter.

23. 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 from the well to three acre feet. In the event that the water pumped exceeds three acre feet, a new well will have to be drilled and connected to the system and/or, initially, the Developer may purchase or cause to be transferred additional rights to satisfy the necessary demand.

24. Limitations on Water Use and Prohibition of Waste. No member may use more than 97,700 gallons of water in any year without the consent of a majority of the other members of the Co-op. An increase in the maximum usage may occur by the purchase or transfer of additional water rights. Developer will notify each member if any such increase shall occur. If it is determined that a member has used more water than he or she is entitled to, the other members will determine if that member's water supply should be terminated or restricted for the balance of the year. The other members may also impose a surcharge not to exceed triple the amount now charged. No member may use water for irrigation unless it is on an automatically timed irrigation system, and no member may irrigate more than twenty (20) bushes, trees and shrubs and 1200 square feet of lawn.

25. Accounting. The Co-op Manager shall prepare or caused to be prepared an annual report and financial statement of the Co-op which shall be mailed to each of the members.

Notarization on file at this office. A true and correct copy of the original document filed as a necessary operation in the operation of an Irrigation document file.

Robert P. Miller
COUNTY CLERK
5-2-88
DEPT. OF PUBLIC AFFAIRS

26. Limitation of Warrantees. The system has been designed, installed and constructed with the best information available. The Developer will not be liable for any loss or damage as a result of improper design or operation, nor for any interruption of service. The Developer has exercised his best judgment to design and install a system adequate for the purposes intended; however, he does not warrant the adequacy or operation of the system.

27. Amendment. This Co-operative Agreement may be amended by a majority of the members of the Co-op at any regular or special meeting of the Co-op.

28. Withdrawal. Any member may voluntarily withdraw from the force and effect of this Agreement by voluntarily relinquishing all right, title or interest in the property of the Co-op, and by voluntarily giving up any rights to having water supplied by the Co-op by a letter in writing.

29. Termination. In the event that the Co-op decides to terminate and no longer pursue its interests, it may sell all of its property and divide the proceeds and equipment among its members upon such terms and conditions as the members of the Co-op shall then determine.

30. Rules. The Co-op may adopt such reasonable rules for its operation, water use and other matters as it may determine necessary to carry out its business.

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

32. 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 prorata payments of the costs and expenses of construction, operation and maintenance of members' water system. The Co-op will not be a separate taxable entity nor will it file any tax returns.

33. Ingress and Egress. The Co-op shall have the right of ingress and egress upon any of the members' property to repair and maintain the Co-op's system. However, the Co-op shall try to restore the members' property to as near the same condition as practicable if it becomes necessary for the Co-op to repair or maintain its system located upon a member's property.

34. Counterparts. This Agreement will be executed by the Developer and recorded in the County Clerk's Office. Thereafter, members will execute counterparts to this Agreement which will make them subject to all of the terms and conditions

All correspondence and papers of documents on this file being use of designated documents in the preparation of this report as noted in the Statement of Documents and Certification on file at this agency. These documents are routinely electronically filed as a necessary condition in the preparation of an LARVALION document file.

Handwritten signature
5-3-08
KARL B. THOMAS

EXHIBIT A

WATER COOPERATIVE AGREEMENT
CEDAR CREEK WATER USERS CO-OP

Lots A-4 through A-16, inclusive, of CEDAR CREEK, a Subdivision in Section 30, Township 13 North, Range 5 East, N.M.P.M., Sandoval County, New Mexico, as filed for record on April 13, 1988, at 4:35 P.M. in Volume #3, folio 715 B in the office of the County Clerk of Sandoval County, New Mexico. The "Site" of Well A-1 is located on Lot A-10 of the above described Subdivision: CEDAR CREEK.

Lots A-1, A-2 and A-3 of CEDAR CREEK may also become members of the CEDAR CREEK WATER USERS CO-OP, Well A-1, upon payment of \$5,000.00 for each membership.

Notarized in the presence of this county, to be used in the preparation of the
said Certificate on file in this office. These documents are hereby
filed as a necessary operation in the execution of an Ordinance of the
County Clerk of Sandoval County, New Mexico.

Robert L. Linn
County Clerk
Sandoval County, New Mexico

of this Agreement the same as if the members had executed their original Agreement.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement the day and year first above written.

APPROVED:

DEVELOPER

By Robert H. Poling
 ROBERT H. POLING, PRESIDENT

Address: CEDAR CREEK, INC.
P.O. BOX 747
PLACITAS, NEW MEXICO 87043

ACKNOWLEDGMENTS

STATE OF NEW MEXICO)
) ss.
 COUNTY OF SANDOVAL)

The foregoing instrument was acknowledged before me this 28th day of April, 1988, by ROBERT H. POLING, President of CEDAR CREEK, INC., as Developer of CEDAR CREEK WATER USERS CO-OP.

Guerrita Delgado
 NOTARY PUBLIC



My commission expires:

July 16, 1991

STATE OF NEW MEXICO)
 COUNTY OF SANDOVAL)
 This instrument was filed for record on

APR 28 1988
 At 4:25 P.M.
 Received in Vol. 115-51
 of records of said county. I
 Nettie Lucero Griego, Clk. & Recorder
 By: _____ Deputy

This instrument is the property of the State of New Mexico. It is loaned to the County of Sandoval for the purpose of recording. It is to be returned to the State of New Mexico upon the expiration of the term of the recording. If the instrument is not returned to the State of New Mexico within the term specified, it shall be deemed to have been abandoned and the State of New Mexico shall have the right to dispose of it as it sees fit.

Robert H. Poling