

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims ("Agreement") is between Suerte del Sur, LLC and Suerte Development, Inc. (collectively, "Suerte"), on one hand, and the Board of County Commissioners ("Board") of Santa Fe County ("County") and County Manager Katherine Miller ("County Manager"), on the other hand. Suerte, the County, and County Manager are collectively referred to in this Agreement as the "Parties."

RECITALS

A. Suerte Del Sur LLC and the County entered into a Water Service Agreement, dated November 29, 2005, which was amended by that First Amendment to Water Service Agreement filed in the property records of the County Clerk as Instrument No. 1508264.

B. The WSA set out the terms and conditions under which the County would provide water service to a 304-lot subdivision described in a final plat that the Board conditionally approved in its January 13, 2009, Order, which Order is filed in the property records of the County Clerk as Instrument No. 1552111.

C. Suerte terminated the WSA on December 9, 2014.

D. A dispute arose between Suerte and the County concerning the outstanding charges, if any, payable by Suerte to the County under paragraph V of the WSA.

E. The County filed a complaint against Suerte alleging breach of the WSA ("Complaint") in New Mexico First Judicial District Case No. 101-CV-2015-01485 ("Case"). Suerte filed an answer denying liability and counterclaimed against the Board, County Commissioners Robert Anaya, Miguel Chavez, Kathy Holian, Henry Roybal, and Liz Stefanics, County Manager Katherine Miller, and County Utilities Director Claudia Borchert, suing each individual in their individual and official capacities. Suerte's counterclaims alleged breach of contract, breach of the covenant of good faith and fair dealing, violation of the 14th Amendment, and frivolous, bad faith, and vexatious litigation; and, in the alternative to its contract counterclaims, Suerte sought rescission of the WSA (collectively, "Counterclaims").

F. Suerte denies any liability to the County under the WSA or otherwise; the County and County Manager deny any liability to Suerte under its counterclaims or otherwise.

G. To avoid prolonged and expensive litigation, and with no Party admitting any liability to any other, Suerte, the County, and County Manager now desire to fully, finally, and amicably resolve, compromise, and settle their respective causes of action arising out of, relating to, or concerning the WSA, including all claims and counterclaims that were brought or could have been brought by a Party against another Party in the Case and, upon execution of this Agreement, to dismiss the Case, including Suerte's counterclaim, with prejudice.

H. **Definitions.** As used in this Agreement:

(1) "Case" means the legal action pending in the New Mexico First Judicial District, Santa Fe County, as Case No. 101-CV-2015-01485.

(2) The "County" includes the County as a political subdivision, the Board, and all past and current County Commissioners, County elected officials, County employees, County officers and appointees, County insurers, and County agents and contractors.

(3) "Claims" means any and all causes of action, whether known or unknown, existing as of the effective date of this Agreement and arising out of, relating to, or concerning the WSA that the County or County Manager could assert against Suerte, including but not limited to the claims that the County or County Manager brought or could have brought against Suerte in the Case.

(4) "Counterclaims" mean any and all causes of action, whether known or unknown, existing as of the effective date of this Agreement and arising out of, relating to, or concerning the WSA that Suerte could assert against the County or County Manager, including but not limited to the counterclaims that Suerte brought or could have brought against the County or County Manager in the Case.

(5) "Parties" mean Suerte, the County, and County Manager; "Party" means either Suerte or the County or County Manager.

(6) "Subdivision" means the 304-lot subdivision described in the final plat that the Board conditionally approved in its January 13, 2009, Order, which is filed in the property records of the County Clerk as Instrument No. 1552111.

(7) "Suerte" means Suerte del Sur, LLC, and Suerte Development, Inc., collectively, including all past and current officers, employees, agents, and contractors of Suerte.

(8) "WSA" means the Water Service Agreement, dated November 29, 2005, between Suerte del Sur LLC and the County, and all amendments of the WSA.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set out in this Agreement, the Parties agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are incorporated into and made a part of this Agreement by reference.

2. Payment. Within sixty (60) days following the execution of this Agreement, Suerte shall pay the County \$35,840.00.

3. Mutual Release and Discharge.

A. Suerte hereby releases and fully discharges the County and County Manager from any and all Counterclaims.

B. The County and County Manager hereby release and fully discharge Suerte from any and all Claims.

4. Dismissal of Case. Within ten (10) days following Suerte's payment under Section 2 above, the Parties shall file a stipulated dismissal with prejudice of the Case, including the County's First Amended Complaint and Suerte's Counterclaims.

5. Attorney's Fees. Each party hereto shall bear its own attorneys' fees and costs arising from the dealings of its own counsel in connection with this matter and matters related to this Agreement.

6. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the Parties' successors and assigns.

7. Non-Admission of Liability. By entering into this Agreement no Party admits any liability to any other Party. Suerte expressly denies any liability to the County or County Manager, and the County and County Manager expressly deny any liability to Suerte.

8. Neutral Construction. The Parties have reviewed this Agreement with their respective counsel. Any ambiguity in this Agreement shall not be construed against any Party as the drafter.

9. Warranty of Capacity to Execute Agreement. The undersigned person or persons executing this Agreement on behalf of Suerte warrant that they have authority to enter into this Agreement on behalf of the corporations they represent.

10. Entire Agreement. This Agreement sets forth the entire understanding of Suerte, the County, and County Manager and supersedes all prior agreements, arrangements, and communications, whether oral or written, pertaining to the subject matter hereof. This Agreement shall not be modified or amended except by written agreement executed by Suerte, the County, and County Manager Miller.

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SANTA FE COUNTY

By: _____

Date: _____

Anna T. Hamilton
Chair, Board of County Commissioners of Santa Fe County

SANTA FE COUNTY MANAGER KATHERINE MILLER

Date: _____

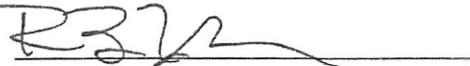
Katherine Miller
Santa Fe County Manager

ATTEST:

Date: _____

Geraldine Salazar
Santa Fe County Clerk

Approved as to Form:



R. Bruce Frederick, County Attorney

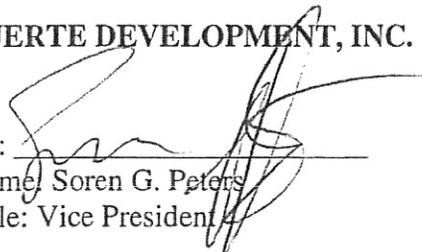
SUERTE DEL SUR LLC

By: 

Date: 2/12/2019

Name: Gerald P. Peters
Title: President/ Manager

SUERTE DEVELOPMENT, INC.

By: 

Date: 2/12/2019

Name: Soren G. Peters
Title: Vice President

