

THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY

ORDINANCE NO. 2021- 01

AN ORDINANCE  
AMENDING ORDINANCE 2016-3, THE PLACE AT CAJA DEL RIO LEDA PROJECT  
ORDINANCE, TO AUTHORIZE THE EXECUTION OF AN AMENDED AND  
RESTATED PROJECT PARTICIPATION AGREEMENT EXTENDING THE  
DEADLINE FOR THE PROJECT PARTY'S SUBSTANTIVE CONTRIBUTION AND  
MAKING OTHER CHANGES

**IT IS HEREBY ORDAINED** by the Board of County Commissioners of Santa Fe County as follows:

1. **SHORT TITLE.** This Ordinance shall be cited as the "The Place at Caja Del Rio LEDA Project Amendatory Ordinance".
2. **FINDINGS.** Capitalized terms not otherwise defined in these findings have the meaning provided in the Section 1, Definitions, of Ordinance No. 2016-3.
  - a. CDRH subdivided the Property into five (5) lots via the Plat of Minor Subdivision for Senior Campus @ Caja Del Rio of Plat of Land Division for New Mexico State Land Office, filed in the Office of the County Clerk on December 30, 2016, as Document Number 1813763 in Book 812, Page 12 ("Subdivision Plat").
  - b. CDRH and the County are parties to that certain Water & Wastewater Line Extension, Water Delivery & Wastewater Discharge Agreement, Agreement No. 2017-088-UT/BT ("Water and Wastewater Agreement"), pursuant to which, among other things, the Developer agreed to construct, and the County agreed to accept, water and wastewater infrastructure on the terms stated therein.
  - c. CDRH and the County entered into the PPA, effective December 28, 2016.
  - d. Pursuant to the PPA, CDRH granted to the County that certain Mortgage, Assignment of Rents and Leases, and Security Agreement concerning Lots 3 and 5 created by the Subdivision Plat, which was recorded in the records of the County Clerk on or about December 30, 2016, as Instrument No. 1813870.
  - e. Disputes arose between CDRH and the County concerning, among other things, the costs of upsizing the Wastewater Improvements under the Water and Wastewater Agreement and the connection fee due and payable prior to recordation of the Subdivision Plat.
  - f. CDRH and the County have entered into a Settlement Agreement that would resolve those disputes, which Settlement Agreement is contingent upon, among other things, CDRH and the County entering into an Amended and Restated Project Participation Agreement extending the deadline for CDRH to provide its substantive contribution until three years after execution of the Amended and Restated Project Participation Agreement. The Settlement Agreement is attached hereto as Exhibit A.

g. Resolution of the disputes between the parties and extension of the deadline for CDRH to provide its substantive contribution is in the public's interest, since it avoids time-consuming and costly litigation that would delay development of the Project and corresponding creation of jobs.

h. The Board desires to authorize the County Manager to negotiate and execute an Amended and Restated Project Participation Agreement to effectuate CDRH's and the County's Settlement Agreement.

3. Section 3, Definitions, of Ordinance No. 2016-3 is hereby amended by adding the following new subparagraphs i, j, and k:

"i. "Amended and Restated PPA" means the Amended and Restated Project Participation Agreement authorized by Section 13 of this Ordinance.

j. "Settlement Agreement" means the Settlement Agreement between CDRH and County attached to The Place at Caja Del Rio LEDA Project Amendatory Ordinance as Exhibit A.

k. "Subdivision Plat" means the Plat of Minor Subdivision for Senior Campus @ Caja Del Rio of Plat of Land Division for New Mexico State Land Office, filed in the Office of the County Clerk on December 30, 2016, as Document Number 1813763 in Book 812, Page 12."

4. Ordinance No. 2016-3 is hereby amended by adding the following new Section 13:

**"13. AMENDED AND RESTATED PPA AND SUBSTITUTE SECURITY AUTHORIZED; DEADLINE.**

A. The Board hereby authorizes the County Manager to negotiate and execute on behalf of the County the Amended and Restated PPA and amendments thereto.

1. Notwithstanding Section 8(a) of this Ordinance, the Amended and Restated PPA may extend the deadline by which CDRH must meet its job creation goals until three (3) years after the effective date of the Amended and Restated PPA.

B. Notwithstanding Section 7(b) of this Ordinance, the Board hereby authorizes the County Manager to negotiate and execute on behalf of the County:

1. a release of the Mortgage, Assignment of Rents and Leases, and Security Agreement concerning Lots 3 and 5 created by the Subdivision Plat, which was recorded in the records of the County Clerk on or about December 30, 2016, as Instrument No. 1813870;

2. accept a Mortgage, Assignment of Rents and Leases, and Security Agreement ("Replacement Mortgage") on the remainder tract created when Lots 1-3 and 5 are consolidated pursuant to the Settlement Agreement;

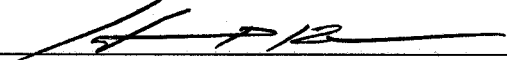
3. negotiate and execute releases from the Replacement Mortgage of lots that are subsequently created from such remainder tract, the terms and conditions for such releases to be set forth in the Amended and Restated PPA.

C. The authority provided in this Section 13 shall be null and void if the conditions subsequent specified in the Settlement Agreement are not met by the Closing Date established pursuant to the Settlement Agreement."

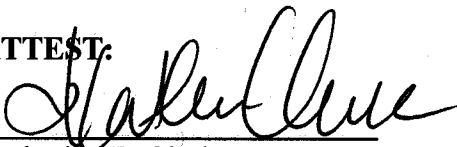
5. **EFFECTIVE DATE.** The Place at Caja Del Rio LEDA Project Amendatory Ordinance shall become effective thirty (30) days after it is recorded in the Office of the County Clerk.

**PASSED, APPROVED AND ADOPTED THIS 26<sup>th</sup> DAY OF JANUARY, 2021.**

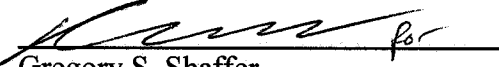
**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

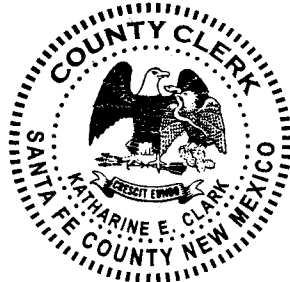
By:   
Henry P. Roybal, Chairperson



ATTEST:  
  
Katharine E. Clark  
County Clerk

**APPROVED AS TO FORM:**

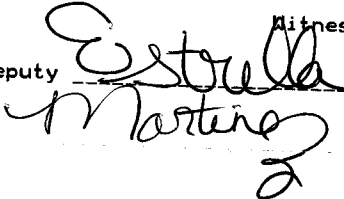
 for  
Gregory S. Shaffer  
County Attorney



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

BCC ORDINANCE  
PAGES: 10

I Hereby Certify That This Instrument Was Filed for  
Record On The 28TH Day Of January, 2021 at 02:07:26 PM  
And Was Duly Recorded as Instrument # 1941777  
Of The Records Of Santa Fe County

Deputy  Witness My Hand And Seal Of Office  
Katharine E. Clark  
County Clerk, Santa Fe, NM

SFC CLERK RECORDED 01/28/2021

**SETTLEMENT AGREEMENT**

This SETTLEMENT AGREEMENT ("Agreement") is entered into by and between Santa Fe County ("County") and Caja del Rio Holdings, LLC ("CDRH" or "Developer"), a New Mexico Limited Liability Corporation, (the County and Developer are sometimes each referred to as a "Party" and collectively as the "Parties"), as of the Effective Date set forth below.

**RECITALS**

**WHEREAS**, Developer is the owner and developer of Senior Campus at Caja del Rio Subdivision, a large scale mixed used development to be utilized as a senior care facility on approximately 28 acres located at 28 Caja del Rio Road (the "Property"), within Section 2, Township 16 North, Range 8 East ("Development" or "Project");

**WHEREAS**, the Board of County Commissioners ("Board" or "BCC") approved the master plan for the Project via its Order, dated on or about April 14, 2015, and recorded for record on or about April 16, 2015, as Instrument No. 1762024;

**WHEREAS**, the Project is anticipated to consist of a skilled nursing facility, assisted living facility, independent living facility, and memory care facility to be developed in four phases on five (5) lots created from the subdivision of the Property;

**WHEREAS**, the Developer subdivided the Property into five (5) lots via the Plat of Minor Subdivision for Senior Campus @ Caja Del Rio of Plat of Land Division for New Mexico State Land Office, filed in the Office of the County Clerk on December 30, 2016, as Document Number 1813763 in Book 812, Page 12 ("Subdivision Plat");

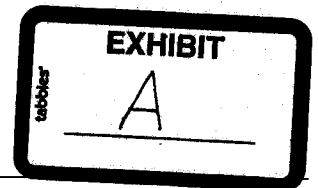
**WHEREAS**, Developer and County are parties to that certain Water & Wastewater Line Extension, Water Delivery & Wastewater Discharge Agreement, Agreement No. 2017-088-UT/BT ("Water and Wastewater Agreement"), pursuant to which, among other things, the Developer agreed to construct, and the County agreed to accept, water and wastewater infrastructure on the terms stated therein;

**WHEREAS**, Developer and the County are also parties to that certain LEDA Project Participation Agreement for the Place at Caja Del Rio, Agreement No. 2017-0170-GM/BT ("PPA"), which was authorized by Ordinance No. 2016-3 and pursuant to which the County, among other things, agreed to make a \$300,000 grant to Developer for water and wastewater infrastructure to the Project in exchange for the Developer's substantive contribution in the form of job creation and payroll requirements to be met by January 1, 2021, on the terms set forth therein;

**WHEREAS**, pursuant to the PPA, the Developer granted to the County that certain Mortgage, Assignment of Rents and Leases, and Security Agreement ("Mortgage") concerning Lots 3 and 5 created by the Subdivision Plat, which was recorded in the records of the County Clerk on or about December 30, 2016, as Instrument No. 1813870;

**WHEREAS**, disputes arose between the Parties concerning, among other things, the costs of upsizing the Wastewater Improvements under the Water and Wastewater Agreement and the connection fee due and payable prior to recordation of the Subdivision Plat; and

**WHEREAS**, the parties desire to resolve the existing disputes between them on the terms and conditions set forth herein.



SFC CLERK RECORDED 01/28/2021

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. *Recitals.* The Recitals set forth above are, by this reference, incorporated into and deemed a part of this Agreement.

2. *Definitions.* In addition to the definitions set out in the text of this Agreement, the following terms used in this Agreement have the following meanings:

a. "Amendatory Ordinance" means an ordinance adopted by the Board amending Ordinance No. 2016-3 to authorize the County Manager to negotiate and execute on behalf of the County the Amended and Restated PPA.

b. "Amended and Restated PPA" means the amended and restated LEDA Project Participation Agreement for the Place at Caja Del Rio, which, among other things, shall extend the deadline for CDRH's substantive contribution until three (3) years after the effective date of the Amended and Restated PPA.

c. "Amended Subdivision Plat" means the amendment to the Subdivision Plat, which shall consolidate existing Lots 1-3 and 5 into the Remainder Tract and renumber existing Lot 4 as Lot 1.

d. "Claims" means all claims that could be brought by CDRH against the County concerning the Project, including, without limitation, those arising under the Water and Wastewater Agreement and PPA.

e. "Closing" means the satisfaction of all Conditions Subsequent set forth in Paragraph 8. The Closing shall occur at 100 Catron Street Santa Fe NM unless otherwise agreed to by the parties.

f. "Closing Date" means the date of the Closing, which shall be the effective date of the Amendatory Ordinance or such later date as may be mutually agreed to by the Parties in writing.

g. The "Effective Date" of this Agreement means the date of the last signature of a Party below.

h. "Initial Connection Fee" means the amount due under Section 4.2 of the Water and Wastewater Agreement prior to recording of the Amended Subdivision Plat.

i. "Remainder Tract" means the area of the Property that has not been subdivided into a lot, as shown on the Amended Subdivision Plat.

j. "Replacement Mortgage" means the Mortgage, Assignment of Rents and Leases, and Security Agreement to be provided to the County by Developer, which shall be in a form mutually agreeable to the Parties and, among other things, grant a security interest to the County in the Remainder Tract.

k. "Utility Easements" has the same meaning as it has in the Water and Wastewater Agreement.

l. "Utility Improvements" has the same meaning as it has in the Water and Wastewater Agreement.

m. "Wastewater Improvements" has the same meaning as it has in the Water and Wastewater Agreement.

3. *Upsizing.*

a. The County agrees to pay the Developer \$86,502.22 for the upsizing of the Wastewater Improvements ("Upsizing Charge"). The Developer agrees to accept this amount in full satisfaction of all claims under the Water and Wastewater Agreement for the upsizing of the Wastewater Improvements, including, but not limited to, claims under Section 1.4.10, Section 1.4.12, and Section 1.4.13 of the Water and Wastewater Agreement.

b. At the Closing, the Upsizing Charge shall be credited against the Initial Connection Fee, leaving a balance due on the Upsizing Charge from the County to the Developer at the Closing of \$5,734.20.

4. *Acceptance of Utility Improvements and Utility Easements; Waiver of Warranty and Maintenance Bond Requirements for Utility Improvements.*

a. Provided all conditions precedent to acceptance under the Water and Wastewater Agreement (other than the one-year warranty and Maintenance Bond waived in subparagraph c of this Section) have been met, the County shall accept the Utility Improvements and Utility Easements at the Closing.

b. Construction of the Utility Improvements was completed on or about September 26, 2018. Developer represents and warrants (i) that, consistent with Section 3.3.3 of the Water and Wastewater Agreement, it has and will continue to maintain the Utility Improvements until such time as the Utility Director accepts the assignment and dedication of the Utility Easements and Utility Improvements and (ii) it is not aware of any defects in material or workmanship of the Utility Improvements.

c. In reliance upon the Developer's representations and warranties in subparagraph a of this Section and in recognition that over a year has passed since construction of the Utility Improvements was completed and final testing conducted, the County shall waive the one-year warranty and Maintenance Bond required by Section 1.8.8 of the Water and Wastewater Agreement.

5. *Connection Fee.*

a. The Initial Connection Fee shall be \$80,768.02, which was calculated as follows: the water budget for a memory care facility (4.176 afy, inclusive of 20% line loss) multiplied by the last cost per acre-foot paid by the County for pre-1907 surface water rights that are divertible at the Buckman Direct Division, which is \$19,341. At the Closing, the Upsizing Charge shall be credited against the Initial Connection Fee, resulting in the Initial Connection Fee being paid in full.

b. The connection fee for future phases of the Development shall be due prior to recordation of the plat or plat amendment creating the lot for that phase of the Development, pursuant to Section 4.2 of the Water and Wastewater Agreement. No connection fee shall be due for the Remainder Tract created by the Amended Subdivision Plat or future subdivision plat or plat amendment unless the Master Plan for the Project is amended to allow development on the Remainder Tract without further subdivision, in which case the connection fee shall be due upon recordation of the final order approving of such Master Plan amendment, or the recording of a Site Development Plan, whichever occurs first.

6. *Water and Wastewater Agreement Unaffected.* Except as provided in Paragraph 4(c) and 5(b) of this Agreement, the Water and Wastewater Agreement remains in full force and effect.

7. *Master Plan Governed by Conceptual Plan Provisions of the Sustainable Land Development Code ("SLDC").* Upon recordation of the Amended Subdivision Plat, the Master Plan for the Project shall be subject to the provisions of the SLDC concerning expiration of Conceptual Plans. See SLDC, Sections 1.11.4 and 4.9.9.10. In the unique context of the Project, this means that the master plan shall expire (unless an extension is granted by the Board pursuant to Section 4.9.9.10 of the SLDC) five (5) years after the Amended Subdivision Plat is filed.

8. *Conditions Subsequent; Closing.* This Settlement Agreement is conditioned upon the following occurring after the Effective Date:

- a. The Board adopting the Amendatory Ordinance by January 31, 2021;
- b. The County Land Use Administrator having approved the Amended Subdivision Plat as being consistent with the SLDC and Master Plan for the Project;
- c. The Parties executing the Amended and Restated PPA;
- d. The County paying the remaining balance of the Upsizing Charge;
- e. The Developer recording the Amended Subdivision Plat, duly approved by the County Land Use Administrator;
- f. The Developer records the Replacement Mortgage; and
- g. The acceptance of the Utility Improvements and Utility Easements by the County.

Items c-g shall occur at the Closing.

9. *No Litigation.* From the Effective Date to the Closing Date, the Parties agree to not institute any litigation related to the Project; provided, however, that the County shall not be precluded from bringing SLDC enforcement actions should Developer violate the SLDC during that period.

10. *Contingent Release.* Upon satisfaction of all conditions subsequent set forth in Paragraph 8:

a. CDRH, for itself, and for its parents, subsidiaries, related and affiliated companies, its predecessors, successors, and assigns, and each of its and their respective directors, officers, shareholders, underwriters, agents, servants, and employees, irrevocably and forever discharges the County, former and current County employees, and former and current County elected officials from any and all Claims, known or unknown, at law or in equity related to the Project.

b. The County, on behalf of itself only, irrevocably and forever discharges CDRH from demands or suits related to the connection fee due prior to recordation of the Subdivision Plat and the failure to provide its Substantive Contribution under the PPA by January 1, 2021.

11. *Failure to Close; Reservation of Rights.* Should all of the conditions subsequent set forth in Paragraph 8 fail to be met by the Closing Date, this Settlement Agreement shall be null

and void and of no further force or effect. In that event, the Parties expressly reserve all rights and claims they may have against each other related to the Project, including, but not limited to, those arising under the Water and Wastewater Agreement and PPA.

12. *Compromise Discussions.* In the event of litigation, this Agreement shall be regarded as inadmissible compromise negotiations under Rule 11-408 NMRA and Federal Rule of Evidence Rule 408; provided, however, that this Agreement may be admitted for the sole purpose of enforcing the terms of the Agreement, including to challenge any claims by any Party that a claim asserted against it is barred or waived.

13. *Merger, Amendments, Rules of Construction, Successors and Assigns.* This Agreement: (a) fully states the agreement between the Parties; (b) may be amended only by written amendment signed by both Parties; (c) shall not be construed against any Party as the drafter of the Agreement; and (d) shall be binding on and inure to the benefit of the Parties' and their successors and assigns.

14. *Representations and Warranties.* CDRH warrants and represents that:

i. this Agreement has been duly authorized by CDRH, the person executing this Agreement has authority to do so, and, once executed by CDRH, this Agreement shall constitute a binding Agreement enforceable against CDRH according to its terms; and

ii. this Agreement and CDRH's obligations hereunder do not conflict with CDRH's Articles of Organization, other company policies or organizational documents, or any contract or judgment to which CDRH is a party or by which CDRH is bound.

15. *Notices; Changing Notice Addresses.* Notices under this Agreement shall be sent via registered/return receipt mail to the other Party at the following addresses:

If to the County:

County Manager  
102 Grant Avenue  
P.O. Box 276  
Santa Fe NM 87504-0276

with a copy to:

County Attorney  
102 Grant Avenue  
P.O. Box 276  
Santa Fe NM 87504-0276

If to CDRH:

Caja Del Rio Holdings, LLC  
8814 Horizon Blvd. NE, Suite 400  
Albuquerque, NM 87113  
pc@cauwelsinvestments.com  
jstuve@csrednm.com



with a copy to:

Kyle S. Harwood  
Egolf + Ferlic + Martinez + Harwood, LLC  
123 W. San Francisco St. 2<sup>nd</sup> floor  
Santa Fe, NM 87501  
Kyle@Egolfaw.com

Such notice shall be deemed given five (5) calendar days after notice is mailed. A party may change the persons to whom or addresses at which notice shall be given by giving the other party notice of the change in accordance with this Article.

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SANTA FE COUNTY

CAJA DEL RIO HOLDINGS, LLC

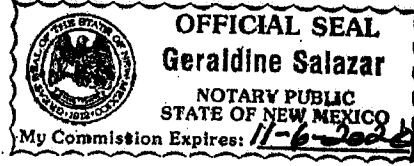
By: [Signature]  
Henry P. Roybal, Chair  
Board of County Commissioners

By: [Signature]  
Paul Cauwels, Manager

Date: 12/15/2020

Date: 12/3/20

Approved as to form:  
[Signature]  
Gregory S. Shaffer



State of New Mexico )  
                                  ) ss.  
County of Santa Fe )

This instrument was acknowledged before me on December 15, 2020 by  
Henry P. Roybal as the Chair of the Board of County Commissioners of the County of Santa Fe.

[Signature: Geraldine Salazar]  
Notary Public

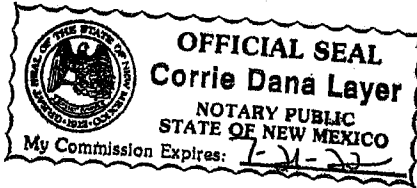
My commission expires: November 6, 2024

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

This instrument was acknowledged before me on December 30, 2020 by  
Paul Cauwels, as Manager of Caja del Rio Holdings, LLC.

[Signature: Corrie Dana Layer]  
Notary Public

My commission expires: 7-21-22



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