



WATER USE AGREEMENT

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THIS AGREEMENT is made this 12th day of October, 1986, by and between ODD FELLOWS SIERRA RECREATION ASSOCIATION, a California corporation ("GRANTOR"), and ODD FELLOWS SIERRA HOMEOWNERS' ASSOCIATION, a California nonprofit corporation ("GRANTEE").

WHEREAS, GRANTOR was, prior to its conveyance of certain portions to GRANTEE's members, the owner of certain tracts of land in the County of Tuolumne, State of California, which are particularly described on Exhibit A hereto; and

WHEREAS, GRANTOR has prior to this date subdivided and conveyed by separate deeds certain portions of the above-described land, which portions are described on Exhibit B hereto; and

WHEREAS, GRANTEE is a homeowners association organized and existing for the mutual benefit of some or all of the owners of the portions of said tracts subdivided and conveyed by GRANTOR; and

WHEREAS, GRANTOR owns and maintains a water system on the portions of said tracts of land it retained; and

WHEREAS, GRANTEE desires to obtain water from that water system for use by its members on a not-for-profit basis.

NOW, THEREFORE, the parties hereto agree as follows:

1. Agreement to Furnish Water. GRANTOR agrees to furnish to GRANTEE from its water system such water as may be necessary for the domestic use of GRANTEE's members subject to the terms and conditions hereinafter set forth.

2. Domestic Use Defined. The "domestic use" for which water is to be furnished GRANTEE's members under this Agreement consists in general of the usual household uses and adequate watering of ornamental plants and shrubbery and household garden plots connected with the occupancy and development of the lots of GRANTEE's members as a residence but not their development for any industrial, commercial, or agricultural purposes.

3. Limit on Water Amount. In no event shall the water furnished GRANTEE's members under this contract exceed one hundred percent (100%) of the maximum amount of water that may be made available from said water system or any replacement or expansion thereof.

4. Quality and Quantity. GRANTOR cannot and does not make any guarantee concerning the quality of water agreed to be furnished under this Agreement or concerning the continuing availability of water except as herein expressly provided. GRANTEE understands and hereby acknowledges on behalf of its members that GRANTOR is not a public utility, is not guaranteeing any specific quantity of water, is the sole owner of said water system and all water supplied therefrom or in any way connected with the retained portion of said tracts of land, and has agreed to furnish water to GRANTEE's members only in accordance with the terms of this Agreement. GRANTEE stipulates that neither it nor its members have any right, title, or interest in or to any water from said water system coming from the retained portion of said tracts of land except as herein specifically set forth.

5. Maintenance of Water System. GRANTOR shall at its sole cost and expense:

a. Maintain said water system in proper and sanitary order without representation as to the quantity or quality of water that may be produced by it;

b. Install such pipeline, tanks, and other facilities for the delivery of water to GRANTEE's members as GRANTOR may deem reasonably necessary;

c. Maintain and operate the facilities described in this paragraph for so long as it is reasonably possible to procure and distribute water from the water source supplying the water system; and

d. Repair, replace, or expand the water system as reasonably necessary, in the opinion of water experts, to supply water as herein agreed.

6. Payment. GRANTEE shall pay to GRANTOR for water furnished pursuant to this Agreement the sum of *Sixty nine thousand three hundred fifty* Dollars (\$69,350.⁰⁰) per year during the first (1st) year of this Agreement and shall pay during each subsequent year such amount plus any increase in expense of GRANTOR over its expenses for the prior year in furnishing water to GRANTEE under this Agreement. Unless otherwise agreed in writing, the yearly payments herein provided shall be paid by GRANTEE to GRANTOR in annual installments on the first (1st) day of the second (2d) month of each year of the term of this Agreement.

7. Term. This Agreement is made for the period of twenty-five (25) years, commencing on the date hereof, unless earlier terminated as hereinafter provided.

8. Default. Should GRANTEE fail to pay any annual charge for water specified in this Agreement for a period of ninety (90) days after receiving written notice thereof from GRANTOR, GRANTOR may suspend supplying water until the charge is paid in addition to pursuing any other legal or equitable right or remedy it may have. The prevailing party in any legal or equitable action brought pursuant to this paragraph shall be entitled to its reasonable attorneys' fees and costs. Notwithstanding the provisions of this paragraph, however, GRANTOR may not terminate this Agreement if GRANTEE fails to pay the annual charges for water.

9. Termination. This Agreement shall automatically terminate upon the termination of the irrevocable license of even date given by GRANTOR to GRANTEE to use its roads and retained land for access and recreational purposes.

10. Subject to Valid Laws. This Agreement is subject at all times to any and all valid laws, ordinances, and governmental regulations, whether federal, state, county, or city, and any modification made to this Agreement by such law, ordinance, or regulation or to the conduct of the parties under this Agreement shall not impose liability on either party hereto for breach of their duties under this Agreement.

** See Minutes of B.O.D of Del. Fellow's Res. Assoc.
on Oct. 12, 1986*

11. Assignment. This Agreement shall be binding on the parties hereto and on their successors in interest.

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

GRANTOR:

ODD FELLOWS SIERRA RECREATION
ASSOCIATION

By Deot R. Johnson
Title: President

GRANTEE:

ODD FELLOWS SIERRA HOMEOWNERS'
ASSOCIATION

By W. J. Walker
Title: Secretary