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(SPACE BELOW FOR FILE STAMP ONLY)

5 **DAMBACHER, TRUJILLO & WRIGHT,**  
6 A PROFESSIONAL LAW CORPORATION  
7 32 North Washington Street  
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*Donna Benz*

11 Attorneys for Plaintiff

12  
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF TUOLUMNE**

15 ODD FELLOWS SIERRA RECREATION  
16 ASSOCIATION, a California corporation,

17 Plaintiff,

18 vs.

19 ODD FELLOWS SIERRA HOMEOWNERS'  
20 ASSOCIATION, a California non-profit  
21 corporation; and DOES 1 through 500, inclusive,

22 Defendants.

Case No.: *CV 57297*

**COMPLAINT FOR 1) BREACH OF  
CONTRACT; 2) BREACH OF THE  
COVENANT OF GOOD FAITH AND FAIR  
DEALING; 3) COMMON COUNTS-ACCOUNT  
STATED; 4) COMMON COUNTS-OPEN  
ACCOUNT; 5) DECLARATORY RELIEF**

ASSIGNED FOR ALL PURPOSES TO:

DEPT.:

AMOUNTED DEMANDED EXCEEDS  
\$25,000.00

1 Plaintiff ODD FELLOWS SIERRA RECREATION ASSOCIATION alleges as follows:

2 **I.**

3 **THE PARTIES**

4 1. Plaintiff ODD FELLOWS SIERRA RECREATION ASSOCIATION ("Plaintiff") is a  
5 California corporation with its principal place of business in Tuolumne County, California. Plaintiff was  
6 incorporated on January 19, 1949. Plaintiff is in good standing with the California Secretary of State.

7 2. Defendant ODD FELLOWS SIERRA HOMEOWNERS' ASSOCIATION ("Defendant")  
8 is a California non-profit corporation with its principal place of business in Tuolumne County,  
9 California. Defendant was incorporated on October 10, 1986.

10 3. The true names and capacities of defendants DOES 1 through 500, inclusive, are  
11 unknown to Plaintiff who therefore sues said defendants by such fictitious names pursuant to Section  
12 474 of the California Code of Civil Procedure. Plaintiff will seek leave of court to amend this complaint  
13 when said true names and capacities of said defendants have been ascertained.

14 4. At all times mentioned herein, each of the defendants, including the defendants served as  
15 DOE herein, was the agent and/or employee of each of the remaining defendants and in doing the things  
16 herein mentioned was acting within the scope of such agency and/or employment.

17 **II.**

18 **JURISDICTION**

19 5. This court has jurisdiction over this matter in that Plaintiff's and Defendant's principal  
20 places of business are located in Tuolumne County California and that the Subject Agreements (as  
21 hereinafter defined) were entered into and to be performed in Tuolumne County, California.  
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1 III.

2 STATEMENT OF THE FACTS

3  
4 **A. The Subject Property and the Park.**

5 6 There currently exist in Tuolumne County, California certain subdivisions known as  
6 I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 1 and I.O.O.F. Odd Fellows Sierra Camp  
7 Subdivision No. 2 (collectively, the "Park"). The Park consists of approximately 364 lots.

8 7. At all times referenced herein, Plaintiff was the legal owner of areas with and adjacent to  
9 the Park (collectively, the "Subject Property").

10 8. Plaintiff is also the owner of certain improvements to the Subject Property, including,  
11 without limitation, gates, streets/roadways, signage, lighting, drainage systems, wells, water storage  
12 systems, water supply systems, lake, picnic area, baseball field, playground area, etc. Plaintiff also  
13 owns one (1) lot within the Park that is used for a caretaker's cabin.

14 9. Upon information and belief, Defendant does not hold legal title to any real property in  
15 Tuolumne County, California. However, upon information and belief, certain members of Defendant  
16 hold legal title to various lots within the Park.

17  
18 **B. The Subject Agreements.**

19 10. On or around October 12, 1986, Plaintiff and Defendant entered into that certain Water  
20 Use Agreement (the "Water Agreement"), pursuant to which, among other things, Plaintiff agreed to  
21 provide water to Defendant on a wholesale basis provided that Defendant pay for all expenses associated  
22 with the provision of such water. A copy of the Water Agreement is attached hereto as **Exhibit "A"** and  
23 incorporated by this reference. The term of the Water Agreement was set to expire by its own terms on  
24 October 11, 2011.

25 11. The water that is and was provided by Plaintiff to Defendant is provided from various  
26 wells and related water storage system that are located on the Subject Property and through a system of  
27 pipes that are also located on the Subject Property. As set forth above, Plaintiff is the legal owner of the  
28 Subject Property and all improvements thereto.

1           12.     On or around October 12, 1986, Plaintiff and Defendant also entered into that certain  
2 License Agreement (the "License Agreement"), pursuant to which, among other things, Plaintiff agreed  
3 to permit Defendant to use the streets and roads on the Subject Property for access purposes and  
4 maintain such streets and roads provided that Defendant pay for all expenses associated therewith. A  
5 copy of the License Agreement is attached hereto as **Exhibit "B"** and incorporated by this reference.  
6 The term of the License Agreement was set to expire by its own terms on October 11, 2011. The  
7 License Agreement was subsequently modified by the parties so that Defendant would pay in advance  
8 for the estimated cost of the expenses incurred by Plaintiff pursuant to the License Agreement.

9           13.     Between October 12, 1986 and May 31, 2011, Plaintiff and Defendant also entered into  
10 various other agreements pursuant to which, among other things, Plaintiff agreed to provide the  
11 following services or improve and provide use of certain areas of the Subject Property: access gate  
12 maintenance and repair; pine needle disposal; improvement and use (and maintenance (and repair as  
13 applicable)) of lake, recreation hall, picnic area, baseball field, playground, and other similar types of  
14 areas on the Subject Property; maintenance and repair of vehicles used in connection with the foregoing;  
15 services of an onsite caretaker to assist in providing the aforementioned services; and certain other  
16 services (the "Other Agreements"). Defendant agreed to pay, in advance, for the estimated cost of  
17 providing the forgoing pursuant to the Other Agreements. The parties agreed that the term of the Other  
18 Agreement would expire upon expiration of the Water Use Agreement and License Agreement. The  
19 Water Agreement, License Agreement and Other Agreements may hereinafter be collectively referred to  
20 as the "Subject Agreements".

21  
22 **C.     The Declaration.**

23           14.     On May 9, 1996, Plaintiff recorded a Declaration Relating to the Roads and Streets  
24 Located In and Appurtenant to the I.O.O.F. Odd Fellows Sierra Camp Subdivision #1 and Subdivision  
25 #2 (the "Declaration") pursuant to which, among other things, Plaintiff granted to each owner of a lot in  
26 the Park a non-exclusive easement on and over all streets and roadways owned by Plaintiff within the  
27 Park for general ingress and egress purposes. Defendant is not a party to the Declaration.

1 **D. Determination and Payment of Amounts Due Pursuant to Subject Agreements between**  
2 **October 12, 1986 and May 31, 2011.**

3 15. During each May between October 12, 1986 and May 31, 2011, Plaintiff, at its annual  
4 meeting of shareholders, would determine, based on the previous fiscal year's costs, the estimated cost  
5 of the services to be provided by Plaintiff to Defendant pursuant to the Subject Agreements for the  
6 upcoming fiscal period of June 1 through May 31 (the "Annual Fee").

7 16. Plaintiff would then promptly inform Defendant of the Annual Fee for the fiscal period of  
8 June 1 through May 31. Defendant would then divide such Annual Fee by the number of lots in the Park  
9 and invoice each lot owner of the Park for their prorata share of such Annual Fee.

10 17. Upon information and belief, between October 12, 1986 and May 30, 2011, the lot  
11 owners of the Park paid no further amounts to Defendant other than their prorata share of the Annual  
12 Fee.

13 18. Between October 12, 1986 and May 31, 2011, Defendant promptly paid the Annual Fees  
14 due.

15  
16 **E. Balance Due for Service Provided Between October 12, 1986 and May 31, 2011.**

17 19. Between October 12, 1986 and May 31, 2011, the Annual Fees paid by Defendant were  
18 less than the expenses incurred by Plaintiff in providing the services to Defendant pursuant to the  
19 Subject Agreements. Upon information and belief, the amount unpaid by Defendant to Plaintiff  
20 pursuant to the foregoing sentence is approximately **\$460,000.00**. Defendant has not reimbursed  
21 Plaintiff for such amount as of the date hereof.

22  
23 **F. Balance Due for Service Provided or to be Provided Between**  
24 **June 1, 2011 and May 31, 2012.**

25 20. On May 29, 2011, Plaintiff's shareholders approved a budget of \$302,120.00 for the  
26 services to be provided by Plaintiff to Defendant pursuant to the Subject Agreements for the fiscal  
27 period of June 1, 2011 to May 31, 2012. The budget approved by Plaintiff for the fiscal period of June  
28 1, 2011 to May 31, 2012 was comparable to Plaintiff's budget for the services provided by Plaintiff to

1 Defendant pursuant to the Subject Agreements for the previous 2010-2011 fiscal year (adjusted for  
2 inflation and increased expenses).

3 21. Plaintiff informed Defendant of Annual Fee for the fiscal period of June 1, 2011 through  
4 May 31, 2012 (the "2011-12 Annual Fee") and thereafter, Defendant invoiced each lot owner for their  
5 prorata share of the 2011-12 Annual Fee (or \$830 per lot).

6 22. On or about July 31, 2011, Defendant paid Plaintiff \$50,000.00 as a partial payment for  
7 the 2011-12 Annual Fee. Defendant made no further payments to Plaintiff for the period of June 1, 2011  
8 to September 15, 2011.

9 23. Therefore, on September 15, 2011, Plaintiff invoiced Defendant for the services being  
10 provided and to be provided to Defendant pursuant to the Subject Agreements between June 1, 2011 and  
11 May 31, 2012 (the "Subject Invoice"). A copy of the Subject Invoice is attached hereto as **Exhibit**  
12 "**C**".

13 24. On or about October 4, 2011, Defendant paid Plaintiff \$19,350.00 as a further partial  
14 payment for the 2011-12 Annual Fee. The total payments made by Defendant for the 2011-12 Annual  
15 Fee between June 1, 2011 and the date hereof are therefore **\$69,350.00**.

16 25. After October 4, 2011, Defendant indicated to Plaintiff that it would not pay the balance  
17 due on the Subject Invoice despite the fact that Defendant had billed each lot owner of the Park an  
18 amount designed to collect the total amount due by Defendant to Plaintiff pursuant to the Subject  
19 Invoice (\$302,120.00).

20 26. Upon information and belief, as of December 10, 2011, Defendant had collected the  
21 entire 2011-12 Annual Fee from the lot owners of the Park with the exception of nineteen (19) lots (six  
22 from previous years) or approximately \$15,770.00. However, as of the date hereof, there is still  
23 approximately **\$232,770.00** still due and owing by Defendant to Plaintiff pursuant to the Subject Invoice  
24 (the "Past Due Amount").

25  
26 **G. Expiration of Water Agreement and License Agreement.**

27 27. On September 17, 2011, Plaintiff agreed to extend the term of the Water Agreement and  
28 License Agreement from October 11, 2011 to January 10, 2012.







1 **THIRD CAUSE OF ACTION**  
2 **OF PLAINTIFF AGAINST DEFENDANT**  
3 **(Breach of Contract-License Agreement)**

4 43. Plaintiff realleges and incorporates Paragraphs 1 through 30, above, as though set forth in  
5 full herein.

6 44. As referenced above, Plaintiff and Defendant entered into the License Agreement. The  
7 License Agreement, as modified, is a valid and binding obligation of Plaintiff and Defendant.

8 45. Defendant breached the License Agreement by failing to pay the amounts due pursuant  
9 thereto as set forth above. Plaintiff gave Defendant written notice of such breach as set forth above.

10 46. Upon information and belief, there are additional breaches of the License Agreement on  
11 the part of Defendant.

12 47. The aforesaid breaches by Defendant were without justification or excuse.

13 48. Plaintiff has performed all of the covenants and conditions on its part to be performed  
14 under the License Agreement, express or implied, except for those covenants and conditions excused by  
15 Defendant's breaches thereof, as described above.

16 49. As a proximate result of Defendant's breaches of the License Agreement, Plaintiff has  
17 suffered damages as set forth above, in an amount to be shown according to proof.

18  
19 **FOURTH CAUSE OF ACTION**  
20 **OF PLAINTIFF AGAINST DEFENDANT**

21 **(Breach of Implied Covenant of Good Faith and Fair Dealing-License Agreement)**

22 50. Plaintiff realleges and incorporates Paragraphs 1 through 30 and 43 through 49, above, as  
23 though set forth in full herein.

24 51. In entering into the License Agreement, Defendant owed Plaintiff a duty of good faith  
25 and fair dealing.

26 52. Defendant breached the covenant of good faith and fair dealing as set forth herein.

27 53. As a direct, proximate and foreseeable result of Defendant's breach of the covenant of  
28 good faith and fair dealing, Plaintiff has been damaged, and will continue to sustain damages, in an

1 amount to be shown according to proof.

2  
3 **FIFTH CAUSE OF ACTION**  
4 **OF PLAINTIFF AGAINST DEFENDANT**  
5 **(Breach of Oral Contract-Other Agreements)**

6 54. Plaintiff realleges and incorporates Paragraphs 1 through 30, above, as though set forth in  
7 full herein.

8 55. As referenced above, Plaintiff and Defendant entered into the Other Agreements. The  
9 Other Agreements are valid and binding obligations of Plaintiff and Defendant.

10 56. Defendant breached the Other Agreements by failing to pay the amounts due pursuant  
11 thereto as set forth above.

12 57. Upon information and belief, there are additional breaches of the Other Agreements on  
13 the part of Defendant.

14 58. The aforesaid breaches by Defendant were without justification or excuse.

15 59. Plaintiff has performed all of the covenants and conditions on its part to be performed  
16 under the Other Agreements, express or implied, except for those covenants and conditions excused by  
17 Defendant's breaches thereof, as described above.

18 60. As a proximate result of Defendant's breaches of the Other Agreements, Plaintiff has  
19 suffered damages as set forth above, in an amount to be shown according to proof.

20  
21 **SIXTH CAUSE OF ACTION**  
22 **OF PLAINTIFF AGAINST DEFENDANT**

23 **(Breach of Implied Covenant of Good Faith and Fair Dealing-Other Agreements)**

24 61. Plaintiff realleges and incorporates Paragraphs 1 through 30 and 54 through 60, above, as  
25 though set forth in full herein.

26 62. In entering into the Other Agreements, Defendant owed Plaintiff a duty of good faith and  
27 fair dealing.

28 63. Defendant breached the covenant of good faith and fair dealing as set forth herein.

1           64.     As a direct, proximate and foreseeable result of Defendant's breach of the covenant of  
2 good faith and fair dealing, Plaintiff has been damaged, and will continue to sustain damages, in an  
3 amount to be shown according to proof.

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5                               **SEVENTH CAUSE OF ACTION**  
6                               **OF PLAINTIFF AGAINST DEFENDANT**  
7                               **(Common Counts-Account Stated)**

8           65.     Plaintiff realleges and incorporates Paragraphs 1 through 30, above, as though set forth in  
9 full herein.

10          66.     That within the last four years, and prior to the commencement of this action, there was  
11 an account stated by and between Plaintiff and Defendant, wherein and whereby the sum of at least  
12 \$302,120.00 was found to be due Plaintiff, which said sum Defendant agreed and promised to pay, and  
13 that no part of the same has been paid other than \$69,350.00 (for the period of June 1, 2011 and May 31,  
14 2012). There are further amounts due to Plaintiff by Defendant under such account as set forth above.

15          67.     Plaintiff has been required to retain the services of an attorney to prosecute this claim and  
16 is entitled to an award of attorneys' fees and costs pursuant to statute.

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18                               **EIGHTH CAUSE OF ACTION**  
19                               **OF PLAINTIFF AGAINST DEFENDANT**  
20                               **(Common Counts-Open Account)**

21          68.     Plaintiff realleges and incorporates Paragraphs 1 through 30, above, as though set forth in  
22 full herein.

23          69.     That within four years last past, and prior to the commencement of this action, Defendant  
24 became indebted on an open book account to Plaintiff for services furnished to Defendant by Plaintiff at  
25 Defendant's special instance and request as set forth above.

26          70.     That only \$69,350.00 (for the period of June 1, 2011 and May 31, 2012) thereof has been  
27 paid and there is still due, owing and unpaid to Plaintiff from Defendant the sum of at least \$232,750.00  
28 since on or about September 15, 2011, on which date formal demand for payment was duly made on

1 Defendant for the balance due pursuant to the Subject Invoice. There are further amounts due to  
2 Plaintiff by Defendant under such open book account as set forth above.

3 71. Plaintiff has been required to retain the services of an attorney to prosecute this claim and  
4 is entitled to an award of attorneys' fees and costs pursuant to statute.

5  
6 **NINTH CAUSE OF ACTION**  
7 **OF PLAINTIFF AGAINST DEFENDANT**

8 **(Declaratory Relief)**

9 72. Plaintiff realleges and incorporates Paragraphs 1 through 71, above, as though set forth in  
10 full herein.

11 73. An actual controversy has arisen and now exists between Plaintiff and Defendant  
12 concerning their respective rights and duties with regard to the Subject Agreements. Plaintiff contends  
13 that, as set forth above: (i) the Other Agreements are valid and binding obligations of Plaintiff and  
14 Defendant; (ii) all amounts due by Defendant to Plaintiff pursuant to the Subject Agreements were to be  
15 paid in advance in June of each year between October 12, 1986 and the present date (based on an  
16 estimate provided by Plaintiff to Defendant in the preceding May of each year during such period); (iii)  
17 Defendant has not paid Plaintiff in full for the services provided by Plaintiff to Defendant pursuant to  
18 the Subject Agreements for the period October 12, 1986 to May 31, 2011; (iv) \$302,120.00 is a fair  
19 estimate of the costs of the services provided and to be provided by Plaintiff to Defendant pursuant to  
20 the Subject Agreements for the period of June 1, 2011 to May 31, 2012; (v) Defendant, by billing each  
21 lot owner of the Park for their prorata share of the Subject Invoice, entered into a contract in fact with  
22 Plaintiff to pay the full amount of the Subject Invoice to Plaintiff; (vi) the amount due pursuant to the  
23 Water Use Agreement as of June 1, 2011 is not \$69,350.00; and (vii) Defendant breached the Subject  
24 Agreements, and each of them, prior to January 10, 2012.

25 74. Upon information and belief, Defendant contends to the contrary that: (i) the Other  
26 Agreements are not valid and binding obligations of Plaintiff and Defendant; (ii) all amounts due by  
27 Defendant to Plaintiff pursuant to the License Agreement and the Other Agreements were to be paid in  
28 arrears; (iii) Defendant has paid Plaintiff in full for the services provided by Plaintiff to Defendant  
pursuant to the Subject Agreements for the period October 12, 1986 to May 31, 2011; (iv) \$302,120.00

1 is not a fair estimate of the costs of the services provided and to be provided by Plaintiff to Defendant  
2 pursuant to the Subject Agreements for the period of June 1, 2011 to May 31, 2012; (v) Defendant, by  
3 billing each lot owner of the Park for their prorata share of the Subject Invoice, did not enter into a  
4 contract in fact with Plaintiff to pay the full amount of the Subject Invoice to Plaintiff; (vi) the amount  
5 due pursuant to the Water Use Agreement as of June 1, 2011 is \$69,350.00; and (vii) Defendant has not  
6 breached the Subject Agreements.

7 75. Plaintiff desires a judicial determination of its rights and duties, and a declaration as to  
8 whether or not: (i) the Other Agreements are valid and binding obligations of Plaintiff and Defendant;  
9 (ii) all amounts due by Defendant to Plaintiff pursuant to the Subject Agreements were to be paid in  
10 advance in June of each year between October 12, 1986 and the present date (based on an estimate  
11 provided by Plaintiff to Defendant in the preceding May of each year during such period); (iii)  
12 Defendant has paid Plaintiff in full for the services provided by Plaintiff to Defendant pursuant to the  
13 Subject Agreements for the period October 12, 1986 to May 31, 2011; (iv) \$302,120.00 is a fair estimate  
14 of the costs of the services provided and to be provided by Plaintiff to Defendant pursuant to the Subject  
15 Agreements for the period of June 1, 2011 to May 31, 2012; (v) Defendant, by billing each lot owner of  
16 the Park for their prorata share of the Subject Invoice, entered into a contract in fact with Plaintiff to pay  
17 the full amount of the Subject Invoice to Plaintiff; (vi) the amount due pursuant to the Water Use  
18 Agreement as of June 1, 2011 is \$69,350.00; and (vii) Defendant breached the Subject Agreements, and  
19 each of them, prior to January 10, 2012.

20 76. A judicial determination is necessary and appropriate at this time so that Plaintiff may  
21 ascertain its rights and duties.

22 77. The Water Use Agreement contains an attorneys' fee clause and Plaintiff has been  
23 required to retain the services of an attorney to prosecute this claim and is therefore entitled to an award  
24 of attorneys' fees and costs.

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V.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs prays for judgment against Defendant as follows:

1. For actual damages in an amount to be proven at trial but no less than \$232,750.00;

2. As to the Ninth Cause of Action, a declaration that (i) the Other Agreements are valid and binding obligations of Plaintiff and Defendant; (ii) all amounts due by Defendant to Plaintiff pursuant to the Subject Agreements were to be paid in advance in June of each year between October 12, 1986 and the present date (based on an estimate provided by Plaintiff to Defendant in the preceding May of each year during such period); (iii) Defendant has not paid Plaintiff in full for the services provided by Plaintiff to Defendant pursuant to the Subject Agreements for the period October 12, 1986 to May 31, 2011; (iv) \$302,120.00 is a fair estimate of the costs of the services provided and to be provided by Plaintiff to Defendant pursuant to the Subject Agreements for the period of June 1, 2011 to May 31, 2012; (v) Defendant, by billing each lot owner of the Park for their prorata share of the Subject Invoice, entered into a contract in fact with Plaintiff to pay the full amount of the Subject Invoice to Plaintiff; (vi) the amount due pursuant to the Water Use Agreement as of June 1, 2011 is not \$69,350.00; and (vii) Defendant breached the Subject Agreements, and each of them, prior to January 10, 2012.

3. Interest thereon since October 4, 2011;

4. For a monetary award representing an amount equal to reasonable attorneys' fees incurred by Plaintiff in the prosecution of this case;

5. For all costs of suit incurred by Plaintiff; and

6. For such other and further relief as this court may deem just and proper.

DATED: February 23, 2012

DAMBACHER, TRUJILLO & WRIGHT

By: \_\_\_\_\_

Timothy T. Trujillo, Esq.  
Attorneys for Plaintiff

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**EXHIBIT "A"**  
**TO COMPLAINT**

WATER USE AGREEMENT

THIS AGREEMENT is made this 12<sup>th</sup> 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 \$* Dollars (*\$69,350.<sup>00</sup>*) 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.C.D of Odd Fellows Rev. 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 H. Johnson

Title: President

GRANTEE:

ODD FELLOWS SIERRA HOMEOWNERS'  
ASSOCIATION

BY W. J. Walker

Title: Secretary

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**EXHIBIT "B"**  
**TO COMPLAINT**

LICENSE AGREEMENT

THIS AGREEMENT is made this 12<sup>th</sup> day of October, 1986, by and between ODD FELLOWS SIERRA RECREATION ASSOCIATION, a California corporation ("LICENSOR"), and ODD FELLOWS SIERRA HOMEOWNERS' ASSOCIATION, a California nonprofit corporation ("LICENSEE").

WHEREAS, LICENSOR is the owner of certain real property in the County of Tuolumne consisting of approximately four hundred (400) acres as more particularly described on Exhibit A hereto; and

WHEREAS, LICENSEE is a homeowners association organized and existing for the mutual benefit of for some or all of the owners of the lots in the subdivisions located in Tuolumne County as more particularly described in Exhibit B hereto; and

WHEREAS, LICENSEE desires to obtain for its members and their family, renters, and guests permission to perform certain acts upon LICENSOR's property;

NOW, THEREFORE, the parties hereto agree as follows:

1. LICENSOR grants to LICENSEE permission to use all private roads on its property for access purposes and the remainder of its property, except as hereinafter limited, for recreational purposes, including such activities as fishing (for persons under age sixteen (16)), camping, water sports, hiking, spelunking, horseback riding, rock collecting, sightseeing, picnicing, nature studying, nature contacting, recreational gardening, gleaning, and viewing or enjoying historical, archeological, scenic, natural, or scientific sights.

2. LICENSOR agrees to leave the heretofore undeveloped portions of its property in its natural state, LICENSOR's reasonable logging operations, mining, oil and gas extraction, and recreational development excepted.

3. LICENSOR may, from time to time, adopt rules and regulations pertaining to the use of its property by LICENSEE's members

for access and recreational purposes and may exclude LICENSEE's members at any given time from no more than twenty-five percent (25%) of its property to enable it to conduct logging operations.

4. LICENSOR agrees to repair and maintain at its expense all existing roads on its property which are reasonably necessary for access by LICENSEE's members to their properties and to LICENSOR's property for recreational purposes. As soon as reasonably practicable following the end of each calendar year, LICENSOR shall notify LICENSEE of the amounts so expended by it during that calendar year for repair and maintenance of roads providing direct access to the properties owned by LICENSEE's members. LICENSEE shall reimburse LICENSOR within ninety (90) days thereafter.

5. LICENSEE agrees on behalf of its members that LICENSOR shall have no greater duty of care to keep that portion of its property used for recreational purposes safe for entry or use or to give any more warnings of hazardous conditions, uses of, structures, or activities on its property than would a landowner who gives permission without consideration (other than by license) for another to use his property for recreational purposes under the provisions of California Civil Code section 846.

6. The term of this Agreement shall be twenty-five (25) years from the date hereof and 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.

LICENSOR:

ODD FELLOWS SIERRA RECREATION  
ASSOCIATION

By *Dart E. Johnson*  
Title: *President.*

LICENSEE:

ODD FELLOWS SIERRA HOMEOWNERS  
ASSOCIATION

By *W. E. Walker*  
Title: *Secretary*

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**EXHIBIT "C"**  
**TO COMPLAINT**

Sierra  
9-15-2011

Odd Fellows Sierra Recreation Association  
P.O. Box 116  
Long Barn, CA 95335

September 15, 2011

Odd Fellows Sierra Homeowners Association  
P.O. Box 236  
Long Barn, CA 95335

Assessments due for the year June 1, 2011 thru May 31, 2012

Statement of your account

June 1, 2011

Assessments due 364 x \$830.00	\$302,120.00
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July 31, 2011

Partial payment	<u>( 50,000.00)</u>
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September 1, 2011

Past due	\$252,120.00
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Assessments past due may be subject to legal action.



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**EXHIBIT "D"**  
**TO COMPLAINT**

January 4, 2012

VIA US POSTAL SERVICE, CERTIFIED MAIL, RETURN  
RECEIPT REQUESTED AND ELECTRONIC MAIL

Odd Fellows Sierra Homeowners' Association  
Attn: Fred Coleman, President  
P.O. Box 236  
Long Barn, CA 95335

Re: Notice of Termination of Water Agreement and License Agreement

Dear Mr. Coleman:

Reference is made to that certain Water Use Agreement dated as of October 12, 1986 (the "Water Agreement") and entered into by and between Odd Fellows Sierra Recreation Association, a California corporation ("OFSRA") as "Grantor", and Odd Fellows Sierra Homeowners' Association, a California non-profit corporation ("OFSHA") as "Grantee".

Reference is also made to that certain License Agreement dated as of October 12, 1986 (the "License Agreement") and entered into by and between OFSRA as "Licensor", and OFSHA as "Licensee".

As you know, the initial term of the Water Agreement and License Agreement was set to expire on October 11, 2011. As you also know, OFSRA agreed to extend the term of the Water Agreement and License Agreement until January 10, 2012.

As you know, OFSRA approved a budget of \$302,120.00 in May 2011 for the wholesale services OFSRA provided to OFSHA for the period of June 1, 2011 to May 31, 2012. On or about September 1, 2011, OFSRA presented OFSHA with an invoice in the amount of \$302,120.00 for the wholesale services of OFSRA, including, but not limited to: unmetered water; repair and maintenance of water supply/storage system; garbage removal; road maintenance and repair; access gate maintenance and repair; snow removal; pine needle disposal; maintenance (and repair as applicable) of lake, recreation hall, picnic area, baseball field, playground, etc.; maintenance and repair of vehicles used in connection with the aforementioned services; services of a caretaker to assist in providing the aforementioned services and certain costs associated therewith; utility costs in providing some of the foregoing services; etc. OFSHA in turn provides retail service to OFSHA's homeowners.

The total amount invoiced by OFSRA for the period of June 1, 2011 to May 31, 2012 was comparable to OFSRA's invoice for the previous fiscal year (adjusted for

inflation and increased expenses). However, in response to such invoice, OFSHA paid only \$69,350.00 (in two separate payments) and has expressed an unwillingness to pay for the remainder of such invoice despite the fact that OFSHA billed each of its homeowners an amount designed to collect the total amount due by OFSHA to OFSRA (\$302,120.00). OFSRA understands that OFSHA has collected the majority of the amount due by OFSHA to OFSRA from its homeowners. Therefore, there is approximately \$232,770.00 still due and owing by OFSHA to OFSRA for the period of June 1, 2011 to May 31, 2012.

As a result of the non-payment by OFSHA of OFSRA's above-referenced invoice (other than the \$69,350.00 partial payments referenced above), on December 5, 2011, at a special meeting of the shareholders of OFSRA, the shareholders of OFSRA voted to allow the Water Agreement and License Agreement to expire on January 10, 2012. The shareholders of OFSRA also voted to not enter into any further license agreement, water use agreement or other similar type of agreement with OFSHA after January 10, 2012 without approval of the shareholders of OFSRA.

Notwithstanding the expiration of the Water Agreement and License Agreement under their own terms, OFSRA believes that OFSHA's billing of its homeowners of an amount equivalent to that invoiced by OFSRA to OFSHA demonstrates the existence of a contract in fact through May 31, 2012. Therefore, OFSRA will continue to provide all services to OFSHA that it previously provided through May 31, 2012. OFSRA expects immediate payment from OFSHA directly for the remainder due by OFSHA to OFSRA (\$232,770.00) as set forth above (and will not seek payment from OFSHA's homeowners directly as they have already paid OFSHA for these services).

Please feel free to call me at (916)536-9860 if you have any questions.

Sincerely,

Odd Fellows Sierra Recreation Association,  
a California corporation



By: Shaun Velayas

Its: President

P.O. Box 116

Long Barn, CA 95335

7007 2002 0952 0000 8441 6493

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or PO Box No.

City, State, ZIP+4