

**AGREEMENT TO PROVIDE
UNTREATED WATER FOR IRRIGATION PURPOSES**

This Agreement to Provide Untreated Water for Irrigation Purposes (hereinafter "Agreement") is dated 11/25/03 for reference purposes only, and is entered into by and between **Cal-Stanford Oaks, LLC**, a California limited liability company (hereinafter "Owner"), and the **Whitney Oaks Community Association**, a California non-profit corporation (hereinafter "WOCA").

Recitals

- A. Owner is the developer of that project known as Whitney Oaks (the "Project") located within the City of Rocklin. The Project is comprised generally of residential subdivisions and the Whitney Oaks Golf Course, which is also owned by Owner.
- B. WOCA has the responsibility to irrigate and maintain certain common area landscaping within the Project, and desires to obtain a source of untreated water for irrigation purposes.
- C. Under a contract with the Placer County Water Agency ("PCWA") commonly identified as PLX No. 1673, Owner has the contractual right to receive up to sixty (60) "miner's inches" of untreated water for irrigation purposes from PCWA's Caperton Canal. Owner's primary use of that untreated water is to irrigate the Whitney Oaks Golf Course.
- D. Owner is willing to make a portion of the untreated water it receives under PLX No. 1673 available to WOCA for the purposes of irrigating WOCA's common area landscaping.
- E. Owner and WOCA acknowledge that the use of untreated water for irrigation purposes may result in significant cost savings for WOCA.
- F. Owner and WOCA have entered into this Agreement to provide for the irrigation of the common area landscaping with untreated water.

Terms and Conditions

1. Connection to Main Waterline.

Owner has entered into an agreement with the City of Rocklin to design and construct a main waterline within the Project for the purpose of conveying untreated water received under PLX No.1673 for irrigation purposes, which also

allows Owner to provide water to the common area landscaping irrigation systems to be operated by WOCA. The general locations of such irrigation systems for the common area landscaping are identified on Exhibit "A" attached hereto and incorporated herein by reference. Owner agrees untreated water can be used by WOCA to irrigate the common area landscaping, as shown on Exhibit A, upon the terms and provisions set forth in this Agreement.

2. Provision of Untreated Water.

Upon WOCA's acceptance of each phase of the common area landscaping depicted on Exhibit A attached hereto and incorporated herein by reference, Owner agrees to provide WOCA with a portion of the untreated water Owner receives under PLX No. 16731673 upon the following terms and conditions:

- A. WOCA shall use the untreated water only for irrigation of the common area landscaping owned by the WOCA, and for no other purposes.
- B. Subject to the availability and receipt of untreated water from the PCWA under PLX No. 1673, Owner agrees to provide WOCA with untreated water for the irrigation of WOCA's common area landscaping as described in the table found in Exhibit A.
- C. The points of delivery for untreated water furnished to WOCA by Owner under this Agreement shall be as depicted on Exhibit A.
- D. WOCA shall pay Owner for untreated water furnished to WOCA for WOCA's use under this Agreement an amount equal to Owner's actual cost of the untreated water. Owner shall bill WOCA annually. Each annual billing shall show WOCA's pro rata share of the cost of the amount of untreated water from the PCWA delivered to WOCA, based upon the table of water consumption for each landscaped area contained in Exhibit A. WOCA acknowledges that WOCA's annual pro rata share may fluctuate over time until all landscaped areas within the Whitney Oaks Project are completed, at which point WOCA's pro rata share would be fixed at the ultimate share described in Exhibit A.
- E. WOCA shall irrigate the common area landscaping only during the times specified in the Water Schedule attached hereto as Exhibit B. Any changes to the Water Schedule require the prior consent of Owner and the City of Rocklin.
- F. The water delivery system for WOCA's common area landscaping is managed by a water controller installed by Owner and owned by the City

of Rocklin. The water controller is located at the Parcel 60 Park Water Storage Reservoir. WOCA shall coordinate access to the water controller for the purpose of adjusting irrigation times directly with the City of Rocklin.

3. Interruption of Supply; Connection to Domestic Water Supply.

- A. If at any time during the term of this Agreement, Owner experiences a reduction in the amount of untreated water it receives from PCWA pursuant to PLX No. 1673 to a level below the amount customarily used to irrigate the Whitney Oaks Golf Course (including any and all related facilities), the amount customarily delivered to the City of Rocklin for the irrigation of public landscaping within the Project, and the amount delivered to WOCA for irrigation of common area landscaping, then the reduced supply of untreated water received shall be apportioned between the Whitney Oaks Golf Course, the City of Rocklin, and WOCA based on their respective historical use of untreated water prior to the period of reduction.
- B. If at any time during the term of this Agreement, Owner is unable to deliver untreated water to WOCA in amounts necessary to irrigate WOCA's common landscaped areas, then WOCA may, upon written notice to Owner, apply to PCWA for a temporary emergency treated water connection and supply WOCA's irrigation needs with treated water until Owner can again provide adequate untreated water consistent with this Agreement. The cost of the temporary emergency connection and the treated water shall be payable by WOCA.

4. Termination of Agreement; Permanent Connection to Domestic Supply.

- A. This Agreement shall automatically terminate upon the expiration or sooner termination of Owner's contract PLX No. 1673 with PCWA.
- B. WOCA may, in its sole discretion, give Owner thirty (30) days' written notice of intent to terminate this Agreement and convert to a domestic treated water supply if WOCA determines conversion is necessary to safeguard WOCA's investment in its common area landscaping. WOCA shall bear all costs and expenses of the permanent connection of its landscape irrigation system to the domestic water supply system, including the cost of installing a permanent water meter as required by PCWA and payment of all associated costs, fees and other charges.

5. Default.

- A. In the event any party hereto defaults in its obligations and fails to remedy or commence to cure an alleged default within thirty (30) days for a non-monetary default, and within ten (10) days in the event of a monetary default, after receipt of notice of default from the non-defaulting party, then the non-defaulting party may terminate this Agreement and pursue any and all legal and equitable remedies.
- B. Failure or delay in giving notice of default shall not constitute a waiver of any default. Any failure or delay by either party in asserting any of its rights or remedies shall not operate as a waiver of its rights or remedies, and shall not deprive either party of the right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.
- C. No party shall be in breach or default under this Agreement for delays or failures in performance due to war, insurrection, strikes, floods, drought, earthquakes, damage or failure of the PCWA water delivery system, fires, casualties, acts of God or similar basis beyond the reasonable control of the Party to be excused.

6. Remedies.

In addition to any other rights or remedies, either Party may institute an equitable action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, enforce by specific performance the obligations and rights of the Parties hereto, or obtain any other remedies consistent with the foregoing and the purposes of this Agreement. Prior to the initiation of any litigation hereunder, the Parties agree to pursue mediation to resolve any disputes.

7. Assignment.

- A. WOCA may not assign this Agreement without the prior written consent of Owner, which consent shall not be unreasonably withheld.
- B. Owner may freely assign this Agreement at any time without the necessity of obtaining WOCA's consent. Following any such assignment by Owner, Owner shall be relieved and released from any and all liabilities and obligations arising from all actions or omissions of the assignee arising after the date of such assignment.

8. Indemnification.

WOCA shall defend, indemnify and hold harmless Owner and its members, shareholders, partners, officers, directors, employees and volunteers from and against any and all claims, demands, damages, penalties, losses and expenses, including attorneys' fees, arising out of WOCA's performance under this Agreement or WOCA's use of the untreated water for irrigation and related uses as contemplated herein.

9. No Third Party Beneficiary.

- A. WOCA and Owner acknowledge and agree that WOCA is not a third party beneficiary under Owner's contract PLX No. 1673 with PCWA for the supply of untreated water to the Project.
- B. This Agreement is not intended, nor shall it be construed, to create any third party beneficiary rights under this Agreement in any person or entity who is not a Party hereto, unless it has been expressly otherwise provided herein.

10. Insurance.

- A. During the term of this Agreement, WOCA shall maintain in effect a policy of commercial general liability insurance (with coverage at least as broad as ISO occurrence form CG0001) with limits no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit. The commercial general liability policy shall be endorsed to name Owner and its members, partners, shareholders, officers, directors, employees and volunteers as additional insured, shall provide that WOCA's insurance shall be primary as respects Owner, and shall provide that Owner shall be given thirty (30) days prior written notice of any cancellation of coverage by the insurer.
- B. During the term of this Agreement WOCA shall maintain in full force and effect one or more policies of workers compensation insurance insuring against any liability WOCA may have for worker's compensation. WOCA shall also maintain in full force and effect a policy of employer's liability insurance with limits no less than One Million Dollars (\$1,000,000) for each accident; One Million Dollars (\$1,000,000) policy limit for bodily injury by disease; and One million Dollars (\$1,000,000)

each employee bodily injury by disease. A waiver of subrogation shall be obtained in favor of Owner by way of endorsement under the workers compensation policy.

- C. WOCA shall provide Owner with copies of insurance policies and the endorsements required hereunder, or at Owner's option, with certificates of insurance, evidencing the types of insurance required herein.
- D. All insurance shall be provided by companies admitted to do business in the State of California and which have a current A.M. Best's rating of at least A:VII or equivalent acceptable to Owner.

11. Severability.

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, such provision shall be disregarded and this Agreement shall continue in effect unless enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under the circumstances or would frustrate the purpose of this Agreement.

12. Construction.

Each Party hereto has had an opportunity to have this Agreement reviewed by its legal counsel, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

13. California Law / Attorneys' Fees.

This Agreement has been entered into and will be performed within the State of California and it shall be construed and enforced in accordance with the laws of the State of California. If legal action by either Party is brought against the other Party because of an alleged default under this Agreement, the prevailing Party shall be entitled to an award of its reasonable attorneys' fees and court costs, including those incurred on any appeals.

14. Notices.

All notices given under this Agreement shall be in writing and delivered personally or sent by certified mail/return receipt requested, or sent by overnight delivery service such as Federal Express, or sent by facsimile. If given by certified mail or overnight delivery service, a notice shall be deemed to have been

given and received on the date of actual receipt by the addressee. If a notice is personally delivered, a notice shall be deemed given and received when delivered to the party to whom it is addressed. If sent by facsimile, the notice shall be deemed given and received when confirmation of transmission is made. Any Party may designate any other address in substitution of the address set forth below for notices:

If to Owner: Cal-Stanford Oaks LLC
4301 Live Oak Lane
Rocklin, California 95765
Attn: Peter M. Bridges
Telephone (916) 435-0413
Facsimile: (916) 435-0597

If to WOCA: Whitney Oaks Community Association
2890 Gateway Oaks Dr., Suite 250
Sacramento, CA 95833
Attn: George Moore
Telephone: (916) 925-9000
Facsimile: (916) 567-6222

15. Waiver.

No term or provision of this Agreement shall be considered waived unless such waiver is in writing and signed by the Party to be bound by such waiver. No extension of time for the performance of any obligation or act shall be deemed an extension of time for any other obligation or act.

16. Entire Agreement.

This Agreement, together with all exhibits hereto, constitutes the entire Agreement between the Parties with respect to the subject matter hereof. This Agreement is specifically intended by the Parties to supercede all prior Agreements and understandings, whether written or oral, which may exist between Owner and WOCA.

State of California)
County of Placer)

On this 18th day of November, 2003, before me

Cheryl A. Mendoza, a Notary Public
(Notary Name and Title)

personally appeared Peter M. Bridges
personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the
person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me
that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by
his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

My Commission Expires: July 20, 2006

Cheryl A. Mendoza
(Signature of Notary Public)

(SEAL)



State of California)
County of Placer)

On this 18th day of November, 2003, before me

Cheryl A. Mendoza, a Notary Public
(Notary Name and Title)

personally appeared Gale L. Wild
personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the
person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me
that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by
his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

My Commission Expires: July 20, 2006

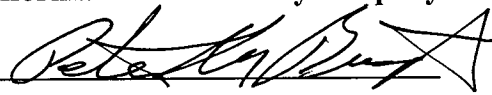
Cheryl A. Mendoza
(Signature of Notary Public)

(SEAL)



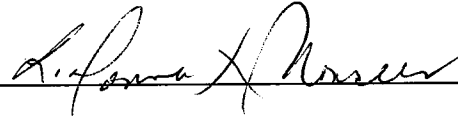
IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first written above.

OWNER:
CAL-STANFORD OAKS, LLC
a California limited liability company

By: 

Name: Peter M. Bridges

Title: Vice President

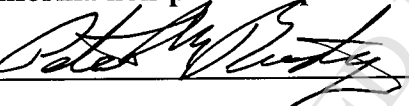
By: 

Name: LaDonna K. Monsees

Sr. Vice President

Title: _____

WOCA:
WHITNEY OAKS COMMUNITY ASSOCIATION,
a California non-profit corporation

By: 

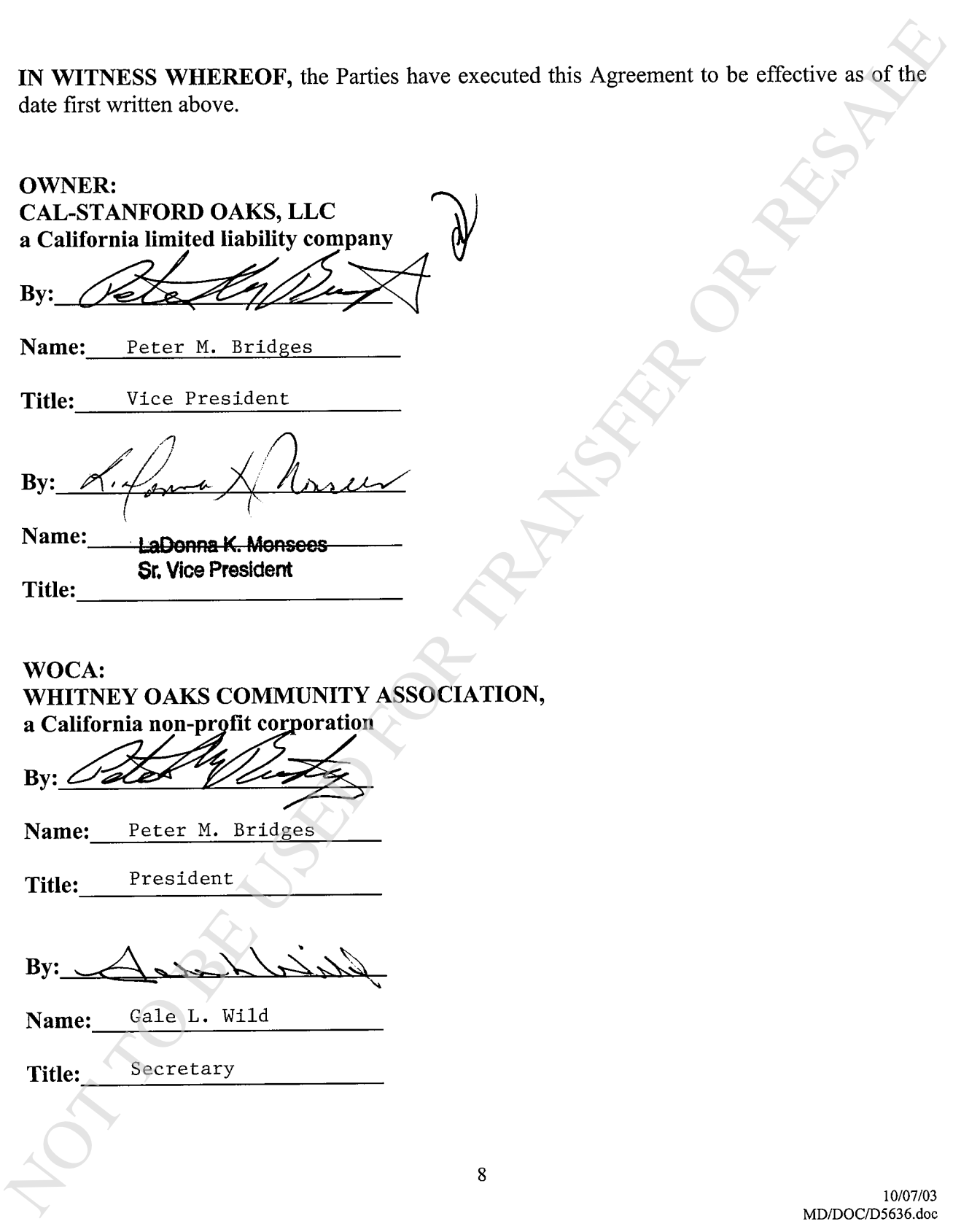
Name: Peter M. Bridges

Title: President

By: 

Name: Gale L. Wild

Title: Secretary



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)

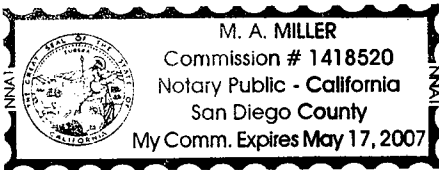
COUNTY OF SAN Diego)

) ss.

On Nov 25 2003, before me, M.A. Miller, Notary Public
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared LaDONNA K. MONSEES
Name of Signer(s)

personally known to me – OR – proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

M.A. Miller
Signature of Notary Public

OPTIONAL

ough the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY(IES) CLAIMED BY SIGNER(S)

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

_____ Title(s)

_____ Title or Type of Document

- Partner(s) Limited
- General

_____ Number of Pages

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: _____

_____ Date of Document

Signer is Representing:
Name of Person(s) or Entity(ies)

_____ Signer(s) Other Than Named Above