



No Recording Fees
Required Per
Government Code
Section 27383

*Orig/emc J. Stark
emc S. Bigley
R. Voderer
M. Johnson
P. Reyes*

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

File: 0643.532
SWN 06S07E22K01S

COACHELLA VALLEY WATER DISTRICT
Post Office Box 1058
Coachella, California 92236

(Space above this line is for Recorder's Use)

WATER PRODUCTION METERING AGREEMENT

THIS WATER PRODUCTION METERING AGREEMENT is made this 20 day of
January, 2009, by and between the COACHELLA VALLEY WATER
DISTRICT (District), a public agency, and The Palms Golf Club, Inc.
("Producer").

Recitals

- A. District is a California public agency, organized and existing under Section 30000, et seq., of the California Water Code.
- B. Producer is the owner of, or has an interest in, certain real property within the District's boundaries; said property is described on the attached Exhibit "A" and is referred to hereafter as the ("Property").
- C. Certain groundwater basins within the District, including the basin underlying the Property, are in a state of overdraft. The District has adopted a Water Management Plan for the purpose of, among other things, reducing or eliminating overdraft through several programs, including replenishing or replacing the groundwater pumped through groundwater recharge with imported water using funds raised through an assessment on the production of groundwater.
- D. It is in the interests of each of the Parties to this Agreement that overdraft of the basin underlying the property be eliminated.
- E. The District is authorized by California Water Code sections 31630 – 31639 to place water-measurement devices on wells or other water producing facilities and to levy and collect water replenishment assessments on water production.

F. Producer is extracting groundwater from a well, wells or other water production facilities ("Well(s)") on the Property; the identity of each such Well on the Property is shown on the attached Exhibit "B."

G. The Parties desire to provide for the metering of each Well that is not already metered, to measure water production by one of the following methods:

- (1) Installation of a water-measurement device ("Water Meter") in the Well. The Water Meter(s) shall be funded by the Producer and installed in accordance with the District's Standard Specifications for the Construction of Well Head Meter Assemblies. The District will assume the ownership, maintenance, replacement and reading of the Water Meter(s) after installation.
- (2) Through the use of an existing dedicated electrical power supply consumption metering device ("Power Meter") for the Well. A Pumping System Efficiency Test funded by the Producer shall be completed prior to implementing this method and annually thereafter by a qualified technician approved by the District to ensure accurate conversion of electric power consumption to water production.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Use of Existing Water Meters by the District. An existing Water Meter that is affixed to a Well located on the Property and capable of measuring and registering the accumulated amount of water produced may be used to report water production. The District will evaluate the Water Meter's ability to measure water production and suitable location and will perform a Pumping System Efficiency Test funded by the Producer to confirm accurate measurement of the water production. If the existing Water Meter is unable to accurately measure and register the accumulated amount of water produced by the Well, the Producer shall have the existing Water Meter repaired and tested to confirm accurate measurement of the water production or install a new Water Meter as described in Recitals, Paragraph G (1) above.
2. Installation of Water Meter for New Facilities. The Producer shall install a Water Meter in accordance with the District's Standard Specifications for the Construction of Well Head Meter Assemblies on any new or replacement Well that is constructed on the Property by Producer. Producer shall notify District when Producer has completed a new or replacement Well so that the District can evaluate the Water Meter's ability to measure water production before the Well is placed in service.

3. Other Properties or After Acquisition Properties. Producer shall notify the District of other properties in which the producer has an interest and contains a producing Well within the District's boundaries and shall notify the District after the acquisition of property containing a producing Well within the District's boundaries after the date of this agreement.

4. Ingress and Egress. Producer hereby grants to the District an irrevocable license for ingress and egress across the property for the purpose of installing, maintaining, repairing, replacing, and/or reading each Water Meter or Power Meter on the Property and shall make provision for access by District representatives through locked gates or facilities.

5. Site Conditions and Safety. Producer shall maintain each Well in a safe and accessible condition, as required under local, state and federal regulations. This shall include but not be limited to provision of ventilation in enclosed spaces, providing safe access to vaults, and protecting personnel from unsafe conditions, which could be caused by electrical and mechanical equipment. In the event that Producer fails to maintain each Well in a safe and accessible condition, Producer hereby agrees that District may take such safety measures as may be necessary at Producer's expense, including but not limited to performing repairs to equipment or estimating production as provided in Paragraph 6, below.

6. Modifications.

A. Changes to Well Pump or Piping. Producer shall have the right to change or modify any pump or piping connected to a Well on the Property but shall first notify the District, if the changes or modifications will require that the Water Meter be moved or its connections modified. Any modifications shall be in accordance with the District's Standard Specifications for the Construction of Well Head Meter Assemblies. The District will evaluate the Water Meter's ability to measure water production and suitable location and may perform a Pumping System Efficiency Test funded by the Producer to confirm accurate measurement of the water production after the modifications are completed.

B. No By-Pass. Producer shall not by-pass the Water Meter or Power Meter or take any action which would affect the accuracy of the Water Meter or Power Meter readings. The penalty for violation of this provision shall be in accordance with Section 31638.5 of the California Water Code.

7. Reading Water Meters and Power Meters. The District shall read each Water Meter or Power Meter on a monthly basis and shall mail to Producer a statement each month showing the amount of water produced during the preceding month and the amount of the replenishment assessment due. Producer shall pay the amount then due within thirty (30) days of the date of mailing of the statement. Delinquent amounts shall bear interest at the rate of one percent (1%) per month.

8. Estimating Production

A. Alternative Methods. In the event water production for a Well cannot be determined by one of the two methods given in Recital G, the production shall be estimated using one or more of the following alternative methods:

- (1) Consumptive use/Evapotranspiration method;
- (2) Historic water production data related to that particular Well; and
- (3) Any other standard method.

B. Notice of Estimate, Protest and Hearing. If the District estimates production, it shall clearly state in the monthly statement that the assessment is based on estimated production rather than on actual Water Meter readings or Power Meter readings and shall describe the method used to estimate the production. The estimate shall be binding on Producer unless Producer files a written protest within fifteen (15) days of the date of mailing of the statement. The protest shall state the grounds for the protest and shall include any supporting data and documentation. The District shall hold a hearing to consider a protest within twenty (20) days of receipt of the protest, provided that Producer is given at least ten (10) days' notice of the time and place of hearing. At the hearing, the District's Hearing Officer, appointed by the General Manager, shall consider all information submitted by the Producer and by District staff and shall make a written determination of (1) the production that is to be used to calculate the assessment, and (2) the amount of the assessment. The determination shall be made within ten (10) days after the close of the hearing, and notice thereof shall be promptly mailed to Producer. Producer shall pay the assessment within twenty (20) days of the date of mailing of said determination.

9. Pumping System Efficiency Tests. The District at its expense may perform periodically a Pumping System Efficiency Test to confirm the Producer's ability to accurately measure the water production by each Well.

10. Well Records. In the event that the District finds it necessary to obtain records, data, reports and other data relating to a Well on the Property, Producer shall provide the requested information to District within twenty (20) days after the date of a written request for same. All information and documentation received by the District, pursuant to this paragraph, shall be treated as confidential by the District, to the extent permitted by law.

11. Power Records. Producer hereby authorizes District obtain information relating to energy/electrical power consumption for each Well on the Property from the agency or company providing the electricity or energy.

12. Agreement as Covenant Running With the Land. This Agreement and the covenants contained herein shall be binding upon and run with the Property and shall pass to and be binding upon Producer's successors in interest to the Property. Each contract, lease, deed or other instrument transferring the Property or an interest therein, shall conclusively be held to have been given, executed, delivered and accepted subject to this Agreement.

13. Notice of Sale or Transfer of Property. Producer shall provide the District with written notice within ten (10) days after Producer has agreed to sell, give, donate, lease, or otherwise transfer the property to a third party. The written notice shall include the following:

- A. Name and address of the proposed transferee;
- B. Name and address of the escrow company handling the transaction, if any;
- C. Date of close of escrow or effective date of transfer; and
- D. Name and address of title company issuing any title policy.

Producer authorizes the District to examine and copy any records concerning the sale, lease or transfer of the Property.

14. Further Acts to Carry Out Agreement. Each Party hereto agrees to perform any further act required to execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

15. Notices. All notices, requests and demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date personally served or within five (5) days after the date of mailing, if mailed, by first-class mail, registered or certified, and properly addressed to the address set forth below, or to any replacement address provided by that Party:

PLEASE ATTACH APPROPRIATE
NOTARIAL CERTIFICATES

PRODUCER

The Palms Golf Club, Inc.

By: 

Print Name and Title:

JD EBERSBERGER COO

Address:

57000 PALMS DRIVE

LAQUINTA, CA 92253

PLEASE ATTACH APPROPRIATE
NOTARIAL CERTIFICATES

COACHELLA VALLEY WATER DISTRICT

By: _____

Address: P.O. Box 1058

Coachella, CA 92236

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Riverside

On 1/20/2009 before me, Christina Castellano Banke "Notary Public",
(Here insert name and title of the officer)

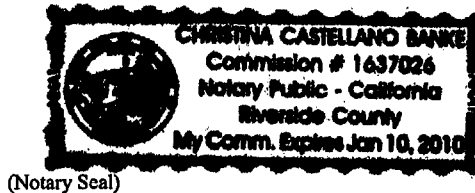
personally appeared J.D. Ebersberger,

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Christina Castellano Banke
Signature of Notary Public



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER