Dedication of Dedicated Water Facilities and Utility Easement Agreement

This Dedication of Dedicated Water Facilities and Utility Easement Agreement is entered into this 10th day of December, 1991 by and between Meadowood Associates, a California limited partnership ("Grantor") and the City of St. Helena, California, a California municipal corporation ("Grantee"), who agree as follows:

Recitals:

A. Grantor is the owner of certain real property in an unincorporated area of Napa, State of California, commonly known as Meadowood Resort, more particularly described in Exhibit "A" attached hereto ("Meadowood Resort" or the "Servient Tenement").

B. Grantee is the owner and operator of a municipal water system.

C. Grantor and Grantee wish to incorporate a portion of the Meadowood Resort water distribution system into the municipal water system of Grantee.

D. In furtherance of this goal, Grantor desires to grant to Grantee and Grantee desires to acquire from Grantor certain water facilities and certain rights in the Servient Tenement subject to the terms and conditions contained herein.
Agreement:

1. Dedication of Dedicated Water Facilities. Grantor hereby grants, conveys and otherwise transfers to Grantee all water mains shown on Exhibit B-1 and gate valves, hydrants, portions of service laterals, master water meters, water facility containment structures, blowoffs, post indicator valves, pump input station facilities and miscellaneous appurtenances marked "City" on Exhibits B-2 and B-3, attached hereto (collectively the "Dedicated Water Facilities").

2. Grant of Easement: Creation of Utility Easement. Grantor grants to Grantee for the purpose of installing, maintaining, operating, repairing and replacing the Dedicated Water Facilities a non-exclusive, permanent utility easement (the "Utility Easement"), as hereinafter described. The Utility Easement is located on the portion of the Servient Tenement containing the Dedicated Water Facilities, as shown on Exhibit E, and over existing roadway and utility easements shown on Exhibit C-1 (Meadowood Parcel Map) and Exhibit C-2 (Easements of Record) attached hereto. All rights created hereunder shall be solely for the benefit of Grantee, Grantor and Grantor's permittees who shall be subject to all of the terms, covenants and conditions herein contained.

3. Description and Use of Utility Easement. The Utility Easement granted herein is a right to build, install, lay, maintain, operate, repair and replace the Dedicated Water Facilities in the manner consistent with this Instrument:

   (a) The Utility Easement. The Utility Easement shall be used by Grantee in accordance with applicable law. All Dedicated Water Facilities and any replacement facilities and improvements shall be located underground, except where they are required to be aboveground by law, necessity or as situated as of the date of this instrument.

   (b) Compliance With Laws. Grantee shall not use the Utility Easement or permit it to be used by any agent, employee, contractor, invitee or licensee of Grantee for any purpose not permitted under all applicable laws, ordinances, rules and regulations, nor shall Grantee permit the same to be utilized in any manner constituting a nuisance or an undue disturbance to the use and enjoyment of the Servient Tenement.
(c) **No Overburdening.** The Dedicated Water Facilities and the Utility Easement granted hereunder are for the sole benefit of Grantee, Grantor and Grantor's permittees. If any increased use of the Utility Easement or any part thereof by Grantee causes the capacity of the Utility Easement or portion thereof to be exceeded or overburdened, the Grantee shall promptly implement all actions reasonably necessary to divert any such excess use or overburdening from the Utility Easement or portions thereof so overburdened. All such actions shall be taken at the sole cost and expense of the Grantee. Such overburdening shall not operate, however, to terminate, diminish or otherwise affect the Utility Easement.

4. **Non-Exclusiveness of Easement.** The Utility Easement granted herein shall not be exclusive to Grantee. Grantor reserves for itself and its successors in interest in the Servient Tenement the right to use the Servient Tenement, subject to the Utility Easement and the rights of Grantee herein. Grantor and Grantee acknowledge that there are presently other utilities located in or using the Servient Tenement and the portion thereof where the Utility Easement is located.

5. **Construction Easement.** The Utility Easement granted herein includes rights to enter upon and use the Servient Tenement for purposes of constructing, installing and replacing the Dedicated Water Facilities in and on the Utility Easement.

6. **Maintenance, Repair and Replacement of Dedicated Water Facilities and Improvements in and on the Utility Easement.** Grantee shall be solely responsible for the maintenance, repair and/or replacement of the Dedicated Water Facilities. Grantee shall effect such maintenance, repair and replacement at times as agreed to by Grantor and Grantee. Each party shall be solely responsible for the maintenance, repair and/or replacement of the improvements it makes in and on the Utility Easement from and after the date this Instrument is recorded to a standard sufficient to keep it in good condition for the uses and purposes intended. Grantee, its employees, agents and contractors shall have the right to enter upon the Servient Tenement for purposes of maintenance, repair or replacement of the improvements in and on the Utility Easement.
7. **Damage and Destruction of Easement Area.** In the event of any damage or destruction to all or any portion of the Utility Easement, Grantee, or Grantor, if Grantor is responsible for the repair work pursuant to this Agreement, shall promptly rebuild and restore such Easement with all due diligence. The cost of any such reconstruction shall be allocated in accordance with the provisions of this Agreement. If any repair or maintenance to the Utility Easement is required by reason of the negligence or willful misconduct or other fault of any party hereto, then that party shall be obligated to repair all damage caused by such negligence and/or willful misconduct and to pay for the entire cost of the subject repair or maintenance.

8. **Condemnation and Eminent Domain.** If a portion of the Servient Tenement is taken by condemnation or eminent domain, then the obligations of Grantor under this Agreement, with regard to that portion of the Utility Easement so taken, shall, as of the date of taking, cease and the provisions of this Agreement with respect thereto shall be null and void and of no further force or effect. Nothing herein shall be construed to give either party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof affecting any portion of the Easement located on said other party's property.

9. **Default.** If either party shall, at any time, be in default in the performance of any of the covenants, terms, conditions or provisions of this Agreement, and said party shall fail to cure such default within the period of time stated herein, after written notice thereof from the other party, the non-defaulting party shall have the following rights:

   (a) **Right to Cure.** The non-defaulting party shall, upon five (5) days written notice, the right, but not the obligation, to cure such default for the account of and at the expense of the defaulting party. To effectuate any such cure, the non-defaulting party shall have the right to enter upon the property of the defaulting party to perform any necessary work or to furnish any necessary materials or services to cure the default of defaulting party, as provided herein. The non-defaulting party shall have the further right to recover from the defaulting party all costs and other sums expended in connection with the cure of the default, including, but not limited to, reasonable attorneys' fees and costs incurred in collecting any such sum, plus interest thereon at the maximum legal rate.
(b) Other Remedies. The non-defaulting party shall, prosecute any proceedings at law or in equity against the defaulting party, or any successor in interest of such party, or any other person, violating or attempting to violate any of the provisions contained in this Agreement, in order to prevent any such party or person from violating or attempting to violate the provisions of this Agreement, including, without limitation, an action for specific performance, and to recover damages for any such violation or attempted violation. The remedies available under this Subparagraph 9(b) shall include, without limitation, ex parte applications for temporary restraining orders, and preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation of any provisions of this Agreement. Any costs and expenses incurred by any party to cure a default of another party under the provisions of this Subparagraph 9(b), together with interest thereon, and all costs and expenses of any proceedings at law or in equity, including reasonable attorneys' fees awarded to such party by order of any court of competent jurisdiction, shall be assessed against and paid by the defaulting or violating party.

10. Term. The Utility Easement, covenants and obligations set forth in this Agreement shall continue in full force and effect from the date of recordation hereof, until such time as the Utility Easement and covenants granted are no longer required by the parties and/or their successors-in-interest for the purpose for which the Utility Easement or covenant has been granted. Subject to the foregoing, the Servient Tenement shall hereafter be held, transferred, sold, leased, conveyed and occupied subject to the Utility Easement, and the covenants and obligations set forth herein, all of which shall run with the land.

11. Indemnity and Waiver of Subrogation. Each party hereto shall indemnify, defend and hold the other party harmless from and against any and all claims, expenses, liabilities, losses, damages and costs, including any actions or proceedings in connection therewith, and including reasonable attorneys' fees, incurred in connection with, arising from, due to or as a result of the death of, or any accident, injury, loss or damage to any person, or loss of or damage to the property of any person caused by the indemnifying party which may occur in or about the portion of the Servient Tenement on which Utility Easement is located, except to the extent that such claim arises out of or is connected with the gross negligence or willful misconduct of the indemnified party. Each party releases the other from all liability for injury to any person or damage to any property to the extent covered by insurance carried by such party to the
extent of insurance proceeds therefrom. Each party shall cause any insurance policy it obtains with respect to the property owned by it to provide that the insured thereunder waive all right of recovery by way of subrogation in connection with any injury or damage covered by the policy.

12. Mortgage Protection. The rights and obligations created by this Agreement are subject and subordinate to any and all existing easements, liens and encumbrances affecting the Servient Tenement and of public record on the date this Agreement is recorded. No breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any first mortgage or deed of trust on any property or portion thereof made in good faith and for value, but the Utility Easement, covenants and restrictions contained herein shall be binding upon and effective against any party who acquires title to the Servient Tenement, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise, pursuant to such mortgage or deed of trust.

13. Notices. All notices required or permitted by this Agreement shall be given in writing, and served by personal delivery or by United States express mail or courier delivery service, or by United States registered or certified mail. Notices by personal delivery shall be deemed given when received. Notices by United States express mail or courier delivery service shall be deemed given twenty-four (24) hours after dispatch. Notices by United States registered or certified mail shall be deemed given on the date shown on the return receipt or, if no date is shown, then forty-eight (48) hours after mailing. Notices shall be addressed as set forth below, but either party may change its address by giving written notice thereof to the other in accordance with the provisions of this paragraph.

To Grantor: Meadowood Associates
3460 Buchanan Street
San Francisco, California 94123
Tel No.: (415) 929-7100
Fax No.: (415) 921-1439

With copy to: Tsar F. Mulvana, Esq.
Pacific Union Advisory Group
3727 Buchanan Street, 4th Floor
San Francisco, California 94123
Tel No.: (415) 929-0803
Fax No.: (415) 931-4796
14. **Negation of Partnership.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between Grantee or Grantor, nor shall this Agreement cause the parties to be considered or deemed to be joint venturers or members of any joint enterprise. This Agreement is not intended, nor shall it be construed, to create any third party beneficiary rights in or for the benefit of any person who is not a party hereto, except as otherwise expressly provided to the contrary in this Agreement.

15. **Covenants Run With Land.** All of the provisions, agreements, rights, powers, covenants, conditions and obligations contained in this Agreement shall be binding upon and shall inure to the benefit of Grantor and Grantee, and their respective successors (by merger, consolidation or otherwise), assigns and representatives, and all other persons acquiring all or any portion of the Dominant Tenement and the Servient Tenement. All of the provisions of this Agreement shall be covenants running with the land pursuant to any and all applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. It is expressly agreed that each covenant to do or to refrain from doing some act on the Servient Tenement, respectively (i) is for the benefit of the Dominant Tenement and is a burden on the Servient Tenement, (ii) runs with each property, and (iii) shall benefit or be binding upon each successive owner during the period of its ownership of all or any portion of the Dominant Tenement and the Servient Tenement, respectively, and each person having any interest therein derived in any manner through any party owning all or any portion of the Dominant Tenement and the Servient Tenement.
16. Estoppel Certificates.

(a) Obligation to Execute Certificate. Grantor may, at any
time and from time to time, in connection with the sale, lease or
transfer of Meadowood Resort or any portion thereof, or in
connection with the financing or refinancing of said property,
deliver a written notice to Grantee requesting that Grantee
execute a certificate certifying that neither party hereto is in
default in the performance of its obligations under this
Agreement or, if in default, describing therein the nature and
amount of any default. Grantee shall execute and return such
certificate within ten (10) days following the receipt of the
notice from Grantor.

(b) Failure to Execute Certificate. Failure by Grantee to
execute and return such certificate within the specified period
shall be deemed an admission on Grantee's part that Grantor and
Grantee are both current and not in default in the performance of
such requesting owner's obligations under this Agreement. Any
such certificate may be relied upon by all transferees, lessees,
mortgagees, and deed of trust beneficiaries.

17. Miscellaneous.

(a) Amendment by Written Recorded Instrument. This
Agreement may be amended or modified, in whole or in part, only
by a written, recorded instrument executed by Grantee and all of
the then owners of record of the Servient Tenement.

(b) Severability. The invalidation of any of the
provisions contained in this Agreement, or of the application
thereof to any person by judgment or court order, shall in no way
affect any of the other provisions hereof, or the application
thereof to any other person, and the same shall remain in full
force and effect to the maximum extent possible.

(c) Attorneys' Fees. In the event of any controversy,
claim or dispute concerning the interpretation or enforcement of
any of the provisions of this Agreement or the breach of any
provision of this Agreement, the prevailing party shall be
entitled to recover reasonable attorneys' fees, expenses and
costs. "Prevailing party" shall include without limitation (i) a
party who dismisses an action in exchange for sums allegedly due;
(ii) the party which receives performance from the other party of
an alleged breach of covenant or a desired remedy where such is
substantially equal to the relief sought in an action; or (iii)
the party determined to be the prevailing party by a court of
law.

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(d) **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

(e) **Exhibits; Entire Agreement.** All exhibits attached hereto are incorporated by this reference as if fully set forth herein. This Agreement, along with any exhibits and attachments hereto, constitutes the entire agreement between the parties hereto concerning the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**GRANTOR:** Meadowood Associates, a California limited partnership

By: St. Helena Co., Inc., a California corporation
    Its General Partner
    By: [Signature]
    Thomas R. Owens
    Its Secretary

**GRANTEE:** The City of St. Helena, a California municipal corporation

By: [Signature]
    Name: Gene Armstead
    Its: City Administrator

**READ AND APPROVED:**

[Signature]
    Diane Price, City Attorney

(MEADOWOOD\\EASEMENT.AGR)
December 5, 1991
State of California  ) ss
County of San Francisco  )

On this 10th day of December, 1991, before me, Claudia Aron, the undersigned Notary Public, personally appeared THOMAS R. OWENS personally known to me or proved to me on the basis of satisfactory evidence to be the Secretary of St. Helena Co., Ltd., General Partner of Meadowood Associates, a California Limited Partnership, and acknowledged to me that such corporation executed the within document on behalf of the partnership.

WITNESS my hand and official seal.

Claudia Aron
STATE OF CALIFORNIA
COUNTY OF NAPA

On this 11th day of December, 1991, before me, the undersigned, Delia Guijosa, Deputy City Clerk of the City of St. Helena, personally appeared Gene Armstead, personally known to me to be the City Administrator of the City of St. Helena, whose signature was subscribed to the within instrument and acknowledged to me that he executed it on behalf of the City of St. Helena.

WITNESS my hand and official seal.

[Signature]
Delia Guijosa, Deputy City Clerk

[Seal]
CITY OF ST. HELENA

RESOLUTION NO. 91-151

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA APPROVING DEDICATION OF DEDICATED WATER FACILITIES AND UTILITY EASEMENT AGREEMENT FROM MEADOWOOD ASSOCIATES TO THE CITY OF ST. HELENA

Be it resolved that the City Council hereby approves the attached Dedication of Dedicated Water Facilities and Utility Easement Agreement from Meadowood Associates, a California limited partnership, according to condition 3(d) of the Meadowood Water Agreement.

Be it further resolved that the City Administrator is hereby authorized to execute the agreement.

PASSED AND ADOPTED at a Regular Meeting of the City Council held on the 10th day of December, 1991, by the following vote:

AYES: Councilmen Salinger, Hardy, Heitz, Mayor Hayne

NOES: Councilmen Brown

ABSENT: None

ABSTAIN: None

APPROVED:  

William A. Hayne  
Mayor

ATTEST:  

Gene Armstead, City Clerk/City Administrator

The foregoing instrument is a correct copy of the original on file in the office of City Clerk and Clerk of the City of St. Helena City Council, County of Napa, State of California.

By  

[Signature]

[Stamp]  

1/13/92

STATE OF CALIFORNIA