WATER AGREEMENT

THIS AGREEMENT, entered into on \underline{August 15}, 2000, between the CITY OF ST. HELENA, a municipal corporation, (City) and CULINARY INSTITUTE OF AMERICA AT GREYSTONE, a New York corporation, (Customer) provides as follows:

RECITALS

A. Customer is the owner of one parcel of real property (the Property) located in the City of St. Helena, County of Napa, California, located inside the city limits of the City, as more particularly described in Exhibit "A" attached hereto. A culinary school and restaurant is located on the property and is authorized by Use Permit # 93-105 issued on September 14, 1993, Use Permit Amendment #96-95 issued on December 10, 1996, and Use Permit Amendment #97-162 issued on February 3, 1998. A water use agreement was required by Use Permit Determination #99-105 dated January 11, 2000.

B. City, through the St. Helena Water Enterprise, has provided water service to the Property for many years. Use Permit 93-105 allows 12,500 gallons per day to be used for domestic purposes only.

C. City has an overburdened water system and needs to control water use by industrial users.

D. The parties hereto wish to clarify their rights and obligations with respect to water service to the property.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:
AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. City agrees to and shall provide up to 4,562,500 gallons of water per year (12,500 gpd) (Water Year) to the property (the Annual Limitation). The Annual Limitation shall become effective as of the first meter reading after the date of this Agreement and shall be prorated through the remainder of the current Water Year. As used herein, the term Water Year shall mean the twelve-month period between the City’s last water meter reading of a calendar year and the last water meter reading of the following calendar year. At present, City’s last meter reading in a calendar year is in mid-December; a Water year will run from mid-December to the following mid-December.

2. City water shall be used for domestic purposes only. City water shall in no event be used for landscape, vineyard or agricultural irrigation.

3. While water is furnished to Customer pursuant to this Agreement, Customer shall be bound by and subject to all lawful resolutions, rules, regulations, directives, ordinances and orders of the City pertaining to water services as may be enacted from time to time for all other applicable users of City water, including, without limitation, provisions relating to rate charges and water shortage emergencies.

4. Customer shall monitor its water usage on a bi-monthly basis and employ all measures necessary to ensure that the Annual Limitation is not exceeded. In the event the City Director of Public Works reasonably determines that the Annual Limitation inevitably will be exceeded or that the Annual Limitation has been exceeded, City may require Customer to undertake reasonable additional conservation measures and may require Customer, upon ten (10) days’ prior written notice, to terminate water service for nonessential uses. For purposes of this Agreement, the term “nonessential uses” shall mean uses where non-potable water will suffice.

5. In the event Customer exceeds its Annual Limitation, it shall pay to City a penalty surcharge equal to 60% of the water rate charge for each hundred cubic feet, or portion thereof, used in excess of the Annual Limitation. Such penalty surcharge shall be due and payable within 30 days after calculation and demand by City. In addition to the 60% surcharge, City may avail itself of all rights and remedies set forth in paragraph 8.

6. Customer agrees that if any future request or application for approval of amendments or modifications to any of the user permits for the Property is submitted to the Napa County Planning Commission (the Planning Commission) or Board of Supervisors (the Board), City shall be informed on or before the date on which any such request or application is submitted. In addition, Customer agrees to provide City with copies of all supporting documents or other information submitted in connection with
such requests or applications on or before the date such materials are submitted to the Planning Commission or the Board.

7. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default of this Agreement; to enforce any covenants or agreements herein or to enjoin any threatened or attempted violation thereof; to recover damages for any default; or to obtain any other remedy consistent with the purpose of this Agreement.

8. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either party because of breach of this Agreement or to enforce any provisions of this Agreement, the prevailing party in such action shall be entitled to all reasonable attorney’s fees, court costs and necessary disbursements in connection with such litigation.

9. The parties hereto agree that the provisions of this Agreement are severable. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected and shall remain in full force and effect unless amended or modified by mutual consent of the parties in writing.

10. The provisions of this Agreement shall be binding on all heirs, assigns, and successors in interest to the parties hereto and shall be a covenant that runs with the land.

Executed the day and year first above written.

CUSTOMER:  

CULINARY INSTITUTE OF AMERICA  
AT GREYSTONE, a Delaware corporation

Dated: 5/18/00  

By: [Signature]  
Mark Erickson  
Its: Vice President – Managing Director

CITY:  

CITY OF ST. HELENA,  
a municipal corporation

DATED: 8/18/00  

By: [Signature]  
Bonnie Long  
Its: City Administrator
APPROVED AS TO FORM:

[Signature]
Diane M. Price, City Attorney
On 5/18, 2000, before me, Lauren S. Davis, personally appeared Mark Erickson personally known to me (or proved to me upon the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature 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.

Notary Public

STATE OF CALIFORNIA )
COUNTY OF NAPA ) ss.

On August 18, 2000, before me, the undersigned, City Clerk of the City of St. Helena, personally appeared Bonnie Long, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Delia Guijosa, City Clerk

Notary Public
EXHIBIT “A”

The land referred to herein is situated in the State of California, County of Napa, and is described as follows:

TRACT ONE:
BEGINNING at a stake marked “C & S” standing on the inside of the stone wall on the Southerly line of Main Street in said City of St. Helena, and at the distance of 9.62 chains North 42-1/4° West from the most easterly corner of the 24.50 acre tract conveyed to Charles Carpy by Deed of record in Book 53 of Deeds, page 167, said Napa County Records; and running thence, along said Southerly line of Main Street, North 42-1/4° West 7.08 chains to an angle; thence North 49° West 6.35 chains to the most Northerly corner of said 24.50 acre tract; thence South 50-3/4° West 9.44 chains to the most Westerly corner of said 24.50 acre tract; thence along the Southerly line of said tract, South 43° 20’ East 13.98 chains to a stake marked “C & S” from which a black oak about 30 inches in diameter market “B.T.” bears North 49-1/2° West 43 links distant; and thence North 47-3/4° East 9.84 chains to the point of commencement. Containing 13.47 acres of land.

EXCEPTING THEREFROM mineral rights as reserved in the Deed from Schenley Industries, Inc., a Delaware corporation to St. Helena Wine Cellars, Inc., recorded June 12, 1950 in Book 337 at page 30 of Official records of Napa County, which Deed contains an express waiver of right of surface entry.
CITY OF ST. HELENA

RESOLUTION NO. 2000-58

APPROVING A WATER AGREEMENT
WITH CULINARY INSTITUTE OF
AMERICA AT GREYSTONE AT 2555
MAIN STREET

RECITALS
Culinary Institute of America at Greystone has received a use permit from the City of St. Helena for a culinary school/restaurant located at 2555 Main Street. The City of St. Helena has supplied water to this location for many years. Use Permit #93-105 issued on September 14, 1993, authorized the use of 12,500 gallons per day for domestic use only. A water use agreement was required by Use Permit Determination #99-105 dated January 11, 2000.

A water agreement is attached for approval. The City Attorney and Public Works Director have reviewed the agreement.

RESOLUTION

NOW, THEREFORE, the City of St. Helena resolves as follows:

The water agreement (attached) between Culinary Institute of America at Greystone and the City of St. Helena is hereby approved.

Approved at a Regular Meeting of the St. Helena City Council on May 23, 2000, by the following vote:

AYES: Councilmembers Toller, Potter, Savidge, Mayor Slavens
NOES: None
ABSENT: Councilmember Bowers
ABSTAIN: None

APPROVED:

Ken Slavens
Mayor

ATTEST:

Deka Guijosa
City Clerk