EXEMPT FROM RECORDING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

City Clerk
City of St. Helena
1480 Main Street
St. Helena, California 94574

Assessor's Parcel No. 009-131-003

AGREEMENT

CULINARY INSTITUTE OF AMERICA

THIS AGREEMENT, entered into on October 8, 2004, between the City of St. Helena, a municipal corporation (City), and the Culinary Institute of America at Greystone (Customer), provides as follows:

RECITALS

A. Customer is the owner of real property (the Property) located at 2555 Main Street, St. Helena, Napa County, known as Assessor’s Parcel No. 009-131-003, as more particularly described in Exhibit A attached hereto.

B. On October 12, 2004, the St. Helena City Council approved Resolution 2004-712, which authorized an amendment to Resolution 93-105 and an amendment to the year 2000 water use agreement to allow an increase of water use by the Customer.

C. The parties hereto wish to enter into this Water Agreement to fulfill the Resolution condition of approval requiring such an agreement.

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

1. City is obligated to provide water to the Property up to no more than an annual limitation (Annual Limitation) of 19.6 acre feet (8,545 hundred cubic feet/billing units) per Water Year upon the terms and conditions set forth herein. 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.

2. City water shall be used only for those uses as authorized by the Resolution. City shall not be obligated to provide water service for any other use nor for any further expansion of the uses allowed by the Resolution.

4. 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.

5. Customer shall monitor its water usage on a bimonthly 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 for which non-potable water would suffice.

6. 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 of this Agreement.

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 provision 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 action.
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 tenants, 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.

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CUSTOMER: Culinary Institute of America at Greystone

Dated: October 8, 2004

By: Charles A. O’Mara,
Sr. Vice President for Finance & Administration

CITY: CITY OF ST. HELENA,
a municipal corporation,

Dated: 10-13-04

By: Bert Johansson
Its: City Manager

ATTEST:

Della Guijosa, City Clerk
APPROVED AS TO FORM:

[Signature] 10/13/04

Diane M. Price, City Attorney
STATE OF NEW YORK
COUNTY OF DUTCHESS

On October 8, 2004, before me, Carol Dipper, a Notary Public in and for the State of New York, personally appeared Charles A. O'Mara personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his 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.

SEAL AFFIXED

Carol Dipper
Notary's Signature

STATE OF CALIFORNIA
COUNTY OF ______________

On ___________________, before me, __________________, a Notary Public in and for the State of California, personally appeared ________________________________ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his 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.

Notary's Signature
STATE OF CALIFORNIA  
COUNTY OF NAPA  
ss.

On October 13, 2004, before me, the undersigned, City Clerk of the City of St. Helena, personally appeared Bert Johansson, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his 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
CITY OF ST. HELENA

RESOLUTION 2004-112

APPROVING A USE PERMIT AMENDMENT
AND WATER AGREEMENT TO INCREASE
THE WATER USE LIMITATION FOR
THE CULINARY INSTITUTE OF AMERICA
AT 2555 MAIN STREET

RECITALS

A. Mark Erickson, representative of the Culinary Institute of America (CIA) submitted an application for a use permit amendment to condition 13A of Resolution 93-105, granting a use permit to the Culinary Institute of America. Condition 13A states:

Domestic water will be supplied by the City. Water use shall be limited to an average of 12,500 gpd. No City water shall be used for irrigation. Off-site well water shall be used for landscaping; reclaimed wastewater shall be used for agricultural irrigation.

B. Use Permit Amendment 2003-42 authorizing the renovation and use of the Gate House for CIA programs required that the applicants submit a plan to show compliance with the 1993 water use limitation. The applicants showed evidence of on-going leak detection and water conservation measures, and an audit of all water fixtures located on the property.

C. The CIA has requested an amendment to the use permit and to the year 2000 water use agreement to allow municipal water use of 17,500 gpd, an increase of 5,000 gpd. The amount of water requested is anticipated to cover all foreseen expansion of uses at Greystone including the food and wine programs at the renovated Still House and Gate House.

D. Approval of the amendment to the use permit necessitates an amendment to a water use agreement executed between the City of St. Helena and the CIA in May 2000.

E. The Planning Commission of the City of St. Helena, State of California, held a noticed public hearing on August 17, 2004 and recommended approval to the City Council.

RESOLUTION

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

1. The City Council finds that with a condition of approval to require an alternative equivalent to 80 retrofits, the proposed project is in compliance with the certified 1993 Final Environmental Impact Report and the adopted Mitigation Monitoring Program and Statement of Overriding Considerations for the Culinary Institute of America (Resolution 93-103).
2. Pursuant to Municipal Code section 17.168.050, the City Council makes the following findings for approval of an amendment to a use permit:

a. That the proposed use would not generate odors, fumes, dust, light, glare, radiation or refuse that would be injurious to surrounding uses or to the community.

b. That the proposed use would not generate levels of noise that adversely affect the health, safety, or welfare of neighboring properties or uses.

c. That the proposed use would not generate traffic noise in excess of the "normally acceptable" range identified in the General Plan.

d. That the proposed use would not make excessive demands on the provision of public services including water supply, sewer capacity, energy supply, communication facilities, police protection, and fire protection.

e. That the proposed use would provide adequate ingress and egress to and from the proposed location.

f. That allowing the proposed use would not conflict with the City's goal of maintaining the economic viability of a local serving economy.

g. That the proposed use would be compatible with surrounding land uses and would not conflict with the purpose established for the district within which it would be located.

h. That the proposed use would not be in conflict with the City's General Plan.

i. That the proposed use would not be injurious to public health, safety, or welfare.

j. That granting the use permit would not set a precedent for the approval of similar uses whose incremental effect would be detrimental to the City or would be in conflict with the General Plan.

k. That, as demonstrated on a detailed plan submitted by the applicant, adequate off-street parking to accommodate the long term parking needs of employees and business owners and customers is available.

l. That the capacity of surrounding streets is adequate to serve the automobile and delivery truck traffic generated by the proposed use.

3. The Use Permit Amendment for the above described use is granted subject to compliance with the following conditions. The conditions noted below are particularly pertinent to this permit and shall not be construed to permit violation of other laws and policies not so listed.

4. The applicant will defend and indemnify and hold the City, its agents, officers, and employees harmless of any claim, action or proceedings to attack, set aside, void or annul an approval so long as the City promptly notifies the applicant of any such claim, action, or proceedings and the City cooperates fully in the defense of the action or proceedings.

5. This permit shall run with the land and shall be binding upon all parties having any right, title or interest in the real property or any part thereof, their heirs, successors and assigns, and shall inure to their benefit and benefit of the City of St. Helena.

6. This permit modifies condition 13A of Resolution 93-105 as follows:

*Domestic water will be supplied by the City of St. Helena. Water use shall be limited to an average of 17,500 gpd as reflected in a water use agreement limiting annual water use to 19.6 acre feet (8,545 billing units) per year. Well water or reclaimed wastewater shall be utilized for landscape and agricultural irrigation.*
7. The authorization of this amendment modifies the condition of approval in Use Permit 2003-42 requesting proof of compliance with the 1993 water use limitation.

8. This project is subject to the City’s water use efficiency program. The requested 5,000 gallons of water per day increase may be offset by a credit of 3,100 gallons per day for the reduction in water use at the Culinary Institute of America’s Marlinda dormitory facility located at 830 Pratt Avenue. The remaining 1,900 gallons per day or 2.12 acre feet per year increase shall be mitigated by a combination of the payment of in-lieu fees, water savings achieved through 30 retrofits, or by an equivalent alternative innovative method of mitigation of water use to be approved by the Public Works Director.

9. The site shall utilize tertiary water for irrigation when it becomes available.

Approved at a Regular Meeting of the St. Helena City Council on October 12, 2004, by the following vote:

AYES: Councilmembers Potter, Savidge, Sklar, Mayor Slavens
NOES: None
ABSENT: Councilmember Schoch
ABSTAIN: None

APPROVED:

[Signature]
Ken Slavens
Mayor

ATTEST:

[Signature]
Deliá Gujosa
City Clerk

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

[Signature]
Deputy City Clerk
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 Southwesterly 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 Southwesterly 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.