EXEMPT FROM RECORDING FEES PURSUANT
TO GOVERNMENT CODE SECTION 27383

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. 009-010-024

AGREEMENT

(CULINARY INSTITUTE DORMITORY WATER AGREEMENT)

THIS AGREEMENT, entered into on June 14, 2005, between the City of St. Helena, a municipal corporation (City), and The Culinary Institute of America, a New York non-profit corporation, (Customer), provides as follows:

RECITALS

A. Customer is the owner of real property (the Property) located at 830 Pratt Avenue, St. Helena, Napa County, known as Assessor's Parcel No. 009-010-024, and more particularly described in Exhibit A attached hereto.

B. On March 23, 2004 the St. Helena City Council approved Resolution 2004-33 (the Resolution), which approved a use permit to convert the Marlinda skilled nursing home to a dormitory for students enrolled at the Culinary Institute of America Greystone campus. As a condition of approval of the Resolution, Customer is required to execute a water agreement with the City limiting city potable water use on the Property to 1,150,000 gallons per water year, approximately 50% of historical use.

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 1,150,000 gallons of water 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. 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 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.

3. Any future modifications to landscaping shall be submitted to the Planning Director for review. Landscape plans shall comply with Ordinance 92-20, Water Efficient Landscape Standards and Procedures. Plans shall be designed and verified by a landscape professional and shall include drought tolerant landscaping and low water irrigation systems. Landscaping shall not block vision from exits or at street intersections. If the landscape area is 2,500 square feet or greater, a landscape water flow meter shall be installed for verification of the amount of water being used for landscaping.

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 7 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.
CUSTOMER: CULINARY INSTITUTE OF AMERICA, a New York non-profit corporation,

Dated: 6-15-05

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

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

Dated: 6-22-05

By: Bert Johansson
Bert Johansson
City Manager

ATTEST: 

Delfa Guijosa, City Clerk

APPROVED AS TO FORM:

Diane M. Price, City Attorney
STATE OF NEW YORK  

COUNTY OF DUTCHESS  

On JUNE 15, 2005, 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.

Notary's Signature

STATE OF CALIFORNIA  

COUNTY OF__________  

On _______________ 2005, 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

On June 23, 2005, 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 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

Delia Guijosa, City Clerk
LEGAL DESCRIPTION

Napa County Assessor’s Parcel Number: 009-010-024

Beginning at the point of intersection of the Northwesterly line of the Southern Pacific Railroad Company’s Right of Way with the Northwesterly line of Hudson Street; thence North 28º East along said Northwesterly line of Hudson Street, 190 Feet to an iron stake on a Southerly line of the land conveyed by the Bank of St. Helena, a corporation, to J.L. Beringer and Bertha Beringer, comprising the firm of Beringer Bros., by Deed dated November 18, 1901 and recorded November 26, 1901 in Book 71 of Deeds at page 250, said Napa County Records; thence North 58º 35’ West along said Southerly line of land so conveyed to Beringer as aforesaid, 413 feet to an iron stake on the aforesaid Northerly line of the Southern Pacific Railroad Company’s Right Of Way; thence South 34 1/2º East along said Railroad Right Of Way, 465 feet to the point of beginning.