CITY OF ST. HELENA

RESOLUTION NO. 96 - 93

APPROVING A WATER AGREEMENT WITH CROSSROADS ASSOCIATES AT 677 S. ST. HELENA HIGHWAY

RECITALS

Crossroads Associates has requested a use permit from the County of Napa for a winery tasting room, gourmet coffee/deli to be located at 677 S. St. Helena Highway. The City of St. Helena has supplied water to this location for many years. The water use for the calendar year 1980 was 710 gallons per day. Crossroads Associates has requested that the City continue to provide water to this location in the amount of 710 gallons per day or 259,150 gallons per year.

A water agreement allowing 710 gallons of water per day or 259,150 gallons per year is attached for approval. The City Attorney and Public Works Director have reviewed the agreement.

RESOLUTION

The water agreement (attached) between Crossroads Associates and City of St. Helena is hereby approved.

Approved at a Regular Meeting of the St. Helena City Council on August 13, 1996, by the following vote:

Ayes: Mayor Brown, Councilmembers Gard, Heitz, Savidge, Slavens

Noes: None

Absent: None

Abstain: None

APPROVED:

[Signature]
John L. Brown
Mayor

ATTEST:

[Signature]
Gene Armstead
City Administrator/City Clerk
WATER AGREEMENT

THIS AGREEMENT, entered into on August 15, 1996, between the CITY OF ST. HELENA (City), a municipal corporation, and CROSSROADS ASSOCIATES, a general partnership, (Crossroads) provides as follows:

RECITALS

A. Crossroads is the owner of real property (the Property) in the County of Napa, California, located outside the city limits of the City at 677 S. St. Helena Highway, as more particularly described in Exhibit "A" attached hereto. A winery tasting room, gourmet coffee/deli will be located on the property and is authorized by Use Permit # 94280-UP issued on November 1, 1995, allowing water use of 710 gallons per day (the Use Permit).

B. City, through the St. Helena Water Enterprise, has provided unlimited water service to the Property for many years. Water usage for the calendar year 1980 was 710 gallons per day.

C. Crossroads must ensure to the satisfaction of the County that it has a supply of water adequate to support the expansion. City already has an overburdened water system and is concerned about guaranteeing unlimited water to the Property in perpetuity.

D. The parties hereto wish to clarify their rights and obligations with respect to water service to the property.
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 259,150 gallons of water per year (the Annual Limitation) to the Property commencing September 1, 1996, and every calendar year thereafter, upon the terms and conditions set forth herein.

2. Water provided by City hereby shall be limited to service for uses approved and permitted by the Amended User Permit only (or by the Use Permit in the event the Amended Use Permit is not approved). City shall not be obligated to provide water service for any other use nor for any further expansion of the Amended Use Permit.

3. Crossroads shall install at its expense, on all new construction and existing facilities, only low-volume flush toilets. All existing or new shower heads shall be equipped with flow restrictors. All landscaping may continue to be irrigated with the present system using City water. All new landscaping which requires City water shall feature native, drought-resistant species requiring minimal irrigation. Crossroads shall make reasonable, good faith efforts to evaluate alternative water sources, including on-site wells, to supplement or replace City water. The retrofitting of existing facilities and shower heads shall be completed by January 1, 1997.

4. All applications for water service connections shall be made pursuant to ordinances of City as they exist at the time application is made and as otherwise applicable to customers of the Water Enterprise. While water is furnished to Crossroads pursuant to this Agreement, Crossroads shall be bound by and subject to all lawful resolutions, rules, regulations, directives, ordinances and orders of the City pertaining to water service 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. In interpreting and applying water restriction regulations, the City and its agencies agree to recognize and take into consideration the conservation measures Crossroads has already implemented and those undertaken pursuant to this Agreement.

5. Crossroads 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 Crossroads to undertake reasonable additional conservation measures and may require Crossroads, upon ten (10) days prior written notice, to terminate water service for nonessential uses.

6. In the event Crossroads exceeds its Annual Limitation, it shall pay to City a penalty surcharge equal to sixty percent (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.
7. Crossroads agrees that if any request or application for approval of amendments or modifications to the Amended Use Permit is submitted to the Napa County Planning Department, Planning Commission, or Board of Supervisors, City shall be informed on or before the date on which any such requests or applications are submitted. In addition, Crossroads 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 County. Finally, Crossroads agrees to inform the St. Helena City Council of any requests for the Napa County Planning Commission or Napa County Board of Supervisors to agendize discussion of any changes, approvals, or other actions related to the Crossroads Use Permit on or before the date on which the request to be agendized is submitted to Napa County.

8. 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.

9. 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.

10. 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 remain in full force and effect unless amended or modified by mutual consent of the parties in writing.

11. 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.

CROSSROADS ASSOCIATES,
General Partnership

DATED: Aug. 15, 1996

By: [Signature]
John Komes, Partner

By: [Signature]
Pat Garvey, Partner
CITY OF ST. HELENA, a municipal corporation

DATED: August 19, 1986

By: [Signature]
Gene Armstead
Its: City Administrator

ATTEST:

[Signature]
Delia Guijosa
Deputy City Clerk

APPROVED AS TO FORM:

[Signature]
Diane Price
City Attorney
STATE OF CALIFORNIA

COUNTY OF NAPA

On __________, 1996, before me _______________ 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

L. Blessing

STATE OF CALIFORNIA

COUNTY OF NAPA

On __________, 1996, before me _______________ 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

L. Blessing

STATE OF CALIFORNIA

COUNTY OF NAPA

On this _______ day of __________, 1996, before me, the undersigned, Deputy City Clerk of the City of St. Helena, personally appeared Gene Armstead, 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.

Delia Guijosa, Deputy City Clerk

9602 1220 0005
EXHIBIT “A”

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

TRACT ONE:

Commencing at a point on the Southwestern line of the State Highway leading from Napa to St. Helena distant thereon North 43° 30’ West 200 feet from the intersection thereof with the Northwestern line of Inglewood Avenue (formerly Sumner Avenue); running thence North 43° 30’ West along the Southwestern line of said State Highway, 100 feet; thence South 46° 30’ West 210 feet; thence South 43° 30’ East 100 feet; thence North 46° 30’ East 210 feet to the point of commencement.

APN 027-150-003

TRACT TWO:

Commencing at a point on the Southwestern line of the State Highway leading from Napa to St. Helena, distant thereon North 43° 30’ West 100 feet from the intersection thereon with the Northwestern line of Inglewood Avenue (formerly Sumner Avenue); running thence North 43° 30’ West, along the Southwestern line of said State Highway, 100 feet; thence South 46° 30’ West 210 feet; thence South 43° 30’ East, 100 feet; thence North 46° 30’ East, 210 feet to the point of commencement.

APN 027-150-004
CITY OF ST. HELENA

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Nees: None

Absent: None

Abstain: None

APPROVED:

[Signature]
John L. Brown
Mayor

ATTEST:

[Signature]
Gene Armstead
City Administrator/City Clerk

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