WATER USE AGREEMENT

THIS AGREEMENT is made this 12th day of April, 1991, between DAVID A. GARDEN (Garden), and the CITY OF ST. HELENA, a California municipal corporation (City).

RECITALS:

A. Garden is the fee simple owner of certain real property situated in the City of St. Helena, Napa County, California, more particularly described as Parcel 4 on that Parcel Map recorded on January 10, 1991, 992 Napa County Official Records 138. A copy of the Parcel Map is attached to this Agreement as Exhibit "A" and incorporated herein by reference. Garden has drilled a certain water well (the Well) on a portion of the parcel.

B. On February 26, 1991, the parties entered into an Agreement For the Purchase and Sale of Real Property whereby City agreed to purchase from Garden on certain conditions a portion of Parcel 4 along with the existing Well thereon, which portion (the Property) is described on the Plat Map attached hereto as Exhibit "B".
C. Garden desires to obtain water from the Well for use by Garden and his successors in interest on the remainder of Parcel 4 and for use on Parcels 1, 2, and 3 of the above-referenced Parcel Map. As a condition of close of escrow for the sale of the Property to City by Garden, the parties agreed to enter into a Water Use Agreement which will become effective on close of escrow.

NOW, THEREFORE, it is agreed as follows:

AGREEMENT:

1. Agreement to Furnish Water. City agrees to furnish water from the Well, or from the Pope Street Well pursuant to Sections 7 and 8, for "irrigation and agricultural use", as that term is defined herein, for Parcels 1, 2, 3 and the remainder of 4 as shown on the Parcel Map attached hereto as Exhibit "B". The "irrigation and agricultural use" for which water is to be furnished shall consist solely of the watering of landscaping and agriculture and consumption by livestock, and shall not consist of domestic household use.

2. Annual Limitation. In no event shall the water furnished exceed the following amounts on a calendar year basis:

   Parcels 1 and 2 (combined) 9 acre feet
   Parcel 3 9 acre feet
   Parcel 4 (remainder) 12 acre feet

In the event Garden installs a fire hydrant to service the parcels using the Well water, any water used through such
fire hydrant for firefighting purposes shall not be charged against any parcel's annual allocation.

3. **Storage Tanks.**

(a) On or before the first date that Garden or its successors in interest acquire water from City under this Agreement, Garden shall cause one or more storage tanks to be constructed in the area marked as "Storage" on Exhibit "B". City hereby grants Garden and its agents the access easements necessary for the construction of such tank(s).

(b) The total storage capacity of the tank(s) initially or subsequently constructed by Garden shall not exceed sixty five thousand gallons (65,000) of water. The plans and specifications for the tank(s) have been agreed upon between the parties and the tank(s) shall be constructed and installed in conformance with such plans and specifications at Garden's expense. Upon completion and acceptance, the tank(s) shall be donated to City, which shall thereafter own, maintain and replace such improvements. Garden's responsibility is limited to constructing and installing the tank(s) in conformance with the approved plans and specifications and he makes no warranty concerning the suitability, durability or seismic safety of the tank(s).

4. **Allocation Between Parcels.** The total water that may be used by the four benefited parcels shall not exceed the sum of sixty five thousand (65,000) gallons in any one day without City's consent, which shall not unreasonably be withheld. In addition, none of the parcels designated to
receive water under this Agreement may receive more than its pro rata share of the water available on a daily basis, based on the proportion that their annual allotment bears to the total annual allotment to these parcels under Section 2, without the prior written consent of the other owners, which may be granted in an irrigation schedule developed by the parcel owners and delivered to City. In any event, no parcel shall be entitled to receive more than its annual allotment.

5. **Disclaimer.** City will be delivering untreated water to Garden and does not make any guaranty concerning the quality of water agreed to be furnished except as expressly provided in this Agreement. Garden understands and acknowledges that City will be the sole owner of the Well and all waters underlying or in any way connected with the Property, and agrees to furnish water to Garden only in accordance with the terms of this Agreement. Garden stipulates that it has no right, title, or interest in or to any water from the Well or water underlying the Property except as herein specifically set forth.

6. **Installation and Maintenance of Lines and Meters.** City shall bear the expense of connecting the Well to the storage tank(s) constructed by Garden, installing the water meters at the property lines, and installing the water line necessary for deliver of the water from the storage tank(s) to the water meters. Garden shall bear the expense of installing and maintaining the water lines and any supplemental pumps necessary to deliver water from the meters.
to the respective parcels. City shall have the sole responsibility for repairing, replacing and maintaining all improvements utilized in conjunction with the Well, including the storage tank(s) constructed by Garden and donated to City, up to and including the water meters.

7. Discontinuance of Well Use.

(a) City shall not be entitled to permanently discontinue pumping from the Well except due to hydrological failure of the Well, and shall use its best efforts to maintain the Well in good operating condition and repair on an ongoing basis. In the event that City discontinues pumping from the Well due to hydrologic failure or otherwise with the consent of the parcel owners receiving water under this Agreement, which consent may be withheld in their sole discretion, or in the event that City must temporarily discontinue operating the Well despite its best efforts to keep it operational, then City shall provide water pursuant to this Agreement from City's Pope Street Well, so long as the Pope Street Well exists and is operational. City shall bear the expense of connecting the Pope Street Well to the storage tank(s) constructed by Garden and of repairing, replacing and maintaining the Pope Street Well system and shall use its best efforts to keep this Well operational.

(b) In the event that the City is of the opinion that both the Well and the Pope Street Well have suffered hydrologic failure of a permanent nature, it shall give notice of such fact to the owners of Parcels 1, 2, 3 and 4.
On receipt of this notice, the owners of these Parcels, may elect to (a) submit this issue to binding arbitration in accordance with the rules of the American Arbitration Association; (b) terminate this Agreement; or (c) assume exclusive operation of either or both of these Wells for the purpose of providing landscaping and irrigation water to these Parcels utilizing the City's existing Well improvements, subject to these owners' obligations to maintain, repair and replace such improvements thereafter as needed.

(c) In the event the owners elect arbitration of this issue, the parties agree that the Wells will be determined to have suffered permanent hydrologic failure only in the event that it is determined that the aggregate maximum water production that could be produced from the Wells would be less than the minimum amount of water to be provided under this Agreement. In the event that standard has been satisfied, but some water can be produced from these Wells, then the owners shall be entitled to assume exclusive operation of the Wells. The City hereby grants conditional easements to these owners for the purpose of gaining access to the Wells for these purposes in the event the City gives notice of its belief that permanent hydrologic failure has occurred and the owners assume operation of the Wells. The decision of the owners shall be made by the majority vote of the three different parcels affected (Parcels 1 and 2 shall be owned in the aggregate by one owner); provided, however,
so long as one owner resists termination of the Agreement that owner shall be entitled to operate the Well(s) as needed.

(d) This Agreement shall terminate if:

(1) No water can be produced from either of the Wells; or

(2) Either Well is not operated and maintained by any owner for a period of one year from the date City gives notice of hydrologic failure; or

(3) Either Well is not operated and maintained by any owner for a period of one year after such owner assumes responsibility therefor; or

(4) The owners unanimously agree to terminate this Agreement.

All terms and conditions of this Agreement shall apply to the provision of water from the Pope Street Well.

8. Reduction in Operating Capacity. City, at its cost and expense, shall ensure that all storage tank(s) are filled to capacity during each evening unless otherwise agreed, the specific time to be mutually agreed upon between City and the owners of the parcels receiving water under this Agreement. The parties contemplate that, when needed, the Well pump will operate 24 hours a day and that, at current production projections, it will take 2.4 hours (10%) of pump operating time to fill the storage tank(s) during periods of high water use by Garden. In the event the available operating time of the Well pump is caused to be reduced because of hydrological
conditions, Garden's entitlement shall be reduced proportionally, such that Garden shall be entitled to no more than (1) can be pumped during 10% of the available operating time, or (2) 30% of the annual allotment, set forth in Section 3c., whichever is greater; provided, however, at Garden's option it may acquire additional water, not to exceed its maximum annual allotment, out of City's Pope Street Well.

9. **Water Shortages.** While water is furnished pursuant to this Agreement, Garden shall be bound by and subject to all lawful resolutions, rules, regulations, directives, ordinances and orders of City pertaining to water shortage emergencies; provided, however, that the total water available under the provisions of this Agreement shall be reduced only by the same percentage that such restrictions are imposed on all other similarly situated water users. Further, notwithstanding the existence of any water connection moratorium or similar prohibition of new water connections instituted in the City of St. Helena under the provisions of any water shortage or similar ordinance, Garden and its successors in interest shall be exempted from the moratorium for the purpose of establishing the water connections contemplated under this Agreement. Further, this Agreement shall be nonterminable by City during any water shortage and Garden shall be exempt from absolute prohibitions on the use of water for irrigation and/or agricultural purposes, although Garden shall remain subject

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to the percentage reductions referred to above, which percentage reduction of the yearly maximum allotment available under this Agreement shall be the lesser of the percentage reduction imposed on commercial and industrial users or the percentage reduction imposed on irrigation users.

10. **Water Rate.**

(a) The water rate to be charged to Garden and its successors in interest shall be the rate of one hundred and fifty dollars ($150.00) per acre-foot during calendar year 1991. Thereafter, the charge per acre-foot of water shall be adjusted, when such adjustment is made, by the percentage change in the rates charged by the St. Helena Water Enterprise for the lowest level of residential water consumption from the rates charged for such water previously, subject to the Consumers' Price Index (CPI) limitation set forth in subparagraph (b). For example, the St. Helena rate for the lowest level of residential water consumption at January 1, 1991, is $.60 per hundred cubic feet. If the St. Helena residential rate increases to $.63 per hundred cubic feet in 1992, which constitutes a five percent increase, the $150 per acre-foot charge shall increase by five percent to one hundred fifty-seven dollars and fifty cents at that time.

(b) Notwithstanding the foregoing, the rate charged for water under this Agreement shall not be increased at any one time by an amount greater than the percentage change in the San Francisco--Oakland--San Jose Area for "All Water Use Agreement, p. 9
Urban Consumers" ("CPI-U") index from the index most immediately preceding the month of the last rate adjustment to the index most immediately preceding the month in which the rate adjustment is made. The first rate adjustment shall be indexed to the CPI-U for October, 1990, which was 134.6. Using the foregoing example, if at the time of the 1992 rate increase the available CPI-U is 139.0, that is only a 4.4% increase. Consequently, the rate charged for water under this Agreement could only increase by 4.4%, to $156.60.

(c) Each parcel shall be metered separately and billed bimonthly, and the balance owing shall be due and payable thirty (30) days from the date of billing.

11. **Easement Appurtenant.** Use of the water to be supplied under this Agreement shall constitute an easement appurtenant to Parcels 1, 2, 3 and 4 and shall run with the land and shall be binding on and inure to the benefit of all heirs and successors to the parties thereto.

12. **Default.** Should any of the owners of the parcels fail to pay the bimonthly charge for water for a period of sixty (60) days after receiving written notice thereof from City, City may discontinue furnishing water to such parcel without further notice, until the default is cured. The default may be cured by payment of the arrearages, of interest at the rate of 10% per annum from the date the payment became due and payable, and of a reconnection charge in the amount of $250.
13. **Exceed Annual Allocation.** Should any parcel exceed its annual allocation of water, City may, in its sole discretion, terminate water service to that parcel for the remainder of the calendar year. In any event, Garden or its successors in interest shall pay twice the then-applicable water rate for each acre foot or portion thereof used in excess of the annual allocation.

14. **Power Line Easement.** Pacific Gas & Electric will be installing power to service the Well and water treatment facilities. Upon installation, City agrees to grant a power line easement to Garden from the new power pole to the pumps servicing the parcels. The exact location of the power line easement will be agreed upon when the final location of the pumps and power pole is known.

15. **Effective Date.** This Agreement shall become effective when escrow closes for the sale of the subject Property and Well to City. In the event escrow does not close and the sale is not completed, this Agreement shall be of no force and effect.

16. **Time to Supply Water.** City shall complete the installation and connection of all water lines and meters necessary to supply water from the Well to the parcels no later than thirty (30) days after City acceptance of the tank(s) installed by Garden or June 30, 1991, whichever is later. City shall accept the tank(s) within five (5) working days of tender, provided that the tank(s) is constructed and installed pursuant to the approved plans and specifications.

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17. **Notices.** All notices hereunder shall be sent by registered mail or certified mail, return receipt requested, postage prepaid, addressed to the parties as follows or hand-delivered to such addresses:

**Garden:**

Mr. David Garden  
2727 Sulphur Springs Avenue  
St. Helena, California 94574

**City:**

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

Either party may at any time designate a substitute address by like notice. Notices shall be deemed effective upon receipt.

18. **Attorneys' Fees.** In the event of litigation between the parties relating to this Agreement or the Property, the prevailing party shall be entitled to recover its reasonable attorneys' fees.

19. **Further Assurances.** Whenever and so often as reasonably requested by the other party, each party will promptly execute and deliver or cause to be executed and delivered all such other and further instruments, documents, or assurances, and promptly do or cause to be done all such other and further things as may be necessary or reasonably required in order to further and more fully vest in the other party all rights, interests, powers, benefits, privileges,
and advantages conferred or intended to be conferred upon it by this Agreement.

20. **Counterparts.** This Agreement may be executed in one or more counterparts and all so executed shall constitute one contract, binding on both of the parties hereto, notwithstanding that both of the parties are not signatory to the same counterpart.

21. **Interpretation.** The parties agree that they have carefully reviewed this Agreement, have consulted independent counsel if they saw fit or have independently elected not to do so. The doctrine that any ambiguities in a contract are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

22. **General Provisions.** This Agreement shall be interpreted, construed, and applied according to the laws of California and shall be binding on and inure to the benefit of the parties, their successors, heirs, assigns, and personal representatives. Should any provision of this Agreement be void or become unenforceable, the remaining provisions shall remain in full force and effect and shall not in any way be impaired. In the absence of a specific provision to the contrary, the party upon whom an obligation is imposed shall perform the obligation at its own expense. Headings relating to the contents of particular sections are inserted for reference and are not to be construed as parts of the sections to which they refer. This Agreement,
together with the referenced Exhibits, contains the entire agreement between the parties relating to the Property and water use and supersedes all prior and contemporaneous negotiations, understandings, and agreements, written or oral, between the parties. This Agreement shall not be amended or modified and no waiver of any provision hereof shall be effective, unless set forth in a written instrument authorized and executed with the same formality as this Agreement. The obligations, representations, warranties, indemnities, and remedies for breach of this Agreement shall survive the close of escrow and transfer of title.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

GARDEN:

By: [Signature]
David Garden

CITY:

CITY OF ST. HELENA,
a municipal corporation

By: [Signature]
Eugene Armstead
City Administrator

APPROVED AS TO FORM:

[Signature]
Diane M. Price
City Attorney

ATTEST:

[Signature]
Deputy City Clerk

CITY OF ST. HELENA
STATE OF CALIFORNIA

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STATE OF CALIFORNIA  
COUNTY OF NAPA  

On this __ day of May, 1991, before me, Linda Mc Daniels, a Notary Public for the State of California, personally appeared DAVID GARDEN, 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 Public

STATE OF CALIFORNIA  
COUNTY OF NAPA  

On this __ day of May 1991, before me, the undersigned, Deputy City Clerk of the City of St. Helena, personally appeared Eugene Armstead, personally known to me to be the City Administrator of the City of St. Helena, whose signature is 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.

Delia Guijosa  
Deputy City Clerk

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PLAT OF DESCRIPTION
OF A WELL EASEMENT PARCEL
A PROPORTION OF PARCEL 4 OF 18 P.M. 16, N.C.R.
ST. HELENA, CALIFORNIA

BY
THOMPSON & ASSOCIATES, INC.
ST. HELENA, CALIFORNIA

EXHIBIT B

Revised Feb. 21, 1991
CITY OF ST. HELENA, CALIFORNIA
Resolution No. 91-44

APPROVING GARDEN WATER USE AGREEMENT

RESOLUTION

The City Council of the City of St. Helena hereby resolves to approve the attached Water Use Agreement between David Garden and the City of St. Helena. The City Administrator is authorized to execute the Agreement.

Approved by action of the City Council at a Regular Meeting held on April 9, 1991, by the following votes:

AYES : Councilmen Brown, Hardy, Heitz, Mayor Hayne

NOES : None

ABSENT : Councilman Salinger

Approved:

[Signature]
William A. Hayne
Mayor

Attest:

[Signature]
Gene Armstead
City Administrator/City Clerk

CERTIFIED COPY

I certify that this is a true and correct copy of an original document on file in the office of the City Clerk of St. Helena, Napa County, California.

[Signature]
Gene Armstead
City Administrator/City Clerk

Dated 5-10-91

END OF DOCUMENT