LEE R. AND EMA HALLERBERG WATER AGREEMENT

THIS AGREEMENT, entered into on the 0th day of August, 1993, between the CITY OF ST. HELENA (City), a municipal corporation, and LEE R. AND EMA HALLERBERG (Hallerberg), provides as follows:

RECITALS

A. Hallerberg is the owner of real property (the Property) in the City of St. Helena, County of Napa, California, as shown on Parcel Map No. 4712 of the Lands of the Lee R. Hallerberg Family Trust recorded in Book 20 of Parcel Maps, Pages 18 and 19, and as more particularly described in Exhibit "A" attached hereto.

B. Hallerberg submitted an application for a Tentative Parcel Map to divide a 20.35 acre parcel into a 5-acre and a 15.35-acre parcel on property located on Spring Mountain Road, APN 09-131-031.

C. The Planning Commission of the City of St. Helena held a noticed public hearing on October 20, 1992 and recommended approval of said project with certain water use conditions and the City Council approved it on October 27, 1992.

D. The parties hereto wish to clarify their rights and obligations with respect to water service to Parcel "1" of the Property in view of the conditions imposed upon the Tentative Map approval.

"THIS INSTRUMENT IS FILED FOR RECORD BY FIRST AMERICAN TITLE INSURANCE COMPANY AS AN ACCOMMODATION ONLY. IT HAS NOT BEEN EXAMINED AS TO ITS EXECUTION OR AS TO ITS EFFECT UPON THE TITLE."
AGREEMENT

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

1. City agrees to and shall provide water to Parcel "l" of the Property in an amount not to exceed the Bimonthly Limitation, defined as 800 gallons times the number of days in a City Water Enterprise bimonthly billing period (64 hcf in a 60 day billing period), upon the terms and conditions set forth herein. Hallerberg shall not be entitled to use City water in an amount exceeding the Bimonthly Limitation.

2. Water provided by City hereby shall be limited to service for uses approved and permitted by Planning Commission Resolution No. 92-52 as recorded in the Official Records of the Napa County Recorder on December 4, 1992, Document No. 040881.

3. Hallerberg shall install, at its expense, a high-head pump rated at 17 gallons per minute (gpm) at the existing pump station and a 2" diameter service connection off the City water main to the City's specifications. All new landscaping which requires City water shall feature native, drought-resistant species requiring minimal irrigation.

4. Hallerberg shall monitor its water usage on a bimonthly basis and employ all measures necessary to ensure that the Bimonthly Limitation (64 hcf) is not exceeded. In the event the City Director of Public Works determines that the Bimonthly Limitation has been exceeded, City may require Hallerberg to undertake reasonable additional conservation measures and may require Hallerberg, upon ten (10) days prior written notice, to terminate water service for nonessential uses.

5. In the event Hallerberg exceeds the Bimonthly Limitation, it shall pay to City a penalty surcharge equal to one hundred percent (100%) of the water rate charge for each hundred cubic feet, or portion thereof, used in excess of the Bimonthly limitation. Such penalty surcharge shall be due and payable within 30 days after calculation and demand by City. In addition to the 100% surcharge, City may avail itself of all rights and remedies set forth in paragraph 6.

6. 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. In addition, City may install a flow restrictor or take any other action that will ensure water use does not exceed the Bimonthly Limitation.
7. 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 litigation.

8. 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.

9. 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.

LEE R. AND EMA HALLERBERG

DATED: 08SEP93

By: 
Lee R. Hallerberg

By: 
Ema Hallerberg

CITY OF ST. HELENA, a municipal Corporation,

DATED: 9/9/93

By: 
Gene Armstead
Its: City Administrator

APPROVED AS TO FORM:

Diane Price, City Attorney
STATE OF CALIFORNIA
COUNTY OF NAPA

On [date], before me, [notary public], personally appeared [name of person].

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/she/they executed the same in his/their authorized capacity(s), and that by his/her/their signature(s) on the instrument the person or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

STATE OF CALIFORNIA
COUNTY OF NAPA

On [date], before me, [notary public], personally appeared [name of person].

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/she/they executed the same in his/their authorized capacity(s), and that by his/her/their signature(s) on the instrument the person or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

STATE OF CALIFORNIA
COUNTY OF NAPA

On [date], before me, the undersigned, Deputy City Clerk of the City of St. Helena, personally appeared [name of person], 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

[Official seal]

Delia Guijosa, Deputy City Clerk
The land referred to herein is situated in the State of California, County of Napa, City of St. Helena, and is described as follows:

PARCEL ONE:
Commencing at a point distant North 62° 00' West 420 feet from the most Southern corner of the Lands of Lee R. Hallerberg, et ux, recorded April 25, 1979 in Book 1122 at page 724 of Official Records of Napa County; thence North 62° 00' West 798.31 feet, more or less; thence South 60° 15' West 660 feet to a point on the Western line of that certain 41.67 acre tract of land conveyed to Myron M. Booth, et ux, recorded in Book 242 at page 298 of Official Records of Napa County; thence from said point South 35° 00' West along the Northwestern line of said 41.67 acre tract, 25.00 feet to the point of intersection of the centerline of the 50.00 foot Right of Way described in the Deed to Walter H. Brignoli, et ux, in Book 340 at page 407 of Official Records of Napa County with the Northwestern line of the 41.67 acre tract; thence from said point along the centerline of said 50.00 foot Right of Way the following courses and distances: South 89° 22' East 150.15 feet, South 82° 08' East 211.58 feet and South 61° 33' East to the point of intersection of the centerline of the 40.00 foot Easement described in the Deed to Albert S. Menasco, et ux, in Book 749 at page 442 of Official Records of Napa County; thence along the centerline of said last mentioned 40.00 foot Easement the following courses and distances: South 74° 00' East 120.00 feet; thence along a curve to the left having a radius of 240.00 feet, a central angle of 44° 00' and a length of 184.31 feet; thence North 62° 00' East 38.00 feet; thence along a curve to the right having a radius of 140.00 feet, a central angle of 34° 00' and a length of 83.08 feet; thence South 84° 00' East, 320 feet; thence along a curve to the left having a radius of 150.00 feet, a central angle of 29° 00' and a length of 75.92 feet; thence North 67° 00' East 80.00 feet, more or less, to the point of commencement.

PARCEL TWO:
Commencing at the most Southern corner of that certain 24.50 acre tract of land conveyed to Charles Carpby by Deed of record in Book 53 of Deeds, at page 167, said Napa County Records, and running thence along the Southwestern line of said 24.50 acre tract so conveyed, North 43° 20' West 1004.25 feet; thence South 54° 14' West 1400.51 feet to the Western line of that certain 41.67 acre tract of land conveyed to Myron M. Booth, et ux, by Deed of record in Book 242 at page 298 of Official Records of Napa County; thence along the Northwestern and the Northeastern lines thereof, North 60° 15' East 660.00 feet and South 62° East 1218.31 feet to the York-Krug line; thence along the last mentioned line North 28° East 376.66 feet to the point of commencement.

EXCEPTING THEREFROM that 1.070 acre tract of land described in the Deed to Albert S. Menasco, et ux, recorded May 15, 1967 in Book 765 at page 793 of Official Records of Napa County.

PARCEL THREE:
A Right of Way for private road and utilities, as described secondly in the Deed to Myron M. Booth, et al, recorded May 23, 1946 in Book 242 at page 298 of Official Records of Napa County.

PARCEL FOUR: