WATER WELL AGREEMENT

THIS AGREEMENT is made as of the last day and date appearing herein below, by and between the CITY OF ST. HELENA, a California municipal corporation (CITY) and INDIAN CREEK VINEYARDS, a California corporation (OWNER).

RECITALS:

A. As a temporary measure to alleviate drought-caused water shortage in CITY’s municipal water system, CITY has requested the privilege of taking water from the well located on OWNER’s property situated in the City of St. Helena, Napa County Assessor’s Parcel No. 09-070-06, for the consideration and upon the terms and conditions hereafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

AGREEMENT:

1. OWNER hereby grants to CITY the right to take water for municipal water system purposes from OWNER’s well above described, using in so doing OWNER’s pump, engine, electric
meter, discharge piping and other appurtenances. CITY may at its own expense install valves, drawdown measuring devices, meters, etc., as it finds necessary and appropriate, and CITY shall likewise at its expense install facilities necessary to allow OWNER to take water from the well for owner’s usual and normal purposes regardless of whether CITY is drawing water from the well at the time or not. CITY may likewise install, operate and maintain water pipe lines, valves, meters and other necessary appurtenances to convey water from the well to the CITY’s Pope Street water facility, and Owner hereby grants a water line easement to CITY at a location mutually agreed upon for the term of this Agreement, along with the right to cross over and maintain and operate the well, water lines and appurtenances.

2. CITY may draw water from the well on Mondays through Fridays only, and City may only draw up to 1,000 gallons a minute from the well. In no event shall City’s taking of water from OWNER’s well interfere with or prejudice OWNER’s use of water from the well for OWNER’s own purposes.

3. CITY shall at its expense utilize adequate drawdown monitoring facilities to provide accurate measurement of the drawdown of the well during CITY’s use, and shall not take water from the well whenever the drawdown reaches a level within ten (10) feet of the physical setting of the pump, at whatever level OWNER sets the same from time to time. The level setting of such pump shall be at the sole judgment of OWNER.
4. In consideration for the foregoing, CITY shall pay all costs during the term of this Agreement for the operation and maintenance of the well, its pump, its engine (if used), appurtenant facilities and the facilities to be installed by the CITY under the terms of this Agreement, and CITY shall pay all power costs for pumping at the well including all pumping done for the benefit of OWNER. At the termination of this Agreement or when CITY's use of the existing pump exceeds seven hundred (700) hours, whichever occurs first, CITY shall cause the pump (and engine if used) to be removed from the well and repaired, reconditioned or otherwise returned to a condition as good or better than it was as of this date. With the approval of OWNER, CITY may replace the pump and engine with a new pump and engine of equal or better operating quality. CITY shall pay to the owner or his assignees the sum of Fifty cents ($ .50) for each one thousand (1000) gallons of water taken from the well for CITY purposes. The measurement of the water shall be by appropriate metering device installed by CITY at CITY's expense. Payment for water used by CITY shall be made monthly and CITY shall supply owner with a copy of the meter readings. If the water supply becomes inadequate, CITY shall have no liability for the costs of drilling the well deeper or installing additional pipe and equipment for such deeper drilled well.

5. CITY shall at its expense obtain all necessary approvals for use of water from OWNER's well required by any
governmental agency having jurisdiction thereof. OWNER makes no representation of warranty, express or implied, for the quality of the water for municipal water purposes.

6. CITY shall defend, indemnify and hold OWNER harmless from all claims, losses, damages, suits and cost of suits in connection with any claim that may be made against OWNER by any person or organization, including CITY, that may arise by any use by CITY of water drawn from OWNER’s well or by CITY’s use of any of the well’s appurtenant facilities.

7. This Agreement is for a period commencing upon the date of execution hereof and terminating on November 30, 1995.

8. Within 30 days of termination, CITY shall at its expense remove all appurtenances and water lines installed by CITY upon the property of OWNER, unless OWNER agrees otherwise, and shall restore OWNER’s property to the condition in which it was as of the date of this Agreement.

9. The terms and conditions of this Agreement are binding upon, and inure to, the successors and assigns of the parties hereto.

10. This Agreement is the only Agreement among the parties hereto with respect to the subject matter hereof, and may not be changed, altered or modified except by a writing signed by all parties hereto.

11. In the event of any litigation covering this Agreement, the prevailing party shall be entitled to reasonable attorney’s fees.
12. This Agreement shall be interpreted by the laws of the State of California.

EXECUTED this ___ day of ___ , 1995,
by CITY by its officer duly authorized and by OWNER.

CITY OF ST. HELENA,
a Municipal Corporation

By ____________________
Gene Armstead
City Administrator

OWNER
INDIAN CREEK VINEYARD, INC.

Pierre Birebent
President

APPROVED AS TO FORM:

__________________
Diane M. Price
City Attorney
State of California

County of Napa

On January 6, 1995 before me, MERRIL-LYNN DODDS, Notary Public, personally appeared PIERRE BIREBENT 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.

Signature MERRIL-LYNN DODDS

STATE OF CALIFORNIA
COUNTY OF NAPA

On January 25, 1995, 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