CITY OF ST. HELENA
RESOLUTION NO. 2007-73

ACCEPTING WATER AGREEMENT BETWEEN
THE CITY OF ST. HELENA AND
DEVELOPER 1915 MAIN, LLP (GRANDVIEW)

RECITALS
1. On May 23, 2006, the St. Helena City Council approved Resolution 2006-65 which authorized the conversion of residential property at 1915 Main Street ("Grandview") to a 35 room inn with 22 studio apartment units set aside as affordable housing. As a condition of approval of the Resolution, Grandview’s developer is required to execute a water agreement with the City limiting city potable water use on the Property to the historic use on the property.

2. The Water Agreement attached hereto will fulfill the Resolution’s condition of approval requiring such an agreement.

3. The Water Agreement limits water to be provided to Grandview to an annual amount of 2,784 water units (approximately 2,082,432 gallons) based on historical usage (Annual Limitation); requires new construction and retrofitting of existing facilities to include flow restrictors and low volume fixtures; requires landscaping irrigation from on-site well; requires customer monitoring of usage; and imposes a 60% surcharge on use exceeding Annual Limitation.

4. Once approved by Council, the Water Agreement will be recorded against the property, and its terms and conditions are binding on any successors in interest.

RESOLUTION
NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

1. Accept Water Agreement Between the City of St. Helena and Developer 1915 Main, LLP (Grandview) Between the City of St. Helena and Developer 1915 Main, LLP (Grandview), attached hereto.

Approved at a Regular Meeting of the St. Helena City Council on June 26, 2007, by the following vote:

AYES: Councilmembers Sklar, Schoch, Novak, Potter, Mayor Britton
NOES: None
ABSENT: None

APPROVED:  
Delford Britton  
Mayor

ATTEST:  
Delta Guijosa  
City Clerk
AGREEMENT

(GRANDVIEW WATER AGREEMENT)

THIS AGREEMENT, entered into on this 26th day of June, 2007, between the City of St. Helena, a municipal corporation (City), and 1915 Main Street LP (Customer), provides as follows:

RECITALS

A. Customer is the owner of real property (the Property) known as Grandview and located at 1915 Main Street, St. Helena, Napa County, Assessor’s Parcel No.009-490-009, more fully described in Exhibit A, attached hereto (Property).

B. On May 23, 2006, the St. Helena City Council approved Resolution 2006-65 (“Resolution”), which authorized the conversion of the residential property to a 35 room inn with 22 studio apartment units set aside as affordable housing. 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 the historic use on the Property.

C. The parties hereto wish to enter into this Water Agreement to fulfill the Resolution’s 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 2,784 water units (approximately 2,082,432 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. Customer shall install at its expense, on all new construction and existing facilities, only low volume flush toilets and urinals, showerheads and faucets. All existing faucets and showerheads shall be equipped with flow restrictors. The retrofitting of all existing facilities and showerheads for each building on the Property shall be completed prior to issuance of a certificate of occupancy for that particular building.

4. All landscaping shall be irrigated with an on-site irrigation well. Customer shall provide documentation to the City’s satisfaction of such on-site irrigation well and of the well’s use for landscaping within 45 days of the execution of this Agreement. Failure to provide such documentation entitles the City to pursue any and all rights and remedies available under this Agreement.

5. 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.

6. 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.

7. 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 60% surcharge, City may avail itself of all rights and remedies set forth in Paragraph 8 of this Agreement.

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 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.

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 shall 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 tenants, heirs, assigns and successors in interest to the parties hereto and shall be a covenant that runs with the land.

(The remainder of this page has been left intentionally blank. Signatures are on following page.)
Executed the day and year first above written.

CUSTOMER: 1915 Main Street Associates, LLC:

Dated: 9/10/2008
By: Jerry Lynch
Its: Managing Member

Dated: 
By: 
Its: Managing Member

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

Dated: 10/1/08
By: Bert Johansson, City Manager

ATTEST:

Delia Guajosa, City Clerk

APPROVED AS TO FORM:

Amy L. Valukovich, City Attorney
ACKNOWLEDGMENT
(Individual or Partnership)

STATE OF HAWAII
)  
(ss.
City & County of Honolulu
)

On this ______ day of __________, 2008, before me, Valerie A. Poag, a Notary Public for the State of Hawaii, personally appeared Jerry Lynch, who 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 executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Hawaii that the foregoing paragraph is true and correct.

Witness my hand and official seal.

NOTARIAL
SEAL

[Signature]
Valerie A. Poag
Notary Public, State of Hawaii
My commission expires: July 1, 2009

Doc. Date: _________________ # of Pages 6
Circuit: First Circuit Commission No.: 2001-281
Doc. Description: Grandview Water Agreement.
STATE OF CALIFORNIA

COUNTY OF NAPA

On October 4, 2008, before me, Delia H. Guijosa, Notary Public for the State of California, personally appeared Beryl Johnson, who 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 executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Delia H. Guijosa
Notary Public