CITY OF ST. HELENA, CALIFORNIA

Resolution No. 90-101

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA APPROVING WATER AGREEMENT WITH MEADOWOOD ASSOCIATES

The attached Meadowood Water Agreement between the City of St. Helena and Meadowood Associates is hereby approved.

The City Administrator is authorized to execute the agreement.

Passed and adopted at a Regular Meeting of the City Council held on the 9th day of October, 1990.

AYES: Councilmen Brown, Salinger, Hardy, Perez, Mayor Hayne

NOES: None

ABSENT: None

ABSTAIN: None

Approved: William A. Hayne

Attest: Gene Armstrong

William A. Hayne
Mayor

City Administrator/City Clerk
MEADOWOOD WATER AGREEMENT

THIS AGREEMENT, entered into on September 24, 1990, between the CITY OF ST. HELENA, a municipal corporation, (City) and MEADOWOOD ASSOCIATES, a California limited partnership, (Meadowood), provides as follows:

RECIPIENTS:

A. Meadowood is the owner of real property (the Property) in the County of Napa, California, located adjacent to the city limits of City, as more particularly described in Exhibit "A" attached hereto.

B. City initially provided water service to the Property pursuant to a Water Contract entered into on November 13, 1962, between City and Meadowood Development Company, Meadowood's predecessor in interest. City has continued to provide unlimited water service to the Property as the Meadowood development has expanded through the years, although the legal obligation of City to do so, insofar as City is concerned, has become unclear with the passage of time.

C. On July 18, 1990, Meadowood filed an application with the County of Napa Conservation, Development & Planning Department for an alleged minor modification to its Development Agreement No. 1847, seeking to convert three (3) caretaker homes (approved but not yet completed) to overnight guest use totalling twelve (12) units, and to convert ten (10) existing day rooms to overnight guest use (the Modification Request). At the direction of the Board of Supervisors, the Planning Director approved the Meadowood Agreement, p. 1
Modification Request and City appealed the approval on various grounds (the Appeal). The Appeal is presently pending before the Board of Supervisors.

D. The parties hereto wish to clarify their rights and obligations with respect to water service to the Property and to resolve differences relating to the Appeal.

A G R E E M E N T:

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

1. City agrees to and shall provide up to 20.5 million gallons of water per year (the Annual Limitation) to the Property commencing January 1, 1991, and every year thereafter, upon the terms and conditions set forth herein.

2. Water provided by City hereby shall be limited to service for development already approved and permitted by Development Agreement No. 1847 and any previous amendments and minor modifications thereto, including but not limited to the Modification Request (the Approved Development). True and correct copies of the Development Agreement and previous amendments and modifications thereto are attached thereto as Exhibit "B", describing the Approved Development. City shall not be obligated to provide water service for any use other than the Approved Development nor for any expansion of the Approved Development.

3. Within six (6) months from the date of this Agreement, Meadowood shall:

(a) pay to City all unpaid water connection fees as calculated by the Director of Public Works in accordance with Meadowood Agreement, p. 2
normal and customary City standards and practices. In the event Meadowood disagrees with the City Engineer's calculations, Meadowood may appeal to the City Council, which decision shall be final; and

(b) provide City with as-built plans for the water system previously installed by Meadowood on the Property (the Water System); and

(c) designate a person to assist City in locating water mains on the Property on an as-needed basis; and

(d) dedicate the Water System to City with normal and customary easements therefor.

4. Meadowood shall install, on all new construction, only low-volume flush toilets. All existing or new shower heads shall be equipped with flow restrictors. All landscaping shall continue to be irrigated with the present system of using reclaimed water except as may be restricted by the Regional Water Quality Control Board or the Napa County Department of Public Health. All new landscaping which requires city water shall feature native, drought-resistant species requiring minimal irrigation. Meadowood shall make reasonable, good faith efforts to develop alternative water sources, including on-site wells, to supplement or replace City water.

5. All applications for water service connections to the Approved Development shall be made pursuant to ordinances of City as they exist at the time application is made and as otherwise applicable to City residents. While water is furnished to Meadowood pursuant to this Agreement, Meadowood shall be bound by Meadowood Agreement, p. 3
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.

6. Meadowood shall monitor its water usage on a bimonthly basis and employ all measures necessary to ensure that the Annual Limitation is not exceeded. In drought years, 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 Meadowood to undertake reasonable additional conservation measures and may require Meadowood, upon ten (10) days prior written notice, to terminate water service for nonessential uses. As used herein, a "drought year" is any year Bell Canyon Reservoir is not at 100% capacity by April 15th (it being understood that in a normal rain year the reservoir is at 100% capacity by that date).

7. In the event Meadowood exceeds its Annual Limitation, but is not under the restrictions contained in paragraph 6, it shall pay to City, as City's sole remedy, 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. If Meadowood exceeds its Annual Limitation when the restriction in paragraph 6
apply, then in addition to the 50% surcharge, City may avail itself of all rights and remedies set forth in paragraph 12.

8. Meadowood represents that the Water System to be dedicated to City is in good condition, is constructed to the as-built plans and is adequate to service the Approved Development. If any improvements are necessary to remedy any deficiencies or to provide service to the Approved Development, the City shall not be responsible for any costs related thereto.

9. Upon execution of this Agreement, City agrees to dismiss the Appeal presently pending before the Napa County Board of Supervisors and to promptly notify the Board of Supervisors of such action.

10. The parties hereto recognize that this Agreement is, in part, a settlement of an appeal by City and accordingly neither party admits nor denies the propriety of the County of Napa granting the Modification Request. By execution of this Agreement, both parties further agree that any other claims they may have against each other arising out of or related to the Modification Request are deemed resolved, settled and waived in full.

11. Meadowood agrees that if any request or application for approval of amendments or modifications to Development Agreement No. 1847, Meadowood's Use Permit or the Approved Development 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, Meadowood 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, Meadowood 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 Meadowood Development Agreement, use permit and/or Approved Development on or before the date on which the request to be agendized is submitted to Napa County.

12. 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.

13. 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.

14. This Agreement constitutes the entire understanding and agreement of the parties with respect to the Appeal, the Modification Request, and the provision of city water for the Property. The parties agree that the terms and conditions of this Meadowood Agreement, p. 6
Agreement fulfill all of the parties' respective obligations under the original 1962 Water Agreement and amendments thereto, and that both parties agree that any claims they may have against each other arising out of or related to water service pursuant to the original Agreement are deemed resolved, settled and waived in full. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations and previous agreements, including the 1962 Water Agreement and amendments thereto, by and between the parties and their predecessors in interest with respect to all or any part of the subject matter hereof.

15. 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.

Executed the day and year first written above.

CITY OF ST. HELENA, a municipal corporation

By: [Signature]
Eugene Armstead
City Administrator

APPROVED AS TO FORM:

MEADOWOOD ASSOCIATES, a California Limited Partnership

By: [Signature]
Diane M. Price
City Attorney for City of St. Helena

By: [Signature]
Thomas R. Owens
General Partner

Meadowood Agreement, p. 7
On this 25 day of September, 1990, before me, the undersigned, a Notary Public for the state, personally appeared DIANE M. PRICE, personally known to me (or proved to me on the oath of DIANE M. PRICE who is personally known to me) to be the person whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn, deposes and says that she was present and saw THOMAS R. OWENS, the same person described in and whose name is subscribed to the within and annexed instrument as a party thereto, execute the same, and that said affiant subscribed his name to the within instrument.

WITNESS my hand and official seal.

STATE OF CALIFORNIA )
COUNTY OF NAPA ) ss.

On this 23 day of September, 1990, 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.
The real property situate in the County of Napa, State of California, described as follows:

Being all that portion of the Rancho Carne Humana, Sections 19, 30, Township 8 North, Range 5 West, and Sections 24 and 25, Township 8 North, Range 6 West, Mount Diablo Base and Meridian, described as follows:

BEGINNING at a 3/4" iron pipe in a stone mound on the Northerly line of the Rancho Carne Humana at the Northwest corner of the parcel of land described in the Deed to Fred H. Hunter, et ux, recorded May 28, 1958 in Book 569 at page 596 of Official Records of Napa County; thence South 17° 54' 10" West 131.24 feet to a 1-1/4" iron pipe set in concrete in an 18" live oak tree and shown on Map No. 2465, entitled, "Parcel Map of a Portion of the Lands of Henry Marolf, et al", filed December 12, 1973 in Book 5 of Parcel Maps, at page 80, in the office of the Napa County Recorder; thence South 58° 41' 50" West 378.43 feet to a nail and tag stamped L.S. 2799 set on top of the stone wall on the Southwest line of Meadowood Lane and being a point on the Northerly line of Parcel C shown on said Map No. 2465; thence along the Northerly line of said Parcel C, North 32° 59' 20" West 16.50 feet to a T-bar monument; thence South 53° 41' 50" West 378.43 feet to a nail and tag stamped L.S. 2799; thence South 17° 54' 10" West 131.24 feet to a 3/4" iron pipe; thence North 72° 37' East 222.00 feet to a 3/4" iron pipe; thence South 26° 20' West 300.00 feet to a 3/4" iron pipe; thence South 65.00 feet to a 3/4" iron pipe; thence South 64° 57' East 288.00 feet to a 3/4" iron pipe; thence South 26° 20' West 300.00 feet to a 3/4" iron pipe.