CITY OF ST. HELENA

RESOLUTION NO. 92 - 83

APPROVING A LEASE AGREEMENT WITH NAPA VALLEY WINE TRAIN TO CONSTRUCT, MAINTAIN AND OPERATE CITY WATER MAIN ON ADAMS STREET

RECITALS

As part of the Fulton, Railroad, Adams Water/Sewer Main Replacement Project it will be necessary to install a water main under the railroad crossing at Adams/Railroad.

A utility easement does not exist at the Adams Street Crossing. Napa Valley Wine Train has required a lease be executed for installation, maintenance and operation of the water main.

RESOLUTION

The attached lease agreement with Napa Valley Wine Train to construct, maintain and operate a City water main on Adams Street is hereby approved.

Approved by action of the City Council at a Regular Meeting held on April 28, 1992, by the following votes:

AYES: Councilmen Hardy, Heitz, Brown, Mayor Hayne

NOES: None

ABSENT: None

ABSTAIN: None

APPROVED:

[Signature]
William A. Hayne
Mayor of St. Helena

ATTEST:

[Signature]
Gene Armstead
City Administrator/City Clerk
NAPA VALLEY WINE TRAIN, INC.
LEASE AGREEMENT

This agreement is entered into this _15th_ day of _April_, 1992, by
and between the NAPA VALLEY WINE TRAIN, INC., a railroad located in the
City and County of Napa in the State of California ("RAILROAD") and
____City of St. Helena_________ located in the City of _St. Helena_,
County of Napa in the State of California, ("LESSEE").

RECITALS

Railroad, in consideration of (a) a lump sum of $___NA___, or (b) a monthly
fee of $___NA___, or (c) an annual fee of $____24.00___ paid by Lessee to
Railroad, hereby permits Lessee subject to the provisions hereof to
construct, maintain and operate the following described facilities under
and across property of Railroad at or near __Adams St. Crossing________,
County of Napa, State of California, more particularly described in the
attached print or prints: __Railroad Ave., Fulton Ln. and Adams St.__, which
together with necessary supports and appurtenance shall hereinafter
be termed facilities.

Now, therefore, the parties agree as follows:

1. Lessee hereby acknowledges the title of Railroad in and to the
premises described in this agreement and agrees never to dispute
Railroad's title.

2. Lessee shall pay before delinquency all taxes, assessments, license
fees, and other charges ("taxes") that are levied and assessed against
Lessee's personal property installed or located in or on the premises
and that become payable during the term.
3. Lessee shall use the premises solely for the following specified use:  

8" water main under existing track

4. No person shall make use of any improvements for residential purposes and Lessee waives the provisions of Civil Code Sections 1941 and 1942 with respect to any obligations of Railroad for tenant ability of the premises leased under this agreement.

5. Lessee shall pay all costs for construction done by it or caused to be done by it on the premises as permitted by this lease. Lessee shall keep the premises free and clear of all mechanics' liens resulting from construction done by or for Lessee.

6. Lessee shall make all arrangements for paying for all utilities and services furnished to or used by it.

7. Lessee waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) with respect to any destruction of the facilities or improvements constructed on Railroad's property.

8. The unenforceability, invalidity, or illegality of any provision shall not render the other provisions unenforceable, invalid or illegal.

9. This Lease contains all the agreements of the parties, and cannot be amended or modified except by a written agreement.

10. Time is of the essence of each provision of this Lease.

11. This Lease shall be binding on and inure to the benefit of the parties and their successors, except as provided in the assignment paragraph of this Lease.

12. This Lease is subject to all licenses, leases, easements, encumbrances and claims of title affecting said property of Railroad. Absence of markers does not constitute a warranty by Railroad of the absence of sub-surface installations.

13. The facilities shall be installed and maintained by Lessee to the satisfaction of Railroad and in strict conformance to the plans and specifications approved by Railroad in advance, in writing. Clearances with respect to existing and future tracks and other structures on Railroad premises shall be provided by Lessee to conform with all applicable orders of all applicable governmental agencies. If the Lease is for electrical facilities it shall also comply with the National Electrical Safety Code. Lessee shall take all precautions necessary to prevent interference by its facilities with existing or future railway signals, gates or safety devices or the telephone, telegraph or other circuits of Railroad, or other persons on Railroads premises with Railroads consent, whether such interference be by leakage, induction or otherwise.
Lessee shall assume the expense of insulating any wire lines and of any other alterations to any facilities on Railroad premises required by reason of Lessee's facilities. Before performing work in the vicinity of Railroads tracks or which would involve any excavation of Railroad premises, Lessee shall obtain written approval, in advance, from Railroad and shall give Railroad sufficient notice to permit Railroad to have its representative present and shall pay the cost of such representative.

If said facilities or any portion of the facilities thereof are underground, project markers in form and size satisfactory to Railroad, identifying the facility and its owner, will be installed and constantly maintained by and at the expense of Lessee at Railroad property lines or such locations as Railroad shall approve. Such markers shall be relocated or removed upon request of Railroad without expense to Railroad.

If said facilities are for a private roadway, the Licensee, at the Lessee's expense, shall:

(a) construct and/or maintain said roadway in a good and safe condition satisfactory to Railroad;
(b) keep the roadway and track flangeways clear of all rubbish, debris and other material;
(c) construct and/or maintain roadway, whistle and stop signs as designated by Railroad;
(d) trim shrubbery as required to provide proper visibility to trains and vehicles;
(e) install and maintain warning devices and make roadway changes required by public authority;
(f) install and maintain such drainage facilities, barricades and fence gates as Railroad may designate, keeping such barricades and fence gates locked except when roadway is actually being used;
(g) upon request, provide evidence of insurance of Licensee's liability under this agreement, in form and amount satisfactory to Railroad; and
(h) reimburse Railroad for any expense incurred in the maintenance of its tracks and premises, including, but not limited to, the items listed above.

All vehicles shall comply with posted signs and in any event shall stop before entering the crossing area and ascertain that it is safe to proceed across the tracks before so doing. Licensee shall not obstruct or interfere with the passage of Railroad's trains.

14. Lessee agrees for the duration of this Agreement to keep Railroad's premises in a good and safe condition, so far as effected by Lessee's use, free from waste all to the satisfaction of Railroad, failing which, Railroad may, but shall not be required to do so, perform the necessary work at the expense of Lessee, which expense Lessee agrees
to pay Railroad upon demand. Lessee shall keep the track area and toe path clear of all obstructions. All work upon or in connection with any improvements shall be done to the satisfaction of the Railroad at such times and in such manner as not to interfere in any way whatsoever with the operations of Railroad. Lessee agrees to reimburse Railroad for any expense incurred by Railroad by reason of construction, presence, maintenance, use or removal of said facilities on Railroad premises. In the event that Railroad shall, at any time, require the removal, reconstruction, alteration or changes in the location of any improvements, or shall at any time or times plan to repair its existing roadway or to construct an additional track or tracks, the Lessee agrees at Lessee's own sole cost and expense, upon receiving written notice from Railroad to do so, to forthwith construct and maintain substitute improvements or extend or change the improvements or immediately remove, reconstruct, alter or make changes in the location of said improvements as may be requested by Railroad and in a manner satisfactory to Railroad.

Lessee shall give Railroad five (5) days written notice prior to the commencement of any work of construction or reconstruction, alteration or removal.

15. Lessee agrees to release, indemnity and hold Railroad harmless from and against all liability cost and expense from loss of or damage to any tangible or intangible property and for injuries to or deaths of any persons caused wholly or partially by;
(a) the construction, presence, maintenance, use or removal of said facilities, or;
(b) the unauthorized use of any patented devise on said facilities, or;
(c) breach of any provision of this contract by Lessee except arising out of the sole active negligence of Railroad. Except as herein stated Lessee expressly assumes all risk of damage to said facilities or appurtenance from any cause whatsoever.

The term "Railroad" as used in this Section shall include the successors, assigns and affiliated companies of Railroad, and any other railroad company operating upon Railroad's tracks.

Lessee at its cost shall maintain public liability and property damage insurance with a signal combined liability limit of $1,000,000.00, and property damage limits of not less than $1,000,000.00, insuring against all liability of Lessee and its authorized representatives arising out of an in connection with Lessee's use or occupancy of the premises.

All public liability insurance and property damage shall name both parties as insured, and the policy shall contain cross-liability endorsements. The parties release each other, and their respective authorized representatives from any claims for damage to any person, the premises, or the fixtures, personal property and Lessee's
facilities that result from risks insured against under any insurance policies carried by the parties and in force at the time of damage.

Each party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by an policy.

All the insurance required of Lessee under this Lease shall:

a. Be issued as a primary policy.
b. Contain an endorsement requiring 30 days written notice from the insurance company to both parties before cancellation or change in the coverage, scope, or amount of any policy.
c. Each policy, or a certificate of policy, together with evidence of payment of premiums, shall be deposited with Railroad at the commencement of the term, and on renewal of the policy not less than 20 days before expiration of the term of the policy.

16. This agreement may be terminated by either party by giving thirty (30) days notice, sixty (60) days for occupied building, in writing to that effect to the other, and Lessee shall thereupon remove any lessee owned facilities and any and all conductors, structures, pipes and other apparatus placed on Railroad's premises to a condition satisfactory to Railroad. Failing in which Railroad may perform such work at the expense of Lessee.

17. Lessee shall not assign the rights and privileges herein given, or any part thereof, without the previous written consent of Railroad.

18. No work on Railroad's premises shall be commenced by a contractor for Lessee until such contractor has entered unto Railroad's standard Contractors right of Entry covering such work and obtained Railroad's approval of such work. Lessee shall give Railroad ten (10) days advance notice before commencement of construction to permit Railroad to post a Notice of Non-Responsibility.

19. This agreement shall be governed by, and construed in accordance with the laws of the State of California.

19(1). If either party to this agreement seeks to enforce its rights under this agreement by legal proceedings or otherwise, the non-prevailing party shall pay all cost and expenses incurred by the prevailing party, including, without limitation, all reasonable attorney's fees.

19(2). All notices, requests and demands given to or made upon any party hereto, must be in writing and shall be deemed to have given or made when personally delivered or seventy-two (72) hours after any of the same are sent by registered or certified mail, addressed as follows:
Napa Valley Wine Train, Inc.
1275 McKinstry St.
Napa, CA  94559
ATTN:  Mr. Gil Velasquez, Jr.
LEASE ON FILE

20. Lessee agrees to release and indemnify Railroad and City of 
   St. Helena, successors and assigns, from all 
   liability, cost and expense for loss of or damage to property (whether 
   of the parties hereto or of others) and for injury to or deaths of 
   persons (whether employees of the parties hereto or third persons), 
   and from all claims and demands of whatsoever nature, arising or 
   resulting from:

   (a) the installation or use by Lessee of any patented device in 
       connection with any structure of Lessee, or the construction, 
       maintenance, use or renewal of such structure, or 

   (b) the construction, maintenance, presence or operation of any of 
       Lessee's structures on Railroad's premises, except those 
       structures serving only Railroad, its employees or tenants, 
       whether or not caused or contributed to by the construction, 
       maintenance or operation of Railroad's line of railroad.
The parties have executed this agreement in triplicate the day of the year first above written.

WITNESSED BY:

________________________

________________________

RAILROAD:

By: G. Velasquez, Jr.

G. Velasquez, Jr., President

LESSEE:

By: ______________________

Title: ____________________

REVISED 04/01/92