EXEMPT FROM RECORDING FEES PURSUANT TO GOVERNMENT CODE SECTION 27383

RECORDING REQUESTED BY AND WHEN_recorded MAIL TO:

City Clerk
City of St. Helena
1480 Main Street
St. Helena, California 94574

Assessor’s Parcel No(s). 022-180-020, 022-180-021 and 009-450-001

RAW WATER USE AGREEMENT

SPRING MOUNTAIN VINEYARDS, INC.

THIS AGREEMENT is entered into this 24th day of May, 2016 ("Effective Date"), by and between the City of St. Helena, a California municipal corporation ("City"), on the one hand, and Spring Mountain Vineyards, Inc., a Delaware corporation, and Good Wine Company, a Delaware corporation (collectively "Buyer"), on the other. City and Buyer are sometimes referred to herein individually as a “party” and collectively as the “parties.”

RECITALS

A. Buyer is the owner of that certain real property (the “Property”) generally located on the southerly side of Spring Mountain Road at 2805 Spring Mountain Road, in the City of St. Helena, County of Napa, State of California, identified by Napa County Assessor’s Parcel Nos. 022-180-020, 022-180-021 and 009-450-001, and more commonly referred to as “Spring Mountain Vineyards.”

B. City is the owner of that certain reservoir (the “Lower Reservoir”) located on the northerly side of Spring Mountain Road and identified by Napa County Assessor’s Parcel No. 009-131-013.

C. On August 28, 1990, City adopted City Council Resolution No. 90-91 approving a Water Use Agreement between City and Buyer’s predecessor in interest, Michael Robbins (the “1990 Water Use Agreement”).

D. The 1990 Water Use Agreement was amended in 1996 by the “Amended Agreement.” That Amended Agreement terminated on June 30, 2006. Since that time the City has had no obligation to provide raw water from the Lower Reservoir to Buyer. The City has continued to voluntarily provide raw water to Buyer, even though the City has no ongoing obligation to do so.
E. Since the Amended Agreement expired on June 30, 2006, Buyer has continued to purchase water from the City substantially under the terms of that expired agreement, although the volume of water used by Buyer has exceeded the 25-acre feet authorized by the 1990 Water Use Agreement and the Amended Agreement.

F. Buyer desires to continue to use raw water from the Lower Reservoir to irrigate its vineyard, and City is willing to continue to sell said water to Buyer upon the terms and conditions set forth hereinafter.

G. The parties mutually desire to enter into a new raw water use agreement to: (i) replace the expired Amended Agreement; (ii) strictly limit Buyer’s actual annual water usage; and (iii) set forth the respective obligations of the parties and the terms under which City will continue to sell and Buyer will continue to purchase raw water from the City from Lower Reservoir.

H. This Agreement confirms the City’s intent to continue to use the raw water for beneficial purposes pursuant to pre-1914 water rights claimed by the City associated with water in Lower Reservoir.

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

**AGREEMENT**

1. **Supply.** City shall provide water from the Lower Reservoir to the Property up to a maximum of twenty-five (25) acre-feet per Water Year (“Annual Limitation”) upon the terms and conditions set forth herein. As used herein, the term “Water Year” shall mean the twelve-month period between July 1st and June 30th each year. Buyer shall in no event use more water than the Annual Limitation.

2. **Term.** This Agreement shall commence on the Effective Date and shall continue in full force and effect for a period not to exceed two (2) years.

3. **Price.**

   A. Within thirty (30) days of the receipt of an invoice from City, Buyer shall pay City for water delivered pursuant to this Agreement at a rate of Seven Hundred Fifty Dollars ($750.00) per acre foot of water delivered. The amount of water furnished shall be measured by the existing meter located directly across Spring Mountain Road from the dam at Lower Reservoir. Any and all maintenance expenses and costs of the meter shall be the sole responsibility of Buyer, payable within thirty (30) days of the receipt of an invoice from City.

   B. Without limitation on the provisions of Paragraph 1, and without in any manner excusing Buyer from strict compliance with the Annual Limitation, should Buyer for any reason exceed the Annual Limitation, Buyer shall pay City the price of Fifteen Hundred Dollars ($1,500.00) per acre foot of water delivered in excess of the Annual Limitation.
4. **Quality.** City does not warrant or guarantee the quality of water coming from the Lower Reservoir or provided to Buyer, or its suitability for any purpose or use by Buyer. Buyer expressly acknowledges, agrees and understands that the water being delivered from the Lower Reservoir pursuant to this Agreement is raw water. Buyer expressly acknowledges and agrees that said water is **not treated** and is **not suitable or intended for human consumption**.

5. **Use.** Buyer shall use the water delivered under this Agreement solely for vineyard irrigation purposes.

6. **Release and Indemnity.**

   A. Buyer shall defend (with counsel approved by City, which approval shall not be unreasonably withheld), indemnify, and hold harmless City, its elected and appointed officials, employees, volunteers and agents from and against any and all loss, liability, expenses, claims, costs (including reasonable attorney's fees), suits and damages of every kind, nature, and description, directly or indirectly arising from the performance of this Agreement or any third party legal or administrative challenge to City's approval of this Agreement.

   B. To the full extent authorized by law, Buyer hereby waives, releases and covenants not to sue the City, and its Council members, officials, officers, agents, representatives, insurers and employees, from any and all claims, causes of action and damages, including without limitation damages to Buyer's road and/or Property, arising from or in any manner connected with Buyer's (and its predecessors') acceptance of soil from the City in 2006 or at any other time.

7. **Connection Location.** Buyer shall receive raw water via their current water meter and existing three and one-half inch (3.5") diameter pipe located in Spring Mountain Road. Buyer expressly acknowledges and agrees that Spring Mountain Road was resurfaced in October 2013 and is subject to a 5-year moratorium on non-emergency utility construction.

8. **Emergencies.** City shall have the unlimited right to shut off or reduce the supply of water to Buyer in the event of an emergency. As used in this Agreement, an "emergency" shall be defined as (1) a fire, act of god, or other natural disaster, (2) malfunction of the water system that prevents distribution to Buyer, or (3) an event declared by resolution of the city council to threaten the public health, safety or welfare.

9. **Compliance with Laws.** At all times during the term of this Agreement, Buyer shall be bound by and subject to all lawful resolutions, rules, regulations, directives, ordinances and orders of the City applicable to Buyer.

10. **Conservation: Declaration of Water Shortage Emergency; Avoidance of City Liability.**

   10.1 **Conservation.** In the event City's Director of Public Works, in his or her sole discretion, determines that the Annual Limitation inevitably will be exceeded or that the
Annual Limitation has been exceeded, City will require Buyer to undertake additional conservation measures and will shut off raw water delivery, upon ten (10) days prior written notice.

10.2 Water Shortage Emergency. The Lower Reservoir holds approximately 161 acre feet of water at full capacity. Buyer acknowledges and understands that City desires to retain not less than twenty-five percent (25%), or 40.25 acre feet, of this capacity in the reservoir at all times. In addition, Robert Louis Stevenson Middle School ("RLS") uses 10 acre feet per year for irrigation of athletic fields and landscaped areas. At any time City determines that delivery of the Annual Limitation specified in Paragraph 1 of this Agreement will reduce the water level in the Lower Reservoir below 40.25 acre feet ("Minimum Water Reserves"), City may declare a water shortage emergency and, upon written notice to Buyer, reduce the Annual Limitation delivered to Buyer as necessary to ensure that the water capacity in the Lower Reservoir does not dip below the Minimum Water Reserves.

10.3 State Ordered Reductions, or Potential Liability Associated with Diversion and Use. Buyer acknowledges and agrees if, at any time during the term of this Agreement, the State of California instructs City to reduce the storage volume behind the dam at the Lower Reservoir, the Annual Limitation pursuant to Paragraph 1 of this Agreement shall be reduced or raw water delivery may be turned off in order to maintain Minimum Water Reserves and comply with the State of California instruction. Further, if a federal, state, or local agency or third party asserts that the diversion, storage or use of water associated with Lower Reservoir is unlawful, or that the delivery of water to Buyer is unlawful, City may shut off water delivery.

11. Modification of Use Permit with County. Buyer agrees that if any future request or application for approval of amendments or modifications to any of the use permits for the Property are filed with the County of Napa, Buyer shall concurrently submit copies of such application(s) or request(s) to City. In addition, Buyer agrees to provide City with copies of all supporting documents or other information submitted in connection with such requests or applications.

12. Remedies; Prohibition on Damages.

A. As part of the bargained for consideration for this Agreement, the parties agree that any action or proceeding to cure, correct, or remedy any default or to enforce any covenant or promise herein shall be limited solely and exclusively to those remedies expressly provided herein. Either party may institute legal or equitable proceedings to cure, correct or remedy any default of this Agreement; or to enforce any covenants or promises herein, enjoin any threatened or attempted violation, or to enforce by specific performance, injunction, declaratory relief, writ of mandate, and/or other similar non-monetary relief, the obligations and rights of the parties under this Agreement.

B. Without limitation and in addition to its other rights under this Agreement, the City shall have the right to enter Buyer’s Property, to read, shut off, or turn on the water meter on Buyer’s Property.
C. In no event shall the City, or any of its officers, agents, representatives, officials, Council, employees, or insurers, be liable to Buyer for damages for any breach or violation of this Agreement. In the event Buyer requests damages in any action or proceeding brought for breach or violation of this Agreement or to enforce any provision hereof, then such request shall destroy the consideration supporting the City's agreement to enter into this Agreement, and shall, in turn, entitle the City to immediately terminate and end all obligations under this Agreement, irrespective of any provision to the contrary contained herein. The enforceability and validity of the above limitations on the remedies available to the parties, including, without limitation, the specific provision prohibiting the recovery of damages, is part of the bargained for, negotiated consideration for the City's agreement to enter into this Agreement, and it is acknowledged that the City would not have entered this Agreement if it were to be liable in damages under this Agreement.

13. Notices. All notices and other communications provided for herein shall be in writing and shall be sent to the address set forth below (or such other address as a party may hereafter designate for itself by notice to the other parties as required hereby) of the party for whom such notice or communication is intended:

If to City:

City of St. Helena
Attn: City Manager
1480 Main Street
St. Helena, CA 94574
Facsimile No.: 707-963-7748

If to Buyer:

Spring Mountain Vineyard
Attn: Susan Doyle, General Manager
2805 Spring Mountain Rd.
St. Helena, CA 94574
Facsimile No.: 707-963-2753

Any such notice or communication shall be sufficient if sent by registered or certified mail, return receipt requested, postage prepaid; by hand delivery; by overnight courier service; or by facsimile transmission or by email. Any notice given by facsimile transmission or by email shall be deemed given on the day sent, provided it is sent on a business day during normal business hours, otherwise it will be deemed sent on the next business day. Any notice given by registered or certified mail, return receipt requested, shall be deemed to have been given on the date receipt was acknowledged to the postal authorities. Any notice given by overnight courier service shall be deemed to have been given on the business day following deposit with the courier service. Buyer and City agree that any notice provided by their respective legal counsel shall be deemed to be notice given by Buyer or City, respectively. Either party may, by written notice to the other in the manner aforesaid, change the address to which notices addressed to it shall thereafter be mailed.

A. "Force Majeure Event" means a cause of non-performance or delay that is not the fault of the party who is required to perform under this Agreement and is beyond that party’s reasonable control, including the elements (including floods, earthquakes, windstorms, drought or water shortage and unusually severe weather), fire, energy shortages or rationing, riots, acts of terrorism, war or war-defense conditions, acts of any public enemy, epidemics, the actions or inactions of any governmental entity (excluding City) or that entity’s agents, litigation, labor shortages (including shortages caused by strikes or walkouts), and materials shortages.

B. If the performance of any act required by this Agreement to be performed by either City or Buyer is prevented or delayed because of a Force Majeure Event, then the time for performance will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused. An extension of time for any such Force Majeure Event shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Lease may also be extended in writing by the mutual agreement of City and Buyer.

C. This Section does not excuse (1) Buyer’s obligation to pay for water provided under this Agreement when due and payable; or (2) either party’s obligation to perform an act when performance is rendered difficult or impossible solely because of the party’s financial condition. Buyer expressly agrees that adverse changes in economic conditions, either of Buyer specifically or the economy generally, or changes in market conditions or demand, shall not constitute grounds of enforced delay pursuant to this Section. Buyer expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the effective date of this Agreement.

15. Governing Law; Venue. 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 venue for such action shall be in the Superior Court of California, County of Napa.

16. Attorneys’ Fees. If any legal action is brought by either party to interpret or enforce any terms or provisions of this Agreement, the prevailing party shall be entitled to its reasonable attorneys’ fees and costs.

17. Severability. 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.

18. Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of all tenants, heirs, assigns and successors in interest to the parties hereto and shall be a covenant that runs with the land.
19. **Integration.** This Agreement, together with any documents expressly incorporated herein, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements, representations, warranties and understandings of the parties concerning the subject matter contained herein, written or oral. No change, modification, addendum or amendment to any provision of this Agreement shall be valid unless executed in writing by each party hereto.

20. **Counterparts.** This Agreement may be executed in counterparts, and all counterparts shall constitute but one and the same document.

Executed the day and year first above written.

**BUYER:**

SPRING MOUNTAIN VINEYARD, INC.

Dated: **6-13-16**

By: 

Constantine S. Yannias, President

Dated: **6-15-16**

By: 

Susan Doyle, General Manager

GOOD WINE COMPANY

Dated: **6-13-16**

By: 

Constantine S. Yannias, President

Dated: **6-15-16**

By: 

Susan Doyle, General Manager

**CITY:**

CITY OF ST. HELENA,

A municipal corporation,

Dated: **6-26-16**

By: 

Jennifer Phillips

Its: City Manager

Dated: **6-26-16**

By: 

Alan Galbraith

Its: Mayor

OAK #4817-3562-7057 v1
ATTEST
Cindy Black, City Clerk

APPROVED AS TO FORM:
Thomas B. Brown, City Attorney
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
COUNTY OF NAPA

On 7/27/2016, before me, Maria Pantoja, Notary Public, personally appeared Jennifer Phillips who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) 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.

[Notary Public Signature]

Notary08 (DS1 Rev. 11/10/14)
CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California
COUNTY OF

On 01/12/11 before me, K. Hansen, Notary Public, personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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.

Signature

This area for official notarial seal.

OPTIONAL SECTION - NOT PART OF NOTARY ACKNOWLEDGEMENT
CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the documents.

☐ INDIVIDUAL
☐ CORPORATE OFFICER(S)  TITLE(S)
☐ PARTNER(S)  ☐ LIMITED  ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER

SIGNER IS REPRESENTING:

Name of Person or Entity

Name of Person or Entity

OPTIONAL SECTION - NOT PART OF NOTARY ACKNOWLEDGEMENT

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW

TITLE OR TYPE OF DOCUMENT:

NUMBER OF PAGES  DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE
On 6-13-2016, before me, MARY JANE STACH, a Notary Public in and for the State of California, personally appeared CONSTANTINE S. YANNIAS 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.

Notary's Signature

STATE OF CALIFORNIA)
COUNTY OF COOK)

On ________________, before me, ____________________________, a Notary Public in and for the State of California, personally appeared ____________________________ 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.

Notary's Signature
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of NAPA

On June 15, 2016 before me, LISA C.G. SLATTERY, Notary Public
(Inset name and title of the officer)

personally appeared SUSAN MARGARET DOYLE, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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.

Signature LISA C.G. SLATTERY
(Seal)