CITY OF ST. HELENA
RESOLUTION NO. 2008-103

APPROVING WATER AGREEMENT BETWEEN
THE CITY OF ST. HELENA AND
V. SATTUI WINERY, INC.

RECITALS

A. V. Sattui Winery, Inc. ("Customer") is the owner of real property located at 1111 and 1181 White Lane, outside the St. Helena City Limits, Napa County, known as Assessor's Parcel Nos. 030-260-035 and 030-020-029 (the "Property"), and

B. Despite its location outside the City Limits, the Property benefits from the right to City water by virtue of two, (2) existing water accounts: a residential account with a service address of 882 St. Helena Highway South (the "Residential Account"), and a commercial account fed by a City water main under White Lane with a service address of 1111 White Lane (the "Commercial Account"), and

C. A winery is located on the Property and is authorized by Napa County (the "County") Use Permit #U-118687, issued on February 4, 1987, to produce 96,000 gallons of wine per year (the "Use Permit"), and

D. On October 28, 2004, Customer filed an application for a Use Permit Modification ("Amended Use Permit") with the County. City requested and County required that Customer execute a water agreement with City as a condition of approval of the Amended Use Permit, and

E. In 1992, Customer connected the Property to an on-site well and, through further conservation efforts, well-water system upgrades and construction of an additional vineyard well in 2003, has reduced its demand for City water to the point that its needs are strictly limited to continuity of operations in the event of an Emergency (as defined in the attached Agreement incorporated by reference herein), and

F. Customer and City hereto wish to enter into a Water Agreement to fulfill said condition of approval requiring such an agreement, and

G. 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. The attached Water Agreement between the City of St. Helena, a municipal corporation (City), and V. Sattui Winery, Inc. are approved.

Approved at a Regular Meeting of the St. Helena City Council on November 25, 2008, by the following vote:

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

APPROVED:

[Signature]
Delford Britton
Mayor

ATTEST:

[Signature]
Delia Guijosa
City Clerk
RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

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

EXEMPT FROM RECORDING FEES
GOVERNMENT CODE SECTION 27383

Assessor's Parcel Nos. 030-260-035 and 030-020-029

AGREEMENT

(V. SATTUI WINERY INC. WATER AGREEMENT)

THIS AGREEMENT, entered into on Dec. 3, 2008, between the City of St. Helena, a municipal corporation (“City”), and the V. Sattui Winery, Inc. (“Customer”), (collectively hereinafter, the “Parties”), provides as follows:

RECATALS

A. Customer is the owner of real property located at 1111 and 1181 White Lane, outside the St. Helena City Limits, Napa County, known as Assessor’s Parcel Nos. 030-260-035 and 030-020-029, and more particularly described in Exhibit “A” attached hereto (the “Property”).

B. Despite its location outside the City Limits, the Property benefits from the right to City water by virtue of two, (2) existing water accounts: a residential account with a service address of 882 St. Helena Highway South (the “Residential Account”), and a commercial account fed by a City water main under White Lane with a service address of 1111 White Lane (the “Commercial Account”).

C. A winery is located on the Property and is authorized by Napa County (the “County”) Use Permit #U-118687, issued on February 4, 1987, to produce 96,000 gallons of wine per year (the “Use Permit”).

D. On October 28, 2004, Customer filed an application for a Use Permit Modification (“Amended Use Permit”) with the County. City requested and County required that Customer execute a water agreement with City as a condition of approval of the Amended Use Permit.
E. In 1992, Customer connected the Property to an on-site well and, through further conservation efforts, well-water system upgrades and construction of an additional vineyard well in 2003, has reduced its demand for City water to the point that its needs are strictly limited to continuity of operations in the event of an Emergency (as defined below).

F. The Parties hereto wish to enter into this Water Agreement to fulfill said condition of approval requiring such an agreement.

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

AGREEMENT

1. Customer shall have the option of a 1-1/2-inch Orion®-equipped water meter for its Commercial Account (the “Commercial Meter”) at Customer’s sole cost and expense. Should Customer exercise said option, City shall evaluate the need for and replace all or portions of the existing water main under White Lane, Customer’s existing service connection, and other appurtenances (the “Public Improvements”) at its convenience such that Customer has the benefit of full flow from its Commercial Meter. Customer may include the Public Improvements in the scope of improvements it makes under the Amended Use Permit subject to a reimbursement agreement to be approved by City prior to construction.

2. Customer shall install and maintain at its sole cost and expense a minimum of a three-quarter inch (3/4-inch) reduced-pressure type backflow prevention device on Customer’s side of Commercial Meter in conformance with applicable City Standards. Should customer exercise its option under (1) above, Customer shall replace and maintain at its sole cost and expense said 3/4-inch device with a minimum 1-1/2-inch reduced-pressure type backflow prevention device on Customer’s side of Commercial Meter in conformance with applicable City Standards.

3. In the event the Residential Account is transferred from Customer’s ownership, Customer will not make any agreement or in any other way provide or allow City water from commercial meter to be provided to the premises served by the Residential Account.

4. For purposes of this Water Agreement, the Parties agree that an “Emergency” exists when Customer suffers a loss of groundwater production capacity (either quantity or quality) that results in the material threat of (a) bodily injury, (b) impacts to public health, (c) damage to property (except as expressly excluded in paragraph 7 below), or (d) interruption in business (except as expressly excluded in paragraph 7 below).

5. Customer agrees that upon its discovery of an Emergency as defined above, Customer shall take the following actions:
a. Provide notification of an Emergency via telephone to City Department of Public Works during normal business hours and in writing via facsimile to City Public Works within 24 hours of the inception of the Emergency.

Customer shall indicate with such notification, the nature of the Emergency, the actions taken and planned to mitigate the Emergency, and the expected duration of the Emergency. Customer agrees to similarly notify City in the event that any change in the above conditions are noted.

b. In the event the Emergency occurs, Customer may open its meter valve on the Commercial account. During normal business hours, City shall respond Water Distribution personnel to confirm that the meter valve has been appropriately opened.

6. The Parties agree that when an Emergency exists, and assuming that City is not itself in any state of emergency that would further restrict its services to customers, Customer shall be entitled to water from City at a maximum flow rate of 175 gallons per minute (0.23 Units per minute) through its Commercial Account with a total annual limitation of five million (5,000,000) gallons (6,685 Units) per Water Year (the “Annual Limitation”) upon the terms and conditions set forth herein. The Parties agree that the Annual Limitation has been established on the basis of Customer’s historic usage of City water and that the Annual Limitation shall serve as the basis for any mandatory conservation percentages or other requirements to be imposed should a state of emergency exist that would restrict City water services to customers. 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.

7. Customer agrees that City water shall be used only for sustaining Customer’s normal day-to-day operations, limited to winemaking, visitor and employee consumption, kitchen and sanitation facilities, and the survival of landscape plant materials. Customer shall not use City water for vineyard or agricultural irrigation. Customer understands that alternative non-potable resources for preservation of vineyard and agricultural crops are available and City agrees to cooperate with Customer and make every reasonable effort to facilitate provision of non-potable water for such purposes in time of Emergency. City shall not be obligated to amend this Agreement to allow any increase in the quantity of water provided under this Agreement should Customer’s receive approval to modify its operations or uses from Napa County.

8. Customer shall monitor its water usage on a daily basis and employ all measures necessary to ensure that the Annual Limitation is not exceeded. In the event City’s Director of Public Works reasonably determines that the Annual Limitation has or will be exceeded, City may at its sole discretion, (a) install a flow restrictor upstream of Customer’s Commercial Meter to limit flow to 50 gallons per minute, and/or (b) require Customer to undertake reasonable
additional conservation measures including but not limited to (upon ten (10) days prior written notice), termination of water service for nonessential uses. For purposes of this Agreement, the term “Nonessential Uses” shall mean uses for which non-potable water would suffice including but not limited to landscape irrigation.

9. Should Customer’s usage exceed the Annual Limitation allowed under this Agreement more than one time the City shall have the right to suspend delivery of water under this Agreement until such time as the Customer has provided to the City specific measures detailing how the Customer’s future use of water shall be prevented from exceeding the Annual Limitation which measures are approved by City in its reasonable discretion. Should Customer thereafter willfully fail to comply with those approved measures the City shall have the right to provide written notice of proposed termination by hand-delivery with receipt or certified US Mail of breach under this Agreement to Customer and County. Customer shall have thirty (30) days following issuance of such notice to show cause to the Director of Public Works as to why this Agreement should not be thereafter terminated. The Director shall make a recommendation on that basis to the City Manager and within fourteen (14) days of the Customer’s showing of cause, the Customer shall be informed in writing of the City Manager’s decision regarding the Agreement. The Customer shall have fourteen (14) days in which to appeal said decision to the City Council, whose decision shall be final.

10. Customer warrants that it has installed, on all existing facilities, only California Plumbing Code compliant low volume flush toilets and urinals, showerheads and faucets, and that all new construction shall fully and similarly comply with said standards.

11. 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.

12. Customer agrees that in the event of Emergency, it will make every reasonable effort to repair its facilities and abate the Emergency. As an incentive, Customer agrees to pay the base outside water rate in effect at the time of use as set forth in St. Helena Municipal Code Section 13.04.080 or successor codes (the “Base Rate”) as well as a penalty for use of more than two and one-half (2.5) million gallons (3,342 Units) of City Water used in any Water Year in conformance with the following schedule:

   a. Use of more than 2.5 million gallons (3,342 Units) and less than 3 million gallons (4,011 Units) of City water in any Water Year shall result in payment of the Base Rate plus a penalty surcharge of 10% of the Base Rate (i.e., the actual charges for the water served between 2.5 million gallons and 3 million gallons would total 110% of the Base Rate).
b. Use of more than 3 million gallons (4,011 Units) and less than 3.5 million gallons (4,679 Units) of City water in any Water Year shall result in payment of the Base Rate plus the penalty for the usage under (a) above, plus the Base Rate and a penalty surcharge of 25% of the Base Rate for each unit used between 3 million gallons (4,011 Units) and less than 3.5 million gallons (4,679 Units) (i.e., the actual charges for the water served between 3 and 3.5 million gallons would total 125% of the Base Rate).

c. Use of more than 3.5 million gallons (4,011 Units) and less than 4 million gallons (5,348 Units) of City water in any Water Year shall result in payment of the Base Rate plus the penalty for the usage under (a) above, plus the Base Rate and penalty for the usage under (b) above, plus the Base Rate and a penalty surcharge of 50% of the Base Rate for each unit used between 3.5 million gallons (4,011 Units) and less than 4 million gallons (5,348 Units) (i.e., the actual charges for the water served between 3.5 and 4 million gallons would total 150% of the Base Rate).

d. Use of more than 4 million gallons (5,348 Units) of City water in any Water Year shall result in payment of the Base Rate plus the penalty for the usage under (a) above, plus the Base Rate and penalty for the usage under (b) above, plus the Base Rate and penalty under (c) above, plus the Base Rate and a penalty surcharge of 200% of the Base Rate for each unit used in excess of 4 million gallons (5,348 Units) (i.e., the actual charges for each gallon more than 4 million gallons served would total 300% of the Base Rate).

Such penalty surcharges shall be due and payable within 30 days after calculation and demand by the City.

13. 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.

14. 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.

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 shall remain in full force and effect unless amended or modified by mutual consent of the parties in writing.
16. 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.

17. This Agreement and any exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto. This Agreement may only be amended by a written document duly executed by all parties.

Executed the day and year first above written.

CUSTOMER: V. SATUUI WINERY, a California Corporation Property owner,

Dated: 12/3/08

By: Thomas C. Davies

Its: President

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

Dated: 12/9/08

By: Bert Johansson

City Manager

APPROVED AS TO FORM: ATTEST:

Amy Valuievich, City Attorney

Delia Gujiosa, City Clerk

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STATE OF CALIFORNIA  
COUNTY OF NAPA

On 12/03/2008, before me, Nadya Cadiz, a Notary Public in and for the State of California, personally appeared Thomas Davies, 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 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.

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.

Nadya Cadiz  
Notary's Signature

STATE OF CALIFORNIA  
COUNTY OF NAPA

On December 9, 2008, before me, Delia H. Guijosa, a Notary Public in and for the State of California, personally appeared Bert Johansson, 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 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.

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's Signature
ILLEGIBLE NOTARY SEAL DECLARATION
(GC 27361.7 and CCP 2015.5)

The notary seal on the document to which this statement is attached reads as follows:

Name of Notary  Delia H. Guijosa
Date Commission Expires  July 16, 2011
County of Commission  Napa
Commission Number  1757618

"I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct."

Today’s Date  12-17-08

[Signature]
Signature of Declarant:

[Printed Name]
Printed Name

(Updated 2/7/02)
Exhibit "A"

LEGAL DESCRIPTION

Napa County Assessor's Parcel Numbers: 030-260-035 and 030-020-029