

**RAW WATER BACKBILLING AGREEMENT
SPRING MOUNTAIN VINEYARD, INC.**

THIS RAW WATER BACKBILLING AGREEMENT (“BACKBILLING AGREEMENT”) is entered into this 9th day of January, 2017 (“Effective Date”), by and between the City of St. Helena, a California municipal corporation (“City”), on the one hand, and Spring Mountain Vineyard, 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 Vineyard.”

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.

E. Since the Amended Agreement expired on June 30, 2006, Buyer continued to purchase water from the City substantially under the terms of that expired agreement.

F. On May 24, 2016, the parties entered into the Raw Water Use Agreement (“2016 Water Use Agreement”).

G. The 1990 Water Use Agreement provided in Paragraph 2 that Buyer was obligated to pay “\$200 per acre foot of water furnished” by the City, and in Paragraph 7 that the “price for water set forth in Paragraph 2 above shall be increased 5%” on May 1, 1993, “and continuing on each anniversary thereafter.” The 1996 Amendment similarly provided: “Beginning with May 1, 1993, and continuing on each anniversary thereafter, the price for water set forth in paragraph 2 above shall be increased by 5%.”

H. Buyer asserts that City did not submit invoices to Buyer for annual 5% increases. City asserts that Buyer did not pay annual 5% increases as required.

I. In June, 2016, the City included an adjustment of \$22,201.05 on Buyer's monthly water bill which was "back billing" for three years, a period the City used in other back billing contexts under City ordinances. That back billing was for the difference between what was billed to Buyer and what the City initially believed should have been billed pursuant to the 5% increases.

J. Subsequently, the City asserted that the City's right to back bill is based on City the statute of limitations set forth in Code of Civil Procedure section 337, and should extend to four years, based on the City's assertions that Buyer was buying water from the City pursuant to the terms of the 1990 Agreement, as Amended in 1996; that the City may not enter an oral contract to sell water and could not and did not enter any oral contract; that prior to the entry of the 2016 Raw Water Use Agreement, the 1990 Agreement (as amended in 1996) governed; and that, accordingly, the four-year statute of limitations for written contracts applies.

K. Buyer has disagreed with City on the applicability of the 1990 Agreement, as Amended in 1996, to the disputed charges, and has asserted that any claim against Buyer is limited by the two-year statute of limitations for oral contracts set forth in Code of Civil Procedure section 339 (1).

L. The disputes and disagreements described in these Recitals are hereafter referred to as the "Dispute."

M. To that end, the Parties wish to agree by this Backbilling Agreement to resolve and fully settle, compromise, and release any and all disputes, contentions, claims, arguments, rights, and defenses that relate to, or have been or could be asserted by them in connection with the Dispute by Buyer's payment to the City of back billing charges for water used for two and one-half (2 ½) years pursuant to the terms of this Backbilling Agreement.

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

AGREEMENT

1. Settlement of Backbilling Claims. This Backbilling Agreement shall fully and forever compromise and settle the Dispute, including any and all claims of the Parties, related to, or have been or could be asserted by them in connection with the 1990 Water Use Agreement, the 1996 Amendment to Water Use Agreement, and any other contract or agreement for the use or purchase of water prior to May 24, 2016, the Effective Date of the 2016 Water Use Agreement ("Effective Date").

2. Payment. Under this Backbilling Agreement, Buyer will pay the City a total of Sixteen Thousand Thirty Eight Dollars and Eighteen Cents (\$16,038.18). Buyer's payments shall be according to the payment schedule attached hereto as **Exhibit 1**. Time shall be of the essence in Buyer's payments pursuant to this Backbilling Agreement.

3. Release. The Parties, on behalf of themselves and their officers, employees, partners, directors, and shareholders, hereby release, forever discharge and covenant not to sue

each other and each party's respective heirs, executors, administrators, devisees, assigns, agents, representatives, partners, directors, officers, shareholders, trustees, beneficiaries, employees, attorneys, parent company or companies, insurers, lenders, affiliates, subsidiaries, and successors-in-interest with regard to any and all existing or potential demands, causes of action, equitable or legal claims, obligations, damages, losses, penalties, fines, misdemeanors and liabilities between the Parties, whether asserted or unasserted, known or unknown, arising out of or connected to the Dispute, including water delivered to Buyer pursuant to the 1990 Water Use Agreement, the 1996 Amendment to Water Use Agreement, and any other contract or agreement for the use or purchase of water prior to the Effective Date of the 2016 Water Use Agreement. The Parties expressly waive any rights or benefits available to them under the provisions of Civil Code section 1542 of the California Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Each Party to this Backbilling Agreement acknowledges that they or their attorneys may hereafter discover facts different from or in addition to those which they or their attorneys now know or believe to be true with respect to the claims, demands, liabilities, accounts, reckonings, obligations, costs, expenses, liens, actions and causes of action of every kind herein released, and further agree that this Agreement shall be and remain in effect as a full and complete release notwithstanding such different or additional facts.

4. 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:

[fill in appropriate address]

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. Any notice given by facsimile transmission 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.

5. 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.

6. 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.

7. No Admission of Liability. Neither the negotiation, performance, nor the terms and conditions of this Agreement shall be deemed or construed to be an admission of liability by any Party for any purpose.

8. 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.

9. 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.

10. 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.

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

12. 2016 Water Use Agreement To Remain In Effect. Nothing in this Backbilling Agreement is intended to effect in any manner the Parties' rights and obligations under the 2016 Water Use Agreement.

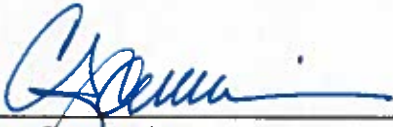
13. Authority. Each respective Party represents and warrants that the respective individual signing below on its behalf has full authority to execute this Agreement for and on behalf of that Party and that, once executed, this Agreement will be binding and enforceable according to its terms.

Executed the day and year first above written.

BUYER:

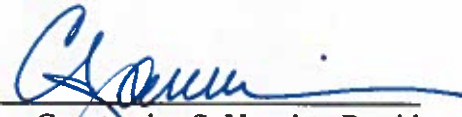
SPRING MOUNTAIN VINEYARD, INC.

Dated: 12/9/17

By: 
Constantine S. Yannias, President
Its: President

GOOD WINE COMPANY


Dated: 12/9/17

By: 
Constantine S. Yannias, President
Its: President

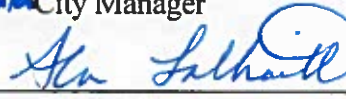
CITY:

CITY OF ST. HELENA,
A municipal corporation,

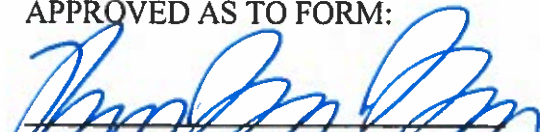
Dated: 1/26/17

By: 
Jennifer Phillips **LARRY F. PENNELL**
Its: ~~John~~ City Manager

Dated: 1/26/17

By: 
Alan Galbraith
Its: Mayor

APPROVED AS TO FORM:


Thomas B. Brown, City Attorney

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On JANUARY 9, 2017, before me, Mary Jane Stach, a Notary Public in and for the State of Illinois, 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.



Mary Jane Stach
Notary's Signature

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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

Payment Number	Payment Date	Year	Payment Amount	Balance
				\$ 16,038.18
1	February	2017	\$ 534.61	\$ 15,503.57
2	March	2017	\$ 534.61	\$ 14,968.96
3	April	2017	\$ 534.61	\$ 14,434.35
4	May	2017	\$ 534.61	\$ 13,899.74
5	June	2017	\$ 534.61	\$ 13,365.13
6	July	2017	\$ 534.61	\$ 12,830.52
7	August	2017	\$ 534.61	\$ 12,295.91
8	September	2017	\$ 534.61	\$ 11,761.30
9	October	2017	\$ 534.61	\$ 11,226.69
10	November	2017	\$ 534.61	\$ 10,692.08
11	December	2017	\$ 534.61	\$ 10,157.47
12	January	2018	\$ 534.61	\$ 9,622.86
13	February	2018	\$ 534.61	\$ 9,088.25
14	March	2018	\$ 534.61	\$ 8,553.64
15	April	2018	\$ 534.61	\$ 8,019.03
16	May	2018	\$ 534.61	\$ 7,484.42
17	June	2018	\$ 534.61	\$ 6,949.81
18	July	2018	\$ 534.61	\$ 6,415.20
19	August	2018	\$ 534.61	\$ 5,880.59
20	September	2018	\$ 534.61	\$ 5,345.98
21	October	2018	\$ 534.61	\$ 4,811.37
22	November	2018	\$ 534.61	\$ 4,276.76
23	December	2018	\$ 534.61	\$ 3,742.15
24	January	2019	\$ 534.61	\$ 3,207.54
25	February	2019	\$ 534.61	\$ 2,672.93
26	March	2019	\$ 534.61	\$ 2,138.32
27	April	2019	\$ 534.61	\$ 1,603.71
28	May	2019	\$ 534.61	\$ 1,069.10
29	June	2019	\$ 534.61	\$ 534.49
30	July	2019	\$ 534.49	\$ 0.00

Amount \$ 16,038.18

Monthly Payment \$ 534.61