

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO

City of Calistoga
1232 Washington Street
Calistoga, CA 94515
Attn: Su Sneddon, City Clerk

(Space above this line for Recorder's Use Only)
Exempt from recording fee per Govt. Code §27383

**COVENANT AND AGREEMENT TO ACCEPT DRAINAGE
WATERS, AND TO RELEASE AND INDEMNIFY**

THIS COVENANT AND AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2010, by Vincent Arroyo and Marjorie Arroyo, as Trustees of the Arroyo Family Trust, dated November 7, 2003 ("Arroyo") and the City of Calistoga ("City").

RECITALS

A. Arroyo is the owner of certain real property (the "Property") located in the City of Calistoga, County of Napa, State of California, generally located south of Grant Street and west of Garnett Creek, more particularly described as follows:

Parcels A through D of Parcel Map No. 2008-03, recorded in Book _____, pages _____ and _____ of Parcel Maps, Records of Napa County, State of California.

B. Arroyo intends to develop on the property four residential lots served by a private road.

C. In connection with the development of the Property, Arroyo has recorded Parcel Map No. 2008-03 (the "Parcel Map").

D. In connection with the development of the Property, Arroyo shall cause to be constructed a public drainage system along the south side of Grant Street ("Drainage System"). Surface runoff water and storm water ("Drainage Waters") from Grant Street will be collected by the Drainage System and be discharged into earthen swales that will be constructed along the sides of the private road on the site. Drainage water shall be limited to the surface water and drainage from "Drainage System" per the approved plans for this property by Cullen-Sherry Associates, on file with the Calistoga Public Works Department. No additional waters shall be discharged onto Property.

AGREEMENT

In consideration of certain approvals by the City of Calistoga relating to the development of the Property, Arroyo hereby agrees as follows:

1. Acceptance of Drainage Waters. Arroyo agrees to accept on the Property the Drainage Waters being discharged from the Drainage System into the earthen swales along the private road.

2. Release and Indemnification. Arroyo agrees to release the City, its officers, employees and agents from any and all claims, demands, suits and other actions that Arroyo may now or in the future have against the City, its officers, employees or agents arising out of or incurred as a result of any harm caused by the Drainage Waters being discharged from the Drainage System onto and across the Property.

Arroyo agrees to defend, indemnify and hold harmless the City, its officers, employees and agents from any and all liabilities, expenses, claims or causes of action arising out of or alleged to be caused by or resulting from Drainage Waters discharged from the Drainage System onto or across the Property or from the approval of any street, drainage, grading or other improvement plans approved by the City relating to the disposition of the Drainage Waters.

3. Attorneys' Fees. The terms of this agreement shall be enforced by the City, its successors and assigns. In the event either party should bring an action to enforce the terms of this agreement, the prevailing party shall be entitled to reasonable attorneys' and expert witness' fees and other reasonable costs of suit.

4. Covenants Running With The Land. This Agreement and the covenants contained shall run with the land and shall be binding upon Arroyo, its successors and assigns, and shall continue in effect until such time as released by the City Council of the City of Calistoga, California.

IN WITNESS WHEREOF, Arroyo has executed this agreement the date and year first written above.

CITY OF CALISTOGA

William C. Norton,
Interim City Manager


Attest:

Susan Sneddon, City Clerk


Approved as to Form:

City Attorney

VINCENT ARROYO AND
MARJORIE ARROYO, Trustees
Of the Arroyo Family Trust, dated
November 7, 2003



Vincent Arroyo



Marjorie Arroyo

STATE OF CALIFORNIA)

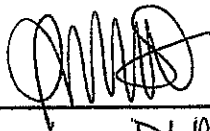
) ss.

COUNTY OF NAPA)

On 8-31-2010, 2010, before me, DUMILLS, a Notary Public, personally appeared Vincent Arroyo and ~~Marjorie Arroyo~~ ^{Marjorie}, 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.

WITNESS my hand and official seal:

Signature



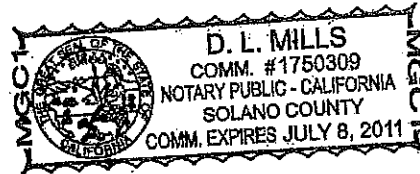
Notary Public

DUMILLS

Commission # _____

Expires _____

County of _____, State of California




STATE OF CALIFORNIA
COUNTY OF NAPA

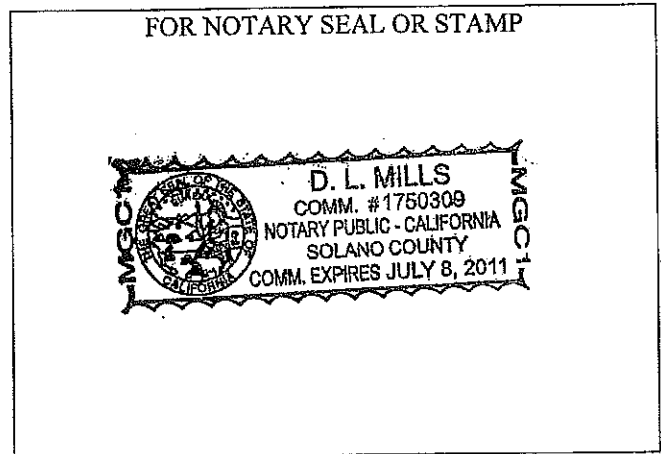
} SS:

On 9-2-2010, before me, **DL Mills**, Notary Public, personally appeared **Marjorie Arroyo**, 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 



STATE OF CALIFORNIA)

)

COUNTY OF NAPA)

On _____ before me, Susan Sneddon, the undersigned, personally

(Date)

appeared William C. Norton who proved to me on the basis of satisfactory evidence to

Name(s) of Signer(s)

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 OR PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Place Notary Seal Above

WITNESS my hand and official seal.

Signature of Notary Public

Expiration Date

Print Name

Commission Number

Notary Telephone Number: _____