CITY OF ST. HELENA

RESOLUTION NO. 2001-174

APPROVING WAX WATER AGREEMENT

RECITALS

Richard A. Wax is the owner of real property located at 2727 Sulphur Springs Road, located outside the City limits, known as APN 27-020-014. The City Council considered Mr. Wax’s request to reconnect water service to his property at its meetings of September 25, October 9 and October 23, 2001. The Council approved Mr. Wax’s request based upon the findings and conditions set forth in the attached Water Agreement.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

The attached Wax Water Agreement is hereby approved. The City Attorney is directed to record the Agreement.

Approved at a Regular Meeting of the St. Helena City Council on December 11, 2001, by the following vote:

AYES: Councilmembers Potter, Bowers, Toller, Mayor Slavens
NOES: Councilmember Savidge
ABSENT: None
ABSTAIN: None

APPROVED:

Ken Slavens
Mayor

ATTEST:

Delfa Guijosa
City Clerk
EXEMPT FROM RECORDING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

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

Assessor’s Parcel No. 027-020-014

AGREEMENT

(WAX WATER AGREEMENT)

THIS AGREEMENT, entered into on December 11, 2001, between the City of St. Helena, a municipal corporation (City), and Richard A. Wax (Customer), provides as follows:

RECITALS

A. Customer is the owner of real property (the Property) located at 2727 Sulphur Springs Rd, in the County of Napa, California, located outside the city limits of the City, known as Assessor Parcel No. 27-020-014, as more particularly described in Exhibit "A" attached hereto.

B. Customer has requested a reconnection of water service to the Property. The City Council considered Customer’s request at its meetings of September 25, October 9 and October 23, 2001, and made the findings set forth herein.

C. The Property was previously connected to the City water system through December of 1980, when Resolution No. 80-59 was approved, and this approval would permit a reconnection and not a new service. The water line exists and a meter box is in place.

D. The residence was constructed in 1954 on the original parcel and supplied by City water. The original owner contributed financially to the extension of the City system prior to the construction of the residence.

E. City water service was established in the 1950’s and stand-by charges were paid at least through December 1980.

F. Customer has demonstrated an extreme hardship by the construction of three dry wells.
G. The prior owner of the original larger parcel, David A. Garden, has waived any claims that the original larger parcel would be entitled to a future water connection.

H. Based upon the foregoing findings, the City Council approved Customer's reconnection to the City water system subject to this Agreement on the terms and conditions set forth herein.

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

AGREEMENT

1. City agrees to and shall provide water to the Property up to an annual level (Annual Limitation) of 182,500 gallons (based on 500 gallons per day or 244 hundred cubic feet) per Water Year upon the terms and conditions set forth herein. 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.

2. City water shall be used only for domestic purposes within the single residence only. Water for irrigation of landscaping, agricultural purposes, for swimming pools and any other uses shall be provided from another source.

3. Customer shall install at its expense, on all new construction and existing facilities, only low volume flush toilets and urinals, shower heads and faucets. All existing faucets and shower heads shall be equipped with flow restrictors. The retrofitting of existing facilities and shower heads shall be completed within one year after date of this Agreement. Security of $500 per existing toilet and urinal shall be deposited with the City within 30 days of the date of this Agreement, which sum City shall keep in an interest-bearing account and which sum, along with all allowed interest, City shall return to Customer upon proof of completion of the required retrofitting.

4. Within six months from the date of this Agreement, Customer shall retrofit five existing residences or pay the in-lieu fee pursuant to the City's Water Conservation Ordinance.

5. Customer shall pay all reconnection costs incurred by the City to install a service between the existing water main and the Customer's meter box, including the Customer's water meter. Within 30 days of the date of this Agreement, Customer shall also pay all unbilled standby charges, penalties and interest accrued since December 29, 1981, in the sum of $4032.83 and all staff and attorney time incurred by the City for the preparation of this Agreement.

6. 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.

7. Customer shall monitor its water usage on a bimonthly basis and employ all measures necessary to ensure that the Annual Limitation is not exceeded. In the event the City Director of Public Works reasonably determines that the Annual Limitation inevitably will be exceeded or that the Annual Limitation has been exceeded, City may require Customer to undertake reasonable additional conservation measures and may require Customer, upon ten (10) days prior written notice, to terminate water service.

8. In the event Customer exceeds its Annual Limitation, he shall pay to City a penalty surcharge equal to 60% of the water rate charge for each hundred cubic feet, or portion thereof, used in excess of the Annual Limitation. Such penalty surcharge shall be due and payable within 30 days after calculation and demand by City. In addition to the 60% surcharge, City may avail itself of all rights and remedies set forth in Paragraph 10 of this Agreement.

9. Customer agrees that if any future request or application for approval of a use permit for the Property is submitted to the Napa County Planning Commission or Board of Supervisors, City shall be informed on or before the date on which any such request or application is submitted. In addition, Customer agrees to provide City with copies of all supporting documents or other information submitted in connection with such requests or applications on or before the date such materials are submitted to the Planning Commission or the Board.

10. 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.

11. 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.

12. 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.
13. The provisions of this Agreement shall be binding on all heirs, assigns and successors in interest to the parties hereto and shall be a covenant that runs with the land.

Executed the day and year first above written.

CUSTOMER:

Dated: _____________

_____________________  
Richard A. Wax

CITY:

CITY OF ST. HELENA,  
a municipal corporation,

Dated: _____________

By: ____________________  
Bonnie Long

Its: City Manager

ATTEST:

_______________________  
Delia Guijosa, City Clerk

APPROVED AS TO FORM:

_______________________  
Diane M. Price, City Attorney
EXHIBIT A

Parcel Two as shown on Map No. 3112 entitled, "Parcel Map of the Lands of David A. Garden", filed January 5, 1979 in Book 10 of Parcel Maps at pages 32 and 33 in the office of the County Recorder.
STATE OF CALIFORNIA )
COUNTY OF ___________ ) ss.

On __________________, before me, __________________, a Notary Public in and for the State of California, personally appeared Richard A. Wax, 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

Wax Water Agreement
Wax is in So. America or some place now and won't be back until after the holidays. Marty gave me a faxed copy of his signature. I don't know where the original document is. Marty is the contact person, work with him in getting the original doc. or Wax can resign when he gets back if no one knows where it is. Also, Wax has to pay $ for toilet retrofits and security and back stand-by charges. Myke's dept has to calculate those amounts. We need to get the $ when we get the original document and before Wax can get the water reconnection.

-----Original Message-----
From: Delia Gujiosa [mailto:delia@gci.st-helena.ca.us]
Sent: Thursday, December 13, 2001 12:06 PM
To: Diane Price (E-mail)
Subject: Wax Agreement
Importance: High

Who will be providing me with the signed agreement. You or Myke?
September 11, 2001

St. Helena City Council
1480 Main Street
St. Helena, CA 94574

Dear Council:

Prior to 1952 my father, Nelson Garden, participated in the financing of the municipal water service extension on Vallejo Street and at the time there was installed a two inch service meter on his property directly across Sulphur Springs Avenue. This water was used to service the residence I now live in. This building was built in 1954 and the occupants at that time were Mr. and Mrs. Alexis Klotz.

This service remained in place into the seventies at a standby cost per month which kept increasing over time.

When I moved back to St. Helena after my father died in 1969, the standby charges continued. I was not notified in writing as to its removal though I had not used the water from the city for a number of years.

There is a proposal before you to reestablish this service for Mr. Richard Wax's home. If such a service is granted, I consent not to use any of the city water on my adjoining property.

Sincerely,

DAVID A. GARDEN
MEMORANDUM

DATE: December 18, 2001

To: Public Works Director
Finance Director
City Attorney

FROM: Delia Guijosa, City Clerk

RE: Wax Water Agreement

Copy: Bonnie Long, City Manager

The Council approved a water agreement with Richard Wax at the December 11, 2001 meeting. I understand Mr. Wax faxed the signature page to the City Attorney and after the holidays he will come to City Hall to execute two copies of the agreement.

The City Attorney has recommended that monies due be paid prior to the recordation of this document.

The agreement has several stipulations and I have provided each of you with a copy of the agreement and have listed your name with the various items you are responsible for.

Correspondence 2001/Wax Water Stipulations

1480 Main Street
St. Helena, CA 94574
707/967-2792