RESOLUTION NO. 2004-14

APPROVING A WATER AGREEMENT
WITH WHITING NURSERY
LOCATED AT 738 MAIN STREET

RECITALS

A. Whiting Nursery, located at 738 Main Street, received a use permit approved by City Council on August 26, 2003;

B. Conditions of approval required a water agreement to allot 600 gallons per day annually for a total amount not to exceed 219,000 gallons per year.

RESOLUTION

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

1. Approve the attached water agreement for Whiting Nursery (APN 009-112-017).

Approved at a Regular Meeting of the St. Helena City Council on, February 24, 2004 by the following vote:

AYES: Councilmembers Potter, Schoch, Savidge, Sklar, Mayor Slavens
NOES: None
ABSENT: None

APPROVED

Ken Slavens
Mayor

ATTEST:

Delia Guijosa
City Clerk

ATTEST:

The foregoing instrument is a correct copy of the original on file in this office of City Clerk and Clerk of the St. Helena City Council, County of Napa, State of California.

By: Deputy City Clerk

Seal
EXEMPT FROM RECORDING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103

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. 009-112-017

AGREEMENT

(WHITING NURSERY WATER AGREEMENT)

THIS AGREEMENT, entered into on 2/24/04, between the City of St. Helena, a municipal corporation (City), and Martin Van Der Kamp and Dixie Van Der Kamp, trustees of the Van Der Kamp Revocable Family Trust (Customer), provides as follows:

RECITALS

A. Customer is the owner of real property (the Property) located at 738 Main Street, St. Helena, Napa County, known as Assessor’s Parcel No. 009-112-017, as more particularly described in Exhibit A attached hereto.

B. On August 5, 2003, the St. Helena City Council approved Resolution 2003-127, which authorized the development of a retail garden center on the Property that will be operated by Kevin Twohey dba Whiting Nursery, a sole proprietorship. As a condition of approval of the Resolution, Customer is required to execute a water agreement with the City limiting city potable water use on the Property to 600 gallons per day.

C. The parties hereto wish to enter into this Water Agreement to fulfill the Resolution condition of approval requiring such an agreement.

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

1. City is obligated to provide water to the Property up to no more than an annual limitation (Annual Limitation) of 219,000 gallons of water 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 those uses as authorized by the Resolution. City shall not be obligated to provide water service for any other use nor for any further expansion of the uses allowed by the Resolution.

3. Customer shall install at its expense, on all new construction and existing facilities, only low volume flush toilets and urinals, showerheads and faucets. All existing faucets and showerheads shall be equipped with flow restrictors. The retrofitting of all new construction existing facilities and showerheads shall be completed within one year after date of this agreement.

4. 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.

5. 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 for nonessential uses. For purposes of this Agreement, the term “nonessential uses” shall mean uses for which non-potable water would suffice.

6. In the event Customer exceeds its Annual Limitation, it 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 8 of this Agreement.

7. 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.
8. 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.

9. 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.

10. 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.

Executed the day and year first above written.

///
///
///

CUSTOMER: Martin Van Der Kamp and Dixie Van Der Kamp, trustees of the Van Der Kamp Revocable Family Trust

Dated: 13 Feb. 04

By: [Signature]
Martin Van Der Kamp, Trustee

Dated: 13 Feb. 04

By: [Signature]
Dixie Van Der Kamp, Trustee

CITY:

CITY OF ST. HELENA, a municipal corporation,

Dated: 2/24/04

By: [Signature]
Bert Johansson
Its: City Administrator
ATTEST:

Delia Guijosa, City Clerk

APPROVED AS TO FORM:

Karin Troedsson, Deputy City Attorney
STATE OF CALIFORNIA
COUNTY OF NAPA

On February 13, 2004, before me, F. Maxine Mendoza, a Notary Public in and for the State of California, personally appeared -
- Martin Van Der Kamp; Dixie Van Der Kamp -

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.

Notary's Signature

WITNESS my hand and official seal.

Notary's Signature
STATE OF CALIFORNIA  
)  
COUNTY OF NAPA  
) ss.

On 16. 24, 2007, before me, the undersigned, City Clerk of the City of St. Helena, personally appeared Bert Johansson, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her 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.

Signature: Delia Guijosa, City Clerk
Exhibit A

The land referred to herein is situated in the State of California, County of Napa, City of St. Helena, and is described as follows:

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF CHARTER OAK AVENUE AT THE POINT OF INTERSECTION THEREOF WITH THE NORTHEASTERLY LINE OF THE RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILROAD COMPANY; RUNNING THENCE SOUTHEASTERLY ALONG THE NORTHEASTERN LINE OF SAID RIGHT OF WAY 400 FEET TO THE NORTHEASTERLY LINE OF THE LAND FORMERLY OWNED BY THOMAS GREER; THENCE NORTHEASTERLY, PARALLEL WITH SAID SOUTHEASTERLY LINE OF CHARTER OAK AVENUE AND ALONG THE SAID NORTHWESTERN LINE, 280 FEET TO THE MOST SOUTHERLY CORNER OF THE LAND CONVEYED TO JOSEPH C. MONEY BY DEED OF RECORD IN BOOK 116 OF DEEDS, PAGE 50, NAPA COUNTY RECORDS; THENCE NORTHWESTERLY, PARALLEL WITH THE NORTHEASTERN LINE OF SAID RAILROAD RIGHT OF WAY ALONG THE SOUTHWESTERN LINE OF THE LAND SO CONVEYED TO JOSEPH C. MONEY, 251 FEET 8 INCHES TO THE MOST EASTERLY CORNER OF THE 12 FOOT STRIP OF LAND CONVEYED TO JOSEPH C. MONEY BY DEED OF RECORD IN BOOK 136 OF DEEDS, PAGE 412, SAID NAPA COUNTY RECORDS; THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF SAID STRIP, 12 FEET TO THE MOST SOUTHERLY CORNER THEREOF; THENCE NORTHWESTERLY PARALLEL WITH THE NORTHEASTERN LINE OR SAID RAILROAD RIGHT OF WAY AND ALONG THE SOUTHWESTERN LINE OF SAID STRIP, 148 FEET 4 INCHES TO THE SOUTHEASTERN LINE OF CHARTER OAK AVENUE; THENCE SOUTHWESTERLY ALONG LAST MENTIONED LINE 157 FEET TO THE POINT OF COMMENCEMENT.

EXCEPTING THEREFROM: RECORDED IN A DEED TO THE STATE OF CALIFORNIA UNDER INSTRUMENT NO. 93-2522, RECORDED AUGUST 11, 1993 AND IS DESCRIBED AS FOLLOWS:

A PORTION OF THAT PARCEL OF LAND CONVEYED TO EVERETT A. BELLANI, ET UX, BY DEED RECORDED MAY 11, 1989 IN BOOK 1656, PAGE 550, OFFICIAL RECORDS OF NAPA COUNTY, SAID PORTION DESCRIBED AS FOLLOWS:

A STRIP OF LAND, 7.00 FEET WIDE, AT RIGHT ANGLES, LYING NORTHEASTERLY OF AND CONTIGUOUS TO THE NORTHEASTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY RIGHT OF WAY. THE TERMINAL OF SAID STRIP BEING THE SOUTHEASTERLY LINE OF CHARTER OAK AVENUE AND THE SOUTHEASTERLY LINE OF SAID PARCEL.

AP No.: 009-112-017