

## IRRIGATION AGREEMENT

**THIS AGREEMENT** is entered into this 27<sup>th</sup> day of July, 2005, between **RAINIER VIEW WATER CO., INC.**, a corporation organized under the laws of the State of Washington, hereinafter referred to as "Rainier View", and Caliber Company, Inc., a corporation organized under the laws of the State of Washington, hereinafter referred to as "Property Owner."

### RECITALS

1. The Property Owner has proposed to install an irrigation system on the property described below and desires to connect said irrigation system to Rainier View's water system.
2. Rainier View owns and operates a public water system, and is willing to provide irrigation water service to Property Owner under the terms of this Agreement and its tariff.

**NOW, THEREFORE**, in consideration of the mutual promises and benefits to be derived, it is agreed as follows:

### AGREEMENT

1. Property Owner shall install an irrigation system at the location described below:  
Address: 7200 199<sup>th</sup> St. Ct. E. Spanaway, WA 98387  
Parcel #0418052010 Tract A of proposed plat of Winterwood  
Number of ERUs Requested 1 (one)
2. After the Date of Acceptance, as defined herein and all fees are paid, Rainier View shall install a service connection at the property line of the location described in Paragraph 1, in accordance with its tariff.

3. From the Date of Acceptance, Rainier View shall, subject to approval by the Washington Utilities and Transportation Commission, provide service to the property. As used in this Agreement, Date of Acceptance is the date of payment by Property Owner of all sums owed by Property Owner under this Agreement.
4. Nothing in this Agreement entitled Property Owner or Property Owner's successors or assigns to connect to Rainier View's water system, except in accordance with the terms, conditions and charges in Rainier View's tariff filed with the Washington Utilities and Transportation Commission.
5. Property Owner further agrees that its use of water on a per ERU basis shall be limited to eight hundred (800) gallons per day during the irrigation season of May 1 through September 30 and such use shall be pursuant to the tariffs of Rainier View filed with the Commission; provided, that, to the extent such tariffs provide for less usage during the irrigation season than eight hundred (800) gallons per ERU per day, the limitation of eight hundred (800) gallons per ERU per day shall control.
6. The calculation of the eight hundred (800) gallon per ERU per day usage limitation shall be made on a monthly basis. Under this method of calculation, water that is not used in a month may not be saved or "banked" for use in a later month during the irrigation season. For example, if actual irrigation usage is six hundred (600) gallons per ERU per day for the month of May, that difference between six hundred (600) gallons per ERU per day and eight hundred (800) gallons per ERU per day may not be applied in the month of August to provide usage greater than eight hundred (800) gallons per ERU per day.
7. In consideration of the provision of irrigation service as set forth in this Agreement, Property Owner agrees to adopt a "best practices" approach to use of the irrigation service. This best practices approach includes, but is not limited to, the following:

- (a) revisiting existing landscaping to determine if modifications are needed to reduce use of water;
- (b) irrigation of grass areas at a rate of no more than one (1) inch per week;
- (c) sizing irrigation sprinklers and installing irrigation sprinklers to provide as near a uniform coverage of grass-landscaped areas as feasible;
- (d) not using watering practices that involve a "sponge" approach where water is applied in one area with the thought that it will eventually provide coverage of other areas through the water traveling over, through or under the ground;
- (e) not irrigating when the temperature is forecasted to exceed ninety (90) degrees Fahrenheit; and
- (f) installation of rain sensors at each irrigation location so that irrigation does not occur during or shortly after rain.

8. Property Owner agrees that it shall not ask that the meters be disconnected during the periods that fall outside of the irrigation season (October 1 through April 30). If Property Owner does request disconnection for a meter that provides irrigation service, Property Owner will lose all rights related to the meter connection and the ERUs assigned to that meter. Any subsequent request to reinstate service will be treated as a request for new service and will be subject to payment of all of Rainier View's fees for such service, including payment of Developer Contingency Charge and Supplemental Developer's Fee, currently at the rate of Six Thousand Four Hundred Eighty and 00/100 Dollars (\$6,480.00) per ERU.

9. Property Owner represents and warrants that: (1) it is a Washington State Corporation and in good standing in Washington; (2) it has full authority to enter into this Agreement and that execution of such Agreement shall be binding for all irrigation service throughout the Property Owner's development; (3) entry into this Agreement shall not place Property Owner in breach of any other agreement or loan covenant; and (4) the person signing on behalf of Property Owner has full authority to

do so and execution of this Agreement has been duly approved by appropriate action of Property Owner.

10. Rainier View does not warrant delivery of any specific quantity of water.

11. Property Owner shall pay ONE THOUSAND TWO HUNDRED TEN Dollars (\$1,210.00) per residential equivalent for which water service is proposed to be provided by the System Extension as a Developer Contingency Charge. In addition, Property Owner shall pay FIVE THOUSAND TWO HUNDRED SEVENTY Dollars (\$5,270.00) per residential equivalent for which water service is proposed to be provided by the Irrigation Agreement as a Supplemental Developer's Fee. Payment of the sums under this paragraph shall be due and payable within five (5) days of the date this Agreement is approved by the Washington Utilities and Transportation Commission, which approval may occur by the passage of time (thirty days after filing).

12. Property Owner shall pay to Rainier View ONE HUNDRED Dollars (\$100.00) for Rainier View's attorney fees for the development and filing of this Agreement.

13. This Agreement may be terminated by Rainier View, at Rainier View's discretion, upon ten (10) calendar days' written notice to Property Owner, if Property Owner fails to pay any amounts due under this Agreement when due. **TIME IS OF THE ESSENCE IN THIS AGREEMENT.**

If this Agreement is terminated under this provision, Rainier View shall have no obligation to provide service to Property Owner or Property Owner's successors or assigns.

14. Rainier View shall have no obligation to maintain or repair service lines or other equipment or appurtenances on the Property Owner's side of the meter.

15. Property Owner shall design the irrigation system and landscaping served by the irrigation system to serve conservation goals. Design criteria shall be to use no more

than 800 gallons per day per irrigation ERU during peak period of May through September. The irrigation system will be designed to include a rain sensor that automatically shut down the system. The Property Owner warrants that it will use its best efforts to meet these conservation goals.

16. Given the nature of the obligations contained herein, Property Owner and Rainier View agree that this Agreement may be enforced by action for specific performance and that monetary damages are otherwise unavailable or insufficient as a means of enforcing the terms of this Agreement.

17. Miscellaneous.

- a. Jurisdiction. This Agreement is made with reference to and is intended to be construed in accordance with the laws of the State of Washington. The parties agree that the venue for any suit brought hereunder shall be laid exclusively in Pierce County, Washington.
- b. Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the successors, heirs, assigns and personal representatives of the parties.
- c. Execution of Counterpart. This Agreement shall be executed separately or independently in any number of counterparts, each and all of which together shall be deemed to have been executed simultaneously and for all purposes be one agreement.
- d. Construction. This Agreement shall not be construed more favorably to one party over another, notwithstanding the fact that one party, or its attorney, may have been more responsible for the preparation of the document.
- e. Attorney's Fees. In the event that any party hereto retains an attorney to enforce any of the provisions hereof, then the substantially prevailing party shall be entitled to

reasonable attorney's fees incurred in both trial and appellate courts, or fees incurred without suit and all court and accounting costs.

f. Survival. All of the obligations (except to the extent performed), warranties and representations in this Agreement shall survive the closing.

g. Amendment. No modification, amendment, addition to, or termination of this Agreement nor waiver of any of its provisions shall be valid or enforceable unless in writing and signed by all parties.

h. Waiver. No failure on the part of either party to exercise, and no delay in exercising, any rights hereunder shall operate as a waiver thereof; nor shall any waiver or acceptance of a partial, single or delayed performance of any term or condition of this Agreement operate as a continuing waiver or a waiver of any subsequent breach thereof.

i. Notices. Any notice provided for in this Agreement shall be deemed given if it is in writing and is personally delivered or sent by certified mail, postage prepaid, return receipt requested, and delivered or addressed as set forth below, or to such other address as the parties may hereafter designate by notice given in the same manner.

To Rainier View: RAINIER VIEW WATER COMPANY, INC.

P.O. BOX 44427

TACOMA, WA 98444

To Property Owner: Caliber Company, Inc.

PO Box 1231

Puyallup, WA 98371

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Phone # (253) 845-7075

Fax # (253) 845-0266

Cell # ( ) \_\_\_\_\_

j. Effective Date. The effective date of this Agreement shall be thirty (30) days after this Agreement is filed with the Washington Utilities and Transportation Commission (WUTC), but may be extended if the WUTC suspends the Agreement.

18. To the extent allowed by law, the Property Owner shall hold Rainier View and its officers, agents, and employees harmless from all suits, claims or liabilities of any nature, including attorney's fees, costs, and expenses for or on account of injuries or damages sustained by any persons or property resulting from negligent or willful activities or omissions of the Property Owner, its agents, employees, or on account of any unpaid wages or other remuneration for services or for failure to comply with Chapter 19.122 RCW ("dig-up laws") or any violation of county franchise requirements; and if judgment be rendered or settlement made requiring payment of damages by Rainier View, which damages are based in whole or in part on the negligent or willful activities or omissions of the Property Owner, its agents or employees, or on account of any unpaid wages or other remuneration for services or for a violation of Chapter 19.122 RCW or county franchise requirements, the Property Owner shall pay the same.

19. Property Owner and Rainier View agree that the obligations contained herein are of such a nature as to be so inextricably combined with the operation and management of the land within the Property Owner's development which is subject to the irrigation service described herein that it is hereby intended that this Agreement materially affects such land and shall be a covenant running with such land and shall be recorded as such.

EXECUTED by the parties the date first above written.

RAINIER VIEW WATER CO., INC:

By: *[Handwritten Signature]*

(Signature)

Its: *MANAGER*

(Title)

PROPERTY OWNER:

*Carl D. Wade*

(Print Name)

By: *[Handwritten Signature]*

(Signature)

Its: *President*

(Title e.g., Property Owner, Contractor)