

ORIGINAL

FIRE FLOW AGREEMENT

THIS AGREEMENT is entered into this 3 day of ^{MAY} ~~April~~, 2010, between RAINIER VIEW WATER CO., INC., a corporation organized under the laws of the State of Washington, hereinafter referred to as the "Owner," and HAWTHORNE LANE GRAHAM ASSOCIATES, LLLP, a Limited Liability Limited Partnership organized under the laws of the State of Washington, hereinafter referred to as "Developer."

RECITAL

1. Developer owns real property, described on Exhibit A, attached hereto and incorporated by this reference (the "Property"). The Developer is intending to construct a retail center on the Property. Developer desires to have fire flow service to the Property provided by Owner. Project known as:

Hawthorne Lane Apartments
Pierce County Parcel # 6024410040

2. Owner owns and operates a public water system in Pierce County, Washington, and desires to provide fire flow service to Developer under the terms and conditions of this Agreement.

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

AGREEMENT

1. Owner agrees to provide fire flow service to Developer's Property (the "Services"). Provision of the Services means that Owner has capacity sufficient to provide fire flow to Developer's Property and will certify to state and local regulatory agencies as such. By providing such Services, Developer is then able to develop its property to the business advantage of Developer.

2. Developer shall construct, at its own discretion, its own fire prevention system on Developer's Property. Developer is providing and constructing such system, or choosing not to construct such system, based upon Developer's own knowledge and for Developer's own purposes. Developer will retain ownership and be responsible for the maintenance and operation of the fire prevention system.

3. Owner shall provide to Developer a service connection appropriate for the size of the Developer's lines serving the fire flow protection system constructed by Developer. Said service connection shall be used only for the provision of fire flow and shall not be used for any other purpose, including, but not limited to, domestic water service. Developer shall pay for fire flow service at the following rate:

- a. In accordance with the Owner's current tariff the monthly recurring rate shall be \$0.006 per square foot as measured by the exterior dimensions of the buildings on the Property, which dimensions shall be provided by Developer to Owner.
- b. Owner's normal non-recurring charge of 6 ERU per acre calculated at \$1,210.00 per ERU with the Developer's property constituting 1.86 acre for a total of 11.16 ERUs.

11.16 ERU's @ \$1,210 = \$13,503.60

4. Developer covenants and agrees that it shall be responsible for maintaining the back flow prevention and leak detection device in working order. The back flow prevention and leak detection device shall be inspected and tested at Developer's expense by Washington Certified Back Flow Assembly Tester as required under WAC 246-290-490. The Developer may contract for the back flow certification with any Washington Certified Back Flow Assembly Tester. A copy of satisfactory certification will be provided to Owner prior to the date of providing service under this Agreement and on an ongoing basis as testing certifications are required by state law and regulation. The back flow prevention and leak detection device shall be accessible to the Owner and its employees and agents at all times.

5. DEVELOPER SHALL INDEMNIFY AND HOLD OWNER AND OWNER'S DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS HARMLESS FROM ANY CLAIM FOR DAMAGE TO PROPERTY OR PERSONAL INJURY OR DEATH RESULTING FROM OR IN CONNECTION WITH THE WORK DONE UNDER THIS AGREEMENT OR THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING ATTORNEY'S FEES AND COURT COSTS, EXCEPT THAT WHICH IS THE RESULT OF THE GROSS NEGLIGENCE OF OWNER OR A VIOLATION OF CHAPTER 19.122 RCW BY THE OWNER.

6. Developer understands and agrees that Owner is not acting as an insurer of Developer or Developer's Property or property of others on the Property. Owner shall not be liable for any loss of life, personal injury or loss or damage to Property of Developer, its employees, agents, guests or invitees whether or not caused by failure of the Services and Developer shall hold Owner and Owner's directors, officers, employees and agents harmless from any such claim. Owner makes no warranties or representations as to performance of the Services.

7. THE PARTIES AGREE THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED FROM THIS TRANSACTION AND SHALL NOT APPLY TO ANY SERVICES PROVIDED. SECTIONS 5, 6 AND 7 ALL FORM THE BASIS UPON WHICH OWNER IS WILLING TO PROVIDE THE SERVICES AND OWNER WOULD NOT ENTER INTO THIS AGREEMENT EXCEPT ON THE BASIS OF THE ENFORCEABILITY OF THESE SECTIONS 5, 6 AND 7.

8. This Agreement does not create any relationship or obligation to any person or entity other than Developer. The only relationship created between Owner and Developer is the obligations of Developer and Owner expressly set forth herein.

9. Nothing in this Agreement entitles Developer or Developer's successors or assigns to connect to Owner's water system, including the Services, except in accordance with the terms, conditions and charges in Owner's tariff filed with the Washington Utilities and Transportation Commission, which tariff includes a monthly recurring charge for the services.

10. The price for the Services is set expressly on the disclaimer of warranties and limitation on liability set out in this Agreement and the disclaimer of warranties and limitations on liability are essential parts of the bargain and this Agreement.

11. 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 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. Time. Time is expressly declared to be of the essence in this Agreement.

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

- h. 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.
- i. 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.
- j. 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 Developer and Owner may hereafter designate by notice given in the same manner:

To Owner: Rainier View Water Co., Inc.
P.O. Box 44427
Tacoma, WA 98444

To Developer: Hawthorne Lane Graham Associates, LLLP
2223 112th Ave NE, Suite 102
Bellevue, WA 98004
(425) 454-8205

- k. Effective Date. For purposes of transfer of the facilities used in connection with the Services, and Owner's obligation herein, the Effective Date of this Agreement shall be thirty (30) days after this Agreement is filed with the Washington Utilities and Transportation Commission, unless suspended by the Commission; in which case the Effective Date shall be the date the Agreement is approved by the Commission.
- l. Entire Agreement. The terms of this Agreement constitute the entire understanding of Developer and Owner. Any other statement or representation, whether in writing or verbal, is expressly disclaimed and is not a part of this Agreement unless set forth herein.
- m. Survival. Paragraphs 5, 6, 7, 10 and 12 shall survive closing or termination of this Agreement. Any other provision which by its terms is reasonably intended to survive closing or termination of this Agreement shall do so.
- n. Force Majeure. Owner's obligations under this Agreement may be delayed or interrupted for reasons beyond its control such as, but not limited to, acts of nature, acts or orders of regulatory agencies, line breaks, mechanical failures or actions of third parties (a "force majeure event"). Owner shall not be in breach of this Agreement for a force majeure event.

12. DEVELOPER SHALL HOLD OWNER 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 ACTIVITIES OR OMISSIONS OF THE DEVELOPER, ITS AGENTS, EMPLOYEES, GUESTS OR INVITEES RELATED IN ANY WAY TO THE USE, MAINTENANCE, REPAIR, OR FAILURE OF OPERATION OF THE SERVICES; AND IF JUDGMENT BE RENDERED OR SETTLEMENT MADE REQUIRING PAYMENT OF DAMAGES BY OWNER, WHICH DAMAGES ARE BASED ON THE ACTIVITIES OR OMISSIONS OF DEVELOPER, ITS AGENTS, EMPLOYEES, GUESTS OR INVITEES, THE DEVELOPER SHALL PAY THE SAME.

13. By signing this Agreement, Developer warrants that it is a limited liability company in good standing in the State of Washington, that the person signing on Developer's behalf is authorized to do so and shall bind Developer and that execution of this Agreement shall not put Developer in breach of any other agreement, including, but not limited to, financing or security arrangements.


EXECUTED BY THE PARTIES as of the date first written above.

RAINIER VIEW WATER CO., INC.

By:  _____

Its: MANAGER _____

DEVELOPER: Hawthorne Lane Graham Associates, LLLP

By:  _____

Its: C.E.O. _____



Pierce County Assessor-Treasurer
electronic Property
Information Profile (e-PIP)



Ken Madsen
Assessor-Treasurer

Pierce County Home Assessor-Treasurer Home Parcel Search Sales Search Recorded Documents Permits
Summary Taxes/Values Land Buildings Sales Map

Parcel Map for 6024410040

10/09/2008 10:52 AM

