

AFTER RECORDING RETURN TO:
KRISTEN C. REID
900 Dupont Street
Bellingham, WA 98225-3105

Document Title(s) (or transactions contained therein): RATE AND LATECOMERS AGREEMENT
Reference Number(s) of Documents assigned or released: (on page ____ of document[s])
Grantor(s) (Last name first, first name and initials) BS 80, L.L.C., a Washington limited liability company
Grantee(s) (Last name first, first name and initials) NORTHWEST WATER SERVICES, LLC, a Washington limited liability company
Legal description (abbreviated: i.e. lot, block, plat or section, township, range) PTN NE ¼ PTN W ½ OF SW ¼ ALL IN SECTION 23, TWP 36N, R 3 E, W.M.
Assessor's Property Tax Parcel / Account Number P48086 and P48087
↪ Additional legal is on page ____ of document.

RATE AND LATECOMERS AGREEMENT

THIS RATE AND LATECOMERS AGREEMENT ("Agreement") is made and entered into this 4th day of August, 2020, by and between BS 80, L.L.C., a Washington limited liability company ("BS 80") and Northwest Water Services, LLC, a Washington limited liability company ("NWWWS").

RECITALS:

A. NWWWS purchased assets of the water system commonly referred to as the Blanchard Knob Water System, ID No. AC712E (the "Water System") from BS 80 pursuant to that Asset Purchase Agreement dated January 9, 2019 (the "Purchase Agreement").

B. Consideration given by NWWWS to BS 80 for the Water System includes the promises and agreements set forth in this Agreement.

C. NWWWS has agreed to allocation of twenty (20) of the water services that are available, as set forth herein. The remaining five (5) water services ("Unallocated Services") shall be allocated to parcels of real property pursuant to the terms of this Agreement.

D. The rates and charges that may be assessed by NWWWS to its customers are regulated by the Washington Utilities and Transportation Commission under RCW Title 80 and Washington Administrative Code Title 480 ("WUTC").

E. The parties have agreed that during the term of this Agreement BS 80 will receive latecomers reimbursement payments upon allocation of an Unallocated Service to a parcel of real property, as more specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties agree as follows:

1. Twenty (20) of the Water System's available services shall be allocated to eleven (11) lots created by the Plat of Samish Heights (PL13-0067) and nine (9) or the ten (10) lots created by the Plat of Blanchard Knob (PL10-0383) excluding the lot within the Plat of Blanchard Knob that is subject to a Natural Resource Land Easement granted to Skagit County (collectively the "Allocated Services").

2. NWWWS shall not charge the Allocated Services a water system facilities charge as set forth in Paragraph 3, below. NWWWS shall be entitled to charge the Allocated Services all other WUTC approved charges, if applicable, consistent with NWWWS' approved WUTC rate schedule including, but in no way limited to, charges for installing water meters.

3. Unallocated Services shall not be allocated to any parcel of real property by NWWWS without the prior written consent of BS 80, which shall not be unreasonably withheld,

conditioned, or delayed, NWWS will allocate Unallocated Services to parcels of property (each a "Designated Property") at the request of BS 80, subject to the following conditions:

- (i) The Designated Property shall pay a water system facilities charge to NWWS in an amount equal to the cost of the Water System divided by twenty five (25) services, which equals Thirty Two Thousand Seven Hundred Twenty Nine Dollars (\$32,729.00) per service (the "Facilities Charge"); provided such amount is authorized and approved by WUTC and is incorporated into NWWS's approved WUTC rate schedule;
- (ii) NWWS is able to acquire necessary regulatory approvals for providing water service to the Designated Property;
- (iii) The Designated Property pays all costs and expenses for extending water lines from the Designated Property to the Water System at a location that is acceptable to NWWS; and
- (iv) Upon receipt of the Facilities Charge from the Designated Property, NWWS shall remit the Facilities Charge received to BS 80.

With the sole exception of the Facilities Charge, NWWS shall be entitled to charge the Designated Property for, and retain for itself, all other WUTC approved charges, if applicable, consistent with NWWS' approved WUTC rate schedule

4. If Facilities Charge received pursuant to section 3(iv) are Thirty Two Thousand Seven Hundred Twenty Nine Dollars (\$32,729.00), BS 80 shall grant an easement in the form attached hereto as Exhibit A (the "Easement") over Lot 11 Plat of Samish Heights as shown on the Plat of Samish Heights ("Lot 11"), for water transmission lines from the Water System to the Designated Property. If the Facilities Charge received is less than Thirty Two Thousand Seven Hundred Twenty Nine Dollars (\$32,729.00), BS 80 shall grant the easement upon receipt of a payment of monies equal to the difference between the monies received for the Facilities Charge and Thirty Two Thousand Seven Hundred Twenty Nine Dollars (\$32,729.00).

5. The parties agree to make their best efforts to (a) find parcels of real property to which the Unallocated Services can be allocated that are capable of paying the Facilities Charge and the cost of extending waterlines to the Water System and (b) acquire UTC approval of the Facilities Charge based on the formula described in section 3(i).

6. This Agreement shall terminate fifteen (15) years from the date of this Agreement, upon which time NWWS shall be entitled to any and all Facilities Charges paid or collected to it related to the Unallocated Services.

7. MISCELLANEOUS.

A. Time of the Essence. Time is of the essence in the performance of this Agreement.

B. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

C. Benefit. The provisions in this Agreement shall inure to the benefit of and be binding upon the successors, assigns and personal representatives of the parties hereto.

D. Notices. All notices or demands to be given by each party to the other under this Agreement and all sums to be paid by each party shall be deposited in the United States mails, postage prepaid, by certified or registered mail, return receipt requested, and addressed as follows:

Northwest Water Services, LLC
P. O. Box 921
Bellingham, WA 98227

BS 80, L.L.C.
3850 Mustang Way
Bellingham, WA 98226-8044

Notices and demands sent by mail shall be deemed to have been given and delivered when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

E. Execution of Documents. The parties agree to execute any documents which may be necessary, appropriate or convenient to carry out the intent of the transaction contemplated by this Agreement.

F. Attorney's Fees. In the event either Purchaser or Seller shall institute suit to enforce any rights hereunder, the successful party shall be entitled to court costs and reasonable attorney's fees against the losing party.

G. Survival. All of the terms and covenants in this Agreement shall survive the Closing and delivery of any deed.

H. Severability. If any provision of this Agreement is deemed void or unenforceable by the action of a court of law, such provision shall be severable and not affect the balance of this Agreement, which shall remain in full force and effect.

I. Applicable Law. This Agreement shall be construed, interpreted and enforced pursuant to the laws of the State of Washington, and the parties agree that the Superior Court of Skagit County shall be the appropriate venue of any suit or proceeding brought with respect to this Agreement.

J. Recording. This Agreement shall be recorded against the Property and the obligation of BS 80, or its successors in interest to the Property, to grant the Easements pursuant to Paragraph 4 shall be a perpetual covenant construed as running with the Property and shall be binding upon, and inure and extend to the benefit of, the heirs, executors, administrators, successors, and assigns of the parties hereto..

NORTHWEST WATER SERVICES, LLC


By


KELLY WYNN

Its: Owner

BS 80, L.L.C.

By

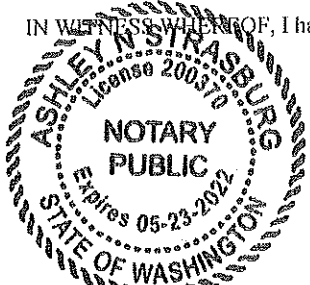

PATRICK STEPHENS

Its: Member / Manager

STATE OF WASHINGTON)
)ss.
COUNTY OF WHATCOM)

On this 4th day of August, ²⁰²⁰2019, before me personally appeared PATRICK STEPHENS, to me known to be the Manager of the limited liability companies that executed the within and foregoing instrument to be the free and voluntary act and deed of said limited liability companies for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Ashley N. Strasburg
Notary Public in and for the State of Washington,
residing at Bellingham.
My Commission Expires: 5/23/22

STATE OF WASHINGTON)
)ss.
COUNTY OF WHATCOM)

On this 4th day of August, ²⁰²⁰2019, before me personally appeared KELLY WYNN, to me known to be the Manager of the limited liability company that executed the within and foregoing instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Katy C. James
Notary Public in and for the State of Washington,
residing at Bellingham.
My Commission Expires: 7/1/23

EXHIBIT A
TO RATE AND LATECOMERS AGREEMENT
[EASEMENT FORM]

After Recording Return to:
Chester T. Lackey
900 Dupont Street
Bellingham, WA 98225

Document: Waterline Easement
Grantor: BS 80, LLC, a Washington limited liability company
Grantee: Northwest Water Services, LLC, a Washington limited liability company
Legal: Lot 11 Plat of Samish Heights
Parcel#:

WATERLINE EASEMENT

BS 80, LLC, a Washington limited liability company ("BS 80"), hereby grants and conveys to Northwest Water Services, LLC, a Washington limited liability company ("NWWS") a non-exclusive easement to install, construct, operate, maintain, repair, replace, improve, remove and upgrade one or more waterlines over and across Lot 11 Plat of Samish Heights, recorded under Skagit County Auditor's File No. _____ ("Waterline Easement"). The Waterline Easement shall be a 20' wide easement centered on the location of the waterline once installed upon Lot 11 (the "Easement Area"). NWWS shall have the right to have access over Lot 11 and the Easement Area for the purpose of exercising the rights granted to it in this Waterline Easement.

This Waterline Easement shall be for the benefit of the real property legally described in Exhibit "A" attached hereto ("Dominant Estate").

This Waterline Easement shall only be used for the installation of underground water pipe for conveyance of water from Blanchard Knob Water System, ID# AC712E to the Dominant Estate.

If any damage is done to improvements within Lot 11, including, but not limited to damage to the road known as Blanchard Knob Trail, shall be restored as near as reasonably practical to their prior condition.

This Waterline Easement, and all rights associated therewith, and the covenants shall be perpetual in existence and shall be perpetual in duration and considered and construed as covenants running with the land as a burden on the Property and shall be binding upon and inure and extend to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

If, by reason of any default or breach on the part of either party in the performance of any of the provisions of this Waterline Easement, a legal action is instituted, the substantially prevailing party shall be entitled to an award of its attorneys' fees and costs. It is agreed that the sole venue of any legal action brought under any dispute related to the conveyances and rights herein granted, including without limitation the terms of this Easement, shall be in the Superior Court for Skagit County, Washington.

GRANTOR:

BS 80, LLC

****EXHIBIT PAGE – DO NOT SIGN HERE****

By _____
PATRICK STEPHENS, Manager

STATE OF WASHINGTON)
)ss.
COUNTY OF WHATCOM)

On this _____ day of December, 2018, before me personally appeared PATRICK STEPHENS, to me known to be the Manager of the limited liability company that executed the within and foregoing instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

****EXHIBIT PAGE – DO NOT SIGN HERE****

Notary Public in and for the State of Washington,
residing at Bellingham.
My Commission Expires: _____.