

## SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“Agreement”), entered into this 11th day of October, 2001, is by and among TFL Associates, LLC, a Washington limited liability company (“TFL”), Caliber Company, Inc., a Washington corporation (“Caliber”), Jacobson Construction and Development, Inc., a Washington corporation (“Jacobson”), Rainier View Water Company, Inc., a Washington corporation, (“Rainier View”), Pageantry XIX/E-P LLC, a Washington limited liability company (“Silver Creek”), Lehman Brothers Holdings Inc., a Delaware corporation, Property Asset Management Inc., a Delaware corporation and LB Silver Creek LLC, a Delaware limited liability company. TFL, Caliber, and Jacobson are each referred to as a “Petitioner” and collectively as the “Petitioners”. Lehman Brothers Holdings Inc., Property Asset Management Inc. and LB Silver Creek LLC are referred to collectively as “Lehman Brothers”.

The terms and conditions of this Agreement shall become effective as of the Effective Date (as defined in Section 1.3).

### RECITALS

Rainier View is a public service company that owns and operates a water system subject to regulation by the Washington Utilities and Transportation Commission (“the Commission”).

Petitioners are developers of the Plats (as defined in Section 1.6).

Silver Creek is a developer of real property located within Rainier View’s water service area and is a party to that certain Development Agreement dated November 19, 1999, by and between Silver Creek and Rainier View as amended by the 1st Amendment to Development Agreement dated May 15, 2001 (collectively, the “Development Agreement”).

The Development Agreement provides, among other things, for the provision of water service to the Silver Creek master planned community and the Meridian Commercial Site (collectively, the “Silver Creek Project”). Pursuant to the Development Agreement, Silver Creek agreed to construct certain water storage facilities and other specified improvements to Rainier View’s water system in return for Rainier View’s commitment to prioritize applications for water service for the Silver Creek Project up to a maximum of 2,839 equivalent residential units (“ERUs”).

The Petitioners brought an action against Silver Creek and Rainier View before the Commission, Docket Number UW-010683, alleging, among other things, that the priority allocation of ERUs to the Silver Creek Project pursuant to the Development Agreement constitutes an undue and unreasonable preference of water service by Rainier View and that Rainier View has failed to furnish water service to Petitioners (the “Litigation”).

Property Asset Management Inc. and LB Silver Creek LLC each claims to hold a perfected security interest in Silver Creek's rights under the Development Agreement. The Commission has granted Lehman Brothers leave to intervene in the Litigation.

In resolution of the disputes giving rise to the Litigation, the parties agree as follows:

## AGREEMENT

### SECTION 1. DEFINITIONS.

For purposes of this Agreement, the following capitalized terms shall have the respective meanings set forth below:

- 1.1 "Caliber Plat" means Stonerise.
- 1.2 "Claims" means each and every claim, demand, cause, notice, prayer, plea, application, assertion, solicitation or appeal of any form, at law or in equity, known or unknown, asserted or unasserted, for any relief based on statute, code, regulatory or case law, whether in existence at, or arising after, the Effective Date of this Agreement.
- 1.3 "Effective Date" means the date on which this Agreement is approved by the Commission.
- 1.4 "Jacobson Plat" means Country Rose.
- 1.5 "Petitioner Water Agreement" means any water extension agreement or water availability letter that relates to water service for any Plat.
- 1.6 "Plat" means any of the following real property plats: Stonerise, Country Rose, Reed (including Pioneer Park and Evan's Estates), Reed 2, or Windwood 2.
- 1.7 "Release" means to fully and forever remise, release, waive, acquit and discharge.
- 1.8 "Released Claims" means Claims relating directly or indirectly to the validity or enforceability of the Development Agreement or any other subject matter of the Litigation, including, without limitation, claims voluntarily withdrawn or dismissed by Petitioners.
- 1.9 "Representatives" means, as applicable, shareholders, members, directors, officers, employees, agents, attorneys, partners, administrators, assigns and successors.
- 1.10 "TFL Plats" means all Plats other than the Caliber Plat and the Jacobson Plat.

## **SECTION 2. ACKNOWLEDGMENT OF PRIORITY, STANDSTILL AGREEMENT.**

2.1 Each Petitioner acknowledges and agrees that, notwithstanding anything to the contrary in this Agreement, the following water service connection commitments from Rainier View to the Silver Creek Project have priority over any right or claim for water service held, made, or to be made by any Petitioner, including any right to water service acquired by any Petitioner under any Petitioner Water Agreement: phase 12/Chennes Park (145 ERUs), phase 8/Rim (99 ERUs), phase 9/Hillsboro (363 ERUs) and phase 10/Premier (123 ERUs).

2.2 Subject to Petitioners' payment to LB Silver Creek LLC in accordance with Section 3, Silver Creek and its successors and assigns, including, without limitation, Lehman Brothers, shall not enforce its right under Section 1.5 of the Development Agreement as to priority issuance of water availability letters and processing of water extension agreements to the disadvantage of any Petitioner Water Agreement; provided, however, that:

(a) the aggregate number of ERUs provided under all Petitioner Water Agreements filed with the Commission by Rainier View shall not exceed 239 ERUs; and

(b) nothing in this Section 2.2 shall prohibit Silver Creek from executing and delivering water extension agreements and requesting water availability letters with respect to the Silver Creek Project at any time following the date of this Agreement.

2.3 Rainier View shall treat each Petitioner Water Agreement permitted under Section 2.2(a) with the same priority as water extension agreements and water availability letters relating to the Silver Creek Project are required to be treated under Section 1.5 of the Development Agreement. Except as provided under Section 2.1, as between any Petitioner Water Agreement permitted under Section 2.2(a) and any water extension agreement or water availability letter referred to in Section 2.2(b), the Petitioner Water Agreement permitted under Section 2.2(a) shall have priority.

2.4 Neither Silver Creek nor Lehman Brothers has or assumes any obligations or costs imposed by any person or entity as a condition to the provision of water service to any Plat (which obligations or costs may include, without limitation, engineering fees, hook-up fees, water meter charges, miscellaneous tariff charges and costs related to construction of water system infrastructure).

2.5 Neither Silver Creek nor Lehman Brothers makes any representation or warranty, express or implied, with respect to (i) the approval of any Petitioner Water Agreement by any person or government entity, including, without limitation, the Commission, the Washington Department of Health (the "DOH") or the Washington Department of Ecology ("Ecology"), (ii) the performance of any Petitioner Water

Agreement by Rainier View, or (iii) the availability of any ERU contemplated under any Petitioner Water Agreement.

2.6 Except as expressly set forth in a water extension agreement executed and delivered by Rainier View, Rainier View makes no representation or warranty with respect to (i) the approval of any Petitioner Water Agreement by any person or government entity, including, without limitation, the Commission, the DOH or Ecology, or (ii) the availability of any ERU contemplated under any Petitioner Water Agreement.

### **SECTION 3. PAYMENT.**

3.1 Each Petitioner shall pay for the account of Silver Creek an amount equal to \$2,700 per ERU provided under each Petitioner Water Agreement relating to such Petitioner's Plat(s) on or before filing of such Petitioner Water Agreement with the Commission.

(a) If the aggregate number of ERUs provided under all Petitioner Water Agreements submitted to the Commission for approval in connection with the Caliber Plat is less than 42 as of December 31, 2001, Caliber shall pay for the account of Silver Creek an amount equal to \$113,400 less any amount previously paid by Caliber pursuant to this Section 3.1 (the "Caliber Balance Amount"). The Caliber Balance Amount shall be paid on December 31, 2001.

(b) If the aggregate number of ERUs provided under all Petitioner Water Agreements submitted to the Commission for approval in connection with the Jacobson Plat is less than 56 as of December 31, 2001, Jacobson shall pay for the account of Silver Creek an amount equal to \$151,200 less any amount previously paid by Jacobson pursuant to this Section 3.1 (the "Jacobson Balance Amount"). The Jacobson Balance Amount shall be paid on December 31, 2001.

(c) If the aggregate number of ERUs provided under all Petitioner Water Agreements submitted to the Commission for approval in connection with the TFL Plats is less than 141 as of December 31, 2001, TFL shall pay for the account of Silver Creek an amount equal to \$380,700 less any amount previously paid by TFL pursuant to this Section 3.1 (the "TFL Balance Amount"). The TFL Balance Amount shall be paid on December 31, 2001.

3.2 To facilitate Silver Creek's payment of the indebtedness secured pursuant to that certain Deed of Trust and Security Agreement dated September 18, 1998 by and among, Silver Creek, as trustor, Lehman Brothers Holdings Inc., as original beneficiary and Chicago Title Insurance Company, as original trustee, each Petitioner shall make any payment required under Section 3.1 by wire transfer of federal funds directly to:

Citibank  
Lehman Capital Corporation  
New York, NY  
Account # 4061-5501  
ABA No. 021000089  
Attn: Ricky Depaulis  
(201) 524-4888  
REF: Pageantry XIX/E-P LLC

3.3 In addition to any other remedy it may have at law or in equity, LB Silver Creek may notify Rainier View in writing in the event a Petitioner fails to make any payment required of such Petitioner under Section 3.1 in the manner provided under Section 3.2 (a “Defaulting Petitioner”). Upon receipt of such written notice, Rainier View shall not execute or file any water extension agreement or issue any water availability letter relating to any Plat of such Defaulting Petitioner unless and until such Defaulting Petitioner has fully paid its Balance Amount and is no longer a Defaulting Petitioner, or unconditional water availability letters providing for 2,839 ERUs have been issued with respect to the Silver Creek Project.

3.4 If a Defaulting Petitioner fails to timely pay its respective Balance Amount in accordance with Section 3.1, Silver Creek may, at its option, either: (i) bring an action for recovery of such unpaid Balance Amount, or (ii) by notice to Petitioners, terminate the Defaulting Petitioners’ rights under this Agreement with respect to the ERUs represented by such unpaid Balance Amount. For purposes of this Section 3.4, the term “Balance Amount” means the Caliber Balance Amount if the Defaulting Petitioner is Caliber, the Jacobson Balance Amount if the Defaulting Petitioner is Jacobson, or the TFL Balance Amount, if the Defaulting Petitioner is TFL.

#### **SECTION 4. ALLOCATION.**

The allocation of ERUs described in Section 3.1 constitutes fulfillment of Petitioners’ demands for water service from Rainier View for the Plats and all other plats or properties in which Petitioners have an interest. Except for Petitioners’ Plats and the plats listed on Exhibit A, the Petitioners hereby waive any demand for water service for any and all other plats or properties in which Petitioners have an interest. Except as provided in Section 2.2, Section 4 and Exhibit A, Petitioners shall not have priority for water service for any plats or properties, and a new application for water service must be filed if any of the Petitioners desires additional ERUs. Nothing in this Agreement shall be construed as requiring Rainier View to grant additional ERUs to Petitioners or to issue a water availability letter to any of them.

#### **SECTION 5. ENGINEERING DOCUMENTS.**

The engineering documents for water extensions to the Stonerise and Country Rose Plats will be submitted by Rainier View to DOH within two weeks from the date Caliber and Jacobson provide all information in electronic form necessary for Apex Engineering to complete its review, or from the date of this Agreement, whichever

is later. The engineering for the Reed Plat will be submitted by Rainier View to DOH within one month from the date complete information is submitted by TFL in electronic form to Apex Engineering to complete its review for each such plat, or from the date of this Agreement, whichever is later. Rainier View will emphasize to DOH the urgent priority of these engineering reviews. The parties recognize that Rainier View ultimately has no authority over DOH and cannot control the time within which DOH will conduct its review. Rainier View will clearly communicate to DOH Rainier View's request for urgent review.

## **SECTION 6. WATER AVAILABILITY LETTERS.**

6.1 Each party except Rainier View represents to each other party to this Agreement (including Rainier View) that it is not aware of any water availability letters issued to such representing party or any of its predecessors by either Rainier View or any of Rainier View's predecessors for Rainier View's Sound Water System other than those set forth in the priority list attached hereto as Exhibit A.

6.2 Rainier View represents to each party to this Agreement that it is not aware of any water availability letters issued by Rainier View or any of its predecessors for Rainier View's Sound Water System to any person or entity other than those water availability letters set forth in the priority list attached hereto as Exhibit A.

6.3 No party objects to the priorities for water service set forth in the priority list attached hereto as Exhibit A.

## **SECTION 7. INDEMNIFICATION.**

Each Petitioner shall indemnify, defend, and hold Silver Creek, Rainier View, Lehman Brothers and each of their respective Representatives (each an "Indemnified Party") fully and completely harmless from any and all claims, losses, damages, penalties, fines, forfeitures, legal fees and costs, judgments and any other fees, costs or expenses that such Indemnified Party may sustain in any way related to either: (i) the allocation of water service rights among Petitioners; or (ii) the failure of such Petitioner to perform any of its respective obligations, covenants and agreements hereunder.

## **SECTION 8. MISCELLANEOUS CHARGES.**

No Petitioner shall be obligated to pay Rainier View's general facilities charges, currently set at \$1,210 per connection to the extent payments are made by such Petitioner for the account of Silver Creek pursuant to Section 3.1. Petitioners will be required to pay applicable hookup (meter installation) charges pursuant to Rainier View's then current tariff on file with the Commission, engineering fees and costs incurred by Rainier View's designated engineer, and other costs set forth in Rainier View's standard water system extension agreement. A copy of Rainier View's standard water system extension agreement is attached as Exhibit B.

## **SECTION 9. RELEASE OF CLAIMS.**

9.1 Except as to the obligations memorialized in this Agreement, and subject to Section 16.8, each Petitioner hereby Releases Silver Creek, Lehman Brothers, Rainier View and each of their respective Representatives from any and all Released Claims. Each Petitioner acknowledges the risk that, subsequent to the execution of this Agreement, it may discover, incur or suffer Released Claims that were unknown or unanticipated at the time this Agreement was executed, which Released Claims, if known upon execution of this Agreement, might have materially affected its decision to execute this Agreement. Each Petitioner hereby expressly assumes the risk of such unknown and unanticipated Released Claims and agrees that this Agreement applies to all such Released Claims.

9.2 Each Petitioner represents and warrants to each of the other parties that the Release of the Released Claims pursuant to Section 9.1 was given solely for the consideration recited or set forth in this Agreement on a fully-informed basis following receipt of advise of counsel, was voluntarily entered into, and is valid and binding in accordance with its terms.

9.3 Contemporaneously with the submission of this Agreement to the Commission pursuant to Section 10, and effective as of the Effective Date, each Petitioner shall cause the Litigation to be voluntarily dismissed without prejudice and without costs, and shall not file, or in any manner pursue, prosecute or participate in any judicial or administrative action, suit, grievance or proceeding involving or relating to the subject matter of any Released Claim.

9.4 The obligations of this Agreement shall survive the Release set forth in Section 9.1 and the dismissal of the Litigation under Section 9.3 and may be enforced by any party in a court or administrative tribunal with proper jurisdiction.

9.5 Notwithstanding anything to the contrary in this Agreement, all provisions of this Section 9 shall be effective as of the Effective Date.

## **SECTION 10. COMMISSION APPROVAL.**

The parties shall submit this Agreement to the Commission for approval.

## **SECTION 11. ASSIGNMENT**

Each Petitioner represents and warrants to each party that it has not assigned or otherwise transferred or subrogated any interest in any claims that are related in any way to the subject matter of this Agreement. Each Petitioner agrees to indemnify, defend and hold each party fully and completely harmless from any claims, losses, damages, penalties, fines, forfeitures, legal fees and costs, judgments and any other fees, costs or expenses that such party may sustain as a result of any person or entity asserting such assignment, transfer or subrogation.

## **SECTION 12. INDUCEMENT.**

Each party represents and warrants to each other party that, to its knowledge, no other party or person, nor any agent or attorney of any other party or person, has made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce any party to execute this Agreement, and each party acknowledges that it has not executed this Agreement in reliance on any such promise, representation or warranty.

## **SECTION 13. NO ADMISSION OF LIABILITY.**

Each party agrees that this Agreement is a result of a mutual compromise and shall not be construed as an admission by it of (i) liability to any person and or entity, or (ii) breach of any agreement, or (iii) violation of any law or regulation.

## **SECTION 14. VOLUNTARY EXECUTION.**

In executing this Agreement, each party fully, completely and unconditionally acknowledges and agrees that (i) it has consulted with, and had the advice of, counsel of duly licensed and competent attorneys and that it has executed this Agreement after independent investigation, voluntarily and without fraud, duress or undue influence and (ii) expressly consents that this Agreement be given full force and effect according to each and every of its express terms and provisions.

## **SECTION 15. AUTHORITY TO EXECUTE.**

Each person executing this Agreement on behalf of another person or organization represents and warrants to each party that he or she is fully authorized to execute and deliver this Agreement on behalf of such person or organization. Each party represents and warrants to each other party that (i) the execution, delivery and performance of this Agreement by such representing party have been duly and validly authorized and will not violate, to the best of its knowledge, any provision of any law, rule, regulation, order writ, judgment, injunction, decree or determination presently in effect, including, but not limited to tax, usury, bankruptcy and currency laws and regulations and (ii) no consent of any person or entity is necessary for this Agreement to be fully and completely binding upon such representing party.

## **SECTION 16. MISCELLANEOUS PROVISIONS.**

16.1 Entire Agreement. This Agreement (including any exhibits, which are material and integral parts of this Agreement) and the Development Agreement together contain the entire understanding between the parties and supersedes any prior understandings and agreements between them respecting the subject matter hereof. There are no other representations, agreements, arrangements or understandings, oral or written, between and among the parties hereto, or any of them, relating to the subject matter of this Agreement. No amendment, modification, termination, waiver or supplement of any



provision of this Agreement shall be valid or effective unless made in writing and executed by the parties hereto subsequent to the date of this Agreement.

16.2 Construction. Any titles or captions of paragraphs contained in this Agreement are for convenience and reference only and the words contained in them shall not be held to expand, modify, amplify or aid in the interpretation, construction or meaning of this Agreement. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identification of the person or persons, firm or firms, corporation or corporations may require. The locative adverbs "herein," "hereunder," "hereto," "hereby," "hereinafter" and the like, wherever the same appear herein, mean and refer to this Agreement in its entirety and not to any specific article, section, subsection, paragraph or subparagraph hereof. The general rule of construction that an agreement will be construed against the party who drafted it will not apply to any disputes over the provisions of this Agreement.

16.3 Attorneys' Fees. In the event of litigation between any of the parties hereto, declaratory or otherwise, in connection with or arising out of this Agreement, the prevailing party shall recover from the non-prevailing party all actual costs, actual damages and actual expenses, including attorneys' fees, paralegals' fees and other professional or consultants' fees expended or incurred in connection therewith, including for appeals, which shall be determined and fixed by the court as part of the judgment.

16.4 Binding. Except as otherwise herein provided, this Agreement shall be binding upon and inure to the benefit of each of the parties hereto, and their respective Representatives, transferees, successors, assigns.

16.5 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

16.6 Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed to constitute an original version of this Agreement, and all of which shall, taken together, constitute one Agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

16.7 No Waiver. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such a provision, nor in any way to effect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall constitute or be deemed a waiver of any other breach.

16.8 DOH Approval. If, on or before December 31, 2001, DOH fails to approve any Petitioner Water Agreement due to lack of capacity in the Rainier View

water system, the terms and conditions of this Agreement, including, without limitation, Section 9.1, shall be deemed null, void and unenforceable.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties to this Agreement have set forth their signatures as of date first above written.

**PETITIONERS:**

TFL ASSOCIATES, LLC,  
a Washington limited liability company

CALIBER COMPANY, INC.,  
a Washington corporation

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

JACOBSON CONSTRUCTION AND  
DEVELOPMENT, INC.,  
a Washington corporation

By \_\_\_\_\_  
Its \_\_\_\_\_

**SILVER CREEK:**

**RAINIER VIEW:**

PAGEANTRY IX/E-P LLC,  
a Washington limited liability company

RAINIER VIEW WATER COMPANY, INC.,  
a Washington corporation

By E-P Companies of Washington  
Incorporated, a Washington corporation  
Its Managing Member

By \_\_\_\_\_  
Thomas R. Pilkinton  
President/General Manager

By \_\_\_\_\_  
Its \_\_\_\_\_

**LEHMAN BROTHERS HOLDINGS  
INC.:**

LEHMAN BROTHERS HOLDINGS  
INC., a Delaware corporation

By \_\_\_\_\_  
Its \_\_\_\_\_

**PROPERTY ASSET MANAGEMENT  
INC.:**

PROPERTY ASSET MANAGEMENT INC.,  
a Delaware corporation

By \_\_\_\_\_  
Its \_\_\_\_\_

**LB SILVER CREEK LLC:**

LB SILVER CREEK LLC,  
a Delaware limited liability company

By \_\_\_\_\_  
Its \_\_\_\_\_

EXHIBIT A

Sound Water System - Priority

Project Name Requesting Service	# of Lots/ERUs	Date of W.A.L.
Southwell (Southwell)	20	12/22/94
Silver Creek	*	11/14/95
Vista Village (Vilwock)	82	08/20/96
Berkely Ridge (McGowan)	53	04/10/97
Rimview (Rebelez)	18	05/27/97
Michael's Landing (Mahan)	27	02/13/98
Windwood #2 (TFL)	27	03/10/98
Winterwood (Caliber)	27	12/01/00
Linderkamp (McGowan)	26	03/23/01

This priority list is premised upon the date upon which a water availability letter was issued for the particular plat. All projects with water availability letters are subject to approval by the Department of Health as to the engineering requirements for that plat and the capacity within Rainier View's Sound Water System to serve that plat.

Further, the foregoing is a tentative setting of priorities. Due to a variety of factors, a plat lower on the priority list may receive service prior to a plat higher on the priority list. For example, a plat higher on the priority list may not be ready for development at a time when additional ERUs are available or the developer of that plat may not be willing to make the required improvements to serve that plat. Further, there may be technological reasons based upon hydrology, pressure zones or other factors that will make water available to a plat that may be, in theory, lower on the priority list than another plat. Rainier View retains the final discretion to determine when water is available to a particular plot.

This priority list addresses the Sound Water System. Rainier View operates several other water systems, for example, the Southwood Water System. This list is not intended to address any system other than the Sound Water System.

\*2839 ERUs per Development Agreement, as amended.

EXHIBIT B

**WATER SYSTEM EXTENSION AGREEMENT**

**THIS AGREEMENT** is entered into this \_\_\_ day of September, 2001, by and between **RAINIER VIEW WATER CO., INC.**, a corporation organized under the laws of the state of Washington, hereinafter referred to as the "Owner", and \_\_\_\_\_, a \_\_\_\_\_ corporation, hereinafter referred to as "Developer".

RECITALS

1. The Developer is proposing to develop a plat approved by Pierce County known as " \_\_\_\_\_ " which consists of \_\_\_\_\_ lots.
  
2. Owner owns and operates a public water system, and is willing to provide water service to Developer and to own and operate the water distribution main and related operating equipment and appurtenances if constructed to Owner's standards and specifications.
  
3. Developer understands that Owner is limited in the number of equivalent residential units (ERUs) that it may provide because of recent actions by the Department of Ecology in restricting interpretations of the amount of water available under earlier issued water rights.

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

AGREEMENT

1. Developer shall install a water distribution main and related operating equipment and appurtenances ("System Extension") to Owner's Conditions and Standards, a copy of which is attached hereto as Exhibit "A", and by this reference incorporated herein at the location described below:

The details of the System Extension are described on Drawing No. 1, attached hereto as Exhibit "B" and by this reference incorporated herein.

2. Developer shall provide a construction performance and maintenance bond which holds Owner harmless from the negligence of Developer, its agents, liens, third-party liability, and

defective materials or equipment, a copy of said bond is attached hereto as Exhibit "C" and by this reference incorporated herein.

3. Developer shall procure and maintain for the period of the contract up to the Date of Acceptance, as defined herein, insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work hereunder by the Developer, its agents, representatives, employees or subcontractors.

The insurance required shall include the specific coverages and be written for not less than the limits of liability and coverages listed below or required by law, whichever is greater.

Workers Compensation, etc., shall have the following minimum limits:

- |    |   |             |
|----|---|-------------|
| A. | State                                     | Statutory   |
| B. | Applicable Federal (e.g., longshoremen's) | Statutory   |
| C. | Employer's Liability                      | \$1,000,000 |

Comprehensive General Liability shall have the following minimum limits:

- |    |  |               |
|----|--|---------------|
| A. | Bodily injury (including completed operations and products liability): |               |
|    | \$1,000,000  | Each Person   |
|    | \$1,000,000  | Each Accident |

Property Damage:

- |    |  |                  |
|----|--|------------------|
|    | \$1,000,000  | Each Occurrence  |
|    | or a combined single limit of  | \$1,000,000      |
| B. | Property Damage liability insurance will provide explosion, collapse and underground coverages where applicable. |                  |
| C. | Personal injury, with employment exclusion deleted   |                  |
|    | \$1,000,000  | Annual Aggregate |

Comprehensive Automobile Liability shall have the following minimum limits:

Bodily Injury:

- |  |             |                 |
|--|-------------|-----------------|
|  | \$1,000,000 | Each Person     |
|  | \$1,000,000 | Each Occurrence |

Property Damage:

- |  |                             |                 |
|--|-----------------------------|-----------------|
|  | \$1,000,000                 | Each Occurrence |
|  | or combined single limit of | \$1,000,000     |

The comprehensive general liability insurance will include completed operations insurance. All of the policies of insurance so required to be purchased and maintained (or the certificates) for the coverage afforded will not be canceled, materially changed or renewal refused until at least forty-five (45) days prior written notice has been given to Owner by certified mail. All such insurance shall remain in effect until Date of Acceptance, as defined herein, and at all times thereafter when Developer may be correcting, removing or replacing defective work. In addition, Developer shall maintain such completed operations insurance for at least one (1) year after Date of Acceptance, as defined hereinafter, and furnish Owner with evidence of continuation of such insurance. The original policy or a signed certificate of insurance shall be filed with the Owner.

4. Prior to the commencement of work, the Developer shall furnish to the Owner acceptable proof of insurance on a form acceptable to the Owner. All material change insurance certificates must have the project title and address. All insurance certificates shall specifically require forty-five (45) days prior notice to the Owner of cancellation or any Owner shall be named as an additional insured on all certificates of insurance.

5. All work by Developer shall be subject to passing inspection by Owner's Engineer. Developer shall pay for the cost of inspection within ten (10) days from the date of inspection.

6. Developer shall pay for any improvements to Owner's system required by the Department of Health for approval of the engineering design to serve the location set out in paragraph 1, above, or other governmental agency for Owner to serve System Extension.

7. Developer has previously submitted an application to construct the System Extension, and in that application made certain promises, representations and warranties. Said application is attached hereto as Exhibit "D," and by this reference incorporated herein. Developer specifically reaffirms said promises, representations and warranties contained in Exhibit "D."

8. Developer shall pay to Owner upon signing of this Agreement, the sum of Five Hundred Dollars (\$500.00) to reimburse Owner the cost to have Owner's attorney develop this Agreement and submit this Agreement to the Washington Utilities and Transportation Commission for approval.

9. Developer shall furnish all necessary conveyances in form to be approved by the Owner, including, but not limited to: (1) a duly executed easement for access to the area around said System Extension for purposes of maintaining and repairing, if necessary, the System Extension, a copy of which easement is attached hereto as Exhibit "E"; (2) a Bill of Sale in the form attached



hereto as Exhibit "F"; (3) an assignment of any permit or water rights; and (4) any necessary deeds to real property conveyed.

10. From the Date of Acceptance of the System Extension, Owner shall, subject to approval by the Washington Utilities and Transportation Commission, maintain and operate the System Extension. Owner has no duty to accept the System Extension, or any portion thereof, if the System Extension does not pass inspection by Owner's Engineer or does not conform strictly to Owner's Conditions and Standards. As used in this Agreement, Date of Acceptance is the date that the last of the following events occurs: (1) payment by Developer of all sums owed by Developer under this Agreement; (2) delivery of all documents required under paragraph 9; or (3) the System Extension passing inspection by Owner's Engineer.

11. Nothing in this Agreement entitles Developer or Developer's successors or assigns to connect to Owner's water system, including System Extension, except in accordance with the terms, conditions and charges in Owner's tariff filed with the Washington Utilities and Transportation Commission.

12. Owner does not warrant delivery of any specific quantity of water, and Owner's Standards and Conditions are designed to produce only the minimum state standards in effect at the time of this Agreement. Such standards may not be sufficient for large lots, agricultural use or highly landscaped lots. Developer is relying on Developer's own knowledge to determine the adequacy of the System Extension to meet Developer's needs and those of Developer's assigns and successors in interest.

13. This Agreement may be terminated by Owner, at Owner's discretion, upon ten (10) calendar days written notice to Developer, if Developer 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, Owner shall have no obligation to provide service to Developer or Developer's successors or assigns, and Developer shall forfeit any rights in the System Extension.

14. In consideration for the actions of Owner, Developer hereby agrees to indemnify and hold Owner, its officers, employees, agents and contractors harmless from any claim arising out of or related to the fulfillment of this Agreement.

Developer recognizes and agrees that Owner shall have no liability to Developer for any cause whatsoever, whether in tort or contract or any other form of action arising from service under this Agreement, including, but not limited to, claims that this Agreement may constitute an

undue preference or is otherwise found to be in violation of law or void. This limitation of liability includes any actions or omissions by Owner, its officers, employees, agents and contractors arising out of providing service to the System Extension or the fulfillment of this Agreement, except for acts constituting gross negligence or intentional misconduct. This indemnification and limitation of liability are in addition to, and not in replacement of, the obligations set forth in paragraph 17, below. Developer understands and agrees that Owner would not enter into this Agreement without the foregoing indemnifications and limitations on liability.

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

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, and further, no modification or amendments of specification or approval of "approved equal" materials shall be valid or enforceable unless approved in writing by Owner's Engineer.

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 Owner: RAINIER VIEW WATER COMPANY, INC.  
P.O. BOX 44427  
TACOMA, WA 98444

To Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

j. Effective Date. For purposes of transfer of the System Extension, and Owner's obligations herein, the Effective Date of this Agreement shall be thirty (30) days after this Agreement is filed with the Washington Utilities and Transportation Commission.

16. The Owner's acceptance of the System Extension is subject to approval by the Washington Utilities and Transportation Commission which requires this Agreement to have been filed with it at least thirty (30) days prior to transfer of the System Extension (effective date of Agreement). Developer understands that any work done on System Extension prior to Washington Utilities and Transportation Commission approval is done at its sole risk and Owner has no duty to accept said work. Developer further understands Washington Utilities and Transportation Commission approval is not automatic and Owner has not guaranteed or warranted such approval.

17. To the extent allowed by law, the 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 negligent or willful activities or omissions of the Developer, 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 Owner, which damages are based in whole or in part on the negligent or willful activities or omissions of the Developer, 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 Developer shall pay the same.

**EXECUTED** by the parties the date first above written.

**OWNER:**

RAINIER VIEW WATER CO., INC.

**DEVELOPER:**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_)

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Jacobson Construction and Development, Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed Name of Notary Public)

My Appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_)

I certify that I know or have satisfactory evidence that Thomas R. Pilkinton is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President/General Manager of EP Companies of Washington Incorporated, a Washington corporation, the Managing Member of Pageantry XIX/E-P LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed Name of Notary Public)

My Appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Rainier View Water Company, Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed Name of Notary Public)

My Appointment expires \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of LB Silver Creek LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed Name of Notary Public)

My Appointment expires \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Lehman Brothers Holdings Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed Name of Notary Public)

My Appointment expires \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Property Asset Management Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed Name of Notary Public)

My Appointment expires \_\_\_\_\_