

KING COUNTY WATER DISTRICT NO. 125
KING COUNTY, WASHINGTON
RESOLUTION NO. 040310-368

A resolution of the Board of Commissioners of King County Water District No. 125, King County, Washington, ratifying a settlement agreement involving Val Vue Sewer District, Build & Design Group, Inc. and R.J. Lampers Construction, Inc., and accepting water line improvements constructed by R.J. Lampers Construction Co., Inc.

WHEREAS, in view of a Settlement Agreement dated January 13, 2004, between R.J. Lampers Construction, Inc. ("Lampers"), Build & Design Group, Inc., Val Vue Sewer District and King County Water District No. 125 (the "District") relating to water lines and appurtenances (the "Water Lines") and sewer lines and appurtenances constructed by Lampers to serve lots on the north and south side of South 126th Street in the District, the District desires to ratify the Settlement Agreement and accept the Water Lines constructed by Lampers; now, therefore

BE IT RESOLVED by the Board of Commissioners of King County Water District No. 125, King County, Washington, as follows:

Section 1. Ratification of Settlement Agreement. The District ratifies the Settlement Agreement attached to this resolution as Exhibit "A" and by this reference incorporated herein, which Settlement Agreement the Board of Commissioners has previously authorized the District Superintendent to execute on behalf of the District.

Section 2. Acceptance of Water Lines and Appurtenances. The Water Lines are hereby accepted by the District and made a part of the District's water system.

Section 3. Acceptance of Bill of Sale. The Bill of Sale for the Water Lines dated February 18, 2004, and executed by Build & Design Group, Inc. and Lampers, which has heretofore been delivered to the District, is hereby accepted.

ADOPTED by the Board of Commissioners of King County Water District No. 125, King County, Washington, at a regular open public meeting held on the 10th day of March, 2004.

Commissioner

Commissioner

Commissioner

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into by and between R.J. LAMPERS CONSTRUCTION, INC., a Washington corporation ("Lampers"), BUILD & DESIGN GROUP, INC., a Washington corporation ("B & D"), VAL VUE SEWER DISTRICT, a Washington municipal corporation ("Val Vue") and KING COUNTY WATER DISTRICT NO. 125, a Washington municipal corporation ("District 125"), as set forth below.

RECITALS

A. Keystar, Inc. ("Keystar") entered into a developer extension agreement with Val Vue ("Val Vue DEA") dated February 15, 2000 to construct and install sewer lines ("Sewer Lines") in the 40th Avenue South and South 126th Street right-of-way in Tukwila, Washington, to provide sewer service to certain parcels of real estate as legally described in the Val Vue DEA and on Exhibit "A" attached hereto and by this reference incorporated herein (collectively the "Lots" and separately a "Lot"). The Val Vue DEA was recorded with the King County Office of Records and Elections on March 1, 2000 (Recording No. 20000301001693). Keystar also entered into a developer extension agreement with District 125 ("District 125 DEA") dated June 12, 2000 to construct and install water lines ("Water Lines") in the South 126th Street right-of-way in Tukwila, Washington, to provide water service to the Lots. The Val Vue DEA and the District 125 DEA are hereinafter collectively referred to as the "DEA's".

B. Pursuant to a contract with Keystar, Lampers constructed and installed the Sewer Lines and Water Lines (collectively the "Lines"). Keystar failed to pay Lampers for the installation of the Lines.

C. Pursuant to RCW Chapter 60.04 *et seq.*, Lampers filed and foreclosed liens for the work and obtained a King County Superior Court judgment against Keystar. Subsequently, the Lots were conveyed by a Trustee's Deed to EverTrust Bank pursuant to RCW Chapter 61.24, eliminating Lampers' judgment lien on the Lots. B & D is a successor in interest to EverTrust Bank and now owns the Lots.

D. B & D has built homes on some of the Lots and has requested that Val Vue and District 125 (collectively referred to as the "Districts" and sometimes individually as "District") provide sewer service and water service to the Lots. The Lots have not been connected to the Lines. B & D asserts that it is legally entitled to connect the Lots to the Lines and receive sewer and water service upon payment by B & D of the Districts' customary connection charges. The Districts and Lampers assert that since the Lines have not been conveyed to the Districts, the Districts are not the owners of the Lines and, therefore, are legally unable to permit B & D to connect to the Lines. Lampers also asserts that it is the true owner of the Lines since Keystar failed to pay for the Lines. In the alternative, Lampers asserts that it has a valid lien on the Lines pursuant to RCW Chapter 60.04, and that it has the legal right to remove the Lines.

E. Keystar has failed to perform the terms and conditions of the DEA's and is in default and breach of the DEA's. In addition, since November 30, 2001, Keystar has failed to renew its corporate license to do business in the State of Washington and may no longer exist. By its actions, Keystar has apparently abandoned any interest that it may have in the Lines.

F. B & D has filed a lawsuit against the Districts and Lampers in the King County Superior Court for the State of Washington under Cause No. 03-2-33429-4 KNT (the "Lawsuit"). In the Lawsuit B & D requests, among other remedies, an order from the court compelling the Districts to: (1) permit B & D to connect the Lots to the Lines; and (2) provide sewer and water service to the Lots. B & D has also made a claim for damages against the Districts arising out of the Districts' refusal to permit connections to the Lines. The Districts and Lampers deny that B & D is entitled to the remedies requested in the Lawsuit.

G. The Districts, Lampers and B & D desire to compromise and settle their disputes regarding connection of the Lots to the Lines, title to and ownership of the Lines, all claims for damages and payment for the Lines.

AGREEMENT

NOW, THEREFORE, in consideration of the terms and conditions set forth below, the parties agree as follows:

1. Bills of Sale. Lampers and B & D shall convey, transfer, sell and deliver all right, title and ownership which they may have in the Lines to the Districts by duly executed Bills of Sale in the forms attached hereto as Exhibits "B" and "C" and incorporated herein by this reference.

2. Payment by B & D. B & D agrees to pay to Lampers the sum of **Forty Five Thousand and 00/100 Dollars (\$45,000.00)**. Payment of such amount shall be made no later than January 30, 2004.

3. Payment by Val Vue. Val Vue agrees to pay Lampers the sum of **Seven Thousand and 00/100 Dollars (\$7,000.00)**. Payment of such amount shall be made no later than January 30, 2004.

4. Payment by District 125. District 125 agrees to pay Lampers the sum of **Five Thousand and 00/100 Dollars (\$5,000.00)**. Payment of such amount shall be made no later than January 30, 2004.

5. District 125 Waiver of Engineering Fees. District 125 agrees not to charge B & D the **Eight Thousand Eight Hundred Seven and 00/100 Dollars (\$8,807.00)** in engineering fees that it has incurred pursuant to the District 125 DEA.

6. Val Vue Waiver of Costs. Val Vue agrees not to charge B & D the **Eight Hundred Fifteen and 00/100 Dollars (\$815.00)** in costs that it has incurred pursuant to the Val Vue DEA.

7. Connection to Systems. Except as otherwise provided in this Agreement, upon: (1) compliance with Sections 1 and 2 above; (2) applications being submitted to the Districts for connections to the Lines; and (3) payment of the charges and fees referred to in this Section 7, Val Vue and District 125 shall within three (3) business days thereafter permit B & D to connect the Lots to the Lines, install the water meters and immediately thereafter provide water and sewer service to the Lots, in accordance with all applicable regulations, rules, policies and requirements governing or relating to connections to such systems, including the payment of such standard connection charges, Seattle meter charges, and other fees and charges as are normally and customarily charged to customers of the Districts (where the obligations under the DEA are fully performed and the Lines are properly installed to the Lots).

8. Segregation. If a Lot referred to in Exhibit A is subdivided, the Districts, upon receipt of a recorded copy of the final plat, shall permit the newly created lots in such subdivision to connect to the Lines upon payment of the standard connection charges, Seattle meter charges, and other fees and charges as are normally and customarily charged to customers of the District.

9. Release. The Districts, Lampers and B & D hereby mutually release, waive and forever discharge each other from any and all claims, liens, indebtedness, demands, charges, causes of action, obligations, damages or liabilities of any kind or nature whatsoever, whether known or presently unknown, arising out of or otherwise relating to the DEA's and the Lines constructed and installed by Lampers. Val Vue, District 125, Lampers and B & D acknowledge that this Release shall also extend to, bind and inure to the benefit of all past, present and future officers, directors, shareholders, employees, agents, managers, attorneys, insurers, predecessors-in-interest, successors-in-interest and assigns of Val Vue, District 125, Lampers and B & D.

10. Dismissal of Lawsuit. The Districts, Lampers and B & D hereby authorize their attorneys of record in the Lawsuit to have entered by the court a dismissal of the Lawsuit, with prejudice and without costs to any party, in such form as their attorneys deem appropriate.

11. Encumbrance on Title. In the event the DEA's appear as an encumbrance on the title to the Lots or a Lot, the respective District to which the DEA relates agrees to have recorded with the King County Auditor a document satisfactory in form to eliminate such DEA as an encumbrance on title. To the extent reasonably necessary, the parties shall cooperate with B & D if needed to remove any lis pendens or other Keystar encumbrance arising out of the DEA or the Lines (court records indicate that the underlying action giving rise to the notice, *Keystar v. Banner Bank*, King County Superior Court Cause No. 02-2-31410-4 SEA, was dismissed with prejudice and without costs on November 25, 2003, but B & D has not confirmed that a release of the lis pendens has been filed).

12. No Third Party Rights. Except as expressly set forth in this Agreement, this Agreement is neither expressly nor impliedly intended for the benefit of any third party, and is neither expressly nor impliedly enforceable by any third party.

13. Representations. The parties acknowledge that no other person or entity, nor any agent or attorney of any person or entity, has made any promise, representation or warranty whatsoever, express or implied, not contained in this Agreement concerning the subject matter hereof to induce the parties to execute this Agreement. The parties further acknowledge that they have not executed this Agreement in reliance on any such promise, representation or warranty not contained herein.

14. Authority to Execute. Each person executing this Agreement on behalf of a corporation, partnership, company or other organization or entity represents and warrants that he or she is fully authorized to execute and deliver this Agreement on behalf of the entity or party for which he or she is signing.

15. Voluntary Execution. In executing this Agreement, the parties acknowledge that they have consulted with their duly licensed and competent attorneys, and that they have executed this Agreement after independent investigation, voluntarily and without fraud, duress or undue influence, and they exclusively consent that this Agreement be given full force and effect according to each and every one of its express terms and conditions.

16. Interpretation. Counsel for the parties have reviewed this Agreement and no rule of construction shall apply whereby the terms hereof are to be construed in favor of one party over another.

17. Binding Nature of Agreement. Except as otherwise herein provided, this Agreement shall be binding upon and inure to the benefit of the parties, their heirs, executors, administrators, successors and assigns.

18. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or relating to this Agreement shall be in the King County Superior Court for the State of Washington.

19. Entire Agreement. This Agreement contains the entire agreement between the parties regarding the matters set forth herein. Neither party has entered into this Agreement based on any representation or consideration not stated in this Agreement.

20. Amendment. No change, modification or amendment of this Agreement shall be valid or binding unless such change, modification or amendment is in writing and signed by the persons against whom it is sought to be enforced.

21. Date of Agreement. For identification purposes, this Agreement shall be dated January 13, 2004, but it shall be effective upon the last date of its execution by all parties hereto.

22. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A facsimile of the signature of a party to this Agreement shall be deemed an original signature of such party.

23. Interpretation of DEA's. The parties agree that the original DEA's entered into between the Districts and Keystar are not binding on B & D and create no contractual rights between B & D and the Districts.

R.J. LAMPERS CONSTRUCTION, INC.

BUILD & DESIGN GROUP, INC.

By: _____

By: _____

[Print Name]

[Print Name]

Its: _____

Its: _____

Dated: _____

Dated: _____

VAL VUE SEWER DISTRICT

KING COUNTY WATER DISTRICT NO. 125

By: _____

By: _____

Russ Austin

Its: Superintendent

Its: _____

Dated: _____

Dated: _____

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23. Interpretation of DEA's. The parties agree that the original DEA's entered into between the Districts and Keystar are not binding on B & D and create no contractual rights between B & D and the Districts.

R.J. LAMPERS CONSTRUCTION, INC.

BUILD & DESIGN GROUP, INC.

By: _____

By: _____

(Print Name)

(Print Name)

Its: _____

Its: _____

Dated: _____

Dated: _____

VAL VUE SEWER DISTRICT

KING COUNTY WATER DISTRICT NO. 125

By: _____

By: Russ Austin

Russ Austin

Its: Superintendent

Its: _____

Dated: 1-22-04

Dated: _____

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23. Interpretation of DEA's. The parties agree that the original DEA's entered into between the Districts and Keystar are not binding on B & D and create no contractual rights between B & D and the Districts.

R.J. LAMPERS CONSTRUCTION, INC.

BUILD & DESIGN GROUP, INC.

By: _____

By:  _____

[Print Name]

[Print Name]

Its: _____

Its: VICE PRESIDENT

Dated: _____

Dated: 1-21-04

VAL VUE SEWER DISTRICT

KING COUNTY WATER DISTRICT NO. 125

By: _____

By: _____

Russ Austin

Its: Superintendent

Its: _____

Dated: _____

Dated: _____

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21. Date of Agreement. For identification purposes, this Agreement shall be dated January 13, 2004, but it shall be effective upon the last date of its execution by all parties hereto.

22. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A facsimile of the signature of a party to this Agreement shall be deemed an original signature of such party.

23. Interpretation of DEA's. The parties agree that the original DEA's entered into between the Districts and Keystar are not binding on B & D and create no contractual rights between B & D and the Districts.

R.J. LAMPERS CONSTRUCTION, INC.

BUILD & DESIGN GROUP, INC.

By: _____

By: _____

(Print Name)

(Print Name)

Its: _____

Its: _____

Dated: _____

Dated: _____

VAL VUE SEWER DISTRICT

KING COUNTY WATER DISTRICT NO. 125

By: *Dana Dick*

By: _____

Dana Dick

Russ Austin

Its: Superintendent

Its: Manager

Dated: _____

Dated: 1/22/04

23. Interpretation of DEA's. The parties agree that the original DRA's entered into between the Districts and Keystar are not binding on B & D and create no contractual rights between B & D and the Districts.

R.J. LAMPERS CONSTRUCTION, INC.

BUILD & DESIGN GROUP, INC.

By: Ronald J. Lampers
Ronald J Lampers
(Print Name)

By: _____

(Print Name)

In: President

In: _____

Dated: 1-20-04

Dated: _____

VAL VUE SEWER DISTRICT

KING COUNTY WATER DISTRICT NO. 125

By: _____

By: _____
Russ Austin
Mr. Superintendent

In: _____

Dated: _____

Dated: _____

EXHIBIT "A"
LEGAL DESCRIPTION OF LOTS

PARCEL A:

LOTS 5, 6, 7, 8, 9 AND 10 IN BLOCK 1 OF SQUIRE'S REPLAT OF PART OF TRACT 33, RIVERSIDE INTERURBAN TRACTS, AS PER PLAT RECORDED IN VOLUME 20 OF PLATS, PAGE 100, RECORDS OF KING COUNTY AUDITOR;

EXCEPT THAT PORTION CONDEMNED FOR STATE HIGHWAY UNDER SUPERIOR COURT CAUSE NO. 646939;

TOGETHER WITH THOSE PORTIONS OF VACATED SOUTH 126TH STREET AND 40TH AVENUE SOUTH ADJOINING WHICH WOULD ATTACH BY OPERATION OF LAW;

SITUATE IN THE CITY OF TUKWILA, COUNTY OF KING, STATE OF WASHINGTON.

PARCEL B:

THE WEST 200 FEET OF THE NORTH 132.5 FEET OF TRACT 45 OF RIVERSIDE INTERURBAN TRACTS, AS PER PLAT RECORDED IN VOLUME 10 OF PLATS, PAGE 74, RECORDS OF KING COUNTY AUDITOR;

TOGETHER WITH THAT PORTION OF VACATED SOUTH 126TH STREET ADJOINING, WHICH WOULD ATTACH BY OPERATION OF LAW;

SITUATE IN THE CITY OF TUKWILA, COUNTY OF KING, STATE OF WASHINGTON.

PARCEL C:

THE NORTH 132.5 FEET OF TRACT 45 OF RIVERSIDE INTERURBAN TRACTS, AS PER PLAT RECORDED IN VOLUME 10 OF PLATS, PAGE 74, RECORDS OF KING COUNTY AUDITOR;

EXCEPT THE WEST 200 FEET THEREOF;

EXCEPT THAT PORTION THEREOF CONDEMNED FOR STATE HIGHWAY UNDER KING COUNTY SUPERIOR COURT CAUSE NO. 647372; AND

TOGETHER WITH THAT PORTION OF VACATED SOUTH 126TH STREET ADJOINING, WHICH WOULD ATTACH BY OPERATION OF LAW;

SITUATE IN THE CITY OF TUKWILA, COUNTY OF KING, STATE OF WASHINGTON.

EXHIBIT "B"

**VAL VUE SEWER DISTRICT
SPECIAL BILL OF SALE**

Build & Design Group, Inc. and R.J. Lampers Construction, Inc. ("Owner") and Val Vue Sewer District ("District") are parties to a Settlement Agreement dated the 13th day of January, 2004 ("Settlement Agreement"), concerning the conveyance of certain sewer facilities to the District and the payment for the sewer facilities. In consideration of the terms and conditions set forth in the Settlement Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, Owner does hereby convey, sell, transfer and deliver to the District all right, title and ownership interest which Owner may have to the sewer facilities and appurtenances described in Exhibit A attached hereto and incorporated herein by this reference.

DATED this _____ day of _____, 2004.

Build & Design Group, Inc.

By: _____

[Print Name]

Its _____

R.J. Lampers Construction, Inc.

By: _____

[Print Name]

Its: _____

EXHIBIT "A"

VAL VUE SEWER DISTRICT

SANITARY SEWER FACILITIES AND APPURTENANCES

APPROXIMATELY 425 LINEAL FEET OF 8" PVC SANITARY SEWER MAIN, 3 MANHOLES, SIDE SEWERS, AND APPURTENANCES LOCATED AS FOLLOWS:

<u>ALONG</u>	<u>FROM</u>	<u>TO</u>
40 TH AVENUE SOUTH	150' SOUTH OF S 126TH ST.	SOUTH 126 TH STREET
SOUTH 126 TH STREET	40 TH AVENUE SOUTH	41 ST AVENUE SOUTH

EXHIBIT "C"

**KING COUNTY WATER DISTRICT 125
SPECIAL BILL OF SALE**

Build & Design Group, Inc. and R.J. Lampers Construction, Inc. ("Owner") and King County Water District 125 ("District") are parties to a Settlement Agreement dated the 13th day of January, 2004 ("Settlement Agreement"), concerning the conveyance of certain sewer facilities to the District and the payment for the sewer facilities. In consideration of the terms and conditions set forth in the Settlement Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, Owner does hereby convey, sell, transfer and deliver to the District all right, title and ownership interest which Owner may have to the water facilities and appurtenances described in Exhibit A attached hereto and incorporated herein by this reference.

DATED this _____ day of _____, 2004.

Build & Design Group, Inc.

By: _____

[Print Name]

Its _____

R.J. Lampers Construction, Inc.

By: _____

[Print Name]

Its: _____

EXHIBIT "A"

KING COUNTY WATER DISTRICT # 125

WATER FACILITIES AND APPURTENANCES

APPROXIMATELY 530 LINEAL FEET OF 8" DUCTILE WATERMAIN, 2 FIRE HYDRANTS, VALVES, AND APPURTENANCES LOCATED IN SOUTH 126TH STREET FROM EAST MARGINAL WAY SOUTH, RUNNING EASTERLY TO 41ST AVENUE SOUTH.