



# POINT ROBERTS WATER DISTRICT NO. 4

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## RESOLUTION NO. 602

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF POINT ROBERTS WATER DISTRICT NO. 4 OF WHATCOM COUNTY, WASHINGTON, RATIFYING AND APPROVING AN AGREEMENT PROVIDING FOR THE CONSTRUCTION OF A RESERVOIR TO PROVIDE ADDITIONAL WATER SUPPLY AND CAPACITY FOR THE BENEFIT OF THE DISTRICT.**

**WHEREAS**, Point Roberts Water District No. 4 ("District"), as a special purpose water district, is authorized to provide water supply within its municipal corporate and service area boundaries pursuant to Title 57 RCW; and

**WHEREAS**, when acting under Title 57 RCW the District exercises the police power of the State of Washington which has been delegated to it to provide for the public health, safety and welfare by providing potable water to its customers; and

**WHEREAS**, the District previously provided for the allocation of available District water supply ("Available ERUs") by the adoption of Resolution No. 591 on July 20, 2007; and, pursuant to the provisions of Resolution No. 591, an allocation of Available ERUs was held on September 10, 2007; and Available ERUs were made available to parties who were successful in the allocation of such ERUs; provided, Resolution No. 591 also created MIR ERUs as that term is defined in Resolution No. 591 to be allocated to parties applying for water allocation where the District and such parties have entered into a written agreement providing for the construction of major infrastructure improvements to the District's water system such as water storage tanks which will create additional water supply and capacity; and

**WHEREAS**, the District received applications from Stanton Land Holding, LLC, a Washington limited liability company ("Stanton"), Point Roberts Resort Limited Partnership, a Washington limited partnership ("Point Roberts Resort"), and Yamato Development Canada, Inc., a Canadian corporation ("Yamato") (Stanton, Point Roberts Resort and Yamato individually a "Developer" and collectively the "Developers") for the MIR ERUs; and, pursuant to the terms and conditions set forth in Resolution No. 591, the Developers proposed to construct major infrastructure improvements to the District's water system in the form of a three million gallon (3 mg) water reservoir ("Reservoir") to create additional water supply and capacity for their proposed projects and for other property owners on Point Roberts desiring water service from the District; and

**WHEREAS**, the District and the Developers then negotiated the terms and conditions of an agreement providing for the construction of the Reservoir, and the District Board of Commissioners approved the agreement by the adoption of Resolution No. 598 on March 26, 2008, conditioned on and subject to the revision and approval of such agreement by the District's General Manager; and

**WHEREAS**, however, after the District's conditioned approval of the agreement referenced in Resolution No. 598, the District's consulting engineer determined that the completion of certain water treatment facilities in the water system operated by the Greater Vancouver Regional District ("GVRD") may provide up to an additional seven hundred forty-one (741) ERUs in water supply to the District, and that the District may have additional peaking capacity for a total of up to two thousand nine hundred fifty-three (2,953) ERUs, which includes the additional 741 ERUs and the existing 2,212 ERUs that the Washington State Department of Health (DOH) has currently approved for the District's water system; and if DOH approves the additional peaking capacity and the additional ERUs estimated by the Consulting Engineer, the Reservoir will not be needed to create additional water supply, water storage capacity and ERUs for the Developers' water supply needs and those of other property owners within the District requiring water supply from the District now and in the reasonably foreseeable future; and

**WHEREAS**, the General Manager and the District's General Counsel have revised the agreement previously conditionally approved by Resolution No. 598 to address the alternatives for the Developers to construct the Reservoir if approved by DOH, or not be required to construct the Reservoir if DOH approves the additional peaking capacity and ERUs which may be connected to the District's water system; and such agreement in the form attached hereto as **Exhibit A** was approved by the District Board of Commissioners at its special meeting held on April 16, 2008 by motion ("Agreement"), and the General Manager was authorized and directed to sign the Agreement on the District's behalf once representatives of all of the Developers had signed the Agreement; and

**WHEREAS**, all of the Developers have signed the Agreement, the General Manager has signed the Agreement on behalf of the District, and the District Board of Commissioners now desires to ratify and approve the Agreement by resolution; now, therefore,

**BE IT RESOLVED**, by the Board of Commissioners of Point Roberts Water District No. 4, Whatcom County, Washington, as follows:

1. The Agreement in the form attached hereto as **Exhibit A** is hereby ratified and approved and the District Manager and the District's engineering and legal consultants are authorized and directed to perform and carry out the terms and conditions of the Agreement as appropriate.
2. This resolution shall be effective the date set forth below.

**ADOPTED** at a regular open public meeting of the Board of Commissioners, Point Roberts Water District, Whatcom County, Washington, held on the 13th day of May, 2008.

*N. Madeleine Anderson*

N. Madeleine Anderson, Commissioner

*Scott Hackleman*

Scott Hackleman, Commissioner

William H. Meursing, Commissioner

AFTER RECORDING RETURN TO:

John W. Milne  
Inslee, Best, Doezie & Ryder  
Symetra Financial Center, Suite 1900  
777 108th Avenue N.E.  
P.O. Box C-90016  
Bellevue, WA 98009-9016

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**AGREEMENT**

Grantor: Point Roberts Water District No. 4  
Grantor: Stanton Land Holdings, LLC  
Grantor: Point Roberts Resort Limited Partnership  
Grantor: Yamato Development Canada, Inc.  
Short Legal Description: N/A  
Assessor's Property Tax Parcel/Account Number(s): N/A  
Reference Number(s) of Documents Assigned or Released: N/A

This Agreement ("Agreement") is entered into by and between the **POINT ROBERTS WATER DISTRICT NO. 4**, a Washington municipal corporation ("District"), **STANTON LAND HOLDINGS, LLC**, a Washington limited liability company ("Stanton"), **POINT ROBERTS RESORT LIMITED PARTNERSHIP**, a Washington limited partnership ("Point Roberts Resort"), and **YAMATO DEVELOPMENT CANADA, INC.**, a Canadian corporation ("Yamato") (Stanton, Point Roberts Resort and Yamato individually a "Developer" and collectively the "Developers") (the District, Stanton, Point Roberts Resort and Yamato individually a "Party" and collectively the "Parties").

## RECITALS

A. The District owns and operates a public water system in the Point Roberts area in Whatcom County, Washington, pursuant to Title 57 of the Revised Code of Washington.

B. Stanton owns certain real property and has the contractual right to purchase certain other real property located on Point Roberts (collectively the "Stanton Property"), which Stanton seeks to develop as a subdivision of single family homes. The Stanton Property is depicted and legally described on **Exhibits A and B** attached hereto and incorporated herein by this reference.

C. Yamato owns certain real property located on Point Roberts ("Yamato Property"), which Yamato seeks to develop as a residential development. The Yamato Property is depicted and legally described on **Exhibit C** attached hereto and incorporated herein by this reference.

D. Point Roberts Resort owns certain real property located on Point Roberts which is used as a marina and for other purposes ("Marina property"), which Point Roberts Resort seeks to further develop as a mixed-use commercial/residential resort project. The Marina Property is depicted and legally described on **Exhibit D** attached hereto and incorporated herein by this reference.

E. As set forth in Resolution No. 591 adopted by the District Board of Commissioners on July 20, 2007, a copy of which is attached hereto as **Exhibit E** and incorporated herein by this reference, the District has experienced significant growth during the last five years and, because its ability to provide water supply is limited by the maximum amount it can purchase from the Greater Vancouver Regional District ("GVRD"), the District is concerned that its commitments and allocations to provide water supply not exceed the maximum amount of water it may purchase from GVRD. The State of Washington Department of Health ("DOH"), a state agency vested with approval authority of the District's water system comprehensive plan and the number of connections which may be made to the District's water system, previously determined that, based on the maximum water supply source from the GVRD, the total number of connections to the District's water system may not presently exceed 2,212 equivalent residential units ("ERUs").

F. Whatcom County requires parties applying for certain land use development approvals and permits to provide evidence that adequate water supply is available to serve such proposed development, and such evidence may be in the form of an Availability Notification for Public Water ("Availability Notification") from a public purveyor of such utility services. The District has previously allocated water supply to its existing customers and to certain properties identified by the District through service

applications, previously issued Availability Notifications, developer extension agreements and other service agreements.

G. District staff previously reported to the District Board of Commissioners that the demand on the District's water supply from its existing customers and allocations and commitments to provide future water service was close to the maximum amount of water supply the District can purchase from GVRD. Thereafter, the District established a moratorium on the issuance of new Availability Notifications and water service commitments by water service applications or otherwise by the adoption of Resolution No. 573 on the 20th day of July, 2005 and extended such moratorium through successive resolutions until the 10th day of September, 2007, when the District rescinded such moratorium by the adoption of Resolution No. 591 as referenced herein. Pursuant to the provisions of Resolution No. 591, the District made one hundred (100) existing ERUs available for immediate allocation under the terms, conditions and process set forth therein and also established a "Major Infrastructure Reserve" of sixty (60) ERUs for parties willing to construct and finance major infrastructure improvements to the District's water system which would, when completed, provide additional water supply and storage capacity availability in the District's water system.

H. The District's consulting engineer, Hammond Collier Wade Livingstone ("Consulting Engineer") in a report to the District dated July 12, 2006 entitled "Interim 2006 Capital Improvement Program" and in a Water System Comprehensive Plan adopted by the District by Resolution No. 586 on the 28th day of March, 2007 ("Comprehensive Plan"), has advised that the construction of a three million gallon (3.0 mg) water storage reservoir and appurtenances, including a recirculating pump ("Reservoir"), will provide sufficient water supply and water storage capacity for an additional one thousand fifty eight (1,058) ERUs to be connected to and served by the District's water system. The additional ERUs may provide for the build-out of the District under current Whatcom County zoning and land use regulations (in addition to the 2,212 ERUs that DOH has previously approved for the District's water system). Pursuant to Chapter 57.16 RCW, the District submitted the Comprehensive Plan to DOH and Whatcom County for review and approval but has not yet received such approvals. Following the approval of the Comprehensive Plan by DOH and Whatcom County, the District plans to construct the Reservoir, which will include identifying a suitable site for the location of the Reservoir, identify interim and permanent funding sources or alternative methods of financing the construction of the Reservoir and complete the construction of the Reservoir. Given the current estimated cost of the Reservoir of approximately Three Million Two Hundred Thousand Dollars (\$3.2 million), it may be difficult for the District to obtain and provide funding for its construction.

However, after the District's approval of the Comprehensive Plan and its submittal to DOH for review and approval, the Consulting Engineer determined that the completion of certain water treatment facilities in the water system operated by GVRD may provide up to an additional seven hundred forty-one (741) ERUs in water supply to

the District. The Consulting Engineer has indicated that GVRD's treatment facilities will reduce the "contact time" required for water entering the District's water system from GVRD and that all or a portion of the water volume currently dedicated to meet required contact time may be used to meet District peak water demand. Therefore, the Consulting Engineer has reported to DOH that the District should have additional peaking capacity for a total of up to two thousand nine hundred fifty-three (2,953) ERUs, which includes the additional 741 ERUs and the existing 2,212 ERUs that DOH has currently approved for the District's water system. If DOH approves the additional peaking capacity and the additional ERUs estimated by the Consulting Engineer, the Reservoir will not be needed to create additional water supply, water storage capacity and ERUs for the Developers' water supply needs and those of other property owners within the District requiring water supply from the District now and in the reasonably foreseeable future.

I. The Developers are willing to assist the District to create sufficient water supply and water storage capacity for an additional one thousand fifty eight (1058) ERUs for the build-out of the District by constructing and financing the Reservoir in consideration of (a) the District making available to the Developers the sixty (60) ERUs/connections to the District's water system from the Major Infrastructure Reserve as previously established by Resolution No. 591 based on the capacity of the existing system to be allocated among the Developers as the Developers determine, and (b) the District providing the Developers an additional number of ERUs/connections to the District's water system as identified in this Agreement contingent upon the completion of the construction of the Reservoir by the Developers and DOH approving such additional ERUs/connections to the District's water system as provided for in this Agreement.

J. The District expects that it will receive approval for the Comprehensive Plan from DOH and Whatcom County on or about June 1, 2008, provided the approval of the Comprehensive Plan by such public agencies may, for a variety of reasons, be delayed.

Now, therefore, in consideration of the terms and conditions set forth below, the Parties agree as follows:

#### AGREEMENT

1. Recitals. The recitals set forth above are hereby fully incorporated herein by this reference.
2. Agency Approval of Comprehensive Plan and Reports/Plans. The District agrees to use its best efforts to obtain DOH and Whatcom County approval of the Comprehensive Plan and any related reports and plans providing for (a) the availability of an additional 741 ERUs (or a substantially similar number of additional ERUs as the District determines sufficient) in the District's water system due to additional District peaking capacity because of the completion of certain water treatment facilities in the GVRD water system, or (b) the design,

construction and operation of the Reservoir to provide sufficient water supply and water storage capacity for an additional 1,058 ERUs for the build-out of the District under current Whatcom County zoning and land use regulations. However, if DOH (i) approves the Comprehensive Plan and re-rates the District's water system to include an additional 741 ERUs (or a substantially similar number of additional ERUs as the District determines sufficient) due to additional District peaking capacity because of the completion of certain water treatment facilities in the GVRD water system, or (ii) rejects or denies the Comprehensive Plan due to the inclusion of the Reservoir in the Comprehensive Plan, this Agreement shall be terminated and the Parties shall not have any further rights or responsibilities pursuant to this Agreement, provided the Developers shall be entitled to obtain and receive the MIR ERUs if the terms and conditions of Section 10(a) herein are fully satisfied and performed.

3. Developer Extension Agreement. If DOH (a) rejects or denies the District's proposal in the Comprehensive Plan to create an additional 741 ERUs (or substantially similar number as the District determines sufficient) due to the creation of additional District peaking capacity because of the completion of certain water treatment facilities in the GVRD water system, and (b) approves the Comprehensive Plan including the construction of the Reservoir to provide an additional 1,058 ERUs for connection to the District's water system, prior to commencement of construction of the Reservoir and within thirty (30) days of the approval of the Comprehensive Plan by DOH, the Developers shall execute and return to the District the developer extension agreement attached hereto as **Exhibit F** and incorporated herein by this reference ("DEA").

4. Reservoir Site.

a. The District shall, following the approval of the Comprehensive Plan by DOH and Whatcom County and any reports or plans required by such agencies relating to the construction of the Reservoir, identify the preferred location for the construction of the Reservoir, which location shall either be on real property already owned by the District or on property owned by one or more of the Developers.

b. The Developers agree that if the District's preferred location for the Reservoir is on real property which one of the Developers own or control, the Developer will dedicate and convey fee simple title of such property to the District pursuant to the terms of this Agreement no later than at the time the District considers the Reservoir for final acceptance pursuant to the DEA. In the event that one of the Developers owns the real property upon which the Reservoir is to be constructed, the Developers shall determine financial credits among themselves with respect to the right to receive reimbursement payment from other parties who subsequently connect their real property to the District's water system after the

Reservoir is constructed by the Developers and accepted by the District as further addressed in Section 9 of this Agreement.

- c. If the District's preferred location for the Reservoir is on real property which one of the Developers own or control, the fair market value of the real property upon which the Reservoir is to be constructed shall be determined by the District and such Developer prior to the construction of the Reservoir thereon, provided, that if the District and the Developer are not able to agree on the fair market value of such property, a neutral appraiser mutually agreed upon by the District and the Developer conveying ownership of the real property to the District shall determine the fair market value of the property under its highest and best use and such determination shall be final and binding upon the District and the Developer, absent a showing sufficient to invalidate an arbitration award or determination pursuant to RCW 7.04A.230-240. If the District and the Developer are unable to agree on a mutually acceptable appraiser, any party may request that an appraiser be appointed by the Presiding Judge of the Whatcom County Superior Court pursuant to the provisions of Chapter 7.04A RCW.
- d. If the District's preferred location for the Reservoir is on real property which one of the Developers owns or controls and a boundary line adjustment, boundary line agreement, administrative segregation or other subdivision process is necessary to create a separate tax lot for the Reservoir property or to add such property to District property, the Parties agree to perform and complete such process as necessary and the cost of such process may be added to the cost of the Reservoir as further addressed in this Agreement.

5. Reservoir Design.

- a. The Consulting Engineer shall prepare a design of the Reservoir consistent with District specifications and details, including the Reservoir's plans and specifications, and such appurtenances as may be necessary to connect the Reservoir to the District's existing water sources, water storage and conveyance/transmission system. The Developers shall pay the cost of preparation of such plans and specifications for the Reservoir and appurtenances, provided the Developers shall determine financial credits among themselves for the cost of such work with respect to the right to receive reimbursement payment from other parties who subsequently connect their real property to the District's water system after the Reservoir is constructed by the Developers and accepted by the District as further addressed in Section 9 of this Agreement. The cost of such plans, specifications or other documents shall be the actual billed cost of such documents without markup or allowance for profit or overhead by any

party other than the Consulting Engineer, provided the District shall be entitled to a five (5%) percent markup to recover its costs to process and administer the payment of such billings.

- b. After the Consulting Engineer has completed the design of the Reservoir and that design has been approved by the District, the Consulting Engineer shall determine the final estimate of the Cost of the Reservoir ("the Design Cost Estimate"), which shall include all costs associated with the Reservoir project, including but not limited to, the final design, engineering, construction, restoration and real property cost.
- c. The Developers agree to provide to the District within thirty (30) days of the approval of the Comprehensive Plan by DOH the sum of Fifty Thousand Dollars (\$50,000.00) which the District will deposit with a federally insured bank in an interest-bearing account ("the Deposit Account") in the District's name to cover the cost of the Consulting Engineer's design services, District administrative staff time and other District fees and costs associated with the negotiation, execution and implementation of this Agreement. Interest accruing on the Deposit Account shall be deposited into the Account and used to reimburse the District for its fees and costs incurred under this Agreement. The District will advise the Developers from time to time of the costs of such services, shall provide Developers with copies of invoices, bills or other documentation establishing the cost of such services and shall reimburse the District for such fees and costs from the Deposit Account. The Developers shall, within thirty days after receipt of demand from the District to replenish the Deposit Account, deposit such additional funds with the District to replenish the Deposit Account. At such time as construction of the improvements contemplated by this Agreement is completed, or at such time as this Agreement is otherwise terminated, the remaining funds, if any, in the Deposit Account shall be returned to the Developers.
- d. If the District's capital facility connection charge ("GFC") in effect at the time the Developer ERUs as referenced in Section 8 herein connect to the District's water system includes an allocation for the estimated capital cost of the Reservoir, the Developer undertaking such connection(s) shall be entitled to a credit per ERU against the GFC owing for such connecting ERU(s) in the amount of the Reimbursement Charge set forth in Section 9(b) herein, provided that such credit per connecting ERU shall not exceed the allocation for the estimated capital cost of the Reservoir included in the GFC as of the Effective Date of this Agreement as determined by the District's financial consultant, FSC Group, Inc.

6. Construction of the Reservoir and Appurtenances.

- a. The Developers agree, subject to the terms of this Agreement and the DEA, to construct the Reservoir and appurtenances in accordance with the Reservoir's design, plans and specifications approved by the District. Such construction shall be undertaken and performed in accordance with the DEA's terms and conditions and shall commence as further provided in Section 6(e) herein.
- b. If the Reservoir is to be located on property owned by the District, the Developers shall publicly and competitively bid the construction of the Reservoir and shall award the Reservoir construction work by contract ("Construction Contract") to the lowest responsible bidder ("Contractor") as determined by applicable Washington law and the District's applicable policies and procedures. If the Reservoir is to be located on property owned or acquired by the Developers, the Developers are not required to publicly and competitively bid the construction of the Reservoir but shall undertake a commercially reasonable process for obtaining competitive bids or proposals for the construction of the Reservoir.
- c. Prior to commencement of Reservoir construction, Developers shall provide a performance bond for the benefit of the District in the amount of the final Design Cost Estimate to ensure the completion of the Reservoir construction work., In addition, Developers shall pay prevailing wages to all parties providing labor for the Reservoir work pursuant to Chapter 39.12 RCW, and provide a five (5) percent retainage pursuant to the requirements of Chapter 60.28 RCW. If the project is located on property owned by the District, the Developers shall also provide a payment bond for the benefit of the District to ensure payment of all parties providing labor and materials for the Reservoir work.
- d. The Construction Contract shall require the completion of the Reservoir work, testing of the completed improvements to assure that they comply with the approved plans, design and District specifications and meet the District's requirements, and transfer of title and ownership of the Reservoir improvements (and the Reservoir site, if the site is on property owned or acquired by the Developers) to the District by bill of sale, warranty deed, dedication or other appropriate document or mechanism free from all liens and title encumbrances.
- e. Construction of the Reservoir shall commence within ninety (90) days after the date on which the following have occurred, unless otherwise agreed by the Parties; provided, that if the Developers have not provided the District with a performance bond within sixty (60) days of the Consulting Engineer's determination of the Design Cost Estimate pursuant

to Section 5(b) herein to ensure the completion of the construction of the Reservoir, the District shall have the unconditioned right to terminate this Agreement and any obligations to provide water service to the Developers:

- i. One or more of the Developers have obtained approval from Whatcom County to proceed with construction of improvements for development of their property; and
    - ii. The District's Consulting Engineer has completed the design of the Reservoir Improvements pursuant to Section 5.
  - f. The Reservoir work shall be completed for consideration for final acceptance by the District within twelve months after commencement of construction, unless otherwise agreed by the Parties.
  - g. As required by the DEA, at the time of final acceptance of the Reservoir improvements by the District, the Developers shall cause all manufacturers' warranties to be assigned to the District. The Developers shall also warrant the Reservoir improvements to be free from defects in workmanship and materials for a period of two years from the date of final acceptance of the Reservoir improvements by the District. At the time and as a condition of final acceptance, the Developers shall provide the District with a maintenance assurance guarantee of a type, form (cash, maintenance bond or letter of credit) and amount as required by the District in its sole discretion to guarantee that the Reservoir is free from defects in workmanship and materials for the two year period.
7. Reservoir Maintenance and Operation. Following the final acceptance of the Reservoir and appurtenances by the District and the transfer of title or ownership of the real property and Reservoir improvements to the District, the District shall be solely responsible for the ongoing maintenance and operation of the Reservoir and appurtenances and the real property upon which such improvements are located.
8. Financing of Reservoir Construction Cost and Other Property.
  - a. The Developers shall collectively undertake and pay for the cost of the construction of the Reservoir and appurtenances as required pursuant to the DEA and this Agreement, including the payment of all contractors, consultants, engineers, suppliers, materialmen and other third parties providing services, labor or supplies for the construction of the Reservoir and appurtenances.
  - b. The storage capacity in the Reservoir at the time of its construction and final acceptance by the District as provided in the DEA and this

Agreement shall be allocated to the Developers on an ERU basis based on the zoning and development capacity of the real property described in Exhibits A, B, C and D attached hereto ("Developer Capacity" and "Developer ERUs") as follows:

- |  |     |      |
|--|-----|------|
| (1) Stanton:   | 108 | ERUs |
| (provided that Stanton shall only be entitled to 47 ERUs if Stanton is not the fee title owner of the real property legally described on <b>Exhibit B</b> at the time of the construction and final acceptance of the Reservoir as provided in the DEA and this Agreement) |     |      |
| (2) Yamato:  | 171 | ERUs |
| (3) Point Roberts Resort:  | 171 | ERUs |
| Total:   | 450 | ERUs |

However, following the construction and final acceptance of the Reservoir as provided in the DEA and this Agreement, any Developer may request that the number of ERUs allocated to the respective Developer be modified based on the zoning and development potential of the Developer's respective property which the District shall consider in good faith and the ERUs allocated to the Developers as provided herein may be modified for good cause. The remaining capacity in the Reservoir of 608 ERUs ("Future Capacity" and "Future ERUs") shall be available to all other property owners seeking connection to the District's water system on the terms and conditions for such connections in effect at the time of any application to the District for connection to and water service from the District's water system, including the payment of all then-current District capital facility connection and meter charges.

- c. The District agrees to provide and reserve the Developer ERUs for a period of five (5) years from the Effective Date of this Agreement. Each Developer may elect to extend this reservation of its respective Developer ERUs for some or all of the unused Developer ERUs remaining at the end of such period for an additional three (3) years by payment to the District of fifty (50%) percent of the then applicable District water general facility connection charges for the remaining Developer ERUs prior to the expiration of such period. Any such payment to extend the reservation of Developer ERUs as provided herein shall be applied against the then current District water general facility connection charge applicable at the time such unused Developer ERUs are connected to District's water system.

9. Reimbursement to Developers For Reservoir Cost.

- a. Pursuant to the requirements of Chapter 57.22 RCW and Section 1 of the reimbursement agreement in the form attached hereto as **Exhibit G** and incorporated herein by this reference ("Reimbursement Agreement"), following completion of the construction and final acceptance of the Reservoir as provided in the DEA and this Agreement, the Developers shall certify to the District the final design, engineering, construction, restoration and real property cost (as determined in Section 4(c) herein) incurred by the Developers to construct the Reservoir (collectively the "Certified Cost") and submit such supporting vouchers, invoices, appraisals, and other data and documentation as the District may require to substantiate the Certified Cost. District reserves the right to approve, modify and approve or reject any portion of the Certified Cost as reasonable and subject to reimbursement to the Developers, provided in no event shall the Certified Cost eligible for reimbursement to the Developers as provided herein exceed the Design Cost Estimate established pursuant to Section 5(b).
  
- b. The District shall then allocate the District-approved Certified Cost to the Developer ERUs and Future ERUs on a pro rata cost basis per ERU ("Pro Rata Cost Share") and determine the amount which is subject to reimbursement to the Developers from Future ERUs which are connected to the District's water system ("Reimbursement Amount"). For example, if the Certified Cost was \$3.2 million, and the total number of additional ERUs created by the Reservoir is 1058, the pro rata cost basis per ERU would be \$3,024.57 (\$3.2 million divided by 1058 = \$3,024.57). The portion of the Certified Cost allocated to the Developers would be \$1,361,056.50 (450 ERUs X \$3,024.57) and the remaining portion of the Certified Cost of \$1,838,943.50 (608 ERUs X \$3,024.57) would be subject to reimbursement to the Developers from the Future ERUs. After the District's approval of the Reimbursement Amount, the District shall reimburse the Developers for the Reimbursement Amount as follows. District shall adopt and charge property owners seeking to connect to or use the District's water system a connection charge based on their pro rata share of the Reimbursement Amount per ERU based on the estimated number of ERUs sought to be connected to and served by the District's water system, including the Reservoir. ("Reimbursement Charge"). Following the District's adoption of the Reimbursement Charge, the District and the Developers shall execute the Reimbursement Agreement and the District shall record the Reimbursement Agreement against the real property located within the District which is subject to the Reimbursement Charge in the event the owner(s) of any of such properties connect to or use the District's water system, including the Reservoir.

- c. The District shall require owners of real property subject to the Reimbursement Agreement to pay the Reimbursement Charge as determined in accordance with the terms of this Agreement. The Reimbursement Charge shall be in addition to all other District fees and connection charges in effect at the time of application to the District to connect to or use the District's water system.
- d. Reimbursement Charges collected by the District pursuant to this Agreement shall be paid to the Developers on a biannual calendar basis commencing at the end of the first six month period following the District's final acceptance of the Reservoir. Payments shall be made to the Developers by mailing to the addresses for the Developers set forth in the Reimbursement Agreement in the percentages set forth below in accordance with the procedures set forth in the Reimbursement Agreement.

	Stanton	Yamato	Point Roberts Resort
Percentage:	33.34%	33.33%	33.33%

10. Availability Notifications.

- a. Major Infrastructure Reserve ERUs. Following the Effective Date of this Agreement, the District shall make available to the Developers sixty (60) ERUs/connections to the District's water system from the Major Infrastructure Reserve as established by Resolution No. 591 based on the capacity of the existing system ("MIR ERUs") to be allocated among the Developers as follows:

(1) Stanton:	26	ERUs
(2) Yamato:	17	ERUs
(3) Point Roberts Resort:	17	ERUs
Total:	60	ERUs

The MIR ERUs shall be made available for issuance to the Developers in accordance with the requirements and procedures set forth in Resolution 591, including, but not limited to, Sections 5 (H), 5 (I), 7(I) and 7 (K), including full payment of the District's general facility connection charge as provided in Section 5 (H). The Developers shall be deemed to have

been notified in accordance with Section 5(H) of Resolution 591 of their opportunity to obtain Availability Notifications and the MIR ERUs set forth above as of the Effective Date of this Agreement.

- b. Conditioned ERUs/Availability Notifications. As referenced in Section 2 herein, if DOH approves the Comprehensive Plan and re-rates the District's water system to include an additional 741 ERUs (or substantially similar number as the District determines sufficient) due to the creation of additional District peaking capacity because of the completion of certain water treatment facilities in the GVRD water system, connections to the District's water system in the form of ERUs and Availability Notifications issued by the District confirming the availability of such ERUs/connections shall be made available to the Developers in accordance with policies and procedures later adopted by the District Board of Commissioners. Any such policies and procedures shall be applied equally to all property owners within the same class as determined by the District seeking to connect their property to and receive service from the District's water system, including the Developers.

However, as further set forth in Section 2 herein, if DOH (i) rejects or denies the District's proposal in the Comprehensive Plan to create an additional 741 ERUs (or substantially similar number as the District determines sufficient) due to the creation of additional District peaking capacity because of the completion of certain water treatment facilities in the GVRD water system, and (ii) approves the Comprehensive Plan including the construction of the Reservoir to provide an additional 1,058 ERUs for connection to the District's water system, the District shall thereafter issue Conditional Availability Notifications for ERUs/connections to the District's water system up to the respective numbers for each Developer as identified in Section 8(b) herein ("Conditioned Availability Notifications"). Such Conditioned Availability Notifications shall be on a form agreed upon by the District and the Developers which indicates that the District's ability to provide water service is conditioned as follows:

- (1) Prior to the commencement of delivery of water service to the Developer, the Reservoir and any extensions of the District's water system pursuant to Chapter 57.22 RCW to serve the Developer's respective real property and development must be designed, bonded and constructed in accordance with DOH, District and Whatcom County Health Department approvals, requirements and regulations and DOH has re-rated and approved the District's water system to increase the number of permitted connections/ERUs to the water system in at least the number of ERUs/connections requested by the Developers to the District's water system.

(2) The Developer requesting the Conditioned Availability Notifications shall pay all general facility connection charges owing for the number of ERUs/connections requested no later than (a) within thirty (30) days following the approval by Whatcom County of any land use application for the development of the respective Developer's property referenced in this Agreement; or (b) the Reservoir has been designed, bonded and constructed in accordance with DOH, District and Whatcom County Health Department approvals, requirements and regulations and DOH has re-rated and approved the capacity of the District's water system to increase the number of permitted connections/ERUs to the water system in at least the number of ERUs/connections up to the amount requested in the Conditioned Availability Notifications, whichever event occurs later.

(3) If connection to the District's water system occurs more than one year after the date of the completion of the Reservoir, the District's general facility connection charge in effect at the time of such connection shall apply and shall be paid to the District;

(4) The availability of the ERUs/connections identified in the Conditioned Availability Notification is conditioned on the approval of the Comprehensive Plan by DOH, Whatcom County and any other governmental agency with jurisdiction over such plan.

(5) Following the approval of the Comprehensive Plan by DOH, Whatcom County and any other governmental agency with jurisdiction over such plan, the Reservoir must be constructed and granted final acceptance by the District, and DOH shall have re-rated the capacity of the District's water system to allow for additional ERUs/connections up to the amount requested in the Conditioned Availability Notifications.

The Developer requesting the Conditioned Availability Notifications shall pay an annual District administrative fee of Five hundred Dollars (\$500) for each Conditional Availability Notification requested. This fee shall be paid initially upon issuance of the Conditional Availability Notification and renewed annually thereafter in accordance with the terms and conditions of this Agreement. If the renewal fee is not paid, the Conditional Availability Notification shall be cancelled for those connections for which it is not paid. All fees for which required renewal fees are not paid shall be forfeited.

12. Dispute Resolution: In the event of any dispute regarding this Agreement or its application in any circumstance, the following procedure shall be implemented before either party pursues the resolution of any dispute by litigation, except that any party may seek injunctive relief from a court where appropriate in order to

maintain the status quo while this procedure is being followed: (a) The parties shall hold a meeting promptly to attempt in good faith to negotiate a resolution of the dispute, provided, that any such meeting shall be considered to be held for settlement purposes only and therefore no written or oral statement of any person presented at or relating to such meeting shall be used as evidence in any arbitration or other proceeding; and (b) if, within ten days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, any party to the dispute may seek the resolution of such dispute through legal action in Whatcom County Superior Court.

13. Binding Effect. The provisions contained in this Agreement are intended to and shall run be binding on the heirs, executors, administrators, successors, grantees, and assigns of the Parties.
14. Amendments; Waivers. No change or modification of this Agreement, the DEA and the Reimbursement Agreement shall be valid unless the same is in writing and is signed by all Parties to this Agreement. No purported or alleged waiver of any of the provisions of this Agreement shall be binding or effective unless in writing and signed by the Party against whom it is sought to be enforced.
15. Severability. Invalidation of any one of provisions in this Agreement by judgment or court order shall not affect the enforceability of any other of the terms, conditions and provisions of this Agreement, all of which shall remain in full force and effect.
16. Entire Agreement. This Agreement contains the entire understanding between the Parties and supersedes any prior understandings and agreements between them with respect to the subject matter hereof. There are no other representations, agreements, arrangements or understandings, oral or written, between the Parties hereto or any of them, relating to the subject matter of this Agreement. No amendment of or supplement to this Agreement shall be valid or effective unless made in writing and executed by the Parties hereto.
17. Additional Documents. Each Party agrees to take such action and to execute, acknowledge, and deliver any and all documents and instruments as may be desired by the other Party which are necessary to carry out the purpose of this Agreement.
18. Applicable Law/Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action arising out of or relating to this Agreement shall lie in the Superior Court for Whatcom County, Washington.

19. Counterparts. This Agreement may be executed in any number of counterparts and all counterparts shall be deemed to constitute a single agreement. The execution and delivery of one counterpart by any Party shall have the same force and effect as if that Party had signed all other counterparts. The signatures to this Agreement may be executed on separate pages and when attached to this Agreement shall constitute one complete document. Facsimiles of executed counterparts shall be deemed acceptable.
20. Assignment. No Developer shall assign or transfer this Agreement, or any interest herein, by operation of law or otherwise, without the prior written approval of the District, which consent shall not be unreasonably withheld.
21. Incorporation by Reference. All Recitals set forth above and all Exhibits attached to this Agreement are incorporated into this Agreement in full.
22. Attorneys' Fees and Costs. If any Party commences any legal action or proceeding relating to the provisions of this Agreement, the prevailing party shall be entitled to receive, and the losing party shall pay, its reasonable attorneys' fees and costs, including those incurred on appeal.
23. Warranty of Authority. Each Party represents and warrants that it has duly authorized the execution and performance of this Agreement, that this Agreement is binding and enforceable upon the respective Party and the individual executing this Agreement on behalf of the respective Party is duly authorized and has the capacity and authority to do so.
24. Effective Date. This Agreement shall be effective ("Effective Date") on the last date that the Agreement has been approved and signed by all of the Parties.
25. Recording. Following its execution by the Parties, this Agreement shall be recorded with the Whatcom County Auditors Office.
26. Exhibits. The following exhibits attached to this Agreement are fully incorporated herein by this reference:

- Exhibit A: Stanton Property
- Exhibit B: Stanton Property
- Exhibit C: Yamato Property
- Exhibit D: Point Roberts Resort Property
- Exhibit E: Resolution No. 591, as amended by Resolution No. 597
- Exhibit F: Developer Extension Agreement
- Exhibit G: Reimbursement Agreement

27. Conflict. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any exhibit attached hereto, the terms and conditions of this Agreement shall control.
28. Notices. Any notice or demand to be given under this Agreement shall be in writing and shall be deemed given when personally delivered, sent by facsimile machine, or deposited in the United States mail (or with an express courier), postage prepaid, sent certified or registered mail, and addressed to the Party or Parties as set forth below or to such other address as any Party shall have previously designated by notice as follows:

To: Point Roberts Water District No. 4  
Attn: General Manager  
79 Tyee Drive, Suite A  
Point Roberts, WA 98281  
Facsimile (360) 945-3021

With a copy to: John W. Milne  
Inslee, Best, Doezie & Ryder, P.S.  
777 - 108th Avenue NE  
Bellevue, WA 98009-9016  
Facsimile (425) 635-7720

To: Stanton Land Holdings, LLC  
Attn: Brian Housley/Randy Forsyth  
11410 NE 122nd Way, Suite 102  
Kirkland, WA 98034  
Facsimile: (425) 823-9038

With a copy to: Robert D. Johns  
Johns Monroe Mitsunaga  
1601 114th Avenue S., Suite 110  
Bellevue, WA 98004  
Facsimile (425) 451-2818

To: Yamato Development Canada, Inc.  
Attn: Jack Swanson  
C/O Belcher, Swanson Law Firm  
900 Dupont Street  
Bellingham, WA 98220  
Facsimile: (360) 671-0753

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile \_\_\_\_\_

To:

Point Roberts Resort Limited Partnership  
Attn: Stephen McKay  
713 Simundson Drive  
Point Roberts, WA 98281  
Facsimile: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile \_\_\_\_\_

**POINT ROBERTS WATER DISTRICT NO. 4**

By Dan Bouds

Title General Manager

Entered into this 24 day of April, 2008 by Resolution No. 602  
1 May

**STANTON LAND HOLDINGS, LLC**

By B. Hurley

Title Manager

Entered into this 24<sup>th</sup> day of April, 2008

**YAMATO DEVELOPMENT CANADA, INC.**

By Kenji Nose

Title President

Entered into this 24 day of April, 2008



**POINT ROBERTS RESORT LIMITED PARTNERSHIP**

PR MARINA LIMITED PARTNERSHIP

By [Signature]

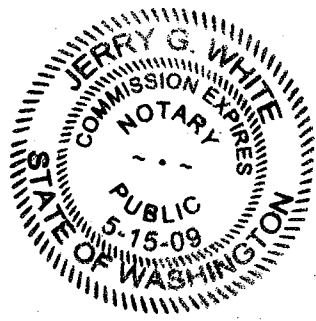
By \_\_\_\_\_

Title President

Entered into this 1<sup>st</sup> day of MAY, 2008

STATE OF WASHINGTON )  
COUNTY OF Whatcom ) ss

I certify that I know or have satisfactory evidence that Dan Bourles is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument as the Manager on behalf of **POINT ROBERTS WATER DISTRICT NO. 4**, and acknowledged it to be the free and voluntary act of said company for the uses and purposes mentioned in the instrument.



DATED: May 1 - 2008  
[Signature]  
NAME: Jerry G. White  
(Print Name)  
Notary Public in and for the State of Washington  
Commission Expires: May 15 2009

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/she signed  
this instrument, on oath stated that he/she was authorized to execute the instrument as the  
\_\_\_\_\_ on behalf of **STANTON LAND HOLDINGS, LLC**, and  
acknowledged it to be the free and voluntary act of said company for the uses and  
purposes mentioned in the instrument.

DATED: \_\_\_\_\_

NAME: \_\_\_\_\_

(Print Name)

Notary Public in and for the State of Washington

Commission Expires: \_\_\_\_\_

*Province of British Columbia*

~~STATE OF WASHINGTON~~ )  
 ) ss  
COUNTY OF ~~Kingston~~ )

*of Vancouver*

*municipality* I certify that I know or have satisfactory evidence that Kenji Noze  
is the person who appeared before me, and said person acknowledged that he/she signed  
this instrument, on oath stated that he/she was authorized to execute the instrument as the  
Director and Resident on behalf of **YAMATO DEVELOPMENT CANADA, INC.**,  
and acknowledged it to be the free and voluntary act of said company for the uses and  
purposes mentioned in the instrument.

DATED: April 24, 2008

Alvin Hui  
NAME: \_\_\_\_\_

(Print Name)

Notary Public in and for the State of Washington

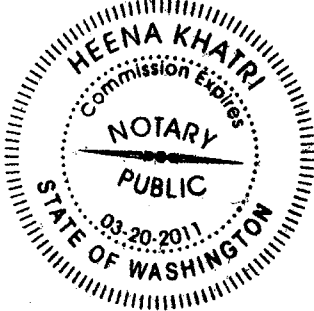
Commission Expires: Dec 31, 2008

*Province of British Columbia*

ALVIN HUI  
Barrister & Solicitor, Notary Public  
1606 Hornby Street  
Vancouver, B.C. V6Z 2T4  
(604) 732-3898

STATE OF WASHINGTON )  
 )  
COUNTY OF King ) ss

I certify that I know or have satisfactory evidence that Brian Housley is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument as the \_\_\_\_\_ on behalf of **STANTON LAND HOLDINGS, LLC**, and acknowledged it to be the free and voluntary act of said company for the uses and purposes mentioned in the instrument.



DATED: 4/24/08  
Khatri  
NAME: Heena Khatri  
(Print Name)  
Notary Public in and for the State of Washington  
Commission Expires: 3/20/2011

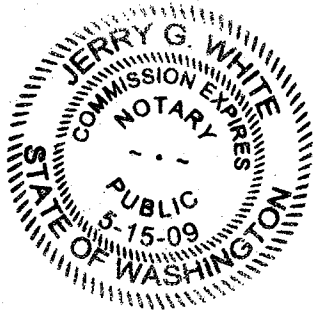
STATE OF WASHINGTON )  
 )  
COUNTY OF \_\_\_\_\_ ) ss

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument as the \_\_\_\_\_ on behalf of **YAMATO DEVELOPMENT CANADA, INC.**, and acknowledged it to be the free and voluntary act of said company for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_  
\_\_\_\_\_  
NAME: \_\_\_\_\_  
(Print Name)  
Notary Public in and for the State of Washington  
Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON )  
COUNTY OF Whatcom ) ss

I certify that I know or have satisfactory evidence that Stephen Mackay is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument as the General Partner on behalf of **POINT ROBERTS RESORT LIMITED PARTNERSHIP**, and acknowledged it to be the free and voluntary act of said company for the uses and purposes mentioned in the instrument.



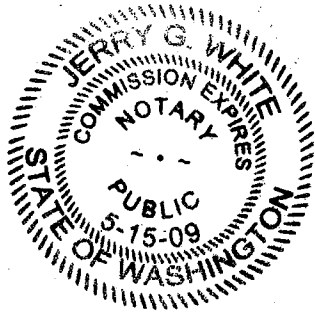
DATED: May 8 2008

Jerry G White  
NAME: Jerry G White  
(Print Name)

Notary Public in and for the State of Washington  
Commission Expires: May 15 2009

STATE OF WASHINGTON )  
                                  ) *Whatcom* ) ss  
COUNTY OF (~~Washington~~)

I certify that I know or have satisfactory evidence that Stephen Mackay is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument as the President on behalf of **POINT ROBERTS RESORT LIMITED PARTNERSHIP**, and acknowledged it to be the free and voluntary act of said company for the uses and purposes mentioned in the instrument.



DATED: May 1 - 2008

NAME: Jerry G White  
(Print Name)

Notary Public in and for the State of Washington  
Commission Expires: MAY 15 2009