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Skagit County Auditor

RETURN DOCUMENT TO:

5/10/2010 Page 1 of 13 1:59PM

Samish Water District
2195 Nulle Road
Bellingham, WA 98229

DOCUMENT TITLE: SETTLEMENT AGREEMENT
REFERENCE NO.: SKAGIT COUNTY AUDITOR'S FILE #200801170085
GRANTOR: LARSON COOK ROAD LLC; ROETER COOK ROAD LLC; and
BISSELLR/EHOLDINGS LLC
GRANTEE(S): SAMISH WATER DISTRICT
LEGAL DESCRIPTION: TRACT 3 SKAGIT COUNTY SHORT PLAT #90-33
SKAGIT COUNTY ASSR'S PROP TAX PARCEL: 350419-4-004-0100 P99467; P127415; P127417; P127418

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into this 11 day of March, 2010 (date the Agreement was approved by the District) by and among the SAMISH WATER DISTRICT, a Washington municipal corporation, with offices located at 2195 Nulle Road, Bellingham, Washington 98229, party of the first part (hereinafter referred to as the "District"), and LARSON COOK ROAD LLC, a Washington limited liability company, ROETER COOK ROAD LLC, a Washington limited liability company, and BISSELL R/E HOLDINGS LLC, also a Washington limited liability company, all with offices located at 11-105th Ave., S.E., Bellevue, Washington, collectively, party of the second part (hereinafter referred to collectively as "Owner"). District and Owner are sometimes collectively referred to as the "Parties," and individually as a "Party."

WITNESSETH

WHEREAS, District is a municipal corporation located in Whatcom County, Washington, operating a sewer system within said county and also within a portion of Skagit County, Washington, and

WHEREAS, Owner is the owner of certain real property located on Old Highway 99 south of the Cook Road intersection in Skagit County, more particularly described in Exhibit A hereto ("Owner's Property"); and

WHEREAS, Owner's Property is a portion of an earlier, larger 5.84 acre tract of land located on Old Highway 99 adjacent to the District's sewer line (hereinafter referred to as "Force Main"), said land being more fully described in Exhibit B hereto (hereinafter the "Pierson Tract"), formerly owned by Pierson Associates, a Washington limited partnership; and

WHEREAS, the Pierson Tract was subdivided into four separate lots (hereinafter Lots 1, 2, 3, and 4) in 1991 by a subsequent owner, pursuant to Short Plat 90-33 recorded under Skagit County Auditor file No. 9101140018 at Volume 9, page 300, with Owner's Property being described thereon as "Lot 3"; and

WHEREAS, Owner's "Lot 3" represents on a square footage basis approximately thirty-four percent (34%) of the original Pierson Tract.

WHEREAS, the District and Pierson Associates previously entered into that certain Sewer Service Availability Agreement dated June 29, 1978 with respect to the Pierson Tract, and recorded under Skagit County Auditor file No. 884000 at Volume 326, page 46 (hereinafter referred to as the "Pierson Agreement"); and

WHEREAS, Owner has subsequently subdivided Lot 3 into three separate parcels, pursuant to Binding Site Plan ("BSP") No. PL07-0601, designated as Skagit County Assessor Parcels P127416, P127417, and P127418, which parcels are more fully described in Exhibit C hereto; and

WHEREAS, Owner has developed one of the parcels under BSP No. PL07-0601 on which it erected a building, a portion of which is currently occupied by a Starbucks restaurant and Georgio's Sub Shop restaurant. There is one remaining business space available in the building located on said parcel which remains unoccupied at the present time. Owner has also constructed two additional building pads on lots 1 and 2 of Owner's Property (as described in BSP No. PL07-0601) which are currently unimproved and unoccupied; and

WHEREAS, for purposes of calculating the connection charge for initial connections to the District's sewage system, the District determines the number of "Living Unit Equivalents" (LUE's) serviced by the connection. For non-residential connections, the District calculates the number of LUE's using a conversion table. For restaurant usage, four seats equal one LUE. Each LUE is equal to one hundred eighty five (185) gallons per day as determined by water meter readings.

WHEREAS, on August 21, 2008, Michael Roeter, the manager of Roeter Cook Road LLC, acting on behalf of the owners of the Owner's Property and operating under the name of Cook Road Alliance, entered into a Sewer Service Agreement covering the Owner's Property which was recorded under Skagit County Auditor's file no. 200907230170, under which the District agreed to furnish six (6) LUE's worth of capacity to the property for the Starbucks restaurant and pursuant to which Owner agreed to pay the District's general facilities charges



201005100100

Skagit County Auditor

(also referred to as connection charges) on the six (6) LUE's in the sum of Eighteen Thousand Seven Hundred Twenty Six Dollars (\$18,726) representing Three Thousand One Hundred Twenty One Dollars (\$3,121) per LUE, together with paying a general facilities charge to the City of Burlington in the sum of Ten Thousand Six Hundred Seventy-Two Dollars (\$10,672) and to pay general facilities charges on any additional LUE's utilized by the owners in the future related to development of the property (hereinafter referred to as the "Starbucks Agreement"); and

WHEREAS, Owner currently leases a portion of Owner's Property to Starbucks Corporation on which Starbucks has constructed a coffee shop representing six (6) LUE's (based upon seating capacity of twenty-four (24) seats at four (4) seats per LUE), and also leases a portion of Owner's Property to Georgio's Sub Shop, representing three (3) LUE's, based upon a seating capacity of twelve (12) seats; and

WHEREAS, Owner has not paid any connection charges or monthly service charges related to the Georgio's Sub Shop; and

WHEREAS, the Parties disagree upon a number of issues related to the Pierson Agreement, including (i) the extent to which, if any, said Agreement still controls sewer service to Owner's Property, (ii) the interpretation and/or application of the Pierson Agreement to Owner's Property, including, but not limited to, the issues of whether Owner has a vested right to a specific number of LUE's and/or a certain amount of capacity under the Sewer Service Agreement, (iii) whether the District is required to refund some or all of the connection charges paid by Owner under the Starbucks Agreement, (iv) whether Owner must pay a connection charge to the District for each LUE connected to the District's system, including those allocated to Georgio's Sub Shop and those LUE's connected in the future, and (v) the amount of monthly services charges payable to the District for each LUE; and

WHEREAS, the Parties disagree on the legal import of the Starbucks Agreement, including whether it is enforceable in light of the Pierson Agreement.

NOW THEREFORE, in consideration of the mutual covenants set out herein, the sufficiency of which is acknowledged by both Parties, and in view of their mutual desire to avoid the costs and uncertainties of litigation over the foregoing issues, the Parties hereby agree as follows:

1. District agrees that the sewer connections undertaken previously by Owner or its tenants with respect to the Starbucks and Georgio's Sub Shop leases are lawful, and are covered



by the terms of this Agreement. Upon execution of this Agreement, the Starbucks Agreement shall be deemed null and void.

2. Owner shall have the right to six (6) LUE's or one thousand one hundred ten (1,110) gallons per day (gpd) worth of capacity to service the Starbucks (each LUE equating to 185 g.p.d) based upon seating capacity of twenty-four (24) seats at four (4) seats per LUE. In addition, Owner shall have the right to three (3) LUE's worth of capacity (555 g.p.d) for the Georgio's Sub Shop. As noted in the Recitals, Owner has previously paid to the District connection charges for six (6) LUE's related to the Starbucks, totaling Eighteen Thousand Seven Hundred Twenty Six Dollars (\$18,726) at Three Thousand One Hundred Twenty One Dollars (\$3,121) per LUE. As consideration for this Settlement, the District agrees to waive the connection charges on a total of nine (9) LUE.s, 6 of which shall cover Starbucks and three (3) of which shall cover Georgio's Sub Shop. The District shall refund to the Owner the connection charges previously paid under the Starbucks Agreement, including the Burlington connection charge less the delinquent monthly service charges owing for the Georgio's Sub Shop as per the following paragraph. As long as the refund check(s) is tendered to Owner within sixty (60) days of this Agreement being approved and executed by both Parties, no interest shall be payable on the refunded amount.

3. Owner agrees to pay to the District the same monthly service charge on each LUE as are paid by the District's other commercial customers of a similar nature (i.e. restaurants) which are connected to the District's Force Main. At the present time, the monthly service charge per LUE is Sixty Seven Dollars & Ninety-Six Cents (\$67.96) (the "Base Rate" per LUE). For the three (3) LUE's related to the Georgio's Sub Shop, Owner agrees to pay the monthly service charges for three (3) LUE's retro-active to June 2009 at monthly cost of Two Hundred Three Dollars & Eighty-Eight Cents (\$203.88). The delinquent monthly service charges relative to the Georgio's Sub Shop, retroactive to June 2009, shall be subtracted from the amount refunded to Owner by the District as per the preceding paragraph. In the event that the average daily flow (as determined by Owner's water meter servicing each business located on Owner's Property) in a given month exceeds the allocation for that specific customer, a surcharge on the excess flow shall be assessed in an amount equal to the surcharge applicable to the District's other commercial customers of a similar nature (i.e.: restaurants) located along the Force Main. For example, with the three (3) LUEs being allocated to the Georgio's Sub Shop, the surcharge would apply in the event the water meter reading for Georgio's in a given month indicates water usage averaging more than five hundred fifty five (555) gallons per day (the "Base Amount"). The surcharge at the present time is Eleven and 15/100 Dollars (\$11.15) per one hundred (100)



201005100100

Skagit County Auditor

cubic feet (a cubic foot is 7.48 gallons). The total service charge in a given month is the Base Rate per LUE plus any applicable surcharge.

4. Owner shall be required to pay all applicable connection charges before expanding its usage beyond the nine (9) LUE's related to the Starbucks and Georgio's Sub Shop, including any expansion of those two businesses. District officials shall have the right to enter each business located on Owner's property during normal business hours to verify whether there has been an expansion of the business requiring additional LUEs (i.e.: increase in restaurant seating). The number of LUEs associated with a new or expanded use will be calculated according to District policy applicable to other Force Main customers. All future purchase of capacity in the District's system shall be on a first-come, first-serve basis, with the District retaining the power to limit future connections or the expansion of existing usage based upon capacity or other considerations including, but not limited to, complying with limitations imposed by law or contract (i.e.: the District's Agreement with Burlington or the Inter-Local with Skagit County).

5. Owner shall provide written notice to the District prior to developing its property beyond the existing Starbucks and Georgio's Sub Shop and to provide the District with sufficient information to allow the District to calculate the number of LUE's associated with the new or expanded usage.

6. Nothing herein prevents Owner from re-allocating any LUE's acquired by the Owner amongst the various uses located on Owner's Property, PROVIDED the total amount of capacity/LUE's does not exceed the amount of capacity that Owner has paid for or is authorized to use under this Agreement. Any reallocation of LUEs amongst the Starbucks and Georgio's Sub Shop (or any other businesses located on Owner's property) shall be confirmed in writing by Owner to the District with proof required that the District received the notification (i.e.: certified mail receipt or written confirmation from the District). Any subsequent sale agreement entered into by Owner with respect to the lots described in Exhibit C shall allocate to each lot being sold that lot's share of the capacity to which Owner is entitled under this Agreement and written confirmation of said allocation, signed by the purchaser, shall be recorded with the Skagit County Auditor and also provided to the District.

7. Owner acknowledges and affirms that, except as provided for in this Agreement, it has no claims to capacity/LUE's in the District's sewage system. Further, the Parties agree that with respect to the Owner's Property, this Agreement shall act as an amendment to the Pierson Agreement. Owner further acknowledges that it is subject to the District's rules and



201005100100

Skagit County Auditor

regulations generally applicable to the District's other Force Main customers, including periodic adjustments to the connection charge and to the monthly service charges.

8. District agrees that in the event of non-payment of monthly service charges or any other sums owing under this Agreement, that it will limit the scope of its lien to that legally distinct parcel to which the delinquency applies.

9. This Agreement is subject to approval by the District's Board of Commissioners at an open, public meeting and shall not be binding on the District until said action is taken and the Agreement is fully executed.

10. This Amended Sewer Service Agreement is subject to the terms and conditions of that certain CONTRACT FOR WASTEWATER TREATMENT AND DISPOSAL dated January 23, 2001, between the District and the City of Burlington and which is recorded under Skagit County Auditor's File No. 200102020095 and any subsequent agreements between Burlington and the District for wastewater treatment and the District's obligations under this Agreement are no greater than its contractual rights with Burlington.

11. The Parties represent and warrant to each other that the execution, delivery and performance of this Agreement have been duly authorized by all required official or company action, and that the person(s) signing this Agreement on behalf of such Party has full authority to do so.

12. This Agreement shall be governed by the laws of Washington, and any dispute hereunder that cannot be resolved by the Parties shall be resolved in the state courts of Washington.

13. Any notices required or authorized by this Agreement shall be in writing, and shall be delivered by certified mail, return receipt requested to the other Party at the address set out in the introductory paragraph for such Party, or at such amended address as such Party shall provide by like notice. Notices provided to "Owner" shall be delivered to each of the limited liability companies that collectively are referred to as "Owner" under this Agreement.

14. This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof, and supersedes all prior oral or written understandings, including the New Sewer Services Agreement. Any amendments to this Agreement must be



in writing and executed by both Parties. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.

15. Either Party may record at its expense a copy of this Agreement, or a notice/memorandum of agreement with the Skagit County Auditor. This Agreement may be executed in duplicate originals, with the Owner keeping one original and the District retaining the other original. The Parties agree that this Agreement "runs with the land" and shall bind any successors or assigns of Owner.

OWNER:

LARSON COOK ROAD LLC, Owner

By [Signature]
Linden Larson, Manager
Date 3/10

ROETER COOK ROAD LLC, Owner

By [Signature]
Mike Roeter, Manager
Date 3/10

BISSELL R/E HOLDINGS LLC, Owner

By [Signature]
Eric Bissell, Manager
Date 3/8/10

DISTRICT:

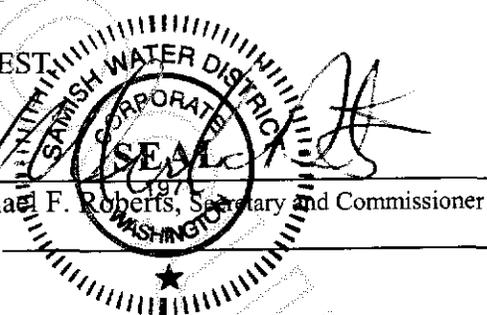
SAMISH WATER DISTRICT,
a municipal corporation

By [Signature]
Robert N. Merrill, President and Commissioner
Date 3-11-10

By [Signature]
Herbert A. Barker, Commissioner
Date _____

ATTEST

By [Signature]
Michael F. Roberts, Secretary and Commissioner
Date _____



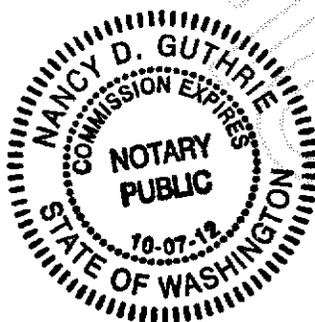
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STATE OF WASHINGTON)
COUNTY OF King)

ss.

I certify that I know or have satisfactory evidence that Linden Larson signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager of Larson Cook Road, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Subscribed and Sworn to before me this 1st day of March, 2010.



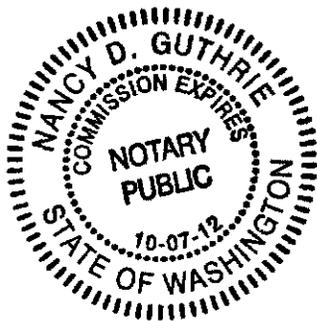
Nje
Notary Public in and for the State of Washington
residing at Seattle
My commission expires 10/7/12

STATE OF WASHINGTON)
COUNTY OF King)

ss.

I certify that I know or have satisfactory evidence that Mike Roeter signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager of Roeter Cook Road, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Subscribed and Sworn to before me this 1st day of March, 2010.



Nje
Notary Public in and for the State of Washington
residing at Seattle
My commission expires 10/7/12



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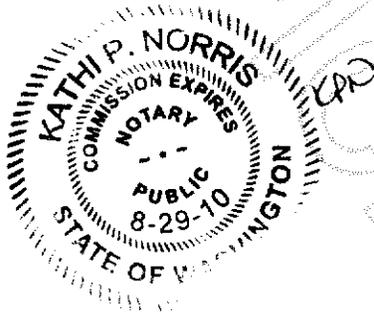
5/10/2010 Page 8 of 13 1:59PM

STATE OF WASHINGTON)
)
COUNTY OF King)

ss.

I certify that I know or have satisfactory evidence that Eric Bissell signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager of Bissell R/E Holdings, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Subscribed and Sworn to before me this 8th day of March, 2010.



[Signature]
Notary Public in and for the State of Washington,
residing at Lynnwood
My commission expires 8-29-10

STATE OF WASHINGTON)
)
COUNTY OF WHATCOM)

ss.

I, the undersigned, a notary public in and for the State of Washington, do hereby certify that on this 11 day of March, 2010, personally appeared before me Robert N. Merrill, to me known to be Commissioner and President of the Samish Water District, the municipal corporation that executed the foregoing instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument on behalf of said municipal corporation.



[Signature]
Notary Public in and for the State of Washington,
residing at Bellinham
My commission expires 7/30/2013



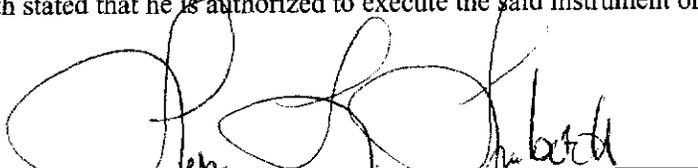
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Skagit County Auditor

5/10/2010 Page 9 of 13 1:59PM

STATE OF WASHINGTON)
)
COUNTY OF WHATCOM) ss.

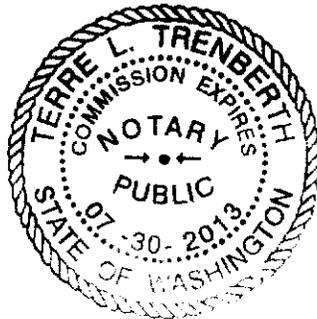
I, the undersigned, a notary public in and for the State of Washington, do hereby certify that on this 11 day of March, 2010, personally appeared before me Herbert A. Barker, to me known to be Commissioner of the Samish Water District, the municipal corporation that executed the foregoing instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument on behalf of said municipal corporation.

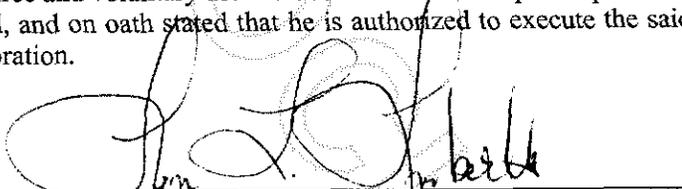



Notary Public in and for the State of Washington,
residing at Bellingham
My commission expires 7-30-2013

STATE OF WASHINGTON)
)
COUNTY OF WHATCOM) ss.

I, the undersigned, a notary public in and for the State of Washington, do hereby certify that on this 11 day of March, 2010, personally appeared before me Michael Roberts, to me known to be Commissioner and Secretary of the Samish Water District, the municipal corporation that executed the foregoing instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument on behalf of said municipal corporation.




Notary Public in and for the State of Washington,
residing at Bellingham
My commission expires 7-30-2013


201005100100
Skagit County Auditor
5/10/2010 Page 10 of 13 1:59PM

**EXHIBIT A:
Legal Description of Owner's Property**

Tract 3 of Skagit County Short Plat No. 90-33, approved January 14, 1991 and recorded January 14, 1991 under Auditor's File No. 9101140018 in Volume 9 of Short Plats, Page 300, records of Skagit County, Washington, being a portion of the Northeast quarter of the Southeast quarter of Section 19, Township 35 North, Range 4 East, W.M.

Situated in Skagit County, Washington

Tax Parcel Number(s): 350419-4-004-0100 P99467



201005100100

Skagit County Auditor

EXHIBIT B:
Legal Description of Former Pierson Tract

A portion of the East half of the Southeast quarter of Section 19, Township 35 North, Range 4 East, W. M., being bounded on the East side by Old Highway 99, on the South and West sides by State Highway No. I-5, and on the North by the Cook Road, said parcel being more particularly described as follows:

Beginning at the Northeast corner of said subdivision; thence North $87^{\circ} 07' 34''$ West along the North line of said subdivision 551.78 feet; thence South $7^{\circ} 26' 07''$ East a distance of 111.81 feet to a point of intersection of the West line of Old Highway 99 and the South line of the Cook Road, being the TRUE POINT OF BEGINNING; thence continue South $7^{\circ} 26' 07''$ East along the West line of Old Highway 99 a distance of 1482.49 feet to an intersection with the State right-of-way line; thence South $73^{\circ} 53' 55''$ West along said right-of-way line a distance of 53.83 feet to a point that is 110 feet (as measured radially) from the centerline of I-5, said point being a point on curve of the right-of-way line of said Highway, having a radius of 7750 feet; thence Northerly along said curve to the left through a central angle of $4^{\circ} 04' 55''$ an arc distance of 552.14 feet to State Highway Station 456+44.3 thence North $20^{\circ} 11'$ West along said State right-of-way line a distance of 192.6 feet; thence North $9^{\circ} 37' 30''$ West along said Highway right-of-way a distance of 802.57 feet to the Southerly line of the Cook Road; thence South $87^{\circ} 07' 34''$ East along the South line of said Cook Road a distance of 232.70 feet to the TRUE POINT OF BEGINNING, situated in Skagit County, Washington, containing 5.84 acres.



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**Exhibit C:
Description of Parcels into which Owner's Property has been Subdivided
Pursuant to BSP No. PL07-0601**

P127416

Legal Description

(DR14) LOT 1 OF BSP NO. PL07-0601, RECORDED UNDER AF#200803030109, BEING A PORTION OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 4 EAST, W.M.

P127417

Legal Description

(DR14) LOT 2 OF BSP NO. PL07-0601, RECORDED UNDER AF#200803030109, BEING A PORTION OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 4 EAST, W.M.

P127418

Legal Description

(DR14) LOT 3 OF BSP NO. PL07-0601, RECORDED UNDER AF#200803030109, BEING A PORTION OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 4 EAST, W.M.



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