

## WATER ERU AGREEMENT

THIS AGREEMENT is entered into this 1 day of DECEMBER 2009, between SOUTH BAINBRIDGE WATER SYSTEMS, INC., a Washington corporation, hereinafter referred to as the "Owner," and ROMERKOFF SERENITY LLC, a Washington limited liability company, hereinafter referred to as "Customer."

### RECITALS

1. Customer owns property that was previously served with four (4) equivalent residential units (ERUs). Customer is planning additional development on the property which may include up to an additional eleven (11) ERUs. However, plans are not complete. Customer desires to secure water availability for the property.

2. Owner is willing to accommodate Customer's request to reserve water availability under the terms and conditions as set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and benefits to be derived, Owner and Customer agree as follows:

### AGREEMENT

- Customer has property located at 4500 PLEASANT <sup>BEACH DR. BI WA</sup> (the "Property") and desires to secure water availability for up to fifteen (15) ERUs for service at the Property. The Property was previously served by Owner with a total of four (4) ERUs. In order to secure the additional eleven (11) ERUs, Customer agrees to pay to Owner the sum of Twenty-Three Thousand Three Hundred Sixty-Seven and 52/100 Dollars (\$23,367.52), which is the tariffed Water System Facility Charge for the eleven (11) additional ERUs, which payment shall be delivered to Owner within five (5) days after the Effective Date. In addition, as of the Effective Date, Customer shall pay to Owner a monthly recurring fee for fifteen (15) ready to serve charges in the amount of twenty-five and 75/100 dollars (\$25.75) per connection for a total of Three Hundred Eighty-Six and 25/100 Dollars (\$386.25) per month.
- Once Customer's plans for the Property are known and approved by the City of Bainbridge, actual service configurations will be developed for not more than fifteen (15) ERUs. Connections will be paid for at the Owner's then effective tariffed service connection charge. Owner specifically warrants and represents that it will pay for any infrastructure improvements that will be needed to serve the Property as determined by Owner's engineer, and shall enter into a standard Water System Extension Agreement with Owner that provides the terms and conditions for such construction and payment of improvements and engineering and attorney's fees. Failure to enter into such Water System Extension Agreement within thirty (30) days of the date that plans are approved for the Property shall result in termination of this Agreement and forfeiture by Customer

of any and all rights to water availability for the Property and shall not be entitled to the refund of any amounts paid under this Agreement.

3. So long as Customer continues to pay to Owner the monthly recurring ready-to-serve charge for reserved ERUs, this Agreement shall remain in effect as to such ERUs. If Customer provides notice to Owner that Customer does not require some or all of the ERUs reserved to Customer under this Agreement, Customer's obligation to pay the monthly ready-to-serve charge for the non-required ERUs will terminate and Owner shall buy back the non-required ERUs by returning to Customer the proportionate amount of the Water System Facility Charge paid by Customer that corresponds to such ERUs at such time as the returned ERUs are assigned to a new customer and upon receipt of the Water System Facility Charge for the corresponding ERUs from such new customer.
4. Nothing in this Agreement entitles Customer or Customer's successors or assigns to connect to Owner's water system except in accordance with the terms, conditions and charges and under tariff filed with the Washington Utilities and Transportation Commission ("WUTC"), which terms and conditions include, but are not limited to, the ability to limit use of water for irrigation under conditions of high demand.
5. Customer shall pay the costs of Owner's attorney to develop this Agreement and seek approval of the WUTC, not to exceed Seven Hundred Fifty Dollars (\$750.00), which payment is due upon execution of this Agreement by Customer.
6. The Effective Date of this Agreement shall be thirty-one (31) days after filing with the WUTC, or if suspended by the WUTC, at such date as this Agreement is approved by the WUTC. WUTC approval is not warranted or guaranteed by Owner.
7. Miscellaneous.
  - A. Jurisdiction. This Agreement is made with reference to and is intended to be construed in accordance with the laws of the State of Washington. The parties agree that the venue for any suit brought hereunder shall be laid exclusively in Kitsap County, Washington.
  - B. Successors in Interest. This Agreement shall be binding upon and inure to the benefits of the successors, heirs, assigns and personal representatives of the parties.
  - C. Execution of Counterpart. This Agreement will be executed separately or independently in any number of counterparts, each and all of which shall be deemed to have executed simultaneously and for all purposes be one Agreement.
  - D. Construction. This Agreement shall not be construed more favorably to one party over another notwithstanding the fact that one party or its attorney, may have been more responsible for the preparation of the document.

- E. Attorneys' Fees. In the event that any party hereto retains an attorney to enforce any of the provisions hereof, then the substantially prevailing party shall be entitled to reasonable attorney's fees incurred in both trial and appellate courts, or fees incurred without suit and all court and accounting costs.
- F. **Time. Time is expressly declared to be of the essence in this Agreement.**
- G. Survival. All of the obligations (except to be to the extent performed), warranties and representations in this Agreement shall survive the closing.
- H. Amendment. No modification, amendment, addition to or termination of this Agreement nor waiver of any of its provisions shall be valid or enforceable unless in writing and signed by all of the parties, and further, no modification or amendments of specifications or approval of "approved equal" material shall be valid or enforceable unless approved in writing by Owner's engineer.
- I. Waiver. No failure on the part of either party to exercise, and no delay in exercising, any rights hereunder shall operate as a waiver thereof; nor shall any waiver or acceptance of a partial, single or delayed performance of any term or condition of this Agreement operate as a continuing waiver or a waiver of any subsequent breach thereof.
- J. Entire Agreement. This Agreement constitutes the entire Agreement among the parties, integrates the understanding of the parties, and supersedes and replaces any prior statements and representations, written or oral. Any prior written statements, written or oral, not contained herein are void and in no force or effect. This Agreement supersedes and cancels all prior obligations and negotiations, correspondence and communications between the parties with respect to the terms and conditions of this Agreement.
- K. Notices. Any notice provided for in this Agreement shall be deemed effective as if it is in writing and is personally delivered or sent by certified mail, postage prepaid, return receipt requested, and delivered or addressed as set forth below or to other such address as the parties may hereafter designate by notice given in the same manner:

To Owner:  
South Bainbridge Water Systems, Inc.  
4573 Point White Drive  
Bainbridge Island, WA 98110


To Customer:  
Romerhoff Serenity LLC  
265 MAIDEN LANE E  
SEATTLE WA 98112

L. Survival of Warranties and Representations. All warranties and representations made by any party hereto shall survive the conveyance and transfer of the Main Extension to Owner.

Entered into the date first set forth above.

OWNER:

SOUTH BAINBRIDGE WATER  
SYSTEMS, INC.

By: 

Its: President

CUSTOMER:

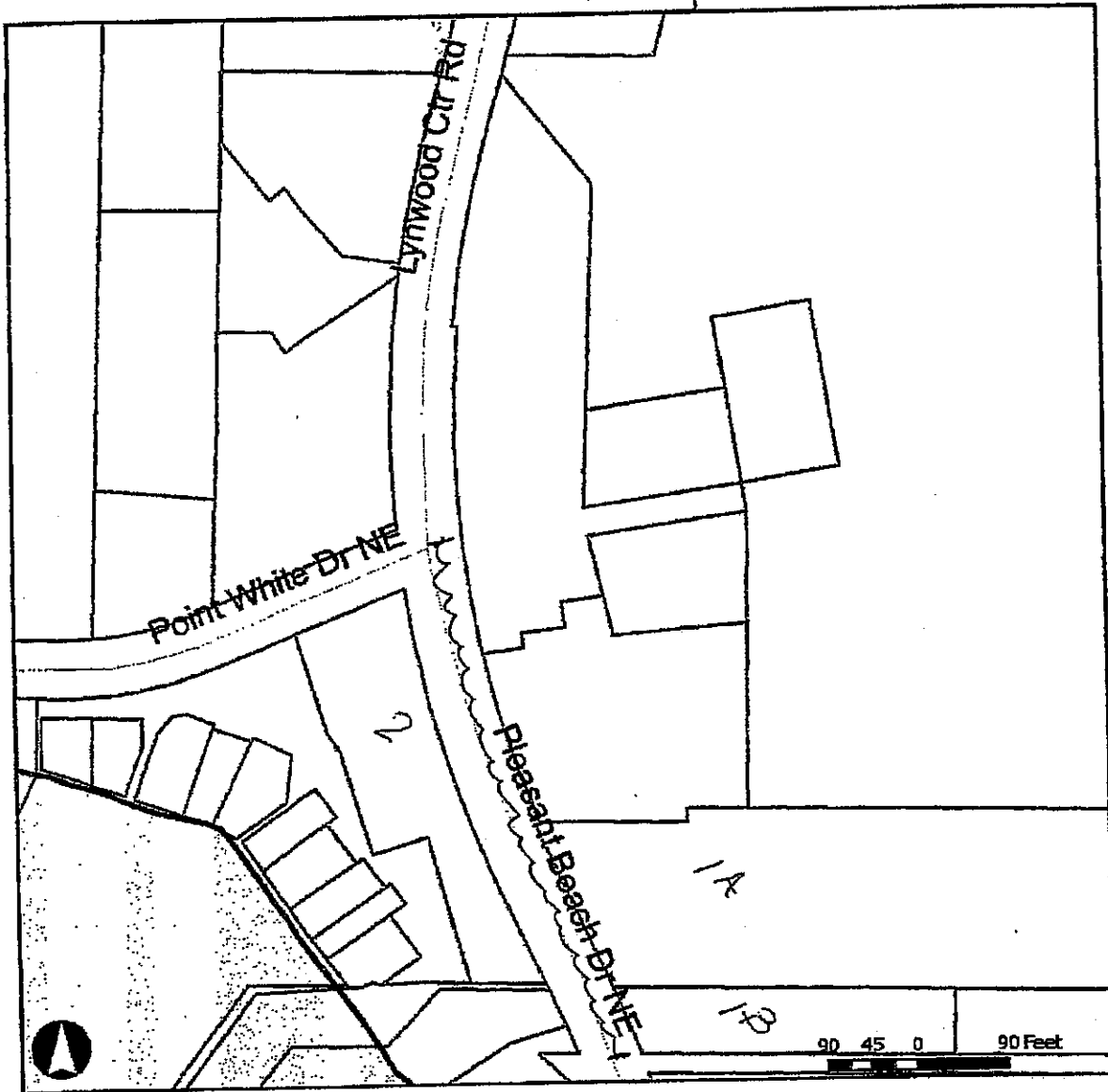
ROMERKOFF SERENITY LLC

By: 

Its: MEMBER

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SOUTH SAINSBIDGE WATER  
1A/1B Romerkoff Serenity LLC  
2 - Romerkoff, LLC  
may 8" DI and fire suppression to 2

# Map



Streams

Wetlands

Shoreline

Streets

Highway

Parcels

BI\_Background-Shoreline

BI\_Background-Land

BI\_Background-Water

### GIS Data Disclaimer

This data should be used for informational purposes only. This map does not represent a survey. Every effort has been made to ensure the accuracy of these data; however, the data may be dated, which would have an impact on its accuracy. The maps are provided without warranty or guarantee of any kind, expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. The parcel lines, and right of ways shown on these maps are for illustration purposes only and are not intended to be used as a survey product. User accepts all responsibility of the user's unauthorized use or transmission of any such data, or information from its actual or altered form.