

WATER SYSTEM EXTENSION AGREEMENT

THIS AGREEMENT is entered into this 20 day of December, 2013, between SOUTH BAINBRIDGE WATER SYSTEMS, INC., a Washington corporation, hereinafter referred to as the "Owner," and PBPBS, LLC, a Washington limited liability company, hereinafter referred to as "Customer."

RECITALS

1. Customer is constructing a recreational pool, kiddy pool and sauna with a building for restrooms and lifeguards (the "Facilities") and desires water service for the Facilities. Customer is proposing to extend, at Customer's sole cost, the Owner's water distribution main to serve said Facilities, which work will be done to Owner's standards and specifications.

2. Owner is willing to accommodate Customer's request to extend Owner's existing water main if such extension is constructed to Owner's standards and specifications.

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

AGREEMENT

1. Customer shall construct and perform the following to Owner's standards and specifications as approved by the Washington State Department of Health ("DOH"):
 - a) Customer will construct an eight inch (8") ductile iron main extension east on Pitts Path to Dotson Lane, a distance of approximately 150 feet. There will be a separate one inch (1") irrigation meter with a back flow prevention device. There is an above-ground tank for flushing the pools and sauna which will be served through a three-quarter inch (3/4") meter with a back flow prevention device. The building's first floor will house changing rooms, restrooms, showers and an office space for lifeguards. The use of the second floor is not known at this time. The connection to the building will be used to fill the pool, kiddy pool and sauna. Therefore, to ensure sufficient capacity, the building will be served by a two inch (2") meter. The meters will be located along Pitts Path as determined by the Company in the reasonable exercise of its judgment.
 - b) Where fire suppression is required, Customer shall also install a fire sprinkler vault, double check valve and a by-pass meter.
 - c) For ease of reference, this project will be described as Phase II.
 - d) Phase II will have eleven and one-half (11.5) equivalent residential units (ERUs). Customer agrees and covenants to pay for the eleven and one-half (11.5) ERUs in the amount EIGHTEEN THOUSAND FOUR HUNDRED DOLLARS (\$18,400.00). The EIGHTEEN THOUSAND FOUR HUNDRED DOLLARS (\$18,400.00) shall be due and payable two (2) business days after the execution of this Agreement. Only after payment in full is received, shall Owner issue a water availability letter.

e) The project is located off of the Lynnwood Center Road bearing Tax Parcel Nos. 9209030013 (the "Property"), legally described as follows:

i. PLEASE SEE EXHIBIT A

- f) All work shall be at Customer's sole cost and expense, according to specifications and at the location more specifically described on the attached Exhibit A, which Exhibit is incorporated by this reference. For convenience, the work to be done under this Agreement is referred to in this Agreement as the "Main Extension."
2. Customer warrants and represents that the building that is part of the Facilities is not required to have a fire suppression system. If a fire suppression system turns out to be required, Customer shall construct, at its own discretion, its own fire suppression system on Customer's Property. Customer will provide and construct such a system based upon Customer's own knowledge and for Customer's own purposes. Customer will retain ownership and shall be responsible for the maintenance and operation of any fire suppression system.
 3. If fire suppression is required, Customer shall provide the facilities to provide water to the Customer's fire suppression system, consisting of a six inch (6") ductile iron main off of the Main Extension with an appropriately sized turbine leak detection meter connected to the fire suppression system, which shall be installed by a duly qualified contractor possessing the necessary skills and credentials for installation of fire suppression services as chosen by Customer. The connection for fire suppression shall be a separate connection from the connection for domestic service described under Section 1. Said connection shall be used only for the provision of the fire suppression system and shall not be used for any other purpose, including, but not limited to, domestic water service.
 4. In addition to the foregoing, if fire suppression is required there are charges assessed to Customer by Owner for this service of Twenty Five Cents (\$0.25) per one hundred square foot of building space per month. Customer warrants that there are a total of twenty-five hundred (2500) square feet of space in the building which results in a charge of six dollars and twenty-five cents (\$6.25) per month if fire suppression is required.
 5. Customer agrees to pay the Owner's hook-up charge of One Thousand Three Hundred Twenty-Two Dollars And Twenty-Five Cents (\$1,322.25) per ERU, for a total of Fifteen Thousand Two Hundred Five Dollars And Eighty-Eight Cents (\$15,205.88) within two (2) business days after execution of this Agreement. Owner will provide a water availability letter to Customer only after Customer has paid, in full, all charges under this Agreement and all connection and facilities charges assessed under Owner's tariff.
 6. As described above, Customer must provide, at Customer's sole expense, back flow prevention devices. Customer covenants and agrees that it shall be responsible for maintaining the back flow prevention devices in working order. The back flow prevention devices shall be inspected and tested at Customer's expense by Washington Certified Back Flow Assembly Tester as required under WAC 246-290-490. The Customer may contract for the back flow certification with any Washington Certified Back Flow Assembly Tester. A copy of satisfactory certification will be provided to

Owner prior to the date of providing service under this Agreement and on an ongoing basis as testing certifications are required by state law and regulation (currently on an annual basis). The back flow prevention devices shall be accessible to the Owner and its employees at all times.

7. CUSTOMER SHALL INDEMNIFY AND HOLD OWNER AND OWNER'S DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS HARMLESS FROM ANY CLAIM FOR DAMAGE TO PROPERTY OR PERSONAL INJURY OR DEATH RESULTING FROM OR IN CONNECTION WITH THE WORK DONE UNDER THIS AGREEMENT OR THE FACILITIES PROVIDED UNDER THIS AGREEMENT, INCLUDING ATTORNEY'S FEES AND COURT COSTS, EXCEPT THAT WHICH IS THE RESULT OF THE GROSS NEGLIGENCE, BREACH OF CONTRACT, OR INTENTIONAL MISCONDUCT OF OWNER OR A VIOLATION OF CHAPTER 19.122 RCW BY THE OWNER.
8. Customer understands and agrees that Owner is not acting as an insurer of Customer or Customer's Property or property of others on the Property. Owner shall not be liable for any loss of life, personal injury or loss or damage to Property of Customer, its family members, agents, guests or invitees whether or not caused by failure of the Facilities and Customer shall hold Owner and Owner's directors, officers, employees and agents harmless from any such claim. Owner makes no warranties or representations as to performance of the Facilities. Nor shall Owner be liable under any theory in law or equity to Customer or Customer's family members, agents, guests or invitees for any consequential, incidental, punitive or other loss or damage beyond direct damages caused by Owner's gross negligence, breach of contract, or intentional misconduct or a violation of Chapter 19.122 RCW by the Owner, and then only in an amount not to exceed Ten Thousand Dollars (\$10,000.00).
9. THE PARTIES AGREE THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED FROM THIS TRANSACTION AND SHALL NOT APPLY TO ANY FACILITIES OR SERVICES PROVIDED. SECTIONS 7, 8 AND 9 ALL FORM THE BASIS UPON WHICH OWNER IS WILLING TO PROVIDE THE FACILITIES AND SERVICES AND OWNER WOULD NOT ENTER INTO THIS AGREEMENT EXCEPT ON THE BASIS OF THE ENFORCEABILITY OF THESE SECTIONS 7, 8 AND 9.
10. Customer hereby agrees to purchase insurance, in such amount as Customer deems adequate, to protect against loss by fire, which insurance Customer agrees shall be Customer's sole source of recovery for failure of the Facilities, except for Owner's gross negligence, breach of contract, or intentional misconduct or Owner's violation of Chapter 19.122 RCW. Said insurance policy shall include a waiver of subrogation as applied to Owner, its directors, officers, employees and agents. This obligation shall survive the transfer of the Main Extension to Owner. Further, Customer covenants and agrees that the continuing obligations contained herein, which include, but are not limited to Sections 6, 7, 8, 9 and 10, shall be incorporated into any lease or sales agreement with the lessee or purchaser of the commercial space and condominium units; provided that as to any lessee

or purchaser that becomes a retail customer of Owner, the Owner's tariff shall control as to the obligations and rights between said retail customer and Owner.

11. Except for the continuing obligations on Customer's successors-in-interest, which include but are not limited to Sections 6, 7, 8, 9 and 10, this Agreement does not create any relationship or obligation to any person or entity other than Customer.
12. Owner has two wells that are located in areas that would be affected by Phase II and a future phase for the project. One of the wells is located in the area where Customer intends to construct facilities for Phase II and a second well is located where the Customer's present intention is to construct seven residential unit buildings in a future phase. As listed on the Owner's Water Facilities Inventory (WFI) on file with DOH, the wells are listed as source 10 (Lynwood #6) and source 12 (Baker Hill Well), together the "Affected Wells." In consideration for Customer granting an easement on which Owner can construct a replacement well in the future, which easement is attached hereto as Exhibit B and incorporated herein, and in consideration for Customer paying for the cost of decommissioning the Affected Wells, Owner shall abandon the Affected Wells. Customer covenants and agrees that it will decommission the Affected Wells and shall bear all costs of any nature whatsoever associated with such decommissioning.
13. Customer agrees that there will be six feet of clearance around the meters for repairs and maintenance with no landscaping to impede access to the meters. Should Customer desire to install landscaping, and such landscaping is damaged or removed for access to the meters for repairs and maintenance, such landscaping shall be replaced at the sole cost of the Customer and Owner shall have no liability for such landscaping. Customer covenants and agrees that meters will not be located in asphalt or concrete or otherwise integrated into the construction of the Facilities for Phase II, but will be stand alone meters with free and clear access for Owner.
14. Developer shall design all irrigation and landscaping for Phase II served by the Main Extension to serve conservation goals. Design criteria shall be to use no more than eight hundred (800) gallons per irrigation ERU per day during peak season of May through September. The design criteria shall also be a usage criterion. The calculation of the eight hundred (800) gallon per ERU per day usage limitation shall be made on a monthly basis. Under this method of calculation, water that is not used in a month may not be saved or "banked" for use in a later month in the irrigation season. In addition, Customer agrees to adopt a "best practices" approach to the use of irrigation service. This best practices approach includes, but is not limited to, the following: (a) irrigation of grass areas at a rate of no more than one (1) inch per week; (b) sizing irrigation sprinklers and installing irrigation sprinklers to provide as near a uniform coverage of grass-landscaped areas as feasible; (c) not using watering practices that involve a "sponge" approach where water is applied in one area with the thought that it will eventually provide coverage of other areas through the water traveling over, through or under the ground; (d) not irrigating when the temperature is forecasted to exceed ninety (90) degrees Fahrenheit; and (e) installing rain sensors at each irrigation location so that irrigation does not occur during or shortly after rainfall. Customer warrants that it will use its best efforts to meet these conservation goals. Notwithstanding anything to the contrary contained herein, all

irrigation use is subject to the terms of Owner's tariff, including, but not limited to Owner's ability to limit or stop irrigation for periods of time.

- 15. Customer shall provide a construction performance and maintenance bond which Owner holds harmless from the negligence of Customer, its agents, liens, third party liability, and defective materials or equipment. A copy of said bond is attached hereto as Exhibit C and by this reference incorporated herein.
- 16. Customer or Customer's contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Customer, its agents, representatives, employees or contractors.

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

Worker's Compensation, etc. should have the following minimum limits:

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

Comprehensive General Liability shall have the following minimum limits:

- A. Bodily Injury (including completed operations and products liability):

\$1,000,000	Each Person
\$1,000,000	Each Accident
- B. Property Damage:

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

Property damage liability insurance will provide Explosion, collapse and Underground coverages where applicable.

Personal injury, with employment exclusion deleted
\$1,000,000 Annual Aggregate

All of the policies of insurance are required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage for it will not be cancelled, materially changed or renewal refused until at least 45 days prior to written notice has been given to the Owner by certified mail. All such insurance shall remain in effect until final payment and at all times thereafter when Customer may be correcting, removing or replacing defective work. In addition, Customer shall maintain completed operations insurance for at least one year after the final payment and furnish Owner with the evidence of continuation of such insurance. The original policy or a signed certificate of insurance shall be filed with the Owner.

17. Prior to the commencement of work, the Customer shall furnish Owner with acceptable proof of insurance in a form acceptable to the Owner.

All insurance certificates must name the project title and address.

All insurance certificates shall specifically require 45 days prior notice to the Owner of cancellation or any material change.

Owner shall be named as an additional insured on all certificates of insurance.

18. All work by Customer shall be subject to passing inspection by Owner's engineer for compliance with Owner's standards and specifications and DOH rules. Customer shall pay the cost of inspection within ten (10) days from the date of inspection at Owners engineer's normal rates for such work. In addition, Customer shall provide Owner with at least three (3) business days prior notice of work to be done by Customer or on behalf of Customer under this Agreement. Owner's engineer, the engineer's designated representative or a representative designated by Owner ("On-site Rep") shall be on-site during all construction and Customer shall pay the cost of the On-site Rep within ten (10) days of date of invoice. Any construction that occurs without On-site Rep being on-site at the time of construction shall result in such construction being excavated and reconstructed at Customer's sole cost and expense.

19. Customer shall furnish all necessary conveyances in form to be approved by the Owner, including duly executed easement for access to the area around said Main Extension for purposes of installing, operating, repairing, replacing, reconstructing, maintaining and using the Main Extension, a copy of which easement is attached hereto as Exhibit D.

20. From the Date of Acceptance of the Main Extension, the Owner shall, subject to the approval by the Washington Utilities and Transportation Commission, maintain and operate the Main Extension. Owner has no duty to accept the Main Extension, or any portion thereof if the Main Extension does not pass inspection by Owner's engineer or does not conform strictly to the Owner's Conditions and Standards.

As used in this Agreement the Date of Acceptance is the date that the last of the following events occur:

- A. Payment by Customer of all sums owned by Customer under this Agreement;
 - B. Delivery of all documents required hereunder; or
 - C. Main Extension passes inspection by Owner's Engineer.
21. Customer shall convey the Main Extension by a Bill of Sale in the form attached as Exhibit E, and incorporated herein by this reference.
 22. Nothing in this Agreement entitles Customer or Customer's successors or assigns to connect to Owner's water system, including Main Extension, except in accordance with the terms, conditions and charges and under tariff filed with the Washington Utilities and

Transportation Commission, which terms and conditions include, but are not limited to, the ability to limit use of water for irrigation under conditions of high demand.

23. **Owner does not warrant delivery of any specific quantity of water, except that Owner warrants that as of the date of this Agreement, its system meets the minimum DOH standards in effect at the time of this Agreement. Such standards may not be sufficient for large lots or agricultural use. Owner further warrants that, subject to the requirements of Sections 2 and 3, as of the date of this Agreement, its system meets the existing, applicable fire flow standards for its system.**
24. Customer shall pay the costs of Owner's attorney to develop this Agreement and seek approval of the Washington Utilities and Transportation Commission, not to exceed Three Thousand Dollars (\$3,000.00), which payment is due upon execution of this Agreement by Customer.
25. The Customer shall hold Owner and its officers, agents, and employees, harmless from all suits, claims or liabilities of any nature, including attorneys' fees, costs, and expenses for or on account of injuries or damages sustained by any persons or property resulting from negligent activities or omissions of the Customer, its agents, employees, or on account of any unpaid wages or other remuneration for services; and if judgment be rendered or settlement made requiring payment of damages by Owner, which damages are based in whole or in part on the negligent activities or omissions of the Customer, its agent or employees, the Customer shall pay the same.
26. This Agreement is subject to prior approval of the Washington Utilities and Transportation Commission ("Commission") and shall not take effect until thirty-one (31) days after filing with the Commission, or if suspended by the Commission, at such date as this Agreement is approved by the Commission. Commission approval is not warranted or guaranteed by Owner.
27. The Main Extension may be subject to approval by the Department of Health, and Bainbridge Fire Department and City of Bainbridge Island. If approval is required, Owner's performance hereunder is conditioned upon such approval. Owner does not warrant or guarantee such approval.
28. Customer warrants that all work done by Customer on the Main Extension shall conform to Owners Standards and Conditions and, in addition, shall have been performed in a workman-like manner and meet standards generally accepted in the industry.
29. To the extent allowed by law, the Customer shall hold Owner and its officers, agents, and employees, harmless from all suits, claims or liabilities of any nature, including attorney's fees, costs, and expenses for or on account of injuries or damages sustained by any persons or property resulting from negligent or willful activities or omissions of the Customer, its agents, employees, or on account of any unpaid wages or other remuneration for services or for failure to comply with Chapter 19.122 RCW ("dig-up laws") or any violation of county franchise requirements; and if judgment be rendered or settlement made requiring payment of damages by Owner, which damages are based in

whole or in part on the negligent or willful activities or omissions of the Customer, its agents or employees, or on account of any unpaid wages or other remuneration for services or for a violation of Chapter 19.122 RCW or county franchise requirements, the Customer shall pay the same.

30. 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:
PBPBS, LLC
c/o Kendra Vita
5424 Sand Point Way NE
Seattle, WA 98005

- 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.
- M. The Effective Date of this Agreement shall be upon approval of the Agreement by the Washington Utilities and Transportation Commission, which approval can be deemed to occur by the passage of time. Approval is not deemed to occur prior to the passing of thirty (30) days after the filing of this Agreement with the Washington Utilities and Transportation Commission.
31. Customer represents and warrants that it is a limited liability company in good standing in the State of Washington, that execution and performance of this Agreement has been duly approved by the members of the limited liability company and that the execution and performance of this Agreement will not place Customer in violation of any other agreement or undertaking.
32. Special Provision Related to Swimming Pool. The swimming pool may be filled only at such times as the prior written permission of Owner specifies in order to minimize the impact of that filling of the swimming pool may have on other customers. All water used in filling the swimming pool shall be charged at Owner's tariffed rate for residential consumption. The swimming pool may be drained and refilled no more than two (2) times in any calendar year. For any violation of this Section 32, Customer or Customer's successor-in-interest shall pay to Owner the sum of One Thousand Dollars (\$1,000.00) per violation as liquidated damages. This amount of liquidated damages is agreed by Customer and Owner to be a reasonable estimate of the potential damage to Owner's reputation, of the effect on Owner's ability to serve other customers, and of Owner

obtaining water for other customers due to the improper draining and filling of the swimming pool.

Entered into as of the date first set out above.

OWNER:

SOUTH BAINBRIDGE WATER
SYSTEMS, INC.

By: 

Maurlen G. Blossom

Its: President

CUSTOMER:

PBPBS, LLC

By: 

Kendra Vita

Its: Manager

EXHIBIT A

LOT B CITY OF BAINBRIDGE ISLAND SHORT PLAT RECORDED UNDER AUDITOR NUMBER 9209030073, VOLUME 8, PAGE 132, W-80) THAT PORTION OF GOVERNMENT LOT 5, SECTION 4, TOWNSHIP 24 NORTH, RANGE 2 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 4; THENCE ALONG THE EAST LINE OF SAID SECTION 4, S00*56'09 W 30.00 FEET; THENCE ALONG THE SOUTH RIGHT OF WAY OF NE BAKER HILL ROAD, N88*42'08 W 125.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE S00*56'09 W 180.00 FEET; THENCE S88*42'08 E 125.00 FEET TO THE EAST LINE OF SECTION 4; THENCE ALONG SAID EAST LINE, S00*56'09 W 879.22 FEET; THENCE N88*48'22 W 100.00 FEET; THENCE N00*56'09 E 15.00 FEET; THENCE N88*48'22 W 404.10 FEET; THENCE N00*56'09 E 307.72 FEET; THENCE N09*04'21 W 30.00 FEET; THENCE N80*56'37 E 100.01 FEET; THENCE N08*55'21 W 175.02 FEET; THENCE S80*56'30 W 100.06 FEET; THENCE S09*04'21 E 75.00 FEET; THENCE S81*57'23 W 142.22 FEET; THENCE N02*15'32 E 235.00 FEET; THENCE N38*05'06 W 142.66 FEET TO THE EASTERLY RIGHT OF WAY, N15*04'32 E 295.80 FEET; THENCE S88*42'08 E 553.91 FEET TO THE TRUE POINT OF BEGINNING. EXCEPT THAT PORTION OF GOVERNMENT LOT 5, SECTION 4, TOWNSHIP 24 NORTH, RANGE 2 EAST, W.M., DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SECTION 4, SAID TOWNSHIP AND RANGE, THENCE N88*42'08 W 678.91 FEET TO THE EAST MARGIN OF COUNTY ROAD AND THE TRUE POINT OF BEGINNING; THENCE S15*04'32 W 305.00 FEET; THENCE N88*39'21 W 150.00 FEET TO THE TRUE POINT OF BEGINNING, SITUATE IN KITSAP COUNTY, WASHINGTON. SUBJECT TO AND TOGETHER WITH EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.