

**PREPARED BY AND RETURN TO:**

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**WASTEWATER CREDIT AGREEMENT  
RELATED TO SEWER CAPACITY FOR THE SABIN PD**

THIS WASTEWATER CREDIT AGREEMENT RELATED TO SEWER CAPACITY FOR THE SABIN PD, ("**Agreement**"), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "**Effective Date**"), by and between the **City of Orlando, Florida**, a municipality duly enacted under the laws of the State of Florida, whose address is 400 South Orange Avenue, Orlando, Florida, 32802, "**City**", and GSSW OL, LC and Radebaugh Properties, Inc, whose mailing address is c/o GSSW Real Estate Investments, 500 N. Akard Street, Suite 2960, Dallas, TX 75201, (jointly, the "**Developer**").

WHEREAS, Developer owns certain property, (the "**Property**") generally located at 5151 Millenia Boulevard, consisting of approximately 50.67 acres, more particularly described in **Exhibit "A"** attached hereto and made a part hereof by reference; and

WHEREAS, Developer is developing the Property as a mixed-use project, consisting of up to 725,000 square feet of office use, 175 rooms of hotel/condo-hotel use and 1,174 units of multi-family use (the "**Project**"); and

WHEREAS, in order for the City to accommodate wastewater from the Project, the City's wastewater system capacity must be upgraded by the construction and/or installation of improvements and equipment (the "**Improvements**"); and

WHEREAS, due to Developer's intention to construct the Project in the near future and in an effort to expedite the City's process of design and construction/installation of the Improvements, Developer commissioned Donald W. McIntosh and Associates, Inc. ("**DWMA**") to conduct the Millenia Boulevard Preliminary Wastewater System Analysis (the "**Report**"), which was delivered to the City on May 21, 2013; and

WHEREAS, City staff have reviewed the Report and are satisfied with the information presented therein; and

WHEREAS, the Report is a prerequisite of the City's construction of the Improvements and the cost thereof would have been the City's responsibility; and

WHEREAS, due to the fact that installation/construction of the Improvements is not a site-related cost with respect to the Project, City has agreed to grant Developer a Wastewater Credit ("Credit") to offset the assessment of sewer benefit fees for development of the Project in the amount of Fifty-Nine Thousand Six Hundred Sixty-Seven and 58/100 (\$59,667.58) which was Developer's cost to produce the Report; and

WHEREAS, City staff have reviewed the DWMA invoices submitted by Developer and based on said review, have determined the reasonableness of the cost; and

WHEREAS, construction/installation of the Improvements, including production of the Report and the City's grant of the Credit constitute a public purpose by facilitating the delivery of sewer service to the citizens of Orlando; and

WHEREAS, the parties hereto desire to memorialize their agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which is acknowledged by the parties hereto, the City and Developer agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated into the substantive body of this Agreement as if set forth therein.

2. Independent Contractors. Developer its agents, contractor(s), subcontractors or design engineer, have performed all activities that are outlined in this Agreement as independent entities and not as agents, employees or representatives of the City, or their employees or representatives.

3. Credit. Developer shall receive a Credit in the amount of Fifty-Nine Thousand Six Hundred Sixty-Seven and 58/100 (\$59,667.58) for the reasonable costs actually incurred by Developer to produce the Report. City and Developer acknowledge that the Credit shall only be utilized to offset the Sewer Benefit Fee assessed against the Project and for no other purpose whatsoever. Developer or assigns shall pay the Sewer Benefit Fee less the Credit at the time of permit issuance for the Project.

4. Litigation and Attorneys' Fees. In the event any party to this Agreement should bring suit to enforce or interpret any provision hereof, the predominantly prevailing party shall

be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal.

5. Binding Effect. The terms and conditions of this Agreement shall run with the title to Lift Station property and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6. No Waiver of Regulatory Authority. Developer acknowledges that the City is the entity responsible for issuing building permits and certain other types of permits which will be required in connection with activities under this Agreement, as well as development of the Project and further acknowledges that nothing in this Agreement constitutes or is intended to operate as a waiver of such regulatory authority or the application of any applicable laws, rules or regulations. Furthermore, nothing herein operates to vest any particular manner or means of development of the Project.

7. Amendment. This Agreement may not be terminated, modified or amended except by an instrument in writing signed by each of the parties.

8. Effective Date. This Agreement shall become effective on the date of full and complete execution by all parties hereto.

**SIGNATURES APPEAR ON FOLLOWING PAGES**

ATTEST:

**CITY OF ORLANDO**

\_\_\_\_\_  
Alana C. Brenner, City Clerk

By: \_\_\_\_\_  
Mayor \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY  
for the use and reliance of the City of Orlando,  
Florida only.

\_\_\_\_\_  
Chief Assistant City Attorney

\_\_\_\_\_, 20\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE

PERSONALLY APPEARED before me, the undersigned authority, \_\_\_\_\_  
and, Alana C. Brenner, well known to me and known by me to be Mayor \_\_\_\_\_ and City  
Clerk, respectively, of the City of Orlando, Florida, and acknowledged before me that they  
executed the foregoing instrument on behalf of the City of Orlando as its true act and deed, and  
that they were duly authorized so to do.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**SIGNATURES CONTINUE ON FOLLOWING PAGES**

**GSSW OL, LC.**, a Missouri limited liability company

By: GSSW WR I, LP, a Missouri limited partnership, its Management Member

By: Americo Services, Inc., a Missouri Corporation, its General Partner

By: \_\_\_\_\_  
Thomas W. Sabin, Vice President

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014 by Thomas W. Sabin as Vice President of GSSW OL, LC, a Missouri limited liability company, who is [ ] personally known to me or [ ] has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
(Name typed, printed or stamped)

Notary Public, State of \_\_\_\_\_

Commission No.: \_\_\_\_\_

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

**SIGNATURES CONTINUE ON FOLLOWING PAGE**

**RADEBAUGH PROPERTIES, INC.,** a Florida corporation

By: \_\_\_\_\_  
Charles W. Atwood, President

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014 by Charles W. Atwood as President of Radebaugh Properties, Inc., a Florida corporation, who is [ ] personally known to me or [ ] has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
(Name typed, printed or stamped)  
Notary Public, State of \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

## **EXHIBIT “A”**

WINDRUSH-RADEBAUGH PHASE 2 REPLAT, according to the plat thereof, as recorded in Plat Book 81, Pages 9 through 11 of the Public Records of Orange County, Florida.

Containing 50.672 acres more or less and being subject to any rights-of-way, restrictions and easements of record.