

**PREPARED BY AND RETURN TO:**

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**WASTEWATER CREDIT AGREEMENT  
FOR CONSTRUCTION OF  
LIFT STATION AT JUBILEE**

THIS WASTEWATER CREDIT AGREEMENT FOR CONSTRUCTION OF A LIFT STATION AT JUBILEE, ("**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 S. Orange Avenue, Orlando, Florida, 32801, "City", and **Grandeville at Jubilee Park 1, LLLP**, a Florida limited partnership whose mailing address is 650 S. Northlake Blvd., Suite 450, Altamonte Springs, FL, 32701, ("Owner").

WHEREAS, Owner owns certain property located in the southwest quadrant of the intersection of Lee Vista Boulevard and Goldenrod Road, "Property," consisting of approximately \_\_\_\_ acres, more particularly described in **Exhibit "A"** attached hereto and made a part hereof by reference; and

WHEREAS, Owner intends to develop the Property as a multi-family apartment project, "Project;" and

WHEREAS, in conjunction with development of the Project, Owner has agreed to complete construction of an existing lift station, "Lift Station," located at \_\_\_\_\_, more particularly described in **Exhibit "B"** attached hereto and made a part hereof by reference; and

WHEREAS, it is necessary to upgrade the City's wastewater system by completion of construction of the Lift Station in order to accommodate development of the Project; and

WHEREAS, the Lift Station will create a significant amount of wastewater capacity that is not necessary for development of the Project; and

WHEREAS, City and Owner have agreed that in consideration for Owner's completion of construction and installation of the Lift Station, City grants Owner a credit, "Credit," in the amount of the reasonable cost of constructing the Lift Station, not to exceed Six Hundred Forty Thousand Dollars (\$640,000.00); and

WHEREAS, Owner is solely responsible for the design, permitting and completion of construction of the Lift Station; and

WHEREAS, the completion of construction of the Lift Station and the payment of the City Reimbursement 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 Owner agree as follows:

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

2. Design and Construction. Owner is solely responsible for the permitting, design and completion of construction of the Lift Station. City has no responsibility or liability with respect thereto. In order to qualify for the Credit, Owner shall coordinate design of the Lift Station, including all specifications, with City staff, which design is subject to the City's review and approval. Owner shall comply with all applicable laws, rules, regulations and reasonable engineering standards in constructing the Lift Station. Owner shall also complete the construction of the Lift Station in substantial compliance with the City's permitted construction plans "Plans". The parties acknowledge that a portion of the Lift Station infrastructure, consisting of approximately 2,600 linear feet of 12" force main, a 10' diameter concrete wet well, a 7' x 7' concrete valve vault with the valves and piping installed, has already been constructed by a third party "Prior Construction". Prior to execution of this Agreement, Owner and City have jointly confirmed that upon completion of Owner's construction activities to complete the Lift Station as described in the Plans and issuance of a Certificate of Completion as described in Paragraph 5, below, "Owner's Construction", the Lift Station infrastructure will be acceptable and satisfactory for the Project and for the City's operation of the Lift Station.

3. Warranty/Maintenance Bond. Prior to certification of the Lift Station as described in Paragraph 5 below, Owner shall obtain from or by its contractor (the "Contractor") a two-year warranty/bond (in a customary form and reasonably acceptable to the City) on the materials and work performed with regard to the Lift Station in the amount of fifteen percent (15%) of the actual construction labor and material cost of the Owner's Construction. The City shall be named as additional beneficiary of the warranty/bond. The parties acknowledge that the bond shall only cover the Owner's Construction work and does not encompass work previously completed by a third party. The commencement date of the warranty/bond shall be the date upon which the Lift Station is completed and certified by the City as described in Paragraph 5 below, unless otherwise agreed by the parties.

4. Non-Conforming Work. In the event the Owner's Construction work on the Lift Station is discovered, whether by the City or Owner, including Owner's consultants or contractors, which is defective or otherwise non-conforming to the requirements of the Plans, the City or Owner shall promptly notify the other party of such defect or non-compliance. Owner shall, at its cost, immediately cause such work to be removed and replaced with conforming work or otherwise remedy the non-conforming work to the reasonable satisfaction of the City.

5. Certification. Upon completion of the Owner's Construction and the delivery of As-Built drawings to the City, the City shall promptly conduct an inspection. If the City determines that all work has been completed in substantial conformance with the Plans, the City shall notify Owner in writing of the City's approval of said construction. City shall also notify Owner of deficiencies in the Lift Station construction, if any, which must be remedied prior to the City's approval. Upon receipt of the City's written notification of approval of the Lift Station Owner shall cause the Contractor to submit a final completion certification, "Contractor's Certification," of the Lift Station. The parties acknowledge that the certification referenced herein only covers the Lift Station work conducted by Owner and does not encompass work previously completed by a third party. The Contractor's Certification shall be accompanied by the As-Built drawings as well as any necessary warranties, waivers and releases from contractors, subcontractors and suppliers, test certifications, operation manuals and documentation of approval of the construction by governmental agencies having jurisdiction other than the City, if any, as well as any other reasonable supporting documents required by the City. Upon the City's review and approval of the above items, City shall notify Owner, in writing, that it has determined final approval of the Lift Station and issued a Certificate of Completion. Upon the City's issuance of a Certificate of Completion, as described herein, and subject to the effective conveyance of the Lift Station site and all equipment to the City as described in Paragraph 10, below, City shall assume ownership and sole responsibility for the maintenance, operation and replacement of the Lift Station. Owner is solely responsible for the Lift Station until the City assumes ownership and maintenance obligations as described herein.

6. Independent Contractors. Owner, its agents, contractor(s), subcontractors or design engineer, shall perform 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.

7. Credit for Construction. The full cost of Owner's Construction of the Lift Station shall be borne by Owner. The final, reasonable costs actually incurred by Owner for Owner's Construction of the Lift Station, as verified by the City, shall define the amount of the Credit but shall not exceed \$640,000.00. The parties acknowledge that the Owner's current estimated construction cost for the Owners' Construction is \$ 455,000.00. To establish the amount of the Credit Owner , once the reasonable costs for the Owner's Construction have been actually incurred, Owner will provide City with a detailed cost break down, together with appropriate documentation, for the City's review and approval. City shall make its determination of the amount of the Credit within twenty (20) days of Owner's submittal of a complete cost break down. Any amendments to the scope of Owner's Construction following the City's initial approval of the Plans shall be resolved through an appropriate change order. If City has any objection to any element of the cost of the Owners' Construction, City shall notify Owner within the applicable thirty (30) day period and City and Owner agree to cooperate in good faith to resolve the issue. After the Owners' Construction is complete as evidenced by the City's issuance of a Certificate of Completion, described in Paragraph 5, above, the Credit shall become effective. City and Owner acknowledge that the Credit shall only be utilized to offset the Sewer Benefit Fee assessed against the Project and for no other purpose whatsoever. Owner shall pay the Sewer Benefit Fee less the Credit within ten (10) business days of the date that the Credit is effective as described above. In no event shall a certificate of occupancy be issued for any portion of the Project prior to Owner's payment of the applicable Sewer Benefit Fee.

8. Indemnification. Owner shall indemnify, release and hold harmless the City, its agents, employees and elected and appointed officials, from and against all claims, damages, losses and expenses (including all costs and attorney's fees and all costs and attorney's fees on appeal), arising out of or resulting from the Owner's Construction which are caused in whole or in part, directly or indirectly, by Owner or any of its contractor(s), subcontractors, employees, agents and assigns, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. This provision shall survive termination of this Agreement to the extent necessary to protect the City from liability arising during the term of this Agreement, which shall be 24 months from the date of the City's issuance of a Certificate of Completion. Nothing herein operates as a waiver of the City's grant of sovereign immunity or the limits of liability established under Florida law. Notwithstanding the foregoing, Owner shall not be required to indemnify, release or hold the City harmless for any matters caused by the gross negligence or willful misconduct of the City; or by any failure to properly operate, maintain or repair the Lift Station after the City accepts the Lift Station pursuant to Section 5 above.

9. Insurance. Owner shall require the Contractor at all times prior to the City accepting the Lift Station pursuant to Section 5 above, to maintain general liability insurance in the amount of one million dollars (\$1,000,000.00) and automobile liability insurance in the amount of one million dollars (\$1,000,000.00) to afford protection against any and all liability, including claims for personal injury, death or property damage arising directly or indirectly from this Agreement and design and Owner's Construction. Said insurance shall be issued by solvent, reputable insurance companies authorized to do business in the State of Florida, naming the City of Orlando as an additional insured, with a combined-single limit of not less than \$1,000,000.00 with respect to bodily injury or death and property damage. Said insurance shall also be primary, and not contributory, as to any insurance coverage maintained by City of Orlando. This provision shall survive termination of this Agreement to the extent necessary to protect the City from any covered liability arising from Owner's Construction. Nothing herein operates as a waiver of the City's grant of sovereign immunity or the limits of liability established under Florida law.

10. Maintenance/Repairs and Conveyance of Easement. Prior to City's Certification of the Lift Station as provided in Paragraph 5, Owner shall own the Lift Station and retain any and all responsibility and liability with respect thereto, or in any way associated therewith. Notwithstanding anything to the contrary contained herein, the City's assumption of ownership and maintenance obligations under this Agreement is conditioned upon the conveyance of marketable title to the Lift Station site, including property necessary for access purposes, to the City in fee simple by special warranty deed free and clear of any and all liens, mortgages and encumbrances except for taxes accruing subsequent to January 1, 2014. Said conveyance shall not occur until Certification of the Lift Station as described in this Agreement. The form of the conveyance document and the extent of the area conveyed are subject to City approval.

11. Default. Failure by any party to comply with or perform any of the terms, conditions, covenants, agreements or obligations contained in this Agreement to be performed by each of them respectively, shall constitute a default under this Agreement, and (i) if such default is not cured or remedied within sixty (60) days after the non-defaulting party provides written notice to the defaulting party specifying with particularity the nature of such default, or (ii) if such default cannot be reasonably cured or remedied within such sixty (60) day period, the defaulting party fails to commence to cure or remedy the default within such sixty (60) day period and thereafter fails to diligently and expeditiously pursue such cure or remedy, the non-defaulting party, in its sole discretion, shall be entitled to exercise any and all rights and remedies available to it under this Agreement, at law and in equity, including without limitation, specific performance.

12. Termination. This Agreement may only be terminated by written consent of all of the parties.

13. 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.

14. 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.

15. No Waiver of Regulatory Authority. Owner acknowledge 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.

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

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

18. Time of the Essence. Time is of the essence of this Agreement.

19. Additional City Work. In the event City requires that Owner perform any repairs or changes to the Prior Construction, and in the event that the City has reviewed and approved the construction plans for said repairs and changes, the reasonable cost actually incurred by Owner for said construction, as verified by City in the manner described in Paragraph 7, above, shall be added to the Credit, up to the full amount of the Sewer Benefit Fee. Any amounts in excess thereof shall be promptly reimbursed by City to the Owner.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

ATTEST:

**CITY OF ORLANDO, FLORIDA**, a municipal corporation, organized and existing under the laws of State of Florida

By: \_\_\_\_\_  
Alana Brenner, City Clerk

By: \_\_\_\_\_  
Mayor / Mayor Pro Tem

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

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_, Mayor Pro Tem and \_\_\_\_\_, City Clerk, who is  
personally known to me who did (did not) take an oath.

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

Signed in the presence of Two Witnesses:

**GRANDEVILLE AT JUBILEE PARK 1, LLLP,**  
a Florida limited partnership

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

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

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

Title: \_\_\_\_\_

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

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

**ACKNOWLEDGMENT**

STATE OF FLORIDA  
COUNTY OF ORANGE

**PERSONALLY APPEARED** before me, the undersigned authority,  
\_\_\_\_\_, as \_\_\_\_\_, of Grandville at Jubilee  
Park 1, LLLP, a Florida limited partnership. He/she ☐ is personally known to me or ☐ who has  
produced \_\_\_\_\_ as identification.

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

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_