

THIS INSTRUMENT PREPARED BY:

Roy K. Payne, Esq.
Chief Assistant CITY Attorney
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801
(407) 246-2295

**SEWER BENEFIT FEE AGREEMENT BETWEEN
CITY OF ORLANDO AND CG ROXANE, LLC**

THIS AGREEMENT made and entered into this ___ day of _____, 2015, by and between the **City of Orlando**, a municipal corporation duly enacted under the laws of the State of Florida, whose address is 400 S. Orange Ave., Orlando, FL, 32801, "CITY", and **CG Roxane LLC**, a California limited liability company, the parent company of SAI Holdings, LLC, a Delaware limited liability company, whose mailing address is 2330 Marinship Way, Suite 190, Sausalito, CA, 94965, "OWNER".

WHEREAS, OWNER owns certain property located at 2224 Hazelhurst Avenue, Orlando, Florida in unincorporated Orange County, Florida, more particularly described in **Exhibit "A"**, attached hereto and made a part hereof by reference, "Subject Property"; and

WHEREAS, OWNER is developing the Subject Property as a bottled water production plant, "Project"; and

WHEREAS, in conjunction with development of the Project, OWNER will bring its bottled water production facilities on line in phases; and

WHEREAS, Section 30.22, City Code, provides that Sewer Benefit Fees shall be paid prior to connection to the CITY's sewer system; and

WHEREAS, OWNER will permit each of the phases of the Project so that each phase constitutes a separate connection to the CITY sewer system and OWNER will not be impacting the CITY's sewer system until each phase is implemented; and

WHEREAS, OWNER has therefore requested that the CITY allow OWNER to pay its sewer benefit fee in installments based on the issuance of permits for each phase; and

WHEREAS, OWNER and CITY desire to memorialize their agreement.

NOW, THEREFORE, in mutual consideration of the covenants contained herein, the sufficiency of which is hereby acknowledged by the parties, CITY and OWNER agree as follows:

1. Recitals. The above recitals are true and correct and incorporated into the substantive body of this Agreement.

2. Sewer Benefit Fee Payment Schedule. The Sewer Benefit Fee for the Project is \$272,800.00, "Fee." CITY and OWNER agree that Owner can pay the Fee in installments, "Installment(s)", at the time each phase of the Project is permitted and thereby connected to the CITY's sewer system as follows:

Bottled Water Production Waste

- A 60% reduction of the sewer benefit fee (\$12.40/gpd) due to the low organic load / clean water resulting in a rate of \$4.96/gpd. Based on an estimated total outflow of 51,000 gpd, the sewer benefit fee for production of wastewater would equate to **\$252,960** (51,000 gpd x \$4.96/gpd) at full build-out.
- The payment of the sewer benefit fee paid over six phases of operational outflow (i.e., \$42,160 per phase) to reflect a "pay as you use" system.
 - Phase 1 (1 Line; 1 Shift) - Estimated at 9,000 gpd - \$42,160
 - Phase 2 (1 Line; 2 Shifts) - Estimated at 18,000 gpd - \$42,160
 - Phase 3 (1 Line; 3 Shifts) - Estimated at 27,000 gpd - \$42,160
 - Phase 4 (2 Lines; 1 Shift) - Estimated at 35,000 gpd - \$42,160
 - Phase 5 (2 Lines; 2 Shifts) - Estimated at 42,000 gpd - \$42,160
 - Phase 6 (2 Lines; 3 Shifts) - Estimated at 51,000 gpd - \$42,160
- CG Roxane will meter its production waste outflow in order to assess when phases have been triggered and will apply to the City for a permit for additional wastewater capacity at each phase.

Domestic Sanitary Waste

- The Sewer Benefit Fee for domestic sanitary waste will be calculated at the full rate of \$10.15/gpd. Based on an estimated total outflow of 1,600 gpd, the sanitary sewer benefit fee for domestic sanitary waste would equate to **\$19,840** (1600 gpd X \$12.40/gpd) at full build-out.
- The payment of the sewer benefit fee paid over six phases of domestic sanitary waste outflow (\$3,306.67).
 - Phase 1 (1 Line; 1 Shift) - Estimated at 266 gpd - \$3,306.67
 - Phase 2 (1 Line; 2 Shifts) - Estimated at 532 gpd - \$3,306.67
 - Phase 3 (1 Line; 3 Shifts) - Estimated at 798 gpd - \$3,306.67
 - Phase 4 (2 Lines; 1 Shift) - Estimated at 1064 gpd - \$3,306.67
 - Phase 5 (2 Lines; 2 Shifts) - Estimated at 1330 gpd - \$3,306.67
 - Phase 6 (2 Lines; 3 Shifts) - Estimated at 1596 gpd - \$3,306.67
- CG Roxane will meter its outflow for domestic sanitary waste to assess when phases have been triggered will apply to the City for a permit for additional wastewater capacity at each phase.

Each Installment shall be paid prior to issuance of a permit for each of the six phases of the Project as described above. OWNER's failure to pull a permit prior to the implementation of each phase of the Project shall constitute a default under the terms of this Agreement, based on which, CITY may terminate this Agreement, at which time the Fee becomes due and payable in full, less any amounts already paid by OWNER, in addition to any other remedy available at law or equity. There may be other reasonable fees applicable to the CITY's provision of sewer services to the Project, which fees the OWNER shall be obligated to pay. CITY and OWNER agree that CITY shall be

authorized to inspect the Project, and any production records relating to each phase, at any time, upon reasonable notice to the OWNER, to verify whether a phase has been implemented. Subject to the forgoing requirements and all requisite permits and approvals, the CITY intends to allow OWNER to discharge a maximum total amount of 52,600 gpd (51,000 gpd low organic/clean stream and 1,600 gpd of sanitary waste) of waste into the CITY's sewer system.

3. Release. OWNER hereby releases the CITY, its representatives, employees and elected officials from any and all damages, claim or liability arising under this Agreement including, though not exclusively, the CITY's termination of this Agreement. This provision shall survive termination of this Agreement.

4. No Waiver/ No Vesting. This Agreement does not constitute a waiver of the CITY's regulatory authority and the Project remains subject to all applicable laws, rules, codes and regulations and OWNER must still obtain any and all necessary permits from the CITY for operation of the Project. This Agreement does not operate to vest any interest or right whatsoever.

5. No Commitment. This Agreement does not commit OWNER to pay for or achieve a certain waste outflow, except as provided for at each phase under Paragraph 2, above.

6. Indemnification. OWNER agrees that it shall indemnify, hold harmless and defend the CITY, its representatives, employees, and elected and appointed officials from and against all claims, damages, loss and expenses of any sort, including reasonable attorney's fees and costs, in any way arising out of or resulting from this Agreement, except to the extent that said claims, damages, losses, and expenses arise directly from CITY's negligence or intentional misconduct. This provision shall survive termination of this Agreement.

7. Termination. This Agreement may be terminated by mutual consent of the parties hereto or upon default as described in Paragraph 7, below.

8. Defaults. Failure by either 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 ten (10) 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 ten (10) 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, the right to terminate this Agreement, by providing ten (10) days written notice, "Notice," to the defaulting party of such termination. In the event that the CITY terminates this Agreement, the Notice shall reference the remaining portion of the Fee that is due and owing and OWNER shall pay said remaining portion within ten (10) days of the termination of this Agreement, (which is twenty days from the Notice), failing which the full amount shall bear interest at the highest rate allowed by law and shall become a lien in favor of the CITY upon the Subject Property. Such liens shall become effective upon the filing of a Claim of Lien by the CITY in the Official Records of Orange County, Florida and may be foreclosed in the manner as provided by Florida law. CITY retains any other remedy at law or in equity to enforce payment of the Fee. Upon

termination of this Agreement, all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except as otherwise provided herein.

9. Representatives Bound Hereby. This Agreement shall be recorded and shall be binding upon the successors, heirs, executors, administrators, representatives, or assigns of the OWNER, and upon all persons acquiring an interest thereunder.

10. Controlling Laws.

- a. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations, and policies of the CITY now in effect and those hereinafter adopted.
- b. The location for settlement of any and all claims, controversies, disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be in Orange County, Florida.
- c. The parties to this Agreement agree to comply with all applicable federal, state, and local laws, ordinances, rules and regulations pertaining to the utilization of the property under this Agreement.

11. Miscellaneous.

- a. This Agreement constitutes the entire Agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Any amendments to or waivers of the provisions herein shall be made by the parties in writing. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.
- b. If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto.

12. Legal Counsel. OWNER acknowledges that it has had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement, and that OWNER represents and warrants that it has sought such independent legal advice and counsel.

13. Attorney's Fees. In the event there is a dispute between the Parties regarding the terms and/or enforceability of this Agreement, the prevailing party in such an action shall be entitled to recover reasonable attorney's fees incurred to take any actions, through litigation or otherwise, to enforce this Agreement.

14. Negotiation. The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arm's length and that this Agreement and all documents executed in connection herewith were prepared and executed without undue influence exerted by any party or on any party. Further, no party is entitled to the benefit of any rules of construction with respect to the interpretation of any terms, conditions or provisions of this Agreement in favor of or against any person or party who drafted this Agreement.
15. Effective Date. This Agreement shall be effective upon the date of full execution by the parties.

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 the 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 _____, 2015 by _____, Mayor Pro Tem and _____, City Clerk, who is personally known to me who did (did not) take an oath.

Name
Notary Public
Serial Number: _____

SIGNATURES CONTINUE NEXT PAGE

CG ROXANE LLC, a California limited liability company

By: _____
Page Beykpour
Chief Operations Officer

Date: _____

CORPORATE ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF _____

PERSONALLY APPEARED before me, the undersigned authority, _____, as _____, of CG Roxane, LLC, a CA limited liability company. He/she is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal this _____ day of _____, 2014.

Notary Public
Print Name: _____
My commission expires:

EXHIBIT "A"

http://maps.ocpaf.org/webmap/default.aspx?pin=292209346000252 2224 Hazelhurst Ave OCPA Interactive MAP

File Edit View Favorites Tools Help

Suggested Sites Intranet ONET Online Teamlink Web Slice Gallery

RICK SINGH CFA ORANGE COUNTY PROPERTY APPRAISER **FLOpana** Home Mobile Feedback

Base Map Layers Legend Search Parcel Sales Analysis Tools Print

John Young Ave: 1:4800

Robertson Warehouse Co (NRA: 108,800 Sqft)

Robertson Warehouse Co (NRA: 118,050 Sqft)

North Trail Store It Park (NRA: 42,100 Sqft)

Xpeds (NRA: 104,950 Sqft)

Central Florida Lumber Supply Co

Lake Fairview Commerce Center (NRA: 66,750 Sqft)

100m 400ft

X:523365.5, Y:1544792.36

125%

10:37 AM 2/11/2015