

THIS INSTRUMENT PREPARED BY:

Alison Brackins  
Assistant City Attorney  
City of Orlando  
400 S. Orange Avenue  
Orlando, FL 32801  
(407) 246-2295

Parcel I.D. #'s: 26-22-29-9280-00-230; 26-22-29-1135-01-000

**COVENANT REGARDING SEWER CAPACITY AND  
REIMBURSEMENT BY CITY OF PORTION OF SEWER BENEFIT FEE**

THIS AGREEMENT is made this \_\_\_ day of May, 2015, by **ORANGE RI HOTEL VENTURE, LLC**, a Florida limited liability company (hereinafter referred to as the "OWNER"), and the **CITY OF ORLANDO**, a municipal corporation existing under the laws of the State of Florida (hereinafter the "CITY").

WITNESSETH

**WHEREAS**, the OWNER is the owner of certain real estate located within the corporate limits of the City of Orlando, County of Orange, State of Florida, located at **680 N. Orange Avenue** and **30 W. Colonial Drive**, and more particularly described as follows:

Lot 1, CAMDEN ORANGE COURT, according to the plat thereof, as recorded in Plat Book 66, Page 11, Public Records of Orange County, Florida;

AND

Lot 23, Less the West 10 feet thereof, and the East 10 feet thereof, PLAN OF JAMES M. WILLCOX ADDITION, according to the plat thereof, as recorded in Plat Book C, Page 64, Public Records of Orange County, Florida;

TOGETHER WITH: those certain Non-Exclusive Easement Rights as set forth and created in the Amended and Restated Cross Access/Joint Use Driveway Easement, recorded in Official Records Book 8865, Page 3772, Public Records of Orange County, Florida, over, under and across the lands described therein;

TOGETHER WITH: those certain Non-Exclusive Easement Rights as set forth and created in the Declaration of Restrictive Covenant, recorded March 13, 2006 in Official Records Book 8525, Page 3348; Amendment to Declaration of Restrictive Covenant, recorded April 24, 2008 in Official Records Book 9670, Page 819, Public Records of Orange County, Florida, over, under and across the lands described therein;

TOGETHER WITH: those certain Non-Exclusive Easement Rights as set forth and created in the Utility and Drainage Easement, by and between Orange Court, LLC, a Delaware limited liability company, and Colonial Drive Partners, LLC, a Florida limited liability company, recorded September 18, 2006 in Official Records Book 8865, Page 3791, Public Records of Orange County, Florida, over, under and across the lands

described therein (hereinafter referred to as the "Property"); and

**WHEREAS**, OWNER is currently constructing a hotel on the Property ("Hotel"); and

**WHEREAS**, by Customer Application Form dated September 26, 2013, the CITY estimated that the sewer service capacity which would be needed for the Hotel would be 10,920 gallons per day, average annual basis ("GPD")(70 GPD per bed); and

**WHEREAS**, based on the OWNER's design and proposed uses of the 138 Hotel rooms to be incorporated into the Hotel, a difference of opinion has arisen between the OWNER and the CITY regarding actual sewage flows that will be generated from the Hotel; and

**WHEREAS**, the parties hereto have reached an agreement that requires OWNER to pay a Sewer Benefit Fee based on the original estimate of 10,920 GPD for the Hotel, while allowing for possible reimbursement to OWNER of a portion of the Sewer Benefit Fee, based on actual sewage flows occurring during the first year issuance of a Certificate of Occupancy for the Hotel and requiring an additional payment by OWNER if actual sewage flows occurring during the first year after issuance of a Certificate of Occupancy for the Hotel exceed the amount of sewer capacity estimated; and

**WHEREAS**, each of the parties hereto represents that it has all right, power, and authority to enter into this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, and other good and valuable consideration given each to the other, the receipt and sufficiency of which is hereby acknowledged, OWNER and the CITY agree as follows:

1. **RECITALS**. The recitals contained above are true and correct and are incorporated herein as part of this Agreement.

2. **CALCULATION OF SEWER SERVICE CAPACITY; PAYMENT OF SEWER BENEFIT FEES**. The parties agree that at this time the sewage flow to be generated by the Hotel to be constructed by the OWNER is estimated to be 10,920 GPD. This estimate is based upon the proposed construction of 138 Hotel rooms with 156 Hotel beds as detailed in the Sewer Benefit Fees Work Sheet (the "Work Sheet") dated September 26, 2013, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference. As a condition precedent to the receipt of its Building Permit, the OWNER shall pay to the CITY a Sewer Benefit Fee for the sewer service capacity as described herein in the amount of 110,838.00 as calculated on the Work Sheet. Eighteen (18) Months following completion of construction and issuance of the Certificate of Occupancy of the Hotel, the parties agree that the average sewage flow of the hotel Building shall be calculated to determine if average usage is less than the estimate of the average sewage flow set forth in this Agreement. The calculations shall be based upon the best available meter data utilizing acceptable engineering techniques which shall be approved by the CITY in advance of any flow from the hotel Building and shall be performed at the expense of the OWNER by the OWNER and submitted to the City Eighteen Months (18) after completion of the construction and issuance of the Certificate of Occupancy. Said calculations shall be reviewed and approved by the CITY, with said approval not to be unreasonably withheld. If the average sewage flows for the Hotel are less than the estimated average sewage flows set forth herein (10,920 GPD), then no reimbursement is required by the CITY. If the average sewage flows for

the Hotel Building exceed the estimated average sewage flows set forth on the Work Sheet (calculated on an average annual basis), the OWNER covenants and agrees to pay to the CITY the additional sewer benefit fees owed in an amount equal to the \$10.15 per gallon for the actual sewage flow measured in GPD, less the sewer benefit fee partially paid at permit with the balance to be paid prior to receiving the Certificate of Occupancy. Said fee shall be paid by OWNER to CITY, as applicable, within thirty (30) days following approval of the calculation by the OWNER. If the actual sewage flows are between 100-110% of the estimated average sewage flows set forth on the Work Sheet, then no reimbursement is required.

3. **CITY SEWER SERVICE.** The CITY shall use reasonable diligence to provide sewer service to the OWNER's Property, but shall not be liable to the OWNER or its successors or assigns, for any damages, costs or attorney fees for breach of contract, or for failure, suspension, diminution or other variations of service caused by circumstances beyond the control of the CITY including, but not limited to, acts of God, acts of other governmental or regulatory agencies, fires, floods, or other unforeseen circumstances of a similar nature.

4. **OWNERSHIP OF THE PROPERTY.** The OWNER represents that it is the owner in fee simple of the Property described above.

5. **COVENANT RUNNING WITH THE LAND.** This Agreement shall be recorded in the Public Records of Orange County, Florida and shall run with the land and be binding on all assigns and successors of the OWNER.

6. **DEDICATION.** Nothing contained herein shall create any rights in the general public nor are there any intended beneficiaries of this Agreement other than those specifically stated herein.

7. **ASSIGNMENT/DELEGATION.** The obligations of this Agreement may not be transferred, or assigned, or delegated by the OWNER without the prior written consent of the CITY. If the OWNER attempts to transfer or assign its obligations without the CITY's consent, then any such assignment shall be null, void, and of no legal effect whatsoever.

8. **MODIFICATION OR TERMINATION.** The terms and provisions of this Agreement may be modified or supplemented only by a written instrument executed by the OWNER and CITY, their successors or assigns. This Agreement may be terminated upon the request of either the OWNER or CITY, or may automatically terminate once all conditions precedent are met as set forth in the terms and provisions of the Agreement herein.

9. **EFFECTIVE DATE.** This Agreement is to take effect immediately upon its execution.

10. **INTERPRETATION.** The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of 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. Amendments to or waivers of the provisions

- 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 parties hereto.
- c. The OWNER shall pay for the cost of recording this Agreement in the Public Records of Orange County, Florida.
- d. The OWNER hereby acknowledges that it has freely and voluntarily entered into this Agreement and that they have had the benefit or been given the opportunity to receive the advice of independent legal counsel for all negotiations in connection with this Agreement.
- e. The OWNER agrees to abide by the terms and provisions of the Sewer Service Policy as it exists now, and as it may be amended in the future. The OWNER further acknowledges receipt of a copy of the Sewer Service Policy.

- 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 of Orlando now in effect and those hereinafter adopted.
- b. The location for the settlement of any and all claims, controversies or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be in Orange County, Florida.
- c. The OWNER agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the Property subject to this Agreement.
- d. Any notice required or allowed to be delivered by this Agreement shall be in writing and be deemed to be delivered when (i) hand delivered to the person hereinafter designated, or (ii) upon receipt of such notice when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to a party at the address(es) set forth opposite the party's name below, or at such other address(es) as the applicable party shall have specified, from time to time, by written notice to the other party delivered in accordance herewith:

PROPERTY OWNER: Orange RI Hotel Venture, LLC  
801 N. Orange Avenue, Suite 530  
Orlando, Florida 32801

CITY:

City Clerk  
City of Orlando  
400 South Orange Avenue  
Orlando, FL 32802

and

Director of Public Works  
City of Orlando  
400 South Orange Avenue  
Orlando, FL 38202

[\*\*\*\*\* REMAINDER OF PAGE INTENTIONALLY LEFT BLANK\*\*\*\*\*]

IN WITNESS WHEREOF, the parties have caused these presents to be duly executed as of the day and year first written above.

**ORANGE RI HOTEL VENTURE, LLC**

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

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

**WITNESSES**

(1) \_\_\_\_\_

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

(2) \_\_\_\_\_

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

STATE OF FLORIDA  
COUNTY OF COUNTY

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_ as \_\_\_\_\_ of Orange RI Hotel Venture, LLC. He is personally known to me or has produced \_\_\_\_\_ as identification.

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

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

\* \* \* \*

**CITY OF ORLANDO**

\_\_\_\_\_  
Mayor/Pro Tem

ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of May, 2015, by \_\_\_\_\_, and \_\_\_\_\_, to me known as the Mayor/Pro Tem and City Clerk, respectively, of the City of Orlando, who acknowledged before me that they have executed the foregoing instrument for the purposes therein expressed, and that they were duly authorized to do so.

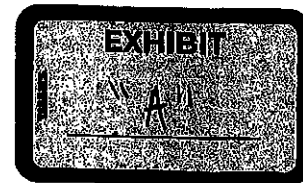
\_\_\_\_\_  
Notary Public

Commission Expires \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY  
for the use and reliance of the  
City of Orlando, Florida, only.  
\_\_\_\_\_, 2015.

\_\_\_\_\_  
ASSISTANT CITY ATTORNEY  
ORLANDO, FLORIDA

## Exhibit "A"



3/24/15

## SEWER BENEFIT FEES - CUSTOMER APPLICATION FORM

SBF321R

File/Plan . . . . . 19486 / 2  
Permit Application # . . . . . 2013-07458

Application Date . . . . . 9/26/13

## DEVELOPMENT INFORMATION:

Name . . . . . RESIDENCE INN BY MARRIOTT  
Location . . . . . 672 N ORANGE AV  
Description . . . . . NEW HOTEL

## CONCURRENCY INFORMATION:

Exempt

## OWNER INFORMATION:

ORANGE RI HOTEL VENTURE LLC  
801 N ORANGE AV 530  
ORLANDO, FL 328015202

## APPLICANT INFORMATION:

THOMAS A FOLEY  
2301 MAITLAND CENTER PK 250  
MAITLAND, FL 32751

Contact: THOMAS A FOLEY

## FEE CALCULATION INFORMATION:

Number of Units . . . . . 1  
Manually Calculate Fee . . . . . N

Number of Beds . . . . . 156  
Number of Seats:  
Bar . . . . . 0  
Dining . . . . . 0  
Outdoor Covered . . . . . 0  
Outdoor Uncovered . . . . . 0  
Theater . . . . . 0  
Church . . . . . 0

Number of Connections . . . . . 0  
Rate Table . . . . . CM 13

Total Fixture Units . . . . . 0  
Number of Students:  
Schools with Cafe . . . . . 0  
Schools without Cafe . . . . . 0  
Number of Staff:  
Schools with Cafe . . . . . 0  
Schools without Cafe . . . . . 0

## FLOW INFORMATION:

Requested Flow (GPD) . . . . . 9,708  
Treatment Plant . . . . . IronBridge

Credit Flow (GPD) . . . . . 1,212  
Plant Category . . . . . Large COM

## FEE INFORMATION:

Sewer Collection System Charge (SCSC) . . . . . \$ 11,164.20  
Water Pollution Control Charge (WPCC) . . . . . \$ 87,372.00  
Sewer Connection Charge (SCC) . . . . . \$ .00  
=====

Sub-Total . . . . . \$ 98,536.20  
Service Line Construction Cost (LAT) . . . . . \$ .00  
=====

Total Sewer Benefit Fee . . . . . \$ 98,536.20  
33% Total (of SCSC + WPCC + SCC) . . . . . \$ 32,516.95

Funds Paid to Date . . . \$ 83,764.30

Amount Due . . . . . \$ 14,771.90

## REMARKS:

NEEDS: PLATTING

Plan1

City Council approval required prior to Cert of Occupancy

Prepared By . . .

Checked By . . .

Date Prepared . . . / /

Date Checked . . .

*Handwritten signature*  
3/19/15



3/24/15

SEWER BENEFIT FEES - CUSTOMER APPLICATION FORM

SBF321R

PAGE: 2

File/Plan . . . . . 19486 / 2  
Permit Application # . . . . . 2013-07458

DEVELOPMENT INFORMATION:

Name . . . . . RESIDENCE INN BY MARRIOTT  
Location . . . . . 672 N ORANGE AV  
Description . . . . . NEW HOTEL

FIXTURE INFORMATION:

No Fixture Information is available for this Customer Application.

3/24/15

SEWER BENEFIT FEES - CUSTOMER APPLICATION FORM

SBF321R

PAGE:

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File/Plan . . . . . 19486 / 2  
Permit Application # . . . . . 2013-07458

DEVELOPMENT INFORMATION:

Name . . . . . RESIDENCE INN BY MARRIOTT  
Location . . . . . 672 N ORANGE AV  
Description . . . . . NEW HOTEL

NOTES:

final  
legal desc: JAMES M WILLCOX ADDITION C/64 LOT 23 (LESS W 10 FT) & (LESS E  
10 FT FOR R/W)  
New hotel with 249 beds @ 70 gpd = 17,430 gpd or \$176,914.50  
Gave 709 gpd credit from previous building or \$7,196.35  
New amount due \$169,718.15  
11/5/13 sag  
  
2/10/2015 Update  
  
Final  
New Hotel with 138 rooms with full kitchen @ 190 gpd per room = 26,220  
gall  
ons per day - 1,212 gpd credit flow = 25,008 gallons per day of capacity  
require @ \$10.15 / gpd  
  
Owner/engineer will provide documentation of flow from existing uses to  
compare flow, allow the payment of 1/3 for study, recommendation and City C  
ouncil approval  
  
February 10, 2015 Based on agreed fee by the Division Manager of Wastewater  
the flow rate will be based on beds at 70 gpd/bed with an agreement to rev  
ise the flow at the end of 18 months, as a true up of the flow lower or hig  
her of 110%  
Balance due prior to C/O is \$14,771.90  
  
156 beds x 70 gpd/bed x \$10.15/ gallon = \$110,838.00  
Less a credit of 1,212 gpd x \$10.15 / gallon = (\$12,301.80)  
Less down payment received to get the building permit (\$83,764.30)  
Amount due prior to issuance of C/O of Sewer Benefit Fee = \$14,771.90  
KSG

\*\*\*\*\* END OF NOTES \*\*\*\*\*

