

RESOLUTION 2017-063

BORDENTOWN SEWERAGE AUTHORITY
COUNTY OF BURLINGTON

**RESOLUTION OF THE BORDENTOWN SEWERAGE
AUTHORITY, IN THE COUNTY OF BURLINGTON,
STATE OF NEW JERSEY AUTHORIZING THE FORM OF
AN AMENDMENT TO A SANITARY SEWERAGE
IMPROVEMENT REIMBURSEMENT AGREEMENT
BETWEEN THE AUTHORITY AND G.S. REALTY CORP.**

WHEREAS, G.S. Realty Corp. (the “Developer”) entered into a sanitary sewerage improvement reimbursement agreement with the Authority on April 23, 2015;

WHEREAS, the Developer has completed the construction of the Phase I project work and is presently initiating with the assistance of Trammell Crow Company the Phase II construction work;

WHEREAS, Trammell Crow Company property owner in the vicinity of the Phase I and II projects and will require the capacity created by each of these projects in order for their properties to be developed; and

WHEREAS, the Developer is seeking to partially assign its rights and obligations under the April 23, 2015 reimbursement agreement with the Authority to Trammell Crow Company as they will be assisting with constructing the Phase II construction work.

NOW, THEREFORE, BE IS RESOLVED, by the Board Members of the Bordentown Sewerage Authority, in the County of Burlington, State of New Jersey that:

1. The first amendment and partial assignment of the Municipal Developers Agreement between The Bordentown Sewerage Authority and G.S. Realty Corp. attached hereto as Appendix "A" is hereby approved in its present form by the Authority.
2. The Authorities' Executive Director and Administrative Manager are hereby authorized to undertake any and all necessary actions to distribute the agreements in draft form to the Developer and their designated representatives for the purpose of the Developer's execution of the same.
3. The Authorities' Executive Director is hereby authorized to execute the agreements on behalf of the Authority.
4. Any and all resolutions inconsistent with this resolution are hereby repealed to the extent of such inconsistencies.

<u>RECORDED VOTE:</u>	Yay	Nay	Abstain	Absent
M. Ellen Gulbinsky	X			
James E. Lynch, Jr.	X			
Joseph R. Malone, III	X			
Leonard J. DeGroot	X			
Zigmont F. Targonski				X
Aneka Miller	X			

Date of adoption: July 17, 2017

THE BORDENTOWN SEWERAGE AUTHORITY

ATTEST:



Joseph R. Malone, III, Secretary

By: M. Ellen Gulbinsky
M. Ellen Gulbinsky, Chair

EXHIBIT "A"

**FIRST AMENDMENT AND PARTIAL ASSIGNMENT OF MUNICIPAL
DEVELOPER'S AGREEMENT BETWEEN THE BORDENTOWN SEWERAGE
AUTHORITY AND G.S. REALTY CORP. FOR THE PRO-RATA REIMBURSEMENT
FOR SANITARY SEWER IMPROVEMENTS FROM BENEFITTED PROPERTIES**

WHEREAS, G.S. REALTY CORP. (“Developer”) having its office at c/o Amboy National Bank, 3690 US Hwy. #9, Old Bridge, New Jersey, 08857, and **The Bordentown Sewerage Authority (“Authority”)**, a public body corporate and politic, organized pursuant to N.J.S.A. 40:14A *et seq.*, entered into a Municipal Developer’s Agreement dated April 23, 2015 (**“Original Agreement” together with this First Amendment “Developer’s Agreement”**), which provided for the construction of certain off-site sewer infra-structure improvements by Developer and reimbursement to Developer of a portion of the improvement costs from the owners of other properties who have benefitted from or will benefit from the improvements to be constructed; and

WHEREAS, Developer has completed the construction of the Project 1 work and will obtain a release of the bond for the Project 1 work; and

WHEREAS, Developer has posted a bond for the Project 2 work and the Project 2 work has been fully designed in accordance with those certain Plans entitled “Force Main Extension for Bordentown Sewerage Authority Township of Bordentown, Burlington County, New Jersey,” prepared by Maser Consulting, P.A., dated July 18, 2016; and

WHEREAS, it has been determined that the Project 2 work will be necessary in order for the sewer system to accommodate the sewage flow from the Developer’s proposed development of its property; and

WHEREAS, TC Bordentown Associates, LLC with an address of c/o Trammell Crow Company, 300 Conshohocken State Rd., Suite 250, Conshohocken, PA 19428 (**“Trammell”**) owns property in the vicinity of the Project 1 and Project 2 work and will require the capacity created by the Project 1 and Project 2 work in order to accommodate the sewage flow from Trammell’s proposed development; and

WHEREAS, Developer seeks to partially assign its rights and obligations under the Developer’s Agreement to Trammell; and

WHEREAS, if Project 2 is constructed in accordance with the Developer’s Agreement, it will provide conveyance system capacity beyond the need of the projected developments by Developer and Trammell.

NOW, THEREFORE, it is agreed by the parties hereto as follows;

1. The Authority agrees that the Project 1 work has been substantially completed and upon completion will be accepted by the Authority as part of its infrastructure system and that Developer is entitled to a release of the bond for Project 1 upon completion and

acceptance. The Authority has determined that the Project 2 work is required for the sewer system to have sufficient capacity for the proposed development on Developer's property.

2. The Authority acknowledges and agrees that Developer has posted the bond for Project 2 and Developer agrees that the bond for Project 2 shall remain in place until the Project 2 work is completed and accepted by the Authority.

3. The Authority agrees that Developer hereby partially assigns its right and obligation to construct Project 2 and to receive reimbursements from subsequent users to Trammell. Developer and Trammell shall share in the cost to complete Project 2 pursuant to a separate agreement between them. The permits for Project 2 and the construction of Project 2 shall be completed by Trammell or its successors and/or assign in accordance with the design of Project 2 approved by the Authority and otherwise as set forth in the Original Agreement.

4. The Authority agrees that any subsequent user needing to use all or a portion of the remaining capacity not used by Developer and Trammell in said Project 1 and Project 2, shall be referred by the Authority to Developer for a calculation of and payment of the subsequent developers proportionate share of the construction cost of said Project 1 upgrade costs and Project 2 upgrade costs. The Authority further agrees that it will not grant final approval for any construction until it receives certification from Developer that the obligations of the subsequent user to Developer and Trammell pursuant to the Developer's Agreement have been satisfied. The obligation of any subsequent user shall include interest at 10% per year calculated from the date the construction cost is certified. Any reimbursements pursuant to this Amendment shall be allocated between Developer and Trammell pursuant to a separate agreement and delivered to each party at their address set forth in the Developer's Agreement. Developer and Trammell, or their successors or assigns, as the case may be, may change their mailing address by sending written notice to all the other parties hereunder.

5. The proportionate share of a subsequent user shall be calculated according to the following formula: a fraction shall be a developed numerator of which shall be the design flow required by the subsequent user based upon the subsequent user's average daily flow of sewage calculated by the Authority and the denominator of which shall be 166 gallons per minute, which is the additional design flow capacity created by Project 1 and Project 2. The fraction that is thus determined, shall be multiplied times the actual construction cost of Project 1 upgrades and the Project 2 upgrades. The resulting product shall be the subsequent user's proportionate share of the Project 1 and Project 2 upgrades.

6. The Developer's Agreement shall remain in full force and effect for a period of twenty (20) years, from the completion of the construction of Project 2, as evidenced by the submission of the WQM-005 to the New Jersey Department of Environmental Protection for Project 2, which states that the system has been inspected by a New Jersey Licensed Professional Engineer and is installed correctly and ready for operation.

7. This AMENDMENT may not be modified orally. This AMENDMENT shall not be assignable by Developer or Trammell without the express written permission of the Authority.

8. This AMENDMENT shall be binding upon the Authority, Developer and Trammell and their respective heirs and assigns.

9. This AMENDMENT shall be recorded in the office of the County Clerk of Burlington County.

10. This AMENDMENT shall be governed by and construed in accordance with the laws of the State of New Jersey.

11. If any provision of this AMENDMENT is deemed invalid, void or illegal, then the provisions so effected shall be deleted from this AMENDMENT. All remaining provisions shall remain in full force and effect.

12. Defined terms used but not otherwise defined in this First Amendment shall have the meanings ascribed to such terms in the Original Agreement.


13. The Authority, Trammell, and Developer agree that each will take any and all actions, including the execution of documentation which may be necessary to effectuate the intent of the parties as set forth in this AMENDMENT. The Authority, Trammell, and Developer warrant that each has been duly authorized to execute this AMENDMENT required by law.

14. This AMENDMENT constitutes the entire understanding between the parties with respect to the subject matter hereof. This AMENDMENT may only be amended in writing and signed by both parties. This AMENDMENT may be executed in multiple copies, and if so executed, each copy of the AMENDMENT shall be deemed an original.


[Signature page follows]

In witness whereof, the parties have executed this Amendment by their proper corporate officers this 27th day of July, 2017.

Attest:


Secretary

Attest:


Elizabeth J. Kwelty, Admin Manager

Witness:


Lori Latosh, Admin Assist.


DEVELOPER:

G.S. Realty Corp.

By: 
President

AUTHORITY:

Bordentown Sewerage Authority

By: 
Richard D. Eustace, Executive Director


ASSIGNEE:

TC Bordentown Associates, LLC

By: ~~TC Lion Industrial, LLC~~

By: ~~TC Industrial Gr, LLC~~

By: ~~TC Industrial, Inc.~~

By: 
Jeffrey T. Goggins, Vice President