



Interoffice Memorandum

March 5, 2018

TO: Mayor Teresa Jacobs
and Board of County Commissioners

FROM: Raymond E. Hanson, P. E., Director
Utilities Department

A handwritten signature in black ink, appearing to read "Raymond E. Hanson" with a flourish at the end.

**SUBJECT: BCC Agenda Item – Consent Agenda
March 20, 2018 BCC Meeting
First Amendment and Restatement of Hotelier Management
Services Wastewater Flow Monitoring Agreement
Contact Person: Andres Salcedo, P. E.
Assistant Director, Utilities Department
407-254-9719**

The property owner, First Industrial Pennsylvania, L.P., and tenant, Hotelier Management Services, LLC, constructed a new commercial laundry facility at 550 Gills Drive, Suite 300. Wastewater capital charges for the property were determined based on flow estimates pursuant to subsection 37-5b of the Orange County Code.

The property owner and tenant have submitted a signed and sealed engineering study estimating wastewater flows utilizing a water recycling facility and have agreed to enter into an amended 10-year Flow Monitoring Agreement with the Utilities Department.

The agreement provides for a 10-year period to monitor the wastewater discharges from the facility. A monthly monitoring fee will be assessed during the 10-year period, and additional capital charges will be levied if the six-month average wastewater flow exceeds the signed and sealed engineering estimate at any time during the 10-year period.

The County Attorney's Office and Risk Management Division have reviewed the document and find it acceptable as to form. Utilities Department staff recommends approval.

Action Requested: Approval and execution of First Amendment and Restatement of Hotelier Management Services Wastewater Flow Monitoring Agreement by and among First Industrial Pennsylvania, L.P., Hotelier Management Services, LLC and Orange County for a 10-year period to monitor wastewater discharges.

District 4.

**FIRST AMENDMENT
AND
RESTATEMENT OF
HOTELIER MANAGEMENT SERVICES
WASTEWATER FLOW MONITORING AGREEMENT**

This First Amendment and Restatement of Hotelier Management Services Wastewater Flow Monitoring Agreement (the "**Agreement**") is made and entered into as of the date later executed below by and among FIRST INDUSTRIAL PENNSYLVANIA, L.P., a Delaware limited partnership, whose principal address is 311 South Wacker Drive, 39th Floor, Chicago, Illinois 60606 (the "**Owner**"), HOTELIER MANAGEMENT SERVICES, LLC, a Florida limited liability company, whose address is 14640 NW 60th Avenue, Miami Lakes, Florida 33014 ("**HMS**") (the Owner and HMS are referred to together as the "**Operator**") and ORANGE COUNTY, a charter county and political subdivision of the State of Florida whose address is 201 South Rosalind Avenue, Orlando, Florida 32801 (the "**County**").

RECITALS

WHEREAS, Section 37-5, Orange County Code (the "Code"), provides for the assessment of wastewater capital charges for (a) new connections to the wastewater system and for (b) increased flows to the wastewater system due to altering the interior or use of a structure; and

WHEREAS, establishments that have wastewater flows in addition to flows associated with standard Orange County Factors, as described in subsection 37-5(b)(5)b, of the Code, shall submit an estimate of wastewater flows; and actual flows may be subject to monitoring to verify the accuracy of the flow estimate; and

WHEREAS, wastewater capital charges for this property have been determined based on flow estimates pursuant to subsection 37-5(b)(5)b of the Code; and

WHEREAS, pursuant to Section 37-5(b)(1) of the Code, capital charges, and the right to service related thereto, shall be valid only for the property specified in the application for service; and the rights related to such capital charges may not be transferred or sold for use on any other property; and

WHEREAS, the Owner owns property located at 550 Gills Drive, Orlando, Florida 32824, which is located within Orange County, as such property is more particularly

described in Exhibit "A" attached hereto and incorporated by this reference (the "Property"); and

WHEREAS, the Property is located within the County's wastewater service territory and, therefore, the County is the appropriate wastewater service provider with jurisdiction over the Property; and

WHEREAS, the Owner purchased the Property from HC Orlando, LLC, who was an original party to a wastewater flow monitoring agreement entitled HOTELIER MANAGEMENT SERVICES WASTEWATER FLOW MONITORING AGREEMENT amongst the HC Orlando, LLC, HMS, and the County (the "Original Agreement"); and

WHEREAS, by novation, the Owner desires to assume all obligations and liabilities that were the responsibility of HC Orlando, LLC, under terms and conditions of the Original Agreement, as modified by this Agreement; and

WHEREAS the HC Orlando, LLC, leased a portion of the Property, as more particularly described in Exhibit "B" (the "Premises"), to Hotelier Consulting Services, LLC, a Florida limited liability company, pursuant to that certain Warehouse Lease Agreement dated October 13, 2015, as amended by that certain First Amendment to Warehouse Lease Agreement dated February 16, 2016, and assigned to and assumed by HMS pursuant to that certain Assignment and Assumption of Warehouse Lease dated February 22, 2016, and further amended by that certain Second Amendment to Warehouse Lease Agreement between the HC Orlando, LLC, and HMS dated September 29, 2016 (collectively referred to as the "Lease"); and

WHEREAS, the Owner has been assigned all rights and obligations of HC Orlando, LLC, under the Lease; and

WHEREAS, an existing suite on the Property, and adjacent to the Premises, has a wastewater capacity of 2.129 Equivalent Residential Units ("ERUs"), which is equivalent to 479 gallons per day ("gpd") (the "Existing Capacity Flow"); and

WHEREAS, HMS has constructed a new commercial laundry facility (the "Facility") on the Premises; and

WHEREAS, HMS commercial laundry facility generates more wastewater than originally estimated due to increase in use of the laundry facility, and HMS desires to install a water recycling facility (the "Recycling Facility") on the Premises to increase water efficiency of the laundry facility and reduce the discharge of wastewater from the Premises; and

WHEREAS, HMS, as tenant and on behalf of the Owner, has submitted to the County an engineering study, signed and sealed by a professional engineer licensed in the State of Florida, estimating the operational wastewater flows for the Facility to be less than 106.905 ERUs, which is equivalent to 24,054 gpd (the "Facility Capacity Flow"), and is

based on the Owner installing the Recycling Facility that reduces the Facility's wastewater flows significantly; and

WHEREAS, Owner and HMS understand that malfunctions of the Recycling Facility may increase the Billing Period Wastewater Flow, as defined and used in section 4 below, which will require Owner to pay for additional capital charges; and

WHEREAS, HMS, as tenant and on behalf of the Owner, has submitted to the County, construction plans for approval ("**Construction Plans**"), paid capital charges for the Facility Capacity Flow, and obtained an Orange County Building Permit ("**Building Permit**"); and

WHEREAS, HMS, as tenant and on behalf of the Owner, has requested the Existing Capacity Flow be combined with the Facility Capacity Flow for the purposes of this Agreement, which equates to a total of 109.034 ERUs and is equivalent to 24,533 gpd associated with the Property (the "**Current Capacity Flow**"); and

NOW, THEREFORE, and in consideration of fees and charges specified in this Agreement, the covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the County, HMS, and the Owner agree as follows:

SECTION 1. Recitals. The above Recitals are true, and are incorporated herein, and form a material part of this Agreement.

SECTION 2. Capital Charge Payments Remain with the Property. Pursuant to Section 37-5, Orange County Code, wastewater capacity may only be purchased for the property specified in the application for service, and may not be transferred to another property. Therefore, any and all wastewater capacity purchased to serve the Facility is purchased on behalf of the Property, runs with the Property, and may not be transferred to any other property.

SECTION 3. Current Capacity Flow. The estimated flow associated with the Property is 24,533 gpd on the day this Agreement is executed. Thereafter, the Current Capacity Flow shall equal 24,533 gpd plus the flow associated with any additional wastewater capacity purchased for the Property after the execution of this Agreement.

SECTION 4. Metering, Fees and Compliance.

- a. The Operator shall ensure that the existing potable water meter remains unobstructed for both the County and the Orlando Utilities Commission ("**OUC**") meter readings, since this project is located within the OUC water service area.
- b. A monthly monitoring fee, per Board of County Commissioners' Rate Resolutions, as amended from time to time, shall be assessed and shall be billed directly to HMS.

- c. No changes to the Property use, water and wastewater plumbing, or utility mains that may increase the wastewater flows for the Property from the Current Capacity Flow shall be made by the Operator without prior review, inspection, and written approval of the County. The County's approval shall not be unreasonably withheld.
- d. Wastewater flow will be monitored by the County, using OUC water meter readings, less a factor of 10% for evaporation losses, based on HMS' engineering study.
- e. The Operator shall allow the County access to the Property, at any time upon reasonable notice, to (a) inspect the meter, and the water and wastewater plumbing; (b) read the water meter; and (c) conduct monitoring tests, including, but not limited to tests of usage and flows.
- f. For the term of the Agreement, monitoring for compliance with the Current Capacity Flow will be based on a six month rolling average of wastewater flow. The "Billing Period Wastewater Flow" shall equal the volume (in gallons) of water consumption for the billing period, multiplied by a factor of 0.90 and divided by the number of days in that billing period. The volume for each billing period shall be calculated as the difference between the beginning and ending readings of all meters for the Property.
 - i. If any Billing Period Wastewater Flow exceeds the Current Capacity Flow, the County may issue a written warning to the Operator notifying them of the reading.
 - ii. If at any time after the Effective Date of this Agreement or December 15, 2017, whichever is later, the six month average Billing Period Wastewater Flow exceeds the Current Capacity Flow, HMS, on behalf of the Operator, shall purchase wastewater capacity in an amount calculated by the difference between the six month average Billing Period Wastewater Flow and the Current Capacity Flow. The cost of wastewater capacity (gpd) shall be calculated using the then current Orange County wastewater capital charge rates (as of the Effective Date, \$3,346.00 per ERU based on 225 gpd per ERU).
 - iii. If additional wastewater capacity is purchased, as described in paragraph 4.f.ii above, and at a later date a six month average Billing Period Wastewater Flow exceeds the cumulative Current Capacity Flow, HMS, on behalf of the Operator, shall again purchase wastewater capacity from the County as described in paragraph 4.f.ii above.

- iv. HMS, on behalf of the Operator, shall pay to the County within thirty (30) days any additional wastewater capacity charges that may be due and owing for the Property and the Facility based on the conditions set forth in this Agreement. If the additional fees assessed are not paid within thirty (30) days from the demand date, the County may draw on the additional wastewater capacity deposit pursuant to section 5 herein below. The cost of the ERUs shall be based on the Orange County wastewater capital charge rates in effect at the time additional wastewater capacity flow is required.
- v. Failure by HMS to provide monthly payment including, but not limited to, capital charges (if any), past due charges, related service charges, deposits, applicable utility or public service taxes, and current charges will result in the interruption of water and wastewater services to the Property.

SECTION 5. ERUs Purchased; Refund. In anticipation of this Agreement, HMS, on behalf of the Operator, has made a deposit for the purchase of additional wastewater capacity in the amount of \$256,517.74 (the "**Deposit**"), which represents 17,249 gpd of wastewater capacity based on the current value of one ERU. The actual number of ERUs purchased shall be calculated at the time the ERUs are needed pursuant to section 4 hereinabove. HMS, on behalf of Operator, may apply for a refund of the unused portion of the Deposit upon termination of this Agreement. Neither HMS nor the Operator shall have any right to collect interest on the Deposit. HMS and the Operator relinquish all rights to a refund of any unused portion of the Deposit if an application for a refund is not made within 180 days of termination of this Agreement.

SECTION 6. Indemnification of the County. The Operator shall defend, indemnify, and hold the County harmless for any and all claims and losses for personal injury, property damage, or financial loss arising at any time from any aspect of this Agreement, other than claims and losses arising from the negligence of the County, its employees or agents.

SECTION 7. Monitoring. The County shall continue monitoring the wastewater flow generated on the Premises for a period of ten (10) years from the Effective Date of this Agreement, or from December 15, 2017, whichever is later (the "**Monitoring Period**"), unless sooner terminated pursuant to section 13 below. In the event there is a change in tenant, the County may extend the period of monitoring, not to exceed a period of ten (10) years, if the use of the Property is not changed. In the event of a material breach of this Agreement by Operator, the County may extend the Monitoring Period for a period not to exceed ten (10) years from the date of the breach following written notice to the Operator of the breach of this Agreement, and provided that the Operator has not cured such breach within thirty (30) days following the date of the notice. For purposes of this Agreement, "material breach" shall mean (a) the failure of the Operator to pay or cause to be paid any amounts due hereunder, following notice and ability to cure such non-payment;

or (b) any failure of the Operator to provide the County (or its representatives) reasonable access to the meter to allow the County to monitor compliance with this Agreement; or (c) any breach of paragraph 4.c. above.

SECTION 8. Term of Agreement. The initial term of this Agreement shall be for the ten (10) year Monitoring Period as set forth in section 7 above. The term may be extended pursuant to section 7 above, or terminated sooner pursuant to section 13 below.

SECTION 9. Sale of Property. Except as provided in this paragraph 9, the Owner's right to sell or transfer the Property, or any portion of its ownership or leasehold interest in the Property, shall not be restricted by this Agreement provided, however, that the County must be provided with thirty (30) days prior notice of such sale or transfer. At the time of the closing of the sale or transfer of all or any portion of the Property, the successor party(ies) (the "**Purchaser**") shall execute an acknowledgment and agreement whereby the Purchaser acknowledges the existence of and agrees to be bound by the terms of this Agreement ("**Acknowledgement**"). Such Acknowledgment must be delivered to the County within thirty (30) days after the date of such sale or transfer. Upon delivery by the Purchaser of the executed Acknowledgment, the Operator shall be released of any and all claims, liability, or obligations under the terms of this Agreement. If Purchaser does not provide the County the Acknowledgement, then this Agreement shall terminate immediately and the Operator and HMS shall forfeit any right to a refund of any unused portion of the Deposit. Capital charges run with the land, as stated in section 2.

SECTION 10. Limitation on Assignment. If, pursuant to section 9 above, the Owner sells, transfers, or assigns all or any portion of its ownership or leasehold interest in the Property or any portion thereof, then the Owner may assign this Agreement *pro tanto* in accordance with section 9 and cause the transferee to assume all of the rights and obligations of Owner under this Agreement. The Owner shall assign its interests in this Agreement to another person or entity only after providing the County with thirty (30) days prior written notice of any such assignment.

SECTION 11. Change in Tenant. The Owner shall assume all the obligations and responsibilities of HMS upon the expiration or termination of the lease to HMS.

SECTION 12. Recording. The parties hereto agree that an executed copy of this Agreement, including the Exhibits attached hereto, shall be recorded at the Operator's expense in the Public Records of Orange County, Florida. The obligations imposed in this Agreement shall run with the land.

SECTION 13. Termination. This Agreement may be terminated upon written mutual consent of the Owner and the County for which notice shall be provided in accordance with section 14 below. The County may terminate this Agreement and the provision of wastewater service to the Property as set forth herein due to any material breach (as defined in section 7 above), after providing the Owner notice of the breach or anticipating breach, and providing the Operator thirty (30) days to cure the breach, and the Operator fails to cure the breach or anticipated breach. Notwithstanding anything to the

contrary herein, the Owner may terminate this Agreement, so long as (i) the use of the Premises is changed, in accordance with standard County procedures, to a use which does not require monitoring pursuant to Orange County Code Section 37-5(b)(5)b (as that section may be amended or transferred from time to time) as determined, in writing, by the County's Utilities Director, (ii) Owner is not in default under the terms of this Agreement, and (iii) the Owner provides the County with thirty (30) days prior notice of the effective date of such termination. Upon termination of this Agreement, the Owner shall be released of any and all claims, liability, or obligations under the terms of this Agreement.

SECTION 14. Notice. Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when (a) hand-delivered to the official hereinafter designated; (b) delivered when such notice is sent by Federal Express or other nationally recognized overnight courier service; or (c) received when such notice is sent by United States mail, postage prepaid, certified mail, return receipt requested, all to be addressed to a party at the address set forth opposite the party's name below, or such other address as the party shall have specified by written notice to the other party delivered in accordance therewith.

If to the County:	Orange County Utilities Department 9150 Curry Ford Road Orlando, Florida 32825 Attention: Assistant Manager, Utilities Customer Service
With copy to:	Orange County Administrator 201 South Rosalind Avenue, 5 th Floor Orlando, Florida 32802-1393
If to the Owner:	First Industrial Pennsylvania, L.P. C/O First Industrial Realty Trust, Inc. 5455 W. Waters Avenue, Suite 211 Tampa, FL 33634 Attention: Benjamin Wallert
With copy to:	First Industrial Realty Trust, Inc. 1661 Feehanville Drive, Suite 400 Mt. Prospect, IL 60056
If to HMS:	Hotelier Management Services, LLC 14640 NW 60 th Avenue Miami Lakes, Florida 33014 Attn: Agustin Rojas and Nanette Levi Phone: (305) 823-2278/(305) 219-9745 Email: agustin@hotelierlinen.com/nlopezlima@gmail.com

If to Operator: one notice to Owner and one notice to HMS

SECTION 15. Governing Law. This Agreement and provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, without giving effect to any choice of law or rules thereof which may direct the application of laws of another jurisdiction.

SECTION 16. Jurisdiction. Any legal proceeding of any nature brought by any party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, shall be exclusively submitted for trial before the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida; or, if the Circuit Court does not have jurisdiction, then before the United States District Court for the Middle District of Florida (Orlando Division); or if neither of such courts shall have jurisdiction, then before any other court sitting in Orange County, Florida, having subject matter jurisdiction. The parties consent and submit to the exclusive jurisdiction of any such court and agree to accept service of process outside the State of Florida in any matter to be submitted to any such court pursuant hereto and expressly waive all rights to trial by jury for any matters arising under this Agreement.

SECTION 17. Attorneys' Fees and Costs. If any party files suit or brings a judicial action or proceeding against the other to recover any sum due hereunder or for default or breach of any of the covenants, terms or conditions herein contained, each party shall be responsible for its costs, fees and expenses incurred (including the fees and expenses of attorneys and paraprofessionals) in connection with such suit, action or proceeding (whether or not such costs, fees and expenses are taxable to the other party as such by any law) through any and all final appeals arising out of such suit, action or proceeding.

SECTION 18. Headings. The headings or captions of paragraphs and descriptive headings in this Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

SECTION 19. Severability. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties and if the intention of the parties can continue to be effective. To that end, this Agreement is declared severable.

SECTION 20. No Third Party Beneficiaries. This Agreement is solely for the benefit of the formal parties hereto and no rights or cause of action shall accrue upon or by reason hereof, to or for the benefit of, any third party not a formal party hereto.

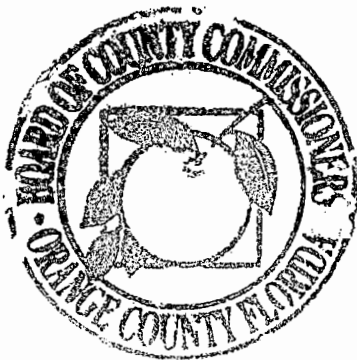
SECTION 21. Entire Agreement. This instrument constitutes the entire Agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement, and shall replace and be a substitute for the Original Agreement.

SECTION 22. Amendment. This Agreement shall not be amended unless the amendment is in writing and approved by the County, the Owner, and HMS.

SECTION 23. Effective Date. The Effective Date of this Agreement shall be the date of recording in the Public Records of Orange County.

SECTION 24. Liability. Notwithstanding anything to the contrary in this Agreement, in the event the Operator fails to meet its obligations under this Agreement, the County shall pursue its remedies from the following sources in the following order: (i) the Deposit and then, (ii) the Operator, jointly or severally.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
County Mayor

Date: 3.20.18

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

for By: *Nedra Perry*
Deputy Clerk

HMS: Hotelier Management Services, LLC,
a Florida limited liability company

By: Agustin J. Rojas
Agustin J. Rojas, General Manager

Date: 1/24/2018

Signed, sealed, and delivered in our
presence as witnesses:

Signature: [Signature]

Printed Name: Juan Pablo Perez

Signature: [Signature]

Printed Name: Lizly P. Wood

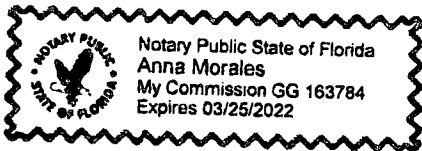
STATE OF Florida

COUNTY OF Dade

The foregoing instrument was acknowledged before me this 24 day of
January, 2018, by Agustin J. Rojas, as General Manager of Hotelier
Management Services, LLC, a Florida limited liability company on behalf of the Company.
He is personally known to me or has produced _____ as
identification.

[Signature]
Notary Public

Anna Morales
Name Printed or Stamped



My Commission Expires: 03/25/2022

OWNER: First Industrial Pennsylvania, L.P., a Delaware limited partnership

By: First Industrial Realty Trust, Inc, a Maryland corporation
Its managing partner

By: [Signature]
Its: Senior Vice President
Date: 1/29/18

Signed, sealed, and delivered in our presence as witnesses:

Signature: [Signature]
Printed Name: John C. Wright, Jr.

Signature: [Signature]
Printed Name: Thomas Ciritanova

STATE OF Missouri
COUNTY OF St. Louis

The foregoing instrument was acknowledged before me this 29th day of January, 2018, by Richard Prokup, as Senior Vice President of First Industrial Realty Trust, Inc, a Maryland corporation, managing partner of First Industrial Pennsylvania, L.P on behalf of the Limited Partnership. He is personally known to me or has produced Drivers as identification.

Michelle P Moore
Notary Public

Michelle P Moore
Name Printed or Stamped



My Commission Expires: Oct 1, 2019

EXHIBIT A
The Property

Lot 6 and the West 75.40 feet of Lot 7, CROSSROADS BUSINESS PARK, according to the Plat thereof as recorded in Plat Book 44, Pages 142, 143 and 144, Public Records of Orange County, Florida.

LESS the following parcel:

A parcel of land being a portion of Lots 6 and 7, CROSSROADS BUSINESS PARK, according to the plat thereof as recorded in Plat Book 44, Pages 142, 143 and 144, Public Records of Orange County, Florida. More particularly described as follows:

BEGIN at the Northeast corner of said Lot 6, also being the Northwest corner of said Lot 7, thence North 89°57'03" East, along the North line of said Lot 7, a distance of 75.40 feet; thence South 00°02'57" East, along the East line of the West 75.40 feet of said Lot 7, a distance of 330.00 feet to the South line of said Lot 7; thence South 89°57'03" West, along the South line of said Lot 7, a distance of 75.40 feet to the Southwest corner of said Lot 7 and Southeast corner of said Lot 6; thence continue South 89°57'03" West, along the South line of said Lot 6, a distance of 360.97 feet to a point of curvature of a curve concave Southerly and having a radius of 508.34 feet; thence, through a delta angle of 16°07'32", Westerly along the arc of said curve and South line of said Lot 6, 143.07 feet to a point on a non-tangent line; thence South 89°57'03" West, along the South line of said Lot 6, a distance of 6.43 feet; thence North 00°02'57" West a distance of 284.34 feet; thence North 89°57'03" East a distance of 42.68 feet; thence North 00°02'57" West a distance of 65.66 feet to a point on the North line of said Lot 6; thence North 89°57'03" East, along the North line of said Lot 6, a distance of 465.91 feet to the POINT OF BEGINNING.

EXHIBIT "B"

Approximately 51,351 square feet of warehouse space located at Suite 300, 550 Gills Drive, Orlando, FL 32824

The Premises

