



Interoffice Memorandum

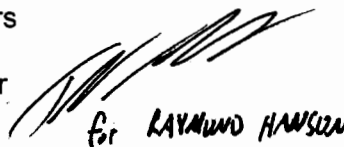
APPROVED BY ORANGE
COUNTY BOARD OF COUNTY
COMMISSIONERS

BCC Mtg. Date: November 1, 2016

October 17, 2016

TO: Mayor Teresa Jacobs
and Board of County Commissioners

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



for RAYMOND HANSON

SUBJECT: BCC Agenda Item – Consent Agenda
November 1, 2016 BCC Meeting
Hold Harmless and Indemnification Agreement for Grande Lakes
Plaza ABC PD
Contact Person: Andres Salcedo, P.E.
Assistant Director, Utilities Department
407-254-9719

The developer, NADG (Grande Lakes) LP, has submitted a proposed development plan to construct a commercial building and related vertical infrastructure on the property that also has an existing OCU 30-inch diameter wastewater force main.

Due to the increased likelihood of damage to the force main, the developer's improvements, or associated assets, the Development Review Committee conditioned approval of the development plan upon the completion of a hold harmless and indemnification agreement.

The agreement prevents the developer from constructing the building foundations closer than 20 feet to the centerline of the force main and provides that the developer will assume sole responsibility for any damage that occurs, including defending Orange County against any legal claims.

The Orange County Attorney's Office and Risk Management Division reviewed the agreement and finds it acceptable. Utilities Department staff recommends approval.

Action Requested: Approval of Hold Harmless and Indemnification Agreement
Parcel ID: 09-24-29-3051-04-000 by and between NADG
(Grande Lakes) LP and Orange County.

District 4.

BCC Mtg. Date: November 1, 2016

Instrument prepared by:

Return to:

Orange County Attorney's Office
P.O. Box 1393
Orlando, Florida 32802
Attn: Anthony Cotter

**HOLD HARMLESS AND
INDEMNIFICATION AGREEMENT
Parcel ID: 09-24-29-3051-04-000**

This Hold Harmless and Indemnification Agreement ("Agreement") is made by and between NADG (Grande Lakes) LP, a Delaware limited partnership, whose mailing address is 400 Clematis Street, Suite 201, West Palm Beach, Florida 33401 (such party or any successor owner of all or any portion of the "Property" constructing and/or owning all or any portion of the "Improvement", as those terms are hereinafter defined, is the "Owner"), and Orange County, a charter county and political subdivision of the State of Florida, whose mailing address is c/o Orange County Administrator, P.O. Box 1393, Orlando, Florida 32802-1393 (the "County").

WITNESSETH:

WHEREAS, the County was granted an easement for a wastewater force main by First City Savings Corp. of Texas, recorded in the Orange County Public Records at Official Records Book 4164/ Page 1608 of the Public Records of Orange County, Florida (the "Easement"); and

WHEREAS, the Easement is situated within Parcel 6A of the Project ABC PD, also referred to as the Grande Lakes Plaza ABC-PD, which is more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the County has constructed a 30-inch diameter wastewater force main (the "Force Main") within the Easement; and

WHEREAS, the Owner intends to submit a proposed development plan to the County for approval for the construction of a commercial building and related vertical infrastructure and assets (the "Improvement"); and

WHEREAS, the County has advised Owner that any vertical structures, including the Improvement, on the Property must not be constructed within twenty feet of the centerline of the Force Main; and

WHEREAS, the Owner understands and agrees that placing the Improvement within twenty feet of the centerline of the Force Main which is located in the Easement may significantly increase the likelihood of damage to the Force Main, the Improvement, or associated assets; and

WHEREAS, in spite of the risks, and recognizing the execution of this Agreement to be one of the conditions of approval for Owner's Development Plan, as set forth by the County during its Development Review Committee ("DRC") meeting of March 9, 2016, the Owner desires to construct the Improvement; and

WHEREAS, because this Agreement will be executed and recorded in the Official Records of Orange County, this Agreement serves as notice that the building foundations for the Improvements shall be constructed no closer than twenty feet from the centerline of the Force Main as measured from the point of the building foundation of the Improvement closest to the centerline of the Force Main ("Restriction") as a condition of the County's approval for the Development Plan.

NOW, THEREFORE, in consideration of these premises, the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the County hereby agree as follows:

1. **RECITALS.** The above recitals are true and correct and are hereby incorporated as a material part of this Agreement by this reference.

2. **HOLD HARMLESS AND INDEMNIFICATION.** To the extent permitted by law, the Owner, on behalf of itself and its successors, assigns, heirs, grantees, representatives, invitees, and permittees, hereby assumes the sole and entire responsibility for (a) any and all damage to the Force Main sustained by the County as a result of the construction of the building foundation of the Improvement within twenty feet from the centerline of the Force Main, (b) bodily injury (including death), and/or any and all damage to the Property, Improvements and any associated assets sustained as a result of any construction of the building foundation of the Improvement and any construction activities related to the Improvement within twenty feet of the centerline of the Force Main. To the extent permitted by law, the Owner, on behalf of itself and its successors, assigns, heirs, grantees, representatives, invitees, and permittees, shall fully indemnify and defend the (with legal counsel reasonably acceptable to the County), County, its Board of County Commissioners ("Board"), the Board members, officers, employees, contractors,

and agents from and against any and all losses, costs damages, injuries, liabilities, claims, demands, penalties and interest, including compensatory damages, costs, and expenses (including but not limited to attorneys' fees, paralegals' fees, consultants' fees and costs at all administrative, pretrial, trial, and appellate levels) of any kind or nature whatsoever related to this Agreement, including (a) injury (including death) to persons or damage to property caused by a rupture of or break in the Force Main directly or indirectly caused by the construction of the building foundation of the Improvement or any construction activity related to the construction of the Improvement located within twenty feet of the centerline of Force Main, and (b) injury (including death) to persons or damage to property caused by a rupture of or break in the Force Main, for any reason, if such injury (including death) to persons or damage to property occurred due to the location of the building foundation of the Improvement located within twenty feet of the centerline of Force Main. Notwithstanding anything to the contrary herein, Owner's indemnity contained in this Section 2 does not apply to any losses, claims, damages or other liabilities incurred more than twenty feet from the centerline of the Force Main to the extent solely caused by the negligence of the County, or those for whom they are in law responsible. Under no circumstances shall this Agreement be construed as authorizing construction within twenty feet of the centerline of the Force Main.

3. **NOTICES.** Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed given and received: (i) on the same day it is personally delivered to the intended recipient at the address set forth below; (ii) the next business day if sent by reputable overnight courier to the intended recipient at the address set forth below; or (iii) three business days after it is deposited in the United States registered or certified mail, postage prepaid, return receipt requested, to the address set forth below:

If to the Owner: NADG (Grande Lakes) LP
1250 Caroline Street, Suite 220
Atlanta, GA 30307 USA
Attn: Property Manager

With a copy to: Centrecorp Management Services LLLP
2851 John Street, Suite 1
Markham Ontario, L3R 5R7 Canada
Attn: Executive Vice President

If to the County: Orange County Utilities Department
9150 Curry Ford Road
Orlando, Florida 32825
Attn: Director of Utilities

With copy to: Orange County Administrator
P.O. Box 1393

4. **COVENANTS RUNNING WITH THE LAND.** This Agreement shall run with the Property, and shall be binding on all parties during the time period that such party has a right, title or interest in the Property or Improvement described herein or any portion thereof, their heirs, representatives, and their successors and assigns.

5. **AMENDMENT/TERMINATION.** This Agreement may be amended or terminated only by express written instrument approved by the Board and the Owner.

6. **APPLICABLE LAW.** This Agreement and the 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 rules thereof that may direct the application of the laws of another jurisdiction.

7. **VENUE; JURISDICTION.** Any legal proceeding of any nature brought by either 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). The parties consent and submit to the exclusive jurisdiction of any such court and expressly waive all rights to trial by jury for any matters arising under this Agreement.

8. **ENTIRE AGREEMENT.** This Agreement embodies the entire understanding of the parties hereto, and supersedes all prior discussions and agreements between the parties hereto, and there are no further or other agreements or understanding, written or oral, in effect between the parties relating to the subject matter hereof. This Agreement does not revise, modify, amend, or alter in any way any land use approval or permit issued by the County with respect to the Property or any other property.

9. **RECORDATION.** Owner shall record an executed original of this Agreement at the Owner's expense, in the Official Records of Orange County, Florida within ten (10) days from the Effective Date of this Agreement.

10. **EFFECTIVE DATE.** This Agreement shall become effective on the date of execution by the County or the date of execution of the Owner, whichever is later ("Effective Date").

[SIGNATURES ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
County Mayor

Date: 11.1.16

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: *Kate Smith*
Deputy Clerk
Date: NOV 01 2016

[REMAINING SIGNATURES ON FOLLOWING PAGES]

Signed, sealed and delivered in our presence as witnesses:

OWNER:

NADG (GRANDE LAKES) LP, a Delaware limited partnership

By: NADG (Grande Lakes) GP, LLC, a Delaware limited liability company, its General Partner

Signature: [Signature]
Printed Name: Winnie Ho

By: [Signature]
Robert S. Green, Manager

Signature: [Signature]
Printed Name: Janie Warren

Date: AUGUST 16, 2016

PROVINCE OF ONTARIO
COUNTY OF YORK

The following instrument was acknowledged before me this 16th day of August, 2016, by Robert S. Green, as Manager of NADG (Grande Lakes) GP, LLC, as General Partner of NADG (Grande Lakes), LP, and authorized representative of NADG (Grande Lakes), LP, who is personally known to me or who as produced _____, as identification.

[Signature]
Notary Public, Province of Ontario

Heather Ball
Notary Printed Name or Stamp

My Commission Expires: N/A

EXHIBIT "A"

LEGAL DESCRIPTION

Parcel ID: 09-24-29-3051-04-000

A PORTION OF LOT 4, GRANDE LAKES NE QUADRANT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 66, PAGES 19 THROUGH 24, INCLUSIVE, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF SAID LOT 4, THENCE RUN N 22 °04'51"E ALONG THE WEST LINE OF SAID LOT 4, FOR A DISTANCE OF 510.67 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 3412 .00 FEET; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE AND SAID WEST LINE OF LOT 4 THROUGH A CENTRAL ANGLE OF 08°14'40" FOR A DISTANCE OF 490.96 FEET TO THE NORTHWEST CORNER OF SAID LOT 4; THENCE RUN S75°26'11"E ALONG THE NORTH LINE OF SAID LOT 4, FOR A DISTANCE OF 529.71 FEET; THENCE RUN S14°33'49"W ALONG SAID NORTH LINE OF LOT 4, FOR A DISTANCE OF 183.00 FEET; THENCE DEPARTING SAID NORTH LINE OF LOT 4 RUN N75°26'11 "W FOR A DISTANCE OF 280.79 FEET; THENCE RUN S15°09'17"W FOR A DISTANCE OF 138.63 FEET; THENCE RUN S00°05'05"W FOR A DISTANCE OF 267 .77 FEET; THENCE RUN S89°59'51 "E FOR A DISTANCE OF 135.05 FEET; THENCE RUN S00°08'27"W FOR A DISTANCE OF 30.09 FEET; THENCE RUN S89°59'51"E FOR A DISTANCE OF 36.57 FEET; THENCE RUN S00°03'19"W FOR A DISTANCE OF 270.10 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 4; THENCE RUN N89°51'40"W ALONG SAID SOUTH LINE OF LOT 4, FOR A DISTANCE OF 672.78 FEET TO THE POINT OF BEGINNING.

CONTAINING 9.433 ACRES, MORE OR LESS.