



Interoffice Memorandum

December 28, 2017

TO: Mayor Teresa Jacobs
—AND—
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director
Community, Environmental and Development
Services Department

SUBJECT: January 9, 2018 – Consent Item.
Lake Whippoorwill Landing PD - Dwell at Nona Place Escrow
Agreement and Dwell at Nona Place Hold Harmless and
Indemnification Agreement

The Lake Whippoorwill Landing PD/LUP (PD) is located east of Narcoossee Road, north of Tyson Road, and south of Kirby Smith Road. On August 29, 2017, the Board of County Commissioners (BCC) approved a substantial change to the PD. Pursuant to that substantial change, two conditions of approval were modified to allow the applicant to construct a temporary vehicular barrier at the southern terminus of a required cross-access drive contiguous to the adjacent Tyson's Corner development and to extend the amount of time the applicant has to remove a portion of an existing wall along the northern property boundary, which provides visual and sound abatement to an existing single family parcel.

Those conditions of approval also required the applicant to escrow the funds to pay for the eventual removal of the wall and vehicular barrier (and to make them available to the County should the applicant fail to perform) and to enter into a Hold Harmless and Indemnification agreement indemnifying the County for any liability or expenses incurred related in any way to the wall or the vehicular barrier, the removal thereof, or any Code Enforcement proceedings relating thereto.

The applicant submitted, and the County Attorney's office reviewed, the proposed Escrow Agreement among the County, Dwell Nona Place, LLC (the applicant) and Lowndes, Drosdick, Doster, Kantor & Reed, P.A. (the escrow agent), as well as the proposed Hold Harmless and Indemnification Agreement (Dwell at Nona Place) between Dwell Nona Place, LLC and the County.

Page Two
January 9, 2018 – Consent Items
Lake Whippoorwill Landing PD

ACTON REQUESTED: Approval and execution of 1) Escrow Agreement by and among Orange County, Dwell Nona Place, LLC and Lowndes, Drosdick, Doster, Kantor & Reed, P.A. and 2) Hold Harmless and Indemnification Agreement (Dwell at Nona Place) by and between Dwell Nona Place, LLC and Orange County. District 4

JVW: rep

Attachments

BCC Mtg. Date: January 9, 2018

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("**Escrow Agreement**") made and entered into by and among Orange County, a charter county and political subdivision of the State of Florida ("**County**") whose mailing address is P.O. Box 1393, Orlando, Florida 32802-1393, Dwell Nona Place, LLC ("**Owner**"), a Florida limited liability company, whose mailing address is 1735 Market Street, Suite 4010, Philadelphia, PA 19103, and Lowndes, Drosdick, Doster, Kantor & Reed, P.A., whose mailing address is 215 N. Eola Drive, Orlando, Florida 32801 ("**Escrow Agent**").

WITNESSETH:

WHEREAS, Owner is the owner of that certain residential development known as Dwell at Nona Place located on the property in Orange County, Florida more particularly described on Exhibit "A" attached hereto and made a part hereof (the "**Property**"); and

WHEREAS, in connection with the Property and the conditions of approval related to the Lake Whippoorwill Landing PD (the "**PD**") approved by Orange County on June 19, 2012, and amended on August 29, 2017, Owner is permitted to construct a temporary vehicular barrier (the "**Barrier**") at the southern terminus of the Cross Access Drive contiguous to the Tyson's Corner development; and

WHEREAS, the condition of approval 6.1. regarding the removal of the Barrier calls for the escrowing of the funds for such removal as provided herein; and

WHEREAS, Escrow Agent has agreed to serve as the Escrow Agent in accordance with the terms and conditions set forth herein;

WHEREAS, the County and Owner desire that Escrow Agent shall hold and release the escrowed funds subject to the terms and conditions set forth in this Escrow Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements herein set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.

2. **Establishment of Escrow Relationship; Acceptance by Escrow Agent.** Owner hereby retains Escrow Agent to serve solely as the Escrow Agent (and in no other capacity) with respect to the Escrowed Funds, as later defined herein, and Escrow Agent hereby accepts such retention.

3. **Escrowed Funds.** Owner has delivered funds in the amount of \$8,254.00 (representing 115% of the cost estimate of the Removal Cost of the Barrier) (the "**Escrowed**

Funds") to Escrow Agent for the purpose of ensuring that Owner performs all obligations under the PD conditions of approval as follows:

(a) County and Owner agree that the Barrier as defined above shall be allowed, subject to the PD conditions of approval, at the southern terminus of the Cross Access Drive contiguous to the Tyson's Corner development.

(b) The Barrier shall be removed by Owner following receipt of a notice from County directing full or partial removal of the existing eight foot wall on the northern boundary of the PD (the "**Wall**") as set forth in Condition 6.p. of the PD approved on August 29, 2017, and removal of the Barrier (the "**Notice**").

(c) Escrow Agent shall place the Escrowed Funds into an escrow account (the "**Escrow Account**") to be held, administered and distributed as provided for herein.

(d) The entire Escrow Account shall be available to Owner for use in removing the Wall and the Barrier, or to the County in the event the Owner fails to remove the Wall and Barrier within ninety (90) days from receipt of the Notice from the County.

(e) Owner shall pay any additional amounts that may be necessary for the complete removal of the Wall and Barrier to allow cross access between the Property and the property to the north of the PD.

(f) Owner shall, within ten (10) days after final approval of CDR17-06-183 enter into and record in the Public Records of Orange County, Florida, at Owner's expense, a Hold Harmless and Indemnification Agreement indemnifying the County for any liability or expenses incurred related in any way to the Wall or Barrier, the removal thereof, or any Code Enforcement proceedings related thereto, which Hold Harmless and Indemnification Agreement shall be in the form attached hereto as Exhibit "B."

4. **Disbursement of Escrowed Funds.** Upon performance of its obligations by the Owner to the County's satisfaction, County shall provide Escrow Agent with written notice of completion. Upon receipt of notice of completion of removal of the Wall and Barrier, Escrow Agent shall disburse the Escrowed Funds to Owner from the Escrow Account. Disbursements shall be payable to "Dwell Nona Place, LLC" and shall be delivered to the address provided in Section 14 below or such other address as Owner may direct in writing. In the event County determines that Owner has not fulfilled its obligations to remove the Wall and Barrier within ninety (90) days following receipt of the Notice from County, County shall submit written notification to Owner and Escrow Agent (the "**Noncompliance Notification**"). Upon receipt of such Noncompliance Notification, the Escrow Agent shall within ten (10) days transfer to County funds in the amount of any draw request from County for the Escrowed Funds for the removal of the Wall and Barrier by County. At the termination of this Escrow Agreement, funds not transferred to the County for the removal of the Wall and Barrier shall be disbursed to Owner without interest; provided, however, that Escrow Agent shall provide thirty (30) days written notice to County prior to such disbursement.

5. **No Constructive Knowledge.** Escrow Agent shall not be deemed to have knowledge of any matter or thing unless and until Escrow Agent has actually received written notice of such matter or thing, and then shall only be required to act on that knowledge in its capacity as Escrow Agent as further described herein. Escrow Agent shall not be charged with any constructive knowledge whatsoever.

6. **Indemnification of Escrow Agent.** It is agreed that the duties of the Escrow Agent are purely ministerial in nature and shall be expressly limited to the matters herein for which Escrow Agent is expressly obligated. Owner hereby indemnifies Escrow Agent and agrees to hold Escrow Agent harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits, or proceedings at law or in equity, and any other expenses, fees, or charges of any character or nature, which Escrow Agent may incur or with which Escrow Agent may be threatened directly or indirectly arising from or in any way connected with this Escrow Agreement, except in the case of gross negligence or willful misconduct of Escrow Agent, or any claims arising from, or in any way connected with, a breach of this Escrow Agreement by Escrow Agent or Escrow Agent's failure to follow the instructions contained herein. In connection therewith, Owner indemnifies Escrow Agent against any and all reasonable expenses, including reasonable attorney fees (pre-litigation, litigation, and appellate) and the cost of defending or prosecuting any action, suit, or proceeding or resisting any such claim, whether or not litigation is instituted. Nothing contained herein is intended as, nor shall constitute, a waiver by County of its sovereign immunity protections pursuant to Section 768.28, Florida Statutes (2017).

7. **Limitation of Remedies.** Owner and County expressly agree that the consideration, in part, for each of them entering into this Escrow Agreement is the willingness of the other to limit the remedies for all actions arising out of or in connection with this Escrow Agreement. Upon any failure by any party hereto to perform its obligations under this Escrow Agreement, each party shall be limited strictly to only the following remedies:

- (a) action for specific performance or injunction;
- (b) action for declaratory judgment regarding the rights and obligations of Owner and County;
- (c) any combination of the foregoing.

Owner and County expressly waive their respective rights to sue for damages of any type for breach of or default under this Agreement by any party hereto.

8. **No Obligation to Overdraw.** Notwithstanding any provision of this Escrow Agreement to the contrary, Escrow Agent shall not be required to make payment of an amount in excess of the balance in the Escrow Account.

9. **No Obligation to Pay Interest.** Notwithstanding any provision of this Escrow Agreement to the contrary, Escrow Agent shall not be required to make any interest payment on any balance in the Escrow Account.

10. **Capacity of Escrow Agent.** It is expressly understood and agreed by the parties that the Escrow Agent may also serve as attorney for Owner under this Agreement in addition to serving in its capacity as Escrow Agent under this Agreement.

11. **Term and Termination.** Unless terminated earlier as provided for in this Section, the term of this Escrow Agreement shall be for a period of fifteen (15) years, commencing upon the Effective Date, as later defined herein. This Escrow Agreement may be terminated as follows:

(a) Upon written notice given by Owner and County of cancellation of designation of Escrow Agent to act and serve in said capacity, in which event, cancellation shall take effect no earlier than twenty (20) business days after notice to Escrow Agent of such cancellation; or

(b) Upon Escrow Agent's resignation as Escrow Agent, which Escrow Agent may do at any time upon giving written notice to Owner and County of its desire to so resign; provided, however, that resignation of Escrow Agent shall take effect no earlier than twenty (20) business days after the giving of notice of resignation or ten (10) days after Owner and County have provided Escrow Agent with written notice of their selection for a successor escrow agent, whichever is later; or

(c) Upon disbursement of all Escrowed Funds as provided in Section 4.

Notwithstanding the foregoing, the fifteen (15) year term shall not apply to any portion of the Escrowed Funds that are subject to any active or pending draw request(s) pursuant to Section 4 above.

12. **Delivery of Escrow Property to Successor Agent.** Upon termination of the duties of Escrow Agent in either manner set forth in Section 11(a) or 11(b), Escrow Agent shall deliver all of the Escrowed Funds to the newly appointed escrow agent designated in writing by Owner and County. In the event the parties fail to agree upon a successor escrow agent pursuant to 11(b), above, within sixty (60) days from the date Escrow Agent provides notice of its resignation to Owner and County, Escrow Agent shall have the right to deposit the Escrowed Funds into the registry of an appropriate state court of competent jurisdiction in Orange County, Florida, and request judicial determination of the rights of the parties by interpleader or other appropriate action.

13. **Settlement of Dispute.** In the event Escrow Agent is joined as a party to a lawsuit by virtue of the fact that it is holding the Escrowed Funds, Escrow Agent shall, at its option, either: (a) tender the Escrowed Funds into the registry of the appropriate court; or (b) disburse the Escrowed Funds in accordance with the court's ultimate disposition of the case. In the event Escrow Agent tenders the Escrowed Funds into the registry of the appropriate court and files an action of interpleader naming Owner, County and any affected third parties of whom Escrow Agent has received actual notice, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith. Owner and County agree that Escrow Agent shall not be liable to any party or person whomsoever for the misdelivery to Owner and County or otherwise of any monies except where such misdelivery

shall be due to breach of this Escrow Agreement or by Escrow Agents willful misconduct, gross negligence, or breach of trust by Escrow Agent.

14. **Notices.** Any notice required to be given hereunder shall be in writing and hand delivered by messenger; mailed, postage prepaid, by United States Certified or Registered Mail, Return Receipt Requested; or dispatched by a nationally-recognized overnight mail delivery service, addressed to the parties as follows:

If to County:

Orange County, Florida
P.O. Box 1393
Orlando, Florida, 32802-1393
Attn.: Orange County Administrator
Facsimile: (407) 836-7399
E-mail: countyadmin@ocfl.net

If to Owner:

Dwell Nona Place, LLC
c/o The Klein Company
1735 Market Street, Suite 4010
Philadelphia, PA 19103
Attn.: Clay Chandler
Facsimile: (215) 751-9607
Email: cchandler@thekleincompany.com

If to Escrow Agent:

Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
215 N. Eola Drive
Orlando, Florida 32801
Attn: Miranda Fitzgerald, Esq.
Facsimile: 407-418-6340
Email: Miranda.fitzgerald@lowndes-law.com

Notice shall be deemed to have been given and received: (i) if by hand delivery, upon delivery; (ii) if by mail, three (3) days after the date first deposited in the United States mail; (iii) if by overnight courier; on the date shown on the courier's receipt as the date of actual delivery. Facsimile numbers and email addresses are provided as a convenience only; notification by either method is not sufficient to constitute notice. A party may change its address by giving written notice to other parties as specified herein.

15. **Waiver.** The failure of either party to insist in any one or more cases upon the strict performance of any one of the terms, covenants, conditions, or provisions of this Escrow Agreement shall not be construed as a waiver or a relinquishment of such party's right to insist on strict performance of any such term, covenant, condition, or provision in the future.

16. **Governing Law and Venue.** This Escrow Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. The parties acknowledge that personal jurisdiction upon proper service will be valid in the State of Florida, and that venue of all actions arising out of or related to this Escrow Agreement shall be proper only in a state court of competent jurisdiction located in Orange County, Florida.

17. **Modifications to Escrow Agreement.** Neither Escrow Agent nor any party shall be bound by any modification, cancellation or rescission of this Escrow Agreement unless in writing and signed by Escrow Agent and both parties.

18. **Cumulative Rights.** No right, power or remedy conferred upon Escrow Agent by this Escrow Agreement is exclusive of any other right, power or remedy, but each and every such right, power or remedy, shall be cumulative and concurrent and shall be in addition to any other right, power or remedy Escrow Agent may have under the Escrow Agreement or now or hereafter existing at law, in equity or by statute. The exercise of one right, power or remedy by Escrow Agent shall not be construed or considered as a waiver of any other right, power or remedy.

19. **Entire Agreement.** This Escrow Agreement contains the entire understanding between the parties and the parties agree that no representation was made by or on behalf of the other which is not contained in this Escrow Agreement, and that in entering into this Escrow Agreement neither relied upon any representation not especially herein contained.

20. **Binding Agreement.** This Escrow Agreement shall be binding upon Principals and Escrow Agent and their respective successors and assigns.

21. **Typewritten or Handwritten Provisions.** Handwritten provisions and/or typewritten provisions inserted in this Escrow Agreement, which are initialed by all parties, shall control over the printed provisions in conflict therewith.

22. **Captions; Days.** The captions contained in this Escrow Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Escrow Agreement or the intent of any provision contained herein. Each reference to "day" or "days" herein shall mean calendar days unless otherwise stated.

23. **Effective Date.** Upon execution by the last of the parties hereto, the Escrow Agreement shall be valid and binding retroactively to October 13, 2017, the date of receipt by Escrow Agent of the Escrowed Funds (the "**Effective Date**").

24. **Counterparts.** This Escrow Agreement may be executed in up to three identical counterparts, each of which, when executed, shall be deemed to be an original and all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed on the dates set forth below.

Signed, sealed and delivered in the presence of: ESCROW AGENT:

Nancy J. Ferri
Signature

Nancy J. Ferri
Print Name

LS
Signature

Kathryn Smith
Print Name

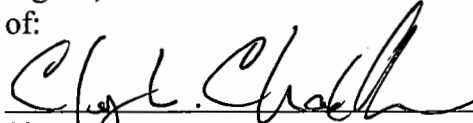
LOWNDES, DROSDICK, DOSTER,
KANTOR & REED, P.A.

By: Miranda F. Fitzgerald
Name: Miranda F. Fitzgerald Esq.
Title: Vice President

Date: 12/18/2017

[Signatures Continue on Following Pages]

Signed, sealed and delivered in the presence of:


Signature

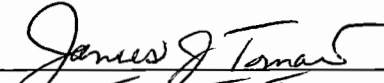
Clay L. Chandler
Print Name


Signature

GAIL FORD
Print Name

OWNER:

DWELL NONA PLACE, LLC

By: 

Name: James J. Tomarino

Title: Manager

Date: 11/27/17

[Signatures Continue on Following Page]

COUNTY:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

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

By: *Katie Smith*
Deputy Clerk

Print Name: **Katie Smith**



EXHIBIT "A"

Lot 2, DWELL AT LAKE NONA, according to the plat thereof as recorded in Plat Book 84, Page 88, Public Records of Orange County, Florida.

EXHIBIT “B”

Instrument prepared by:
Miranda F. Fitzgerald, Esq.
Lowndes, Drosdick, Doster, Kantor
& Reed, P.A.

Return to:
Orange County Attorney's Office
P.O. Box 1393
Orlando, Florida 32802

HOLD HARMLESS AND INDEMNIFICATION AGREEMENT (Dwell at Nona Place)

This Hold Harmless and Indemnification Agreement (the “Agreement”) is made by and between DWELL NONA PLACE, LLC, whose mailing address is 1735 Market Street, Suite 3910, Philadelphia, PA 19103 (“Applicant”) 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 (“County”).

WITNESSETH:

WHEREAS, Applicant holds fee simple title to property located in the Dwell at Nona Place project, which property is more particularly described in **Exhibit “A”** attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, Applicant has requested that County issue a building permit in order to construct a temporary vehicular barrier (the “Barrier”) on the Property; and

WHEREAS, Applicant understands and agrees that constructing the Barrier upon the Property is being done solely at Applicant's risk in accordance with the terms of the conditions of approval of the Lake Whippoorwill Landing PD (the “PD”) and that certain Escrow Agreement of even date herewith between Applicant and County, and Lowndes, Drosdick, Doster, Kantor & Reed, P.A., as Escrow Agent (the “Escrow Agreement”) pursuant to which such Barrier may be at risk of having to be substantially modified or completely removed at an unknown date in the future,

future, if necessary, by Applicant in accordance with the PD conditions of approval and, in spite of these risks, Applicant desires to commence construction of the Barrier upon the Property.

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, Applicant and 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. **ACKNOWLEDGEMENTS.** Applicant acknowledges that:

(a) Applicant is requesting, at its sole risk, that County issue building permits for the Barrier, and;

(b) Regardless of Applicant's request, Applicant has a continuing obligation related to removal of the Barrier under the PD and the Escrow Agreement.

3. **HOLD HARMLESS AND INDEMNIFICATION.**

(a) Applicant hereby assumes sole and entire responsibility for any and all costs associated with the need to modify or remove the Barrier, including any code enforcement actions.

(b) Applicant and its successors, assigns, heirs, grantees, representatives, invitees, and permittees hereby agree to release, indemnify, defend (with legal counsel acceptable to County), and hold County, its Board members, officers, employees, contractors, agents, and elected and appointed officials, harmless from and against any and all claims, suits, judgments, demands, liabilities, 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, including without limitation damage to property, arising out of or related in any way to the issuance of building permit(s) for the Barrier until such time as the Barrier has been removed.

4. **COVENANTS RUNNING WITH THE LAND.** This Agreement shall run with the Property, and shall be binding on all parties having any right, title, or interest in the Property described herein or any portion thereof, their heirs, representatives, successors, and assigns.

5. **AMENDMENT/TERMINATION.** This Agreement may be amended or terminated only by express written instrument approved by County and Applicant. The foregoing notwithstanding, this Agreement shall automatically terminate upon removal of the Barrier by Applicant.

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.

7. **RECORDATION.** An executed original of this Agreement shall be recorded, at Applicant's expense, in the Public Records of Orange County, Florida.

8. **EFFECTIVE DATE.** This Agreement shall become effective on the date of execution by County or the date of execution by Applicant, whichever is later.

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.

COUNTY:

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Teresa Jacobs
Orange County Mayor
Date: _____

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

By: _____
Deputy Clerk

Print Name: _____

DWELL NONA PLACE, LLC, a Florida limited
liability company

WITNESSES:

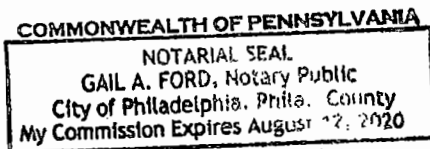
[Signature]
Printed Name: Clyde Chandler

[Signature]
Print Name: GAIL FORD

By: [Signature]
Print Name: James J. Tomaino
Title: Manager
Date: 11/27/2017

STATE OF PENNSYLVANIA
COUNTY OF PHILADELPHIA

The foregoing instrument was acknowledged before me this 27TH day of NOVEMBER, 2017,
by JAMES J. TOMAINO as MANAGER of DWELL NONA
PLACE, LLC, a Florida limited liability company, on behalf of said company, who is personally known
to me or has produced (type of identification) _____ as
identification.



[Signature]
Notary Public
Printed Name GAIL A. FORD

My Commission Expires: 8-12-20

Hold Harmless and Indemnification Agreement
Dwell Nona Place, LLC, 2017

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT "A"

Lot 2, DWELL AT LAKE NONA, according to the plat thereof as recorded in Plat Book 84, Page 88, Public Records of Orange County, Florida.

BCC Mtg. Date: January 9, 2018

Instrument prepared by:
Miranda F. Fitzgerald, Esq.
Lowndes, Drosdick, Doster, Kantor
& Reed, P.A.

Return to:
Orange County Attorney's Office
P.O. Box 1393
Orlando, Florida 32802

**HOLD HARMLESS AND
INDEMNIFICATION AGREEMENT
(Dwell at Nona Place)**

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WITNESSETH:

WHEREAS, Applicant holds fee simple title to property located in the Dwell at Nona Place project, which property is more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, Applicant has requested that County issue a building permit in order to construct a temporary vehicular barrier (the "Barrier") on the Property; and

WHEREAS, Applicant understands and agrees that constructing the Barrier upon the Property is being done solely at Applicant's risk in accordance with the terms of the conditions of approval of the Lake Whippoorwill Landing PD (the "PD") and that certain Escrow Agreement of even date herewith between Applicant and County, and Lowndes, Drosdick, Doster, Kantor & Reed, P.A., as Escrow Agent (the "Escrow Agreement") pursuant to which such Barrier may be at risk of having to be substantially modified or completely removed at an unknown date in the

future, if necessary, by Applicant in accordance with the PD conditions of approval and, in spite of these risks, Applicant desires to commence construction of the Barrier upon the Property.

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, Applicant and 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. **ACKNOWLEDGEMENTS.** Applicant acknowledges that:

(a) Applicant is requesting, at its sole risk, that County issue building permits for the Barrier, and;

(b) Regardless of Applicant's request, Applicant has a continuing obligation related to removal of the Barrier under the PD and the Escrow Agreement.

3. **HOLD HARMLESS AND INDEMNIFICATION.**

(a) Applicant hereby assumes sole and entire responsibility for any and all costs associated with the need to modify or remove the Barrier, including any code enforcement actions.

(b) Applicant and its successors, assigns, heirs, grantees, representatives, invitees, and permittees hereby agree to release, indemnify, defend (with legal counsel acceptable to County), and hold County, its Board members, officers, employees, contractors, agents, and elected and appointed officials, harmless from and against any and all claims, suits, judgments, demands, liabilities, 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, including without limitation damage to property, arising out of or related in any way to the issuance of building permit(s) for the Barrier until such time as the Barrier has been removed.

4. **COVENANTS RUNNING WITH THE LAND.** This Agreement shall run with the Property, and shall be binding on all parties having any right, title, or interest in the Property described herein or any portion thereof, their heirs, representatives, successors, and assigns.

5. **AMENDMENT/TERMINATION.** This Agreement may be amended or terminated only by express written instrument approved by County and Applicant. The foregoing notwithstanding, this Agreement shall automatically terminate upon removal of the Barrier by Applicant.

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.

7. **RECORDATION.** An executed original of this Agreement shall be recorded, at Applicant's expense, in the Public Records of Orange County, Florida.

8. **EFFECTIVE DATE.** This Agreement shall become effective on the date of execution by County or the date of execution by Applicant, whichever is later.

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.

COUNTY:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor
Date: 1.9.18

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

By: *Katie Smith*
Deputy Clerk

Print Name: Katie Smith



DWELL NONA PLACE, LLC, a Florida limited
liability company

WITNESSES:

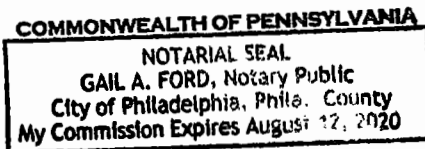
Clyt. Chandler
Printed Name: Clyt. Chandler

Gail Ford
Print Name: GAIL FORD

STATE OF PENNSYLVANIA
COUNTY OF PHILADELPHIA

By: James J. Tomaino
Print Name: James J. Tomaino
Title: Manager
Date: 11/27/2017

The foregoing instrument was acknowledged before me this 27TH day of NOVEMBER 2017,
by JAMES J. TOMAINO as MANAGER of DWELL NONA
PLACE, LLC, a Florida limited liability company, on behalf of said company, who is personally known
to me or has produced (type of identification) _____ as
identification.



Gail A. Ford
Notary Public

Printed Name GAIL A. FORD

My Commission Expires: 8-12-20

Hold Harmless and Indemnification Agreement
Dwell Nona Place, LLC, 2017

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT "A"

Lot 2, DWELL AT LAKE NONA, according to the plat thereof as recorded in Plat Book 84, Page 88, Public Records of Orange County, Florida.