

3G-1

Agenda Item #
PALM BEACH COUNTY

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 12/07/10 [X] Consent [] Regular
[] Workshop [] Public Hearing

Department
Submitted By: Office of Financial Management & Budget
Impact Fee Office

I. Executive Brief

Motion and Title: Staff recommends motion to approve: an indemnification agreement with Taylor Morrison of Florida, Inc. that will indemnify Palm Beach County for any legal claims and obligations in connection with an impact fee refund to be paid to Taylor Woodrow Incorporated.

Summary: The Impact Fee Office has approved a refund (\$518,961.45) of previously collected road impact fees paid in error by builders of a Palm Beach Gardens community known as Mirasol. Mirasol builders include Taylor Woodrow, the master developer and a subsidiary of Taylor Morrison, and other third party builders. The error occurred when road impact fees were paid in cash instead of charged against an \$8 million road impact fee credit earned by Taylor Woodrow for improvements made to PGA Boulevard. Taylor Woodrow reimbursed the third-party builders for the road impact fee payments made in error and subsequently applied for a refund of the road impact fees paid by the builders. Upon approval of the indemnification agreement, Taylor Morrison indemnifies Palm Beach County for any legal claims and obligations in connection with the impact fee refund to be paid to Taylor Woodrow Incorporated. District 1 (LB)

Background and Policy Issues: In 1999, Taylor Woodrow, the master developer of Mirasol, earned \$4.2 million of road impact fee credit for improvements to PGA Boulevard. At the request of Palm Beach County, construction on PGA Boulevard was halted so that PGA could be redesigned to accommodate new FDOT standards. The added improvements increased the road impact fee credit to \$8 million. However, Taylor Woodrow and other Mirasol builders incorrectly paid road impact fees in cash instead of charging the fees against the road impact fee credit. Taylor Woodrow reimbursed the other builders for the road impact fee payments made in error and subsequently applied for a refund. Upon approval of the indemnification agreement, Taylor Morrison agrees to indemnify Palm Beach County for any legal claims and obligations in connection with the impact fee refund to be paid to Taylor Woodrow.

Attachments:

- A. Indemnification Agreement

Recommended By:

Elizabeth Blasen 11/16/10
Department Director Date

Approved By:

[Signature] 11/18/10
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____

Net Fiscal Impact *

Is Item Included In Current Budget? Yes No _____

Budget Account No.: Fund 3501 Dept 361 Unit 1345 Object 4958

Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

* There is no impact on ad valorem funds. After the approval of the indemnification agreement a refund (\$518,961.45) of previously collected road impact fees will be **issued**.

C. Department Fiscal Review:

Kellie M. Dwyer
Impact Fee Manager
RD 11/16/10

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

N. Diaz 11/16/2010
OFMB
5/2/10
11/14/10
11/16/10
11/16/10
11/16/10

Dr. J. Jones 11/17/10
Contract Administration
L. Jones 11/17/10

B. Legal Sufficiency:

[Signature]
Assistant County Attorney

C. Other Department Review:

Department Director

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (this "Agreement") is made this ____ day of _____, 2010, by and between Taylor Morrison of Florida, Inc., a Florida corporation (the "Company"), and Palm Beach County, a political subdivision of the State of Florida (the "Indemnitee").

Preliminary Statements:

A. The Company's subsidiary, Taylor Woodrow Communities at Mirasol, Ltd. ("TWC"), is the developer of that certain master-planned community formerly known as "Golf Digest" and now known as "Mirasol" (the "Community"), located in the City of Palm Beach Gardens, Florida (the "City").

B. In connection with the development of the Community, TWC paid certain impact fees to Indemnitee for development of residential lots within the Community.

C. Additionally, certain third-party builders other than TWC (the "Builders") paid impact fees to the City in order to construct improvements upon residential lots within the Community, which impact fees were delivered by the City to Indemnitee. TWC then reimbursed the Builders for such impact fees. The amounts paid by TWC to the Builders included \$518,961.45 for those residential lots identified on the attached Exhibit "A", to which monies TWC is claiming entitlement (the "Impact Fees").

D. Indemnitee acknowledges that it has now been paid impact fees by both TWC and by the Builders in connection with development of certain residential lots within the Community as identified on the attached Exhibit "A". Accordingly, Indemnitee has agreed to refund the Impact Fees to TWC on the condition that the Company enter into this Agreement with Indemnitee.

The Company and Indemnitee hereby agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

2. Indemnity. In consideration for Indemnitee agreeing to refund the Impact Fees to TWC, the Company agrees to indemnify the Indemnitee for any Obligations (as defined below) which the Indemnitee becomes legally obligated to pay in connection with any Claim. As used in this Agreement, the term "Claim" shall mean any threatened, pending or completed Claim, action, suit or proceeding, whether of a civil or administrative nature, in which the Indemnitee is involved as a party and which is brought by one of the Builders (or its successors or assigns) by reason of the fact that Indemnitee refunded the Impact Fees to TWC rather than such Builder (or its successors or assigns).

3. Obligations. As used in this Agreement, the term "Obligations" shall include, without limitation: (i) damages, judgments, fines, penalties, settlements and costs incurred in connection with or arising out of any Claim; (ii) attorneys' fees (from the date when Indemnitee first engages counsel) and disbursements and any other expenses incurred in connection with investigating, defending, or participating in as a party (including any appeal) or preparing to

defend in connection with any Claim; and (iii) any expenses of establishing a right to indemnification under this Agreement.

4. Enforcement. If any Obligations which Indemnitee becomes legally obligated to pay in connection with or arising out of a Claim under this Agreement is not paid by the Company, or on its behalf, within ten business (10) days after a written Claim or request from Indemnitee has been received by the Company, the Indemnitee may at any time thereafter bring suit against the Company to recover the unpaid amount of the Claim or request and if successful in whole or in part, the Indemnitee shall be entitled to be paid also the Obligations of prosecuting such suit. The Company shall have the right to recoup from the Indemnitee the amount of any item or items of Obligations theretofore paid by the Company pursuant to this Agreement, to the extent such Obligations are not reasonable in nature or amounts; provided, however, that the Company shall have the burden of proving such Obligations to be unreasonable. The burden of proving that the Indemnitee is not entitled to indemnification for any other reason shall be upon the Company.

5. Subrogation. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

6. Indemnification of Obligations of Successful Party. Notwithstanding any other provision of this Agreement, to the extent that the Indemnitee has been successful on the merits or otherwise in defense of any Claim or in defense of any Claim, issue or matter therein, including dismissal without prejudice, Indemnitee shall be indemnified against any and all Obligations incurred in connection therewith.

7. Partial Indemnification. If the Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the Obligations, but not, however, for the total amount thereof, the Company shall nevertheless indemnify the Indemnitee for the portion of such Obligations to which the Indemnitee is entitled.

8. No Presumption. For purposes of this Agreement, the termination of any Claim, by judgment, order, settlement (whether with or without court approval) or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that Indemnitee did not meet any particular standard of conduct or have a particular belief or that a court has determined that indemnification is not permitted by applicable law.

9. Advance of Obligations. Obligations incurred by the Indemnitee in connection with any Claim, except the amount of any settlement, shall be paid by the Company in advance upon request of the Indemnitee that the Company pay such Obligations. The Indemnitee hereby undertakes to repay to the Company the amount of any Obligations theretofore paid by the Company to the extent that it is ultimately determined that such Obligations were not reasonable or that the Indemnitee is not entitled to indemnification. Indemnitee's Obligation to repay the Company shall be unsecured and no interest shall be charged thereon.

10. Settlements Without Consent. The Company shall not be liable to indemnify Indemnitee under this Agreement for any amounts paid in settlement of any Claim effected without its written consent. The Company shall not settle any Claim for which the Company has assumed the defense (with Indemnitee's written consent) in any manner which would impose

any penalty on Indemnitee without Indemnitee's written consent. Neither the Company nor Indemnitee will unreasonably withhold their respective consent to any proposed settlement.

11. Notice of Claim. The Indemnitee, as a condition precedent to its right to be indemnified under this Agreement, shall give to the Company notice in writing as soon as practicable of any Claim made against it for which indemnity will or could be sought under this Agreement. In addition, the Indemnitee shall give the Company such information and cooperation as it may reasonably require and as shall be within the Indemnitee's power.

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Confirmation of execution by electronic transmission of a facsimile or emailed (e.g., "PDF") signature page shall be binding upon any party so confirming.

13. Severability. If any provision of this Agreement or any other agreement entered into pursuant to this Agreement is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder of this Agreement shall not be invalidated thereby and shall be given full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

14. Binding Effect. All of the terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective administrators, executors, legal representatives, heirs, successors and permitted assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company.

15. Notice. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, transmitted by fax, or mailed by registered or certified mail (postage prepaid), return receipt requested, addressed to:

If to the Company: Taylor Morrison
4905 West Laurel Street, Suite 100
Tampa, FL 33607
Attn: Todd Merrill, Vice President, Legal
(813) 227-4243

If to Indemnitee: Palm Beach County Government
2300 North Jog Road
West Palm Beach, FL 33411-2741
Attn: Willie M. Swoope, Impact Fee Manager, OFMB
(561)233-5025

or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery; (b) on the date of transmission with confirmed answer back; and (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

16. Third Parties. Unless expressly stated in this Agreement to the contrary, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to this Agreement and their respective administrators, executors, other legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the Obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

17. Governing Law. This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Florida without regard to principles of conflicts of laws.

18. Amendments. The provisions of this Agreement may not be amended, supplemented, waived or changed orally, but only by a writing signed by both parties and making specific reference to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and signed as of the day and year first above written.

ATTEST:

**SHARON R. BOCK
CLERK AND COMPTROLLER**


**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Chair

WITNESSES:

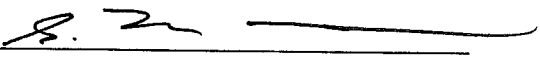
COMPANY:



Signature

Elaine A. Stulic

Name (type or print)




Signature

S. Todd Merrill

Name (type or print)

**Taylor Morrison of Florida, Inc.,
a Florida Corporation**


By: _____
Signature

Louis E. Steffens

Typed Name

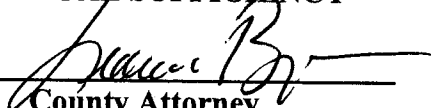
President

Title

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

(corp. seal)

By:


County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By:

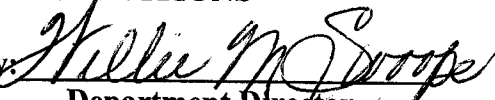

Department Director

EXHIBIT "A"

Parcel 8

Lot #	Builder		Refund
7	Frankel	\$	4,073.98
12	Mustapick	\$	3,650.29
20	Mustapick	\$	4,073.98
			11,798.25

Parcel 26

Lot #	Builder		Refund Paid to Kenco
19	Kenco	\$	3,055.20
22	Kenco	\$	3,055.20
55	Kenco	\$	3,055.20
56	Kenco	\$	3,055.20
57	Kenco	\$	3,055.20
58	Kenco	\$	3,055.20
59	Kenco	\$	3,055.20
60	Kenco	\$	3,055.20
62	Kenco	\$	3,055.20
64	Kenco	\$	3,055.20
66	Kenco	\$	3,055.20
67	Kenco	\$	3,055.20
69	Kenco	\$	3,055.20
70	Kenco	\$	3,055.20
71	Kenco	\$	3,055.20
74	Kenco	\$	3,055.20
76	Kenco	\$	3,055.20
77	Kenco	\$	3,055.20
78	Kenco	\$	3,055.20
79	Kenco	\$	3,055.20
82	Kenco	\$	3,055.20
83	Kenco	\$	3,055.20
84	Kenco	\$	3,055.20
85	Kenco	\$	3,055.20
91	Kenco	\$	3,055.20
98	Kenco	\$	3,055.20
99	Kenco	\$	3,055.20
107	Kenco	\$	3,055.20
108	Kenco	\$	3,055.20
111	Kenco	\$	3,055.20
114	Kenco	\$	3,055.20
116	Kenco	\$	3,055.20
117	Kenco	\$	3,055.20
119	Kenco	\$	3,055.20
120	Kenco	\$	3,055.20
121	Kenco	\$	3,055.20
123	Kenco	\$	3,055.20
125	Kenco	\$	3,055.20
126	Kenco	\$	3,055.20
127	Kenco	\$	3,055.20
128	Kenco	\$	3,055.20
129	Kenco	\$	3,055.20
130	Kenco	\$	3,055.20
131	Kenco	\$	3,055.20
132	Kenco	\$	3,055.20

EXHIBIT "A"

Parcel 26

Lot #	Builder		Refund Paid to Kenco
133	Kenco	\$	3,055.20
135	Kenco	\$	3,055.20
136	Kenco	\$	3,055.20
137	Kenco	\$	3,055.20
139	Kenco	\$	3,055.20
140	Kenco	\$	3,055.20
141	Kenco	\$	3,055.20
142	Kenco	\$	3,055.20
144	Kenco	\$	3,055.20
145	Kenco	\$	3,055.20
146	Kenco	\$	3,055.20
147	Kenco	\$	3,055.20
148	Kenco	\$	3,055.20
149	Kenco	\$	3,055.20
150	Kenco	\$	3,055.20
155	Kenco	\$	3,055.20
156	Kenco	\$	3,055.20
157	Kenco	\$	3,055.20
158	Kenco	\$	3,055.20
159	Kenco	\$	3,055.20
160	Kenco	\$	3,055.20
161	Kenco	\$	3,055.20
162	Kenco	\$	3,055.20
168	Kenco	\$	3,055.20
170	Kenco	\$	3,055.20
175	Kenco	\$	3,055.20
179	Kenco	\$	3,055.20
180	Kenco	\$	3,055.20
181	Kenco	\$	3,055.20
202	Kenco	\$	<u>3,055.20</u>
		\$	229,140.00

Parcel 27

Lot #	Builder		Refund Paid to Kenco
7	Kenco	\$	3,055.20
13	Kenco	\$	3,055.20
15	Kenco	\$	3,055.20
18	Kenco	\$	3,055.20
19	Kenco	\$	3,055.20
20	Kenco	\$	3,055.20
22	Kenco	\$	3,055.20
25	Kenco	\$	3,055.20
28	Kenco	\$	3,055.20
31	Kenco	\$	3,055.20
33	Kenco	\$	3,055.20
34	Kenco	\$	3,055.20
35	Kenco	\$	3,055.20
36	Kenco	\$	3,055.20
37	Kenco	\$	3,055.20
38	Kenco	\$	3,055.20
40	Kenco	\$	3,055.20

EXHIBIT "A"

Parcel 27

Lot #	Builder	Refund Paid to Kenco	
45	Kenco	\$	3,055.20
61	Kenco	\$	3,055.20
62	Kenco	\$	3,055.20
63	Kenco	\$	3,055.20
79	Kenco	\$	3,055.20
80	Kenco	\$	3,055.20
81	Kenco	\$	3,055.20
83	Kenco	\$	3,055.20
115	Kenco	\$	3,055.20
120	Kenco	\$	3,055.20
121	Kenco	\$	3,055.20
122	Kenco	\$	3,055.20
123	Kenco	\$	3,055.20
129	Kenco	\$	3,055.20
130	Kenco	\$	3,055.20
132	Kenco	\$	3,055.20
134	Kenco	\$	3,055.20
135	Kenco	\$	3,055.20
137	Kenco	\$	3,055.20
138	Kenco	\$	3,055.20
139	Kenco	\$	3,055.20
141	Kenco	\$	3,055.20
143	Kenco	\$	3,055.20
144	Kenco	\$	3,055.20
145	Kenco	\$	3,055.20
148	Kenco	\$	3,055.20
149	Kenco	\$	3,055.20
150	Kenco	\$	3,055.20
151	Kenco	\$	3,055.20
152	Kenco	\$	3,055.20
153	Kenco	\$	3,055.20
154	Kenco	\$	3,055.20
155	Kenco	\$	3,055.20
156	Kenco	\$	3,055.20
158	Kenco	\$	<u>3,055.20</u>
		\$	158,870.40

Parcel 28

Lot #	Builder	Refund Paid to Kenco	
20	Kenco	\$	3,055.20
23	Kenco	\$	3,055.20
24	Kenco	\$	3,055.20
28	Kenco	\$	3,055.20
32	Kenco	\$	3,055.20
34	Kenco	\$	3,055.20
35	Kenco	\$	3,055.20
37	Kenco	\$	3,055.20
38	Kenco	\$	3,055.20
39	Kenco	\$	3,055.20

EXHIBIT "A"

Parcel 28

Lot #	Builder	Refund Paid to Kenco
40	Kenco	\$ 3,055.20
42	Kenco	\$ 3,055.20
43	Kenco	\$ 3,055.20
44	Kenco	\$ 3,055.20
45	Kenco	\$ 3,055.20
62	Kenco	\$ 3,055.20
63	Kenco	\$ 3,055.20
69	Kenco	\$ 3,055.20
83	Kenco	\$ 3,055.20
96	Kenco	\$ 3,055.20
97	Kenco	\$ 3,055.20
98	Kenco	\$ 3,055.20
99	Kenco	\$ 3,055.20
100	Kenco	\$ 3,055.20
101	Kenco	\$ 3,055.20
102	Kenco	\$ 3,055.20
103	Kenco	\$ 3,055.20
104	Kenco	\$ 3,055.20
105	Kenco	\$ 3,055.20
106	Kenco	\$ 3,055.20
107	Kenco	\$ 3,055.20
108	Kenco	\$ 3,055.20
109	Kenco	\$ 3,055.20
110	Kenco	\$ 3,055.20
111	Kenco	\$ 3,055.20
113	Kenco	\$ 3,055.20
116	Kenco	\$ 3,055.20
124	Kenco	\$ 3,055.20
125	Kenco	\$ 3,055.20
		\$ <u>3,055.20</u>
		\$ 119,152.80

GRAND TOTAL

518,961.45