Agenda Item #: <u>3L5</u>

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	March 6, 2012
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(X) Consent() Workshop

() Regular() Public Hearing

Department

Submitted By: Submitted For:

Environmental Resources Management

Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Indemnification Agreement with AG/Hov Delray, L.L.C.

Summary: In 2005, Home Devco Tivoli Isles, Inc., a predecessor of AG/Hov Delray, L.L.C. posted a cash bond with the County in the amount of \$28,453 to secure its obligation to complete certain littoral shelf requirements on its property pursuant to the Excavation Approval No. E200504. The property was subsequently sold to K. Hovnanian Standing Entity, L.L.C. and ultimately to AG/Hov Delray, L.L.C. AG/Hov Delray, L.L.C., which operates the development as Four Seasons at Delray Beach, is currently in compliance with Excavation Approval No. E200504 and has requested return of the bond. Because a predecessor in interest to AG/Hov Delray, L.L.C. posted the bond with the County, this Indemnity Agreement is necessary to indemnify the County from and against any and all claims to the bond that may hereinafter be made by any third party. District 5 (SF)

Background and Justification: AG/Hov Delray, L.L.C. has represented to the County that it acquired all right, title and interest in the bond when it acquired the property. Under County policy, a bond is returned to the party who posted it unless sufficient proof has been presented that the bond should be returned to another party. AG/Hov Delray, L.L.C. provided the County with the Transfer, Assignment and Assumption Agreement between Home Devco and AG/Hov Delray, L.L.C. However, the Transfer, Assignment and Assumption Agreement between Home Devco and AG/Hov Delray, L.L.C. does not explicitly mention the bond. Therefore, the Indemnification Agreement provides that in exchange for the County's agreement to release the bond to AG/Hov Delray, L.L.C., AG/Hov Delray, L.L.C. will indemnify the County from and against any and all claims to the bond that may hereinafter be made by any third party.

Attachments:

1. Indemnification Agreement

Recommended by:

<u>Rite III in</u> Department Director

Approved by:

County Administrator

2/12

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures				·	
Operating Costs			<u></u>	<u>_</u>	
External Revenues					•
Program Income (County)					
In-Kind Match (County)		<u> </u>			
NET FISCAL IMPACT					
# ADDITIONAL FTE					•
POSITIONS (Cumulative)	R		·		M*****
Is Item Included in Current	t Budget?	Yes _	<u> </u>	No	
Budget Account No.:	Fund <u>7001</u>	Unit/BSA 2200	Rsrc/SBSA	<u>786</u> 6	
	Department	Unit	Object_		
	Program				

B. Recommended Sources of Funds/Summary of Fiscal Impact: Bond funds have been kept in a balance sheet account. Return of bond funds will have no fiscal impact to County.

С. **Department Fiscal Review:**

III. REVIEW COMMENTS

A. OFMB Fiseal and /or Contract Dev. and Control Comments:

2/12 **OFMB** Contract Development and Control ગ્રીમ 86 3-2-12 Buffelle

В. Legal Sufficiency:

Assistant County Attorney

C. **Other Department Review:**

Department Director

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT made and entered into this <u>day</u> day of <u>Januari</u>, 20<u>12</u>, by and between AG/Hov Delray, L.L.C. (hereinafter referred to as "Indemnitor") whose address is 3601 Quantum Blvd., Boynton Beach, FL 33426 and Palm Beach County, (hereinafter referred to as "County"), whose address is c/o Palm Beach County Department of Environmental Resources Management, 2300 North Jog Road, 4th Floor, West Palm Beach, Florida 33411-2743.

WITNESSETH

WHEREAS, Indemnitor holds title to a certain parcel of real property more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

(hereinafter referred to as the "Property"); and

WHEREAS, Home Devco Tivoli Isles, L.L.C., ("Depositor"), as the previous owner of the Property, posted a cash bond in the amount of \$28,452.55 (the "Bond") with the County to secure Depositor's obligation to complete certain littoral planting pursuant to Palm Beach County Notice of Intent to Construct for Excavation ("NIC") No. E200504; and

WHEREAS, on May 21, 2009, Depositor executed an Assignment of Development Rights, Title and Interests Under Declaration of Covenants and Restrictions for Tivoli Isles (which is recorded in the Official Records of Palm Beach County at Book 23615 Page 0649), which assigned the development rights on the Property to K. Hovnanian Standing Entity, L.L.C.; and

WHEREAS, on August 17, 2009, K. Hovnanian Standing Entity, L.L.C. executed an Assignment of Development Rights, Title and Interests Under Declaration of Covenants and Restrictions for Tivoli Isles (which is recorded in the Official Records of Palm Beach County at Book 23615 Page 0691), which assigned the development rights on the Property to Indemnitor; and

WHEREAS, Indemnitor represents that it has acquired all right, title and interest in the Bond and the Property; and

WHEREAS, on April 5, 2010, the County issued an Excavation Modification for NIC No. E200504 to reflect Indemnitor's ownership of the Property; and

WHEREAS, Indemnitor has completed all work required by NIC No. E200504 and has requested return of the Bond; and

WHEREAS, as inducement to the County to release the Bond to Indemnitor, Indemnitor agrees to indemnify the County from and against any and all claims to the Bond that may hereinafter be made by any third party and any and all liability associated with releasing the Bond to Indemnitor.

NOW THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. <u>Recitals</u>. The recitals set forth above are true, correct and incorporated herein by reference.

2. The County agrees to release the Bond to Indemnitor upon execution of this Agreement in accordance with the terms provided herein.

3. <u>Indemnification</u>. At all times after receipt of the Bond, Indemnitor agrees to hold the County, its officers, employees and designated agents, harmless, and to indemnify and defend the County, its officers, employees and designated agents, against any and all claims, costs,

expenses (including attorneys' fees and court costs), and liability resulting from any third party claims, causes of action, and lawsuits arising out of the County's release of the Bond to Indemnitor.

4. <u>Term of Agreement</u>. This Agreement shall commence upon execution by both parties. Indemnitor's obligations set forth in this Agreement shall survive the release of the Bond to Indemnitor and shall be binding on Indemnitor's heirs, successors, legal representatives and assigns.

5. This Agreement is governed by and will be construed in accordance with the laws of the State of Florida. Exclusive venue for any litigation brought pursuant to this Agreement will be in the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida, and the parties do hereby specifically waive any other jurisdiction and venue for such purpose.

6. This Agreement may be executed in one or more counterparts which together will constitute a single agreement.

7. The parties acknowledge and agree that they have had an opportunity to participate in the preparation of this Agreement and, accordingly, this Agreement will not be construed more or less favorably against any party to this Agreement.

8. This Agreement contains the entire and only agreement between the parties concerning the subject matter hereof. This Agreement supersedes and cancels any and all preexisting agreements and understandings between the parties.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

ATTEST:

Sharon R. Bock, Clerk & Comptroller

BY:

Deputy Clerk

DATE:

WITNESSES:

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

BY: M 1-Assistant County Attorney

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

BY:

Commissioner Shelley Vana, Chair

DATE: _____

APPROVED AS TO TERMS AND CONDITIONS:

Robert Robbins, Director Palm Beach County Dept. of Environmental Resources Management

INDEMINTO By: Johnson

ice l'itle LILLER STEPHEN B

Typed or Printed Name

[Corporate] Seal

itness Signature Donnie uchan.

Typed or Printed Name

gnatture

Typed or Printed Name

STATE OF Florida COUNTY OF ambegin.

NOTARY CERTIFICATE

The foregoing instrument was Jephen B. Liller as iden	as acknowledged b He/ ntification.	efore me this 5 she is personal	day of ly known to		2012 by produced
	Signature of Nota	ry	_		
	Typed, Printed, or of Notary	Set of the	BONNIE S E	N # EE051155	
	Notary Public	(407) 398-0153	EXPIRES Decem		

Serial Number