

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: August 19, 2014 Consent [X] Regular []
Public Hearing []
Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a First Amendment to the Indemnity Agreement (Agreement) with AP 2012 - Boynton, LLC. (Owner).

Summary: The existing Agreement (R98-893D) provides for Palm Beach County's (County) consent to the installation of a fence and landscaping (Encroachment) within a portion of the County's utility easement. As a condition of the Agreement, the Owner is required to remove the Encroachment upon the request of the County if it is determined that the County's infrastructure is in need of repair or maintenance. In addition, the removal of the Encroachment will be at the sole cost of the Owner.

Since the authorization of the Agreement in 1998, property ownership has changed to AP2012-BOYNTON, LLC, a Delaware Limited Liability Company. The County and the Owner have agreed to amend the Agreement to add the provision that if Housing and Urban Development (HUD) is ever deemed the owner of all or part of the property, HUD shall not be subject to the provisions of the Agreement that would require HUD to reimburse, indemnify, or hold the County harmless in relation to the Encroachment. District 5 (MJ)

Background and Justification: The Owner is in the process of refinancing this property through HUD. In order to complete the refinancing, HUD is requiring that the Owner remove language in the Agreement that would require the agency to reimburse, indemnify, or hold the County harmless in relation to the Encroachment.

Attachments:

- 1. Location Maps
- 2. Two (2) Original First Amendment
- 3. One (1) Copy Indemnity Agreement dated May 26, 1999

Recommended By:  7/21/14
Department Director Date

Approved By:  7/25/14
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Expenses	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund 4000 Dept 720 Unit 4200 Rsrc 6992

Is Item Included in Current Budget? Yes No X

Reporting Category N/A

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

C. Department Fiscal Review: *Selma M. Vest*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

<p><i>[Signature]</i> <u>OFMB</u> 5/10/14 7/10/14</p>	<p><i>[Signature]</i> <u>Contract Development and Control</u> 7-22-14 <i>[Signature]</i></p>
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B. Legal sufficiency:

[Signature]
Assistant County Attorney
 7/25/14

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

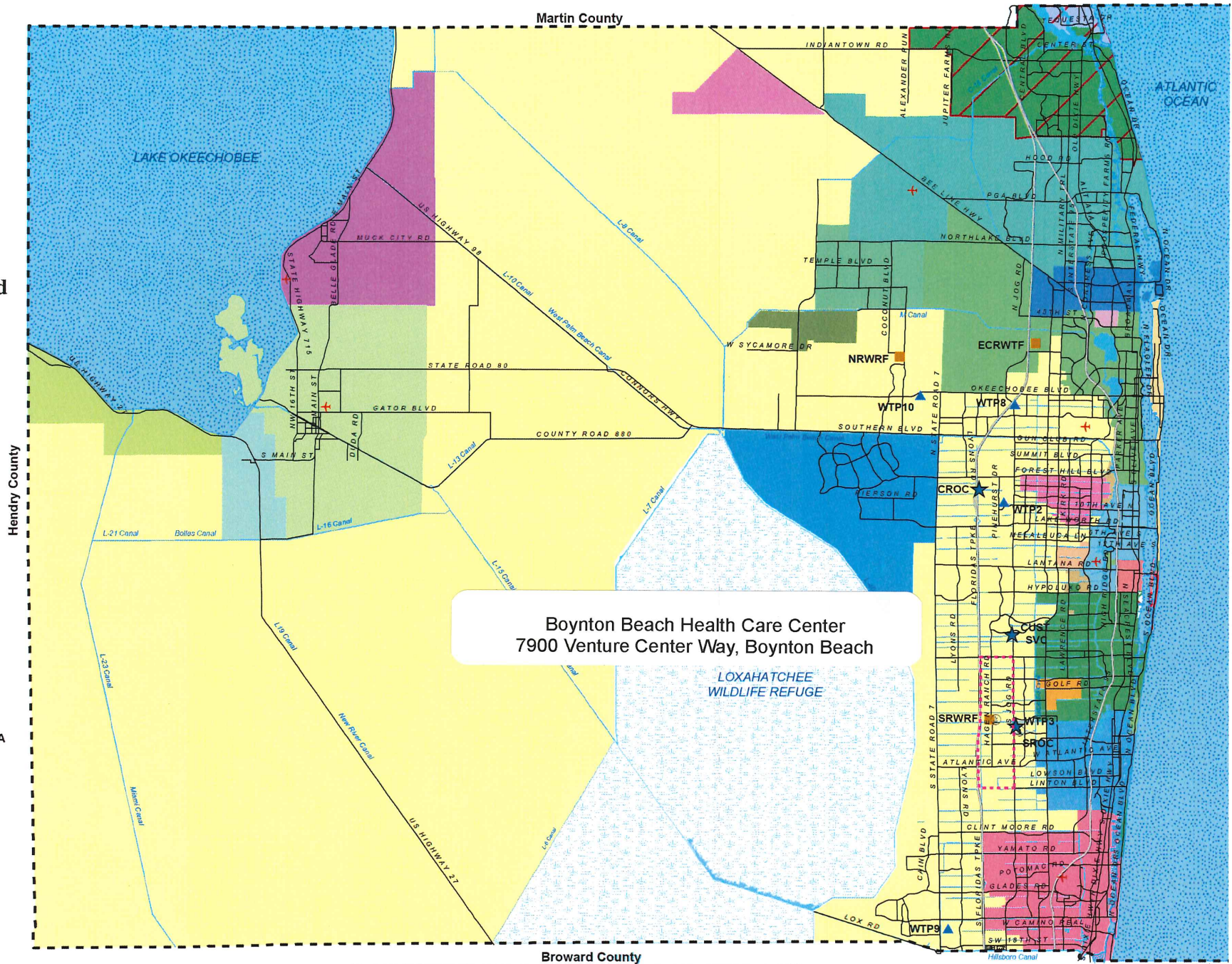


**Palm Beach County
Water Utilities
Department
Service Area (SA) and
Major Facilities**

Attachment 1

Legend

- P.B.C.W.U.D. SA
- MANDATORY RECLAIMED SA
- Palm Beach County Limits
- Administration
- Water Reclamation Facility
- Water Treatment Facility
- Wetlands

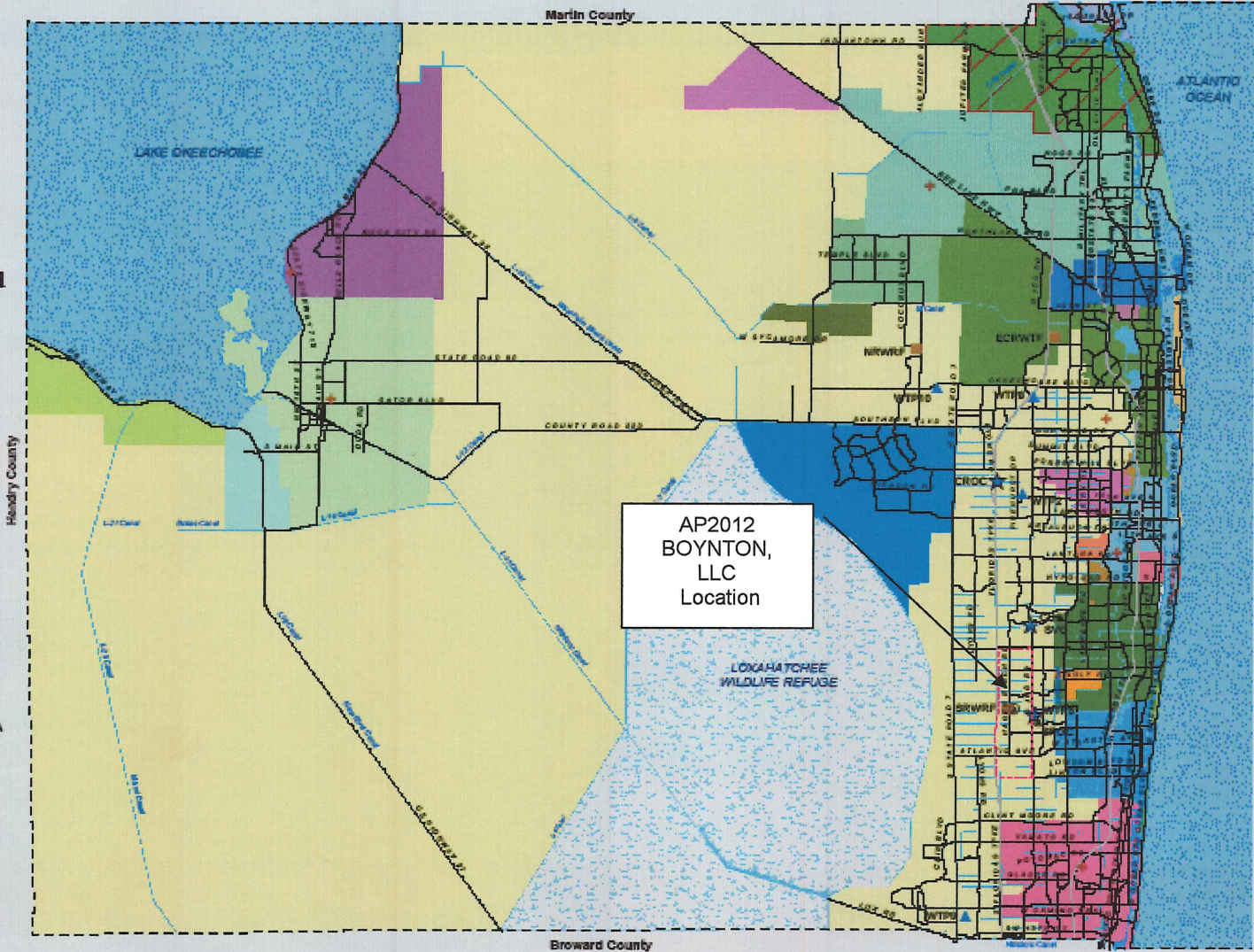


**Boynton Beach Health Care Center
7900 Venture Center Way, Boynton Beach**

Location Map



**Palm Beach County
Water Utilities
Department
Service Area (SA) and
Major Facilities**



- Legend**
- P.B.C. W.U.D. SA
 - MANDATORY RECLAIMED SA
 - - - Palm Beach County Limits
 - ★ Administration
 - Water Reclamation Facility
 - ▲ Water Treatment Facility
 - ⊙ Wetlands



Prepared by and Return to:
Derek Larsen-Chaney, Esquire
Phelps Dunbar LLP
100 South Ashley Dr., Suite 1900
Tampa, Florida 33602

FIRST AMENDMENT TO INDEMNITY AGREEMENT

THIS FIRST AMENDMENT TO INDEMNITY AGREEMENT (the "Amendment") is made this ___ day of _____, 201__, by and between PALM BEACH COUNTY, a municipal corporation having an address of: c/o Palm Beach County Water Utilities Department, P.O. Box 16097 West Palm Beach, Florida 33416-6097 (the "County"), and AP2012-BOYNTON, LLC, a Delaware limited liability company, whose address is 7900 Venture Center Way, Boynton Beach, Florida 33437 ("Boynton").

RECITALS

WHEREAS, pursuant to that certain Indemnity Agreement dated May 26, 1999, recorded in O.R. Book 11375, Page 1245, in the Public Records of Palm Beach County, Florida, (the "Indemnity Agreement"), DELTA FLORIDA PROPERTIES, INC. ("Delta") agreed to indemnify and hold County harmless from any and all liabilities arising from County's consent to Delta's installation of a fence and landscaping within the Easement described therein;

WHEREAS, Boynton is a successor in title to the Property described in and subject to the Indemnity Agreement by virtue of that certain Special Warranty Deed dated November 9, 2012, recorded in O.R. Book 25657, Page 1420, in the Public Records of Palm Beach County, Florida; and

WHEREAS, the County and Boynton have agreed to amend the Indemnity Agreement.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals: The above Recitals are true and correct and are incorporated herein by this reference.
2. Defined Terms: All words with the initial letter capitalized herein which are not otherwise defined herein shall have the meaning ascribed to them in the Indemnity Agreement.
3. Amendment: Paragraph 4 of the Indemnity Agreement is hereby amended to read as follow:

“Owner, its successor, heirs and/or assigns, hereby agrees to indemnify and hold County harmless from and against any and all liabilities, damages, penalties, claims, costs and expenses whatsoever, including attorneys’ fees at all levels, which may be imposed upon or asserted against County as a result of or in any way connected to the encroachment within the Easement or its removal or any occurrence upon said encroachment.

Notwithstanding the foregoing, if HUD is ever deemed the “Owner” of all or part of the Property, HUD shall not be subject to the indemnification provisions contained in this Paragraph. HUD prohibits and does not authorize any expenditure which would violate 31 USC 1341 (the “Anti-Deficiency Act”). Any provision of this Indemnity Agreement which violate(s)(d) the Anti-Deficiency Act, in the past, present or future, will not be enforced against HUD. Notwithstanding any other provision of this Indemnity Agreement, HUD, whether in the capacity of subsidy provider, loan insurer, lender, owner, lessee or mortgagee in possession, shall have no obligation of reimbursement, indemnity, or holding harmless, of any nature whatsoever, to any governmental entity, private entity, person or party, either now or in the future.”

4. No Further Modifications: Except as described herein, the Indemnity Agreement remains unmodified and in full force and effect.
5. Counterparts: This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts together shall constitute one and the same instrument.

6. Inspector General: Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

7. No Third Party Beneficiary. No provision of this Amendment, is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Amendment, including but not limited to any citizen or employees of the County and/or AP2012-Boynton, LLC.

(Remainder of page intentionally left blank. Signature pages to follow.)

IN WITNESS WHEREOF, the County and Boynton have executed this Amendment this
___ day of _____, 201__.

ATTEST:
SHARON R. BOCK
CLERK AND COMPTROLLER

PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Priscilla A. Taylor, Mayor

(SEAL)

APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By:  _____
Director of Water Utilities

IN WITNESS WHEREOF, the County and Boynton have executed this Amendment this 19th day of May, 2014.

WITNESSES:

Sign: Kimberly Ruggiero
Print: Kimberly Ruggiero

Sign: Kaitlin Hartshorn
Print: Kaitlin Hartshorn

AP2012-BOYNTON, LLC, a
Delaware limited liability company

By: [Signature]
Eric M. Roth
Authorized Representative

STATE OF New York
COUNTY OF Westchester

The foregoing instrument was acknowledged before me this 19th day of May, 2014, by Eric M. Roth, as Authorized Representative of AP2012-Boynton, LLC, a Delaware limited liability company, on behalf of the company. He is personally known to me, or has produced _____ as identification.

NOTARY

[Signature]
Print Raymond P. Mulry
NOTARY PUBLIC, State of NY
Commission Number: 02MU6255408
My Commission Expires: 2-6-2016

[NOTARIAL SEAL]

RAYMOND P. MULRY
Notary Public, State of New York
No. 02MU6255408
Qualified in Westchester County
My Commission Expires Feb. 6, 2016

AB # 2623

SDA # 05-00100

Prepared by and return to:
Palm Beach County Water Utilities Department
P.O. Box 16097
West Palm Beach, Florida 33416-6097
DELTA CARE CENTER

Attachment 3

INDEMNITY AGREEMENT
(Encroachment)

THIS INDEMNITY AGREEMENT made and entered into this 26th day of May, 1999, by and between Delta Florida Properties, Inc. (hereinafter referred to as "Owner"), whose address is 7900 Venture Cntr Way, Boynton B and Palm Beach County, (hereinafter referred to as "County"), whose address is c/o Palm Beach County Water Utilities Department, P. O. Box 16097, West Palm Beach, Florida 33416-6097.

WITNESSETH

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

PARCEL B-3, BOYNTON BEACH ENTERPRISE CENTER, REPLAT NO. 3
AS RECORDED IN PLAT BOOK 80, PAGES 160 THROUGH 161 OF THE
PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA
(hereinafter referred to as the "Property"); and

WHEREAS, the Property is encumbered by a certain utility easement (hereinafter referred to as the "Easement"), such Easement being for the benefit of County and other utilities; and

WHEREAS, Owner desires to install Fence & Landscaping within a portion of the Easement (hereinafter referred to as "encroachment").

NOW THEREFORE, for and in consideration of the covenants set forth herein, Owner hereby agrees as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. County hereby consents to the installation by Owner of the encroachment within the Easement, subject to the terms herein.
3. In consideration of County's consent to the installation of the encroachment within the Easement, Owner shall immediately remove said encroachment upon the request of County or, in the event that County determines, in its sole and exclusive discretion that it is necessary or desirable to construct, maintain, repair, remove or replace any facilities of County's property (including but not limited to transmission lines, valves, pumps, meters, and appurtenances) located under, over, or upon the Easement, and such work requires the removal, repair, replacement and/or relocation of the encroachment or the relocation of County's facilities in whole or in part, such removal, repair, replacement and/or relocation shall be done by County or its assigns and any and all expenses or damages incurred as a result of the removal of said encroachment shall be at the sole cost and expense of the Owner.
4. Owner, its successor, heirs and/or assigns, hereby agrees to indemnify and hold County harmless from and against any and all liabilities, damages, penalties, claims, costs and expenses whatsoever, including attorneys' fees at all levels, which may be imposed upon or asserted against County as a result of or in any way connected to the encroachment within the Easement or its removal or any occurrence upon said encroachment.
5. This Indemnity Agreement shall be binding upon the Owner, its heirs, successors, legal representatives and assigns. This Agreement will run with the land and shall be recorded in the Public Records of Palm Beach County, Florida.

PB COUNTY WATER UTILITIES DEPT
CONTRACT MGMT, BLDG "K"
RETURN VIA WILL CALL

Name

Address:

AUG-10-1999 14:32

WUD ENGINEERING

P.02/02

IN WITNESS WHEREOF, the Owner has executed this Agreement as of the date first above written.

WITNESSES:

Signed, sealed and delivered
in the presence of:

N. Hattie Jansen

Witness Signature
N. Hattie Jansen

Print Name
Doreen King / Doreen King

Witness Signature
Doreen King

Print Name

OWNER:

Scott J. Bell

Signature
Scott J. Bell

Print Name & Title

Owner Signature

Print Name & Title

(SEAL)

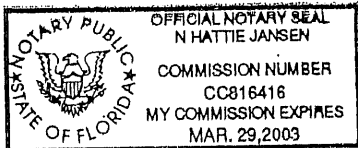


NOTARY CERTIFICATE

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me this 10th day of August,
1999 by Scott J. Bell and _____ who is/are
personally known to me or who has produced _____ as identification.

My Commission Expires: 3/29/2003



N. Hattie Jansen

Notary Signature

N. Hattie Jansen

Typed, Printed or Stamped Name of Notary

WITNESSES:

Signed in the presence of:

Linda Collins

Witness

Linda Collins

Print Name

R. Diane Curtis

Witness Signature
R. DIANE CURTIS

Print Name

**PALM BEACH COUNTY, FLORIDA, ON
BEHALF OF ITS BOARD OF COUNTY
COMMISSIONERS**

BY: Jay De...

County Administrator or Designee

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: Rama Buba
County Attorney