

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: September 1, 2015

☒ Consent

☐ Regular

☐ Workshop

☐ Public

Department:

Submitted By: Engineering and Public Works

Submitted For: Land Development Division

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to approve: A Hold Harmless Agreement (Agreement) with the Wellington View Homeowners Association, Inc. (HOA) regarding deviation from Palm Beach County (County) landscape location requirements for streetscape landscaping and entranceway trees within the common areas as shown on the Plat of Wellington View, recorded in Plat Book 102, Page 40, Public Records of the County.

**SUMMARY:** Approval of this Agreement will obligate the HOA to hold the County harmless from any claim or liability solely arising out of or related to the streetscape requirement deviation and the entranceway street trees location.

District 6 (MRE)

**Background and Justification:** In accordance with the initial development of the Plat of Wellington View (Property), the landscaping was installed within Property rights-of-way. Since the developer, Toll Brothers, did not close out the project's Land Development Permit shortly after the landscaping was installed, the County has determined that certain plantings adjacent to the outer edge of the cul-de-sacs within the Property now exceed the approved size requirements and certain street trees located within the right-of-way along the Property's entrance may deviate from the County's Streetscape location requirements. The County will accept the deviation in the cul-de-sac trees with this Agreement. The County will also accept the location of the entranceway trees based on final as-built drawings previously submitted to the County and the HOA entering into this Agreement. The HOA will be bound by the terms and conditions of this Agreement. The Agreement will remain in effect in perpetuity and run with the Property unless the County Engineer, in his own discretion, determines that the plantings have been removed or that the deviations no longer exist.

**Attachments:**

1. Location Sketch

2 Hold Harmless Agreement (two originals)

Recommended by:

Joannell Kella  
Division Director

08/13/2015

[Signature]  
Date

Approved by:

S. T. Wohl  
County Engineer

8/17/15

[Signature]  
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	* \$ -0-	-0-	-0-	-0-	-0-
# ADDITIONAL FTE					
POSITIONS (Cumulative)					

Is Item Included in Current Budget?    Yes    No

Budget Acct No.: Fund\_\_ Dept.\_\_ Unit\_\_ Object  
Program

Recommended Sources of Funds/Summary of Fiscal Impact:

\* This item has no fiscal impact.

C. Departmental Fiscal Review: .                     D. Willhite                    

III. REVIEW COMMENTS

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

                    Sperry Bm                      
5/10 AED OFMB JR  
8/19 8/19 8/19

                    D. J. Jacobson                     8/21/15  
Contract Dev. and Control

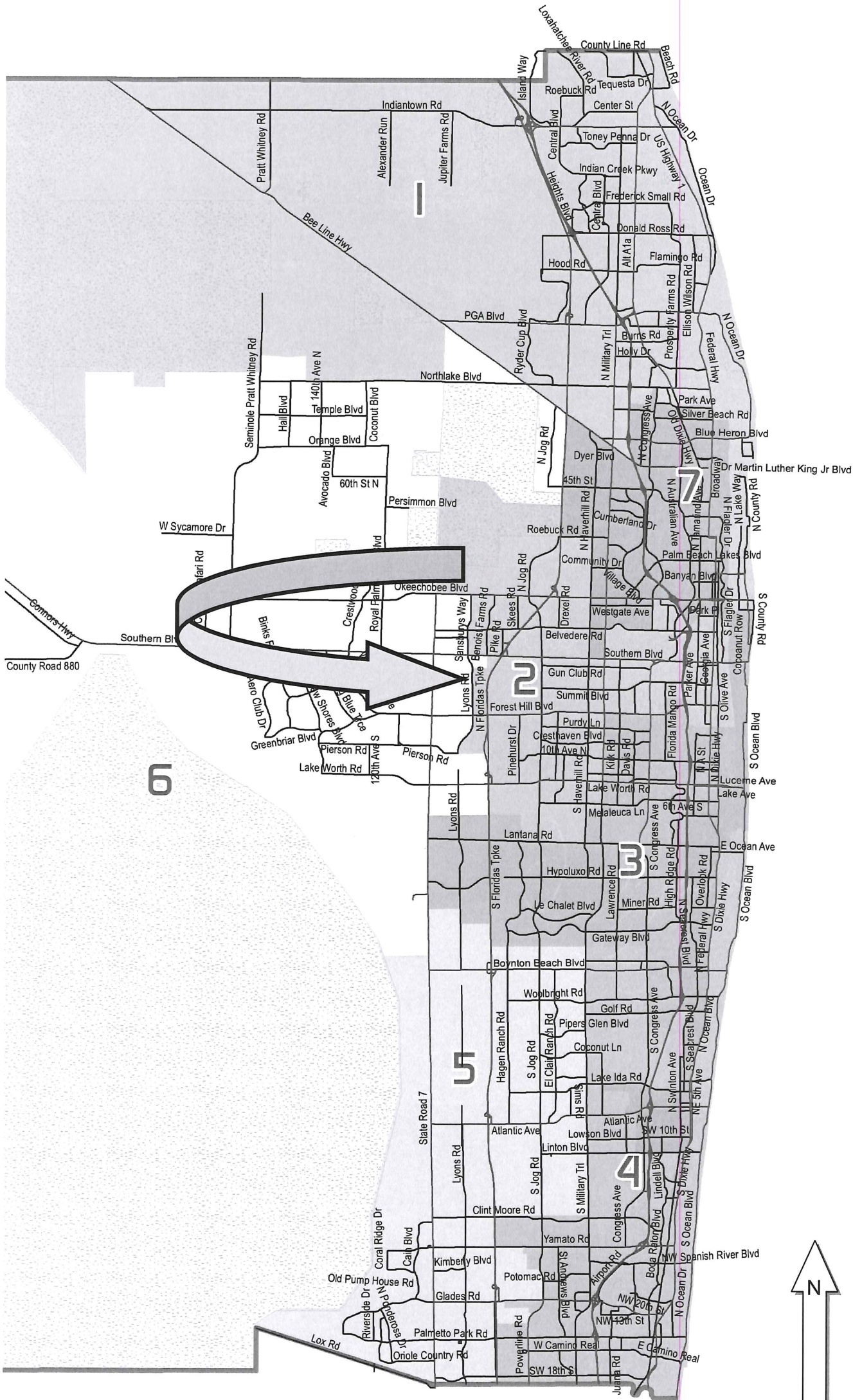
B. Approved as to Form  
and Legal Sufficiency:

                    M. L. Smith                     8/24/15  
Assistant County Attorney

C. Other Department Review:

\_\_\_\_\_  
Department Director

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



WELLINGTON VIEW  
LOCATION SKETCH  
1 INCH = 4 MILES

Prepared by and return to:

Harvey E. Oyer, III, Esquire  
SHUTTS & BOWEN, LLP  
525 Okeechobee Boulevard, Suite 1100  
West Palm Beach, Florida 33401

### HOLD HARMLESS AGREEMENT

**THIS HOLD HARMLESS AGREEMENT** (this “**Agreement**”) dated as of this 24 day of July, 2015 is made by and between the **PALM BEACH COUNTY**, a political subdivision of the state of Florida (the “**County**”), and **WELLINGTON VIEW HOMEOWNERS ASSOCIATION, INC.**, a Florida not for profit corporation (the “**HOA**”).

**WHEREAS**, the **HOA** owns and is responsible for the operation, maintenance and administration of the common areas as shown on the Plat of Wellington View, according to the plat thereof, recorded in Plat Book 102, Page 40, of the Public Records of Palm Beach County, Florida (the “**Property**”); and

**WHEREAS**, in accordance with the initial development of the **Property**, trees and other landscape materials (“**Streetscape Landscaping**”) were installed in accordance with the Street Tree Landscape Plan prepared by Land Design South for Wellington View dated March 30, 2004 and revised June 28, 2004 and approved by the County (the “**Plans**”); and

**WHEREAS**, the **County** has determined that certain plantings of the **Streetscape Landscaping** adjacent to the outer edge of the cul-de-sacs located within the **Property** now deviate from **County** landscape location requirements (the “**Streetscape Requirement Deviation**”); and

**WHEREAS**, the **County** has determined that while certain street trees located within the right-of-way along the **Property**’s entrance (“**Entranceway Trees**”) may deviate from the **County**’s Streetscape Department street tree location requirements (“**Entranceway Street Trees Location**”), that the **County** will accept the location of such Entranceway Trees based upon final as-built drawings for same previously submitted to the **County** and the **HOA** entering into this **Agreement**; and

**WHEREAS**, as a result of the foregoing, the **County** has requested the **HOA** to hold the **County** harmless from any claim or liability solely arising out of or related to the **Streetscape Requirement Deviation** and the **Entranceway Street Trees Location**, subject to the terms of this **Agreement**; and

**WHEREAS**, the **HOA** has agreed to hold the **County** harmless from any such claim or liability, subject to the terms of this **Agreement**.

**NOW THEREFORE**, in consideration of ten dollars (\$10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The recitals set forth above are true and correct and are incorporated in this **Agreement** by this reference.

2. Hold Harmless. The **HOA** shall protect, defend, reimburse, indemnify and hold **County**, its agents, employees, and elected officials harmless from and against all claims, liability, expense, loss, costs, damages or causes of action of every kind or character, including reasonable attorney's fees and costs, whether at trial or appellate levels or otherwise, solely arising out of or related to the **Streetscape Requirement Deviation** and the **Entranceway Street Trees Location**, subject to the terms of this **Agreement**.

3. Notices. Any notices required by this **Agreement** must be in writing, sent by certified United States mail, with return receipt requested, or overnight express addressed to the party from whom it is intended, at their address below, or such other address as a party may specify by notice in compliance with this provision:

To the **County**:           Director of Land Development Division  
                                  Engineering Department  
                                  2300 North Jog Road  
                                  West Palm Beach, FL 33411

To the **HOA**:             Wellington View Homeowners Association, Inc.  
                                  401 Maplewood Drive, Suite 23  
                                  Jupiter, FL 33458

4. Governing Law; Jurisdiction; Venue. This **Agreement** shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law without regard to conflicts of law provisions. The parties hereby irrevocably submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit concerning this **Agreement** shall be Palm Beach County, Florida, or the Federal Southern District of Florida.

5. Entire Agreement. This **Agreement** and any exhibits embody the entire agreement and understanding of the parties with respect to the subject matter of this **Agreement** and supersede all prior and contemporaneous agreements and understandings, oral or written, relating to said subject matter.

6. Public Records. This fully executed **Agreement** shall be recorded in the public records of the **County**.

7. Term. This **Agreement** shall remain in effect in perpetuity and run with the **Property** unless the County Engineer, in his own discretion, determines that the plantings constituting the **Streetscape Requirement Deviation** and/or the **Entranceway Street Trees**



**Location** have been removed or that the deviation, if any, and/or the landscaping are no longer required. This **Agreement** may not be modified without consent by the County Engineer or his designee.

*[remainder of page intentionally left blank; signatures begin on next page]*

A handwritten signature in black ink, consisting of a stylized 'W' followed by a large, looped 'D'.



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

Signed, sealed, and delivered  
in the presence of:

HOA:

WELLINGTON VIEW HOMEOWNERS  
ASSOCIATION, INC., a Florida not for profit  
corporation

Janet Chaby  
Witness Signature

JANET CHABY  
Witness Name Printed

[Signature]  
Witness Signature

MARIA DGA Hollingsworth  
Witness Name Printed

By: [Signature]  
Name: Scott Hollingsworth  
President

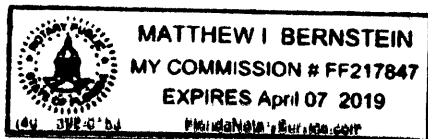
By: [Signature]  
Name: RICHARD CHABY  
Secretary

[CORPORATE SEAL]

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of July, 2015,  
by Scott Hollingsworth and Richard Chaby as President and Secretary,  
respectively, of WELLINGTON VIEW HOMEOWNERS ASSOCIATION, INC., a Florida not  
for profit corporation, on behalf of the corporation, (X) who is personally known to me OR ( )  
who has produced \_\_\_\_\_ as identification and  
who ( ) did ( ) did not take an oath.

(Notary Seal)



[Signature]  
Notary Public, State of Florida  
MATTHEW BERNSTEIN  
Type, print or stamped  
Commission Number: FF217847  
My Commission Expires: 4/7/19

**ATTEST:**

**SHARON R. BOCK**  
CLERK & COMPTROLLER

**PALM BEACH COUNTY**, a political  
subdivision of the State of Florida

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Shelley Vana, Mayor

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND  
CONDITIONS**

By: \_\_\_\_\_  
Assistant County Attorney

By: Joanne P. Keller FOR  
Department Director



Prepared by and return to:

Harvey E. Oyer, III, Esquire  
SHUTTS & BOWEN, LLP  
525 Okeechobee Boulevard, Suite 1100  
West Palm Beach, Florida 33401

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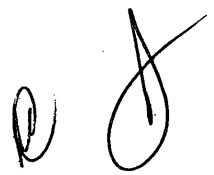
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**WHEREAS**, the **County** has determined that certain plantings of the **Streetscape Landscaping** adjacent to the outer edge of the cul-de-sacs located within the **Property** now deviate from **County** landscape location requirements (the “**Streetscape Requirement Deviation**”); and

**WHEREAS**, the **County** has determined that while certain street trees located within the right-of-way along the **Property**’s entrance (“**Entranceway Trees**”) may deviate from the **County**’s Streetscape Department street tree location requirements (“**Entranceway Street Trees Location**”), that the **County** will accept the location of such Entranceway Trees based upon final as-built drawings for same previously submitted to the **County** and the **HOA** entering into this **Agreement**; and

**WHEREAS**, as a result of the foregoing, the **County** has requested the **HOA** to hold the **County** harmless from any claim or liability solely arising out of or related to the **Streetscape Requirement Deviation** and the **Entranceway Street Trees Location**, subject to the terms of this **Agreement**; and

**WHEREAS**, the **HOA** has agreed to hold the **County** harmless from any such claim or liability, subject to the terms of this **Agreement**.



**NOW THEREFORE**, in consideration of ten dollars (\$10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The recitals set forth above are true and correct and are incorporated in this **Agreement** by this reference.

2. Hold Harmless. The **HOA** shall protect, defend, reimburse, indemnify and hold **County**, its agents, employees, and elected officials harmless from and against all claims, liability, expense, loss, costs, damages or causes of action of every kind or character, including reasonable attorney's fees and costs, whether at trial or appellate levels or otherwise, solely arising out of or related to the **Streetscape Requirement Deviation** and the **Entranceway Street Trees Location**, subject to the terms of this **Agreement**.

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To the **HOA**:             Wellington View Homeowners Association, Inc.  
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4. Governing Law; Jurisdiction; Venue. This **Agreement** shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law without regard to conflicts of law provisions. The parties hereby irrevocably submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit concerning this **Agreement** shall be Palm Beach County, Florida, or the Federal Southern District of Florida.

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**Location** have been removed or that the deviation, if any, and/or the landscaping are no longer required. This **Agreement** may not be modified without consent by the County Engineer or his designee.

*[remainder of page intentionally left blank; signatures begin on next page]*

A handwritten signature in black ink, consisting of stylized, cursive letters, likely representing the County Engineer or designee.

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

Signed, sealed, and delivered  
in the presence of:

HOA:

WELLINGTON VIEW HOMEOWNERS  
ASSOCIATION, INC., a Florida not for profit  
corporation

Witness Signature

Witness Name Printed

Witness Signature

Witness Name Printed

By:

Name: President

By:

Name: Secretary

[CORPORATE SEAL]

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of August, 2015, by Scott Hollingsworth and Richard Chaby as President and Secretary, respectively, of WELLINGTON VIEW HOMEOWNERS ASSOCIATION, INC., a Florida not for profit corporation, on behalf of the corporation, ☒ who is personally known to me OR ☐ who has produced \_\_\_\_\_ as identification and who ( ) did ( ) did not take an oath.

(Notary Seal)

Notary Public, State of Florida  
Matthew I. Bernstein

Type, print or stamped

Commission Number: FF217847

My Commission Expires: 4/7/19



**ATTEST:**

**SHARON R. BOCK**  
CLERK & COMPTROLLER

**PALM BEACH COUNTY**, a political  
subdivision of the State of Florida

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Shelley Vana, Mayor

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND  
CONDITIONS**

By: \_\_\_\_\_  
Assistant County Attorney

By: Joanne L. Kellen FOR  
Department Director