

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	September 13, 2016	Consent <input checked="" type="checkbox"/> Regular <input type="checkbox"/>
		Public Hearing <input type="checkbox"/>
Department:	Water Utilities Department	

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A Non-Standard Indemnity Agreement between Toll FL I, LLC, a Florida limited liability company (Property Owner), the Royal Palm Polo Property Owner's Association, Inc. (Association), and Palm Beach County (County).

Summary: The Property Owner owns a parcel of real property known as Royal Palm Polo located off Jog Road and Clint Moore Road. The Property Owner has installed sprinkler lines, trees, shrubbery, grass and other landscaping materials over and across a portion of the Palm Beach County Water Utilities Easement located within Royal Palm Polo. The Indemnity Agreement requires the Property Owner and the Association to indemnify, defend, and hold the County harmless from any and all liabilities, damages, penalties, claims, costs and expenses that may be imposed or asserted against the County as a result of or in any way connected to the installation, removal, repair, replacement and or relocation of the encroachment within the easement. The Property Owner has requested changes to the standard County Indemnity Agreement, including the joinder of the Association, the addition of a 10-day notice period for the Association to remove encroachments prior to the County's removal of the encroachment in non-emergency situations, and other minor changes. District 5 (MJ)

Background and Justification: The Board of County Commissioners (BCC) has delegated to the WUD Director authority to accept standard Indemnity Agreements. BCC approval is therefore required for this Non-Standard Indemnity Agreement.

Attachments:

1. Location Map
2. One (1) Original Indemnity Agreement with Exhibits

Recommended By:  7-27-16
Department Director **Date**

Approved By:  8-10-16
Assistant County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
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>
Program Income (County)	<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 Dept Unit Object

Is Item Included in Current Budget? Yes ___ No ___

Reporting Category N/A

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

*No Fiscal Impact

C. Department Fiscal Review: Julia Morant

III. REVIEW COMMENTS

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

[Signature] 8/1/16
OFMB 8/1/16
7/28

[Signature] 8/15/16
Contract Development and Control
8/5/16 [Initials]

B. Legal Sufficiency:

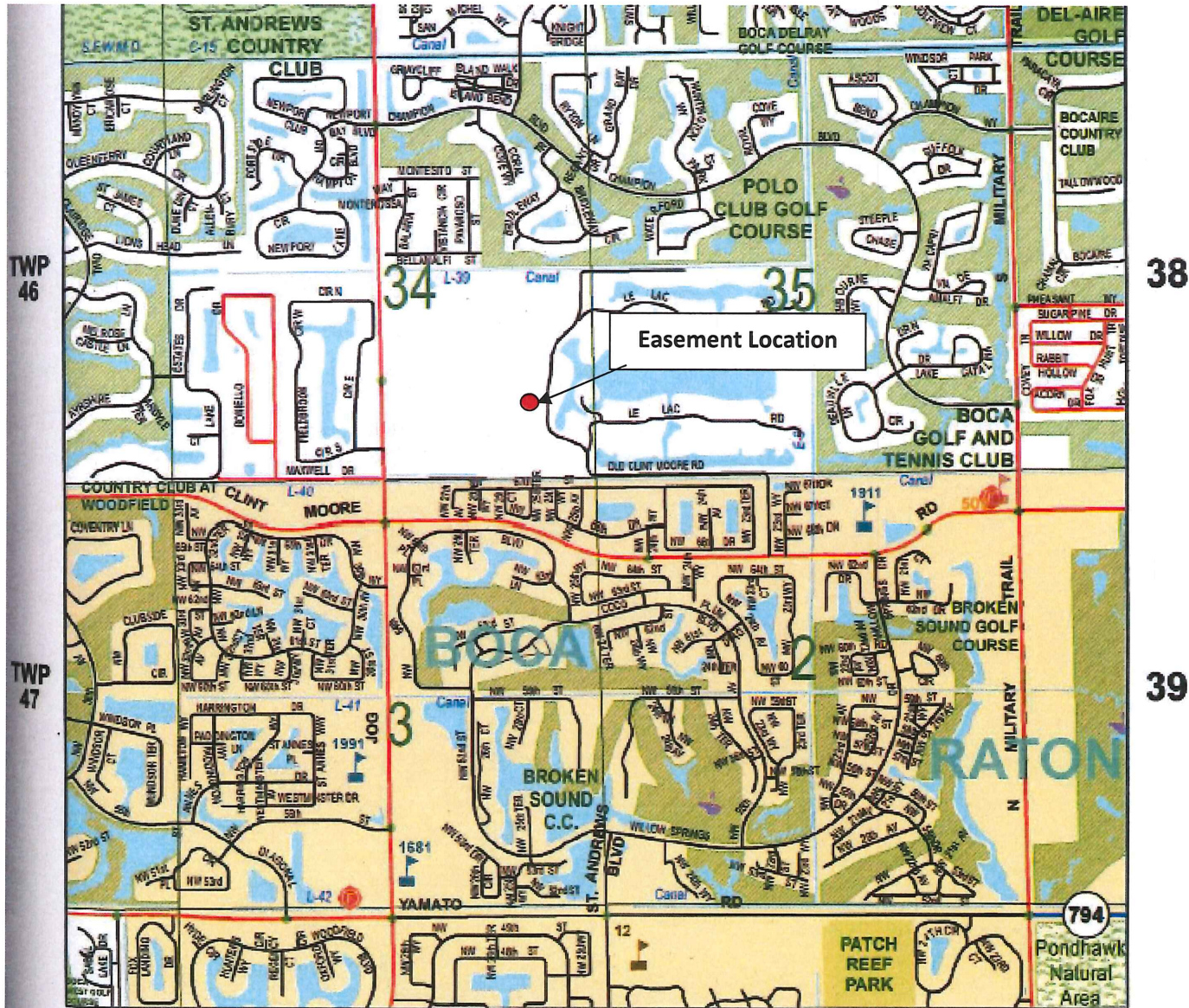
[Signature] 8/9/16
Assistant County Attorney

C. Other Department Review:

Department Director

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

ATTACHMENT 1
Location Map
Royal Palm Polo



Prepared by and return to:
Palm Beach County Water Utilities Department
P.O. Box 16097 *c/o Jackie Michels*
West Palm Beach, Florida 33416-6097

INDEMNITY AGREEMENT
(Encroachment)

THIS INDEMNITY AGREEMENT (this "**Agreement**") is made and entered into this _____ day of _____, 2016 by and between **Toll FL I, LLC**, a Florida limited liability company (hereinafter referred to as "**Owner**"), whose mailing address is 250 Gibraltar Road Horsham, Pennsylvania 19044, and **Palm Beach County**, a political subdivision of the State of Florida (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, and is joined in by **Royal Palm Polo Property Owners Association, Inc.**, a Florida not-for-profit corporation (hereinafter referred to as "**Association**"), whose mailing address is 3918 Via Poinciana Dr., Suite #9, Lake Worth, Florida 33467.

WITNESSETH

WHEREAS, Owner is the owner of that certain parcel of real property (hereinafter referred to as the "**Property**") encumbered by that certain 30 foot utility easement more particularly described on **Exhibit "A"**, which is attached hereto and incorporated herein (hereinafter referred to as the "**Easement**"), such Easement being for the benefit of County and/or other utilities; and

WHEREAS, the Association is the entity responsible for, among other things, operating, administering, and maintaining the "Common Area" (as such term is defined in the Declaration), pursuant to the terms of that certain Declaration of Covenants, Restrictions and Easements for Royal Palm Polo, recorded on December 28, 2015 in Official Records Book 28009, Page 354, of the Public Records of Palm Beach County ("**County**"), Florida (the "**Declaration**"); and

WHEREAS, Owner is the "Declarant" under and as defined in the Declaration and currently controls the Board of Directors of the Association in accordance with the terms of the Declaration and applicable Florida law; and

WHEREAS, the Property is a part of the "Common Area" (as such term is defined in the Declaration) under the Declaration and is the maintenance obligation of the Association; and

WHEREAS, Section 14.1.1 of the Declaration provides that Declarant shall have, in addition to its other rights under the Declaration, the right to, among other things, execute all documents and take all actions affecting any portion of the "Property" (as such term is used and defined in the Declaration) owned or controlled by it which, in its sole discretion, are desirable or necessary to effectuate or facilitate the development of the "Property," subject to the requirements of the appropriate governmental authority; and

WHEREAS, Owner desires to install sprinkler lines, trees, shrubbery, plants, grass, and other landscaping materials over and across a portion of the Easement, as depicted in **Exhibit "B"** attached hereto and incorporated herein (hereinafter referred to as "**Encroachment**"), subject to the terms and conditions of this Agreement; and

WHEREAS, the Association is hereby joining in this Agreement to acknowledge and agree to the obligations imposed thereby in connection with the ongoing maintenance and repair of the Encroachment following installation of the Encroachment thereby by Owner.

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

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. County hereby consents to the installation of the Encroachment by Owner within the Easement, subject to the terms and conditions herein contained.
3. Following installation of the Encroachment by Owner in the Easement, Association shall be responsible for perpetually maintaining the Encroachment (including, any necessary removal, repair, replacement and/or relocation), as the entity under the Declaration responsible for operating, administering, and maintaining the Common Area, of which the Encroachment is a part.
4. In consideration of County's consent to the installation of the Encroachment within the Easement, Association shall remove, repair, replace and/or relocate the Encroachment within 10 days upon the request of County, at Owner's sole cost and expense, or (i) if Association fails to comply within such 10-day period or (ii) in the event of an emergency as determined by the County in its sole and exclusive discretion, which necessitates the County 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 may be done by County or its assigns and any and all reasonable and actual expenses or damages incurred as a result of the removal, repair, replacement and/or relocation of said Encroachment shall be at the sole cost and expense of Association. "**Emergency**" shall mean the cessation of utilities required to be provided to the public or threat of imminent injury or damage to persons or property.
5. Owner, solely as to the initial installation of the Encroachment within the Easement and Association, its successor, heirs and/or assigns thereafter, with respect to its ongoing maintenance and repair obligations, hereby agrees to indemnify and hold County harmless from and against any and all liabilities, damages, penalties, claims, costs and expenses whatsoever, including reasonable 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 installation, removal, repair, replacement and/or relocation of the Encroachment within the Easement, provided that such indemnity shall not include any liability incurred by County as a result of normal wear and tear, casualty, or act of God affecting the facilities within the Easement Area.
6. This Agreement shall be binding upon the parties hereto and each of their respective successors, legal representatives and assigns. This Agreement will run with the land and shall be recorded in the Public Records of the County.
7. 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 the activities of anyone contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and detect corruption and fraud.

8. Any notice to be given under this Agreement may be given either by a party itself or by its attorney or agent and shall be in writing and delivered by hand, by nationally recognized overnight air courier service (such as FedEx), or by the United States Postal Service, registered or certified mail, return receipt requested, in each case addressed to the respective party at the party's notice address. A notice shall be deemed effective upon receipt or the date sent if it is returned to the addressor because it is refused, unclaimed, or the addressee has moved.

9. Notwithstanding anything to the contrary herein contained, it is expressly acknowledged and agreed that following installation of the Encroachment in the Easement, Owner shall be automatically released and discharged from its obligations under this Agreement and Association shall be obligated for same. By its execution hereof, Association hereby agrees to be responsible for and assume such obligations to the County.

10. This Agreement constitutes the final agreement between the parties and is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. This Agreement may be amended or terminated only by a written agreement between the Association and the County that identifies itself as an amendment to, or termination of, as applicable, this Agreement. The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one Agreement. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force, if the essential provisions of this Agreement for each party remain valid, binding, and enforceable. This Agreement shall be construed under the laws of the state of Florida without regard to its conflict of law principles.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

WITNESSES:

Signed, sealed and delivered in the presence of

Witness Signature

Print Name STUART GORDON

Witness Signature

Print Name

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me this 27th day of May, 2016 by DONALD R. BARNES as VP of Toll FL I, LLC, a Florida limited liability company, who is personally known to me or who has produced _____ as identification.

My Commission

Expires: _____

Typed, Printed or Stamped Name of Notary

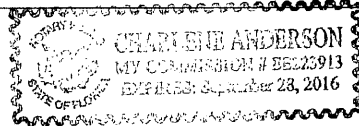
OWNER:

Toll FL I, LLC, a Florida limited liability company

Signature
DONALD R. BARNES

Print Name

Signature of Notary
Charlene Anderson



WITNESSES:

Signed, sealed and delivered
in the presence of:



 Witness Signature

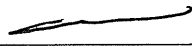
 Print Name **STUART GORDON**


 Witness Signature
Catherine Gouiat

 Print Name

ASSOCIATION:

**Royal Palm Polo Property Owners
Association, Inc.**, a Florida not-for-profit
corporation




Robert Razler

 Print Name

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

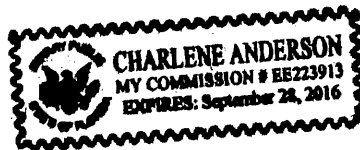
The foregoing instrument was acknowledged before me this 27th day of May, 2016 by Robert Razler as President of **Royal Palm Polo Property Owners Association Inc.**, a Florida not-for-profit corporation, who is personally known to me or who has produced _____ as identification.

My Commission
Expires: _____



 Signature of Notary

Typed, Printed or Stamped Name of Notary



(COUNTY SEAL)

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

ATTEST:

SHARON R. BOCK, CLERK
AND COMPTROLLER

By: _____
DEPUTY CLERK

By: _____
Mary Lou Berger, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
COUNTY ATTORNEY

APPROVED AS TO TERMS AND CONDITIONS

By: Jim Stiles
DIRECTOR OF WATER UTILITIES

EXHIBIT "A"

LEGAL DESCRIPTION OF EASEMENT

THE 30 FOOT WIDE PALM BEACH COUNTY UTILITY EASEMENT, LYING IN TRACT L1, ROYAL PALM POLO, AS RECORDED IN PLAT BOOK 117, PAGES 194 THROUGH 200, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA

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WPBDOCS 8905251 6
5/24/16

EXHIBIT "B"

SKETCH OF ENCROACHMENT

