

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20070061

1. ACTION REQUESTED/PURPOSE: Request Board approve the Assignment of the Landscape Installation and Maintenance Agreement between Riva Del Lago Development, Inc., Riva Del Lago Condominium Association, Inc. and Lee County for the medians on Lakeridge Court, a county-maintained roadway. Authorize Lee County Department of Transportation's Director to sign agreement on behalf of Lee County.

Additionally, approve the Release of Performance Bond and authorize the Chairman to sign release on behalf of the Board of County Commissioners.

2. WHAT ACTION ACCOMPLISHES: Completes transfer of maintenance agreement to the Homeowner's Association as contemplated in the agreement.

3. MANAGEMENT RECOMMENDATION: Approve agreement and release bond.

4. Departmental Category: C12C		5. Meeting Date: JANUARY 23, 2007
6. Agenda:	7. Requirement/Purpose: (specify)	8. Request Initiated:
<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Statute	Commissioner _____
<input type="checkbox"/> Administrative	<input type="checkbox"/> Ordinance	Department _____ County Attorney
<input type="checkbox"/> Appeals	<input type="checkbox"/> Admin. Code	Division _____ General Services
<input type="checkbox"/> Public	<input type="checkbox"/> Other	By: Jed R. Schneck
<input type="checkbox"/> Walk-On		Assistant County Attorney

9. Background:

On December 16, 2003, Lee County entered into a Landscape Installation and Maintenance Agreement with the Developer, Riva Del Lago Development, Inc. for the medians on Lakeridge Court. It was contemplated that upon completion of the Riva Del Lago Project, the agreement would be assigned to the Riva Del Lago Homeowner's Association. The Association has executed the assignment, provided a new performance bond and the required proof of insurance to complete the assignment of the agreement.

Attachments:

- Assignment Agreement
- Landscape Maintenance Agreement
- Release of Performance Bond
- Performance Bond in the name of Riva Del Lago Homeowner's Association

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>SMG for 1/11/07</i>				<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

CO. ATTY.
FORWARDED
TO CO. ADMIN.
1-11-07

RECEIVED BY COUNTY ADMIN:	
1/11	1:45
MP	
COUNTY ADMIN FORWARDED TO:	
1/11	4:02 mp
PR	

**ASSIGNMENT OF THE LANDSCAPE
INSTALLATION AND MAINTENANCE AGREEMENT**

This Agreement of Assignment is made and effective this _____ day of _____, 2006 among Riva Del Lago Development, Inc., a Florida Corporation, (“Assignor”), Riva Del Lago Condominium Association, Inc., a Florida Corporation not for profit (“Assignee”), and Lee County (“County”) a political subdivision of the State of Florida.

WITNESSETH:

WHEREAS, Assignor entered into an agreement with the County on December 16, 2003 to maintain the Roadway Landscaping Improvements located within the right-of-way of Lakeridge Court in Section 26, township 45S, Range 24E, which runs approximately 520 feet from the edge of right of way of Cleveland Avenue westward.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration flowing among the parties hereto, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignor hereby grants, bargains, sells, conveys, transfers, assigns and sets over its entire rights and delegates its entire duties under the Agreement to Assignee subject to the covenants and conditions herein mentioned.
2. Assignee hereby assumes all obligations of Assignor for all obligations under the Agreement including but not limited to existing liabilities and obligations; and Assignee hereby assumes the Agreement and shall hereinafter perform faithfully all of the covenants, stipulations and agreements contained therein.
3. The County consents to the assignment of the Agreement to Assignee. This Assignment shall not be deemed to effect a novation.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officials on the date first above written.

RIVA DEL LAGO DEVELOPMENT, INC., a Florida

Corporation

By: John Amundson

Title: PRESIDENT

Date: 12/11/2006

RIVA DEL LAGO CONDOMINIUM ASSOCIATION,

INC., a Florida corporation not for profit.

By: John Amundson

Title: PRESIDENT/DIRECTOR

Date: 12/11/2006

LEE COUNTY, a political subdivision of the State of

Florida

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Office of County Attorney

**LANDSCAPE INSTALLATION AND
MAINTENANCE AGREEMENT**

THIS AGREEMENT entered into this 16th day of December, 2003, by and between LEE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "County", and RIVA DEL LAGO DEVELOPMENT, INC., a Florida Corporation, hereinafter referred to as "Developer."

RECITALS

WHEREAS, the Developer and the County desire to enter into an Agreement regarding their respective duties and responsibilities for the landscape installation and maintenance for the medians within the right-of-way of Lakeridge Court in Section 26, Township 45S, Range 24E, which run approximately 520' feet from the edge of right-of-way of Cleveland Avenue westward; and

WHEREAS, Developer will be responsible for the installation, operation, and maintenance costs of the installed Roadway Landscaping Improvements consistent with Johnson Engineering "Lakeridge Court S.W. Boulevard Plan" for the landscaping services as shown on Exhibit "A" attached hereto:

Scope of Work by Developer:

- Install curbing for three medians;
- Install electrical lines (jack & bore) and electrical recessed upright fixtures for 3 medians;
- Install irrigation line for irrigation of landscaping in three medians (bubblers for Royal Palms and drip for groundcovers);
- Install Royal Palms, groundcover and mulch as per Johnson Engineering "Lakeridge Court S.W. Boulevard Plan" dated June 25, 2003 with revisions dated September 25, 2003 (Exhibit "A");
- Sealcoat south end of Lakeridge Court roadway (up to end of Ashland Condominium driveway) after completion of the above installation items;
- Sealcoat south end of Lakeridge Court roadway after the completion of the Riva Del Lago Condominium project.
- Maintain all items included the scope of work except for the curbing and sealcoating.

Developer will be responsible for the installation, operation, and maintenance costs associated with the Roadway Landscaping and Lighting Improvements; and

WHEREAS, it is in the public's best interest for the County and Developer to enter into this Agreement; and

WHEREAS, the Developer will pay for the maintenance and replacement of the Roadway Landscaping Improvements and Lighting as necessary in accordance with the terms and provisions of this Agreement and as described in Exhibits "A" and "B" attached hereto; and

WHEREAS, the Developer has agreed to improve the appearance of the roadsides by landscaping the medians and maintaining the landscaping improvements and replacing dead plant material as necessary.

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties, the Developer and the County hereby agree as follows:

1. The Recitals as set forth above are incorporated into the terms of this Agreement as if set out herein at length.
2. The County and the Developer agree to enter into this Agreement concerning installation of landscaping, lighting, irrigation, and curbing, maintenance of landscaping, lighting and irrigation within said County rights-of-way for three (3) existing medians within Lakeridge Court.
3. Reference to the Developer includes all assigns and successors in interest.
4. Developer agrees to landscape the three (3) medians of Lakeridge Court including the installation of plant materials and irrigation system within the right-of-way in accordance with plans and specifications approved by Developer and Lee County Department of Transportation (DOT) see attached landscape and irrigation plans marked Exhibit "A" - "Lakeridge Court S.W. Boulevard Plan dated 6-25-03, with revisions dated September 25, 2003" and by reference, made a part hereof). The cost of construction, initial landscaping, operation and maintenance as described on Exhibits "A" and "B" will be borne by Developer. During the term of this agreement the Developer shall not make any alterations or deviate from the approved plans without written approval from DOT.

5. Developer agrees to obtain a Lee County Department of Transportation *Right-of-Way Construction Permit* before beginning construction of any improvement mentioned in this agreement or in Exhibit "A".
6. Developer will be responsible for all costs of installing the Roadway Landscaping and Lighting Improvements as described on Exhibit "A" attached hereto. Developer will deliver to the County a surety bond or equivalent security document in the amount of \$11,293 for the Estimated Cost of the project's removal and restoration (\$9,820) plus fifteen percent (\$1,473), subject to the reasonable satisfaction of the County Attorney's office. The surety bond or equivalent security document must remain current during the term of this agreement.
7. Developer will be responsible for all operation and maintenance costs associated with the Landscaping and Lighting Improvements. Developer agrees to maintain the enhanced level of landscaping and other items incidental to the landscaping, including the replacement of dead plant materials, as shown on Exhibit "A", and Exhibit "B" - Maintenance Matrix Level Three attached hereto.
8. Failure to keep the surety bond or equivalent security document current, shall constitute a default on the part of the Developer. Failure to keep the surety bond or equivalent security document current, will result in the County removing the enhancements and invoicing the Developer for the removal and restoration costs. Developer agrees to pay the County all of the County's costs for the removal of the enhancements and restoration of the area to pre-construction conditions.
9. Failure of the Developer to pay the County the invoiced removal and restoration costs owed under this Agreement within thirty (30) days following receipt of the invoice shall constitute a material breach of this Agreement by the Developer. The County shall first give notice of the alleged breach and a fifteen (15) day time period to cure same and, if the Developer fails to cure the alleged breach, the County's remedy shall be to exercise the surety bond or equivalent security document and/or sue for specific performance.
10. The County will be liable for money damages in tort for any injuries to or losses of property, personal injury or death caused by the negligent or wrongful act(s) or omission(s) of any official or employee of the County while acting within the scope of the official's or employee's office or employment under circumstances in which a private person would be held to be liable in accordance with the general laws of the State of Florida subject to the

limitations as set out in Section 768.28, Florida Statutes, as it may be amended from time to time.

11. Developer agrees that if Lakeridge Court S.W. is widened, repaired or reconstructed, the Developer may be required to remove the enhanced level landscaping and lighting improvements within thirty (30) days of the Developer's receipt of written notice. The cost of relocation, or removal of the improvements and restoration of those areas to core level of service will be paid entirely by the Developer.
12. The Developer agrees that if the placement, repair, relocation or reconstruction of public utilities, including but not limited to water, sewage, gas, power, or telephone located within the road right-of-way, requires the relocation or removal of the landscaping or lighting improvements referenced herein, then the Developer will move or remove the enhanced level landscaping and lighting improvements which, upon removal, will become the property of the Developer or its successor, or will reimburse the County for moving or removing the enhanced level landscape improvements and restoration of those areas within thirty (30) days of the Developer's receipt of written notice at no cost to the County or utility, and restoration of those areas to the core level of service will be the responsibility of the County or utility.
13. This Agreement will continue in full force and effect until such time as the road or highway is closed, abandoned, vacated, discontinued or reconstructed, or until the Developer receives written notice of the County's termination of this Agreement or until such time as Developer notifies the County in writing of the intent to terminate this Agreement. At the County's option, the Developer will be required to remove all of the enhanced level landscape and lighting improvements (which, upon removal, will become the property of the Developer or its successors) or to reimburse the County for the removal of all of the landscaping and light fixtures placed within the Lakeridge Court right-of-way, and for restoration of those areas to the core level of service, by virtue of this Agreement within thirty (30) days of receipt of written notice.
14. This Agreement binds and inures to the benefit of the parties as well as their respective legal representatives, successors and/or assigns. In the event Developer assigns its obligations hereunder to a condominium association or homeowner's association, all of Developer's obligations and agreements made herein shall be fully and completely assigned to such assignee in full as if such assignee were mentioned by name instead of Developer herein. In the event the Developer desires to transfer its rights and obligations

hereunder to a third party such as a condominium association or homeowner's association, County agrees to cooperate with respect to modifying this Agreement in accordance with Section 15 below, provided that prior to such assignment being binding on County, Developer will demonstrate to County that the association to become the assignee has the authority to undertake the obligations and responsibilities herein contemplated.


15. The Developer may assign the rights and obligations set forth herein to successor Owners, Developer, Condominium Association or Homeowner Associations or similar entity, except that Developer will remain responsible under the terms of this Agreement until such time as the Developer or successor in interest can provide written documentation to the satisfaction of the County Attorney's Office, which confirms that its successor in interest has assumed responsibility for the compliance with the terms and conditions of this Agreement with respect to the landscaping improvements.
16. This Agreement must be construed, and its performance enforced under Florida law.
17. This Agreement is the entire agreement between the parties and shall not be modified or replaced except by another signed written Agreement.
18. The Parties recognize and agree that this Agreement is of a unique nature inuring principally to the benefit of Riva Del Lago Development, Inc., and that money damages may not be adequate or appropriate remedy for either Party due to a breach of the terms herein. As a result, the Parties specifically agree that a non-defaulting Party may raise in any pleadings, without objections from the alleged defaulting Party, the extraordinary remedy of specific performance, in order to protect the public's interest in this Agreement.

IN WITNESS WHEREOF the parties hereto have set their hands and seals the day and year first above written.

Witnesses:

RIVA DEL LAGO DEVELOPMENT, INC.,
A Florida Corporation



By: 
_____ John Armenia, President

Print Name: KISE LAVIOLETTE



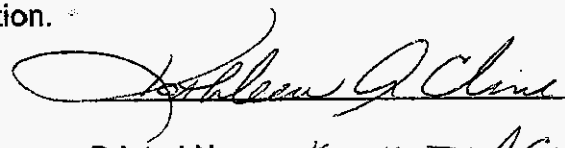
Print Name: KATHLEEN A CLINE

State of Florida
County of Lee

The foregoing agreement was acknowledged before me this 19th day of NOVEMBER, 2003, by John Armenia as President of Riva Del Lago Development, Inc., a Florida corporation. He is personally known to me or has produced _____ as identification.

My Commission Expires:

KATHLEEN A. CLINE
NOTARY PUBLIC - STATE OF FLORIDA
COMMISSION # DD190291
EXPIRES 03/28/2007
BONDED THRU 1-888-NOTARY1



Printed Name: KATHLEEN A CLINE

ATTEST:
CHARLIE GREEN, CLERK

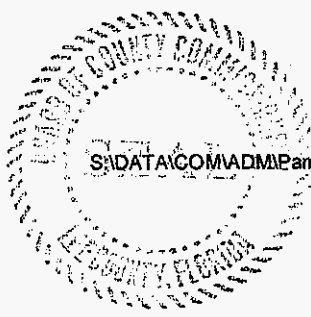
BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

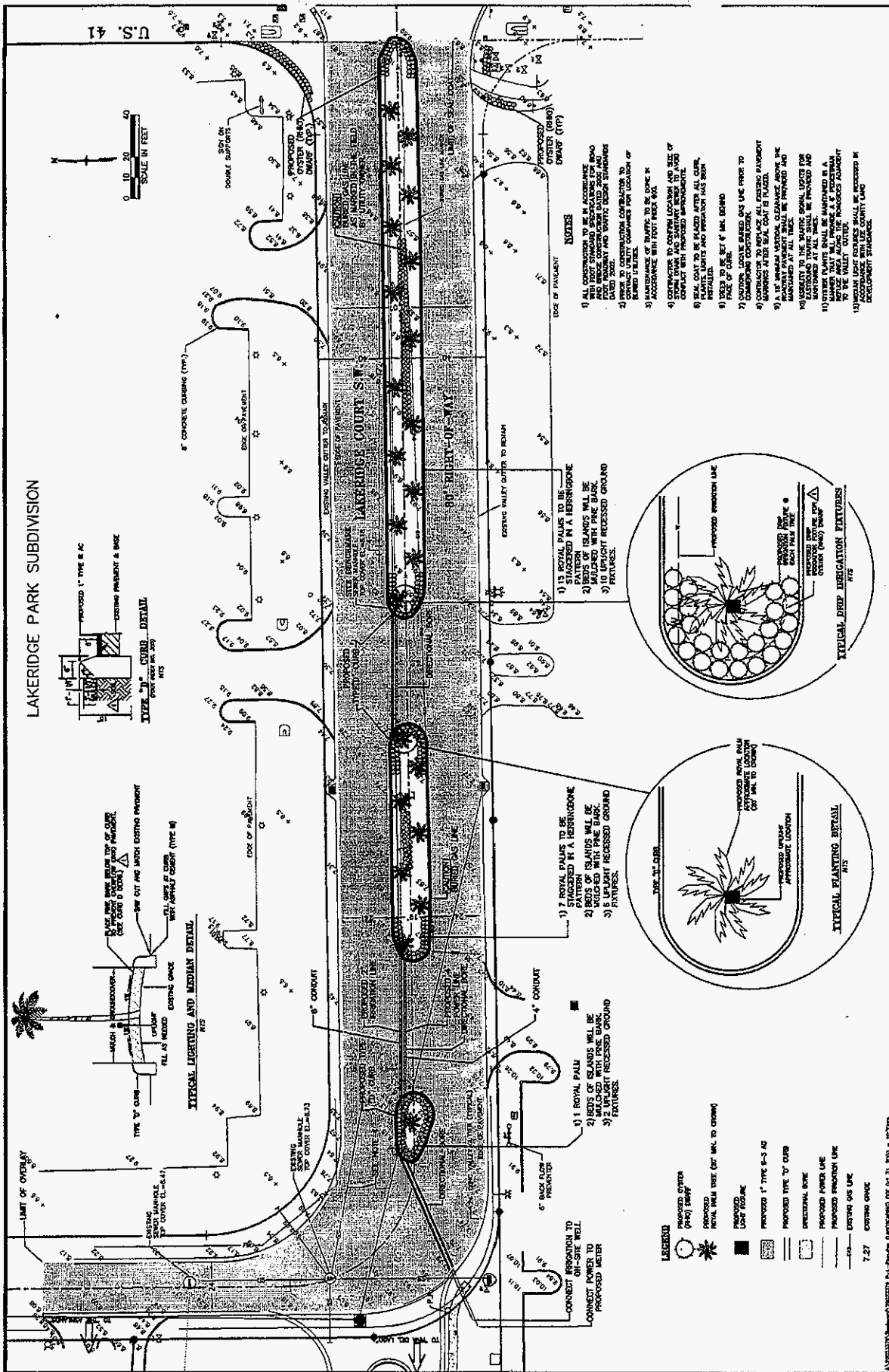
By: 
_____ Deputy Clerk

By: 
_____ Vice-Chairman

APPROVED AS TO FORM BY:


_____ Office of the County Attorney





LAKERIDGE COURT S.W. BOULEVARD PLAN	
DATE: 6-29-03 DRAWN BY: SCS/STB	PROJECT NO.: 0203379 SCALE: 1"=50' SHEET: 1 of 1
2196 JOHNSON STREET PORTLAND, OREGON 97202-1330 PHONE: (503) 253-0366 FAX: (503) 253-0368 E-MAIL: JOE@JOHNSON-ENG.COM OR: 503.253.1212	
JOHNSON ENGINEERING	
<i>John 10/31/03</i>	
REVISIONS 6-29-03 MOVED OTHER PLANTS TO ACCOMMODATE 6' PEDESTRIAN RETUDE ADDED NOTES & TRIM TO LOWER MOUND ADDED DRIP IRRIGATION FOR OTHER PLANTS	

Exhibit A, Page 1 of 1

MAINTENANCE MATRIX - LEVEL THREE

MAINTENANCE OPERATION	MAINTENANCE FREQUENCIES ARE MINIMUMS											
WATERING	PLANT MATERIAL	DAY			FREQUENCY				NUMBER OF APPLICATIONS			
	ALL	1-60			DAILY				60			
	ALL	61-150			3 TIMES/WEEK				36			
	ALL	151-365			WEEKLY				28			
WEEDING	LANDSCAPED BEDS AND MULCHED AREAS SHALL BE KEPT WEED FREE.											
PRUNING	PRUNE AS NECESSARY TO REMOVE ALL SUCKERS, DEAD, DISEASED, OR BROKEN BRANCHES, FRONDS AND SEED HEADS.											
FERTILIZATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
		X		X		X		X		X		X
LITTER REMOVAL	WEEKLY IN ALL MULCHED AREAS.											
GENERAL	RESTORE SAUCERS AND CONTROL ANTS, INSECTS AND DISEASE AS THEY APPEAR.											
IRRIGATION	MAINTAIN THE IRRIGATION SYSTEM IN AN OPERABLE CONDITION AT ALL TIMES. CHECK SYSTEM FOR LINE BREAKS AND CLOGGING OF HEADS AND BUBBLERS EACH WEEK.											
MULCHING	MAINTAIN A CONTINUOUS 3" LAYER OF MULCH IN ALL PLANTED AND MULCHED AREAS. MULCH ENTIRE SITE ANNUALLY OR IN MONTH TWELVE OF MAINTENANCE CONTRACT.											
	REFER TO LANDSCAPE PLAN FOR SPECIFIC LANDSCAPE MAINTENANCE DETAILS. LEE COUNTY RESERVES THE RIGHT TO ADJUST FREQUENCIES AS NECESSARY.											

RELEASE OF PERFORMANCE BOND

As used herein, the term "Releasor" means, **LEE COUNTY, FLORIDA**, and also means its successors and assigns (which, in the case of individuals, shall include personal representatives and heirs). When more than one person or entity is named as a Releasor, then all such persons and entities shall be deemed to be referred to by the term "Releasor" collectively, and jointly and severally.

As used herein, the term "Releasee" means **RIVA DEL LAGO DEVELOPMENT, INC.** and **PLATT RIVER INSURANCE COMPANY**. The term "Releasee" shall also mean the officers, directors, shareholders, partners (both limited and general), managers, members, employees, agents, servants and representatives of entities, and the personal representatives and heirs of individuals, as well as the successors and assigns of all of them. When more than one person or entity is named as a Releasee, then all such persons and entities shall be deemed to be referred to by the term "Releasee" collectively, and jointly and severally.

As used herein, the term "Claims" means any and all manner of action and actions, cause and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, guarantees, warranties (whether based on statute, common law or otherwise) for any failure to perform under the Landscape Installation and Maintenance Agreement (Agreement) dated December 16, 2003.

Both the Releasor and Releasee have voluntarily entered into this Release, and both have taken the opportunity to confer with counsel of their own choosing concerning the legal force and effect of this Release, and the Releasor understands that the Releasor is waiving and releasing the Claims defined herein.

Releasor is in receipt of the assignment of the Agreement to the Riva Del Lago Condominium Association, Inc. and the performance bond in the name of Riva Del Lago Condominium Association, Inc., the adequacy of which are hereby acknowledged by the Releasor, the Releasor has remised, released, and forever discharged, and by these presents does remise, release, acquit, satisfy and forever discharge the said Releasee of and from any and all Claims which against the Releasee the Releasor ever had, now has, or which the Releasor hereafter can, shall or may have, for, upon or by reason of any and all Claims arising out, resulting from, or referring or relating to the Agreement and/or that certain Performance Bond, Surety Bond No. 40058401 issued on November 26, 2003 by Riva Del Lago Development, Inc., as principal, and Platt River Company, as Surety, in favor of the Lee County Board of County Commissioners, Lee County, Florida, as Obligee.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2007.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

(Witness)

LEE COUNTY, FLORIDA by Lee County
Board of County Commissioners

(Witness)

By: _____
Robert P. Janes, Chair

STATE OF FLORIDA)
COUNTY OF LEE)

THE FOREGOING INSTRUMENT was acknowledged before me this _____ day of _____, 2007, by Robert P. Janes, as Chair of Lee County Board of County Commissioners, who is personally known to me or has produced _____ as identification and did not take an oath.

Notary Public
Commission Expiration Date: _____
Commission No.: _____