

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

Blue Sheet No. 20021434

**1. REQUESTED MOTION:
ACTION REQUESTED:**

Approve and authorize the Chairman to execute the attached Landscape Installation and Maintenance Agreement between Lee County and Riverbend Golf and Country Club, Inc.

WHY ACTION IS NECESSARY:

The Board of County Commissioners must approve all agreements.

WHAT ACTION ACCOMPLISHES:

Provides an agreement for the installation and maintenance of enhanced landscaping at the intersection of Bayshore Road and Indian Creek Drive.

**2. DEPARTMENTAL CATEGORY: 9
COMMISSION DISTRICT # 4**

C9K

3. MEETING DATE:

01-07-2003

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:
(Specify)**

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER
LeeScape Master Plan

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT *Transportation*
- C. DIVISION *Operations*

BY: *Scott M. Gilbertson, P.E.,
Director, DOT*

7. BACKGROUND:

The landscaping on Bayshore Road was installed as part of the North Ft. Myers CRA projects. During the process of getting the Bayshore CRA project implemented, the developer of Riverbend Golf and Country Club, Inc. agreed to add enhanced landscaping at the intersection of Bayshore Road and Indian Creek Drive, and also agreed to partner with the County and fund the maintenance (\$200/month) of this enhanced landscaping. Execution of the attached agreement formally consummates this agreement and puts it in compliance with our LeeScape Roadway Landscape Master Plan.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>12/24/02</i> <i>[Signature]</i>	<i>N/A Pur.</i> <i>[Signature]</i>	<i>N/A</i>		<i>[Signature]</i> <i>12/23/02</i>	<i>OA</i> <i>RK</i> <i>12/24/02</i>	<i>OM</i> <i>[Signature]</i> <i>12/24/02</i>	<i>Risk</i> <i>[Signature]</i> <i>12/24/02</i>	<i>GC</i> <i>[Signature]</i> <i>12/24/02</i>	<i>[Signature]</i> <i>12-17-02</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: *12/23/02*
Time: *11:40 am*
Forwarded To:
City Admin.
12/23/02 3:30 PM

RECEIVED BY
COUNTY ADMIN.
12/23/02 4:50 pm
COUNTY ADMIN.
FORWARDED TO:
12/26/02

LANDSCAPE INSTALLATION AND MAINTENANCE AGREEMENT

THIS Landscape Maintenance and Installation Agreement entered into this ___ day of _____, 2002, by and between LEE COUNTY, a political subdivision and charter county of the State of Florida, hereinafter referred to as "County", and RIVERBEND GOLF AND COUNTRY CLUB, INCORPORATED, a Florida corporation, hereinafter referred to as "Developer", collectively the "Parties".

RECITALS

WHEREAS, the County and Developer desire to enter into an agreement regarding their respective duties and responsibilities for the landscape maintenance of the median right-of-way of State Road 78 on each side of its intersection with Indian Creek Drive in Section 31, Township 43S, Range 25E, which runs 150 feet to the northeast and southwest of each bullnose at the median opening; and

WHEREAS, Developer will be responsible for the project's installation, cost of installing and maintenance of the installed Roadway Landscaping Improvements as shown on the Landscape and Irrigation Plans attached hereto as Exhibit "A". Developer will (i) pay to the County the estimated cost for maintenance of the Roadway Landscaping Improvements and (ii) deliver to County a surety bond or equivalent security document in the amount of the Cost Estimate for the project's removal and restoration, plus fifteen percent (15%), subject to the reasonable satisfaction of the County Attorney's office; and

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

WHEREAS, the Developer will pay the County for the maintenance and replacement of the Roadway Landscaping Improvements as necessary in accordance with the terms and provisions of this Agreement; and

WHEREAS, the Developer has agreed to improve and landscape the roadside and provide the County with the financial resources to maintain the landscaping improvements and replace 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 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. Reference to the Developer includes all assigns and successors in interest.

3. The County and the Developer agree to enter into an Agreement concerning installation and maintenance of landscaping within said County right-of-way.
4. The Developer agrees to landscape the medians of SR 78, including the installation of plant materials and irrigation system within the right-of-way in accordance with the plans and specifications approved by the Developer and County (see attached landscape and irrigation plans marked Exhibit "A" and, by reference made a part hereof).
5. Developer agrees to assume full responsibility for preparation of all plans and specifications, securing of the construction contract, construction supervision, and attainment of required permits by contractors.
6. Developer will coordinate project installation in cooperation with Lee County Department of Transportation, herein after referred to as "DOT".
7. All maintenance expenses will be borne by the Developer.
8. Upon completion of the landscape and irrigation installation and its acceptance by the County, the Developer will (i) pay to the County the estimated cost for maintenance of the Roadway Landscaping Improvements; and (ii) deliver to County a surety bond or equivalent security document in the amount of the Cost Estimate for the project's removal and restoration, plus fifteen percent (15%), subject to the reasonable satisfaction of the County Attorney's office.
9. The County agrees to maintain the landscaping and other items incidental to the landscaping as shown on Exhibit "B". The Developer agrees to pay the County for maintaining the landscaping and other items incidental to the landscaping as shown on Exhibit "B".
10. Developer agrees to pay the County quarterly, based on the calendar year, to maintain the landscaping and irrigation improvements covered under this agreement. The initial and final payments may be on a prorated basis. All payments will be made in advance of work performed. First quarter payments are due by December 15; second quarter by March 15; third quarter by June 15; and fourth quarter by September 15 of each calendar year. Payments are due and payable at DOT Operations, 5560 Zip Drive, Fort Myers, FL 33905.
11. Quarterly fees may increase or decrease during this Agreement due to such changes as the County's supervision and maintenance expenses, contracted maintenance service changes, plant material changes, correction of safety concerns, or changes initiated by the Developer for more or less service.

12. Payments not received by the due dates, or failure to keep the surety bond or equivalent security document current, shall constitute a default on the part of the Developer. Failure of the Developer to pay the quarterly fee owed to the County under this Agreement, or 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 areas to pre-construction conditions.
13. 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 fifteen (15) days 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 or sue for specific performance.
14. This Agreement may be amended, modified or terminated solely at the County's discretion should the Florida Department of Transportation (FDOT) make any requests that make it necessary to make changes or alterations to the area.
15. The Developer agrees that if State Road 78 is widened, repaired or reconstructed, the Developer will reimburse the County for moving or removing the landscaping and improvements within thirty (30) days of the Developer's receipt of written notice. The cost of relocation or removal of the landscaping improvements and restoration of those areas will be paid entirely by the Developer.
16. The Developer agrees that if the placement, repair, relocation or reconstruction of public utilities, including but not limited to water, sewage, gas, power, telephone located within the road right-of-way, requires the relocation or removal of the landscape improvements referenced herein, then the Developer will reimburse the County for moving or removing the landscape improvements and restoration of those areas within thirty (30) days of the Developer's receipt of written notice.
17. 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 the Developer notifies the County in writing of the intent to terminate this Agreement. The Developer, at County's option, shall pay the County all costs and expenses required to remove the enhanced level of landscaping and other improvements placed within the State Road 78 right-of-way and restoration of those areas by virtue of this Agreement within thirty (30) days of receipt of written

notice.

18. This Agreement binds and inures to the benefit of the parties as well as their respective legal representatives, successors or assigns. In the event Developer assigns its obligations hereunder to a homeowner's association, all of Developer's obligations and agreements made herein shall be fully and completely assigned to such assignee as full as if such assignee were mentioned by name instead of Developer herein. The parties understand that this Agreement was entered into with the intention that such an assignment will be made in the future. In the event the Developer desires to transfer its rights and obligations hereunder to a third party such as homeowner's association, County agrees to cooperate with respect to modifying this Agreement in accordance with Section 14 above 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.
19. The Developer may assign the rights and obligations set forth herein to successor Owners, Developer or Homeowner Association, 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 and obtained liability insurance and a surety bond.
20. The Parties recognize and agree that this Agreement inures principally to the benefit of Riverbend Golf and Country Club, Incorporated. As the 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.
21. This Agreement must be construed, and its performance enforced, under Florida law.
22. This Agreement is the entire Agreement between the Parties and shall not be modified or replaced except by another signed written Agreement.

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

Witnesses:

RIVERBEND GOLF AND COUNTRY CLUB, INC.,

Joyce Martiano
Signature

BY Kerrey Hoolihan

JOYCE MARTIANO
Name Printed, Stamped or Typed

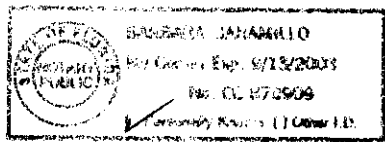
KERREY HOOLIHAN
Name Printed, Stamped or Typed

BERNADETTE L. DEURANEX
Signature

Bernadette L. Deuranex
Name Printed, Stamped or Typed

STATE OF FLORIDA
COUNTY OF LEE

The foregoing agreement was acknowledged before me this 6TH day of NOVEMBER, 2002, by KERREY HOOLIHAN as SECRETARY/DIRECTOR of RIVERBEND GOLF CLUB. She is personally known to me or has produced PERSONALLY KNOWN as identification.



Barbara Jaramillo
Notary Public, State of Florida at Large

BARBARA JARAMILLO
Name of Notary Printed, Stamped or Typed

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM BY:

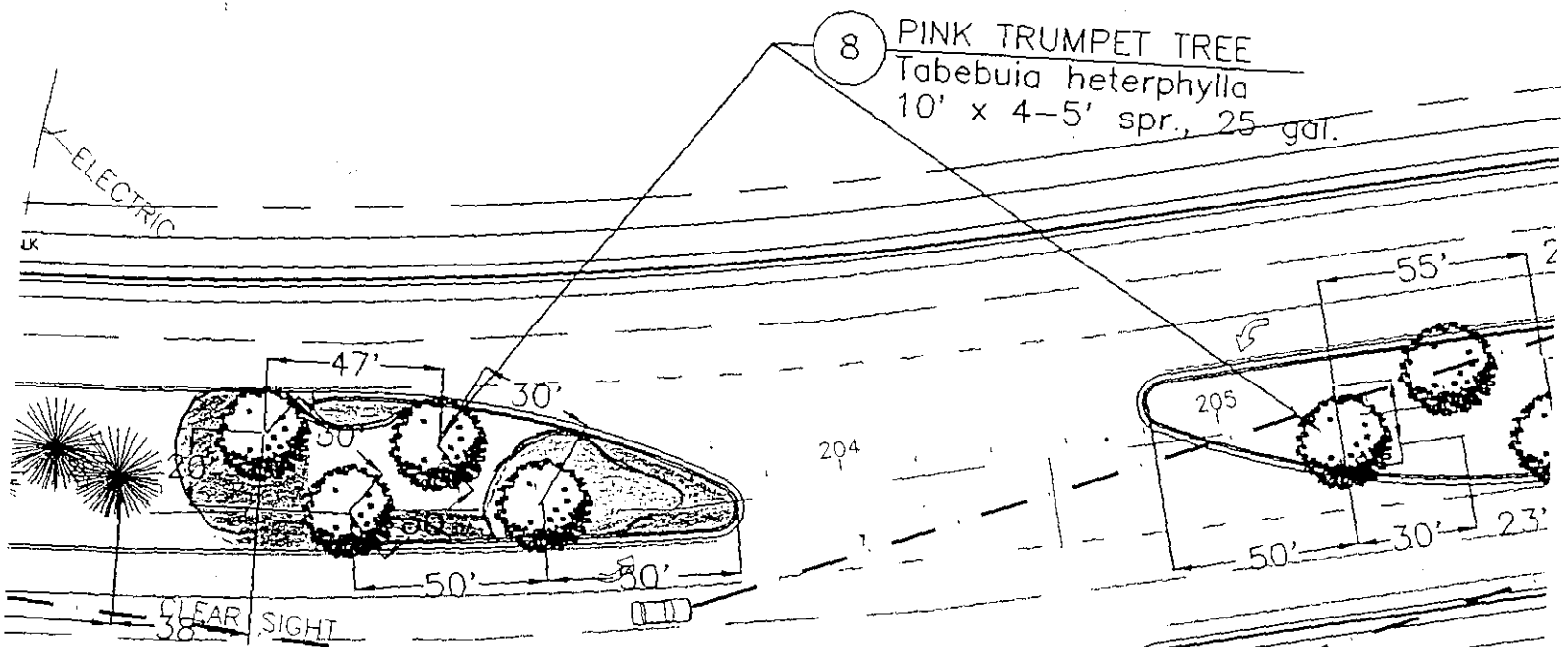
Office of the County Attorney

Legend



- Parsonia Juniper
- Red Penta or dracaena bagainvella
- Cord Grass
- Zamida or parsonia Juniper
- Plumbago

PLANTINGS IN EAST MEDIAN IDENTICAL TO WEST MEDIAN



- SOUTH FLORIDA SLASH PINE
- Pinus elliottii, "Densa"
- 1/3 @ 4', 3 gal.
- 1/3 @ 6', 7 gal.
- 1/3 @ 8', 10 gal.

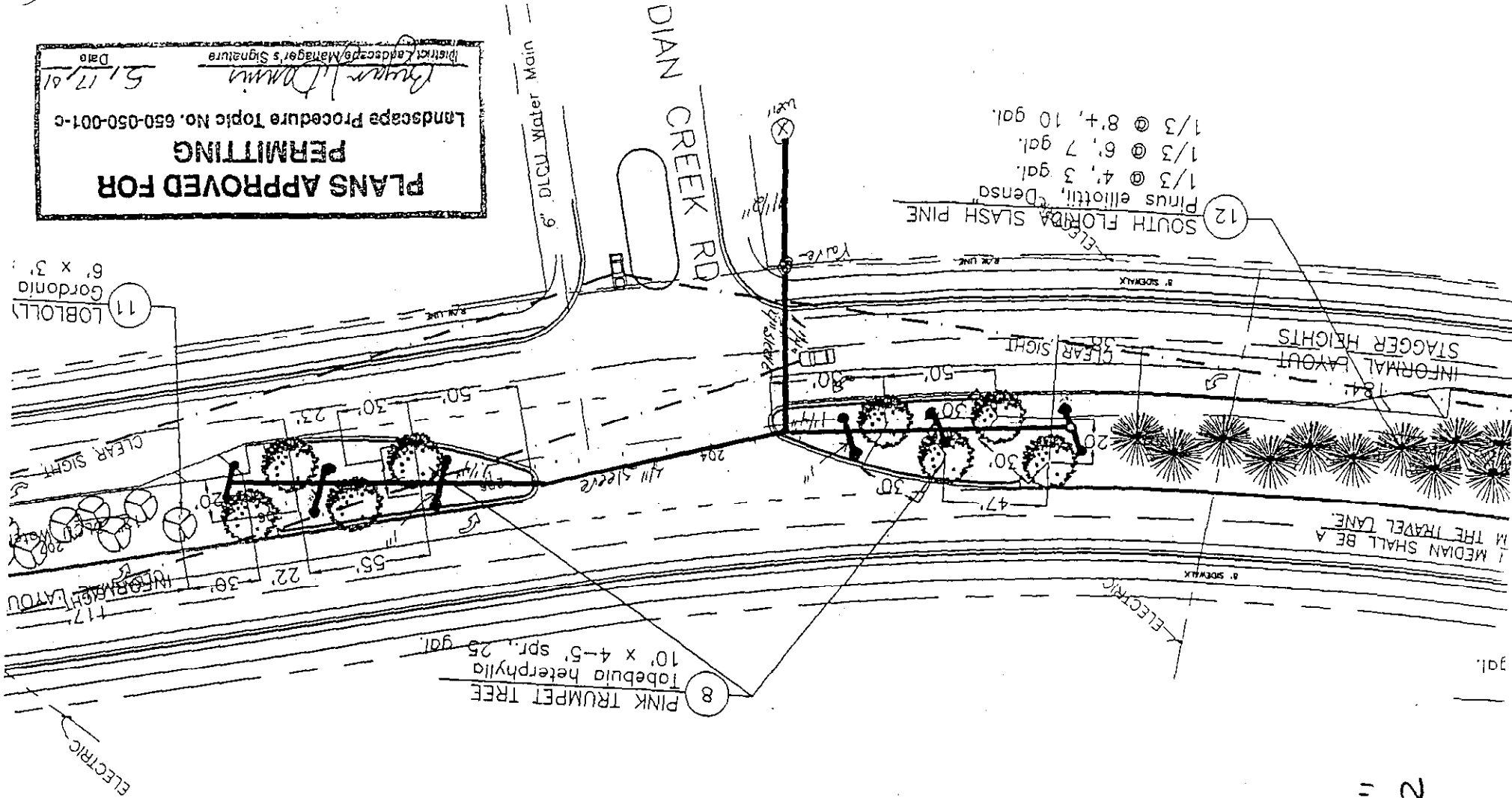
PLANS APPROVED FOR PERMITTING

Landscape Procedure Topic No. 660-860-861-c

Bryan Dennis
 District Landscape Manager's Signature

8, 17, 01
 Date

PLANS APPROVED FOR PERMITTING
 Landscape Procedure Topic No. 650-050-001-c
 District Landscapes/Manager's Signature: *Raymond L. Damm*
 Date: 5/17/01



at entrance to Rutherford SR 78
 in county
 where strong rotary's listed prohibited
 rotary hoods are 10-12" behind inside curb

ADTS

EXHIBIT "A"
 PAGE 2 OF 2

MAINTENANCE SCHEDULE FOR PLANTS IN THE MEDIAN STRIP AT THE INTERSECTION OF BAYSHORE ROAD AND INDIAN CREEK ROAD.

- A. BLOOMING FLOWERS PLANTED IN THE "BULL NOSE" AREAS NEED BI-WEEKLY INSPECTION FOR NUTRIENTS, DISEASE AND INSECT PROBLEMS. CHEWING INSECTS SHOULD BE TREATED WITH VOLCK. FUNGUS PROBLEMS CAN BE TREATED WITH COPPER OR DACONIL. ANY NUTRIENT DEFICIENCY CAN BE TREATED WITH A WELL BALANCED, HIGH MINOR ELEMENT FERTILIZER.
- B. PARSONII JUNIPERS CAN BE FERTILIZED THREE TIMES A YEAR. SUGGESTION: MARCH, JUNE, LATE SEPTEMBER. TRIM AS NEEDED, PROBABLY ONCE A YEAR.
- C. CORD GRASS CAN BE FERTILIZED LIKE THE PARSONII JUNIPERS. WHEN THE GRASS LOOKS WELL OVERGROWN AND OLD - BROWN LIKE - IT SHOULD BE CUT DOWN TO APPROXIMATELY 16". THIS SHOULD BE DONE AT A TIME OF FERTILIZATION, PREFERABLY IN MARCH OR JUNE.
- D. ZANIDU CAN BE FERTILIZED LIKE THE PARSONII JUNIPER AND CORD GRASS. TRIM BY REMOVING DEAD LEAVES. COPPER FOR SPOTS, SEVEN FOR CHEWING INSECTS.
- E. PLUMBAGO, CAN BE FERTILIZED LIKE THE PARSONII JUNIPER, CORD GRASS AND ZANIDU. LET THIS BUSH GROW TO "BUSHY". TRIM IN JUNE AND OR MARCH AS NEEDED. USE SEVEN SPRAY FOR CHEWING INSECTS AND COPPER FOR FUNGUS. HOWEVER, FUNGUS SHOULD NOT BE A PROBLEM.
- F. FERTILIZE BOTTLEBRUSH WHEN FERTILIZING OTHER PLANTS.
- G. SPRAY WEEDS AS NEEDED OR ONCE A MONTH.

EXHIBIT "B"
PAGE 1 OF 1



AIA Document A311
Performance Bond

KNOW ALL MEN BY THESE PRESENTS, that

RIVERBEND GOLF & COUNTRY CLUB, INC
6270 RIVER CLUB COURT, NORTH FORT MYERS, FL 33917

as Principal, hereinafter called Contractor, and

Western Surety Company
101 South Phillips Avenue Sioux Falls, SD 57104-6703

as Surety, hereinafter called Surety, are held and firmly bound unto

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
P.O. BOX 398 FORT MYERS, FL 33902-0398

as Obligee, hereinafter called Owner, in the amount of

THREE THOUSAND TWO HUNDRED SEVENTY FOUR & 63/100 DOLLARS
(\$3,274.63)

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Contractor has by written agreement dated JANUARY 30, 2002 , entered into a contract with Owner for

LANDSCAPE MAINTENANCE

in accordance with Drawings and Specifications prepared by

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

PERFORMANCE BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

- 1) Complete the Contract in accordance with its terms and conditions, or
- 2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or

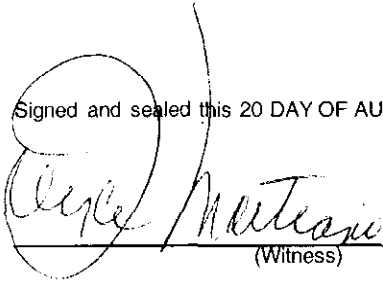
contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.


Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

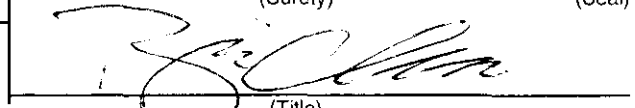
BOND PREMIUM BASED ON FINAL CONTRACT PRICE

Signed and sealed this 20 DAY OF AUGUST 2002


(Witness)


RIVERBEND GOLF & COUNTRY CLUB, INC
(Principal) (Seal)
SECRETARY-DIRECTOR
(Title)


(Witness)

Western Surety Company
(Surety) (Seal)

(Title)
Brian A. Clark ATTORNEY IN FACT



AIA Document A311

Labor and Material Payment Bond

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENTS, that

RIVERBEND GOLF & COUNTRY CLUB, INC
6270 RIVER CLUB COURT, NORTH FORT MYERS, FL 33917

as Principal, hereinafter called Principal, and

Western Surety Company
101 South Phillips Avenue Sioux Falls, SD 57104-6703

as Surety, hereinafter called Surety, are held and firmly bound unto

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
P.O. BOX 398 FORT MYERS, FL 33902-0398

as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of

THREE THOUSAND TWO HUNDRED SEVENTY FOUR & 63/100 DOLLARS

(\$3,274.63)

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated JANUARY 30, 2002, entered into a contract with Owner for

LANDSCAPE MAINTENANCE

in accordance with Drawings and Specifications prepared by

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

LABOR AND MATERIAL PAYMENT BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the principal for labor, material, or both used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimants work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the

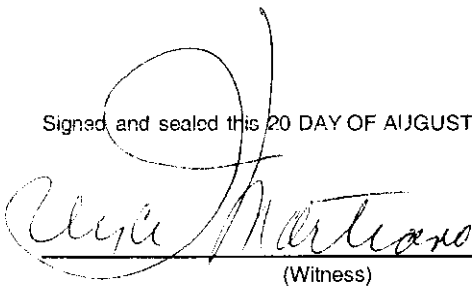
party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer..

b) After the expiration of one (1) year following the date on which principal ceased Work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this 20 DAY OF AUGUST 2002


(Witness)


(Witness)


RIVERBEND GOLF & COUNTRY CLUB, INC

(Principal)

(Seal)

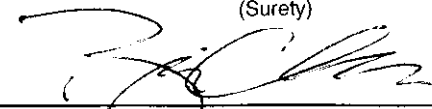
SECRETARY DIRECTOR

(Title)

Western Surety Company

(Surety)

(Seal)



(Title)

Brian A. Clark

ATTORNEY IN FACT



Western Surety Company

POWER OF ATTORNEY - CERTIFIED COPY

Bond No. 24324278

Know All Men By These Presents, that WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, and having its principal office in Sioux Falls, South Dakota (the "Company"), does by these presents make, constitute and appoint Dale E. Clark, Brian A. Clark, Robert A. Jacobson, Diane Gibson, Wendy M. Lands, Heidi S. Skiendziel and Johanna McMasters its true and lawful attorneys-in-fact, with full power and authority hereby conferred, to execute, acknowledge and deliver for and on its behalf as Surety, any surety or fidelity bond in an unlimited amount, and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said attorneys-in-fact may do within the above stated limitations. Said appointment is made under and by authority of the following bylaw of Western Surety Company which remains in full force and effect.

"Section 7. All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

The penal amount of the bond herein described may be increased if there is attached to this Power, written authority so authorizing in the form of an endorsement, letter or telegram signed by the Senior Underwriting Officer, Underwriting Officer, President, Vice President, Assistant Vice President, Treasurer, Secretary, or Assistant Secretary of Western Surety Company specifically authorizing said increase.

In Witness Whereof, Western Surety Company has caused these presents to be signed by its President, Stephen T. Pate, and its corporate seal to be affixed this 20 day of AUGUST, 2002.

STATE OF SOUTH DAKOTA }
COUNTY OF MINNEHAHA } SS

WESTERN SURETY COMPANY

Stephen T. Pate
Stephen T. Pate, President

On this 20 day of AUGUST, in the year 2002, before me, a notary public, personally appeared Stephen T. Pate, who being to me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of WESTERN SURETY COMPANY and acknowledged said instrument to be the voluntary act and deed of said corporation.



D. Krell
Notary Public - South Dakota

I the undersigned officer of Western Surety Company, a stock corporation of the State of South Dakota, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable, and furthermore, that Section 7 of the bylaws of the Company as set forth in the Power of Attorney is now in force.

In testimony whereof, I have hereunto set my hand and seal of Western Surety Company this 20 day of AUGUST, 2002.

WESTERN SURETY COMPANY

Stephen T. Pate
Stephen T. Pate, President