

Lee County Board Of County Commissioners

Agenda Item Summary

Blue Sheet No. 20031417

1. **REQUESTED MOTION:**

**ACTION REQUESTED:** BoCC approve the attached Landscape Installation and Maintenance Agreement between Lee County and Riva Del Lago Development, Inc. Authorize the Chairman to execute the agreement on behalf of the Board of County Commissioners.

**WHY ACTION IS NECESSARY:** The Board must approve the agreement and authorize the Chairman to sign it in order for the document to become fully executed.

**WHAT ACTION ACCOMPLISHES:** Provides an agreement that establishes the landscape installation, maintenance, and removal responsibilities for a proposed landscaping project.

2. **DEPARTMENTAL CATEGORY:** 9  
**COMMISSION DISTRICT #** 3

C9A

3. **MEETING DATE:**  
12-16-2003

4. **AGENDA:**  
 CONSENT  
ADMINISTRATIVE  
APPEALS  
  
 PUBLIC  
  
 WALK ON  
**TIME REQUIRED:**

5. **REQUIREMENT/PURPOSE:**  
(Specify)  
 STATUTE  
 ORDINANCE  
 ADMIN.  
CODE  
 OTHER  
  
LeeScope Master Plan

6. **REQUESTOR OF INFORMATION:**

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

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

7. **BACKGROUND:**

Riva Del Lago Development, Inc. is currently developing property off of Lakeridge Court, which is located in south Ft. Myers just north of Gladiolus Drive and west of U.S. 41. The developer would like to install landscape improvements within the median of Lakeridge Court and along a portion of the roadside right-of-way to improve the marketability of their property. The subject agreement identifies the various responsibilities associated with the project's installation and ongoing maintenance by the developer. The agreement also provides a mechanism for the County to be compensated for the project's removal expenses, if the developer fails to honor their project removal responsibilities, when either party wishes to terminate the agreement.

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>[Signature]</i>		NA		<i>[Signature]</i>	OA <i>[Signature]</i>	OM <i>[Signature]</i>	Risk <i>[Signature]</i>	GC <i>[Signature]</i>	<i>[Signature]</i> 12-1-03

10. **COMMISSION ACTION:**

APPROVED  
 DENIED  
 DEFERRED  
 OTHER

Rec. by CoAtty  
Date: 12/16/03  
Time: 1:15 PM  
Forwarded To:  
Blacked  
12/16/03 9:30 AM

RECEIVED BY  
COUNTY ADMIN: *[Signature]*  
12/16/03  
1:15 PM SGT  
COUNTY ADMIN  
FORWARDED TO:  
12/16/03  
C

**LANDSCAPE INSTALLATION AND  
MAINTENANCE AGREEMENT**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 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*  
John Armenia, President

*Lise Lavolette*

Print Name: LISE LAVOLETTE

*Kathleen A. Cline*

Print Name: KATHLEEN A CLINE

State of Florida  
County of Lee

The foregoing agreement was acknowledged before me this 19<sup>th</sup> day of NOVEMBER, 20    , 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*

Printed Name: KATHLEEN A CLINE

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

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

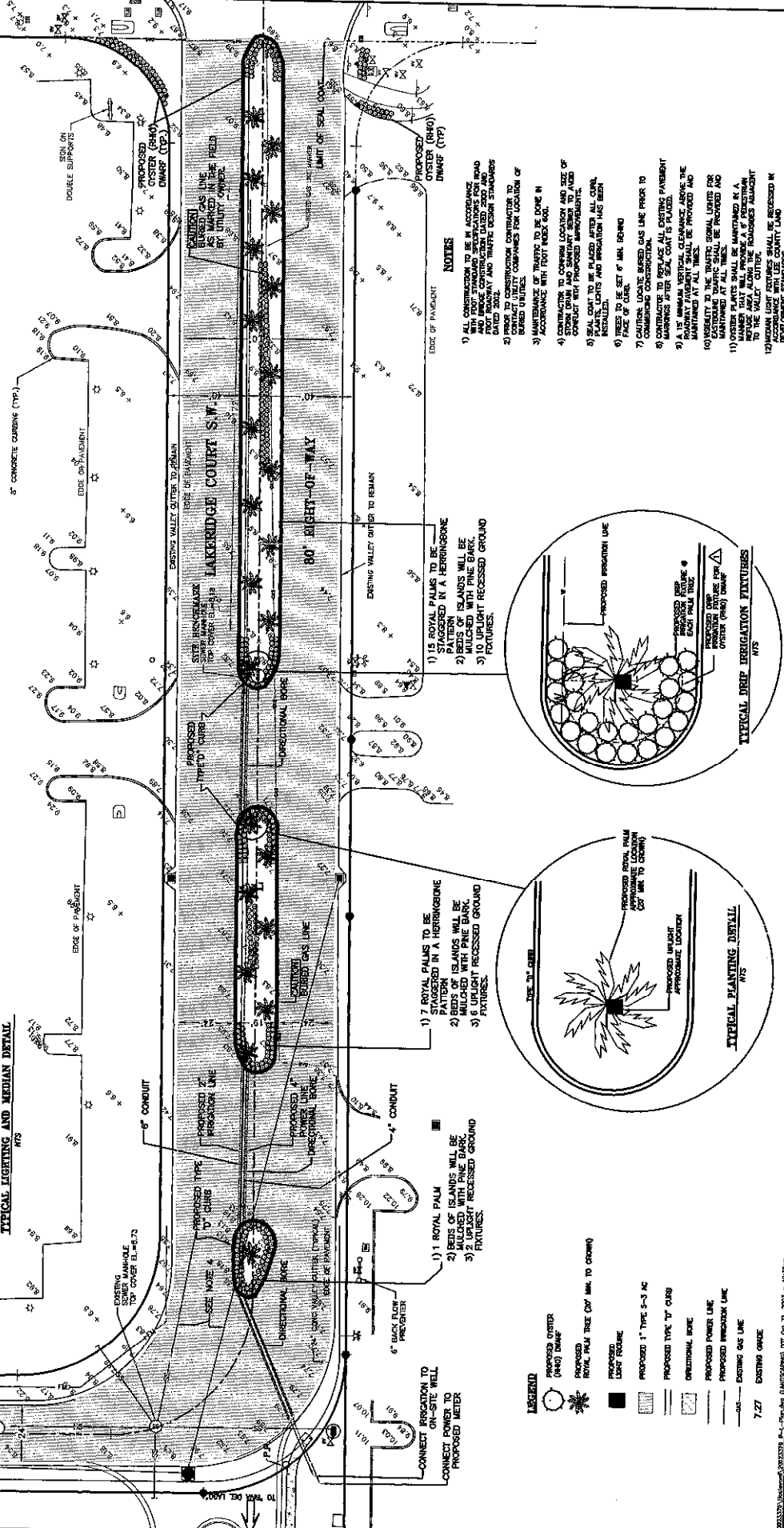
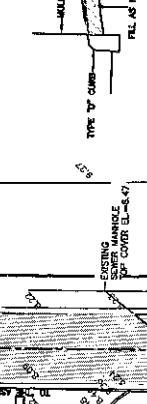
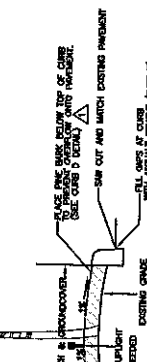
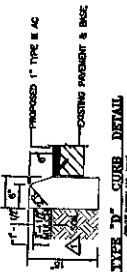
By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairman

APPROVED AS TO FORM BY:

\_\_\_\_\_  
Office of the County Attorney

LAKERIDGE PARK SUBDIVISION



- NOTES**
- 1) ALL CONSTRUCTION TO BE IN ACCORDANCE WITH THE LAKERIDGE PARK SUBDIVISION PLANS AND PERMITS TO ACCOMMODATE PEDESTRIAN REFUGE AND LOWER MULCH. ALL CONSTRUCTION DATED 2000 AND EARLIER SHALL BE MAINTAINED AS SHOWN UNLESS OTHERWISE NOTED.
  - 2) PRIOR TO CONSTRUCTION CONTRACTOR TO OBTAIN NECESSARY PERMITS AND TRAFFIC DESIGN STANDARDS FROM THE CITY OF MIAMI.
  - 3) MAINTENANCE OF TRAFFIC TO BE DONE IN ACCORDANCE WITH FOOT INDEX 600.
  - 4) CONTRACTOR TO CONSULT LOCATION AND SIZE OF EXISTING UTILITIES AND PROVIDE PROTECTIVE CASING AS REQUIRED.
  - 5) SEAL CURB TO PREVENT INFILTRATION. PLANTS, LIGHTS AND IRRIGATION SHALL BE MAINTAINED AT ALL TIMES.
  - 6) FACE OF CURB TO BE SET 6" MIN. BEYOND EDGE OF PAVEMENT.
  - 7) CAUTION LOCATE BASED GAS LINE PRIOR TO COMMENCING CONSTRUCTION.
  - 8) CONTRACTOR TO REPLACE ALL EXISTING PAVEMENT AND CURB AFTER SEAL CURB IS PLACED.
  - 9) ALL CURB SHALL BE MAINTAINED AS SHOWN UNLESS OTHERWISE NOTED.
  - 10) CONTRACTOR TO PROVIDE 1" TYPE 'A' CURB AND 1" TYPE 'B' CURB AS SHOWN UNLESS OTHERWISE NOTED.
  - 11) CURB SHALL BE MAINTAINED AS SHOWN UNLESS OTHERWISE NOTED.
  - 12) CURB SHALL BE MAINTAINED AS SHOWN UNLESS OTHERWISE NOTED.
  - 13) CURB SHALL BE MAINTAINED AS SHOWN UNLESS OTHERWISE NOTED.
  - 14) CURB SHALL BE MAINTAINED AS SHOWN UNLESS OTHERWISE NOTED.
  - 15) CURB SHALL BE MAINTAINED AS SHOWN UNLESS OTHERWISE NOTED.

- 1) 15 ROYAL PALMS TO BE STAGGERED IN A HERRINGBONE PATTERN.
- 2) BEDS OF ISLANDS WILL BE MULCHED WITH PINE BARK.
- 3) 10 UPLIGHT RECESSED GROUND FIXTURES.

- 1) 7 ROYAL PALMS TO BE STAGGERED IN A HERRINGBONE PATTERN.
- 2) BEDS OF ISLANDS WILL BE MULCHED WITH PINE BARK.
- 3) 6 UPLIGHT RECESSED GROUND FIXTURES.

- 1) 1 ROYAL PALM TO BE STAGGERED IN A HERRINGBONE PATTERN.
- 2) BEDS OF ISLANDS WILL BE MULCHED WITH PINE BARK.
- 3) 2 UPLIGHT RECESSED GROUND FIXTURES.

- LEGEND**
- PROPOSED OSTER (H40) DRAIN
  - PROPOSED ROYAL PALM TREE (20' HGT. TO GROUND)
  - PROPOSED LINE FEATURE
  - PROPOSED 1" TYPE 'A' CURB
  - PROPOSED 1" TYPE 'B' CURB
  - ORIENTATIONAL SIGN
  - PROPOSED POWER LINE
  - PROPOSED IRRIGATION LINE
  - EXISTING GAS LINE
  - EXISTING ORNAMENTAL LIGHTING
  - 7/27

2108 JOHNSON STREET  
P.O. BOX 1550  
FORT MYERS, FL 33902  
TEL: (813) 334-0046  
FAX: (813) 334-3881  
E-MAIL: J.E. JOHNSON@JOHNSON-ENGINEERING.COM

**JOHNSON ENGINEERING**

DATE: 6-25-03 PROJECT NO.: 2002379 SCALE: 1"=20'

LAKERIDGE COURT S.W. BOULEVARD PLAN

REVISED: 6-25-03 PERMITS TO ACCOMMODATE PEDESTRIAN REFUGE  
REVISED: 6-25-03 LOWER MULCH  
REVISED: 6-25-03 THRU 12  
ADDED DRIP IRRIGATION FOR OTHER PLANTS

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.											

**EXHIBIT B**  
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