

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

Blue Sheet No. 20021179

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Approve and authorize the Chairman to execute attached Landscape Installation and Maintenance Agreement between Lee County and WCI Communities, Inc. on behalf of the BOCC.

**WHY ACTION IS NECESSARY:** The Board must approve the agreement and authorize the Chairman to sign it so that it May be fully executed.

**WHAT ACTION ACCOMPLISHES:** Provides an agreement that establishes the landscape installation and maintenance Responsibilities along the roadway of Coconut Road.

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

*C9A*

**3. MEETING DATE:**

*11-5-02*

**4. AGENDA:**

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

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

- STATUTE
- ORDINANCE
- ADMIN.
- CODE
- OTHER

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER \_\_\_\_\_
- B. DEPARTMENT Transportation
- C. DIVISION \_\_\_\_\_

BY: Scott M. Gilbertson

**7. BACKGROUND:**

DOT staff and the County Attorneys' Office worked with WCI to develop this agreement to address the landscape and irrigation installation and continual maintenance for the landscaping along Coconut Road from US 41 to the west. This agreement is a continuation of a previous agreement that was executed by the BOCC on January 11, 2000. Between both agreements, the landscape on the entire section of the roadway will be covered.

**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>10/16/02</i> <i>[Signature]</i>	<i>[Signature]</i>	NA		<i>[Signature]</i>	OA <i>RK 10/22</i>	OM <i>[Signature] 10/22</i>	Risk <i>[Signature] 10/23/02</i>	GC <i>[Signature] 10/23/02</i>	<i>[Signature] 10-18-02</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

**Rec. by CoAtty**  
Date: *10/21/02*  
Time: *1:38 pm*  
Forwarded To:  
*ADMIN*  
*11-22-02*


RECEIVED BY  
COUNTY ADMIN. *RK*  
*10/22 1030*  
COUNTY ADMIN.  
FORWARDED TO:  
*10/22 1030*

**MEMORANDUM  
FROM THE  
OFFICE OF COUNTY ATTORNEY**

DATE: July 22, 2002

TO: Nicole Maxey  
DOT

FROM:

  
Dawn E. Perry-Lehnert

RE: **Coconut Road Landscape Maintenance and Hold Harmless Agreement  
LU-1853.E**

---

Attached is the original developer executed Landscape Maintenance and Hold Harmless Agreement for Coconut Road. This document now appears to be legally sufficient. However, I recommend that you double check the legal description and development order reference contained in the Agreement. If all is well, please process the document for appropriate County approvals.

Should you have any questions concerning the above, please do not hesitate to contact me.

DPL/bas  
Attachment

cc: Neale Montgomery, Esq.



**LEE COUNTY**  
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: (239) 335-2236

Bob Janes  
District One

Facsimile 239-335-2606

Douglas R. St. Cerny  
District Two

July 22, 2002

Ray Judah  
District Three

Andrew W. Coy  
District Four

Neale Montgomery  
Pavese Law Firm  
Post Office Box 1507  
Fort Myers, Florida 33902

John E. Albion  
District Five

Donald D. Stilwell  
County Manager

James G. Yaeger  
County Attorney

Re: Coconut Road Landscape Maintenance & Hold Harmless Agreement  
File No. LU-1853.E

Diana M. Parker  
County Hearing  
Examiner

Dear Neale:

Our office recently received a replacement Landscape Maintenance and Hold Harmless Agreement with respect to the additional segment of Coconut Road. Therefore, I am returning the original document provided to our office in April of 2002.

Should you have any questions concerning any of the above, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,

Dawn E. Perry-Lehnert  
Assistant County Attorney

DPL/bas  
Attachment

cc: Nicole Maxey, DOT

RECEIVED  
JUL 24 2002

THIS INSTRUMENT PREPARED BY:

Dawn E. Perry-Lehnert  
Lee County Attorney's Office  
Post Office Box 398  
Fort Myers, Florida 33902

Strap No.: 08-47-25-00-00004.0000

LANDSCAPE MAINTENANCE AND  
HOLD HARMLESS AGREEMENT

THIS AGREEMENT entered into this 10TH day of JULY, 2002, by and between Lee County, a political subdivision of the State of Florida, whose address is Post Office Box 398, Fort Myers, Florida 33902 ("County") and WCI Communities, Inc., a Delaware Corporation, whose address is 24301 Walden Center Drive, Bonita Springs, Florida 34134, ("Developer").

WHEREAS, WCI Communities is the owner and developer of certain property located in Sections 8 and 9, Township 47 South, Range 25 East, Bonita Springs, Lee County, Florida, commonly known as Pelican Landing; and

WHEREAS, the County has maintenance jurisdiction over the 50 foot wide right-of-way for Coconut Road in Sections 8 and 9, Township 47 South, Range 25 East; and

WHEREAS, Developer has received development approval from the County for the construction of Coconut Road, including roadway, drainage, and sidewalks, in accordance with development order #9971213600D-A02 on the property legally described in attached Exhibit "A".

WHEREAS, Developer desires to improve the unlandscaped appearance of Coconut Road from US 41 west to the realigned portion of Coconut Road within Section 7 for the purpose of enhancing the appearance and marketability of the Pelican Landing; and

WHEREAS, the County has agreed to allow Developer to improve and landscape the roadside provided that the landscaping and other improvements are maintained and replaced as necessary by the Developer or his successors in interest at no cost to the County; and

WHEREAS, the Developer is desirous of maintaining and replacing as necessary the roadside landscaping and improvements in accordance with the terms and provisions of this Agreement, provided the cost of the initial landscaping and improvements are paid by the Developer.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and

sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The County agrees to authorize the landscaping of a portion of county-maintained right-of-way located on Coconut Road in accordance with the project application submitted by the Developer and approved by the County.

2. The Developer agrees to bear the initial cost of landscaping the roadside right-of-way of Coconut Road, including, but not limited to, the sodding and installation of plant materials within the right-of-way in accordance with plans and specifications submitted by the Developer and approved by the County. The Developer will prevent the creation of obstructions or conditions that may become dangerous to the traveling public.

3. The Developer assumes all risk and responsibility for any loss or injury to property or persons occasioned by the neglect or accident of Developer, its agents or employees during the progress of work until the landscape project is complete and obtains County approval. The Developer agrees to repair any damage that may occur to adjoining buildings, structures, utility easements, roadways or private property during the course of the work.

4. The Developer accepts the sole responsibility to obtain all appropriate federal, state and local permits necessary to install and maintain the right-of-way landscape project. The Developer also agrees to give all required notices associated with work on the project, including those outlined in Lee County Administrative Code 11-11.

5. In accordance with the responsibilities assumed by each party to the Agreement, the Developer agrees to indemnify, hold harmless and defend the County, its employees and agents, from and against all claims, losses, demands, payments, actions, judgments and liabilities, including litigation costs and attorney's fees, due to any act or omission by the Developer, its employees, agents, or subcontractors, that arise from the placement, replacement or maintenance of landscaping contemplated by this Agreement. A copy of the Certificate of Insurance naming Lee County as "also insured" is attached to this Agreement as Exhibit "B".

6. The Developer agrees to maintain all landscaping, including plant materials, sod, lighting and other items incidental to the landscaping (including the replacement of dead sod or plant materials) in accordance with the project application submitted to and approved by the County and in a manner that will prevent the creation of obstructions or conditions that may become dangerous to the traveling public.

7. The Developer has the right to replant, alter or change the landscaping scheme and the number, species or location of plant material within the right-of-way provided that any alteration complies with the landscaping scheme and location of plant material approved by Lee County Department of Transportation. The Developer's exercise of this right will not diminish the Developer's responsibility to maintain the landscaping in accordance with this Agreement.

8. The Developer assumes the risk and responsibility for any loss or injury to property or persons occasioned by the failure to properly maintain the landscaped area or due to neglect or accident during the maintenance process. The Developer agrees to repair damage that may occur to any adjoining building, structure, utility easement, roadway or private property during the course of the maintenance work.

9. The Developer agrees that if the County undertakes to provide right-of-way improvements in the subject area, including, but not limited to, right-of-way widening, repair and reconstruction, or public utility placement, repair, relocation and reconstruction, the Developer must move or remove the landscaping and associated improvements upon 30 days' written notice at no cost to the County. The parties agree that the Developer will be responsible for the cost of replacing the landscaping removed as a result of the events set forth above.

10. The Developer agrees to maintain in full force and effect a liability insurance policy with respect to the landscaping sufficient to meet the indemnification requirements set out in numbered paragraph 5.

11. This Agreement will continue in full force and effect until the subject right-of-way is closed, abandoned, vacated, discontinued or reconstructed, or written notice of the intent to terminate the Agreement is delivered to each party, their successors or assigns. If the Developer terminates this Agreement, the County has the option to require the terminating party to remove the landscaping improvements at no cost to the County.

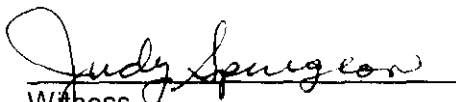
12. This instrument is binding upon and enures to the benefit of the parties' heirs, executors, successors and assigns. In the event Developer desires to transfer its rights and obligations under this Agreement to a third party, such as the Bayside Improvement Community Development District or the Pelican Landing Community Association, Inc., the County agrees to cooperate with respect to modifying this Agreement in accordance with paragraph 14. Assignment or transfer of the rights and obligations under this Agreement, absent formal Agreement between the parties, is prohibited.


13. This Agreement is intended to be construed in accordance with the laws of the State of Florida.


14. This Agreement is the entire agreement between the parties and cannot be amended or modified except by written instrument executed with the same formality.

In Witness Whereof, the parties have signed below.

WCI COMMUNITIES, INC.  
A Delaware Corporation

  
Witness  
JUDY SPURGEON  
Printed Name

By:   
Rick Mercer  
Vice President

  
Witness  
LAURA A. SARGEANT  
Printed Name

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing Agreement was acknowledged before me this 10<sup>th</sup> day of JULY, 2002 by Rick Mercer, as Vice President of WCI Communities, Inc., a Delaware Corporation, on behalf of the Corporation. He is personally known to me.



Judy Spurgeon  
Notary Public  
Printed name: JUDY SPURGEON

ATTEST:  
CHARLIE GREEN, CLERK

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

LEE COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

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

APPROVED AS TO FORM

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

**PROPERTY DESCRIPTION**

COCONUT ROAD RIGHT OF WAY  
(#B-1526-8)

A parcel of land located in Section 8 and Section 9, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

Begin at the Northwest corner of the Southwest quarter of Section 8, Township 47 South, Range 25 East, Lee County, Florida; Thence run South 89°16'14" East, Along the North line of the South half of the aforementioned Section 8, for a distance of 5,105.63 feet to the Northeast corner of the Southeast quarter of said Section 8; Thence run North 00°39'58" West, along the west line of the northwest quarter of Section 9, Township 47 South, Range 25 East, Lee County, Florida, for a distance of 30.00 feet to a point on the centerline of Coconut Road; Thence run South 89°36'13" East, along said centerline of Coconut Road, for a distance of 3,164.61 feet to a point on the west right of way line of US 41 (Tamiami Trail); Thence run South 00°10'33" West, along said west right of way line of US 41, for a distance of 50.00 feet to a point on the South Right of Way line of the aforementioned Coconut Road; The following 9 courses run along the said South Right of Way of Coconut Road: Thence run North 89°36'13" West for a distance of 2,556.84 feet; Thence run North 26°30'59" West for a distance of 10.06 feet; Thence run South 45°01'06" West for a distance of 11.82 feet; Thence run South 28°05'16" West for a distance of 0.63 feet; Thence run North 89°36'12" West for a distance of 568.87 feet; Thence run South 00°39'46" East for a distance of 30.15 feet; Thence run North 89°16'14" West for a distance of 1,828.11 feet to a point on the East Right of Way line of Spring Creek Road; Thence run North 00°07'17" East, along said East right of way line of Spring Creek Road, for a distance of 25.00 feet; Thence run North 89°16'14" West for a distance of 3,303.00 feet; Thence run North 00°23'24" West for a distance of 25.00 feet to the Point of Beginning of the parcel of land herein described; Containing 7.612 acres, more or less.

**NOTES**

1. Bearings shown hereon refer to the Northline of the Southwest 1/4 of Section 8, Township 47 South, Range 25 East, Lee County, Florida; as being South 89°16'14" East.
2. This property is subject to easements, reservations and/or restrictions of record.
3. Dimensions shown hereon are in feet and decimals thereof.

Q. GRADY MINOR AND ASSOCIATES, P.A.

SIGNED 3-12-02

*Eric V. Sandoval*  
ERIC V. SANDOVAL

P.S.M. #5223  
STATE OF FLORIDA

**EXHIBIT "A"**  
1 OF 2

\* NOT A SURVEY \*

JOB CODE: WC19C

DRAWN BY: S.B.

SHEET: 1 OF 2

FILE #: 08-47-25



Q. GRADY MINOR AND ASSOCIATES, P.A.  
CIVIL ENGINEERS • LAND SURVEYORS • PLANNERS  
3800 VIA DEL REY  
HONITA SPRINGS, FLORIDA 34134

PHONE : (941) 947-1144 FAX : (941) 947-0375  
CERTIFICATE OF AUTHORIZATION NUMBER LH 5151

**LEGAL DESCRIPTION**

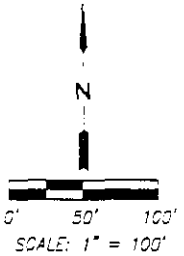
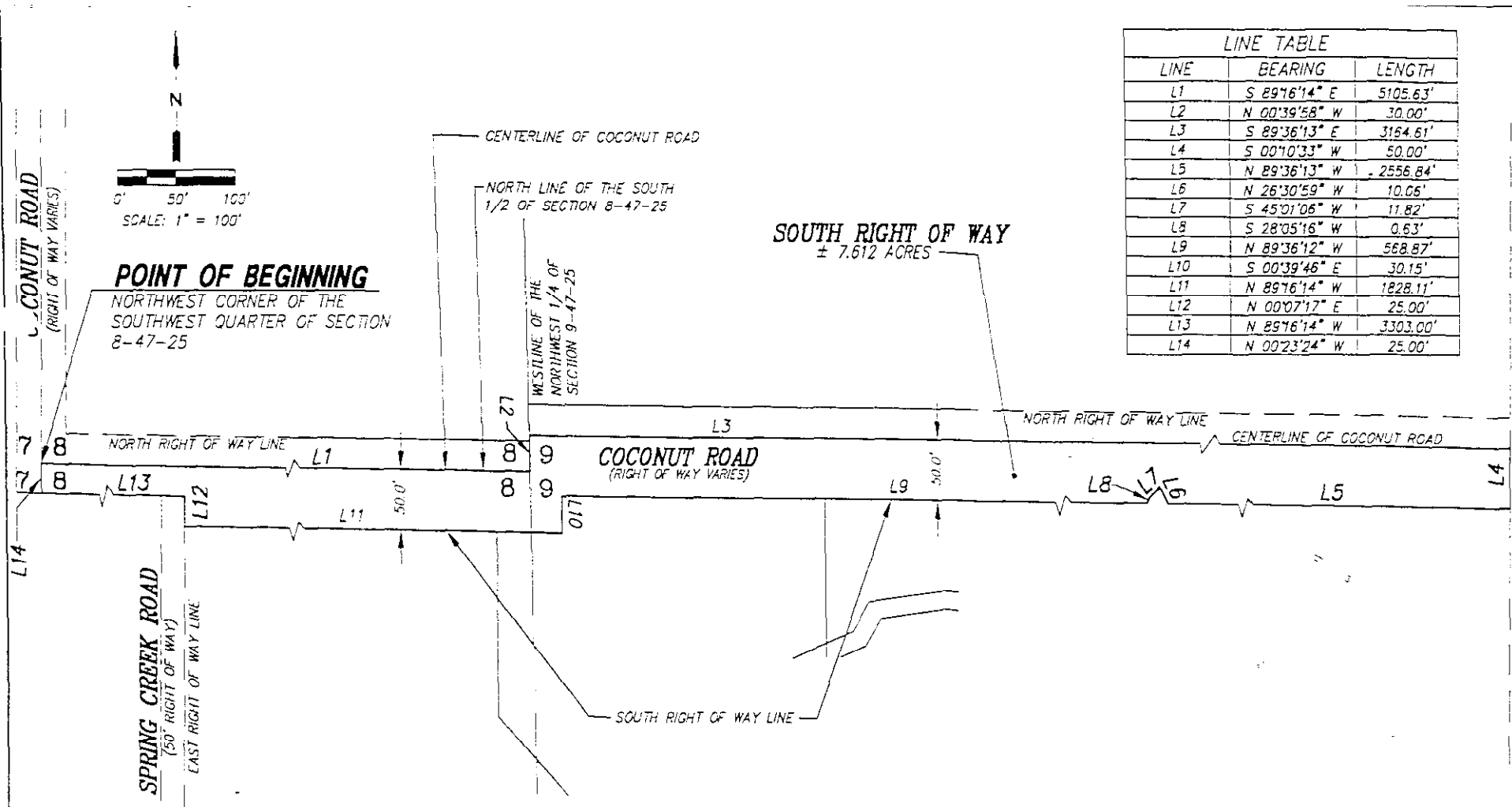
**COCONUT ROAD  
SOUTH RIGHT OF WAY  
SECTIONS 8 & 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST  
LEE COUNTY, FLORIDA**

DATE: MARCH, 2002

DRAWING: B-1526-8



LINE	BEARING	LENGTH
L1	S 89°16'14" E	5105.63'
L2	N 00°39'58" W	30.00'
L3	S 89°36'13" E	3154.61'
L4	S 00°10'33" W	50.00'
L5	N 89°36'13" W	2556.84'
L6	N 26°30'59" W	10.66'
L7	S 45°01'06" W	11.82'
L8	S 28°05'16" W	0.63'
L9	N 89°36'12" W	568.87'
L10	S 00°39'46" E	30.15'
L11	N 89°16'14" W	1828.11'
L12	N 00°07'17" E	25.00'
L13	N 89°16'14" W	3303.00'
L14	N 00°23'24" W	25.00'



SHEET: 2 OF 2  
 PARTY CHIEF: P.B.  
 DRAWN: S.B.  
 JOB CODE: WC19C  
 SCALE: 1" = 100'

**Q. GRADY MINOR AND ASSOCIATES, P.A.**  
 CIVIL ENGINEERS • LAND SURVEYORS • PLANNERS  
 3800 VIA DEL REY  
 BONITA SPRINGS, FLORIDA 34134  
 PHONE: (941) 947-1144 FAX: (941) 947-0375  
 CERTIFICATE OF AUTHORIZATION NUMBER LB 5151

SKETCH TO ACCOMPANY  
**COCONUT ROAD**  
**SOUTH RIGHT OF WAY**  
 SECTIONS 8 & 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST  
 LEE COUNTY, FLORIDA  
 SURVEY DATE: MARCH, 2002      DRAWING: E-1526-8

• NOT A SURVEY •

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)  
4/10/02

PRODUCER ACORDIA EAST - TAMPA BAY P.O. Box 31666 Tampa, FL 33631-3666 727-796-6666	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	<b>INSURERS AFFORDING COVERAGE</b>	
INSURED WCI Communities, Inc.Etal 24301 Walden Drive #300 Bonita Springs FL 34134	INSURER A:	Evanston Insurance Co
	INSURER B:	Hartford Fire Ins Co
	INSURER C:	
	INSURER D:	
	INSURER E:	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> OW/CON PROT GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC	02GLP1004322	1/01/02	1/01/03	EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 500,000 MED EXP (Any one person) \$ 0 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>				<input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	<b>OTHER</b> CRIME	21BDDAP5219	1/01/02	1/01/03	LIMIT: \$10,000,000 DED: \$35,000

### DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

CERT HOLDER IS AN ADD'L INSURED WITH RESPECT TO GENERAL LIABILITY RE: DEVELOPMENT ORDER #99-05-068-00D, COCONUT RD REALIGNMENT, SEC. 8 & 9 TOWNSHIP 47.S RANGE 25.E, BONITA SPRINGS, FL (PELICAN LANDING). THIS IS EXHIBIT B OF THE LANDSCAPE MAINTENANCE AND HOLD HARMLESS AGREEMENT.

CERTIFICATE HOLDER  ADDITIONAL INSURED; INSURER LETTER:

### CANCELLATION

LEE COUNTY  
P.O. BOX 398  
FORT MYERS, FL 33902

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*[Signature]*

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.