

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Approve the attached Landscape Installation and Maintenance Agreement between Lee County and the following property owners: Rookery Pointe LC, Estero Golf Resort LLC, Estero Land Holdings LLC, Cascades by Levitt and Sons LLC, James A. Bernet or Assigns, Paul H. Freeman Trustee, and Richard K. Bennett Trustee. Authorize the Chairman to execute the agreement on behalf of the BoCC.

**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 and maintenance responsibilities for Koreshan Boulevard between Three Oaks Parkway and U.S. 41.

**2. DEPARTMENTAL CATEGORY:** 9  
COMMISSION DISTRICT # 5

*C9A*

**3. MEETING DATE:**

*05-06-2003*

**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:**

On January 7, 2003 the BoCC approved Koreshan Blvd. as one of the top two CIP projects ranked by the Roadway Landscape Advisory Committee (RLAC) for design and preparation of construction documents, along with bidding for construction (BS #20021453).

Lee County staff, the RLAC, the Estero Concerned Citizens Organization, and the property owners of adjacent parcels along Koreshan Boulevard have worked together to develop this public/private partnership. The partnership includes Lee County funding the design and installation of the intensified core level landscaping and irrigation improvements, along with the on-going maintenance costs after the first year. While the adjacent property owners will fund the project's first year of maintenance expenses up to a maximum of \$60,000. Should the bid for the project's first year maintenance costs exceed \$60,000, the County will negotiate with the successful bidder to reduce the scope of work so that the maintenance costs will not exceed the maximum amount.

**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>4/16/03</i>	<i>[Signature]</i>	NA	NA	<i>[Signature]</i>	OA	OM	Risk	GC	<i>4/30/03</i>
					<i>RK 4/23</i>	<i>4/23/03</i>	<i>4/22/03</i>	<i>4/23/03</i>	<i>[Signature]</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty  
Date: *4/22/03*  
Time: *2:03 pm*  
Forwarded To: *3.45 4/22/03*

RECEIVED BY COUNTY ADMIN. *RK*  
*4/22 4:07*  
COUNTY ADMIN. FORWARDED TO:  
*4/22/03*

## LANDSCAPE INSTALLATION AND MAINTENANCE AGREEMENT

This Landscape Installation and Maintenance Agreement entered into this \_\_\_ day of \_\_\_\_\_, 2003, by and between LEE COUNTY, a political subdivision and charter county of the State of Florida, hereinafter referred to as "County", and

Rookery Point, LC  
Estero Golf Resort, LLC  
Estero Land Holdings, LLC  
Levitt and Sons, LLC.  
James A. Bernet or Assigns  
Paul H. Freeman Trustee  
Richard K. Bennett, as successor trustee of the Corlico Road Land Trust #10-F014-004,  
dated January 23, 1989.

hereinafter referred to as "the Property Owners", collectively the "Parties".

### RECITALS

WHEREAS, the Parties desire to enter into an agreement regarding their respective duties and responsibilities for the landscape installation and maintenance for the Koreshan Boulevard right-of-way between Three Oaks Parkway and US 41 located in Sections 21, 22, 27, and 28, Township 46S, Range 25E; and

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

WHEREAS, County has agreed to improve and landscape the roadway medians and maintain the landscaping improvements; and

WHEREAS, County will be responsible for the installation and cost of installing the core level Roadway Landscaping Improvements; and

WHEREAS, the Property Owners will pay the County for the first years maintenance of the core level Roadway Landscaping Improvements as necessary in accordance with the terms and provisions of this Agreement; and

WHEREAS, the Property Owners will pay to the County thirty thousand dollars (\$30,000.00) for the estimated cost of the project's first year of core level landscape and irrigation maintenance expenses.

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 Property Owners and County hereby agree as follows:

The Recitals as set forth above are incorporated into the terms of this Agreement as if set out herein at length.

1. The Parties agree to enter into this Agreement concerning installation and first 12 month's maintenance of landscaping within said County right-of-way for Koreshan Boulevard as described above.
2. The County agrees to landscape the medians of Koreshan Boulevard between Three Oaks Parkway and US 41, including the installation of core level plant material and irrigation system within the right-of-way for Koreshan Boulevard as described above.
3. County 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.
4. County agrees to maintain the landscaping and irrigation improvements in perpetuity.
5. The Property Owners agree to pay to the County the estimated cost of the project's first year of core level landscape and irrigation maintenance expenses, thirty thousand dollars (\$30,000.00). This payment must be received at the Lee County Department of Transportation, hereinafter referred to as "DOT", office located at 5560 Zip Drive in Fort Myers, FL 33905, by the close of business on the date that the Lee County Board of County Commissioners, hereinafter referred to as BoCC, approves entering into this agreement. The County will place the funds in an escrow account and will use them to fund the project's first year of landscape and irrigation maintenance.
6. When the landscape and irrigation project contemplated by this agreement has completed the bidding process, and before the BoCC approves the award of the construction contract, the County will refund to the Property Owners the difference between the original estimate of \$30,000.00, and a lesser actual contract bid amount for the project's first year of landscape and irrigation maintenance.
7. In the event that the County will be refunding a portion of the original \$30,000.00 to the Property Owners, all interest earned in the escrow account on the original amount will also be returned to the Property Owners.
8. The County is exploring the feasibility of installing intensified core level plant material and irrigation system within the right of way. If the County agrees to install intensified core level plant material and irrigation system, the Property Owners agree to pay the actual increased cost of maintenance for the intensified core level landscaping and irrigation system for the first twelve months, up to a maximum additional cost of thirty thousand dollars (\$30,000). The additional payment, if any, shall be paid to the County within thirty (30) days after written notice from DOT to the Property Owners that the contract for intensified core level landscaping and irrigation system has been let by the County.
9. The share of the first year maintenance cost that each Property Owner will pay under this agreement shall be determined by applying the "percent of total" attributable to each Property Owner in Attachment 1 to the total first year maintenance cost.

10. To the extent that any party fails to comply with its payment obligations under this agreement, each of the other parties may seek any and all remedies available at law and in equity, including actual damages incurred and specific performance.
11. The County agrees to maintain the landscaping, irrigation and other items incidental to the landscaping.
12. This Agreement will continue in full force and effect for the period of one year maintenance unless the road or highway is closed, abandoned, vacated, discontinued or reconstructed, or until the Property Owners receive written notice of the County's termination of this Agreement.
13. The Parties recognize and agree that this Agreement inures principally to the benefit of the public. 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.
14. This Agreement must be construed, and its performance enforced, under Florida law.
15. 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:

CASCADES BY LEVITT AND SONS, LLC

Kathryn Ladniak  
Signature

By: [Signature]

Kathryn Ladniak  
Name Printed, Stamped or Typed

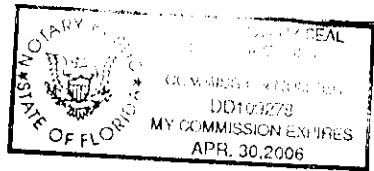
Harry T. Sleek, Sr. Vice President  
Name Printed, Stamped or Typed

Mary Ellen Gabriele  
Signature

Mary Ellen Gabriele  
Name Printed, Stamped or Typed

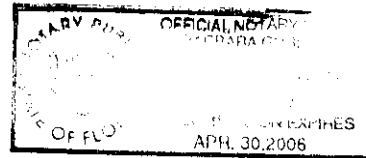
STATE OF FLORIDA  
COUNTY OF LEE

The foregoing agreement was acknowledged before me this 8 day of November, 2002, by Harry T. Sleek as Sr. Vice President of Cascades by Levitt and Sons, LLC. He is personally known to me.



Barbara Gurico  
Notary Public, State of Florida at Large

Barbara Gurico  
Name of Notary Printed, Stamped or Typed



Witnesses:

Signature

Name Printed, Stamped or Typed

Signature

Name Printed, Stamped or Typed

PAUL H. FREEMAN TRUSTEE

By:

Name Printed, Stamped or Typed

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing agreement was acknowledged before me this 11<sup>th</sup> day of December, 2002, by Paul H. Freeman as Paul H. Freeman of Paul H. Freeman. He is personally known to me or has produced Paul H. Freeman as identification.

Brooke S. Allen  
Notary Public, State of Florida at Large



Brooke S Allen  
My Commission DD104505  
Expires March 28, 2008

Name of Notary Printed, Stamped or Typed

Witnesses:  
[Signature]  
Signature

LISA GEORGE  
Name Printed, Stamped or Typed

[Signature]  
Signature

BERT TUMERIN  
Name Printed, Stamped or Typed

JAMES A. BERNET OR ASSIGNS  
By: [Signature]

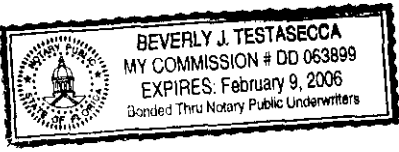
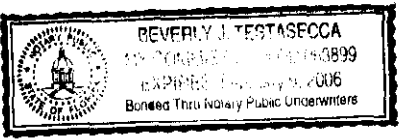
James A. Bernet  
Name Printed, Stamped or Typed

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing agreement was acknowledged before me this 11 day of December, 2002, by James A. Bernet as known to me or has produced of \_\_\_\_\_ He is personally \_\_\_\_\_ as identification.

[Signature]  
Notary Public, State of Florida at Large

Beverly J. Testasecca  
Name of Notary Printed, Stamped or Typed



Witnesses:

ROOKERY POINTE, LC

[Signature]  
Signature

By: [Signature]  
Paula J. Davis, Member

[Signature]  
Name Printed, Stamped or Typed

[Signature]  
Signature

Monique Grieser  
Name Printed, Stamped or Typed

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing agreement was acknowledged before me this 11 day of November 2002,  
by Paula J. Davis as Member of Rookery Pointe, L.C. She is personally known to me or has  
produced \_\_\_\_\_ as identification.

[Signature]  
Notary Public, State of Florida at Large

Monique Grieser  
Name of Notary Printed, Stamped or Typed



Monique Grieser  
MY COMMISSION # CCY88677 EXPIRES  
March 27, 2005  
BONDED THRU TROY FAIR INSURANCE, INC.



Witnesses:

ESTERO GOLF RESORT, LLC

[Signature]  
Signature

By: [Signature]  
Paula J. Davis, Member

[Signature]  
Name Printed, Stamped or Typed

[Signature]  
Signature

[Signature]  
Name Printed, Stamped or Typed

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing agreement was acknowledged before me this 11 day of November 2002, by Paula J. Davis as Member of Estero Golf Resort, L.L.C. She is personally known to me or has produced \_\_\_\_\_ as identification.

[Signature]  
Notary Public, State of Florida at Large

[Signature]  
Name of Notary Printed, Stamped or Typed



Monique Grieser  
MY COMMISSION # CC988677 EXPIRES  
March 27, 2005  
BONDED THRU TROY FAIN INSURANCE, INC.

Witnesses:

ESTERO LAND HOLDINGS, LLC

[Signature]  
Signature

By: [Signature]  
Paula J. Davis, Member

[Signature]  
Name Printed, Stamped or Typed

[Signature]  
Signature

[Signature]  
Name Printed, Stamped or Typed

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing agreement was acknowledged before me this 11 day of November 2002, by Paula J. Davis as Member of Estero Land Holdings, L.L.C. She is personally known to me or has produced \_\_\_\_\_ as identification.

[Signature]  
Notary Public, State of Florida at Large



Monique Grieser  
MY COMMISSION # CC988677 EXPIRES  
March 27, 2005  
BONDED THROUGH TROY TAIN INSURANCE, INC.

[Signature]  
Name of Notary Printed, Stamped or Typed

Witnesses:

RICHARD K. BENNETT, as successor trustee  
of the Corlico Land Trust # 10-F014-004,  
dated January 23, 1989.

Beverly A. Kerndt  
Signature

By: Richard K. Bennett

Beverly A Kerndt  
Name Printed, Stamped or Typed

Richard K. Bennett, as Trustee  
Name Printed, Stamped or Typed

Karen E. Nichols  
Signature

Karen E. Nichols  
Name Printed, Stamped or Typed

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing agreement was acknowledged before me this 7<sup>th</sup> day of January, 2002, by Richard K. Bennett as Richard K. Bennett of Richard K. Bennett. He is personally known to me or has produced Richard K. Bennett as identification.



Karen E. Nichols  
Notary Public, State of Florida at Large

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:  
[Signature]  
Office of the County Attorney

Addendum One to Koreshan Boulevard  
Landscape Installation and Maintenance Agreement  
Between County and Parties

In response to a change in County policy, the County hereby desires to clarify its understanding and interpretation of the term "escrow account" as used in the preceding agreement. The term "escrow account" as used in this agreement shall be defined as an internal Department of Transportation non-interest bearing account.

Front Footage  
of Principal Landowners  
on Koreshan Blvd. from  
US 41 to Three Oaks

Owner	STRAP Number	Front Footage	Percent of Total	Share of \$30,000	Share of \$45,000	Share of \$50,000	Share of \$55,000	Share of \$60,000
<b>Cascades by Levitt</b>	28-46-25-00-00006.0000	1,339.0	9.26%					
	27-46-25-00-00001.0000	2,660.0	18.39%					
Sub-total		3,999.0	27.64%	\$ 8,293	\$ 12,440	\$ 13,822	\$ 15,204	\$ 16,587
<b>Keystone Custom Homes</b>	27-46-25-10							
Rookery Pointe	West Of Drive	597.8	4.13%					
Rookery Pointe	Drive	115.2	0.80%					
Rookery Pointe	East of Drive	250.7	1.73%					
Rookery Pointe	27-46-25-10-00013.0000	399.5	2.76%					
Estero Land Holdings	21-46-25-00-00001.0010	2,207.0	15.26%					
Estero Golf Resort	21-46-25-00-00001.0000	1,816.6	12.56%					
Sub-total		5,386.8	37.24%	\$ 11,171	\$ 16,757	\$ 18,619	\$ 20,481	\$ 22,343
<b>Paul H. Freeman Trust</b>	27-46-25-00-01007.0000	1,192.0	8.24%	\$ 2,472	\$ 3,708	\$ 4,120	\$ 4,532	\$ 4,944
<b>Villages of Bernwood</b>	22-46-25-00-00002.0000	2,646.8	18.30%	\$ 5,489	\$ 8,234	\$ 9,148	\$ 10,063	\$ 10,978
<b>Richard K Bennett Trust</b>	22-46-25-00-01001.1020	283.2	1.96%					
	22-46-25-00-01001.102A	319.1	2.21%					
	22-46-25-00-01001.102B	319.7	2.21%					
	22-46-25-00-01001.102C	319.2	2.21%					
Sub-total		1,241.2	8.58%	\$ 2,574	\$ 3,861	\$ 4,290	\$ 4,719	\$ 5,148
<b>Grand Total</b>		14,465.8	100.00%	\$ 30,000	\$ 45,000	\$ 50,000	\$ 55,000	\$ 60,000