

Lee County Board Of County Commissioners

Agenda Item Summary

Blue Sheet No. 20030952

1. REQUESTED MOTION:

**ACTION REQUESTED:** Approve the attached Landscape Installation and Maintenance Agreement between Lee County and Touse, DBA Engle Homes of Southwest Florida, 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 an existing landscaping project.

2. DEPARTMENTAL CATEGORY: 9  
COMMISSION DISTRICT # 2

C9B

3. MEETING DATE:

09-02-2003

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:

Touse is the current developer of the Casa Del Lago subdivision, a subdivision previously named Deer Run Estates. Touse installed landscaping improvements within a small portion of Ben C. Pratt/Six Mile Cypress Parkway right-of-way adjacent to Key Deer Court. This installation was done without a permit or agreement as to the various responsibilities associated with the project. The subject agreement identifies those responsibilities, and 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 this portion of Ben C. Pratt/Six Mile Cypress Parkway right-of-way is needed for future roadway widening or other items such as utilities.

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>8/13/03</i> <i>[Signature]</i>	<i>[Signature]</i> <i>8/13</i>	NA		<i>[Signature]</i> <i>[Signature]</i>	OA <i>[Signature]</i> <i>8/13</i>	COM <i>[Signature]</i> <i>8/14/03</i>	Risk <i>[Signature]</i> <i>8/13/03</i>	GC <i>[Signature]</i> <i>8/13/03</i>	<i>[Signature]</i> <i>8-14-03</i> <i>[Signature]</i> <i>8-13-03</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty  
Date: *8/13/03*  
Time: *1:40 PM*  
Forwarded To:  
*Budget*  
*8/13/03 3:35PM*

RECEIVED BY  
COUNTY ADMIN: *RK*  
*8/13 4:15*  
COUNTY ADMIN  
FORWARDED TO:  
*[Signature]*  
*8/14 4:10*

## LANDSCAPE INSTALLATION AND MAINTENANCE AGREEMENT

THIS 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 TOUSA DBA ENGLE HOMES OF SOUTHWEST FLORIDA, INC., a Florida corporation, hereinafter referred to as "Developer".

### RECITALS

WHEREAS, the Developer and County desire to enter into an Agreement regarding their respective duties and responsibilities for the installation and maintenance of the landscape improvements installed within the right-of-way of Ben C. Pratt/Six Mile Cypress Parkway, hereinafter referred to as "Right-of-Way", in Section 8, Township 45S, Range 25E, which runs from the westerly edge of Ben C. Pratt/Six Mile Cypress Parkway west ward approximately 150' to the property line for Casa Del Lago subdivision and the beginning of the subdivision entrance road named Key Deer Court; and

WHEREAS, Developer will be responsible for the installation and maintenance of the installed roadway improvements including but not limited to trees, shrubs, ground covers, turfgrass, irrigation system, street/stop signs and any other plant material or hard scape items located within the said right-of-way, hereinafter referred to as "landscape improvements", as described on Exhibits "A" attached hereto. Developer will be responsible for all costs associated with the installation and maintenance of the roadway landscape improvements; and deliver to County a surety bond or equivalent security document in the amount of seven hundred forty seven dollars and fifty cents (\$747.50), for the estimated cost of the project's removal and restoration (\$650.00), plus fifteen percent (15%) \$97.50), 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 has agreed to improve and landscape the right-of-way and maintain the landscape improvements and replace dead or damaged plant material and other items incidental to the landscaping as necessary at the Developer's expense.

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 and maintenance of landscape improvements within said County right-of-way.
3. Reference to the Developer includes all assigns and successors in interest.
4. The Developer agrees to landscape the right-of-way of Ben C. Pratt/Six Mile Cypress Parkway 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, hereinafter referred to DOT (see attached plans marked Exhibit "A", and by reference, made a part hereof). All costs for construction, initial landscaping and maintenance of the landscape improvements as described on Exhibits "A" shall be at the Developer's expense.
5. The Developer will install and maintain the landscape improvements in cooperation with DOT, and in accordance with the Lee County Roadway Landscape Master Plan "LeeScape". The Developer will be responsible for providing the minimum maintenance frequencies as indicated on the Maintenance Matrix - Level Two, as described on Exhibit "B", and by reference, made a part hereof. DOT will enforce the LeeScape guidelines, and reserves the right to reject any plant material for sub-standard quality, improper planting/pruning or maintenance practices, and unsound tree structure. Trees shall be pruned in a manner that will provide a structurally sound street tree, in order to minimize storm damage and tree/branch failure. Should the Developer fail to provide such care, the County will do so with its resources, and pursue reimbursement compensation from the Developer for all expenses incurred.
6. The Developer agrees to maintain the landscape improvements and all other items incidental to the landscaping, including all plant materials and hard scape items, during the installation and on-going maintenance of the landscape improvements.
7. The Developer agrees to prevent obstructions or conditions which may be dangerous to the public through the exercise of its rights of the performance of its installation and maintenance duties. This includes providing clear visibility for motorists and pedestrians and the avoidance of wetting the adjacent roadway or bike paths/sidewalks.
8. The Developer agrees to indemnify, hold harmless and defend the County and all of its officers, agents, consultants and employees from and against all losses, claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description brought or recoverable against it or them by reason of any act or omission of the Developer, its agents, consultants, employees, or subcontractors, during the installation of landscape improvements or their maintenance contemplated by this Agreement; and also agrees to assume any

related costs or fees. Developer further agrees to carry and maintain in full force and effect liability insurance so as to indemnify the County in all respects. A copy of the Certificate of Insurance provided by the Developer is attached as Exhibit "C". This insurance must remain in effect until such time as any assign or successor in interest provides similar proof of insurance to the satisfaction of the County Attorney's Office.

9. The Developer assumes all risk and bears any loss or injury to property or persons occasioned by neglect or accident arising from the exercise of its rights or the performance of its maintenance duties.
10. The Developer also assumes full responsibility for loss by reason of neglect or violation of any state or federal law or local government rule, regulation or order. The Developer will give all required notices relating to the landscaping or maintenance contemplated by this Agreement to the proper authorities. In addition, Developer will obtain all official permits and licenses, and pay all proper fees.
11. The Developer agrees to repair, restore, or rebuild any damage caused to County property by installing or maintaining the landscape improvements in the described right-of-way.
12. Developer will deliver to County a surety bond or other equivalent security document in the amount of seven hundred forty seven dollars and fifty cents (\$747.50), for the Estimated Cost of the project's removal and restoration (\$650), plus fifteen percent (15%) \$97.50), 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.
13. Failure to maintain the landscape improvements as stated above, or keep the certificate of insurance, surety bond, or equivalent security document current, shall constitute a default on the part of the Developer. Failure of the Developer to maintain the landscape improvements, or keep the certificate of insurance, surety bond, or equivalent security document current, will result in the County removing the landscape improvements 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 landscape improvements and restoration of the areas to pre-construction conditions.
14. 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 or sue for specific performance.

15. This Agreement will continue in full force and effect until such time as the road is widened, repaired, closed, abandoned, vacated, discontinued, 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 may be required to remove or relocate all of the landscape improvements placed within the right-of-way by virtue of this Agreement, and restore those areas to pre-construction conditions within thirty (30) days of the Developer's receipt of written notice. The cost of relocation, or removal of the landscape improvements and restoration of those areas to pre-construction conditions will be paid entirely by the Developer.
16. The Developer understands that roadway improvements will occur in the near future and are currently programmed for 2006/2007. As a result of this future road widening project, the Developer agrees to remove or relocate the landscape improvements within 30 days of written notice by the County, as described in paragraph fifteen (15) above at no cost to the County.
17. 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 right-of-way, requires the relocation or removal of the landscape improvements referenced herein, then the Developer will move or remove the landscape improvements and restore those areas to pre-construction conditions within thirty (30) days of the Developer's receipt of written notice at no cost to the County or utility.
18. 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 successor Owners, Developer, 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 homeowner's association, County agrees to cooperate with respect to modifying this Agreement in accordance with Section 20 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.
19. The Developer may assign the rights and obligations set forth herein to successor Owners, Developer, or Homeowner Associations, 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 success in interest has assumed responsibility for the compliance with the terms and conditions of this Agreement with respect to the landscape improvements.

20. This Agreement must be construed, and its performance enforced under Florida law.
21. This Agreement is the entire agreement between the parties and shall not be modified or replaced except by another signed written Agreement.
22. The Parties recognize and agree that this Agreement is of a unique nature inuring principally to the benefit of the Developer and that money damages may not be an adequate or appropriate remedy for either Party for 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:

TOUSA DBA ENGLE HOMES OF  
SOUTHWEST FLORIDA, INC.

Brian Hapke  
Signature

By: [Signature]

Brian Hapke  
Name Printed, Stamped or Typed

Jay Coughlin - VP  
Name Printed, Stamped or Typed

[Signature]  
Signature

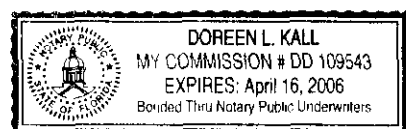
R. Meade  
Name Printed, Stamped or Typed

STATE OF FLORIDA  
COUNTY OF

The foregoing agreement was acknowledged before me this 16<sup>th</sup> day of May, 2003, by Jay Coughlin as Regional VP of TOUSA DBA Engle Homes SWFL. He is personally known to me or has produced \_\_\_\_\_ as identification.

Doreen L. Kall  
Notary Public, State of Florida at Large

Doreen L. Kall  
Name of Notary Printed, Stamped or Typed



ATTEST:  
CHARLIE GREEN, CLERK

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

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

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

APPROVED AS TO FORM BY:

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



Six Mile Cypress  
FL 321

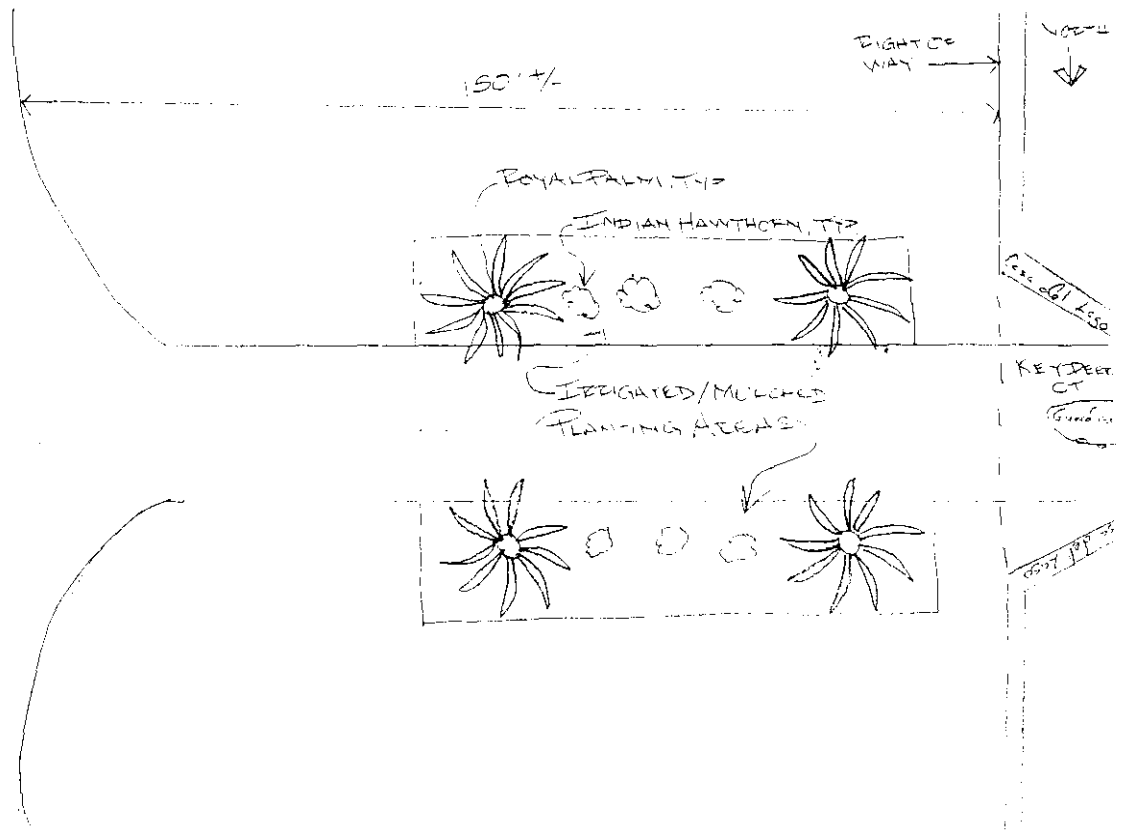


EXHIBIT A  
1 OF 1

## EXHIBIT B - MAINTENANCE MATRIX LEVEL TWO

MAINTENANCE OPERATION	MAINTENANCE FREQUENCIES ARE MINIMUMS											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
MOWING 3-4" HEIGHT	X	X	XX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	X	X	X
	MOW ST. AUGUSTINE ON A WEEKLY BASIS FROM APRIL THROUGH SEPTEMBER AND MONTHLY FROM DECEMBER THROUGH FEBRUARY. MOW BAHIA GRASS AT THE LEVEL ONE FREQUENCIES.											
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		X		X		X		X		X		X
LITTER REMOVAL	WEEKLY IN ALL MULCHED AREAS AND JUST BEFORE EACH MOWING.											
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.											
EDGING	X	X	X	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	X	X	X
MULCHING	MAINTAIN A CONTINUOUS 3" LAYER OF MULCH IN ALL PLANTED AND MULCHED AREAS. MULCH ENTIRE SITE IN MONTH TWELVE OF MAINTENANCE CONTRACT.											
	REFER TO SITE MAINTENANCE SPECIFICATIONS FOR DETAILS. LEE COUNTY RESERVES THE RIGHT TO ADJUST FREQUENCIES AS NECESSARY.											

# ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)  
04/03/03

**PRODUCER**  
Hilb Rogal and Hamilton Co.  
of Houston  
1155 Dairy Ashford, Suite 350  
Houston, TX 77079-3012

**INSURED**  
TOUSA Homes Inc., A Subsidiary of  
Technical Olympic USA, Inc.  
4000 Hollywood Blvd., Ste. 500-N  
Hollywood, FL 33021-2740

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.

**INSURERS AFFORDING COVERAGE**

INSURER A: Steadfast Insurance Co.  
INSURER B: Zurich Insurance 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	GENERAL LIABILITY	HBP3697389	01/01/03	01/01/04	EACH OCCURRENCE \$15,000,000
X	COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire) \$100,000
	CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$Excluded
	X Home Builders Protective Pol.				PERSONAL & ADV INJURY \$15,000,000
	GENL AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE \$30,000,000
	POLICY PRO-JECT LOC				PRODUCTS-COMP/OP AGG \$30,000,000
B	AUTOMOBILE LIABILITY	TAP343685701	01/01/03	01/01/04	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000
B X	ANY AUTO	BAP343685801	01/01/03	01/01/04	
	ALL OWNED AUTOS				BODILY INJURY (Per person) \$
	SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
X	HIRED AUTOS				PROPERTY DAMAGE (Per accident) \$
X	NON-OWNED AUTOS				
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	ANY AUTO				OTHER THAN AUTO ONLY: EA ACC \$
					AGG \$
	EXCESS LIABILITY				EACH OCCURRENCE \$
	OCCUR CLAIMS MADE				AGGREGATE \$
	DEDUCTIBLE				\$
	RETENTION \$				\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WC349544003	01/01/03	01/01/04	X WC STATUTORY LIMITS OTHER
					E.L. EACH ACCIDENT \$1,000,000
					E.L. DISEASE-EA EMPLOYEE \$1,000,000
					E.L. DISEASE-POLICY LIMIT \$1,000,000
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
Certificate holder is an additional insured on the general liability HBPP 6/18) as required by written contract.

<b>CERTIFICATE HOLDER</b>	<b>ADDITIONAL INSURED; INSURER LETTER:</b>	<b>CANCELLATION</b>
Lee County Board of Commissioners DOT Operations Division Attn: Pat Moore 5560 Zip Drive Ft. Myers, FL 33905		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 <i>Jerry L. Sims</i>

## 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.

EXHIBIT C 2 OF 2

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that

TOUSA Homes, Inc., dba Engle Homes Southwest Florida, 14001 Lake Mahogany Boulevard, Room 2311, Ft. Myers, Florida 33907

as Principal, hereinafter called Contractor, and

Travelers Casualty and Surety Company of America, One Tower Square, Hartford, CT 06183-9062

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

Lee County Board of County Commissioners, P.O. Box 398, Ft. Myers, Florida 33902

as Obligee, hereinafter called Owner, in the amount of

Seven Hundred Forty-Seven and 50/100 Dollars (\$747.50)

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 February 3, 2003, entered into a contract with Owner for

Installation and maintenance of the landscape improvements installed within the right-of-way of Ben C. Pratt/Six Mile Cypress Parkway, in Section 8, Township 45S, Range 25E, Casa Del Lago subdivision and the entrance road named Key Deer Court

in accordance with Drawings and Specifications approved by Contractor and Lee County Department of Transportation, which agreement is by reference made a part hereof, and is hereinafter referred to as the Landscape Installation and Maintenance Agreement.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Agreement 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.

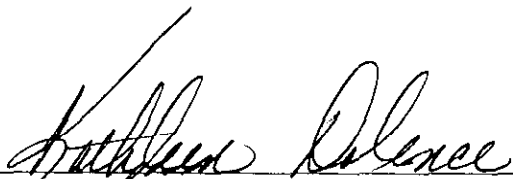
Whenever Contractor shall be, and declared by Owner to be in default under the Agreement, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the

default, or shall promptly (1) complete the Agreement in accordance with its terms and conditions; or (2) obtain a bid or bids for completing the Agreement 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.

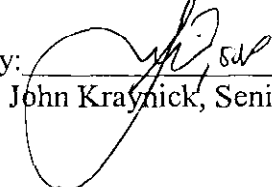
Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

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.

Signed and sealed this 21<sup>st</sup> day of March, 2003

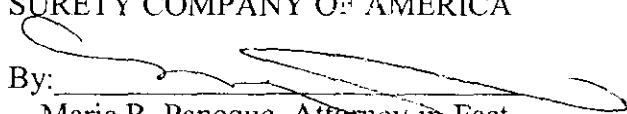
  
Witness

CONTRACTOR  
TOUSA HOMES, INC., DBA ENGLE  
HOMES SOUTHWEST FLORIDA

By:   
John Kraynick, Senior Vice-President

SURETY  
TRAVELERS CASUALTY AND  
SURETY COMPANY OF AMERICA

  
Witness

By:   
Maria R. Paneque, Attorney-in-Fact  
and Florida Resident Agent

SURETY BOND RIDER

To be attached to and form part of Bond No. 103393835.


Issued on behalf of TOUSA Homes, Inc. d/b/a Engle Homes Southwest Florida, as Principal, and in favor of Lee County Board of County Commissioners, as Obligee.

It is agreed that:

1. The date of February 3, 2003 is hereby amended to correspond with the actual date of the written contract signed by Owner.
2. This rider is effective as of March 21, 2003.

This rider does not change any other condition of the original bond, nor does it increase the liability of Surety beyond the amount of the original bond.

**Travelers Casualty and Surety Company of America**

By:   
Maria R. Paneque, Attorney-in-Fact

**TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA  
TRAVELERS CASUALTY AND SURETY COMPANY  
FARMINGTON CASUALTY COMPANY  
Hartford, Connecticut 06183-9062**

**POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT**

**KNOW ALL PERSONS BY THESE PRESENTS, THAT TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY,** corporations duly organized under the laws of the State of Connecticut, and having their principal offices in the City of Hartford, County of Hartford, State of Connecticut, (hereinafter the "Companies") hath made, constituted and appointed, and do by these presents make, constitute and appoint: **Ronald Reshefsky, Ellen R. Segal, Gary H. Morris, Lee A. Morris, Cindy A. Loth, Maria R. Panecque, of Boca Raton, Florida,** their true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, the following instrument(s): by his/her sole signature and act, any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking and any and all consents incident thereto and to bind the Companies, thereby as fully and to the same extent as if the same were signed by the duly authorized officers of the Companies, and all the acts of said Attorney(s)-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following Standing Resolutions of said Companies, which Resolutions are now in full force and effect:

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her.

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary.

VOTED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary, or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority.

**This Power of Attorney and Certificate of Authority is signed and sealed by facsimile (mechanical or printed) under and by authority of the following Standing Resolution voted by the Boards of Directors of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, which Resolution is now in full force and effect:**

VOTED: That the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached

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IN WITNESS WHEREOF, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY have caused this instrument to be signed by their Senior Vice President and their corporate seals to be hereto affixed this 12th day of December, 2002.

STATE OF CONNECTICUT

} SS. Hartford

COUNTY OF HARTFORD

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA  
TRAVELERS CASUALTY AND SURETY COMPANY  
FARMINGTON CASUALTY COMPANY



By *George W. Thompson*  
George W. Thompson  
Senior Vice President

On this 12th day of December, 2002 before me personally came GEORGE W. THOMPSON to me known, who, being by me duly sworn, did depose and say: that he/she is Senior Vice President of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, the corporations described in and which executed the above instrument; that he/she knows the seals of said corporations; that the seals affixed to the said instrument are such corporate seals; and that he/she executed the said instrument on behalf of the corporations by authority of his/her office under the Standing Resolutions thereof.



*Marie C Tetreault*  
My commission expires June 30, 2006 Notary Public  
Marie C. Tetreault

CERTIFICATE

I, the undersigned, Assistant Secretary of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, stock corporations of the State of Connecticut, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney and Certificate of Authority remains in full force and has not been revoked; and furthermore, that the Standing Resolutions of the Boards of Directors, as set forth in the Certificate of Authority, are now in force.

Signed and Sealed at the Home Office of the Company, in the City of Hartford, State of Connecticut. Dated this 6th day of May, 2003.



By *Kori M. Johanson*  
Kori M. Johanson  
Assistant Secretary, Bond