

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

Blue Sheet No. 20061325

1. ACTION REQUESTED/PURPOSE:

Request that the board approve the attached landscape installation and maintenance agreement between Lee County and Palmetto Cove Condominium Association, Inc. and authorize the Chairwoman to execute the agreement.

2. WHAT ACTION ACCOMPLISHES:

Establishes the responsibilities of both parties and allows the Palmetto Cove Condominium Association to add landscaping adjacent to their western property line and within the dedicated easement for IDD canal F.

3. MANAGEMENT RECOMMENDATION:

Approve request.

4. Departmental Category: 9 **C9C** **5. Meeting Date:** OCT 24 2006

6. Agenda: X Consent Administrative Appeals Public Walk-On	7. Requirement/Purpose: (specify) Statute Ordinance Admin. Code X Other	8. Request Initiated: Commissioner
		Department Transportation
		Division Operations
		By: Scott M. Gilbertson, P.E., Director, DOT

9. Background:

The developer of Palmetto Cove Condominiums, acting on behalf of the Condominium Association, has requested that the County allow a landscaping buffer in the canal easement along their west property line and near the south side of Cypress Lake Drive.

The proposed landscaping is in addition to their DSO buffers.

The agreement establishes the terms and conditions of the landscape installation, its on-going maintenance, and removal by the association if necessary. It also provides for a minimum 20' wide maintenance strip adjacent to the top of the canal bank for canal maintenance.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>S. Gilbertson</i> Date 10/13/06	NA CE			<i>[Signature]</i> 10/16/06	RK 10/9	JK 10/9/06	JK 10/9/06	JK 10/9/06	<i>[Signature]</i> Lavender Date 10-5-06

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN: *[Signature]*
10/9/06 10:30 *mp.*
COUNTY ADMIN FORWARDED TO: *[Signature]*
10/10/06 2:30 *pm*

Rec. by CoAtty
Date: 10/16/06
Time: 4:50 *pm*
Forwarded To:
9:00 *Am*
10/19/06

LANDSCAPE INSTALLATION
AND MAINTENANCE AGREEMENT

THIS AGREEMENT entered into this ____ day of _____, 2006 by and between LEE COUNTY, a political subdivision and charter county of the State of Florida, hereinafter referred to as "County", and PALMETTO COVE CONDOMINIUM ASSOCIATION, INC., a Florida Corporation, hereinafter referred to as "Association."

RECITALS

WHEREAS, the Developer and County desire to enter into an Agreement regarding their respective duties and responsibilities for the installation and maintenance of landscaping improvements installed within a portion of the right-of-way of Cypress Lake Drive, and former IDD Drainage Canal F, hereinafter referred to as "Right-of-Way," in Section 21, Township 45, Range 24E, which runs from the southerly edge of the roadway pavement on Cypress Lake Drive south ward ~~the property line for~~ As described on Exhibit A and ~~the beginning of the subdivision entrance road named~~ _____; and

*EXHIBIT A ATTACHED
hereto &
by
reference
made A
PART
hereof.*

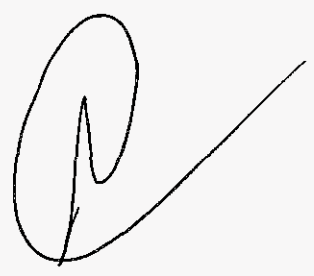
WHEREAS, Developer will be responsible for the installation and maintenance of the installed roadway improvements including, but not limited to, trees, shrubs, ground covers, turfgrass, irrigation system, and any other plant material or hard scape items located within the Right-of-Way, hereinafter referred to as "Landscape Improvements," as described on Exhibit "A" attached hereto and by reference made a part hereof. Developer will be responsible for all costs associated with the installation and maintenance of the Right-of-Way Landscape Improvements; and deliver to the County a surety bond or equivalent security document in the amount of \$ 10,000 ^{9/24}, for the estimated cost of the project's removal and restoration (\$ 8,695 ^{7/24}), plus 15% (\$ 1,305.00), 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

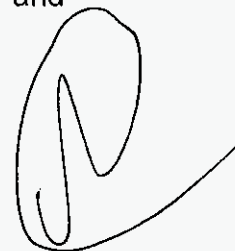
WHEREAS, the Developer has agreed to improve and landscape the Right-of-Way and maintain the Landscape Improvements and replace dead or damaged plant material and other items incidental to the landscaping as necessary at the Developer's expense.

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.

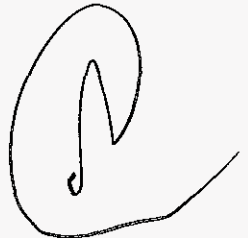


2. The County and Developer agree to enter into this Agreement concerning the installation and maintenance of the Landscape Improvements within the Right-of-Way.
3. Reference to the Developer includes all assigns and successors in interest.
4. The Developer agrees to landscape the Right-of-Way, including 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 as 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, described on Exhibit "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 substandard quality, improper planting/pruning or maintenance practices, and unsound tree structure. Trees shall be pruned in a manner that will provide a structurally sound 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 ongoing 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 in the performance of its installation and maintenance duties contained herein. This includes providing clear visibility for motorists and pedestrians and the avoidance of wetting the adjacent roadway or bike paths/sidewalks with irrigation water.
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. The Developer agrees to assume any related costs or fees. Developer further agrees to carry and maintain in full force and effect liability insurance that covers the foregoing indemnity. A copy of the certificate of insurance provided by the Developer to the County Risk Manager for review and

A large, stylized handwritten signature or set of initials in black ink, located in the bottom right corner of the page.

approval is attached hereto as Exhibit "C." The foregoing 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 Risk Manager's Office. The certificate of insurance on the general liability policy shall name Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials as an Additional Insured and shall provide County thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notification shall be in writing by registered mail, return receipt requested and addressed to the Risk Manager, P.O. Box 398, Ft. Myers, FL 33902.

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 contained herein.
10. 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 related to the installation and maintenance of the Landscape Improvements.
11. The Developer agrees to repair, restore, or rebuild any damage caused to County property by installing or maintaining the Landscape Improvements in the Right-of-Way.
12. Developer will deliver to County a surety bond or other equivalent security document in the amount of \$Ten thousand (\$ 10,000 00%), for the Estimated Cost of the project's removal and restoration (\$ 8,695 00%), plus 15% (\$ 1,305 00%), subject to the reasonable satisfaction of the County Attorney's office. A copy of the surety bond is attached hereto as Exhibit "D." The surety bond or equivalent security document must remain current during the term of this agreement.
13. If Developer shall fail to maintain the Landscape Improvements; as stated above, or keep the certificate of insurance, surety bond, or equivalent security document current, the Developer shall be in default of this agreement. 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 cost of said removal and restoration. 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 as they exist on the date hereof.
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 thirty (30) day time period to cure the same and, if the Developer fails to cure the alleged breach within the thirty (30) day time period, 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 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 all or a portion the Landscape Improvements, then the Developer will relocate or remove the Landscape Improvements affected thereby 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 the relevant utility company.
17. 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 successor owner, developer, or homeowner's association, all of Developer's obligations and agreements made herein shall be fully and completely assigned to such assignees in full as if such assignees were mentioned by name instead of the Developer herein. In the event the Developer desires to transfer its rights and obligations hereunder to a third party such as a condominium association, the County agrees to cooperate with respect to modifying this Agreement, provided that prior to such assignment being binding on the County, the Developer must demonstrate to the County that the third party or condominium association to become the assignee has the authority to undertake the obligations and responsibilities herein contemplated.
18. The Developer may assign the rights and obligations set forth herein to a successor owners, developer, or condominium association, except the 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 Landscape Improvements.
19. This Agreement shall be construed, and its performance enforced under Florida law.
20. This Agreement is the entire agreement between the parties and shall not be modified or replaced except by another signed written Agreement or amendment.



21. 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 contained 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.

[Signature]
Witness

RICHARD A. PASTORE
Printed Name of Witness

Susan Madera
Witness #2

SUSAN MAOERA
Printed Name of Witness #2

PALMETTO COVE CONDOMINIUM ASSOCIATION, INC.

By: [Signature]
Its: Martin G. Berger
Managing Member

STATE OF ~~FLORIDA~~ New York
COUNTY OF ~~LEE~~ Westchester

The foregoing agreement was acknowledged before me this 27th day of June, 2006 by Martin G. Berger as Managing member of Palmetto Cove Cond Assoc. He is personally known to me ~~or has produced~~ _____ as identification.

[Signature]
Notary Public

Name of Notary Printed, Stamped or Typed

JEANETTE TRIVIGNO
Notary Public, State of New York
No. 01TR6001701
Qualified in Dutchess County
Commission Expires January 20, 2010

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

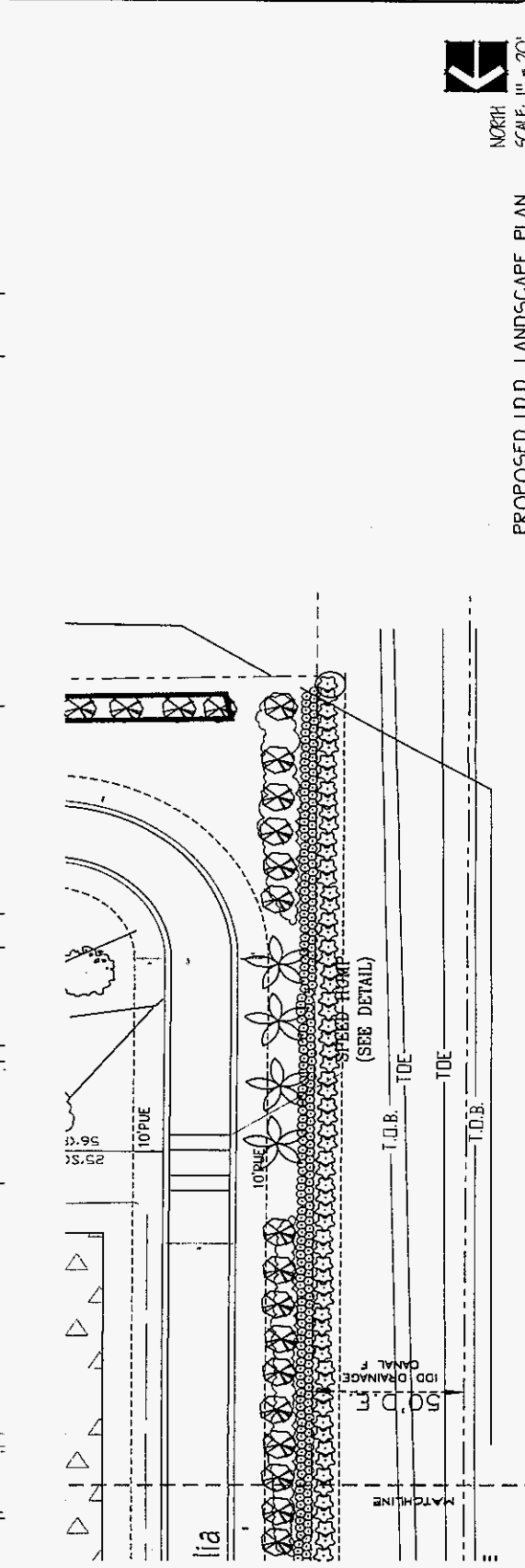
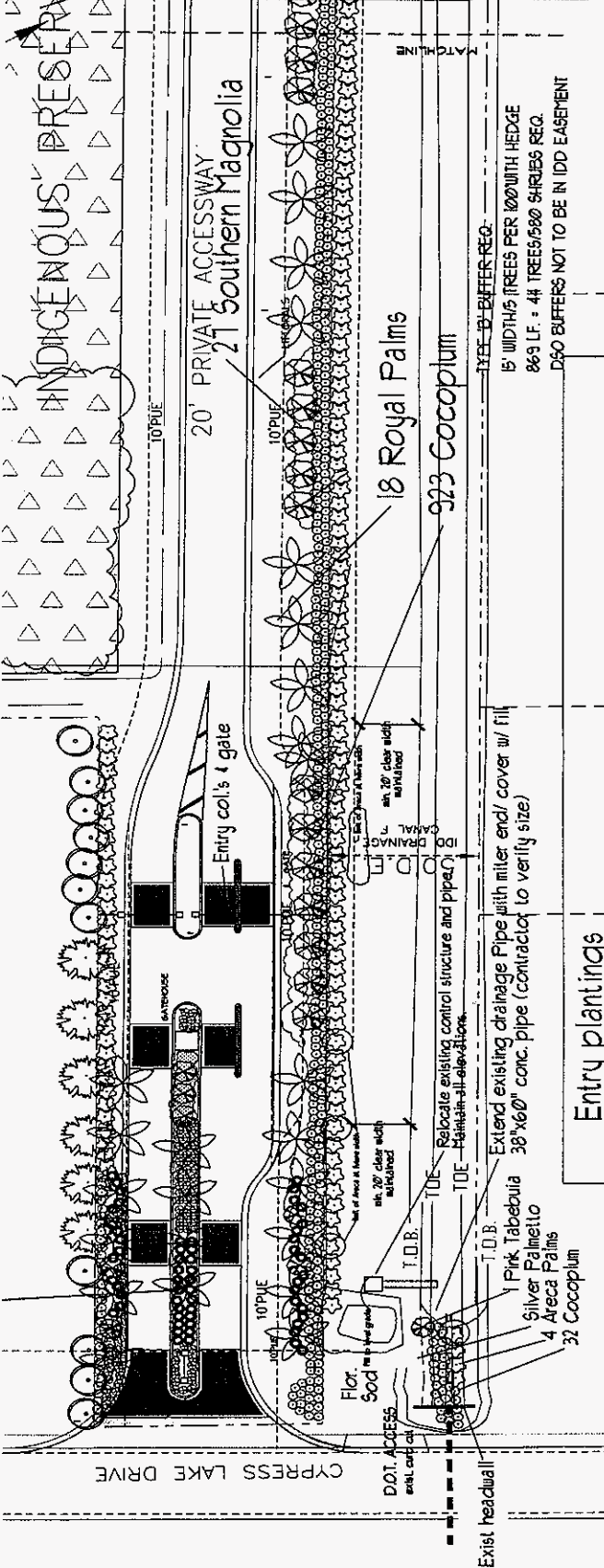


DAVID M. JONES JR. AND ASSOCIATES, INC.
 LANDSCAPE ARCHITECTS AND PLANNERS
 2221 MCGREGOR BOULEVARD
 FORT MYERS, FLORIDA 33901
 (239) 337-5525
 FAX (239) 337-4494

6/20/06
 L.D. CANAL LANDSCAPE PLAN

LANDSCAPE ARCHITECTURAL PLANS FOR:
 L.D. CANAL LANDSCAPE PLAN
 LEE COUNTY, FLORIDA
 Lake McGregor Drive RPD

PROJECT NO. 11882
 DATE: 6-8-06
 SHEET DESCRIPTION: PROPOSED LANDSCAPE
 SHEET NUMBER: IDD-1



PROPOSED I.D.D. LANDSCAPE PLAN
 SCALE: 1" = 20'
 SCALE: 1" = 40'
 SCALE: 1" = 20' (24" x 36" sheet)
 SCALE: 1" = 40' (11" x 17" sheet)

EXHIBIT A
 PAGE 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 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	XX	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		OPID MD MAGNU-1	DATE (MM/DD/YYYY) 09/14/06
PRODUCER Silver Insurance & Financial 381 S. Central Ave Oviedo FL 32765 Phone: 407-359-1009 Fax: 407-359-0804		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	
INSURED Magnum Construction Services Inc 617 NW 38th Ave Cape Coral FL 33993		INSURERS AFFORDING COVERAGE INSURER A: Mt. Hawley Insurance Co. INSURER B: INSURER C: INSURER D: INSURER E:	NAIC #

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 ADD'L LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	MCF0002591	06/16/06	06/16/07	EACH OCCURRENCE \$ 1000000
					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50000
					MED EXP (Any one person) \$ 5000
					PERSONAL & ADV INJURY \$ 1000000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				GENERAL AGGREGATE \$ 2000000 PRODUCTS - COMPROP AGG \$ 2000000
	AUTOMOBILE LIABILITY <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) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
Certificate Holder:
Lee County a Political Subdivision and Charter County of the State of Florida; It's Agents, Employees and Public Officials
Attn: Risk Management.
Please be advised - COI Holder does not fit in the field

CERTIFICATE HOLDER LEECOU1 Lee County Risk Management PO Box 398 Fort Meyers FL 33902	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> 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
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EXHIBIT C
PAGE 1 OF 2



06-17-2005

TOM GALLAGHER
CHIEF FINANCIAL OFFICER

STATE OF FLORIDA
DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF WORKERS' COMPENSATION

**** CERTIFICATE OF EXEMPTION FROM FLORIDA WORKERS' COMPENSATION LAW ****

CONSTRUCTION INDUSTRY EXEMPTION

This certifies that the individual listed below has elected to be exempt from Florida Workers' Compensation Law.

EFFECTIVE DATE: 05/13/2005

** EXPIRATION DATE: 05/13/2007

PERSON: MAGADINO ANTHONY

FEIN: 202444419

BUSINESS NAME: MAGNUM CONSTRUCTION SERVICES INC

AND ADDRESS: 3191 MATECUMBE KEY RD # 107
PUNTA GORDA FL 33955


SCOPE OF BUSINESS OR TRADE: 1- CERTIFIED GENERAL CONTRACTOR

IMPORTANT: Pursuant to Chapter 440.05(14), F.S., an officer of a corporation who elects exemption from this chapter by filing a certificate of election under this section may not recover benefits or compensation under this chapter.

DWC-252 CERTIFICATE OF ELECTION TO BE EXEMPT REVISED 01-04

QUESTIONS? (850) 413-1609

PLEASE CUT OUT THE CARD BELOW AND RETAIN FOR FUTURE REFERENCE

<p>STATE OF FLORIDA DEPARTMENT OF FINANCIAL SERVICES DIVISION OF WORKERS' COMPENSATION</p>  <p>CONSTRUCTION INDUSTRY CERTIFICATE OF EXEMPTION FROM FLORIDA WORKERS' COMPENSATION LAW</p> <p>EFFECTIVE: 05/13/2005 ** EXPIRATION DATE: 05/13/2007</p> <p>PERSON: MAGADINO ANTHONY</p> <p>FEIN: 202444419</p> <p>BUSINESS NAME MAGNUM CONSTRUCTION SERVICES I AND ADDRESS: 3191 MATECUMBE KEY RD # 107 PUNTA GORDA FL 33955</p> <p>SCOPE OF BUSINESS OR TRADE: 1-CERTIFIED GENERAL CONTRACTOR</p>	<p>F O L D</p> <p>IMPORTANT</p> <p>Pursuant to Chapter 440.05(14), F.S., an officer of a corporation who elects exemption from this chapter by filing a certificate of election under this section may not recover benefits or compensation under this chapter.</p> <p>QUESTIONS? (850) 413-1609</p>
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CUT HERE

* Carry bottom portion on the job, keep upper portion for your records.

EXHIBIT C
PAGE 2 OF 2