

LANDSCAPE MAINTENANCE AGREEMENT

This Landscape Maintenance Agreement is entered into this ____ day of _____, 2009, by and between Collier County, Florida, a political subdivision of the State of Florida whose mailing address is 3301 Tamiami Trail East, Naples, FL 34112 (hereinafter referred to as the "County"), and _____, whose mailing address is _____ (hereinafter referred to as the "Association").

RECITALS:

WHEREAS, County is the owner of that certain right-of-way located in Collier County, Florida and known as _____ (hereinafter referred to as "Road"); and

WHEREAS, Section 1-A-1 of the Construction Standards Handbook for Work Within The Public Rights-Of-Way, Collier County, Florida (2009) provides as follows:

Permitting

The responsible property owner or his authorized agent must apply for a "Permit to Perform Work and/or Maintenance in Public Right-of-way."

WHEREAS, Section 1: Planning and Development of the Landscape and Irrigation Specifications for Beautification Improvements within the Public Right-of-way, Collier County, Florida (2009) provides as follows:

Improvements to unimproved medians in the right of way: A private owner, Developer or civic or homeowners' association desiring to landscape within a public right-of-way shall submit landscape and irrigation construction documents prepared by a licensed landscape architect for County review. The Permit application shall include three (3) sets of detailed plans indicating the existing right-of-way facilities and the type and location of the proposed plantings, location of electrical and irrigation systems(s). After acceptance of the landscape and irrigation plans, a landscape agreement shall be prepared by the contracting parties and approved by the County Attorney's Office. (See Appendix for example.) The purpose of the landscape agreement is to ensure that the permittee, or his successors or assigns, shall be responsible to maintain such material and irrigation system until removed or unless otherwise specified.

WHEREAS, in keeping with the above, the Association has applied for a Landscaping Permit Within the Public Rights-of-Way, and has submitted landscape and irrigation construction documents prepared by a licensed landscape architect for County review. A copy of this Permit and the plans are attached hereto as Schedule "A." The Association shall follow the Collier County Maintenance specifications attached as Schedule "B."

NOW, THEREFORE, in consideration of the covenants contained herein, the parties agree as follows:

1. Subject to the issuance of all necessary Permits, County hereby grants to the Association the right to use those portions of the Road depicted in Schedule "A", for the sole purpose set forth in Schedule "A". The Permits address, among other things, the timing of the work, maintenance of traffic flow during construction, and the permissible lane closures during the time that work is to be performed.

2. The Association agrees to construct and maintain the improvements set forth in Schedule "A" (hereinafter referred to as "Improvements") at its sole cost and expense, until such time as the County executes a release from indemnification as discussed below.

3. Should the Association fail to construct or maintain the Improvements in accordance with Schedule "A" or law, the County may provide notice to the Association in writing, specifying the nature of the deficiency. Within five working days following receipt of such notice, the Association at its sole cost shall cause the appropriate repairs or cure to be effected. In the event damage to, or failure to maintain the Improvements results in a situation where public safety is at risk, (1) the Association shall effect repairs within twenty-four hours of receipt of the County's written notice, or (2) the County may, at its option, effect repairs to the Improvements, without the need for prior notice to the Association, and will promptly bill the Association for all actual costs incurred in effecting the repairs. The Association shall reimburse the County for such costs within thirty days of receipt of the County's bill.

4. The Association, as Indemnitor hereunder, shall indemnify and save harmless the County, as Indemnitee hereunder, including all employees of the County, from any loss or damages Indemnitee may suffer as a result of claims, suits, demands, damages, losses, fines, penalties, interest, expenses, costs, or judgments, including attorneys' fees and costs of litigation, against the County arising out of the Association's use of the Road for the purposes set forth in this Agreement, including the construction and removal of the Improvements. The Indemnitee shall not undertake to settle any lawsuit or threatened lawsuit that could give rise to Indemnitor's obligation hereunder without the prior consent of Indemnitor, such consent to not be unreasonably withheld.

5. The indemnity provided for by this Agreement will extend from the date of this Agreement until such time as the parties hereto acknowledge in writing that the Association has ceased to use the Road for the purposes stated within this Agreement and the Road has been restored as set forth below, at which time, following receipt of the Association's written request, the County will execute a release from indemnification in favor of the Association.

6. Indemnitee agrees to give Indemnitor written notice of any claims filed against the County in connection with this Agreement, within thirty days of the date that County is aware of such claim.

7. Unless terminated as set forth below, this Agreement shall remain in full force and effect in perpetuity from the date first set forth above, and shall be binding upon the parties and

all their successors in interest. The Agreement may be freely terminated as of right by either party, with or without cause, upon written notice to the other. If the Association exercises this right, or if the County exercises this right based upon the Association's substantial breach of this Agreement, then upon written demand by County, the Association, at its sole cost and expense, shall remove the Improvements and will restore the Road to the condition that existed immediately prior to the effective date of this Agreement. If the County exercises this right, or if the Association exercises this right based upon the County's substantial breach of this Agreement, then the County will be responsible for any removal of the Improvements or restoration of the Road. Except for the above, neither party will be liable to the other for any damages or claims resulting from the termination of this Agreement.

8. In the event either party hereto shall institute legal proceedings in connection with, or for the enforcement of, this Agreement, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorney's fees, at both trial and appellate levels.

9. This Agreement may be recorded by the County in the Official Records of Collier County, Florida. The Association shall pay all costs of recording this Agreement prior to the execution of this Agreement. A copy of the Recorded Agreement will be provided to the Association.

10. This Agreement is the entire agreement between the parties, and supercedes all previous oral and written representations, agreements and understandings between the parties. This Agreement shall be governed by the laws of the State of Florida, and may not be altered or amended in any way, save by written agreement signed by both parties.

11. The rights and obligations of this Agreement shall bind and benefit any successors or assigns of the parties.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK FOR SPECIAL CONDITIONS, IF ANY

In Witness Whereof, the parties have caused these presents to be executed on the day and date first above written.

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

ATTEST:

Dwight E. Brock, Clerk

Donna Fiala, Chairman

WITNESSES:

("Association")

Printed Name:

By: _____

Printed Name:

Title:

Printed Name:

STATE OF FLORIDA
COUNTY OF COLLIER

Signed and acknowledged on this _____ day of _____, 2002, before me, the undersigned notary public, by _____, President of _____, a Florida corporation not-for-profit, on behalf of the corporation. He is personally known to me or produced _____ as identification.

Notary Public
Printed Name:

My Commission Expires: _____

Approved as to Legal Form and Sufficiency:

Scott Teach
Deputy County Attorney