

Payment and Performance Bond No.: SM2008-00001-51

As to Contractor/Principal: First Genesis Lawn Service, Inc.

Name: Mack McClendon

Principal Business Address:

P.O. Box 244061, Boynton Beach, FL 33424

Telephone: (561)795-2922

As to the Surety: Commercial Insurance Alliance

Principal Business Address:

9309-3 Old Kings Road S, Jacksonville, FL 32252

Telephone: (904) 429-0555

As to the Owner of the Property/Contracting Public Entity:

City of Boynton Beach

Principal Business Address:

100 E. Boynton Beach Blvd., Boynton Beach, FL 33425

Description of project including address and description of improvements:

Annual Landscape maintenance, City of Boynton Beach

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A/A Document A312

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

First Genesis Lawn Service, Inc.
P. O. Box 244061
Boynton Beach, FL 33424

SURETY (Name and Principal Place of Business):

Commercial Insurance Alliance, A
Reciprocal Insurance Company

OWNER (Name and Address):

City of Boynton Beach
100 E. Boynton Beach Blvd.
Boynton Beach, FL 33425

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location): Annual Landscape Maintenance, City of Boynton Beach

BOND

Date (Not earlier than Construction Contract Date): 10-17-08

Amount: \$111,230.00

Modifications to this Bond:

☐

☐ See Page 3

CONTRACTOR AS PRINCIPAL

Company: First Genesis (Corporate Seal)
Lawn Service, Inc.

SURETY

Company: Commercial Insurance Alliance, A
Reciprocal Insurance Company

Signature:

Name Mack McClendon, owner /
President

Signature:

Larry E. Haynes, Attorney-in-fact

(FOR INFORMATION ONLY Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or
other party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- 1 After investigation, determine the amount for

which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

- 2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-

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able to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Con-

tractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

Consent of Surety needed for release of progress payments and final payment and retainage.

This Bond is a guarantee, it is not an insurance product or policy. Seek qualified and licensed insurance companies for all W/C and G/L.

BOND FEE must be paid in full within 30 days of issuance or become NULL and VOID.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

Signature: _____
Name and Title:

CONTRACTOR AS PRINCIPAL
Company: **First Genesis Law** (Corporate Seal)
Service, Inc.

Signature: *Mack McClendon*
Name and Title: **Mack McClendon, owner/**
President

SURETY
Company: **Commercial Insurance, A**
Reciprocal Insurance Company

Signature: *Larry E. Haynes*
Name and Title: **Larry E. Haynes, Attorney-in-**
fact

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AIA Document A312

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

First Genesis Lawn Service, Inc.
P. O. Box 244061
Boynton Beach, FL 33424

SURETY (Name and Principal Place of Business):

Commercial Insurance Alliance, A
Reciprocal Insurance Company
9309-3 Old Kings Road South
Jacksonville, FL 32257

OWNER (Name and Address):

City of Boynton Beach
100 E. Boynton Beach Blvd.
Boynton Beach, FL 33425
CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location): Annual Landscape Maintenance, City of Boynton Beach

BOND

Date (Not earlier than Construction Contract Date): 10-17-08

Amount: \$111,230.00

Modifications to this Bond:

☒ None

☐ See Page 6

CONTRACTOR AS PRINCIPAL

Company: First Genesis (Corporate Seal)
Lawn Service, Inc.

SURETY

Company: Commercial Insurance Alliance, A
Reciprocal Insurance Company (Corporate Seal)

Signature: 

Name and Title: Mack McClendon, owner /

(Any additional signatures appear on page 6) President

Signature: 

Name and Title: Larry E. Haynes, Attorney-in-Fact

(FOR INFORMATION ONLY-Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the **Owner to pay for labor, materials and equipment** furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this

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Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the

Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

Consent of Surety needed for release of progress payments and final payment and retainage.

This Bond is a guarantee, it is not an insurance product or policy. Seek qualified and licensed insurance companies for all W/C and G/L.

BOND FEE must be paid in full within 30 days of issuance or become NULL and VOID.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

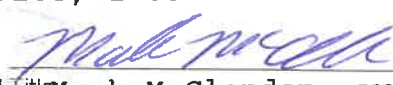
CONTRACTOR AS PRINCIPAL

Signature: _____
Name and Title: _____

CONTRACTOR AS PRINCIPAL

Company: **First Genesis** (Corporate Seal)

Lawn Service, Inc.

Signature: 
Name and Title: **Mack McClendon, owner / President**

SURETY

Company: **Commercial Insurance Alliance, A Reciprocal Insurance Company** (Corporate Seal)

Signature: 
Name and Title: **Larry E. Haynes, Attorney-in-fact**

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**POWER OF ATTORNEY
COMMERCIAL INSURANCE ALLIANCE, A RECIPROCAL INSURANCE COMPANY**

KNOW ALL MEN BY THESE PRESENTS, that Commercial Insurance Alliance, a Reciprocal Insurance Company ("Company"), through its Attorney-in-Fact Briarwood Management, LLC ("Briarwood"), a duly authorized Florida Limited Liability Company, does hereby appoint **Larry E. Haynes** its true and lawful Attorney-in-Fact to make, execute, seal and deliver on its benefit as surety

any and all bonds and undertakings of suretyship and other documents that the ordinary course of surety business may require. Such bonds and undertakings when duly executed by the aforesaid Attorney-in-Fact shall be binding upon the Company as fully and to the same extent as if such bonds and undertakings were signed by the President and sealed with its corporate seal.

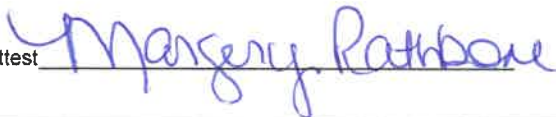
This Power of Attorney is issued pursuant to and by authority of the following resolution of the Board of Managers of Briarwood, on behalf of Commercial Insurance Alliance, A Reciprocal Insurance Company adopted effective June 15, 2006 and now in full force and effect;

RESOLVED that the President may appoint other officers of the Company or agents of the Company to act as its lawful Attorney-in-Fact in any State, Territory or Federal District to represent this Company and to act on its behalf within the scope of the authority granted to them in writing, which authority may include the power to make, execute, seal and deliver on behalf of this Company as surety, and as its act and deed, any and all bonds and undertakings of suretyship and such other documents as are required in the ordinary course of surety business; and the Secretary or any Officer of the Company be, and that each or any of them is, authorized to verify any affidavit or other statement relating to the foregoing and to any resolutions adopted by its Board of Managers; and that any such Attorney-in-Fact may be removed and the authority so granted may be revoked by the President or by the Board of Managers.

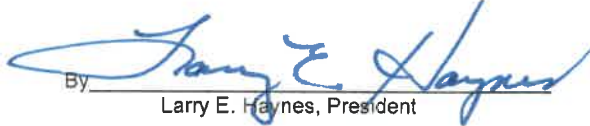
INWITNESS WHEREOF, the Company has caused this Power of Attorney to be signed and its corporate seal to be affixed by its authorized Officer This 17th day of October, 2008

Commercial Insurance Alliance, A Reciprocal Insurance Company through
Briarwood Management, LLC its Attorney-in-Fact

Attest



By


Larry E. Haynes, President**Additional Provisions of this Bond are:**

Securitized Bond - Commercial Insurance Alliance has arranged with the assistance of the bonded party, a 100% cash equivalent security in the form of a bank issued irrevocable trust receipt or bank letter of credit. This security is for the total face amount of the bond and will be retained in place for and on behalf of Commercial Insurance Alliance until the bonded project is completed. Commercial Insurance Alliance is an Authorized Surety Provider and Florida Domiciled Insurance Company.

Premiums - As agreed to and executed in the **General Agreement of Indemnity**, the initial bond premium is fully earned upon issuance of the bond.

Term - The term of this bond shall end upon completion of the obligation and in no event shall extend beyond a 12 month period without an extension in writing by the Company and payment of an additional fee for each month of extension.

State of Florida
County of Duval

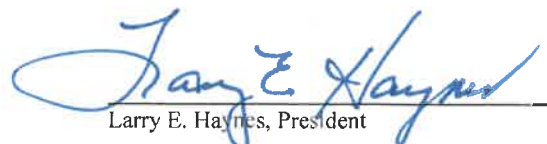
On this 17th day of October, 2008 before me, a Notary Public of the State and County aforesaid residing therein, duly commissioned and sworn, personally came the above named officer of the Company who being by me first duly sworn according to law, did depose and say that he is the officer of the Company described in and which executed the foregoing instrument; that he knows the seal of the Company; that the seal affixed to such instrument is the corporate seal of the Company; and that the corporate seal and his signature as such officer were affixed and subscribed to the said instrument by order of the Board of Managers).


TINA LYLES
Notary Public, State of Florida
Notary Public Comm. exp. Nov. 17, 2011
Comm. No. DD 714214

My commission expires

RESOLVED, that the use of a printed facsimile of the corporate seal of the Company and of the signature of an Officer of the Company on any certification of the correctness of a copy of an instrument executed by the President pursuant to the Board Resolution dated June 15 2006, appointing and authorizing an Attorney-in-Fact to execute in the name of and on behalf of the Company, surety bonds, undertakings and other instruments, shall have the same effect as if such seal and such signature had been manually affixed and made, is hereby authorized and approved.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Company to these presents this 17th day of October, 2008


Larry E. Haynes, President