

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: HEATHERWOOD SUBDIVISION

DEPARTMENT: Planning & Development **DIVISION:** Development Review

AUTHORIZED BY: Dori L. DeBord **CONTACT:** Brian Walker **EXT.** 7337

Agenda Date 01/09/07 **Regular** **Consent** **Work Session** **Briefing**
Public Hearing – 1:30 **Public Hearing – 7:00**

MOTION/RECOMMENDATION:

Authorize the release of Performance Bond # 8826064 for Heatherwood Subdivision as requested by M/I Homes of Orlando, LLC., applicant.

District 1 – Bob Dallari

(Brian M. Walker – Planner)

BACKGROUND:

Heatherwood Subdivision is located west of Nolan Road, east of Hester Avenue, on the south side of Myrtle Street in Section 23, Township 20, Range 30.

The following Performance Bond was required as part of the Land Development Code Section 35.44, Required Submittals for Final Plat, Part (e) Additional Required Legal Submittals, Sub-part (1) Bonds, to secure the construction and completion of the subdivision improvements for Heatherwood Subdivision:

- Performance Bond # 8826064 for \$400,000.00 (Fidelity and Deposit Company of Maryland)

The Performance Bond for improvements was replaced with the following Letters of Credit for maintenance to insure the maintenance of the subdivision improvements:

- Letter of Credit # F848239 for \$151,327.00 for infrastructure improvements (SunTrust)
- Letter of Credit #F848293 for \$20,597.00 for sewer & water (SunTrust)

Staff has conducted the final construction inspection and found that all construction requirements were completed per the approved final engineering plan and meet all Land Development Code criteria.

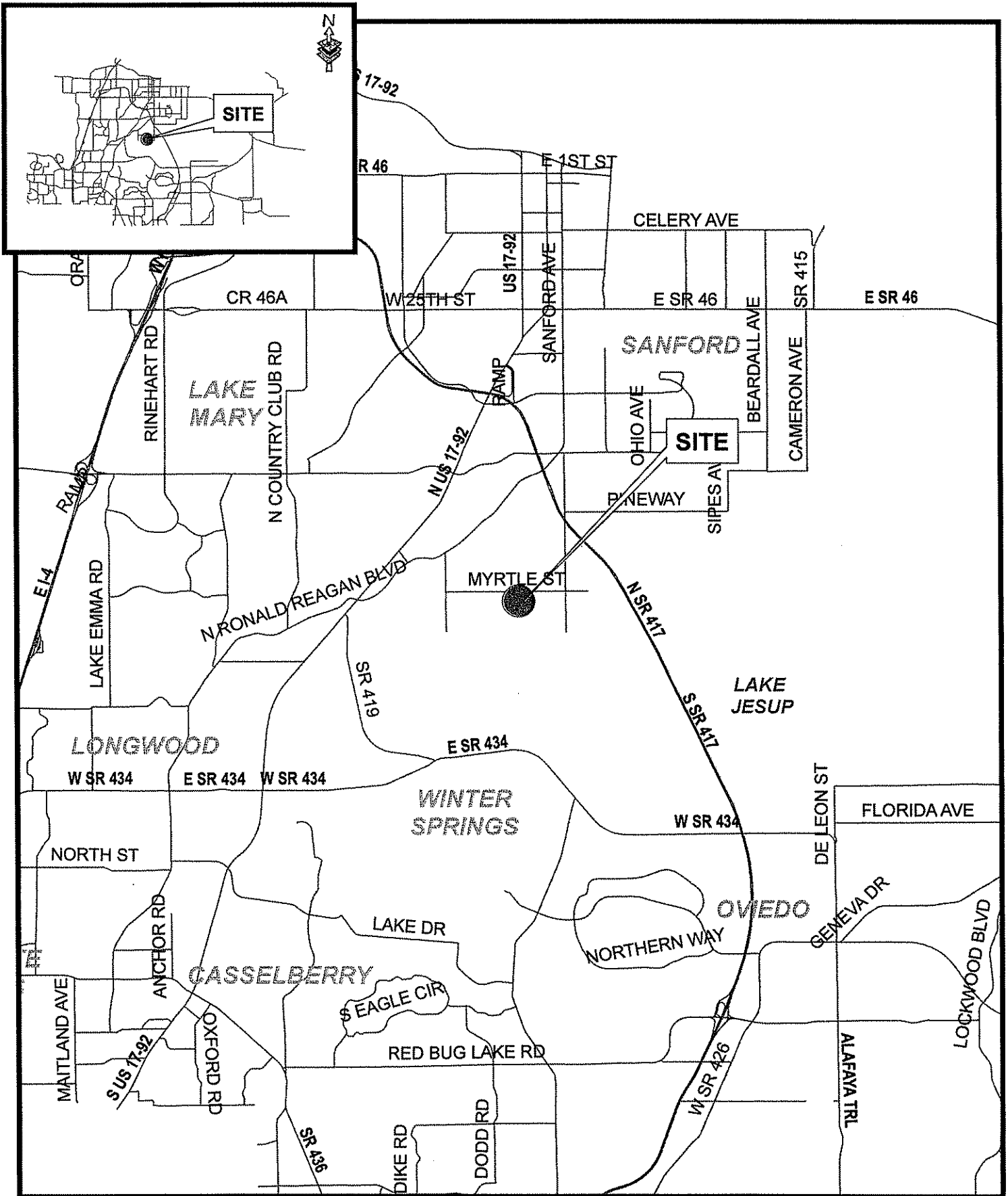
Reviewed by:	<u>KFT</u>
Co Atty:	<u>[Signature]</u>
DFS:	<u>[Signature]</u>
Other:	<u>[Signature]</u>
DCM:	<u>[Signature]</u>
CM:	<u>[Signature]</u>
File No.	<u>Cpddoz</u>

STAFF RECOMMENDATION:

Staff recommends approval of the release of the Performance Bond numbered 8826064 for Heatherwood Subdivision.

District 1 - Dallari

Attachments: Exhibit A - Location Map
Copy of Performance Bond



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Exhibit A

PERFORMANCE BOND (Roads, Streets, Drainage)

KNOW ALL MEN BY THESE PRESENTS:

That we, M/I Homes of Orlando, LLC, hereinafter called the "PRINCIPAL," and Fidelity and Deposit Company of Maryland, a surety company authorized to do business in the State of Florida, hereinafter called "SURETY" are held and firmly bound to Seminole County, a political subdivision of the State of Florida, in the full and just sum of \$400,000.00, lawful money of The United States of America, to be paid to the Board of County Commissioners of Seminole County, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden PRINCIPAL, has as a condition precedent to the approval by Seminole County of a plat of a certain subdivision known as Heatherwood, has covenanted and agreed with Seminole County to construct roads, streets and alleys, drainage as well as sidewalks, landscaping, perimeter walls, and other improvements (delete inapplicable improvements) based upon development plans and plans and specifications pertaining to said subdivision, said development plans and plans and specifications being dated March 22, 2005, and being on file with the County Engineer of Seminole County, Florida, and

WHEREAS, it is a condition precedent to the recording of said subdivision that this bond be executed:

NOW, THEREFORE, the conditions of these obligations are such that if the bounden PRINCIPAL shall construct the aforesaid improvements in accordance with any date prescribed in the approved development plans and plans and specifications dated the 22nd day of March, 2005, or within two (2) years of the date of approval, whichever occurs first, and shall in every respect fulfill its, his, their obligations under the development plans and plans and specifications, and shall indemnify and save harmless Seminole County against or from all claims, costs, expenses, damages, injury, or loss, including engineering, legal and contingent costs which Seminole County may sustain on account of the failure of the PRINCIPAL to perform in accordance with the development plans and plans and specifications within the time therein specified, then this obligation to be void; otherwise to be and remain in full force and virtue.

THE SURETY unconditionally covenants and agrees that if the PRINCIPAL fails to perform all or any part of the construction work required by the development plans or plans and specifications above referred to, within the time specified, the SURETY upon forty-five (45) days written notice from Seminole County, or its authorized agent or officer, of the default, will forthwith perform and complete the aforesaid construction work and pay the cost thereof, including, but not limited to, engineering, legal and contingent costs. Should the SURETY fail or refuse to perform and complete the said improvements, Seminole County, in view of the public interest, health, safety and welfare factors involved and the inducement in approving and filing the said plat, shall have the right to resort to any and all legal remedies against the PRINCIPAL and the SURETY, or either, both at law and in equity, including specifically, specific performance, to which the PRINCIPAL and SURETY unconditionally agree.

The PRINCIPAL and the SURETY further jointly and severally agree that Seminole County, at its option, shall have the right to construct or, pursuant to public advertisement and receipt of bids, cause to be constructed the aforesaid improvements in case the PRINCIPAL should fail or refuse to do so. In the event Seminole County should exercise and give effect to such right, the PRINCIPAL and the SURETY shall be jointly and severally liable hereunder to reimburse Seminole County the total cost thereof, including, but not limited to engineering, legal and contingent costs, together with any damages, either direct or consequential, which may be sustained on account of the failure of the PRINCIPAL to carry out and execute all the provisions of said agreement.

IN WITNESS WHEREOF, the PRINCIPAL and the SURETY have executed these presents this 28th day of March, 2006.

M/I Homes of Orlando, LLC
PRINCIPAL

(Corporate Seal)
By: Phillip J. Green
Its: CFO

ATTEST:

By: Robin Outhun
(If a corporation)
Its: Asst Treasurer

Fidelity and Deposit Company of Maryland
SURETY

(Corporate Seal)
By: Christine Marotta
Christine Marotta, Attorney-in-fact

WITNESSES:

Jocelyn Jibowu
Witness Signature

Jocelyn Jibowu
Witness Print Name

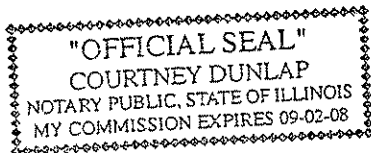
ACKNOWLEDGMENT OF SURETY

STATE OF ILLINOIS

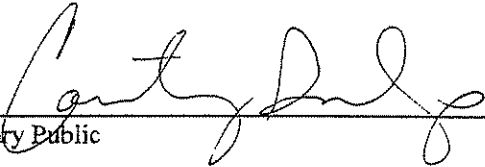
COUNTY OF COOK

On MAR 28 2006, before me, a Notary Public in and for the above county, personally appeared Christine Marotta to me personally known, who, being by me duly sworn, did state that he/she is Attorney-in-Fact of Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland that the seal affixed to the foregoing instrument is the corporate seal of the said corporation, that the instrument was signed, sealed, and executed in behalf of said corporation by authority of its Board of Directors, and further acknowledged the said instrument and the execution thereof to be the voluntary act and deed of said corporation by her voluntarily executed.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed my official seal the day and year first above written.



(SEAL)



Notary Public

COOK County, ILLINOIS

**Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by FRANK E. MARTIN JR., Vice President, and GREGORY E. MURRAY, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Christine MAROTTA, Mark G. RUSTEMEYER, Craig B. BROWN and Debra KOHLMAN, all of Chicago, Illinois, EACH** its true and lawful agent and Attorney-in-Fact to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Christine MAROTTA, Mark G. RUSTEMEYER, Craig B. BROWN, dated October 24, 2003.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 27th day of October, A.D. 2004.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Gregory E. Murray

By:

Frank E. Martin Jr.

Gregory E. Murray Assistant Secretary

Frank E. Martin Jr.

Vice President

State of Maryland }
City of Baltimore } ss:

On this 27th day of October, A.D. 2004, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came FRANK E. MARTIN JR., Vice President, and GREGORY E. MURRAY, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Constance A. Dunn

Constance A. Dunn

Notary Public

My Commission Expires: July 14, 2007

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this _____ day of MAR 28 2006, _____.

Harold F. Halby
Assistant Secretary