

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Authorize Release of (1) Maintenance Agreement and Letter of Credit and
(1) Maintenance and Escrow Agreement/Cash Maintenance Bond

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

AUTHORIZED BY: Dori L. DeBord **CONTACT:** Kelly Brock **EXT.** 7346

Agenda Date <u>01/23/2007</u> <input type="checkbox"/> Regular <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Work Session <input type="checkbox"/> Briefing
<input type="checkbox"/> Public Hearing – 1:30 <input type="checkbox"/> Public Hearing – 7:00

MOTION/RECOMMENDATION:

Authorize the release of The Trails Phase 2A Final Engineering Maintenance Agreement and Letter of Credit and Monroe Commerce Center North Phase 2 Maintenance and Escrow Agreement/Cash Maintenance Bond for road improvements.

Districts: 5 Carey

Kelly Brock, Development Review Engineer

BACKGROUND:

The following Maintenance Agreement Letters of Credit were required as part of the Land Development Code Section 35.44 (e) *Additional Required Legal Submittals (1) Bonds* to insure operating conditions have not significantly degraded. A two year maintenance inspection was conducted by staff for these projects and was determined to be satisfactory.

- **The Trails Phase 2A**
Irrevocable Letter of Credit # 3071912 for \$40,091.67 (Bank of America).
- **Monroe Commerce Center North Phase 2**
Maintenance and Escrow Agreement, Cash Maintenance Bond (\$2,970.00)

STAFF RECOMMENDATION:

Staff recommends the release of a Maintenance Agreement, Letter of Credit and a Maintenance and Escrow Agreement/Cash Maintenance Bond.

Districts: 5 (Carey)

Attachments: Copies of Maintenance Agreement, Letter of Credit, and a Maintenance and Escrow Agreement/Cash Maintenance Bond.

Reviewed by: Co Atty: <u>KET</u> DFS: _____ Other: <u>[Signature]</u> DCM: <u>[Signature]</u> CM: <u>[Signature]</u> File No. <u>cpdd03</u>

MAINTENANCE AGREEMENT
(Road, Drainage, Wall and Landscape Improvements)

THIS AGREEMENT is made and entered into this 15th day of December, 2004 between MARONDA HOMES, INC. OF FLORIDA, hereinafter referred to as "Principal", Developer of TRAILS - UNIT 2A subdivision and SEMINOLE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY".

WITNESSETH:

WHEREAS, Principal has constructed certain road, drainage, wall and landscape improvements including streets, curbs, storm drains and other appurtenances in that certain subdivision described as TRAILS - UNIT 2A, a Plat of which is recorded in Plat Book 66, Pages 34-35, Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid road, drainage, wall and landscape improvements were made pursuant to certain plans and specifications dated June 24, 2004, (as subsequently revised or amended) and filed with the County Engineer of Seminole County; and

WHEREAS, Principal is obligated to protect the COUNTY against any defects resulting from faulty materials or workmanship of said road, drainage, wall and landscape improvements and to maintain said road, drainage, wall and landscape improvements for a period of two (2) years from December 15, 2004 and

WHEREAS, to guarantee performance of said obligations by Principal, Principal has obtained and furnished to the COUNTY, a certain Irrevocable Letter of Credit No. 3071912 issued by BANK OF AMERICA N.A., in the sum of Forty Thousand Ninety One and 67/100 Dollars (\$40,091.67).

NOW THEREFORE, the COUNTY agrees to accept the road improvements into the County Road System upon execution of this Agreement and to accept an Irrevocable Letter of Credit as security for the maintenance obligation of the Principal.

Principal, its heirs, executors, successors and assigns, jointly and severally agrees to be held and firmly bound to the COUNTY in the sum of Forty Thousand Ninety One Dollars (\$40,091.67) on the condition that if Principal shall promptly and faithfully protect the COUNTY against any defects resulting from faulty materials or workmanship of the aforesaid road improvements, drainage, walls and landscaping and maintain road improvements, drainage, walls and landscaping for a period of two (2) years from December 15, 2004 then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The County Engineer shall notify the Principal in writing of any defect for which the Principal is responsible and shall specify in said notice a reasonable period of time within which Principal shall have to correct said defect.

Should the Principal fail or refuse to perform or correct aid defects within the time specified, the COUNTY shall be authorized, but shall not be obligated, to take over and perform, or cause to be performed, such work as shall be necessary to correct such defects, and shall be authorized to draw upon the Letter of Credit to pay the cost thereof, including, but not limited to, engineering, legal an contingent costs. Further, the COUNTY, in view of the public interest, health, safety, welfare and other factors involved, and the consideration in approving and filing the said Plat shall have the right to resort to any and all legal remedies against the Principal, both at law and in equity, including specifically, specific performance, to which the Principal unconditionally agrees.

The **Principal** further agrees that the COUNTY, at its option, shall have the right to correct said defects resulting from faulty materials or workmanship, or, pursuant to public advertisement and receipt of bids, cause to be corrected any defects or said defects in case the **Principal** shall fail or refuse to do so, and, in the event the COUNTY should exercise and give effect to such right, the **Principal** shall be obligated hereunder to reimburse the COUNTY the total cost thereof, including, but not limited to, engineering, legal and contingent costs, together with any damages, either direct or consequent, which may be sustained on account of the failure of the **Principal** to correct said defects.

IN WITNESS WHEREOF, the parties to this Agreement have caused their names to be affixed hereto by the proper officers thereof.

THIS AGREEMENT, signed and sealed the day and year above written.

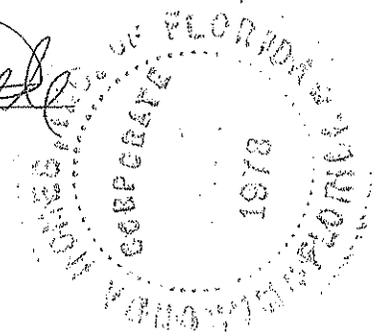
ATTEST:

MARONDA HOMES, INC. OF FLORIDA
Florida Corporation

Witness:

George Jalovecky
(Signature)
George Jalovecky
Denise C. Nicolai
(Signature)
Denise C. Nicolai

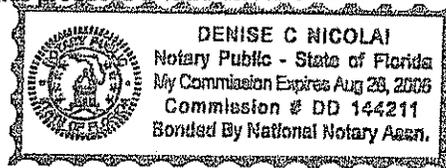
Wayne Von Dreele
(Signature)
Wayne Von Dreele, President



STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 1st day of December, 2004 by Wayne Von Dreele, who is the President of Maronda Homes, Inc. of Florida, a Florida Corporation, on behalf of said corporation. He is personally known to me or has produced a valid driver's license as identification.

Denise C. Nicolai
Signature of Notary
Printed Name: Denise C. Nicolai



ACCEPTANCE BY SEMINOLE COUNTY:

PLANNING & DEVELOPMENT DEPT.
DEVELOPMENT REVIEW DIVISION
SEMINOLE COUNTY, FLORIDA

By: _____
Title: _____
Date: _____

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this _____ day of December, 2004, by _____ on behalf of Seminole County. He/she is personally known to Me or has produced a valid driver's license as identification.

Signature of Notary
Printed Name: _____

See page 3

Witnesses

Teresa L. Sanchez
Shirley Harless

HOLDER:

DEPARTMENT OF PUBLIC WORKS
ROAD OPERATIONS AND STORMWATER DIVISION
SEMINOLE COUNTY, FLORIDA

Michael Arnold
Michael Arnold, Manager
Road Operations and Stormwater Division

Date: 3/17/05

Within authority delegated by the County Manager pursuant to Resolution No. 97-R-66 adopted March 11, 1997 and further delegated by Memorandum dated March 27, 1997, Re: Streamlining of Development-Related Agenda Items and approved on April 2, 1997.

STATE OF FLORIDA)
COUNTY OF Seminole)

The foregoing instrument was acknowledged before me this 17th day of March, 2005, by Michael K. Arnold, who is personally known to me or who has produced _____ as identification.

Linda Gail Blackwelder
Signature of Notary Public in and for the County and State Aforementioned

My Commission Expires: April 6, 2008

(App E, LDC, through Supp 16).



DATE: NOVEMBER 26, 2004

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 3071912

BENEFICIARY
SEMINOLE COUNTY BOARD OF COUNTY
COMMISSIONERS
SEMINOLE COUNTY SERVICES BUILDING
1101 EAST FIRST STREET
SANFORD, FL 32771

APPLICANT
MARONDA HOMES, INC. OF FLORIDA
411 CENTRAL PARK DRIVE
SANFORD, FL 32771
ATTN: GEORGE JALOVECKY

AMOUNT
USD 40,091.67
FORTY THOUSAND NINETY ONE AND
67/100'S US DOLLARS

EXPIRATION
FEBRUARY 15, 2007 IN WINTER
PARK, FLORIDA

BY ORDER OF MARONDA HOMES, INC. OF FLORIDA, WE HEREBY ESTABLISH AN IRREVOCABLE LETTER OF CREDIT 3071912, IN YOUR FAVOR. WE HEREBY AUTHORIZE YOU TO DRAW ON BANK OF AMERICA, N.A. UP TO AN AGGREGATE AMOUNT OF \$40,091.67 (FORTY THOUSAND NINETY ONE AND 67/100'S US DOLLARS) AVAILABLE BY YOUR DRAFTS AT SIGHT ACCOMPANIED BY A SIGNED STATEMENT PURPORTEDLY OF THE BOARD OF COUNTY COMMISSIONERS THAT:

"THE MAINTENANCE AGREEMENT DATED DECEMBER 15, 2004 BETWEEN MARONDA HOMES, INC. OF FLORIDA AND SEMINOLE COUNTY IS IN DEFAULT."

DRAFTS MUST BE DRAWN ON OR BEFORE FEBRUARY 15, 2007 AND EACH DRAFT MUST STATE THAT IT IS "DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NO. 3071912 OF BANK OF AMERICA, N.A. DATED NOVEMBER 26, 2004" AND THE AMOUNT THEREOF ENDORSED ON THIS LETTER OF CREDIT.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR AN ADDITIONAL PERIOD OF ONE YEAR FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE UNLESS AT LEAST 45 DAYS PRIOR TO SUCH EXPIRATION DATE, WE NOTIFY YOU IN WRITING BY REGISTERED MAIL OR OVERNIGHT COURIER SERVICE THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR SUCH AN ADDITIONAL PERIOD. UPON RECEIPT OF SUCH NOTICE YOU MAY DRAW HEREUNDER BY PRESENTATION OF YOUR DRAFT AND SIGNED STATEMENT STATING "THE PROCEEDS SHALL BE HELD BY SEMINOLE COUNTY AS A CASH BOND TO SECURE CONTINUED ADHERENCE TO THE TERMS OF THE MAINTENANCE AGREEMENT WITH MARONDA HOMES, INC. OF FLORIDA."

WE HEREBY ENGAGE WITH YOU THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT, THAT SUCH DRAFTS WILL BE DULY HONORED. PAYMENT UNDER THIS LETTER OF CREDIT WILL BE EFFECTED UPON PRESENTATION OF YOUR DRAFT ACCOMPANIED BY THE REQUIRED DOCUMENT(S) (THE "DRAWING") TO BANK OF AMERICA N.A., 250 SOUTH PARK AVENUE, SUITE 400, WINTER PARK, FLORIDA 32789, MAIL CODE: FLO-500-04-05, ATTENTION: BRENDA J. KASTEN AND A COPY OF SUCH DRAWING SENT SIMULTANEOUSLY BY FACSIMILE TO FAX NUMBER (213) 345-6694.

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 3071912

IF THE BOARD OF COUNTY COMMISSIONERS INITIATES SUIT UNDER THIS LETTER OF CREDIT, THE BANK HEREBY AGREES TO BE RESPONSIBLE FOR SEMINOLE COUNTY'S COURT COSTS AND REASONABLE ATTORNEYS' FEES, IF THE BENEFICIARY PREVAILS, BUT THE BANK OF AMERICA, N.A. SHALL NOT BE RESPONSIBLE FOR ANY ATTORNEYS' FEES IN EXCESS OF FIFTEEN PERCENT (15%) OF THE AGGREGATE AMOUNT OF THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE AMENDED BY REFERENCE HEREIN TO ANY AGREEMENT, AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT OR AGREEMENT OTHER THAN THE MAINTENANCE AGREEMENT DATED DECEMBER 15, 2004 AND REFERENCED HEREIN.

THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 1993 REVISION, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 213-345-5304.



LAWRENCE BANALEZ
ASST. VICE PRESIDENT

SUBDIVISION AND SITE PLAN
PAVING AND DRAINAGE IMPROVEMENTS
MAINTENANCE AND ESCROW AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 19____, between Realvest Monroe CommerCenter, LLC, hereinafter referred to as "PRINCIPAL," and SEMINOLE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY."

W I T N E S S E T H : { Florida Land and Colonization Co.,
Limited, W. Beardall's Map of
St. Joseph's

WHEREAS, PRINCIPAL has constructed certain paving and drainage improvements in that certain subdivision described as _____, a Plat of which is recorded in Plat Book 1 Pages 114, Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid improvements were made pursuant to certain plans and specifications dated November 26, 2003 (as subsequently revised or amended) and filed with the Seminole County Engineer; and

WHEREAS, PRINCIPAL is obligated to protect the COUNTY against any defects resulting from faulty materials or workmanship of said improvements and to maintain said improvements for a period of two (2) years from 9/29/04, 2004; and

WHEREAS, to guarantee performance of said obligations by PRINCIPAL, PRINCIPAL has obtained and furnished to the COUNTY cash (U.S. Currency) in the sum of Two thousand nine hundred seventy DOLLARS (\$ 2,970.00).

NOW, THEREFORE, in consideration of the agreements and promises herein made and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. The COUNTY agrees to accept the paving and drainage improvements into the County System upon execution of this Agreement and to accept the aforementioned cash as security for the maintenance obligation of the PRINCIPAL.

2. The PRINCIPAL hereby deposits in escrow with COUNTY, the sum of Two thousand nine hundred seventy DOLLARS (\$ 2,970.00) to guarantee that all paving and drainage improvements set forth on plans and specifications for the above subdivision will be maintained in accordance with the terms of this Agreement.

3. The COUNTY agrees to hold said funds and to pay same out in the manner described herein.

4. PRINCIPAL, its heirs, executors, successors and assigns, jointly and severally agrees to be held and firmly bound to the COUNTY in the sum of Two thousand nine hundred seventy DOLLARS (\$ 2,970.00) on the condition that, if PRINCIPAL shall promptly and faithfully protect the COUNTY against any defects resulting from faulty materials or workmanship of the aforesaid improvements and maintain said improvements for a period of two (2) years from _____, 2004, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

5. The Seminole County Engineer shall notify the PRINCIPAL in writing of any defect for which the PRINCIPAL is responsible and shall specify in said notice a reasonable period of time within which PRINCIPAL shall have to correct said defect.

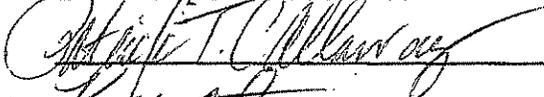
6. Should the PRINCIPAL fail or refuse to perform or correct said defects within the time specified, the COUNTY shall be authorized, but shall not be obligated, to take over and perform, or cause to be performed, such work as shall be necessary to correct such defects, and shall be authorized to draw upon the Letter of Credit to pay the cost thereof, including, but not limited to, engineering, construction, legal and contingent costs. Further, the COUNTY, in view of the public interest, health, safety, welfare and other factors involved, and the consideration in approving and filing the said Plat shall have the right to resort to any and all legal remedies against the PRINCIPAL, both at law and in equity, including specifically, specific performance, to which the PRINCIPAL unconditionally agrees.

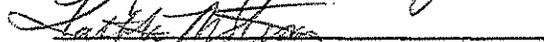
7. The PRINCIPAL further agrees that the COUNTY, at its option, shall have the right to correct said defects resulting from faulty materials or workmanship, or, pursuant to public advertisement and receipt of bids, cause to be corrected any defects or said defects in case the PRINCIPAL shall fail or refuse to do so, and, in the event the COUNTY should exercise and give effect to such right, the PRINCIPAL shall be obligated hereunder to reimburse the COUNTY the total cost thereof, including, but not limited to, engineering, construction, legal and contingent costs, together with any damages, either direct or consequent, which may be sustained on account of the failure of the PRINCIPAL to correct said defects.

IN WITNESS WHEREOF, the parties to this Agreement have caused their names to be affixed hereto by the proper officers thereof.

Signed, sealed and delivered
in the presence of:

Realvest Monroe CommerCenter, LLC





By: 
George D. Livingston, its Managing Member

Date: 30 Aug 2011

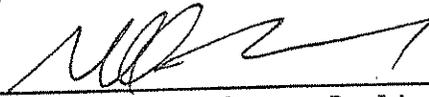
SUBDIVISION AND SITE PLAN
PAVING AND DRAINAGE IMPROVEMENTS
CASH MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned George D. Livingston, as PRINCIPAL is held and firmly bound unto SEMINOLE COUNTY, a political subdivision of the State of Florida, in the cash penal sum of Two thousand nine hundred seventy DOLLARS (\$ 2,970.00), which sum has been deposited in escrow with SEMINOLE COUNTY in accordance with the provisions of a Maintenance and Escrow Agreement of even date which is attached hereto and made a part hereof by this reference to it, does bind _____, _____, respective heirs, personal representatives, successors and assigns, jointly and severally, firmly by this Bond.

The condition of this Bond is that the paving and drainage improvements made as shown on Subdivision Plans and Specifications dated November 26, 2003, including surveying, engineering, and land clearing, for Monroe CommerCenter North Subdivision shall be maintained by the PRINCIPAL for a period of two (2) years or for any extension thereof agreed to by SEMINOLE COUNTY, and if all costs incurred in connection with the maintenance of said improvements shall be made and shall be paid in full, and in accordance therewith and with the documents and specifications referred to therein or attached thereto, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

DATED: 30 Aug, 2004.



Principal George D. Livingston (SEAL)

Principal (SEAL)

Principal (SEAL)

(App E, LDC, through Supp 16).

RECEIPT

No 58945

SEMINOLE COUNTY, FLORIDA

Date 10/15 2009

Received from Development Review

Address _____

Description Cash Bond - Realvest Monroe

Account Number	Amount	Description
-----	<u>2970.00</u>	<u>Cash Bond -</u>
-----	-----	<u>Realvest Monroe</u>
-----	-----	-----
-----	-----	-----
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Total Amount 2970.00

Board of County Commissioners

Check No. 2269 Cash _____

By M Hold