

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Release of Performance Bonds for Trails-Units 2A and 2B

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

AUTHORIZED BY: Dan Matthys **CONTACT:** Cynthia Sweet **EXT.** 7443

Agenda Date <u>1/24/2006</u> Regular <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Work Session <input type="checkbox"/> Briefing <input type="checkbox"/> Public Hearing – 1:30 <input type="checkbox"/> Public Hearing – 7:00 <input type="checkbox"/>

MOTION/RECOMMENDATION:

Authorize the release of Performance Bonds # 3066134 and # 3076137 for Trails-Units 2A and 2B, as requested by Maronda Homes, Inc. of Florida, Wayne Von Dreele, President.

District 1 – Dallari

(Cynthia Sweet, Planner)

BACKGROUND:

The subdivisions are located on the north and south sides of Snowhill Road, east of Jacobs Trail, and west of Avenue H, in Chuluota, within The Trails PUD, in Section 21, Township 21 S, and Range 32 E.

The following Performance Bonds were required as part of the Land Development Code Section 35.44(e)(1) to secure the construction and completion of the subdivision improvements for Trails-Units 2A and 2B:

Trails Unit-2A - Performance Bond # 3066134 for \$72,405.58 (Bank of America)

Trails Unit-2B - Performance Bond # 3076137 for \$303,602.88 (Bank of America).

The Performance Bonds were replaced with Maintenance Bonds to insure the maintenance of the subdivision improvements. Staff has conducted the final construction inspection and found that all construction requirements were completed per the approved final engineering plan.

STAFF RECOMMENDATION:

Staff recommends the Board authorize the release of Performance Bonds # 3066134 and # 3076137 for subdivision improvements for Trails Units 2A and 2B, as requested by the applicant.

District 1 - Dallari

Attachment: Copy of Bonds

Reviewed by: <u>KL</u> Co Atty: _____ DFS: _____ Other: _____ DCM: _____ CM: _____ File No. <u>cpdd01</u>
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PERFORMANCE AND PAYMENT AGREEMENT
(Performance and Payment – Roads, Drainage, Walls and Landscaping)

THIS AGREEMENT is made and entered into this 7th day of October, 2004, between MARONDA HOMES, INC. OF FLORIDA, hereinafter referred to as DEVELOPER, Developer of TRAILS – UNIT 2A subdivision and SEMINOLE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY."

WITNESSETH:

1. The DEVELOPER hereby delivers to the COUNTY, an irrevocable Letter of Credit No. 3066134 of BANK OF AMERICA in the sum of \$72,405.58 to guarantee that all improvements set forth on the approved plans and specifications for the above development will be fully completed and paid for.
2. That COUNTY agrees to accept the Letter of Credit and to return or draw on same in the following manner:
 - a. To return to BANK OF AMERICA upon request by DEVELOPER and upon proof satisfactory to the COUNTY that work has been completed in accordance with all applicable requirements, said proof to include a certificate to that effect signed by the DEVELOPER, the DEVELOPER'S Engineer, and the County Engineer and, upon proof satisfactory to the COUNTY that all bills therefore have been paid, including, but not limited to, bills for surveying, engineering and land clearing, and work and material used in the construction of roads and other required improvements which are included in the plans and specifications.
 - b. To draw upon the Letter of Credit in accordance with its terms upon a determination that any portion or all the improvements have not been completed in accordance with the approved plans and specifications within 90 calendar days from the date of this Agreement. Provided, however, that if the work is not completed within 90 days and the DEVELOPER has made substantial progress towards completion of the required improvements, is prosecuting completion of the work and the public interest is served thereby, the COUNTY may extend the time for performance hereunder to a time no later than thirty (30) days prior to the expiration date of the Letter of Credit. The COUNTY is hereby authorized, but not obligated to take over and perform or cause to be performed any such uncompleted work and to use for such purposes the funds available under said Letter of Credit 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 consequential, which may be sustained on account of DEVELOPER'S failure to perform this Agreement.
 - c. Further, the COUNTY is authorized to draw on the Letter of Credit to pay any bills for said improvements upon proof satisfactory to the COUNTY that such claims are just and unpaid and the DEVELOPER hereby consents to any such payments and authorizes and ratifies any such action on the part of the COUNTY and agrees to protect and save harmless the COUNTY from any claims of any persons whomsoever on account of any improvements which have not been completed or paid for or which have been completed or paid for by the COUNTY.

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

ATTEST:

MARONDA HOMES, INC. OF FLORIDA
Florida Corporation

Witness:

(Signature)

(Printed Name)

(Signature)

(Printed Name)

(Signature)

Wayne Von Dreele, President

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 7th day of October 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.

Jane B. Forest
Signature of Notary
Printed Name: Jane B. Forest



Jane B Forest
My Commission DD061122
Expires September 30, 2005

ACCEPTANCE BY SEMINOLE COUNTY:

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

By: [Signature]

Title: Manager

Date: 12/2/04

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
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 : _____

seal

DATE: OCTOBER 15, 2004

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 3066134

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: STEVE ROSSER

AMOUNT
USD 72,405.58
SEVENTY TWO THOUSAND FOUR
HUNDRED FIVE AND 58/100'S US
DOLLARS

EXPIRATION
JANUARY 6, 2005 IN WINTER
PARK, FLORIDA

BY ORDER OF MARONDA HOMES, INC. OF FLORIDA, WE HEREBY ESTABLISH AN IRREVOCABLE LETTER OF CREDIT 3066134, IN YOUR FAVOR. WE HEREBY AUTHORIZE YOU TO DRAW ON BANK OF AMERICA, N.A. UP TO AN AGGREGATE AMOUNT OF \$72,405.58 (SEVENTY TWO THOUSAND FOUR HUNDRED FIVE AND 58/100'S US DOLLARS) AVAILABLE BY YOUR DRAFTS AT SIGHT ACCOMPANIED BY A SIGNED STATEMENT OF THE BOARD OF COUNTY COMMISSIONERS THAT:

"THE PERFORMANCE AND PAYMENT AGREEMENT DATED OCTOBER 7, 2004 BETWEEN MARONDA HOMES, INC. OF FLORIDA AND SEMINOLE COUNTY IS IN DEFAULT."

DRAFTS MUST BE DRAWN ON OR BEFORE JANUARY 6, 2005 AND EACH DRAFT MUST STATE THAT IT IS "DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NO. 3066134 OF BANK OF AMERICA, N.A. DATED OCTOBER 15, 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 PERFORMANCE AND PAYMENT 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., 750 SOUTH PARK AVENUE, SUITE 400, WINTER PARK, FLORIDA 32789, 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: 3066134

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 PERFORMANCE AND PAYMENT AGREEMENT DATED OCTOBER 7, 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 213-345-0145.



BOLIVAR CARRILLO
ASSISTANT VICE PRESIDENT

PERFORMANCE AND PAYMENT AGREEMENT
(Performance and Payment – Roads, Drainage, Walls and Landscaping)

THIS AGREEMENT is made and entered into this 8th day of August, 2005, between MARONDA HOMES, INC. OF FLORIDA, hereinafter referred to as DEVELOPER, Developer of TRAILS – UNIT 2B subdivision and SEMINOLE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY."

WITNESSETH:

1. The DEVELOPER hereby delivers to the COUNTY, an irrevocable Letter of Credit No. **3076137** of BANK OF AMERICA in the sum of \$303,602.88 to guarantee that all improvements set forth on the approved plans and specifications for the above development will be fully completed and paid for.
2. That COUNTY agrees to accept the Letter of Credit and to return or draw on same in the following manner:
 - a. To return to BANK OF AMERICA upon request by DEVELOPER and upon proof satisfactory to the COUNTY that work has been completed in accordance with all applicable requirements, said proof to include a certificate to that effect signed by the DEVELOPER, the DEVELOPER'S Engineer, and the Development Review Manager or his/her designee and, upon proof satisfactory to the COUNTY that all bills therefore have been paid, including, but not limited to, bills for surveying, engineering and land clearing, and work and material used in the construction of roads and other required improvements which are included in the plans and specifications.
 - b. To draw upon the Letter of Credit in accordance with its terms upon a determination that any portion or all the improvements have not been completed in accordance with the approved plans and specifications within 90 calendar days from the date of this Agreement. Provided, however, that if the work is not completed within 90 days and the DEVELOPER has made substantial progress towards completion of the required improvements, is prosecuting completion of the work and the public interest is served thereby, the COUNTY may extend the time for performance hereunder to a time no later than thirty (30) days prior to the expiration date of the Letter of Credit. The COUNTY is hereby authorized, but not obligated to take over and perform or cause to be performed any such uncompleted work and to use for such purposes the funds available under said Letter of Credit 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 consequential, which may be sustained on account of DEVELOPER'S failure to perform this Agreement.
 - c. Further, the COUNTY is authorized to draw on the Letter of Credit to pay any bills for said improvements upon proof satisfactory to the COUNTY that such claims are just and unpaid and the DEVELOPER hereby consents to any such payments and authorizes and ratifies any such action on the part of the COUNTY and agrees to protect and save harmless the COUNTY from any claims of any persons whomsoever on account of any improvements which have not been completed or paid for or which have been completed or paid for by the COUNTY.

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

ATTEST:

MARONDA HOMES, INC. OF FLORIDA
Florida Corporation

Witness: Jane B. Forest
(Signature)

Jane B. Forest
(Printed Name)

Denise C. Nicolai
(Signature)

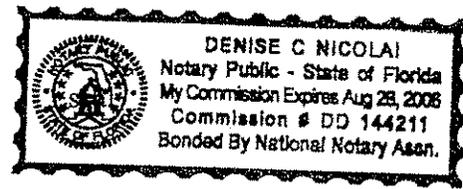
Denise C. Nicolai
(Printed Name)

Mark D. Falck
(Signature)
Mark D. Falck, Vice President

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 8 day of August 20 05
by Mark D. Falck who is the Vice 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: Mahmoud Nagda

Title: Manager

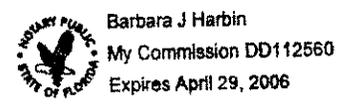
Date: 8/8/05

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 8th day of Aug., 20 05
By Mahmoud Nagda on behalf of Seminole County. He/she is personally known to
Me or has produced a valid driver's license as identification.

Barbara J. Harbin
Signature of Notary
Printed Name: Barbara J. Harbin

seal



DATE: JULY 15, 2005

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 3076137

BENEFICIARY

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

APPLICANT

MARONDA HOMES, INC. OF FLORIDA
3993 WEST FIRST STREET
SANFORD, FL 32771
ATTN: GEORGE JALOVECKY

AMOUNT

USD 303,602.88
THREE HUNDRED THREE THOUSAND
SIX HUNDRED TWO AND 88/100'S
US DOLLARS

EXPIRATION

NOVEMBER 27, 2005 IN WINTER
PARK, FLORIDA

RE: THE TRAILS - PHASE 2B

BY ORDER OF MARONDA HOMES, INC. OF FLORIDA, WE HEREBY ESTABLISH AN IRREVOCABLE LETTER OF CREDIT 3076137, IN YOUR FAVOR. WE HEREBY AUTHORIZE YOU TO DRAW ON BANK OF AMERICA, N.A. UP TO AN AGGREGATE AMOUNT OF \$303,602.88 (THREE HUNDRED THREE THOUSAND SIX HUNDRED TWO AND 88/100'S US DOLLARS) AVAILABLE BY YOUR DRAFTS AT SIGHT ACCOMPANIED BY A SIGNED STATEMENT OF THE BOARD OF COUNTY COMMISSIONERS THAT:

"THE PERFORMANCE AND PAYMENT AGREEMENT DATED _____, 2005 BETWEEN MARONDA HOMES, INC. OF FLORIDA AND SEMINOLE COUNTY IS IN DEFAULT."

DRAFTS MUST BE DRAWN ON OR BEFORE NOVEMBER 27, 2005 AND EACH DRAFT MUST STATE THAT IT IS "DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NO. 3076137 OF BANK OF AMERICA, N.A. DATED JULY 15, 2005 AND THE AMOUNT THEREOF ENDORSED ON THIS LETTER OF CREDIT."

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 3076137

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 PERFORMANCE AND PAYMENT 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., 750 SOUTH PARK AVENUE, SUITE 400, WINTER PARK, FLORIDA 32789, ATTENTION: BRENDA J. KASTEN AND A COPY OF SUCH DRAWING SENT SIMULTANEOUSLY BY FACSIMILE TO FAX NUMBER (213) 345-6694.

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 PERFORMANCE AND PAYMENT AGREEMENT DATED _____, 2005 AND REFERENCED HEREIN.

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 3076137

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 213-345-0153.



BOLIVAR CARRILLO
ASSISTANT VICE PRESIDENT