

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Release of Maintenance Agreements with Letter of Credit - Bennington

DEPARTMENT: Environmental Services **DIVISION:** Business Office

AUTHORIZED BY: *[Signature]* **CONTACT:** *[Signature]* **EXT.** 2148
Dr. John Cirello, Director **Bob Briggs, Finance Manager**

Agenda Date <u>2-28-06</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:

Approve release of original Water and Sewer Maintenance Agreement and LOC

BACKGROUND:

The following project has satisfactorily completed the two (2) year maintenance inspection by the Water and Sewer Division.

Release Maintenance Agreement with Letter of Credit #02OD04349 (Bennington Development Inc., and SouthTrust Bank) in the amount of \$8,523.00 for the project known as Bennington Subdivision. District 1.

Reviewed by:
Co Atty: <u>N/A</u>
DFS: _____
Other: _____
DCM: <u>SS</u>
CM: <u>[Signature]</u>
File No. <u>CEAS01</u>

WACHOVIA

CANCELLATION REQUEST NOTICE OF NON-EXTENSION DATE: 12/23/05

SECOND REQUEST

In favor of your reply will be appreciated.

Wachovia Bank, N.A. Winston-Salem, NC 27101 Standby Letter of Credit Center of Excellence

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

Date: 1-24-06 By: [signature]

LETTER OF CREDIT NO. 02OD04349 LETTER OF CREDIT AMOUNT: USD 8,523.00

GENTLEMEN:

WE HEREBY REQUEST CANCELLATION OF THE ABOVE REFERENCED LETTER OF CREDIT, ISSUED IN YOUR FAVOR FOR THE ACCOUNT OF OUR CUSTOMER, BENNINGTON DEVELOPMENT, INC.

ON JANUARY 3, 2005 WACHOVIA BANK, NATIONAL ASSOCIATION AND SOUTHTRUST BANK MERGED. THE NAME OF THE NEWLY MERGED BANK IS WACHOVIA BANK, NATIONAL ASSOCIATION.

THIS CANCELLATION REQUEST IS SUBJECT TO BENEFICIARY'S CONSENT AS REFERENCED BELOW AND RETURN OF THE ORIGINAL LETTER OF CREDIT, AND ANY AND ALL AMENDMENTS ATTACHED THERETO.

SINCE THIS LETTER OF CREDIT CONTAINS A PROVISION FOR AN AUTO-EXTENSION OF THE EXPIRY DATE, IN THE EVENT THAT WE DO NOT RECEIVE YOUR CONSENT TO CANCEL THIS CREDIT, THIS LETTER WILL ALSO SERVE AS OUR NOTICE TO YOU THAT WE HAVE ELECTED NOT TO EXTEND THIS CREDIT FOR AN ADDITIONAL TERM AND WE WILL, THEREFORE, CONSIDER THIS FILE CANCELLED ON ITS CURRENT EXPIRATION DATE OF 07/30/06.

PLEASE CONTACT STANDBY CUSTOMER CARE, AT 800-776-3862, WITH ANY QUESTIONS REGARDING THIS NOTICE.

SINCERELY,

[Signature]

AUTHORIZED SIGNATURE WACHOVIA BANK, NATIONAL ASSOCIATION MAJ EV03

YOUR CONSENT TO THIS CANCELLATION IS REQUIRED FOR IT TO BE EFFECTIVE. HOWEVER, IN THE EVENT YOU DO NOT SUPPLY YOUR CONSENT, OUR NOTICE OF NON-EXTENSION REMAINS IN FULL FORCE AND EFFECT, AND THIS CREDIT WILL BE CANCELLED ON THE DATE SPECIFIED ABOVE.

PLEASE INDICATE CONSENT TO CANCELLATION BY SIGNING AND DATING THE SECTION BELOW AND RETURNING TO US AT 401 LINDEN STREET, NC6034, WINSTON SALEM, NC 27101-0045 ATTN: STANDBY DEPT.

FOR YOUR ADDED CONVENIENCE, YOU MAY USE THE SELF-ADDRESSED COURIER ENVELOPE INCLUDED HERewith TO EXPEDITE YOUR RESPONSE. THANK YOU

WE AGREE TO THE CANCELLATION OF THIS CREDIT EFFECTIVE IMMEDIATELY.

AUTHORIZED SIGNATURE SEMINOLE COUNTY BOARD OF COUNTY COMMISSIONERS SEMINOLE COUNTY SERVICES BUILDING

DATE

0000 000634 REV. 01

ENVIRONMENTAL SERVICES DEPARTMENT



May 14, 2004

Bennington Development, Inc.
128 E Colonial Dr.
Orlando, FL 32801

Re: Water and Sewer Maintenance Agreement w/ Letter of Credit

Project Name: Bennington
LOC# 0D04349
Amount: \$8,523.00
District #1

To Whom It May Concern:

Pursuant to Seminole County's Land Development Code (LDC) requirements, Chapter 35, Part 8, Sec. 35.902 (H) (1,2) the County conducted an inspection of the referenced project on 5/13/04 to insure that any maintenance problems or design deficiencies which manifested themselves during the maintenance period were addressed prior to expiration of the Bond.

As of 5/13/04, the Seminole County Water and Sewer Inspector found no deficiencies. Therefore, the above mentioned Water and Sewer Maintenance Bond may be released as required by the LDC.

In writing, please contact Becky Noggle, 500 W Lake Mary Blvd, Sanford, FL 32773; phone, 407-665-2143 to request the release of the Letter of Credit or Bond. LOC/Bonds are to be released by the Board of County Commissioners through a regular board session.

If you have any questions, please contact Becky Noggle @ 407-665-2143.

Sincerely,

Chip Tyre
Sr. Utilities Inspector

c: Project File

SUBDIVISION AND SITE PLAN

MAINTENANCE AGREEMENT
(Water and Sewer Improvements)

THIS AGREEMENT is made and entered into this 28th day of June, 2002, between Bennington Development, Inc, 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:

WHEREAS, PRINCIPAL has constructed certain water and sewer improvements, including water lines, sewer lines, lift stations and other appurtenances in that certain subdivision described as Bennington Subdivision, a Plat of which is recorded in Plat Book 4075 Pages 760-841, Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid water and sewer improvements were made pursuant to certain plans and specifications dated _____, 19____, (as subsequently revised or amended) and filed with the Utilities Manager of Seminole County; and

WHEREAS, PRINCIPAL is obligated to protect the COUNTY against any defects resulting from faulty materials or workmanship of said road improvements and to maintain said water and sewer improvements for a period of two (2) years from June 28, 2002; 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. 02.02.04349 issued by South Trust Bank, in the sum of Eight Thousand Five Hundred DOLLARS (\$8,523.⁰⁰), Twenty Three.

NOW THEREFORE, the COUNTY agrees to accept the water and sewer improvements into the County Utility 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 Eight Thousand Five Hundred Twenty Three DOLLARS (\$8,523.⁰⁰) 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 water and sewer improvements and maintain said water and sewer improvements for a period of two (2) years from _____, 19____, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

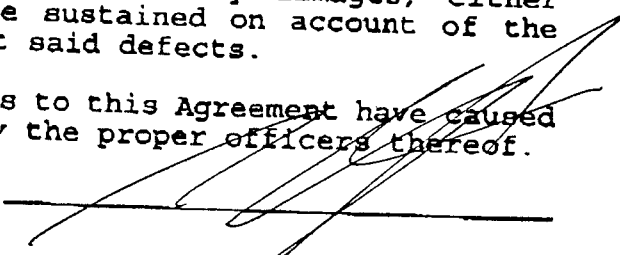
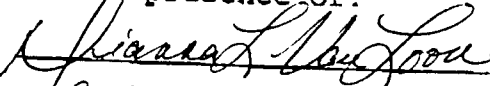
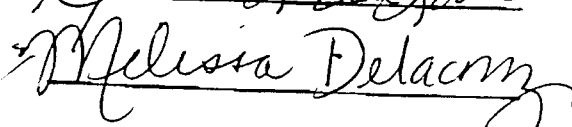
The Utilities Manager shall notify the PRINCIPAL in writing of any defect for which the PRINCIPAL is responsible and shall specify in said notice a reasonable period of time within which PRINCIPAL shall have to correct said defect.

Should the PRINCIPAL fail or refuse to perform or correct 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, 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.

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.

Signed, sealed and delivered
in the presence of:

By: Max Sabeti

Date: 5-30-02

WITNESSES:

Bach N. [Signature]
Carol J. Woodward

ENVIRONMENTAL SERVICES
DEPARTMENT OF PUBLIC WORKS
UTILITIES DIVISION
SEMINOLE COUNTY, FLORIDA

[Signature]
Utilities Manager

Date: 6/22/02

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: Streamling of Development-Related Agenda Items and approved on April 2, 1997.

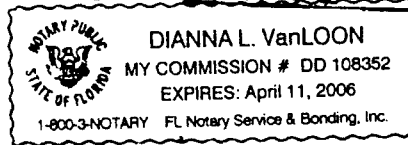
STATE OF Florida)
COUNTY OF Orange) SS

The foregoing instrument was acknowledged before me this 30 day of May, 2002 by MAX SABEL, who is personally known to me or who has produced _____ as identification.

[Signature]
Print Name DIANNA L. VAN LOON
Notary Public in and for the County and State Aforementioned

My commission expires: 4-11-2006

F:\USERS\ROGER\FM\LDCE071
Rev. 05/30/97



P.O. Box 1508
Mobile, Alabama 36633 U.S.A.
61 St. Joseph St., Suite 502
Mobile, Alabama 36602 U.S.A.

Telephone: (251) 431-9272
Telex: 59837 SOTRUST BHM
Telefax: (251) 431-9373
SWIFT: SOTRUS44MBL

International Department



IRREVOCABLE LETTER OF CREDIT
(For Maintenance Agreement - Water and Sewer Improvements)

SouthTrust Bank
May 30, 2002

Seminole County Board of
County Commissioners
Seminole County Services Building
1101 East First Street
Sanford, Florida

Re: Irrevocable Letter of Credit No. 02.OD.04349

Dear Commissioners:

By order of Bennington Development, Inc., we hereby establish an Irrevocable Letter of Credit in your favor. We hereby authorize you to draw on SouthTrust Bank up to an aggregate amount of Eight Thousand Five Hundred Twenty Three and 00/100 Dollars (\$8,523.00) available by your drafts at sight accompanied by a signed statement of the Board of County Commissioners that the Maintenance Agreement dated May 30, 2002, between Bennington Development, Inc. and Seminole County is in default.

Drafts must be drawn and negotiated on or before July 30, 2004, and each draft must state that it is drawn under Irrevocable Letter of Credit No. 02.OD.04349 of SouthTrust Bank dated May 30, 2002 and the amount thereof endorsed on this Letter of Credit. The Bank agrees that this Letter of Credit shall automatically renew itself for successive one-year periods unless the Bank shall give notice to you no later than forty-five(45) days preceding an expiration date that it chooses not to renew the Letter of Credit, in which case, the County shall be entitled to demand and receive the outstanding amount of money represented by this Letter of Credit. In the event a draw based on expiration of this Letter of Credit the proceeds shall be held by Seminole County as a Cash Bond to secure continued adherence to the terms of the Maintenance Agreement with Bennington Development, Inc.

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Irrevocable Standby Letter of Credit No. 02.OD.04349

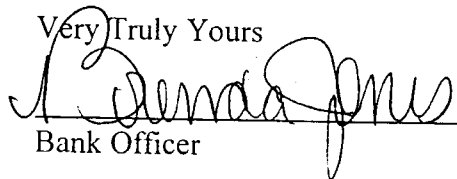
Upon tender of payment, you will release to the Bank the original Irrevocable Letter of Credit marked "Cancelled" In any event, upon expiration of the maintenance Agreement dated May 30, 2002 and the completion of Bennington Development, Inc.'s obligations thereunder, you will return the original Letter of Credit to this Bank marked "Cancelled."

We hereby engage with drawers, endorsers, and bona fide holders of all drafts drawn under and in compliance with the terms of this credit, that such drafts will be duly honored upon presentation to the drawee.

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 attorney's fees, but the SouthTrust Bank shall not be responsible for any attorneys' fees in excess of fifteen percent (15%) of the aggregate amount of this Letter of Credit.

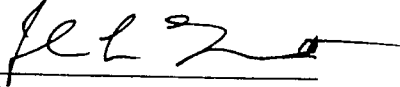
This Letter of Credit sets forth in full the terms of our undertaking and such undertaking shall not, in any way, be amended by reference herein to any agreement, and any such reference shall not be deemed to incorporate herein by reference any document or agreement other than the Maintenance Agreement dated May 30, 2002, and referenced herein.

Very Truly Yours



Bank Officer

ATTEST:



Bank Officer

• (Corporate Seal)