

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Authorize Release of Maintenance Agreement, Irrevocable Letter of Credit and Maintenance Bond

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

AUTHORIZED BY: Dan Matthys **CONTACT:** Tom Radzai **EXT.:** 7342

Agenda Date <u>3/28/2006</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 the Bennington Subdivision Maintenance Agreement and Irrevocable Letter of Credit and the Alaqua Lakes 7B Maintenance Bond for road improvements.

Districts 1 and 5 (Dallari and Carey) (Tom Radzai, Development Review Engineer)

BACKGROUND:

The following Maintenance Agreement, Irrevocable Letter of Credit and Maintenance Bond were required as part of the Land Development Code Section 35.44 (d) (1) 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.

- **Bennington Subdivision**
Maintenance Agreement and Irrevocable Letter of Credit # 020D04350 for \$3,218.00 (South Trust Bank).
- **Alaqua Lakes 7B**
Maintenance Bond # 29-32-21 for \$26,414.00 (National Union Fire Insurance Company)

STAFF RECOMMENDATION:

Staff recommends the release of the Maintenance Agreement, Irrevocable Letter of Credit and Maintenance Bond.

Districts 1 and 5 (Dallari and Carey)

Attachments: Copies of Maintenance Agreement, Irrevocable, Letter of Credit and Maintenance Bond

Reviewed by:	<u>[Signature]</u>
Co Atty:	<u>[Signature]</u>
DFS:	<u> </u>
Other:	<u>[Signature]</u>
DCM:	<u>[Signature]</u>
CM:	<u>[Signature]</u>
File No.	<u>cpdd01</u>

SUBDIVISION AND SITE PLAN

MAINTENANCE AGREEMENT
(Road Improvements)

THIS AGREEMENT is made and entered into this 28th day of June, 2002, between Pennington Subdivision 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 road improvements, including streets, curbs, storm drains and other appurtenances in that certain subdivision described as Pennington Subdivision, a Plat of which is recorded in Plat Book 4075 Pages 760-841, Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid road improvements were made pursuant to certain plans and specifications dated _____, 19____, (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 improvements and to maintain said road 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. 02-0D-04250 issued by South Trust BANK, in the sum of Three Thousand Two Hundred Eighteen DOLLARS (\$ 3,218.-).

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 Three Thousand Two Hundred Eighteen DOLLARS (\$ 3,218.-) 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 and maintain said road improvements for a period of two (2) years from June 28, 2002, 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 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:

Dianna L Van Loon
Melissa Delaney

[Signature]

By: Max Sabetti

Date: 5-30-02

WITNESSES:

Becky Neagle
Sandy Taylor

DEPARTMENT OF PUBLIC WORKS
ROADS DIVISION
SEMINOLE COUNTY, FLORIDA

Kim [Signature] for MEF
Manager

Date: 6-27-02

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

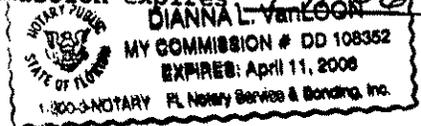
STATE OF Florida)
COUNTY OF Orange) ss

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

Dianna L Van Loon
Print Name DIANNA L. VAN LOON
Notary Public in and for the County and State Aforementioned

F:\USERS\ROGER\PRM\DCR067
Rev. 05/20/97

My commission expires 7-11-06



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 - Road 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.04350

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 Three Thousand Two Hundred Eighteen and 00/100 Dollars (\$3,218.00) 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.04350 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.

Continued on Page 2

Irrevocable Standby Letter of Credit No. 02.OD.04350

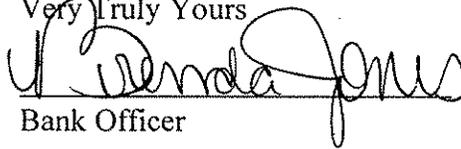
Upon tender of payment, you will release to the Bank the original Irrevocable Letter of Credit marked "Cancelled" In any event, upon expiration of the maintenance Agreement dated May 30, 2002 and the completion of Bennington Development, Inc.'s obligations thereunder, you will return the original Letter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

SUBDIVISION AND SITE PLAN**PRIVATE ROAD MAINTENANCE BOND****KNOW ALL MEN BY THESE PRESENTS:**

That we, **TAYLOR WOODROW COMMUNITIES**, hereinafter referred to as "**Principal**" and **NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA** hereinafter referred to as "**Surety**" are held and firmly bound unto the Homeowners Association and each and all purchasers of lots within **ALAQUA LAKES** subdivision in Seminole County, Florida, and their heirs, successors and assigns, hereinafter referred to as the "**Beneficiary**" or "**Beneficiaries**" in the sum of Twenty Six Thousand Four Hundred Fourteen and 00/100 Dollars (\$26,414.00) for the payment of which we bind ourselves, heirs, executors, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS Principal has constructed certain improvements, including streets, curbs, storm drains and other appurtenances in that certain subdivision described as **ALAQUA LAKES PHASE 7B**, a plat of which is recorded in Plat Book 61, Pages 20 through 24, Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid improvements were made pursuant to certain plans and specifications dated May 18, 2001 and filed with the County Engineer of Seminole County; and

WHEREAS, Principal is obligated to protect each and every Beneficiary 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 1/23/04.

NOW THEREFORE, the condition of this obligation is such that if Principal shall promptly and faithfully protect the Beneficiaries 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 1/23/04, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

Any Beneficiary may 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.

The Surety unconditionally covenants and agrees that if the Principal fails to perform within the time specified, the Surety, upon 30 days written notice from any Beneficiary, or an authorized agent or officer, of the default will forthwith correct such defect or defects and pay the cost thereof, including, but not limited to engineering, legal and contingent cost. Should the Surety fail or refuse to correct said defects, any Beneficiary, in view of the health, safety, welfare and factors involved, shall have the right to resort to any and all legal remedies against the Principal and Surety and either, both at law and in equity, including specifically, specific performance to which the Principal and Surety unconditionally agree.

The Principal and Surety further jointly and severally agree that the Beneficiaries shall have the right to correct said defects resulting from faulty materials or workmanship in case the Principal shall fail or refuse to do so, and in the event the Beneficiaries should exercise and give effect to such right, the Principal and the Surety shall be jointly and severally hereunder to reimburse the Beneficiaries the total cost thereof, including, but not limited to, engineering, legal and contingent cost, together with any damages either direct or consequent which may be sustained on account of the failure of the Principal to correct said defects.

[This Bond shall be held by Seminole County, a political subdivision of the State of Florida, on behalf of Beneficiaries and maintained In the public records of Seminole County.]

IN WITNESS WHEREOF, the Principal and the Surety have executed these presents this 8th day of JANUARY 2004.

PRINCIPAL:

TAYLOR WOODROW COMMUNITIES,
a Florida general partnership

By: **Taylor Woodrow Homes Florida, Inc.,**
a Florida corporation, general partner

By C. Alexander Bratt
Name: C. Alexander Bratt
Title: Vice President

By **Monarch Homes of Florida, Inc.,** a
Florida corporation, general partner

By C. Alexander Bratt
Name: C. Alexander Bratt
Title: Vice President

SURETY:

NATIONAL UNION FIRE INSURANCE COMPANY OF
PITTSBURGH, PA

By Cynthia L. Lewis
Print Name CYNTHIA L. LEWIS
Its ATTORNEY-IN-FACT

Supplement No.17 _____ Appendix E-102 _____ (The next page is E-105)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Francisco

On **January 8, 2004** before me, **Janet C. Rojo, Notary Public**

personally appeared ----- **Cynthia L. Lewis** -----

personally known to me - **OR** -

proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



WITNESS my hand and official seal.

Janet C. Rojo

Signature of Notary



M. KONNOR ESP
Taylor Woodrow Plc
2 Princes Way
SOLI HULL
West Midlands
B91 3ES

17 February 2003

Dear Sir,

**POLICYHOLDER DISCLOSURE STATEMENT
UNDER
TERRORISM RISK INSURANCE ACT OF 2002**

In accordance with the Terrorism Risk Insurance Act of 2002 (the "Act"), we are providing this disclosure notice for bonds for which a member company of the American International Companies is the surety. "Terrorism" is defined in the Act as an act certified by the Secretary of the Treasury (i) to be an act of terrorism, (ii) to be a violent act or an act that is dangerous to (A) human life; (B) property or (C) infrastructure, (iii) to have resulted in damage within the United States, or outside of the United States in case of an air carrier or vessel or the premises of a U.S. mission and (iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. You should read the Act for a complete description of its coverage. The Secretary's decision to certify or not to certify an event as an Act of Terrorism and thus covered by this law is final and not subject to review. There is a \$100 billion dollar annual cap on all losses resulting from Acts of Terrorism above which no coverage will be provided under this policy and under the Act unless Congress makes some other determination.

For your information, coverage provided by this policy for losses caused by an Act of Terrorism may be partially reimbursed by the United States under a formula established by the Act. Under this formula the United States pays 90% of terrorism losses covered by this law exceeding a statutorily established deductible that must be met by the insurer, and which deductible is based on a percentage of the insurer's direct earned premiums for the year preceding the Act of Terrorism.

Acts of Terrorism are not excluded from any surety bonds issued on your behalf and your charge for Terrorism coverage is 0% of what would have been your final premium.

Yours faithfully,

Surety Department
AIG EUROPE (UK) LTD

KNOW ALL MEN BY THESE PRESENTS:

That American Home Assurance Company, a New York corporation, and National Union Fire Insurance Company of Pittsburgh, Pa., a Pennsylvania corporation, does each hereby appoint

--Cynthia L. Lewis, Susan Hecker, Janet C. Rojo, Swan Lee, Susan Exline, Steven N. Passerine, Laura L. Plaisant, Wellington So, Antoinette D. Mitchell, of San Francisco, California--

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the respective company thereby.

IN WITNESS WHEREOF, American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, Pa. have each executed these presents

this 4th day of January, 2002.



[Signature]
Mark A. Mallonee, Vice President

STATE OF NEW YORK }
COUNTY OF NEW YORK }ss.

On this 4th day of January, 2002 before me came the above named officer of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, Pa., to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seals of said corporations thereto by authority of his office.

[Signature]
DOROTHY L. PARKER
Notary Public, State of New York
No. 01PA6060631
Qualified in Richmond County
Commission Expires June 25, 03

CERTIFICATE

Excerpts of Resolutions adopted by the Boards of Directors of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, Pa. on May 18, 1976:

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business;

"RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance or other contract of indemnity or writing obligatory in the nature thereof;

"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Elizabeth M. Tuck, Secretary of American Home Assurance Company and of National Union Fire Insurance Company of Pittsburgh, Pa. do hereby certify that the foregoing excerpts of Resolutions adopted by the Boards of Directors of these corporations, and the Powers of Attorney issued pursuant thereto, are true and correct, and that both the Resolutions and the Powers of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of each corporation

this 8th day of JANUARY, 2004



[Signature]
Elizabeth M. Tuck, Secretary