

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Authorize Release of a Maintenance Agreement, Letter of Credit and a
Maintenance Escrow Agreement

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

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

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|---|
| Agenda Date <u>4/11/2006</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"/> |
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MOTION/RECOMMENDATION:

Authorize the release of the Butler Ridge/Kenmure Subdivision Private Road Maintenance Agreement and Letter of Credit, and the release of Cobblestone Crossing Maintenance and Escrow Agreement for road improvements.

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

BACKGROUND:

The following Maintenance Agreement, Letter of Credit and Maintenance Escrow Agreement were required as part of the Land Development Code Section 35.44 (e) (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.

- **Butler Ridge/Kenmure Subdivision**
Irrevocable Letter of Credit # SM206882W for \$145,980.00 (Wachovia).
- **Cobblestone Crossing**
Maintenance Escrow Agreement for \$2,205.00 (PLM Associates, LLC)

STAFF RECOMMENDATION:

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

Districts 1 and 5 (Dallari and Carey)

Attachments: Copies of Maintenance Agreements, Letter of Credit and Maintenance Escrow Agreement

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

SUBDIVISION AND SITE PLAN

PRIVATE ROAD MAINTENANCE AGREEMENT
(For use with Letter of Credit)

2004 THIS AGREEMENT is made and entered into this 6th day of Febry,
192004, between BUTLER RIDGE DEVELOPMENT, INC.
hereinafter referred to as "PRINCIPAL" and the KENMURE Homeowner's
Association of KENMURE subdivision (hereinafter referred to as the
"BENEFICIARY") or, if none, SEMINOLE COUNTY, a political subdivision of the State
of Florida (hereinafter referred to as the "HOLDER"), on behalf of all purchasers
of lots within KENMURE subdivision.

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 KENMURE, a Plat of which is recorded
in Plat Book 64 Pages 13 THRU 19, Public Records of Seminole County,
Florida; and

WHEREAS, the aforesaid road improvements were made pursuant to certain
plans and specifications dated MAY 2, 2003, ~~XXXXXX~~, (as subsequently revised
or amended) and filed with the BENEFICIARY or the HOLDER, as the case may be; and

WHEREAS, PRINCIPAL is obligated to protect the BENEFICIARY 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
February 6, 192004; and

WHEREAS, to guarantee performance of said obligations by PRINCIPAL,
PRINCIPAL has obtained and furnished to the BENEFICIARY or to the HOLDER on
behalf of the owners of lots within the subdivision (hereinafter referred to as
LOT OWNERS) a certain Irrevocable Letter of Credit No. SM206882W issued by
WACHOVIA BANK, NATIONAL ASSOCIATION, in the sum of ONE HUNDRED FORTY-FIVE
THOUSAND NINE HUNDRED EIGHTY AND 00/100-----DOLLARS (\$145,980.00).

NOW THEREFORE, the BENEFICIARY or the HOLDER on behalf of the LOT OWNERS,
agrees 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 BENEFICIARY or to the HOLDER
on behalf of the LOT OWNERS in the sum of ONE HUNDRED FORTY-FIVE THOUSAND NINE HUNDRED
EIGHTY AND 00/100-----DOLLARS (\$145,980.00) on the condition that, if
PRINCIPAL shall promptly and faithfully protect the BENEFICIARY or LOT OWNERS
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 192004, then this obligation shall be null and
void, otherwise it shall remain in full force and effect.

The BENEFICIARY/HOLDER, or LOT OWNER 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 BENEFICIARY/LOT OWNERS (which shall include, but
not be limited to any individual lot owner in KENMURE subdivision)
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 BENEFICIARY/LOT OWNERS (which shall include, but not be limited to any individual lot owner in KENMURE subdivision), 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 BENEFICIARY/LOT OWNERS (which shall include, but not be limited to any individual lot owner in KENMURE subdivision), at its option, shall have the right to correct said defects resulting from faulty materials or workmanship, or, pursuant to 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 BENEFICIARY/LOT OWNERS should exercise and give effect to such right, the PRINCIPAL shall be obligated hereunder to reimburse the BENEFICIARY (which shall include, but not be limited to any individual lot owner in KENMURE subdivision) 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.

[This Agreement and all rights hereunder may be assigned by the HOLDER to the Homeowner's Association of KENMURE subdivision or to the individual lot owners of KENMURE subdivision as the case may be.]

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

BENEFICIARY:

SEMINOLE COUNTY

ATTEST/WITNESSES:

By: _____

Date: _____

PRINCIPAL:

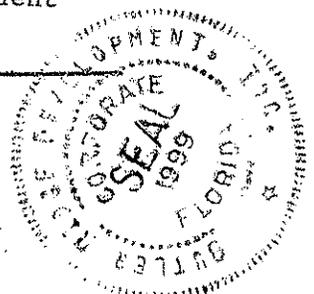
BUTLER RIDGE DEVELOPMENT, INC.

Signed, sealed and delivered in the presence of:

Louise A. Ward
LOUISE A. WARD
Mildred T. Prado
Mildred T. Prado

By: Ellsworth G. Gallimore
Ellsworth G. Gallimore, President

Date: Feb 6. 04.



WACHOVIA

IRREVOCABLE STANDBY LETTER OF CREDIT
NUMBER SM206882W

| LETTER OF CREDIT AMOUNT | ISSUE DATE | EXPIRY DATE |
|-------------------------|------------|-------------|
| USD 145,980.00 | 02/05/04 | 02/05/06 |

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

APPLICANT:
BUTLER RIDGE DEVELOPMENT INC.
657 NORTH WYMORE ROAD
SUITE 102
MAITLAND, FL 32751

GENTLEMEN:

BY ORDER OF BUTLER RIDGE DEVELOPMENT INC., WE HEREBY ESTABLISH AN IRREVOCABLE LETTER OF CREDIT IN YOUR FAVOR. WE HEREBY AUTHORIZE YOU TO DRAW ON WACHOVIA BANK, NATIONAL ASSOCIATION UP TO AN AGGREGATE AMOUNT OF \$145,980.00 AVAILABLE BY PAYMENT WHEN ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. A DRAFT AT SIGHT DRAWN ON WACHOVIA BANK, NATIONAL ASSOCIATION, DULY ENDORSED ON ITS REVERSE SIDE THEREOF BY THE BENEFICIARY, STATING, "DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NO. SM206882W OF WACHOVIA BANK, NATIONAL ASSOCIATION DATED FEBRUARY 05, 2004."
2. THE ORIGINAL LETTER OF CREDIT PLUS ANY AND ALL AMENDMENTS ATTACHED THERETO.
3. A DATED STATEMENT ISSUED ON THE LETTERHEAD OF THE BENEFICIARY AND PURPORTEDLY SIGNED BY AN AUTHORIZED REPRESENTATIVE STATING THAT: THAT CERTAIN PRIVATE ROAD MAINTENANCE AGREEMENT DATED FEBRUARY 06, 2004, BETWEEN BUTLER RIDGE DEVELOPMENT INC., AND SEMINOLE COUNTY IS IN DEFAULT.

THE BANK AGREES THAT THIS LETTER OF CREDIT SHALL AUTOMATICALLY EXTEND ITSELF FOR SUCCESSIVE ONE-YEAR PERIODS UNLESS WE SEND THE BENEFICIARY WRITTEN NOTICE NO LATER THAN AT LEAST FORTY-FIVE (45) DAYS PRECEDING EXPIRATION DATE THAT IT CHOOSES NOT TO EXTEND 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 THAT CERTAIN PRIVATE ROAD MAINTENANCE AGREEMENT WITH BUTLER RIDGE DEVELOPMENT, INC.

UPON TENDER OF FULL PAYMENT, YOU WILL RELEASE TO THE BANK THE ORIGINAL IRREVOCABLE LETTER OF CREDIT MARKED "CANCELLED." IN ANY EVENT, UPON EXPIRATION OR AT ANY TIME AFTER THE COMPLETION OF THAT CERTAIN PRIVATE ROAD MAINTENANCE AGREEMENT DATED FEBRUARY 06, 2004 TO THE SATISFACTION OF THE BOARD OF COUNTY COMMISSIONERS EVIDENCED BY A WRITTEN ACCEPTANCE OF THE REQUIRED IMPROVEMENTS COVERED BY THAT CERTAIN PERFORMANCE AND PAYMENT AGREEMENT, YOU WILL RETURN THE ORIGINAL LETTER OF CREDIT TO THIS BANK MARKED "CANCELLED."

WE HEREBY ENGAGE WITH DRAWERS 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

CONTINUED ON NEXT PAGE WHICH FORMS AN INTEGRAL PART OF THIS
LETTER OF CREDIT

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BK 307 PG 1635

WACHOVIA

IRREVOCABLE STANDBY LETTER OF CREDIT NO. SM206882W PAGE NO. 2

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 WACHOVIA BANK, NATIONAL ASSOCIATION SHALL NOT BE RESPONSIBLE FOR ANY ATTORNEY'S FEES IN EXCESS OF FIFTEEN PERCENT (15%) OF THE AGGREGATE AMOUNT OF THIS LETTER OF CREDIT.

DOCUMENTS MAY BE PRESENTED AT EITHER OF OUR FOLLOWING LOCATIONS:

STANDBY L/C DEPT
401 LINDEN STREET
WINSTON-SALEM, NC 27101

OR

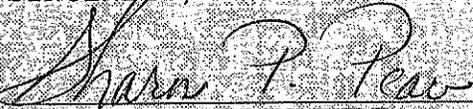
INTERNATIONAL DIVISION
200 S. BISCAYNE BOULEVARD
MIAMI, FL 33131

SHOULD THE BENEFICIARY CHOOSE TO PRESENT AT THE MIAMI ADDRESS THEY MUST ALSO FAX THE DRAWING DOCUMENTS TO 336-735-0950 THE SAME DAY.

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 THAT CERTAIN PERFORMANCE AND PAYMENT AGREEMENT DATED FEBRUARY 06, 2004 AND REFERENCED HEREIN.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98").

SINCERELY,



AUTHORIZED SIGNATURE
WACHOVIA BANK, NATIONAL ASSOCIATION
401 LINDEN STREET
WINSTON-SALEM, NORTH CAROLINA 27101

OUR CUSTOMER CARE PHONE NUMBER FOR QUERIES IS 800-776-3862
OUR FAX NUMBER IS 336-735-0950

BY: LAM

BK 307 PG 1636

the "Cash
Maintenance
Bond"

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 PRINCIPAL'S ACCOUNTS~~ 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:

Kay A. Stoltz
Kay G. Stoltz

PLM ASSOCIATES, LLC, a
Florida Limited Liability Company

By: James Tomaino
James Tomaino, its Managing Member

Date: 2/17/04

