

SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM

SUBJECT: Authorize Release Of Kenmure PUD Irrevocable Letter Of Credit

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

AUTHORIZED BY: Donald S. Fisher **CONTACT:** Denny Gibbs **EXT.** 7359

Agenda Date <u>4/13/04</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 Irrevocable Letter of Credit for Roads, Streets & Drainage and Water & Sewer for Kenmure subdivision, as requested by Ellsworth Gallimore of Butler Ridge Development, Inc.

District 1 – Maloy (Denny Gibbs – Planner)

BACKGROUND:

The following Irrevocable Letter of Credit was required as part of the Land Development Code Section 35.44 (d) (1) to secure the construction and completion of subdivision improvements for Kenmure Subdivision. Staff has conducted the final construction inspection and found that the construction requirements were completed per the approved final engineering plan.

Irrevocable Letter of Credit # SM206659W for \$83,110.51 dated 1/22/04, for roads, streets, and drainage (Wachovia Bank)

STAFF RECOMMENDATION:

Authorize the release of the Irrevocable Letter of Credit for Kenmure subdivision.

District 1 – Maloy

Attachments: Roads, Streets, & Drainage Irrevocable Letter of Credit

Reviewed by: Co Atty: <u>hec</u> DFS: _____ Other: _____ DCM: _____ CM: <u>kg</u> File No. <u>cpdd01</u>

AGREEMENT
(Performance and Payment – Roads)

THIS AGREEMENT is made and entered into this 21st day of January, 2004, between BUTLER RIDGE DEVELOPMENT, INC., hereinafter referred to as “DEVELOPER”, Developer of KENMURE PUD, 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. SM206659W of Wachovia Bank, N.A. in the sum of \$83,110.51 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 Wachovia Bank, N.A. 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 therefor 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 of the improvements have not been completed in accordance with the approved plans and specifications within 120 calendar days from the date of this Agreement. Provided, however, that if the work is not completed within 120 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 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

AGREEMENT

(Performance and Payment – Roads)

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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:

Witness:

Louise A. Ward
(Signature)

LOUISE A. WARD
(Printed Name)

BUTLER RIDGE DEVELOPMENT, INC.
By *Ellsworth G. Gallimore*
(Signature) President

Ellsworth G. Gallimore
(Printed Name)

ACCEPTANCE BY SEMINOLE COUNTY:

PLANNING & DEVELOPMENT DEPARTMENT
DEVELOPMENT REVIEW DIVISION
SEMINOLE COUNTY, FLORIDA

By: *Mahmoud Najda*

Date: 3/4/04


STATE OF FLORIDA)

COUNTY OF SEMINOLE)

The foregoing instrument was acknowledged before me this 4th day of March, 2004, by Mahmoud Najda who is personally known to me or who has produced _____ as identification.

Notary Public in and for the County and State Aforementioned.

Barbara J. Harbin
Notary Public Signature

 Barbara J Harbin
My Commission DD112560
Expires April 29, 2006

My Commission Expires: April 29, 2006

WACHOVIA

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER SM206659W

LETTER OF CREDIT AMOUNT	ISSUE DATE	EXPIRY DATE
USD 83,110.51	01/22/04	01/10/05

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

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

DEAR COMMISSIONERS:

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 \$83,110.51 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. SM206659W OF WACHOVIA BANK, NATIONAL ASSOCIATION DATED JANUARY 22, 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 PERFORMANCE AND PAYMENT AGREEMENT DATED JANUARY 21, 2004, BETWEEN BUTLER RIDGE DEVELOPMENT, INC. AND SEMINOLE COUNTY IS IN DEFAULT. THEREFORE WE HEREBY DEMAND THE AMOUNT DUE US OF \$(INSERT AMOUNT).

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 PRECEEDING 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 PERFORMANCE AND PAYMENT 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 PERFORMANCE AND PAYMENT AGREEMENT DATED JANUARY 21, 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."

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

WACHOVIA

IRREVOCABLE STANDBY LETTER OF CREDIT NO. SM206659W

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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.

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 JANUARY 21, 2004, AND REFERENCED HEREIN.

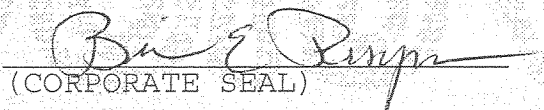
EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98").

VERY TRULY YOURS,



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

ATTEST:


(CORPORATE SEAL)

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

BY: AKM