

SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM

SUBJECT: Authorize Release of an Irrevocable Letter of Credit and Performance and Payment Agreement for Road improvements for Off Broadway Industrial Park

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

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

Agenda Date <u>5/10/2005</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 (#161) and Performance and Payment Agreement (Road) in the amount of \$13,321.00 for the Off Broadway Industrial Park, as requested by Robert G. Martin.

District 2 – Morris (Cynthia Sweet, Planner) *AK*

BACKGROUND:

The subdivision is located on the east side of Sixth Street, approximately 655 feet south of CR 426 in Section 11, Township 21 S, Range 31 E.

The following Performance Bond in the form of an Irrevocable Letter of Credit and Performance and Payment Agreement was required as part of the Land Development Code Section 35.44(d)(1) to secure the construction and completion of the subdivision improvements. Staff has conducted their final construction inspection and found that the requirements were completed per the approved final engineering plan.

Irrevocable Letter of Credit #161, dated November 22, 2004, in the amount of \$13,321.00 issued by The Citizen's Bank of Oviedo.

Performance and Payment Agreement (Road), dated November 30, 2004, between Robert G. Martin and Seminole County.

The performance bond was replaced with a maintenance bond for the subdivision improvements in accordance with the LDC.

STAFF RECOMMENDATION:

Staff recommends release of the Irrevocable Letter of Credit (#161) and Performance and Payment Agreement (Road) for the Off Broadway Industrial Park as requested by the applicant.

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

District 2 – Morris

Attachments: Irrevocable Letter of Credit – Exhibit A

Performance and Payment Agreement – Exhibit B

Main Office
156 Geneva Dr
407.365.6611 p
407.365.6030 f

Alafaya Office
10 Alafaya Woods Blvd
407.365.2212 p
407.365.8833 f

Oviedo Marketplace
Mall Office
407.365.6611 p
407.977.4572 f

Red Bug Office
8305 Red Bug Lake Rd
407.366.4868 p
407.366.0625 f

Mailing Address
P.O. Box 620729
Oviedo, FL
32762-0729

Loan Department
407.365.5631 p
407.365.5635 f

Irrevocable letter of credit
(For Performance and Payment Agreement-Roads)



The Citizens Bank of Oviedo
November 22, 2004

Seminole County Board of County Commissioners
Seminole County Services Building
1101 East First Street
Sanford, Florida 32771

Re: Irrevocable Letter of Credit Number 161

Dear Commissioners:

By order of Robert G. Martin, we hereby establish an Irrevocable Letter of Credit in your favor. We hereby authorize you to draw on The Citizens Bank of Oviedo up to an aggregate amount of \$13,321.00 available by your drafts at sight accompanied by a signed statement of the Board of County Commissioners that the Performance and Payment Agreement dated 11/30/04, between Robert G. Martin and Seminole County is in default.

Drafts must be drawn and negotiated on or before _____, and each draft must state that it is drawn under Irrevocable Letter of Credit No. 161 of The Citizens Bank of Oviedo dated November 22, 2004 and the amount thereof endorsed on this Letter of Credit. The Bank agrees that this Letter of Credit shall automatically renew itself for a one-year period unless the Bank shall give notice to you no later than forty-five (45) days preceding the expiration date 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 Performance and Payment Agreement with Robert G. Martin.

Upon tender of 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 the Performance and Payment Agreement dated 11/30/ 2004, to the satisfaction of the Board of County Commissioners evidenced by a written acceptance of the required improvements covered by said Performance and Payment Agreement, you will return the original Letter of Credit to this Bank marked "cancelled."

We hereby engage with drawers, endorses, 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 attorneys' fees, but The Citizens Bank of Oviedo 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 11/30/04, and referenced herein.

Very truly yours,



Tim Slattery, Vice President

Attest:



Paula Moore, Cashier

(CORPORATE SEAL)

AGREEMENT
(Performance and Payment – Road)

THIS AGREEMENT is made and entered into this November 30th day of 2004, between Robert G. Martin, hereinafter referred to as DEVELOPER, Developer of A, and SEMINOLE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY." off Broadway Industrial Park

WITNESSETH:

1. The DEVELOPER hereby delivers to the COUNTY, an Irrevocable Letter of Credit No. 161 of Citizens Bank in the sum of \$13,321 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 Robert G. Martin 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 of the improvements have not been completed in accordance with the approved plans and specifications within 180 calendar days from the date of this Agreement. Provided, however, that if the work is not completed within 180 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:

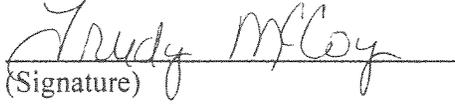
Witness:



(Signature)

DAVID E. AXEL

(Printed Name)



(Signature)

Trudy McCoy

(Printed Name)



(Signature)

ROBERT MARTIN

(Printed Name)

Witness:



(Signature)

(Printed Name)

(Signature)

(Printed Name)



(Signature)

(Printed Name)