

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Release of Maintenance Bond and Letter of Credit for Road
Maintenance Agreements

DEPARTMENT: Public Works **DIVISION:** Roads-Stormwater

AUTHORIZED BY: [Signature] **CONTACT:** MKA/psh **EXT.** 5622
W. Gary Johnson, P.E., Director Michael K. Arnold, Manager

Agenda Date 08/23/05 Regular Consent Work Session Briefing
Public Hearing – 1:30 Public Hearing – 7:00

MOTION/RECOMMENDATION:

Approve release of Maintenance Bond #929266728 in the amount of \$12,082.74 for Vihlen Road/RW@ Crown Colony and Letter of Credit #3055138 in the amount of \$144,599.15 for Trails Phase I for Road Maintenance Agreements.

District 5 – Commissioner Carey
District 1 – Commissioner Bob Dallari (Michael K. Arnold)

BACKGROUND:

A two-year maintenance inspection was conducted by staff for Vihlen Road/RW@ Crown Colony and Trails Phase I and these projects were determined to be satisfactory. Staff recommends release of the Maintenance Bond and the Letter of Credit.

Attachments: Copy of Maintenance Bond
Copy of Letter of Credit

Reviewed by:
Co Atty: N/A
DFS: N/A
Other: N/A
DCM: [Signature]
CM: [Signature]
File No. CPWR01

MAINTENANCE AGREEMENT
(Road and Drainage Improvements)

THIS AGREEMENT is made and entered into this day of April 15, 2003, between MARONDA HOMES, INC. OF FLORIDA, hereinafter referred to as "PRINCIPAL," and SEMINOLE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY."

WITNESSETH:

WHEREAS, PRINCIPAL has constructed certain road and drainage improvements, including streets, curbs, storm drains and other appurtenances in that certain subdivision described as TRAILS - UNIT 1, a Plat of which is recorded in Plat Book _____ Pages _____, Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid road and drainage improvements were made pursuant to certain plans and specifications dated March 2, 2001, (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 and drainage improvements and to maintain said road and drainage improvements for a period of two (2) years from April 15, 2003; 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. 3055138 issued by BANK OF AMERICA, N.A., in the sum of ONEHUNDREDFORTYFOURTHOUSAND FIVEHUNDREDNINETY NINE & 15/100 DOLLARS (\$144,599.15).

NOW THEREFORE, the COUNTY agrees to accept the road and drainage 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 ONEHUNDREDFORTYFOURTHOUSAND FIVEHUNDREDNINETY NINE & 15/100 DOLLARS (\$144,599.15) 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 and drainage improvements and maintain said road and drainage improvements for a period of two (2) years from April 15, 2003, 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.

Bond # 929266.728

SUBDIVISION AND SITE PLAN

MAINTENANCE BOND FOR STREETS, CURBS, STORM DRAINS

KNOW ALL MEN BY THESE PRESENTS:

That we The Briar Corporation, whose address is 4550 Orange Blvd., Lake Monroe, Florida 32707, hereinafter referred to as "PRINCIPAL" and American Casualty Company of Reading, PA, whose address is P.O. Box 946640, Maitland, FL, hereinafter referred to as "SURETY" are held and firmly bound unto Seminole County, a political subdivision of the State of Florida, whose address is Seminole County 1301 East Second Street., Sanford, Fl, 32771, hereinafter referred to as "Seminole County" in the sum of \$12,082.74 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 water and sewer facilities and other appurtenances in and described as Crown Colony Subdivision, a plat of which is recorded in Plat Book 1 Page 67, Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid improvements were made pursuant to certain plans and specifications dated 10/30/01 and filed with the City Engineer of City of Sanford; and

WHEREAS, PRINCIPAL is obliged to protect Seminole County 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 July 10, 2003

NOW THEREFORE, the condition of this obligation is such that if **PRINCIPAL** shall promptly and faithfully protect **Seminole County** 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 _____, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

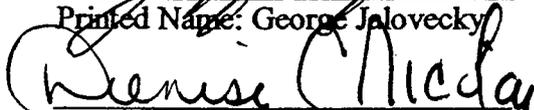
The PRINCIPAL further agrees that the COUNTY, at its option, shall have the right to correct said defects resulting from faulty materials or workmanship, or, pursuant to public advertisement and receipt of bids, cause to be corrected any defects or said defects in case the PRINCIPAL shall fail or refuse 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.

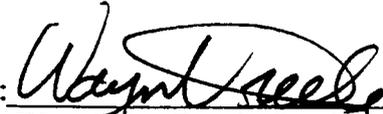
IN WITNESS WHEREOF, the parties to this Agreement have caused their names to be affixed hereto by the proper officers thereof.

PRINCIPAL: MARONDA HOMES, INC. OF FLORIDA
A Florida corporation

Signed, sealed and delivered
in the presence of


Printed Name: George Jalovecky

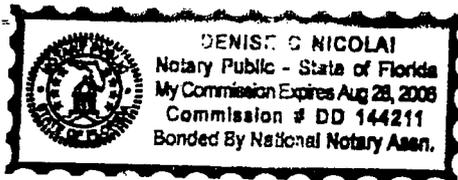

Printed Name: Denise C. Nicolai

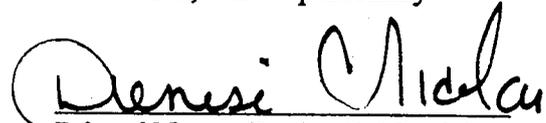
By: 
Wayne Von Dreele, President

Date: MARCH 25, 2003

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 25th day of March, 2003, by Wayne Von Dreele, President of Maronda Homes, Inc. of Florida, who is personally known to me.




Printed Name: Denise C. Nicolai
Notary Public in and for the County
and State aforementioned
My commission expires: 08/28/06

SEMINOLE COUNTY, FL
A political subdivision

WITNESSES:

DEPARTMENT OF PUBLIC WORKS
ROAD DIVISION
SEMINOLE COUNTY, FLORIDA

Manager, Rd Ops/Stormwater

Date: _____
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.

LAND DEVELOPMENT CODE

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 Seminole County, or its authorized agent or officer, of 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, Seminole County, in view of the public interest, health and safety, welfare 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 and SURETY and either, both at law and in equity, including specifically, Vhlen Road paving, drainage, and utility improvements, to which the PRINCIPAL and SURETY unconditionally agree.

The PRINCIPAL and SURETY further jointly and severally agree that Seminole County at it's option, shall have the right to correct said defects resulting from faulty materials or workmanship, or, pursuant to public advertisement and receipt of bids, caused to correct any defects in case the PRINCIPAL and SURETY shall be jointly and severally hereunder to reimburse Seminole County 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 to the PRINCIPAL to correct said defects.

IN WITNESS WHEREOF, the PRINCIPAL and the SURETY have executed these presents this 8TH day of NOVEMBER, 2002,

Address: P.O. Box 470264
Lake Monroe, FL 32747

The Briar Corporation (Seal)
PRINCIPAL
[Signature]
By: Robert E. Harrell Its: Vice. Pres.

ATTEST: *[Signature]* Its: _____
Pauline Page, Office Manager

Address
839 N. Magnolia Avenue
Orlando, FL 32803

AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA
(Seal)

SURETY
[Signature]
By: Francis T. O'Reardon Its: Attorney-in-Fact & Resident
(is Attorney-in-Fact) Florida Agent

ATTEST: *[Signature]* Its: Assistant Secretary
Pamela p. Smith

DATE: MARCH 28, 2003

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 3055138

BENEFICIARY

SEMINOLE COUNTY BOARD OF COUNTY
COMMISSIONERS
SEMINOLE COUNTY SERVICES BUILDING
1101 EAST FIRST STREET
SANFORD, FL 32771

APPLICANT

MARONDA HOMES, INC. OF FLORIDA
411 CENTRAL PARK DRIVE
SANFORD, FL 32771
ATTN: GEORGE JALOVECKY

AMOUNT

USD 144,599.15
ONE HUNDRED FORTY FOUR
THOUSAND FIVE HUNDRED NINETY
NINE AND 15/100'S US DOLLARS

EXPIRATION

APRIL 15, 2005 IN WINTER PARK,
FLORIDA

BY ORDER OF MARONDA HOMES, INC. OF FLORIDA, WE HEREBY ESTABLISH AN IRREVOCABLE LETTER OF CREDIT 3055138, IN YOUR FAVOR. WE HEREBY AUTHORIZE YOU TO DRAW ON BANK OF AMERICA, N.A. UP TO AN AGGREGATE AMOUNT OF \$144,599.15 AVAILABLE BY YOUR DRAFTS AT SIGHT ACCOMPANIED BY A SIGNED STATEMENT PURPORTEDLY OF THE BOARD OF COUNTY COMMISSIONERS THAT:

"THE MAINTENANCE AGREEMENT DATED APRIL 15, 2003 BETWEEN MARONDA HOMES, INC. OF FLORIDA AND SEMINOLE COUNTY IS IN DEFAULT."

DRAFTS MUST BE DRAWN ON OR BEFORE APRIL 15, 2005 AND EACH DRAFT MUST STATE THAT IT IS "DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NO. 3055138 OF BANK OF AMERICA, N.A. DATED MARCH 28, 2003 AND THE AMOUNT THEREOF ENDORSED ON THIS LETTER OF CREDIT."

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR AN ADDITIONAL PERIOD OF ONE YEAR FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE UNLESS AT LEAST 45 DAYS PRIOR TO SUCH EXPIRATION DATE, WE NOTIFY YOU IN WRITING BY REGISTERED MAIL OR OVERNIGHT COURIER SERVICE THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR SUCH AN ADDITIONAL PERIOD. UPON RECEIPT OF SUCH NOTICE YOU MAY DRAW HEREUNDER BY PRESENTATION OF YOUR DRAFT AND SIGNED STATEMENT STATING "THE PROCEEDS SHALL BE HELD BY SEMINOLE COUNTY AS A CASH BOND TO SECURE CONTINUED ADHERENCE TO THE TERMS OF THE MAINTENANCE AGREEMENT WITH MARONDA HOMES, INC. OF FLORIDA."

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 3055138

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, IF THE BENEFICIARY PREVAILS, BUT THE BANK OF AMERICA, N.A. SHALL NOT BE RESPONSIBLE FOR ANY ATTORNEYS' FEES IN EXCESS OF FIFTEEN PERCENT (15%) OF THE AGGREGATE AMOUNT OF THIS LETTER OF CREDIT.

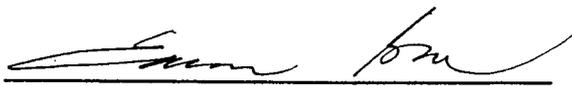
THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE AMENDED BY REFERENCE HEREIN TO ANY AGREEMENT, AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT OR AGREEMENT OTHER THAN THE MAINTENANCE AGREEMENT DATED APRIL 15, 2003 AND REFERENCED HEREIN.

THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 1993 REVISION, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 213-345-5304.



MANUEL BANUELOS
OFFICER



EUNSON BAE
OFFICER