

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Authorize Release of the Private Road Maintenance Agreement and Letter of Credit for Via Tuscany Development, LLC a/k/a Tuscany Island HOA

**DEPARTMENT:** Planning and Development      **DIVISION:** Development Review

**AUTHORIZED BY:** Dori DeBord                      **CONTACT:** Lee Shaffer                      **EXT:** 7346

**MOTION/RECOMMENDATION:**  
Authorize the release of the Via Tuscany Development, LLC a/k/a Tuscany Island HOA Maintenance Agreement and Letter of Credit #F847288 in the amount of \$21,992.40 for the Tuscany Island road improvements.

District 1 Bob Dallari Lee Shaffer

**BACKGROUND:**

Maintenance Agreement and Letter of Credit #F847288 for \$21,992.40 (SunTrust) were required by Section 35.44 (e) *Additional Required Legal Submittals* (1) *Bonds* of the Seminole County Land Development Code to insure operating conditions have not significantly degraded as a result of the work covered by the Tuscany Island Maintenance Agreement and Letter of Credit. A two year maintenance inspection was conducted by staff for this project located on Tuskawilla Road at Old Bear Run Road and it was determined to be satisfactory.

**STAFF RECOMMENDATION:**

Staff recommends the Board authorize the release of the Via Tuscany Development, LLC a/k/a Tuscany Island HOA Maintenance Agreement and Letter of Credit #F847288 in the amount of \$21,992.40 for the Tuscany Island road improvements.

**ATTACHMENTS:**

- 1. Maintenance Agreement
- 2. Letter of Credit

<p><b>Additionally Reviewed By:</b></p> <p><input checked="" type="checkbox"/> County Attorney Review ( Kimberly Romano )</p>
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SUBDIVISION AND SITE PLAN

PRIVATE ROAD MAINTENANCE AGREEMENT

(For use with Letter of Credit)

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005 between Via Tuscany Development LLC, hereinafter referred to as "PRINCIPAL" and the Tuscany Island Homeowner's Association of Tuscany Island 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 subdivision.

WITNESSETH:

WHEREAS, PRINCIPAL has constructed certain road improvements, including streets, curbs, storm drains and other appurtenances in that certain subdivision described as Tuscany Island, a Plat of which is recorded in Plat Book 65 Pages 33-34, Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid road improvements were made pursuant to certain plans and specifications dated January, 2005, (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 November 14, 2005; 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. F84728E issued by Suntrust Bank, in the sum of Twenty One Thousand Nine Hundred Ninety Two & <sup>40</sup>/<sub>100</sub> DOLLARS (\$21,992.40).

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 Twenty One Thousand Nine Hundred Ninety Two & <sup>40</sup>/<sub>100</sub> DOLLARS (\$21,992.40) 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 November 14 2005, 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 The Tuscany Island 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 the Tuscany Island 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 The Tuscany Island 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 the Tuscany Island 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 Tuscany Island subdivision or to the individual lot owners of Tuscany Island 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:

Tuscany Island HOA

ATTEST/WITNESSES:

Patricia Spahr  
Patricia Spahr

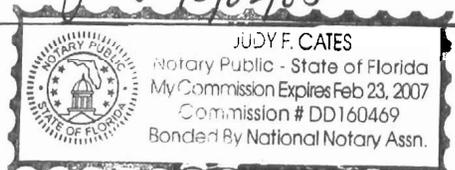
By: [Signature]  
Date: 12-2-05

PRINCIPAL:

Via Tuscany Development, LLC

Signed, sealed and delivered in the presence of:

Judy F. Cates  
12/02/05



By: [Signature]  
Date: Dec. 2, 2005

Witnesses

Sharon J. Johnson  
Chandra

HOLDER:

DEPARTMENT OF PUBLIC WORKS  
ROADS-STORMWATER DIVISION  
SEMINOLE COUNTY, FLORIDA

Michael Arnold  
Michael Arnold, Division Manager  
Roads-Stormwater Division

Date: 12-19-05

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 Seminole )

The foregoing instrument was acknowledged before me this 19 day of Dec, 2005, by Michael C. Arnold, who is personally known to me or who has produced \_\_\_\_\_ as identification.

Teresa Lynn Touchton

Signature of Notary Public in and for the County and State Aforementioned



Teresa Lynn Touchton  
My Commission DD0094804  
Expires May 19, 2008

My Commission Expires: \_\_\_\_\_



LETTER OF CREDIT NUMBER F847288

PAGE NO. 1

ISSUANCE DATE: OCTOBER 21, 2005

APPLICANT:  
VIA TUSCANY DEVELOPMENT, LLC  
4567 TIGUA ISLAND COURT  
WINTER PARK, FL 32792

BENEFICIARY:  
TUSCANY ISLAND HOMEOWNER'S  
ASSOCIATION, INC.  
P.O. BOX 4396  
WINTER PARK, FL 32793

FOR USD 21,992.40  
(TWENTY ONE THOUSAND NINE HUNDRED NINETY TWO 40/100 U.S. DOLLARS)

DATE OF EXPIRATION: NOVEMBER 14, 2007  
PLACE OF EXPIRATION: AT OUR COUNTERS

DEAR TUSCANY ISLAND HOMEOWNER'S ASSOCIATION,

BY ORDER OF VIA TUSCANY DEVELOPMENT, LLC., WE HEREBY ESTABLISH AN IRREVOCABLE LETTER OF CREDIT IN YOUR FAVOR. WE HEREBY AUTHORIZE YOU TO DRAW ON SUNTRUST BANK LETTER OF CREDIT F847288 UP TO AN AGGREGATE AMOUNT OF \$21,992.40 AVAILABLE BY YOUR DRAFTS AT SIGHT ACCOMPANIED BY A SIGNED STATEMENT OF THE TUSCANY ISLAND HOMEOWNER'S ASSOCIATION, INC. THAT THE PRIVATE ROAD MAINTENANCE AGREEMENT DATED 11-14-05 BETWEEN VIA TUSCANY DEVELOPMENT, LLC AND THE TUSCANY ISLAND HOMEOWNER'S ASSOCIATION, INC. IS IN DEFAULT.

DRAFTS MUST BE DRAWN AND NEGOTIATED ON OR BEFORE NOVEMBER 14, 2007 AND EACH DRAFT MUST STATE THAT IT IS DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NO. F847288 OF SUNTRUST BANK DATED OCTOBER 21, 2005 AND THE AMOUNT THEREOF ENDORSED ON THIS LETTER OF CREDIT. THE BANK AGREES THAT THIS LETTER OF CREDIT SHALL AUTOMATICALLY EXTEND FOR A ONE TIME PERIOD OF A YEAR UNLESS THE BANK SHALL GIVE NOTICE TO YOU NO LATER THAN FORTY-FIVE (45) DAYS PRECEDING AN EXPIRATION DATE THAT IT CHOOSES NOT TO EXTEND THE LETTER OF CREDIT IN WHICH CASE, THE HOMEOWNER'S ASSOCIATION, AS THE CASE MAY BE, SHALL BE ENTITLED TO DEMAND AND RECEIVE THE OUTSTANDING AMOUNT OF MONEY REPRESENTED BY THIS LETTER OF CREDIT. IN THE

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# SUNTRUST

LETTER OF CREDIT NUMBER F847288 PAGE NO. 2

EVENT A DRAW BASED ON EXPIRATION OF THIS LETTER OF CREDIT THE PROCEEDS SHALL BE HELD BY THE TUSCANY ISLAND HOMEOWNER'S ASSOCIATION, INC. AS A CASH BOND TO SECURE CONTINUED ADHERENCE TO THE TERMS OF THE PRIVATE ROAD MAINTENANCE AGREEMENT WITH VIA TUSCANY DEVELOPMENT, LLC.

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 PRIVATE ROAD MAINTENANCE AGREEMENT DATED 11-14-05 AND THE COMPLETION OF VIA TUSCANY DEVELOPMENT'S OBLIGATIONS THEREUNDER, YOU WILL RETURN THE ORIGINAL LETTER OF CREDIT TO THIS BANK MARKED "CANCELLED."

IF THE TUSCANY ISLAND HOMEOWNER'S ASSOCIATION INITIATES SUIT UNDER THIS LETTER OF CREDIT, THE BANK HEREBY AGREES TO BE RESPONSIBLE FOR THE TUSCANY ISLAND HOMEOWNER ASSOCIATION'S COURT COSTS AND REASONABLE ATTORNEYS' FEES BUT SUNTRUST 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 THEN THE PRIVATE ROAD MAINTENANCE AGREEMENT DATED 11-14-05 AND REFERENCED HEREIN.

THIS LETTER OF CREDIT IS ISSUED SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 PUBLICATION 590.

WE HEREBY AGREE WITH YOU THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION TO THE DRAWEE.

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# SUNTRUST

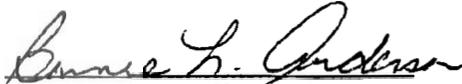
LETTER OF CREDIT NUMBER F847288 PAGE NO. 3

ALL DOCUMENTS ARE TO BE REMITTED TO:  
SUNTRUST BANK, INTERNATIONAL DIVISION  
ATTN: LETTER OF CREDIT DEPARTMENT  
25 PARK PLACE, 16TH FLOOR, MC 3706  
ATLANTA, GEORGIA 30303

PLEASE DIRECT ALL INQUIRIES TO:  
PHONE: 800-951-7847 OPTION 3.

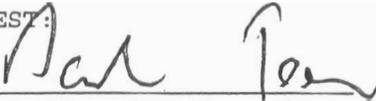
SINCERELY,

SUNTRUST BANK



AUTHORIZED SIGNATURE  
BONNIE L. ANDERSON  
VICE PRESIDENT

ATTEST:



DALE TOOTHILL, AVP  
STANDBY LETTERS OF CREDIT  
105

SEAL

