

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Authorize Release of the Maintenance Agreement and Letter of Credit for Celery Estates North

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

AUTHORIZED BY: Dori DeBord **CONTACT:** Larry Poliner **EXT:** 7318

MOTION/RECOMMENDATION:

Authorize the release of the Celery Estates Maintenance Agreement and Letter of Credit #P003544 in the amount of \$35,709.77 for the Celery Estates North road improvements.

District 5 Brenda Carey

Larry Poliner

BACKGROUND:

Section 35.44 (e) of the Seminole County Land Development Code, concerning *Additional Required Legal Submittals*, required the Celery Estates North project to have a Maintenance Agreement and Letter of Credit, specifically, Maintenance Agreement and Letter of Credit #P003544 for \$35,709.77 (SunTrust Bank), to insure against any significant degradation in operating conditions resulting from any defective work covered by this Agreement and Letter of Credit. Staff conducted a two year maintenance inspection for this project located on Celery Avenue Right-of-Way and determined the improvements to be satisfactory.

STAFF RECOMMENDATION:

Staff recommends that the Board authorize the release of the Celery Estates North Maintenance Agreement and Letter of Credit #P003544 in the amount of \$35,709.77 for the Celery Estates North road improvements.

ATTACHMENTS:

- 1. Maintenance Agreement
- 2. Letter of Credit
- 3. Request Letter

<p>Additionally Reviewed By:</p> <p><input checked="" type="checkbox"/> County Attorney Review (Kathleen Furey-Tran)</p>

SUBDIVISION AND SITE PLAN

MAINTENANCE AGREEMENT
(Road Improvements)

THIS AGREEMENT is made and entered into this day of August 16, 2006, between CELEBY LAND L.L.C., 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 improvements, including streets, curbs, storm drains and other appurtenances in that certain subdivision described as CELEBY ESTATES NORTH, a Plat of which is recorded in Plat Book _____ Pages _____, Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid road improvements were made pursuant to certain plans and specifications dated FEBRUARY 28, 2005, (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 improvements and to maintain said road improvements for a period of two (2) years from August 16, 2006; 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. P003544 issued by SUNTRUST, in the sum of THIRTY FIVE THOUSAND SEVEN HUNDRED DOLLARS (\$35,709.17). with \$ 77,000

NOW THEREFORE, the COUNTY agrees to accept the road 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 THIRTY FIVE THOUSAND SEVEN HUNDRED DOLLARS (\$35,709.17) on the condition that, if PRINCIPAL shall promptly and faithfully protect the COUNTY against my 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 August 16, 2006, 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.



LETTER OF CREDIT NUMBER P003544

ISSUANCE DATE: AUGUST 16, 2006

APPLICANT:
CELERY LAND, LLC
1101 NORTH LAKE DESTINY ROAD
SUITE 475
MAITLAND, FL 32751

BENEFICIARY:
COUNTY OF SEMINOLE
BOARD OF COUNTY COMMISSIONERS
1301 E. FIRST STREET
SANFORD, FL 32771

FOR USD 35,709.77
(THIRTY FIVE THOUSAND SEVEN HUNDRED NINE 77/100 U.S. DOLLARS)

DATE OF EXPIRATION: AUGUST 16, 2007
PLACE OF EXPIRATION: AT OUR COUNTERS

RE: ROAD IMPROVEMENTS

DEAR COMMISSIONERS:

BY ORDER OF CELERY LAND, LLC, WE HEREBY ESTABLISH AN IRREVOCABLE LETTER OF CREDIT NO. P003544 IN YOUR FAVOR. WE HEREBY AUTHORIZE YOU TO DRAW ON SUNTRUST BANK UP TO AN AGGREGATE AMOUNT OF U.S.\$35,709.77 AVAILABLE BY YOUR DRAFTS AT SIGHT ACCOMPANIED BY A SIGNED STATEMENT OF THE BOARD OF COUNTY COMMISSIONERS THAT THE MAINTENANCE AGREEMENT DATED AUGUST 17, 2006, BETWEEN CELERY LAND, LLC AND SEMINOLE COUNTY IS IN DEFAULT.

DRAFTS MUST BE DRAWN AND PRESENTED ON OR BEFORE AUGUST 16, 2007, AND EACH DRAFT MUST STATE THAT IT IS DRAWN UNDER SUNTRUST BANK IRREVOCABLE LETTER OF CREDIT NO. P003544 DATED AUGUST 16, 2006 AND THE AMOUNT THEREOF ENDORSED ON THIS LETTER OF CREDIT. THE BANK AGREES THAT THIS LETTER OF CREDIT SHALL AUTOMATICALLY RENEW ITSELF FOR SUCCESSIVE ONE-YEAR PERIODS UNLESS THE BANK SHALL GIVE NOTICE TO YOU NO LATER THAN FORTY-FIVE (45)

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DAYS PRECEDING AN EXPIRATION DATE THAT IT CHOOSES 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 MAINTENANCE AGREEMENT WITH CELERY LAND, 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 MAINTENANCE AGREEMENT DATED AUGUST 27, 2006 AND THE COMPLETION OF CELERY LAND, LLC OBLIGATIONS THEREUNDER, YOU WILL RETURN THE ORIGINAL LETTER OF CREDIT TO THIS BANK MARKED "CANCELLED".

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 AND DELIVERY OF THE DOCUMENTS SPECIFIED ABOVE TO SUNTRUST BANK, 25 PARK PLACE, 16TH FLOOR, LETTER OF CREDIT DEPARTMENT - MC3706, ATLANTA, GEORGIA 30303 ON OR BEFORE AUGUST 16, 2007 OR ANY AUTOMATICALLY EXTENDED DATE.

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 COST AND REASONABLE ATTORNEY'S 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 THAN THE MAINTENANCE AGREEMENT DATED AUGUST 17, 2006, AND REFERENCED **HEREIN**.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION 500.

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SINCERELY,

SUNTRUST BANK

Dale Toothill
Assistant Vice President

AUTHORIZED SIGNATURE

ATTES

Sharon Anderson
Assistant Vice President

CORPORATE SEAL:

COPY

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October 22, 2008

Board of County Commissioners
C/O Bejay Harbin
1301 East Second Street
Sanford, FL 32771

Dear Commissioners:

In receipt of letter from Seminole County Development Review Division (dated 8/19/2008), Celery Avenue ROW/Celery Estates was found to have no deficiencies, and therefore the Road Maintenance Agreement may be released. Lennar Homes, on behalf of Celery Land LLC, (1101 North Lake Destiny Maitland, FL 32751) hereby requests the release of the irrevocable letter of credit no. P003544 in the amount of \$35,709.77. If you have any questions, please contact me. Thank you.



Rob Bonin
Vice President / Area Manager
Lennar Homes / Central Florida Division
(407) 475-6633
Rob.bonin@lennar.com

