

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Authorize Release of the Private Road Maintenance Bond for Wilson Park Subdivision

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

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

MOTION/RECOMMENDATION:

Authorize the release of the Wilson Park Subdivision Private Road Maintenance Agreement and Letter of Credit #P002862 in the amount of \$61,509.60 for the Wilson Park Subdivision 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 Wilson Park Subdivision project to have a Private Road Maintenance Agreement, specifically, Maintenance Agreement and Letter of Credit #P002862 for \$61,509.60 (SunTrust), to insure any significant degradation in operating conditions resulting from any defective work covered by this Maintenance Agreement and Letter of Credit. Staff conducted a two year maintenance inspection for this project located at 1601 Orange Boulevard and determined the project to be satisfactory.

STAFF RECOMMENDATION:

Staff recommends the Board authorize the release of the Wilson Park Subdivision Maintenance Agreement and Letter of Credit #P002862 in the amount of \$61,509.60 for the Wilson Park Subdivision road improvements.

ATTACHMENTS:

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

| |
|---|
| <p>Additionally Reviewed By:</p> <p><input checked="" type="checkbox"/> County Attorney Review (David Shields)</p> |
|---|

SUBDIVISION AND SITE PLAN

PRIVATE ROAD MAINTENANCE AGREEMENT

(For use with Letter of Credit)

THIS AGREEMENT is made and entered into this 28th day of February, 2006, between M/I Homes of Orlando, LLC, hereinafter referred to as "PRINCIPAL" and the Seminole County Homeowner's Association of Wilson Park 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 Wilson Park, 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 Sept. 13, 2004, (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 January 31, 2006; 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. _____ issued by _____, in the sum of Sixty-One Thousand Five Hundred Nine DOLLARS (\$61,509.60).
Nine Dollars and Sixty Cents

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 Sixty-One Thousand Five Hundred Nine DOLLARS (\$61,509.60) 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 Jan. 31, 2006, 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 Wilson Park 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 Wilson Park 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 Wilson Park 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 Wilson Park 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 Wilson Park subdivision or to the individual lot owners of Wilson Park subdivision as the case may be.]

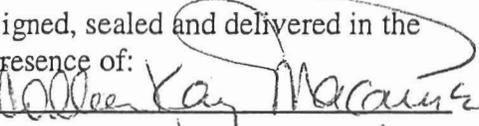
IN WITNESS WHEREOF, the parties to this Agreement have caused their names to be affixed hereto by the proper officers thereof.

BENEFICIARY:
Wilson Park Homeowners Association,
Inc.

ATTEST/WITNESSES:


Steve Pash

By: , Vice President
Date: 3-2-06 Eric K. Wicks

Signed, sealed and delivered in the presence of:


COLLEEN KAY MACQUIRE

PRINCIPAL:
M/I Hoopes of Orlando, LLC

By: _____ DANA A. BENNETT
Date: 3-2-06 AREA PRESIDENT



LETTER OF CREDIT NUMBER P002862

ISSUANCE DATE: JANUARY 18, 2006

APPLICANT:
M/I HOMES OF ORLANDO, LLC
3 EASTON OVAL, SUITE 500
COLUMBUS, OHIO 43219

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

FOR USD 61,509.60
(SIXTY ONE THOUSAND FIVE HUNDRED NINE 60/100 U.S. DOLLARS)

DATE OF EXPIRATION: MARCH 31, 2008
PLACE OF EXPIRATION: AT OUR COUNTERS

WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. P002862 IN YOUR FAVOR FOR ACCOUNT OF THE ABOVE-REFERENCED APPLICANT AVAILABLE BY YOUR DRAFTS DRAWN ON US PAYABLE AT SIGHT FOR ANY SUM OF MONEY NOT TO EXCEED A TOTAL OF THE AMOUNT REFERENCED ABOVE WHEN ACCOMPANIED BY THIS LETTER OF CREDIT AND THE FOLLOWING DOCUMENT:

A SIGNED STATEMENT OF THE SEMINOLE COUNTY BOARD OF COUNTY COMMISSIONERS THAT "THE PRIVATE ROAD MAINTENANCE AGREEMENT DATED JANUARY 13, 2006, BETWEEN M/I HOMES OF ORLANDO, LLC AND SEMINOLE COUNTY IS IN DEFAULT."

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) 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 PRIVATE ROAD MAINTENANCE AGREEMENT WITH M/I HOMES OF ORLANDO, LLC.

UPON TENDER OF PAYMENT, YOU WILL RELEASE TO THE BANK THE ORIGINAL

CONTINUED ON NEXT PAGE

SUNTRUST

LETTER OF CREDIT NUMBER P002862

PAGE NO. 2

IRREVOCABLE LETTER OF CREDIT MARKED "CANCELLED." IN ANY EVENT, UPON EXPIRATION OR AT ANY TIME AFTER THE COMPLETION OF THE PRIVATE ROAD MAINTENANCE AGREEMENT DATED JANUARY 13, 2006, AND THE COMPLETION OF M/I HOMES OF ORLANDO, LLC OBLIGATIONS THEREUNDER, YOU WILL RETURN THE ORIGINAL IRREVOCABLE LETTER OF CREDIT TO THIS BANK MARKED "CANCELLED."

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 BANK SHALL NOT BE RESPONSIBLE FOR ANY ATTORNEYS' FEES IN EXCESS OF FIFTEEN PERCENT (15%) OF THE AGGREGATE AMOUNT OF THIS LETTER OF CREDIT.

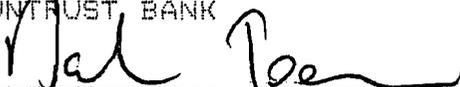
THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT, IN ANY WAY, BE AMENDED BY REFERENCE HEREIN TO ANY AGREEMENT, AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT OR AGREEMENT OTHER THAN THE PRIVATE ROAD MAINTENANCE AGREEMENT DATED JANUARY 13, 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.

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

105



Columbus/Cincinnati, Ohio

Indianapolis, Indiana

Tampa Bay/Orlando/West Palm Beach, Florida

Charlotte/Raleigh, North Carolina

Washington D.C.

March 28, 2008

Seminole County Board of County Commissioners
1301 East 2nd Street
Sanford, FL 32771

RE: RELEASE OF WILSON PARK SUBDIVISION MAINTENANCE BONDS

To whom it may concern:

M/I Homes has completed all required work for the community known as Wilson Park. With the required work complete, approved and through our maintenance period we request that Seminole County release the Maintenance Letter Of Credit (LOC No. **P002862**) put in place prior to the issuance of the certificate of completion by Seminole County.

Thank you in advance for your help in this matter and please do not hesitate to contact me with any comments, questions, or concerns as relates to this matter.

Sincerely,

Justin Campbell
Land Development Manager

Cc: File