

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Authorize Release of the Private Road Maintenance Agreement and Irrevocable Letter of Credit for the Estates at Wekiva Park, Phase II

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

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

MOTION/RECOMMENDATION:

Authorize the release of the Private Road Maintenance Agreement and Irrevocable Letter of Credit # FGAC-05213 in the amount of \$111,543.02 for the Estates at Wekiva Park, Phase II 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 Estates at Wekiva Park, Phase II project to have a Private Road Maintenance Agreement, specifically, Maintenance Agreement and Irrevocable Letter of Credit #FGAC-05213 for \$111,543.02 (Fidelity Guaranty and Acceptance Corp.), to insure against any significant degradation in operating conditions resulting from any defective work covered by this bond. Staff conducted a two year maintenance inspection for this project located on SR 46, Osprey Hammock and determined the improvements to be satisfactory.

STAFF RECOMMENDATION:

Staff recommends that the Board authorize the release of the Estates at Wekiva Park, Phase II Maintenance Agreement and Irrevocable Letter of Credit #FGAC-05213 in the amount of \$111,543.02 for the Estates at Wekiva Park, Phase II road improvements.

ATTACHMENTS:

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

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

PRIVATE ROAD MAINTENANCE AGREEMENT
(For use with Letter of Credit)

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19 05 THIS AGREEMENT is made and entered into this 8 day of July, 2005, between Lennar Homes Inc. hereinafter referred to as "PRINCIPAL" and the Homeowner's Association of 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.

W I T N E S S E T H:

WHEREAS, PRINCIPAL has constructed certain road improvements, including streets, curbs, storm drains and other appurtenances in that certain subdivision described as Estates at Wekiva Park, a Plat of which is recorded in Plat Book 63 Pages 6, Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid road improvements were made pursuant to certain plans and specifications dated July 18, 2002, (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 June 2, 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. EGAC-05213 issued by ~~Bank of America~~ ACCORP, In the sum of ONE HUNDRED ^{02/100} DOLLARS (\$ 111,543.02).

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 ONE HUNDRED ELEVEN THOUSAND FIVE HUNDRED FORTY THREE AND ^{02/100} DOLLARS (\$ 111,543.02) 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 June 2, 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 Estates @ Wekiva 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 ESTATES @ WELKUA 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 ESTATES @ WELKUA 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 ESTATES @ WELKUA 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 ESTATES @ WELKUA PARK subdivision or to the individual lot owners of ESTATES @ WELKUA 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:

ATTEST/WITNESSES:

By: _____

Date: _____

PRINCIPAL:

Lennar Homes Corp.

Signed, sealed and delivered in the presence of:

John Vassantasis

By: Frank Rolu vice Pres.

Date: 11 July 05

Witnesses

Sharon G. Johnson
Jessie Harbo

HOLDER:

DEPARTMENT OF PUBLIC WORKS
ROAD OPERATIONS AND STORMWATER DIVISION
SEMINOLE COUNTY, FLORIDA

Michael K. Arnold
~~Mark E. Flomerfelt, P.E., Manager~~ MICHAEL K. ARNOLD
Road Operations and Stormwater Division

Date: 10/12/05

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 12 day of Oct, 2005, by Michael K. 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 D0094804
Expires May 19, 2006

My Commission Expires: _____

(App E, LDC, through Supp 16).

Fidelity Guaranty and Acceptance Corp.

10707 CLAY ROAD (77041)
Box 2863, Houston, Texas 77252-2863
(713) 599-2575

SUBDIVISION AND SITE PLAN

IRREVOCABLE LETTER OF CREDIT
(FOR PRIVATE ROAD MAINTENANCE AGREEMENT)

JUNE 28, 2005

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

RE: IRREVOCABLE LETTER OF CREDIT NO: FGAC-05213

DEAR COMMISSIONERS:

BY ORDER OF LENNAR HOMES, INC., WE HEREBY ESTABLISH AN IRREVOCABLE LETTER OF CREDIT IN YOUR FAVOR. WE HEREBY AUTHORIZE YOU TO DRAW ON FIDELITY GUARANTY AND ACCEPTANCE CORP. UP TO AN AGGREGATE AMOUNT OF \$111,543.02 (ONE HUNDRED ELEVEN THOUSAND FIVE HUNDRED FORTY THREE AND 021100 US DOLLARS) AVAILABLE BY YOUR DRAFTS AT SIGHT ACCOMPANIED BY A SIGNED STATEMENT OF THE BOARD OF COUNTY COMMISSIONERS THAT THE PRIVATE ROAD MAINTENANCE AGREEMENT DATED JUNE 8, 2005, BETWEEN LENNAR HOMES, MC. AND SEMINOLE COUNTY IS IN DEFAULT.

DRAFTS MUST BE DRAWN AND NEGOTIATED ON OR BEFORE JUNE 8, 2007, AND EACH DRAFT MUST STATE THAT IT IS DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NO. FGAC-05213 OF FIDELITY GUARANTY AND ACCEPTANCE CORP. DATED JUNE 28, 2005 AND THE AMOUNT THEREOF ENDORSED ON THIS LETTER OF CREDIT. THE ISSUER AGREES THAT THIS LETTER OF CREDIT SHALL AUTOMATICALLY RENEW ITSELF FOR SUCCESSIVE ONE-YEAR PERIODS UNLESS THE ISSUER 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, BUT IN NO CASE IS THE EXPIRATION DATE TO EXCEED SEPTEMBER 8, 2007. 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 LENNAR HOMES, MC.

UPON TENDER OF PAYMENT, YOU WILL RELEASE TO THE ISSUER THE ORIGINAL IRREVOCABLE LETTER OF CREDIT MARKED "CANCELLED." IN ANY EVENT, UPON EXPIRATION OF THE PRIVATE ROAD MAINTENANCE AGREEMENT DATED JUNE 8, 2005, AND THE COMPLETION OF LENNAR HOMES, INC. OBLIGATIONS THEREUNDER, YOU WILL RETURN THE ORIGINAL LETTER OF CREDIT TO THIS ISSUER MARKED "CANCELLED."

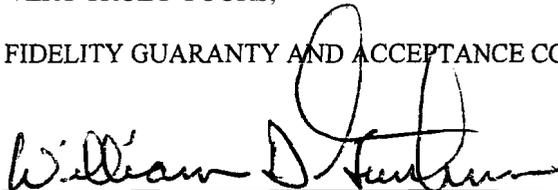
WE HEREBY ENGAGE WITH DRAWERS, ENDORSERS AND BONA FIDE HOLDERS OF ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT, THAT SUCH DRAFTS WILL BE DULY HONORED UPON PRESENTATION TO THE DRAWEE.

IF THE BOARD OF COUNTY COMMISSIONERS INITIATES SUIT UNDER THIS LETTER OF CREDIT, THE ISSUER HEREBY AGREES TO BE RESPONSIBLE FOR SEMINOLE COUNTY'S COURT COSTS AND REASONABLE ATTORNEYS' FEES, BUT FIDELITY GUARANTY AND ACCEPTANCE CORP. SHALL NOT BE RESPONSIBLE FOR ANY ATTORNEYS' FEES IN EXCESS OF FIFTEEN PERCENT (15%) OF THE AGGREGATE AMOUNT OF THIS LETTER OF CREDIT.

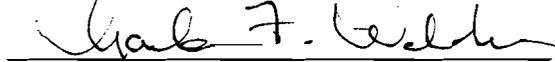
THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT, IN ANY WAY, BE AMENDED BY REFERENCE HEREIN TO ANY AGREEMENT, AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT OR AGREEMENT OTHER THAN THE PRIVATE ROAD MAINTENANCE AGREEMENT DATED JUNE 8, 2005, AND REFERENCED HEREIN.

VERY TRULY YOURS,

FIDELITY GUARANTY AND ACCEPTANCE CORP.


WILLIAM D. GUNTRUM, VICE PRESIDENT

ATTEST:


VICE PRESIDENT

(CORPORATE SEAL)

FIDELITY GUARANTY AND ACCEPTANCE CORP.
10707 CLAY ROAD (77041)
Box 2863, HOUSTON, TEXAS 77252-2863
PHONE (713) 599-2575

DATE: JANUARY 19, 2007

IRREVOCABLE LETTER OF CREDIT # FGAC-05213

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

DEAR COMMISSIONERS:

TO AMEND CREDIT **FGAC-05213** AS ISSUED IN YOUR FAVOR

THIS AMENDMENT IS AN INTEGRAL PART OF THE ORIGINAL CREDIT. ALL OTHER TERMS **AND** CONDITIONS OF THE LETTER OF CREDIT INCLUDING PREVIOUS AMENDMENTS REMAIN **UNCHANGED.**

AMENDED TERMS :

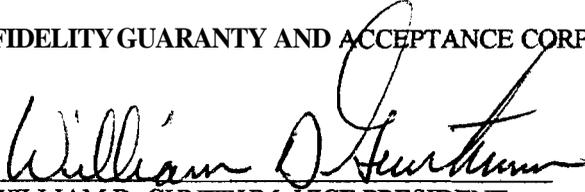
EXTEND EXPIRATION DATE TO **JUNE 2, 2008**

IMMEDIATE NOTIFICATION MUST BE GIVEN TO US IF THIS AMENDMENT IS NOT ACCEPTED.

THIS IS AMENDMENT NO. 2.

VERY TRULY YOURS,

FIDELITY GUARANTY AND ACCEPTANCE CORP.


WILLIAM D. GUNTRUM, VICE PRESIDENT

June 13,2008

BeJay Harbin
SEMINOLE COUNTY
DEVELOPMENT REVIEW DIVISION
1301 East 2nd Street
Sanford, FL 32771

Re: **Estates at Wekiva Park Phase II** Bond Release

Dear BeJay Harbin,

Please note that this letter will serve as a formal request to return the Letter of Credit for the Estates at **Wekiva Park Phase II**, LC# FGAC-05213 in the amount of **\$111,543.02**.

If you have any questions please do not hesitate to call me at 407-682-9291 or my direct line 40747545622.

Sincerely yours,



John Valantasis
LENNAR HOMES LLC
Area Manager