

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Approve the Release of a Performance Bond for Banyan Pointe Subdivision

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

AUTHORIZED BY: Dori DeBord

CONTACT: Brian Walker

EXT: 7337

MOTION/RECOMMENDATION:

Authorize the release of Performance Bond (Water & Sewer Systems) # B98815017259 for Banyan Pointe Subdivision as requested by Ashton Orlando Residential, LLC, applicant.

District 4 Carlton D. Henley

Brian Walker

BACKGROUND:

Banyan Pointe Subdivision is located on Longwood Lake Mary Rd. in Section 17, Township 20 South, Range 30 East.

The following Performance Bond was required as part of the Land Development Code Section 35.44, Required submittals for final plat, Part (e) Additional Required Legal Submittals, Subpart (1) Bonds, to secure the construction and completion of the subdivision improvements for Banyan Pointe Subdivision:

- Performance Bond (Water & Sewer Systems) # B98815017259 in the amount of \$138,787.01 (American Southern Insurance Company)

All work covered by the above referenced bond has been completed, inspected and approved by staff. The performance bond has been replaced by a maintenance bond which covers work quality for a period of two years.

STAFF RECOMMENDATION:

Authorize the release of Performance Bond (Water & Sewer Systems) # B98815017259 for Banyan Pointe Subdivision as requested by Ashton Orlando Residential, LLC, applicant.

ATTACHMENTS:

1. Copy of Performance Bond

<p>Additionally Reviewed By:</p> <p><input type="checkbox"/> County Attorney Review (Kathleen Furey-Tran)</p>
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APPROVED FORMS, CHECKLISTS, PROCEDURES AND ILLUSTRATIONS

Bond #B98815017259

PERFORMANCE BOND (Water and Sewer Systems)

KNOW ALL MEN BY THESE PRESENTS:

That we, Ashton Orlando Residential, LLC, hereinafter called the "Principal", and American Souther Insurance Company, a surety company authorized to do business in the State of Florida, hereinafter called "Surety" are held and firmly bound to Seminole County, a political subdivision of the State of Florida, in the full and just sum of One Hundred Thirty Eight Thousand Seven Hundred Eighty Seven and 01/100 Dollars (\$138,787.01), lawful money of The United States of America, to be paid to the Board of County Commissioners of Seminole County, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden Principal has as a condition precedent to the approval by Seminole County of a plat of a certain subdivision known as Banyan Pointe has covenanted and agreed with Seminole County to construct sewer systems and water distribution systems, and other improvements (delete inapplicable improvements) based upon development plans and plans and specifications pertaining to said subdivision, said development plans and plans and specifications being dated the 10th October day of 2006 and being on file with the Department of Public Works of Seminole County, Florida, and

WHEREAS, it is a condition precedent to the recording of said subdivision that this bond be executed:

NOW THEREFORE, the conditions of these obligations are such that if the bounden Principal shall construct the aforesaid improvements in accordance with any date prescribed in the approved development plans and plans and specifications dated the 10th day of October, 20 06, or within two (2) years of the date of approval, whichever occurs first, and shall in every respect fulfill its, his, their obligations under the development plans and plans and specifications, and shall indemnify and save harmless Seminole County against or from all claims, costs, expenses, damages, injury, or loss, including engineering, legal and contingent costs which Seminole County may sustain on account of the failure of the Principal to perform in accordance with the developments plans and plans and specifications within the time therein specified, then this obligation to be void; otherwise to be and remain in full force and virtue.

The Surety unconditionally covenants and agrees that if the Principal fails to perform all or any part of the construction work required by the developments plans or plans and specifications above referred to, within the time specified, the Surety upon forty-five (45) days written notice from Seminole County, or its authorized agent or officer, of the default, will forthwith perform and complete the aforesaid construction work and pay the cost thereof, including, but not limited to engineering, legal and contingent costs. Should the Surety fail or refuse to perform and complete the said improvements, Seminole County, in view of the public, interest, health, safety and welfare factors involved and the inducement in approving and

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filing the said plat, shall have the right to resort to any and all legal remedies against the Principal and the Surety, or either, both at law and in equity, including specifically specific performance, to which the Principal and Surety unconditionally agree.

The Principal and the Surety further jointly and severally agree that Seminole County, at its option, shall have the right to construct or, pursuant to public advertisement and receipt of bids, cause to be constructed the aforesaid improvements in case the Principal should fail or refuse to do so. In the event Seminole County should exercise and give effect to such right, the Principal and the Surety shall be jointly and severally liable hereunder to reimburse Seminole County the total cost thereof, including, but not limited to engineering, legal and contingent costs, together with any damages, either direct or consequential, which may be sustained on account of the failure of the Principal to carry out and execute all the provisions of said agreement.

IN WITNESS WHEREOF, the Principal and the Surety have executed these presents this the 23rd day of February, 2007

Address: 2450 Maitland Center Pkwy., Ste. 301

Ashton Orlando Residential, LLC

Principal

By: [Signature]

Its Division President
(if corporation)

A T T E S T : _____

Its _____
(if corporation)

CORPORATE SEAL

American Southern Insurance Company

Surety

Address: 3715 Northside Pkwy. NW Bldg. 400, Ste. 800
Atlanta, GA 30327

By: Dawn L. Morgan
Dawn L. Morgan, Attorney-in-Fact
FL License #P011322

ATTEST: Heather A. Beck
Heather A. Beck

(App E, LDC, through Supp 16; Ord. No. 95-4, § 16, 6-26-95)

AMERICAN SOUTHERN INSURANCE COMPANY

Home Office: 200 S.W. 30th Street
Topeka, Kansas 66611

Mailing Address: 3715 Northside Pkwy, NW
Building 400, Suite 800
Atlanta, Georgia 30327

GENERAL POWER OF ATTORNEY

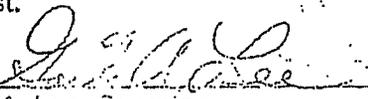
Know all men by these Presents, that the American Southern Insurance Company had made, constituted and appointed, and by these presents does make, constitute and appoint Stephen T. Kazmer, James I. Moore, Mary Beth Peterson, Elaine Marcus, Dawn L. Morgan, or Bonnie Kruse all of Westmont, Illinois, EACH as its true and lawful attorney for it and its name, place and stead to execute on behalf of the said company, as surety, bonds, undertakings and contracts of suretyship to be given to all obligees provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount of the sum of \$1,000,000 (one million dollars).

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted pursuant to due authorization by the Executive Committee of the Board of Directors of the American Southern Insurance Company on the 26th day of May, 1998:

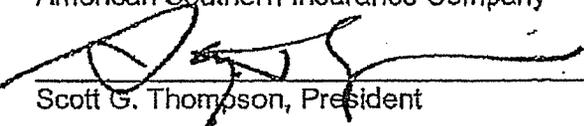
RESOLVED, that the Chairman, President or any Vice President of the Company be, and that each or any of them hereby is, authorized to execute Powers of Attorney qualifying the attorney named in the given Power of Attorney to execute in behalf of the American Southern Insurance Company bonds, undertakings and all contracts of suretyship; and that any Secretary or any Assistant Secretary be, and that each or any of them hereby is, authorized to attest the execution of any such Power of Attorney, and to attach thereto the seal of the Company.

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed and in the future, with respect to any bond undertaking or contract of suretyship to which it is attached.

In Witness Whereof, the American Southern Insurance Company has caused its official seal to be hereto affixed, and these presents to be signed by its President and attested by its Secretary this 16th day of June, 2006.

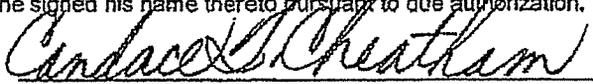
Attest:


Gail A. Lee, Secretary
American Southern Insurance Company
STATE OF GEORGIA
COUNTY OF FULTON

American Southern Insurance Company
By: 

Scott G. Thompson, President

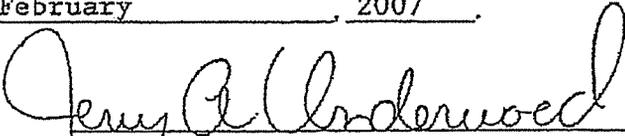
On this 17th day of June, 2009, before me personally came Scott G. Thompson to me known, who being by me duly sworn, did depose and say that he resides in Atlanta, in the County of Fulton, State of Georgia, at 421 Hollydale Court; that he is the President of American Southern Insurance Company, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed and that he signed his name thereto pursuant to due authorization.



Candace T. Cheatham
Notary Public, State of Georgia
Commission Expires December 7, 2009

I, the undersigned, a Vice President of American Southern Insurance Company, a Kansas Corporation, DO HEREBY CERTIFY that the foregoing is a true and correct Power of Attorney remains in full force and has not been revoked; and, furthermore, that the Resolution of the Executive Committee of the Board of Directors set forth in the Power of Attorney is now in force.

Signed and attested at the City of Atlanta, Dated the 23rd day of February, 2007.



Jerry A. Underwood
Vice President - Surety

Number 66769