



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.5.

11/12/2024

Subject:

Adopt Resolution and Release Performance Bond: Aripeka at Viera, Phase 2 - District 4
Developer: SFM Development of Brevard, LLC

Fiscal Impact:

None

Dept/Office:

Public Works/Engineering

Requested Action:

In accordance with Section 62-2844(b), it is requested that the Board of County Commissioners adopt the attached Resolution and authorize the Chair to sign the Resolution releasing the Contract and Surety Performance Bond dated April 19, 2022, for Aripeka at Viera, Phase 2.

Summary Explanation and Background:

Aripeka at Viera, Phase 2 is located within the Viera Development of Regional Impact (DRI), accessed via Aripeka Drive on the east side of Lake Andrew Drive. There are no public rights-of-way within the plat. The subdivision contains 51 lots on 41.73 acres.

The Aripeka at Viera, Phase 2 subdivision received preliminary plat and final engineering plans on March 18, 2022, and final plat and contract approval on April 19, 2022. The developer posted a Surety Performance Bond for guarantee of the completion of the infrastructure improvements according to the approved plans.

Per Section 62-2809(b)(2), "Construction after final plat recordation: ...the applicant shall provide security required in Section 62-2844 for the performance of such construction..." Section 62-2844(a) states: "An applicant shall be required to secure its performance security of the construction required under this article by a surety bond, letter of credit, savings account, certificate of deposit or execution of a tri-party escrow agreement. Such security shall not be required if a certificate of completion has been issued for all the subdivision improvements prior to final plat recordation." Because the applicant chose to plat the subdivision prior to completion of construction, the applicant entered into a Contract with the Board and posted a Surety Performance Bond to guarantee the completion of the infrastructure improvements according to the approved plans.

As of November 1, 2024, the Aripeka at Viera, Phase 2 infrastructure improvements have been completed.

Reference: 20SD00011, 21FM00022

Contact: Christine Verrett, Special Projects Coordinator III, Extension 58328

Clerk to the Board Instructions:

Please forward the Board action to the Public Works Department and provide one original of the Resolution.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

November 13, 2024

MEMORANDUM

TO: Marc Bernath, Public Works Director

RE: Item F.5., Resolution and Release Performance Bond for Aripeka at Viera, Phase 2,
Developer: SFM Development of Brevard, LLC

The Board of County Commissioners, in regular session on November 12, 2024, adopted Resolution No. 24-124, releasing the Contract and Surety Performance Bond dated April 19, 2022, for Aripeka at Viera, Phase 2, Developer: SFM Development of Brevard, LLC. Enclosed is a fully-executed Resolution.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

for: Donna Scott
Kimberly Powell, Clerk to the Board

Encl. (1)

cc: County Manager
County Attorney

RESOLUTION 24-124

WHEREAS, the Board of County Commissioners of Brevard County, Florida and SFM Development of Brevard, LLC entered into a contract to guarantee the construction of improvements on property commonly known as Aripeka at Viera, Phase 2.

WHEREAS, by execution of the Contract, the Board of County Commissioners of Brevard County, Florida agreed to accept said improvements for private use at such time as said improvements were satisfactorily completed; and

WHEREAS, SFM Development of Brevard, LLC completed all the infrastructure improvements and has requested that the executed contract approved on April 19, 2022, be released and release of all undisbursed funds referenced in the Contract hereinabove described.

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Brevard County, Florida that:

1. The Board of County Commissioners of Brevard County, Florida hereby acknowledges that there is satisfactory completion of all improvements to that certain real property commonly known as Aripeka at Viera, Phase 2.
2. The Board of County Commissioners of Brevard County, Florida hereby releases the contract and performance bond executed on April 19, 2022.
3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the 12th day of November 2024.

ATTEST:



Rachel Sadoff, Clerk of the Court

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By: 

Rita Pritchett, Vice Chair

As approved by the Board on November 12, 2024

Subdivision No. 20SD00011

Project Name Aripeka Subdivision, Village 2

Neighborhood 1, Phase 2

Subdivision Infrastructure Contract (Plat Name: Aripeka at Viera, Phase 2)

THIS CONTRACT entered into this 22 day of March, 2022, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY," and SFM Development of Brevard, LLC, hereinafter referred to as "PRINCIPAL."

WITNESSETH:

IN CONSIDERATION of the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. The PRINCIPAL agrees to construct the improvements described below:

and all other improvements depicted in subdivision number 20SD00011. A copy of said plat to be recorded in the Plat Books of the Public Records of Brevard County.

2. Principal agrees to construct the improvements strictly in accordance with the plans and specifications on file in the Land Development Division (which construction is hereinafter referred to as the "Work"). Such plans and specifications (hereinafter referred to as the "Plans") are hereby incorporated into this Agreement by reference and made a part hereof. Principal warrants to County that the Work will conform to the requirements of the Plans and other requirements specified in the County's approval of the Work. Principal also warrants to County that the Work will be free from faults and defects. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered to be defective. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this paragraph 2.

If within two (2) years after approval and acceptance of the improvements by County, any Work is found to be defective, Principal shall promptly, without cost to County, either correct such defective Work, or, if it has been rejected by County, remove it from the site and replace it with nondefective Work. If Principal does not promptly comply with the terms of such instructions, County may elect any of the remedies provided for in paragraph 6 herein below. Corrective Work shall be warranted to be free from defects for a period of six (6) months. Any defect in such Work shall be corrected again by Principal promptly upon notice of the defect from County. In the event the maintenance bond given by Principal in connection with County's acceptance of the improvements is extended, the two (2) year warranty period provided for herein shall be extended for a like period.

To the extent assignable, Principal assigns to County all of Principal's warranty rights under its construction contract with the contractor constructing the improvements (including all warranties provided by law or in equity with respect to such construction contract), which warranties may be asserted by County on behalf of Principal in the event Principal fails to perform its warranty obligations hereunder. Where warranties granted hereunder overlap, the more stringent requirement shall control."

3. The PRINCIPAL agrees to complete said construction on or before the 22 day of March, 2024.

4. In order to guarantee performance of PRINCIPAL'S obligations herein contained, PRINCIPAL shall furnish cash, letter of credit, certificate of deposit or surety bond in a form approved by the COUNTY, in the amount of \$ 2,651,013.96 . If such bond is a cash bond or a certificate of deposit, said amount shall be deposited with the Board of County Commissioners within five (5) business days of the County's acceptance of this contract. Said bond shall be 125% of the estimated cost of construction, as determined by the Land Development Division. PRINCIPAL shall maintain such records and accounts, including property, personnel, financial records, as are deemed necessary by the COUNTY to ensure proper accounting for all funds expended under the agreement. Said records shall be made available upon request for audit purposes to Brevard County and its auditors.
5. The COUNTY agrees to accept said plat above described for recording in the public records of Brevard County, Florida and to accept the areas depicted thereon as dedicated for public use, including but not limited to streets and parks, at such time as said improvements are satisfactorily completed. Satisfactory completion in accordance with the plans and specifications shall be determined by written approval of the County Development Engineer or designated assistant.
6. In the event, PRINCIPAL fails to complete said improvements within the time prescribed, the COUNTY may elect to take all or any of the following actions:
 - A. Vacate all or part of such recorded plat where improvements have not Been completed in accordance with the plans and specifications,
 - B. Complete the improvements utilizing COUNTY employees and materials and request payment from the bond or the PRINCIPAL,
 - C. Request the surety on said performance bond to complete such improvements, or
 - D. Contract for completion of said improvements.
7. The PRINCIPAL and Surety on said performance bond shall be liable for all costs, expenses, and damages incurred by the COUNTY, including attorney's fees, in the event the PRINCIPAL defaults on this contract.
8. In the performance of this Agreement, the PRINCIPAL shall keep books, records, and accounts of all activities, related to the agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this agreement shall be open to inspection during regular business hours by an authorized representative of the Office and shall be retained by the PRINCIPAL for a period of three years after termination of this agreement. All records, books and accounts related to the performance of this agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119 of the Florida Statutes.
9. No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this agreement shall be subject to copyright by PRINCIPAL in the United States or any other country.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

Rachel M. Sadoff, Clerk

Kristine Zonka, Chair

As approved by the Board on: MARCH 22ND, 2022.

WITNESSES:

PRINCIPAL:

MANAGER

, as

DATE MARCH 21, 2022

State of: FLORIDA

County of: BREVARD

The foregoing instrument was acknowledged before me this 21ST day of MARCH 2022, by CHRIS SIMMS who is personally known to me or who has produced as identification and who did (did not) take an oath.

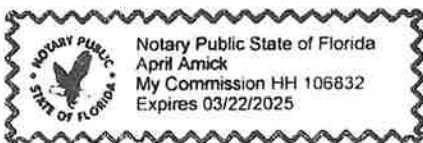
My commission expires: 3-22-2025

S E A L

Commission Number: 106832

Notary Public

APRIL AMICK
Notary Name printed, typed or stamped



Bond No. GSM36082

SURETY PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, SFM Development of Brevard, LLC, hereinafter referred to as "Owner" and, The Gray Insurance Company, hereinafter referred to as "Surety", are held and firmly bound unto the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereinafter referred to as "County", in the sum of \$ 2,651,013.96, for the payment of which we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, Owner has entered into a contract with the County dated the 19th day of APRIL, 2022, which contract is made a part hereof by reference.

NOW THEREFORE, the condition of this obligation is such that if Owner shall promptly and faithfully perform said contract and complete the work contemplated therein by MARCH 22, 2024, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

If the Owner shall be declared in default of said contract by the County, the Surety shall have sixty (60) days from the date of said default within which to take whatever action it deems necessary in order to insure performance. If, at the expiration of sixty (60) days from the date of said default, no arrangements have been made by the Owner or surety satisfactory to the County for the completion of said contract, then the County shall have the right to complete said contract and the Owner and Surety jointly and severally, shall pay all costs of completing said contract to the County, including but not limited to engineering, legal and other costs, together with any damages, either direct or consequential, which the County may sustain on account of the Owner's default of said contract. After the expiration of the aforesaid grace period, the County shall have the additional right to contract for the completion of said contract upon which the Owner has defaulted and upon the County's acceptance of the lowest responsible bid for the completion of said contract, the Owner and Surety shall become immediately liable for the amount of said bid and in the event the County is required to commence legal proceedings for the collection thereof, interest shall accrue at the rate of six percent (6%) per annum beginning with the commencement of such legal proceedings. The County, in its discretion, may permit the Surety to complete said contract, in the event of Owner's default.

In the event that the County commences suit for the collection of any sums due hereunder, the obligors and each of them agree to pay all costs incurred by the County, including attorney's fees.

Executed this 19th day of APRIL, 2022

Project:
Aripeka Subdivision - Village 2,
Neighborhood 1, Phase 2, #20SD00011

OWNER: SFM Development of Brevard, LLC

SURETY: The Gray Insurance Company

Jennifer L. Hindley
Jennifer L. Hindley, Attorney in Fact &
FL Licensed Resident Agent.
Inquiries: (407) 834-0022

Pre-approved Form reviewed for
Legal form and content: 12/18/07



**THE GRAY INSURANCE COMPANY
THE GRAY CASUALTY & SURETY COMPANY**

GENERAL POWER OF ATTORNEY

Bond Number: GSM36082

Principal: SFM Development of Brevard, LLC

Project: Village 2, Neighborhood 1 - Aripeka Subdivision Infrastructure Improvements - Phase 2

KNOW ALL BY THESE PRESENTS, THAT The Gray Insurance Company and The Gray Casualty & Surety Company, corporations duly organized and existing under the laws of Louisiana, and having their principal offices in Metairie, Louisiana, do hereby make, constitute, and appoint: **Bryce R. Guignard, Paul J. Ciambriello, April L. Lively, Margie L. Morris, Jennifer L. Hindley, Allyson Foss Wing, Kelly Phelan, and Christine Morton of Longwood, Florida jointly and severally** on behalf of each of the Companies named above its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its deed, bonds, or other writings obligatory in the nature of a bond, as surety, contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the amount of \$15,000,000.00.

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both The Gray Insurance Company and The Gray Casualty & Surety Company at meetings duly called and held on the 26th day of June, 2003.

"RESOLVED, that the President, Executive Vice President, any Vice President, or the Secretary be and each or any of them hereby is authorized to execute a power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings, and all contracts of surety, and that each or any of them is hereby authorized to attest to the execution of such Power of Attorney, and to attach the seal of the Company; and it is

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 signature or facsimile seal shall be binding upon the Company now and in the future when so affixed with regard to any bond, undertaking or contract of surety to which it is attached.

IN WITNESS WHEREOF, The Gray Insurance Company and The Gray Casualty & Surety Company have caused their official seals to be hereinto affixed, and these presents to be signed by their authorized officers this 28th day of October, 2021.



By:

Michael T. Gray
President
The Gray Insurance Company

Cullen S. Piske
President
The Gray Casualty & Surety Company



State of Louisiana

ss:

Parish of Jefferson

On this 28th day of October, 2021, before me, a Notary Public, personally appeared Michael T. Gray, President of The Gray Insurance Company, and Cullen S. Piske, President of The Gray Casualty & Surety Company, personally known to me, being duly sworn, acknowledged that they signed the above Power of Attorney and affixed the seals of the companies as officers of, and acknowledged said instrument to be the voluntary act and deed, of their companies.



Leigh Anne Henican
Notary Public
Notary ID No. 92653
Orleans Parish, Louisiana

Leigh Anne Henican
Notary Public, Parish of Orleans State of Louisiana
My Commission is for Life

I, Mark S. Manguno, Secretary of The Gray Insurance Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this day of , .

I, Leigh Anne Henican, Secretary of The Gray Casualty & Surety Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this 14th day of APRIL, 2022





April 07, 2022

Brevard County Public Works/Engineering
2725 Judge Fran Jamieson Way, Building A, Room 204
Viera, FL 32940

Re: Authority to Date Bonds and Powers of Attorney

Principal: SFM Development of Brevard, LLC

Bond No.: GSM36082

Project: Village 2, Neighborhood 1 - Aripeka Subdivision
Infrastructure Improvements - Phase 2

Dear Sir or Madam:

Please be advised that as Surety on the above referenced bond, executed on your behalf for this project, we hereby authorize you to do the following:

- Fill in the contract date
- Fill in the project completion date
- Fill in the execution date both at the bottom of the bond and on the Power of Attorney

Once dated, please send a copy of the ***dated*** bonds to our office.

Best regards,

The Gray Insurance Company

A handwritten signature in black ink, appearing to read 'Jennifer L. Hindley', is written over a circular blue ink stamp. The stamp contains text that is partially obscured but appears to be a company seal or official stamp.

Jennifer L. Hindley
Attorney in Fact