

Meeting Date
December 6, 2016



AGENDA	
Section	CONSENT
Item No.	<i>II. A. 10</i>

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Adopt Resolution and Release Performance Bond: St. Andrews Manor, Phase 3 Subdivision Developer: Sawgrass Land Development Co. Fiscal Impact: None District 4
DEPT/OFFICE:	Public Works Department

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 Chairman to sign the resolution releasing the contract and Surety Performance Bond dated March 1, 2016 for the St. Andrews Manor, Phase 3 Subdivision.

Summary Explanation & Background:

The St Andrews Manor subdivision received Final plat and contract approval by the Board on March 1, 2016 for 40 detached single family lots, on approximately 18.74 acres. The developer posted a Cash Performance Bond in the amount of \$1,040,849.00 to ensure completion of the infrastructure improvements according to the approved plans. On August 23, 2016, the Board authorized the release of a portion (\$713,829.32) of the Cash Performance bond.

As of November 18, 2016, the subdivision infrastructure improvements have been completed. The improvements are private and will be privately maintained. We are requesting the Board of County Commissioners adopt the attached Resolution to Release the Contract and authorize the release of the balance of the Cash Performance bond.

The St Andrews Manor subdivision is located on the north side the Pineda Causeway between Interstate 95 and Wickham Road. The proposed subdivision contains 40 detached single family lots, on approximately 18.74 acres.

Reference: 15SD00007

Fiscal Impact: FY 15/16

Clerk to the Board instruction:
 Notify the Public Works Department of the action taken by the Board.

Exhibits Attached: Resolution, Copy of Subdivision Infrastructure Contract, Copy of Cash Performance Bond

Contract /Agreement (If attached):		Reviewed by County Attorney	Yes	☐	No	☐	PR	☐
County Manager					Department Director / Extension John P. Denninghoff, Public Works, Director Ext. 57202			
Stockton Whitten					Assistant County Manager			



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

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December 7, 2016

MEMORANDUM

TO: John Denninghoff, Public Works Director

RE: Item II.A.10., Resolution Releasing Contract and Surety Performance Bond for
St. Andrews Manor, Phase 3 Subdivision – Sawgrass Land Development Co.

The Board of County Commissioners, in regular session on December 6, 2016, adopted Resolution No. 16-216, releasing the Contract and Surety Performance Bond dated March 1, 2016, for the St. Andrews Manor, Phase 3 Subdivision. Enclosed is a certified copy of the Resolution.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/cm

Encl. (1)

RESOLUTION 16 - 216

WHEREAS, the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, and Sawgrass Land Development Company entered into a contract to guarantee the construction of improvements on property commonly known as St. Andrews Manor, Phase 3 Subdivision.

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, Sawgrass Land Development Company completed all of the infrastructure improvements and has requested that the executed contract approved on March 1, 2016 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 the St. Andrews Manor, Phase 3 Subdivision.
2. The BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereby releases the contract and performance bond executed on March 1, 2016.
3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the **6th day of December, 2016.**

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By:



CURT SMITH CHAIRMAN

As approved by the Board on December 6, 2016

Subdivision No. 15SD00007

Project Name St. Andrews Manor Subdivision Phase

**Subdivision Infrastructure
Contract**

THIS CONTRACT entered into this 1st day of MARCH 2016, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY," and SAWGRASS LAND DEVELOPMENT, 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 15SD00007. 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 of 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 30th day of June, 20 17

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 \$ 1,040,849.00 . 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. The plat shall not be recorded until the security described above has been delivered.
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:

Scott Ellis
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Jim Barfield
Jim Barfield, Chairman

As approved by the Board on: 3/1/16, 2016.

WITNESSES:

Bonnie L. Kennedy
D. M. Allen

PRINCIPAL:

SAWGRASS LAND DEVELOPMENT, LLC,
A Florida Limited Liability Company

Hugh M. Evans, Jr.
Hugh M. Evans, Jr., Manager ~~was President~~

February 10, 2016
DATE

State of: FLORIDA

County of: BREVARD

The foregoing instrument was acknowledged before me this 10th day of February, 2016, by
HUGH M. EVANS, JR., as Manager who is personally known to me or who has produced
as identification and who did (did not) take an oath.

My commission expires:

S E A L

Commission Number:

Bonnie L. Kennedy
Notary Public



Notary Name printed, typed or stamped

**CASH
PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

LLC

That SAWGRASS LAND DEVELOPMENT, hereinafter referred to as "Owner" is held and firmly bound unto the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereinafter referred to as "County" in the sum of \$ 1,040,849.00 cash, for the payment of which he binds himself, his heirs, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, Owner has agreed to construct the improvements listed below in St. Andrews Manor Subdivision Phase 3 subdivision.
Improvements to be constructed, are as follows: per approved plan #15SD00007

NOW THEREFORE, the condition of this obligation is such that if Owner shall promptly and faithfully construct the Improvements listed above by June 30, 2017, 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 by the County, the Owner hereby authorizes the County or its representative to enter upon the land and the County shall have the right to complete the improvements described above and the Owner shall pay all costs of completing the improvements 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. The County shall have the additional right to contract for the completion of the improvement upon which the Owner has defaulted and upon the County's acceptance of the lowest responsible bid for completion of said contract, the Owner 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 therefore, interest shall accrue at the rate of six percent (6%) per annum beginning with the commencement of such legal proceedings. The County may use the Cash Performance Bond to pay the cost of construction or completion of the improvements listed. Owner shall remain liable for any costs in excess of this payment bond.

In the event that the County commences suit for the collection of any sums due hereunder, the Owner agrees to pay all costs incurred by the County, including attorney's fees.

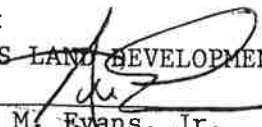
EXECUTED this 10 day of February 2016.

WITNESS:



OWNER:

SAWGRASS LAND DEVELOPMENT, LLC

BY: 

Hugh M. Evans, Jr.

TITLE: Manager