



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.5.

3/22/2022

Subject:

Approval, re: Performance Bond and Contract for Aripeka Subdivision, Village 2, Neighborhood 1, Phase 2 (Plat Name: Aripeka at Viera, Phase 2) - District 4

Fiscal Impact:

None

Dept/Office:

Public Works/Engineering

Requested Action:

In accordance with Sections 62-2841(i) and 62-2844(a), Brevard County Code, it is requested that the Board of County Commissioners: 1) Authorize the Chair to sign the Subdivision Infrastructure Contract for Aripeka Subdivision, Village 2, Neighborhood 1, Phase 2 (Plat Name: Aripeka at Viera, Phase 2) in substantial form as Exhibit A, attached hereto, upon staff receipt of the recorded deed to SFM Development, LLC; and 2) authorize the Chair to sign the attached resolution, in substantial form as Exhibit B, attached hereto, releasing the current contract with The Viera Company, and associated bond, after the execution of the new contract with, and receipt of the necessary bond documents from, SFM Development, LLC.

Summary Explanation and Background:

The Board granted final plat and contract approval for Aripeka Subdivision, Village 2, Neighborhood 1, Phase 2 (Plat Name: Aripeka at Viera, Phase 2) on January 25, 2022, with The Viera Company as the Developer. The Viera Company is under contract for the sale of the property to SFM Development, LLC. The plat will be recorded prior to the sale. As such, a replacement contract and bond are required from the new developer, SFM Development, LLC, in order to guarantee the completion of the infrastructure improvements identified in subdivision number 20SD00011.

Staff has reviewed the replacement contract for the Aripeka Subdivision, Village 2, Neighborhood 1, Phase 2 (Plat Name: Aripeka at Viera, Phase 2) and has determined that it is in compliance with the applicable ordinances.

Aripeka Subdivision, Village 2, Neighborhood 1, Phase 2 (Plat Name: Aripeka at Viera, Phase 2) is located within the Viera DRI, east of the intersection at Lake Andrew Drive and Cuddington Drive. The proposed subdivision contains 51 lots on 41.73 acres.

Reference: 21FM00022, 20SD00011

Contact: Christine Verrett, Special Projects Coordinator III, 321-350-8328

Clerk to the Board Instructions:

Please forward the Board action to the Public Works Department.



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

March 23, 2022

MEMORANDUM

TO: Marc Bernath, Public Works Director Attn: Christine Verrett

RE: Item F.5., Performance Bond and Contract for Aripeka Subdivision, Village 2, Neighborhood 1, Phase 2 (Plat Name: Aripeka at Viera, Phase 2)

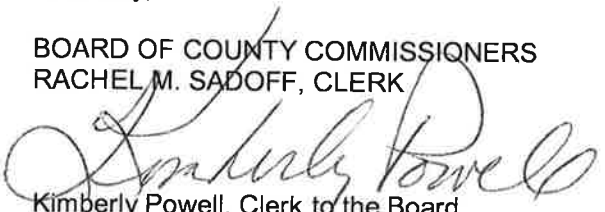
The Board of County Commissioners, in regular session on March 22, 2022, in accordance with Sections 62-2841(i) and 62-2844(a), Brevard County Code, authorized the Chair to sign the Subdivision Infrastructure Contract for Aripeka Subdivision, Village 2, Neighborhood 1, Phase 2 (Plat Name: Aripeka at Viera, Phase 2) in substantial form as Exhibit A, attached hereto, upon staff receipt of the recorded deed to SFM Development, LLC; and adopted and authorized the Chair to sign Resolution 22-027, in substantial form as Exhibit B, attached hereto, releasing the current Contract with The Viera Company, and associated bond, after the execution of the new Contract with, and receipt of the necessary bond documents from SFM Development, LLC.

Upon execution by the Chair, please return the documents to this office for attestation and inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/tr

cc: Contracts Administration
Asset Management

Subdivision No. 20SD00011

Project Name Aripeka Subdivision, Village 2
Neighborhood 1, Phase 2
Subdivision Infrastructure (Plat Name: Aripeka at Viera, Phase 2)
Contract

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 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 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:




_____, as MANAGER



MARCH 21, 2022
DATE

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.

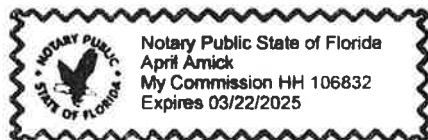
My commission expires: 3-22-2025

S E A L

Commission Number: 106832


Notary Public

APRIL AMICK
Notary Name printed, typed or stamped



RESOLUTION 22- 027

WHEREAS, the Board of County Commissioners of Brevard County, Florida, and The Viera Company entered into a contract on January 25, 2022 (the "TVC Contract"), and The Viera Company provided a performance bond in order to guarantee the construction of certain improvements on property commonly known as Aripeka Subdivision, Village 2, Neighborhood 1, Phase 2 (the "Property"); and

WHEREAS, the plat for the Property has been recorded in Plat Book 71, Pages 40-45; and

WHEREAS, The Viera Company has sold the Property to SFM Development of Brevard, LLC, as recorded in Official Records Book 9474, Page 763; and

WHEREAS, SFM Development of Brevard, LLC, entered into a contract with the County on APRIL 19th, 2022, which is incorporated herein by this reference, and has provided a performance bond in order to guarantee the completion of the aforementioned subdivision's infrastructure improvements; and

WHEREAS, The Viera Company requests the TVC Contract, and for all undisbursed funds in the performance bond, be released by the County; and

WHEREAS, upon receipt by the County of the deed transferring title for the Property to SFM Development of Brevard, LLC, and the County entering into that certain subdivision infrastructure contract with SFM Development of Brevard, LLC, with associated bond, the County finds that the TVC Contract and The Viera Company performance bond are no longer needed and can be released.

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 the transfer of ownership of the Property from The Viera Company to SFM Development of Brevard, LLC.
2. The Board of County Commissioners of Brevard County, Florida, hereby releases the TVC Contract and the performance bond provided by The Viera Company.
3. SFM Development of Brevard, LLC, is now responsible for the infrastructure improvements depicted in subdivision number 20SD00011, and as required by the Subdivision Infrastructure Contract executed on APRIL 19th, 2022, and the associated bond provided by SFM Development of Brevard, LLC, which are incorporated herein by this reference.

4. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the 22nd day of March, 2022.

ATTEST:



Rachel Sadoff, Clerk of the Court

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By: 

Kristine Zonka, Chair

As approved by the Board on March 22, 2022