



Interoffice Memorandum

July 31, 2018

TO: Mayor Teresa Jacobs
and Board of County Commissions

FROM: Mark V. Massaro, P.E., Director, Public Works Department

CONTACT PERSON: Diana M. Almodovar, P.E., Manager
Development Engineering Division

PHONE NUMBER: (407) 836-7974

SUBJ: Memorandum of Understanding between Meritage Homes of
Florida, Inc., and Orange County

A Memorandum of Understanding between Meritage Homes of Florida, Inc. ("Meritage") and the County is being proposed to provide a Letter of Credit for \$353,734.83 and additional time in excess of Orange County Code requirements to guarantee the functioning of an underdrain system installed in the right-of-way of the Heritage Oaks Subdivision.

For a period of five years, Meritage, at its sole cost and expense, will maintain the underdrain system. At the end of the five-year term, and after re-certification of the underdrain system by a geotechnical engineer, the County will accept the underdrain system for maintenance and will release the letter of credit.

The Development Engineering Division and the County Attorney's Office have reviewed the agreement and find the terms acceptable.

Action Requested: Approval and execution of Memorandum of Understanding by and between Meritage Homes of Florida, Inc. and Orange County, Florida. District 4.

DMA/LAA/sa

Attachments

BCC Mtg. Date: August 21, 2018

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is being entered into by and between MERITAGE HOMES OF FLORIDA, INC. ("MERITAGE"), a Florida corporation, whose address is 5337 Millenia Lakes Boulevard, Suite 410, Orlando, Florida 32839 and ORANGE COUNTY, FLORIDA ("COUNTY"), a charter county and political subdivision of the State of Florida, whose address is 201 South Rosalind Avenue, Orlando, Florida 32801.

RECITALS

WHEREAS, MERITAGE is the owner of certain real property located in Orange County, Florida which is being developed as a residential subdivision consisting of 102 single-family units (the "PROPERTY");

WHEREAS, as part of developing the Property and in accordance with the underdrain detail as provided by the geotechnical engineer for the Property, MERITAGE caused the installation of four inch (4") corrugated drainage pipe in portions of the underdrain system for the Property, as depicted on Exhibit "A" attached hereto and incorporated herein by this reference, in lieu of four inch (4") smooth wall interior pipe (the "PROJECT");

WHEREAS Section 34-203, Orange County Code, requires a developer to provide an irrevocable letter of credit prior to issuance of a certificate of completion in the amount of ten percent (10%) of the cost of construction of any required public improvements, such letter of credit to expire one year from the date of issuance of the certificate of completion (the "CODE REQUIREMENTS");

WHEREAS, due to Meritage installing corrugated pipe in lieu of smooth wall interior pipe, the COUNTY has requested that MERITAGE provide an irrevocable letter of credit in an amount and for a period of time in excess of the CODE REQUIREMENTS (the "LOC") for the PROJECT, and MERITAGE has agreed to do so;

WHEREAS, MERITAGE and COUNTY are executing this Memorandum of Understanding in order to memorialize their understanding of the LOC requirements.

1. RECITALS. The foregoing recitals are true and correct, and are incorporated herein by reference.

2. LOC REQUIREMENTS. Notwithstanding certain CODE REQUIREMENTS, MERITAGE agrees to provide the LOC to the COUNTY within fifteen (15) days from the date of the last of the signatures hereto in a form substantially similar to the form letter of credit attached hereto, and incorporated herein by reference, as **Exhibit B**. Specifically, MERITAGE agrees that the LOC shall exceed the CODE REQUIREMENTS in the following respects:

A. The LOC shall be in an amount equivalent to 100% of the cost of construction of the PROJECT, in lieu of an amount equal to ten percent (10%) of the cost of construction of the PROJECT;

B. The LOC shall expire one year from the date of issuance of the LOC; and

C. The LOC shall automatically renew for no more than four one-year periods, in lieu of one 90-day renewal.

3. COUNTY REQUIREMENTS. The COUNTY hereby approves the form of the LOC provided it is in substantially the form attached hereto as **Exhibit B**. The COUNTY agrees to hold and secure the LOC in accordance with its standard letter of credit practices and procedures. The COUNTY agrees to only draw on the LOC in accordance with the terms set forth therein.

4. TERM. The term of the responsibilities described in this MOU shall start on the Effective Date and end on the date the COUNTY has both signed off on the completion of the PROJECT and released the LOC.

5. AMENDMENTS. The provisions of this MOU may only be amended in writing by mutual agreement of the parties hereto.

6. COUNTERPARTS. This MOU may be executed in as many counterparts as there are signatories to the MOU, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

7. SEVERABILITY. If any part of this MOU is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this MOU if the rights and obligations of the parties and if the intention of the parties can continue to be effective. To that end, this MOU is declared severable.

8. ENTIRE AGREEMENT; NO THIRD PARTY BENEFICIARIES. This MOU constitutes the entire agreement between the parties hereto on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written MOU, shall be enforceable. No person or entity is intended to be a third-party beneficiary of this MOU; nor shall any person or entity be permitted to assert any claim or right as a beneficiary under this MOU.

9. EFFECTIVE DATE. The effective date of this MOU is August 31, 2018, on or about the date of issuance of the Certificate of Completion for the Project.

IN WITNESS WHEREOF, the parties have read and agree with this MOU and executed this MOU or caused this MOU to be executed and delivered by their duly authorized officers on the date(s) noted below.

ATTEST:

COUNTY:

Phil Diamond, CPA, County Comptroller,
as Clerk of the Board of County Commissioners

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: Katie Melt
Deputy Clerk

By: Teresa Jacobs
Teresa Jacobs
Orange County Mayor

Execution Date: August 21, 2018

[signatures continue on following page]

Signed, sealed, and delivered
in the presence of:

[Signature]
Name: Alex Madison
[Signature]
Name: Lee Suscitt

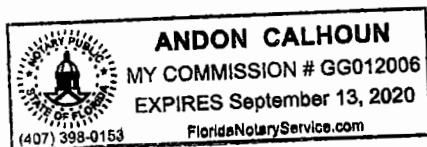
MERITAGE HOMES OF FLORIDA, INC.,
a Florida corporation

By: [Signature]
Name: Brian Kittle
Title: Division President

STATE OF FLORIDA
COUNTY OF ORANGE

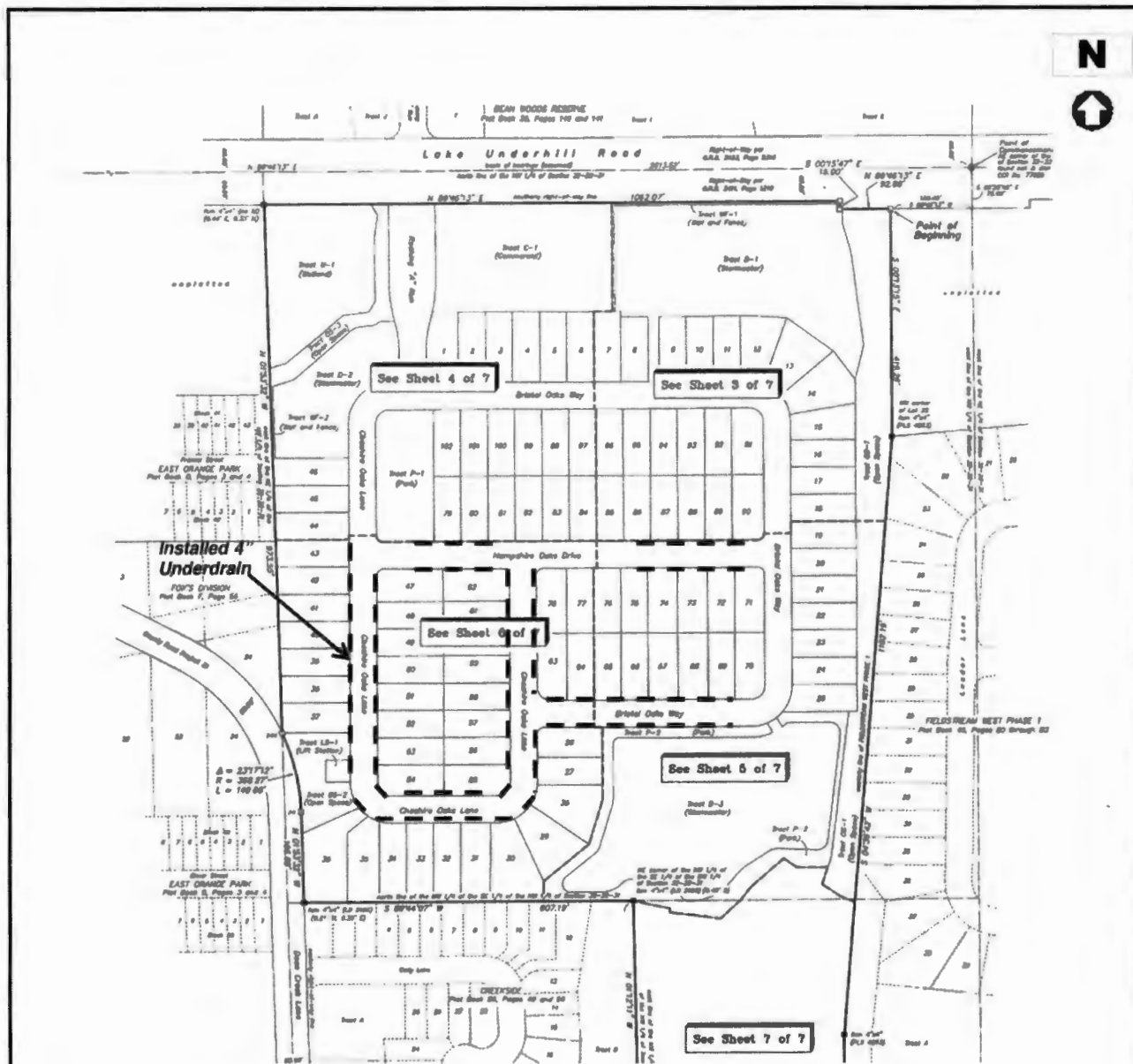
SWORN and subscribed to freely and voluntarily for the purposes therein expressed before me by
Brian Kittle, of MERITAGE HOMES OF FLORIDA, INC., a Florida corporation,
who is known by me to be the person described herein and who executed the foregoing this 30 day of
July, 2018. S/he is personally known to me or has produced _____ as
identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 30 day of
July, 2018.



[Signature]
Notary Public
Print Name: Andon Calhoun
My Commission Expires: Sept. 13, 2020

EXHIBIT A



--- Approximate Locations of Currently Installed 4" Underdrain Segments.

Bristol Oaks Way Sta. 23+00 – 26+83.81
Hampshire Oaks Drive Sta. 11+00 – 12+50 & 15+25 – 17+00
Cheshire Oaks Lane Sta. 10+00 – 22+50



UNDERDRAIN LOCATION DIAGRAM

Heritage Oaks
 Orlando, Orange County, Florida

SOURCE: Ganung-Belton Associates, Inc.

JOB NO.
 24-6047

DRAWN BY
 MM

SCALE
 NTS

FIGURE NO.
 1

CHECKED BY
 AVR

DATE
 03-29-2018

**EXHIBIT B
FORM OF LOC**

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

DATE: _____, 20__

BENEFICIARY:

ORANGE COUNTY, FLORIDA
C/O ORANGE COUNTY DEV. ENGIN.
4200 SOUTH JOHN YOUNG PKWY
ORLANDO, FLORIDA 32839
ATTN: LUIS A. ALVAN

ACCOUNT PARTY:

MERITAGE HOMES OF FLORIDA, INC.
5337 MILLENIA LAKES BOULEVARD,
SUITE 410
ORLANDO, FL 32839
ATTN: _____

PROJECT NAME: HERITAGE OAKS

AMOUNT: \$353,734.83 (**THREE HUNDRED FIFTY-THREE THOUSAND SEVEN HUNDRED THIRTY-FOUR AND 83/100 DOLLARS**)

DATE OF EXPIRY: _____, 2019

AT THE REQUEST AND FOR THE ACCOUNT OF ACCOUNT PARTY, WE, _____ ("ISSUER"), HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____, IN FAVOR OF ORANGE COUNTY, A CHARTER COUNTY AND POLITICAL SUBDIVISION OF THE STATE OF FLORIDA ("BENEFICIARY"), AND AUTHORIZE YOU TO DRAW ON ISSUER, IN THE MAXIMUM AGGREGATE AMOUNT OF THREE HUNDRED FIFTY-THREE THOUSAND SEVEN HUNDRED THIRTY-FOUR AND 83/100 DOLLARS (\$353,734.83), IN UNITED STATES FUNDS, WHICH IS PAYABLE AT SIGHT AGAINST PRESENTATION OF YOUR DEMAND, WHEN ACCOMPANIED BY THIS LETTER OF CREDIT AND ANY OF THE FOLLOWING DOCUMENTS:

1. A STATEMENT SIGNED BY THE ORANGE COUNTY MAYOR OR AUTHORIZED REPRESENTATIVE READING AS FOLLOWS: "THE PERFORMANCE OF ACCOUNT PARTY'S OBLIGATION HAS NOT BEEN COMPLETED YET AND THE LETTER OF CREDIT WILL EXPIRE WITHIN 45 DAYS FROM THE DATE OF DRAWING WITHOUT BEING EXTENDED OR REPLACED TO THE COUNTY'S SATISFACTION;" OR
2. A STATEMENT SIGNED BY THE ORANGE COUNTY MAYOR OR AUTHORIZED REPRESENTATIVE READING AS FOLLOWS: "ISSUER [CONFIRMER] HAS LOST ITS DESIGNATION AS A 'QUALIFIED PUBLIC DEPOSITORY' PURSUANT TO FLORIDA STATUTES, CHAPTER 280, AND AN ACCEPTABLE REPLACEMENT LETTER OF CREDIT HAS NOT BEEN RECEIVED BY THE COUNTY FOLLOWING NOTICE TO ACCOUNT PARTY;" OR
3. A STATEMENT SIGNED BY THE ORANGE COUNTY MAYOR OR AUTHORIZED REPRESENTATIVE READING AS FOLLOWS: THE DRAWING IS DUE TO THE FAILURE OF THE UNDERDRAIN SYSTEM CONSTRUCTED BY ACCOUNT PARTY FOR THE HERITAGE OAKS PROJECT (HEREINAFTER THE "IMPROVEMENTS") AND/OR THE ACCOUNT PARTY'S FAILURE TO MAINTAIN THE FUNCTIONING OF SAID IMPROVEMENTS FOR A FIVE (5) YEAR PERIOD FOLLOWING ISSUANCE OF A CERTIFICATE OF COMPLETION FOR SUCH IMPROVEMENTS. SPECIFICALLY, THE STATEMENT SHALL BE TO THE EFFECT THAT: "THE MATERIALS, WORKMANSHIP, STRUCTURAL INTEGRITY, FUNCTIONING, AND/OR MAINTENANCE (MAINTENANCE REQUIRED TO ENSURE PROPER

OPERATION) OF THE IMPROVEMENTS HAS BEEN DETERMINED TO BE UNACCEPTABLE, AND SUCH CONDITION(S) HAS NOT BEEN CORRECTED DESPITE NOTIFICATION TO THE DEVELOPER,” AND FURTHER STATING THE SUMS DUE AS A RESULT OF SUCH DEFAULT TO DEFRAY THE ESTIMATED COST OF REPAIRS TO THE IMPROVEMENTS..

A SUM NOT TO EXCEED THREE HUNDRED FIFTY-THREE THOUSAND SEVEN HUNDRED THIRTY-FOUR AND 83/100 DOLLARS (\$353,734.83) SHALL BE AVAILABLE FOR PARTIAL OR FULL DRAW BY PRESENTATION OF YOUR DEMAND AT SIGHT IF ACCOMPANIED BY A WRITTEN STATEMENT AS DESCRIBED IN THE PRECEDING PARAGRAPHS.

THIS LETTER OF CREDIT SHALL BE IN FULL FORCE AND EFFECT UNTIL _____, 20____, **[ONE YEAR FROM DATE OF ISSUANCE]** AND WILL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR SUCCESSIVE ONE-YEAR PERIODS, NOT TO EXCEED FOUR SUCH ONE-YEAR PERIODS, UNLESS WE PROVIDE THE BENEFICIARY WITH WRITTEN NOTICE OF OUR INTENT TO TERMINATE THE CREDIT HEREIN EXTENDED, WHICH NOTICE MUST BE PROVIDED AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE OF THE ORIGINAL TERM HEREOF OR ANY EXTENDED TERM.

[IF A CONFIRMING BANK IS TO BE USED, INSERT THIS LANGUAGE: ISSUER NOMINATES _____ [NAME AND ADDRESS OF NOMINATED CONFIRMING BANK] TO CONFIRM THIS STANDBY LETTER OF CREDIT.]

DRAWS MUST BE PRESENTED NO LATER THAN _____, 20____, OR ANY EXTENDED EXPIRATION DATE AND MUST BEAR THE CLAUSE: “DRAWN UNDER LETTER OF CREDIT NO. _____ OF [ISSUER], DATED _____, 20____.”

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED; PROVIDED, HOWEVER, THAT ANY PAYMENT MADE UNDER THIS LETTER OF CREDIT SHALL REDUCE THE AMOUNT AVAILABLE UNDER IT.

WE, ISSUER, HEREBY AGREE THAT ALL DRAWS PRESENTED UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT SHALL BE DULY HONORED UPON PRESENTATION TO ISSUER [CONFIRMER] AT: (*note: must have tri-county street address (Orange, Osceola, Seminole)*).

THIS LETTER OF CREDIT WILL BE CONSIDERED AS CANCELLED UPON RECEIPT BY US OF THE ORIGINAL LETTER OF CREDIT OR UPON ANY PRESENT OR FUTURE EXPIRY DATE HEREUNDER, WHICHEVER SHALL OCCUR FIRST.

THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 (ISP98) (INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590) AND TO THE PROVISIONS OF FLORIDA LAW. IF A CONFLICT BETWEEN THE ISP98 AND FLORIDA LAW SHOULD ARISE, FLORIDA LAW SHALL PREVAIL. IF A CONFLICT BETWEEN FLORIDA LAW AND THE LAW OF ANY OTHER STATE OR COUNTRY SHALL ARISE, FLORIDA LAW SHALL PREVAIL.

VERY TRULY YOURS,

AUTHORIZED SIGNATURE

ISSUER

AUTHORIZED SIGNATURE

ISSUER