



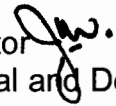
**Interoffice Memorandum**

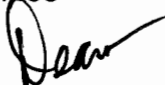
APPROVED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS  
MAY 06 2014 NP/CAS

**AGENDA ITEM**

April 14, 2014

**TO:** Mayor Teresa Jacobs  
–AND–  
Board of County Commissioners

**FROM:** Jon V. Weiss, P.E., Director   
Community, Environmental and Development  
Services Department Office

**CONTACT PERSON:** Dean Stites, Manager   
Fiscal and Operational Support Division  
407 836-5601

**SUBJECT:** May 6, 2014 – Consent Item  
Maronda Homes, Inc. of Florida Indemnity Agreement

On October 16, 2003, the School Board of Orange County (“School Board”) entered into a Capacity Enhancement Agreement (CEA) with Better Built Homes and Hewitt Properties regarding a proposed development project located along Good Homes Road north of SR 50 in west Orange County, Florida. The property was subsequently transferred to Bella Forte, Inc. As a condition of the CEA, Bella Forte, Inc. made a prepayment of school impact fees in the amount of \$129,840. The funds were paid into credit account SCA-047. Impact fee credits of \$12,984 were withdrawn from the account, leaving a balance of \$116,856 in SCA-047.

The property was conveyed to Maronda Homes, Inc. of Florida (Maronda Homes) in 2013. At some point in 2013, Maronda Homes attempted to access SCA-047, but because the ownership of SCA-047 was still in the name of Bella Forte, Inc. the County declined Maronda Homes’ request and asked that they obtain approval from the School Board to access SCA-047. Due to some issues with the chain of title to the property, neither the County nor the School Board had proof that Maronda Homes was entitled to the funds held in SCA-047. During the time that Maronda Homes was trying to sort through their issues with SCA-047, Maronda Homes needed to pull permits, so rather than draw down on SCA-047, it instead paid the school impact fees associated with the development and now seeks a refund of those impact fees from SCA-047.

After reviewing the documentation provided by Maronda Homes, the School Board requested that Maronda enter into the attached Indemnity Agreement (“Agreement”) to

Page Two  
May 6, 2014 – Consent Item  
Maronda Homes, Inc. of Florida Indemnity Agreement

ensure that if the refund was challenged, the School Board would be indemnified. Since the County will be processing the refund, we are also a party to the Agreement. The County's only obligation under the Agreement is to process the refund request in accordance with our standard procedures once we have received something in writing from the School Board approving such a refund. The School Board has agreed that once the Agreement is finalized, they will send something in writing to the County consenting to the refund request. The Indemnity Agreement indemnifies and holds the School Board and Orange County harmless from and against liabilities and claims from Bella Forte, Inc. arising from refunds from SCA-047 for a period of ten years from the date of refund.

**ACTION REQUESTED: Approval of Indemnity Agreement by Maronda Homes, Inc. of Florida in favor of The School Board of Orange County, Florida, and Orange County, regarding a refund of school impact fee credits in the amount of \$116,856. District 6**

JVW/DS:rep

Attachment

MAY 06 2014 NP/CAS

## INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (This “**Agreement**”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, (the “**Effective Date**”) by MARONDA HOMES, INC. OF FLORIDA, a Florida corporation, whose address is 3993 West First Street, Sanford, Florida 32771, (the “**Indemnitor**”) in favor of THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA a public corporate body organized and existing under the Constitution and laws of the State of Florida, whose address is 445 West Amelia Street, Orlando, Florida 32801 (the “**School Board**”) and Orange county, a charter county and political subdivision of the State of Florida (the “**County**”).

WHEREAS, on October 16, 2003, the School Board entered into that certain Capacity Enchantment Agreement No. 03-004 (the “**CEA**”) with Better Built Homes and Hewitt properties pertaining to certain property located in Orange County described in Exhibit “A” to the CEA (the “**Property**”);

WHEREAS, as a condition for developing the Property into a single-family residential development, the CEA required the prepayment of a portion of the school impact fees and establishment of a school impact fee credit account (the “**CEA Condition**”);

WHEREAS, Section 17 of the CEA provides that all rights, privileges, benefits and burdens created under the CEA are covenants running with the land and shall be binding upon the parties to the CEA and their successors in title and assigns;

WHEREAS, title to the Property was subsequently transferred to Bella Forte, Inc.;

WHEREAS, in satisfaction of the above-referenced CEA Condition, on or about November 21, 2006, Bella Forte, Inc., established a school impact fee credit account (“**SCA-047**”) with the County to provide for the development of thirty (30) single-family units on the Property;

WHEREAS, SCA-047 was established with the County in accordance with an Interlocal Agreement Between Orange County, Florida and The School Board of Orange County Regarding Collection of Certain Development-Related Fees dated April 20, 2010, as amended from time to time, pursuant to which the County collects school impact fees on behalf of the School Board; and

WHEREAS, Bella Forte, Inc., subsequently prepaid \$129,840.00 (\$4,328.00 per unit) into SCA-047;

WHEREAS, three school impact fee credits were subsequently withdrawn from the SCA-047 and applied toward the school impact fees associated with the development of three single-family units on the Property, resulting in a balance o \$116,856.00 remaining in SCA-047 (the “**Account Balance**”);

WHEREAS, pursuant to that certain Special Warranty Deed dates April 11, 2013, and recorded in Official Records Book 10559, Page 3388, Public Records of Orange County, Florida, the Property was conveyed to Indemnitor'

WHEREAS, Indemnitor, as owner of the Property, has not drawn on SCA-047 and has instead been directly paying the school impact fees associated with the development of the Property;

WHEREAS, Indemnitor has requested that the County refund the Account Balance to Indemnitor; and

WHEREAS, because the school impact fees belong to the School Board, and because there is no record of an assignment of SCA-047 from Bella Forte, Inc. to Indemnitor, the County has requested written confirmation from the School Board their consent to any such refund; and

WHEREAS, as a condition to granting such a refund, Indemnitor has agreed to indemnify the School Board and County as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which hereby acknowledged, Indemnitor, School Board, and County agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are hereby incorporated in to this Agreement as a material part of this Agreement.

2. **Refund.** Within thirty (30) days from the Effective Date of this Agreement, The School Board hereby agrees to send its written confirmation to the County consenting to the release of the Account Balance to Indemnitor. County hereby agrees to process such refund request in accordance with County's standard refund procedures.

3. **Indemnity.** Indemnitor hereby agrees to indemnify and hold harmless the School Board and County from and against any and all liabilities, obligations, losses, damages, costs and expenses (including, without limitation, attorneys' fees and costs), causes of action, suits, claims, demands and judgments of any nature or description whatsoever, up to an amount equal to the Account Balance, resulting from a claim by Bella Forte, Inc., against the School Board or County arising from any refund related to SCA-047, for a period of ten (10) years from the date of any such refund.

4. **Severability.** The invalidity or unenforceability f any particular provision of this Agreement shall not, to the extent possible, affect the other provisions hereof, and this Agreement shall, to the extent possible, be construed and enforces in all respects as if such invalid or unenforceable provision had not been contained herein.

5. **Modification.** No change or modification of this Agreement shall be valid unless in writing and signed by the parties hereto.

6. **Notices.** All notices, request, demands and other commendations hereunder shall be in writing and personally delivered or sent by United States Certified mail, return receipt requested, postage prepaid, to the following addresses:

If to Indemnitor:

Maronda Homes, Inc. of Florida  
3993 West First Street  
Sanford, FL 32771  
Attn: Scott C. Howard

With a copy to:

Akerman LLP  
Attn: James H. McNeil, Jr, Esq.  
420 South Orange Avenue, Suite 1200  
Orlando, FL 32801  
Email: jim.mcneil@akerman.com

If to School Board:

The School Board of Orange County, Florida  
415 West Amelia Street  
Orlando, Florida 328014  
Attn: Eileen D. Fernández, Esq.

If to County:

Orange County Community, Environmental, and Development Services  
Department  
Manger, Fiscal and Operational Support Division  
201 South Rosalind Avenue, 2<sup>nd</sup> Floor  
Orlando, FL 32801

Provided, however, that any party hereto may, from time to time, give to the other party written notice, in the manner provided for herein, of some other address to which communications to such party shall be sent, in which event notices to such party shall be personally delivered or sent by United States certified mail to such address. Notice shall be deemed effectively given hereunder when personally delivered or, in the case of mailed notices, upon the earlier of: (a) the date on which the return receipt is signed to acknowledge delivery or (b) three (3) days after deposit in the United States mail, postage prepaid, certified, return receipt requested.

7. **Completeness of Agreement.** This Agreement and the related instruments, documents and agreements referred to herein constituted the entire agreement and understanding of the parties hereto with respect to the subject matter hereof. Nothing contained herein shall be deemed a waiver by School Board or County of Indemnitor's school impact fee obligations related to the Property.

8. **Legal Fees.** With the exception of Indemnitor's obligation hereunder to indemnify School Board and County, if any party to this Agreement institutes any action or proceeding to enforce this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the non-prevailing party all legal costs and expenses incurred by the prevailing party, including, but not limited to, reasonable attorney fees, paralegal fees, law clerk fees and other legal costs and expenses, whether incurred at or before trial and whether incurred at the trial level or in any appellate, bankruptcy or other legal proceeding.

9. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of any legal or equitable action arising under this Agreement, the venue for such action shall lie exclusively within either the state courts of Florida located in Orange County, Florida, or the United States District Court for the Middle District of Florida, as the case may be, and the parties hereto do hereby specifically waive any other jurisdiction and venue.

10. **Waiver.** No waiver of any breach of any term or condition of this Agreement shall be deemed to be a waiver of any subsequent breach of any term or condition of a like or different nature.

11. **Captions.** The captions used herein are inserted only as a matter of convenience and are not to be used in the interpretation of any provision hereof.

12. **Draftsmanship.** The fact that one of the parties hereto may have drafted or structured any provision, hereof shall not be considered in construing the particular provision either in favor of, or against, such party.

13. **Counterparts.** This Agreement may be executed in three or more counterparts, each of which shall be deemed to be an original but all of which shall be deemed to constitute one and the same Agreement.

*INTENTIONALLY LEFT BLANK*  
*SEE NEXT PAGES FOR SIGNATURES*

SIGNATURE PAGE OF INDEMNITOR

Witnesses:

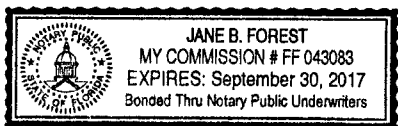
Kirsty Biancardi  
Print Name: Kirsty Biancardi  
Jane B. Forest  
Print Name: Jane B. Forest

**"INDEMNITOR"**  
MARONDA HOMES, INC. OF FLORIDA  
a Florida corporation

By: [Signature]  
Print Name: Scott C. Howard  
Title: President

STATE OF FLORIDA     )  
  ) ss:  
COUNTY OF SEMINOLE )

The foregoing instrument was sworn to and subscribed before me this 10 day of March, 2014 by Scott C. Howard, as President, of MARONDA HOMES, INC. OF FLORIDA, a Florida corporation, on behalf of the corporation. Said person is  personally known to me; or  produced a driver's license issued by the \_\_\_\_\_ Department of Highway Safety and Motor Vehicles as identification; or  produced the following identification: \_\_\_\_\_.



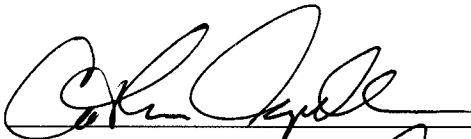
Jane B. Forest  
NOTARY PUBLIC, STATE OF FLORIDA  
Jane B. Forest  
(Print, Type or Stamp Commissioned Name of Notary Public)

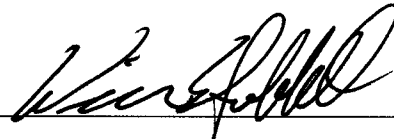
Signed, sealed and delivered in the

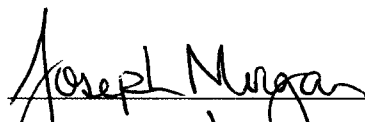
Presence of:

**"SCHOOL BOARD"**

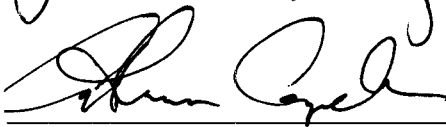
**THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA**, a corporate body organized and existing under the constitution and laws of the State of Florida


  
Print Name: Catherine Capwell

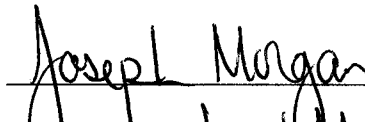
By:   
William E. Sublette, Chairman

  
Print Name: Joseph Morgan

Date: April 3, 2014

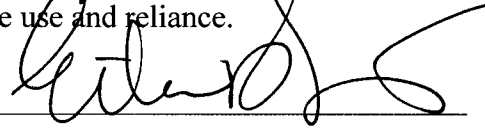
  
Print Name: Catherine Capwell

Attest:   
Barbara M. Jenkins, as its Secretary and Superintendent

  
Print Name: Joseph Morgan

{Corporate Seal}

Approved as to form and legality by the Office of the General Counsel to the School Board of Orange County, Florida this 2nd day of April, 2014 for its exclusive use and reliance.

  
Eileen D. Fernandez, Esq., Associate General Counsel



STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 3rd day of April, 2014, by William E. Sublette, as the Chairman of The School Board of Orange County, Florida, a corporate body organized and existing under the constitution and laws of the State of Florida, on behalf of the School Board. Said person (check one)  is personally known to me or \_\_\_\_\_ produced \_\_\_\_\_ as identification.



Margarita Rivera  
Printed Name: Margarita Rivera  
Notary Public, State of Florida  
Commission No. \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 3rd day of April, 2014, by Barbara M. Jenkins, as Secretary and Superintendent of The School Board of Orange County, Florida, a corporate body organized and existing under the constitution and laws of the State of Florida, on behalf of the School Board. Said person (check one)  is personally known to me or \_\_\_\_\_ produced \_\_\_\_\_ as identification.



Margarita Rivera  
Printed Name: Margarita Rivera  
Notary Public, State of Florida  
Commission No. \_\_\_\_\_  
My commission expires: \_\_\_\_\_

SIGNATURE PAGE OF COUNTY

“COUNTY”

ORANGE COUNTY, FLORIDA

By: *Teresa Jacobs*  
Teresa Jacobs  
Orange County Mayor

Date: 5.6.14

ATTEST: Martha O. Haynie, County Comptroller  
As Clerk of the Board of County Commissioners

By: *Katie Smith*  
Deputy Clerk

