

EXHIBIT 4

STREETS CONSTRUCTED IN ACCORDANCE WITH CITY STANDARDS DESPITE CONTRARY STATEMENTS

There have been unfounded allegations made that there were flaws in the construction of the streets.

- To our knowledge, no one has come forward with evidence that shortcuts were taken or that there were flaws in the construction of the streets.
- Ronald Williams, the City Engineer at the time and a Professional Engineer, by letter dated August 21, 2006, authorized the release of final amounts from the Escrow funds being held by First Bank in connection with the subdivision improvements under a Guaranteed Completion Escrow Agreement. This letter includes tables reflecting the portion of the escrow applicable to concrete, grading and sidewalks. Escrow Agreements for the completion of improvements generally require improvements to be completed within a certain date and that the municipality (that benefits from the Escrow) certifies that the improvements are completed and in accord with the applicable ordinances of the City. This would be in accordance with Sunset Hills Subdivision Regulation 2.2(c) (11) which states: “Acceptance and final approval. Before the applicant’s obligation to the City of Sunset Hills is terminated, all required improvements shall be constructed under the observation and inspection of the inspecting agency and accepted for maintenance or given final approval by the City of Sunset Hills. A complete set of all “all as built” construction drawing for streets, storm and sanitary sewers, and other utilities shall be filed with the city clerk before the . . . escrow . . . will be released.”
- Wes Searcy, another engineer for the City by memo dated December 6, 2006 after the date of the escrow release stated that all of the improvement plans for the streets in the development (other than Gary Player Drive and Tapawingo Place) were in accordance with City standards.
- J. H. Berra was the developer of the Manors. Josh Foster, Vice President of Elite Development Services, a joint venture with J.H. Berra Construction and McBride Homes, has confirmed that all streets were built to City standards.
- The City states that multiple locations of roadway have grade above 7% allowed. 3 locations are above the 10% allowed by variance. With respect to the grades, the City cannot now require any changes to the grade. The time to do so was before acceptance and approval of the roads. And, the City’s arbitrary grade requirement for streets in a residential subdivision should not apply retroactively. Therefore, this should be a non-issue. Even if the City failed to confirm that the streets were built to City standards prior to the release of the escrow, it is prevented from now challenging compliance with City standards by numerous legal doctrines, including but not limited to, laches, estoppel and waiver. Also, notably at least one slab exceeding the permissible grade violation is in the City right of way.
- Interestingly, the City of Kirkwood permits grades up to 12% in some instances. A grade of 12% is not inherently dangerous.