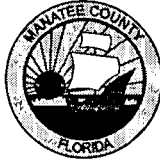


MEMORANDUM



Public Works Department
Fiscal Services Division
1022 26th Ave. E.
Bradenton, FL 34285

MANATEE COUNTY FLORIDA

Phone: 941-708-7450
Fax: 941-708-7502
www.mymanatee.org

To: Susan Romine, Board Records Manager, Clerk of the Circuit Court

Thru: Sue Sandhoff, Fiscal Operations Division Manager

From: Jane Oliver, Bond Coordinator

APPROVED IN OPEN SESSION

Date: July 22, 2011

JUL 26 2011

Subject: UNIVERSITY PARKWAY RIGHT-IN/RIGHT-OUT ACCESS
(B-10-003)

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

**RELEASE PERFORMANCE AGREEMENT
RELEASE SURETY BOND
ACCEPT DEFECT SECURITY AGREEMENT
ACCEPT SURETY BOND**

Please schedule on your consent calendar for the next available Board of County Commissioner's Agenda, the following "Form of Motion".

- **Authorization to release** the *Required Improvements Agreement* (In conjunction with a Surety Bond as security guaranteeing completion of Required Improvements) in the amount of \$104,829.91 securing infrastructure improvements for the right-in/right-out access for a portion of University Parkway;
- **Authorization to release and return** the surety bond and any Riders associated with the above agreement for performance of required improvements. Documents will be returned to David Baldauf with Benderson Properties, Inc. located at 570 Delaware Avenue, Buffalo, NY 14202;
- **Surety Bond** No. 929509665 issued through Western Insurance Company;
- **Amount** of Performance Bond \$104,829.91;
- **Acceptance of** and authorization for Chairman to execute the *Agreement in Conjunction with Surety Bond (Attachment "A") as Defect Security Warranting Required Improvements*.

Susan Romine - (Univ Pkwy Right In/Right Out)

July 22, 2011

Page 2

- **Acceptance of**, and authorization for Chairman to execute the surety bond in conjunction with the above Agreement;
 - **Surety Bond No.** 929530751 issued through Western Surety Company;
 - **Amount** of Defect Security \$8,063.84.

SS/jo

cc: Records Management
Sia Mollanazar, P.E., Deputy Director – Engineering Services
Chad Butzow, P.E., Deputy Director – Field Services Operations
Mickey Lutz, Maintenance Operations Division Manager
Andy Fischer, Infrastructure Inspections Division Manager
Christina Taylor, General Accounting/Finance
Robin Tardiff, Property Appraiser's Office
David Baldauf, Benderson Properties, Inc.
Western Surety Co.

For: University Pkwy Right-In/Right Out Access Connection
(Name of Project)
R-O-W Use Permit No. 10-0054

**AGREEMENT IN CONJUNCTION WITH
SURETY BOND (Attachment "A") AS DEFECT SECURITY
WARRANTING REQUIRED IMPROVEMENTS**

WHEREAS, BENDERSON PROPERTIES (Developer) has constructed certain Required Improvements as a condition of approval of a subdivision or final site plan identified as **UNIVERSITY PARKWAY RIGHT-IN/RIGHT-OUT ACCESS CONNECTION** (Project); and,

WHEREAS, in connection with the Project the Developer has submitted "as-built" construction drawings for the Required Improvements which are on file with and have been approved by Manatee County, Florida; and,

WHEREAS, the Developer is requesting the County to accept for maintenance certain of these Required Improvements; and,

WHEREAS, the Manatee County Land Development Code, Ordinance 90-01, requires that this Security, which represents an amount equal to ten percent (10%) of the actual installation costs of the Required Improvements which the Developer is presently requesting the County to accept for maintenance, be executed prior to their acceptance by the County.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS;

1. That the Developer herewith tenders unto the County a Surety Bond No. 929530751 dated JUNE 21, 2011 in the amount of \$8,063.84 (Numbers), EIGHT THOUSAND SIXTY-THREE & 84/100 (Words), appended hereto and made a part hereof as **Attachment "A"** guaranteeing that the **WESTERN SURETY COMPANY** (Surety Company), as Surety on the bond, shall pay this sum to Manatee County in accordance set forth herein.

**CONDITIONS OF THE DEFECT SECURITY FOR THE BENEFIT OF THE
COUNTY:**

ACCEPTED IN OPEN SESSION

JUL 27 2011

**BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA**

Defect Security Agree

For: University Pkwy Right-In/Right Out Access Connection
(Name of Project)

- A. This security is posted for the purpose of correcting any construction, design, or material defects or failures of or in the Required Improvements which the Developer is presently requesting the County to accept for maintenance, (Defects) which appear within thirty-six (36) months from the date of the County's approval and acceptance of those required Improvements as evidenced by County's execution of this document.
- B. After identifying any such Defects, the County, after providing at least ten (10) days written notice to the Developer by certified mail, return receipt requested, may exercise its right to liquidate the Security for the purpose of correcting or causing the correction of the Defects and paying all costs thereof as provided herein. The costs of correcting shall include all costs of correcting Defects including without limitation all engineering, legal, and contingent costs, together with any and all claims, costs, expenses, and damages, either direct or consequential, which the County may sustain on account of the Defects and correction thereof. Any portion of the Security not used by the County may be released to the Surety upon a finding by a County Engineer that no further defects have been discovered.

Alternatively, the Developer, with the concurrence and at the option of the County, may undertake to correct such Defects itself upon posting additional security acceptable to the County.

- 2. Developer warrants the Required Improvements to be free from Defects, and agrees to indemnify and pay to the County the full cost of correction any such Defects appearing within thirty-six (36) months of the date of the County's acceptance of the improvements without regard to the amount of this Security. Developer agrees to the use of the funds by the County as provided herein.

(Defect Security- Developer is Corp.)

FOR: Tourist Center Drive

SIGNED AND SEALED this 23rd day of June, 20 11

WITNESSES:

Catherine N Eisenhut
Witness

Catherine N Eisenhut
Type or Print Name

Sheila Hoch
Witness

Sheila Hoch
Type or Print Name

Benderson Properties, Inc.

BY: [Signature]
Signature

David H. Baldauf

Type or Print Name

Vice President

Title (If attorney-in-fact Attach Power of Attorney)

570 Delaware Avenue

Postal Address

Buffalo NY 14202

City State Zip

NOTARY ACKNOWLEDGMENT

STATE OF: NEW YORK

COUNTY OF: ERIE

The foregoing instrument was acknowledged before me this 23rd day of June, 20 11, by David H. Baldauf, as Vice President (Title), on behalf of the corporation identified herein as Developer and who is personally known to me or who has produced _____ (Type of Identification) as identification.

NOTARY SEAL:

SHEILA M. HOCH
Notary Public, State of New York
Qualified in Erie County
Commission Expires May 28, 2014

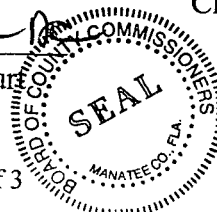
Sheila M. Hoch
Notary Public
Sheila M. Hoch
Print Name of Notary

Approved and accepted for and on behalf of Manatee County, Florida, this 26th day of July, 2011.

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

BY: [Signature]
Chairman

ATTEST: By: Susan Blomine
R. B. Shore, Clerk of the Circuit Court



**SURETY BOND
FOR DEFECTS OF REQUIRED IMPROVEMENTS**

(Attachment "A")

BOND NO. 929530751

KNOW ALL MEN BY THESE PRESENT:

That the Developer, Benderson Properties, Inc. as Principal, and Western Surety Company, a Surety Company, duly authorized to transact business in the State of Florida, are held and firmly bound unto the County of Manatee, State of Florida, as Obligee, in the sum of \$8,063.84 (Numbers) Eight Thousand Sixty Three and 84/100 Dollars (Words) for which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents for the specific benefit of the County in accordance with the conditions set forth herein and in "Agreement in Conjunction with the Surety Bond as Defect Security Warranting Required Improvements".

THE CONDITION of the above obligation is such that, Whereas the Principal has entered into a contract, dated 7-26-11 (LEAVE BLANK - Board of County Commission approval date) with the obligation to warrant those Required Improvements which the Principal is presently requesting the Obligee to accept for maintenance to be free from defects or failures involving construction, design, or materials.

NOW THEREFORE, if the Obligee's inspection of the Required Improvements finds no defects within thirty six (36) months from the date of the Obligee's approval and acceptance of those Required Improvements, then this obligation shall be null and void; otherwise this obligation shall remain in full force and effect. In the event the Defects are not remedied in accordance with the terms of the attached "**Agreement**", which is hereby incorporated herein by reference, the Surety will forthwith pay to the Obligee the costs of correcting the Defects in an amount not exceeding the said sum specified above. The amount of money required to repair the defects shall be at the sole discretion of the County. Means of notification of intent to collect shall be by certified mail to the Surety at the address on page 2. Payment will be made to the County within thirty (30) days by certified check drawn on behalf of the Board of County Commissioners at P.O. Box 1000, Bradenton, FL 34206.

This Surety Bond shall be construed in accordance to the Laws of Florida, and any action of whatever nature, in connection with this Bond and the Agreement Warranting Required Improvements shall be filed in the Twelfth Judicial Circuit in and for Manatee County, Florida.

ACCEPTED IN OPEN SESSION

JUL 27 2011

INSURANCE COMPANY SIGNATURE FORM

FOR: Tourist Center Drive

(Name of Project)

BOND NO. 929530751

SIGNED AND SEALED this 21st day of June, 20 11

Western Surety Company

Surety Company Name

By: John C. Plate

Signature - As its Agent

John C. Plate, Attorney-in-fact

Print Name & Title

333 S. Wabash Avenue, 41st Floor

Address

Chicago

IL

60604

City

State

Zip

WITNESSES OR CORPORATE SEAL

Carol White
Signature

Carol White

Print Name

Diane Hellwig
Signature

Diane Hellwig

Print Name

NOTARY ACKNOWLEDGMENT

STATE OF: Virginia

COUNTY OF Fairfax

The foregoing instrument was acknowledged before me this 21st day of June, 2011, by John C. Plate as Attorney-in-fact (Title), on behalf of the Surety identified herein, and who is personally known to me or who has produced NA (Type of Identification) as identification.

NOTARY SEAL:



Terri I. Campos
Notary Public
Commonwealth of Virginia
ID-7106227
My Commission Expires
November 30, 2011

Commission No. 7106227 My Commission Expires: November 30, 2011

Terri I. Campos
Notary Public

Terri I. Campos

Print Name of Notary

DEVELOPER SIGNATURE FORM

FOR: Tourist Center Drive

(Name of Project)

BOND NO. 929530751

SIGNED AND SEALED this 22 day of June, 20 11

Tourist Center Drive

By: Benderson Properties, Inc.

Developer

David H. Baldauf, Vice President

Print Name & Title

570 Delaware Avenue

Postal Address

Buffalo NY 14202

City State Zip

(If attorney-in-fact
Attach Power of Attorney)

WITNESSES OR CORPORATE SEAL

Sherry A. Keklak
Signature
Sherry A. Keklak
Print Name

Catherine N. Eisenhut
Signature
Catherine N. Eisenhut
Print Name

NOTARY ACKNOWLEDGMENT

STATE OF New York
COUNTY OF _____

The foregoing instrument was acknowledged before me this 22 day of June, 20 11, by David H. Baldauf as Vice President (Title), on behalf of the Surety identified herein, and who is personally known to me or who has produced _____ (Type of Identification) as identification.

NOTARY SEAL:

SHERRY A. KEKLAK
Notary Public, State of New York
Registration No. 01KE6018498
Qualified in Erie County
My Commission Expires January 11, 20 15

Sherry A. Keklak
Notary Public
Sherry A. Keklak
Print Name of Notary

Commission No. _____ My Commission Expires: _____

Approved and accepted for and on behalf of Manatee County, Florida, this 26th day of July, 20 11.

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

BY: _____ Chairman

ATTEST: By: Susan G. Romine
R. B. Shore, Clerk of the Circuit Court



Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

John C Plate, Laura L Brown, Timothy J Hutton, Terri I Campos, Individually

of Falls Church, VA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 12th day of November, 2008.



WESTERN SURETY COMPANY

Paul T. Bruflat, Senior Vice President

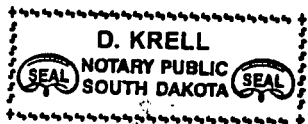
State of South Dakota
County of Minnehaha

} ss

On this 12th day of November, 2008, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

November 30, 2012



CERTIFICATE

D. Krell, Notary Public

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 21st day of June, 2011.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

