

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 *Sue Sandhoff*

From: Jane Oliver, Bond Coordinator *Jane Oliver*

Date: August 1, 2011

Subject: HERITAGE HARBOUR, PHASE I, SUBPHASE E,
CONSTRUCTION PHASE 3
PDMU-98-08/05-S-39 (F)
RELEASE PRIVATE IMPROVEMENTS AGREEMENT
ACCEPT PRIVATE IMPROVEMENTS EXTENSION AGREEMENT
ACCEPT AMENDMENT FOR LETTER OF CREDIT

APPROVED IN OPEN SESSION
AUG 04 2011
BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

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 following *Required Improvements Agreement and Temporary Construction Easement for Private Improvements* in the amount of \$51,253.75 securing roadway infrastructure;

RELEASED IN OPEN SESSION 8/4/11
BOARD OF COUNTY COMMISSIONERS, MANATEE COUNTY

PLEASE DO NOT RELEASE LETTER OF CREDIT NUMBER FGAC-08035. This Letter of Credit will be used to secure the one (1) year private improvements extension agreement previously accepted by the Board of County Commissioners.

- **Acceptance of** and authorization for Chairman to execute the following *Required Improvements Agreement and Temporary Construction Easement for Private Improvements* securing roadway infrastructure. **This Agreement will be for a one (1) year extension, secured by a Letter of Credit previously accepted by the Board of County Commissioners;**

ACCEPTED IN OPEN SESSION 8/4/11
BOARD OF COUNTY COMMISSIONERS, MANATEE COUNTY

- **Acceptance of** the following Letter of Credit Amendment in conjunction with the above agreement (original on file with the Clerk of the Circuit Court);

Susan Romine – Heritage Harbour Ph I, Subph E, Const Ph 3
August 1, 2011
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- **Letter of Credit** No. FGAC-08035, Amendment No. 2 dated June 16, 2011, issued through Fidelity Guaranty And Acceptance Corp.
- **Extended** to August 24, 2012
- **Amount** of Performance \$51,253.75.

8/4/11
ACCEPTED IN OPEN SESSION
BOARD OF COUNTY COMMISSIONERS, MANATEE COUNTY

SS/jo

cc: Records Management
Andy Fischer, Infrastructure Inspections Division Manager
Scott Edwards, Lennar Homes LLC
Fidelity Guaranty & Acceptance Corp.

Attachments

(Pvt Ext)

For: Heritage Harbour, Ph I, Subph E, Const. Ph III
Roadway Infrastructure
(Name of Project)

**REQUIRED IMPROVEMENTS AGREEMENT AND TEMPORARY
CONSTRUCTION EASEMENT FOR PRIVATE IMPROVEMENTS**

(Required with a Letter of Credit as security guaranteeing completion of Required Improvements, Form No. 8417)

WHEREAS, LENNAR HOMES, LLC. (Developer) has made application to Manatee County, Florida (County), for approval of a proposed subdivision or final site plan identified as HERITAGE HARBOUR, PHASE I, SUBPHASE E, CONSTRUCTION PHASE III (Project), the legal description for which is more particularly described in Exhibit "A" which is already on file with the Clerk of the Circuit Court; and

WHEREAS, the Manatee County Land Development Code, Ordinance 90-01, requires that a final subdivision plat not be approved for recording, and that a Certificate of Occupancy not be issued in accordance with final site plan approval, until certain improvements required by the Land Development Code or required as a condition of approval of the plat or site plan (Required Improvements) have been duly constructed, completed, and approved, unless the Developer has provided performance security guaranteeing to the satisfaction of the County that such improvements will be duly constructed, completed, and approved; and

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

WHEREAS, the Developer desires to obtain approval of the Project prior to installation of the Required Improvements; and

WHEREAS, the developer has submitted a cost estimate certificate by the Engineer of Record to be an accurate reflection of the cost to complete the remaining Required Improvements, and the Letter of Credit referred to below is in an amount which represents at least 200% of that estimated cost with a 3% administrative fee; and

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WHEREAS, the Required Improvements shall be privately owned necessitating additional covenants and protections for the County and the public in the event that the Developer fails to complete the Required Improvements; and

(Pvt Impv Agree)

For: Heritage Harbour, Ph I, Subph E, Const Ph III
(Name of Project)

WHEREAS, the Developer herewith tenders to the County a Letter of Credit, Number FGAC-08035, dated JULY 24, 2005 and AMENDMENT NO. 2 dated JUNE 16, 2011 with FIDELITY GUARANTY AND ACCEPTANCE CORP. (Financial Institution), in the amount of FIFTY ONE THOUSAND TWO HUNDRED FIFTY-THREE & 75/100 Dollars (Words) \$51,253.75 (Numbers), expiring on the 24TH day of AUGUST, 2012

NOW, THEREFORE, KNOW ALL MEN

1. That the Developer, in consideration of the County's approval of the proposed Project, and for other valuable consideration, hereby agrees to duly construct and complete the Required Improvements and to otherwise comply fully with the Land Development Code, any conditions of the Project's approval, and all other applicable regulations, requirements and agreements.
2. That in consideration of the foregoing, it is hereby mutually AGREED as follows:
 - (a) The Developer shall complete to the satisfaction of the County all Required Improvements, in accordance with the construction drawings or any amendments thereto approved by the County, at least three (3) months prior to the expiration date of the Letter of Credit and shall indemnify and save harmless the County against or from all claims, costs, expenses, damages, injury, or loss, either direct or consequential, including without limitation all engineering, legal, and contingent costs which the County may sustain on account of the failure of the Developer to fulfill within the time specified its obligations as described herein.
 - (b) In the event the Developer should fail or refuse to fulfill within the time specified its obligations under this Agreement, the County, at its option, shall have the right to enter upon that portion of the Project property, as determined necessary by the County and take all actions required to construct and complete, or cause to be constructed the Required Improvements. In the event the County should exercise such right, the County shall have the unqualified right to draw funds for the purpose of construction and completing the Required Improvements, or causing the same to be done, and for paying costs incidental to the exercise of its rights hereunder, in such amount as the County shall in its sole discretion determine, in accordance with the terms of the Letter of Credit.

(Pvt Impv Agree)

For: Heritage Harbour, Ph I, Subph E, Const Ph III
(Name of Project)

- (c) The Developer, his successors and assigns, hereby grants a temporary easement over property in the Project as necessary to allow the County to complete the Required Improvements.
 - (d) Should it become necessary for the County to complete the Required Improvements, the Developer hereby appoints the County as its agent for the purposes of using the approvals granted for the required improvements.
3. The Developer agrees that it is liable to the County for all costs and damages, as described above, that the County may incur in connection with constructing and completing the Required Improvements for the life of the Project, without regard to the amount of the Letter of Credit identified above. Should the Developer fail or refuse to complete the Required Improvements, as required, nothing herein shall be construed as affecting the County's right to resort to any and all legal and equitable remedies against the Developer, including specific performance, to which the Developer hereby agrees.
 4. The Developer understands and agrees that in the event that the Required Improvements are not constructed or installed in the manner or time consistent with this Agreement, the County shall withhold further permits or approvals for the Project until the Required Improvements have been completed or adequate progress, as determined by the Board of County Commissioners, toward completion of the Required Improvements has been demonstrated.
 5. Upon the County's completion of private improvements, the improvement shall be transferred to the Homeowner's Association or that entity set up in the deed restriction to be responsible for ongoing maintenance of the improvements. In no event shall public funds be used for the maintenance of private improvements, unless they are dedicated to and accepted by the County.

(Pvt Imp./LOC- Developer is Corp.)

For: Heritage Harbour, Ph I, Subph E, Const III

SIGNED AND SEALED this 21st day of July, 2011

WITNESSES:

[Signature]
 Witness
TERRY KIRCHNER
 Type or Print Name
[Signature]
 Witness
Tony BURDETT
 Type or Print Name

LENNAR HOMES, LLC
 Developer

BY: [Signature]
 Signature
DARIN McMURRAY
 Type or Print Name

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

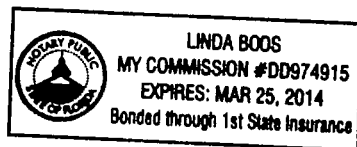
1049 E. University Blvd
 Postal Address
FOOTHILLS FL 33966
 City State Zip

NOTARY ACKNOWLEDGMENT

STATE OF: FLORIDA
 COUNTY OF: MANATEE

The foregoing instrument was acknowledged before me this 21 day of July, 2011, by Darin McMurray, as V.P. Lennar LLC, (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:



[Signature]
 Notary Public
LINDA BOOS
 Print Name of Notary

Approved and accepted for and on behalf of Manatee County, Florida, this 4 day of August, 2011.

BOARD OF COUNTY COMMISSIONERS
 OF MANATEE COUNTY, FLORIDA

BY: [Signature]
 Chairman

ATTEST: 34: Susan Romine
 R. B. Shore, Clerk of the Circuit Court



FIDELITY GUARANTY AND ACCEPTANCE CORP.

15550 LIGHTWAVE DRIVE - SUITE 200

CLEARWATER, FLORIDA 33760

PHONE (727)479-1790



JUNE 16, 2011

IRREVOCABLE LETTER OF CREDIT NO. FGAC-08035

BENEFICIARY: BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA
1112 MANATEE AVENUE WEST 4TH FLOOR
BRADENTON, FL 34206

APPLICANT: LENNAR HOMES, LLC
551 N. CATTLEMEN ROAD, SUITE 202
SARASOTA, FLORIDA 34232

GENTLEMEN:

TO AMEND LETTER OF CREDIT NO. FGAC-08035 AS ISSUED IN YOUR FAVOR.

THIS AMENDMENT IS AN INTEGRAL PART OF THE ORIGINAL CREDIT. ALL OTHER TERMS AND
CONDITIONS OF THE LETTER OF CREDIT INCLUDING PREVIOUS AMENDMENTS REMAIN
UNCHANGED.

AMENDED TERMS:

EXTEND FINAL EXPIRATION DATE TO: AUGUST 24, 2012.

IMMEDIATE NOTIFICATION MUST BE GIVEN TO US IF THIS AMENDMENT IS NOT ACCEPTED.

THIS IS AMENDMENT NO. 2.

VERY TRULY YOURS,

FIDELITY GUARANTY AND ACCEPTANCE CORP.

Jacqueline de Souza signature

JACQUELINE DE SOUZA, VICE PRESIDENT

Grace Santaella signature

ATTEST/WITNESS:

GRACE SANTAELLA, ASSISTANT SECRETARY