

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: Vicki Tessmer, Board Records Manager, Clerk of the Circuit Court

Thru: Ron Schulhofer, Director, Public Works Department

From: Jane Oliver, Bond Coordinator

Date: December 26, 2012

Subject: FOREST CREEK, PHASE II-B, SUBPHASE B
PDR-03-53/11-S-21 (F)
RELEASE PRIVATE IMPROVEMENTS AGREEMENT
SECURING FINAL LIFT OF ASPHALT
ACCEPT PRIVATE IMPROVEMENTS EXTENSION AGREEMENT
SECURING FINAL LIFT OF ASPHALT
ACCEPT VERIFICATION CERTIFICATE

APPROVED IN OPEN SESSION

JAN 08 2012

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 *Required Improvements Agreement and Temporary Construction Easement for Private Improvements* in the amount of \$16,824.11 securing the private final lift of asphalt;

PLEASE DO NOT RELEASE SURETY BOND NO. 5039466. This Surety will be used to secure the one (1) year required private final lift of asphalt improvements extension agreement, (see below).

- **Acceptance of** and authorization for Chairman to execute the *Required Improvements Agreement and Temporary Construction Easement for Private Improvements*. **This Agreement will be for a one (1) year extension, secured by a Surety Bond previously accepted by the Board of County Commissioners.**
- **Acceptance of**, the Verification Certificate in conjunction with the above agreement;

Vicki Tessmer – Forest Creek Ph IIB, Subph B
December 26, 2012
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- **Surety Bond No 5039466**, Verification Certificate dated June 27, 2012 issued through Bond Safeguard Insurance Company;
- **Extension to August 23, 2013;**
- **Amount of Performance Bond \$16,824.11.**

RS/jo

cc: Records Management
Andy Fischer, Infrastructure Inspections Div Mgr., Public Works
James Schier, Central Park Lifestyles, LLC
Bond Safeguard Insurance Co.

Attachments

For: Forest Creek, Ph IIB-Subph B
(Name of Project)
Final Lift of Asphalt

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

(Required with a Surety Bond (Attachment "B") as security guaranteeing completion of Required Improvements, Form No. 8417)

WHEREAS, FOREST CREEK ASSOCIATES, LLC (Developer) has made application to Manatee County, Florida (County), for approval of a proposed subdivision or final site plan identified as FOREST CREEK, PHASE IIB – SUBPHASE B (Project), the legal description for which is more particularly described in Exhibit "A", 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.

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 Surety Bond referred to below is in an amount which represents at least 200% of that estimated cost with a 3% administrative fee; and

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

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

ACCEPTED IN OPEN SESSION

JAN 08 2012

(Pvt Impv Agree)

For: Forest Creek, Ph IIB-Subph B
(Name of Project)

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. Developer and BOND SAFEGUARD INSURANCE COMPANY, a Surety Company duly authorized to transact business in the State of Florida (Surety) are held and firmly bound unto the County as obligee/owner in the amount of SIXTEEN THOUSAND EIGHT HUNDRED TWENTY-FOUR & 11/100 Dollars (words) \$16.824.11 (numbers), and the Developer herewith tenders to the County a Surety Bond, No. 5039466, dated JULY 28, 2011 with BOND SAFEGUARD INSURANCE COMPANY, and VERIFICATION CERTIFICATE dated JUNE 27, 2012 in the amount of SIXTEEN THOUSAND EIGHT HUNDRED TWENTY-FOUR & 11/100 Dollars (words) \$16.824.11 (numbers). Said Bond shall not expire until the Required Improvements guaranteed by this Bond has been accepted by the County.
3. 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 on or before the 23RD day of AUGUST, 2013 in accordance with the construction drawings or any amendments thereto approved by the County, and unless the County elects to proceed in accordance with Paragraph (b) below, the Surety, upon thirty (30) days written notice of the default from the County will cause to be completed the Required Improvements pay all costs, thereof, including without limitation all engineering, legal and contingent costs.
 - (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 Surety Bond. The Developer 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 its obligations as described herein.

(Pvt Impv Agree)

For: Forest Creek, Ph IIB-Subph B
(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.
4. 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 Surety Bond 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.
 5. 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.
 6. 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 restrictions 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./Surety- Developer is Corp.)

For: Forest Creek, Ph IIB-Subph B

SIGNED AND SEALED this 12 day of December, 2012

WITNESSES:

John H. Solis
Witness John H. Solis
Jc. Solis

Sandi Owens
Type or Print Name
Witness

SANDI OWENS
Type or Print Name

Forest Creek Associates, LLC

BY: James R. Schier
Developer
Signature
James R. Schier
Type or Print Name

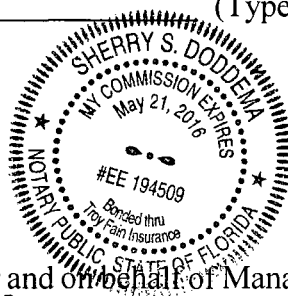
Title (If attorney-in-fact Attach Power of Attorney)
8210 Lakewood Ranch Blvd.
Postal Address
Lakewood Ranch FL 34202
City State Zip

NOTARY ACKNOWLEDGMENT

STATE OF: Florida
COUNTY OF: Manatee

The foregoing instrument was acknowledged before me this 12th day of December, 2012, by JAMES R. SCHIER, as MANAGER, (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:



Sherry S. Dodema
Notary Public
SHERRY S. DODEMA
Print Name of Notary

Approved and accepted for and on behalf of Manatee County, Florida, this 8 day of January, 2013

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

BY: Larry Burtles
Chairman

ATTEST: R. B. Shore Deputy Clerk
R. B. Shore, Clerk of the Circuit Court

VERIFICATION CERTIFICATE

SURETY: Bond Safeguard Insurance Company

PRINCIPAL: Forest Creek Associates, LLC

OBLIGEE: County of Manatee, FL

DESCRIPTION: Forest Creek Ph IIB Subphase B - Final Lift of Asphalt

BOND NO.: 5039466

BOND AMOUNT: \$16,824.11

EFFECTIVE DATE: 07/28/2011

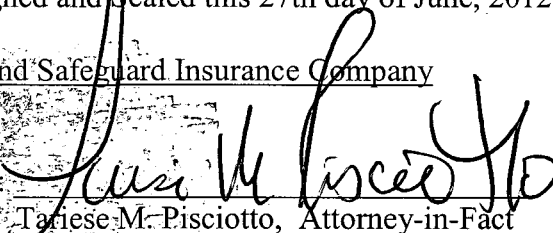
CURRENT REDUCTION TO:

We consent to the extension of the agreement secured by this bond to August 23, 2012.

This is to certify that this company has not terminated its suretyship under the above described bond and that such bond according to its records is still in full force and effect.

Signed and Sealed this 27th day of June, 2012.

Bond Safeguard Insurance Company

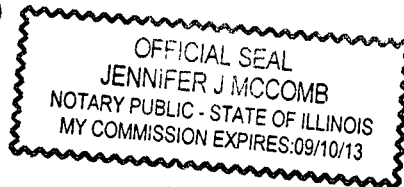
By: 
Tariese M. Pisciotto, Attorney-in-Fact

STATE OF ILLINOIS
COUNTY OF DU PAGE

The foregoing instrument was acknowledged before me this 27th day of June, 2012.

By: 
Jennifer J. McComb, Notary Public

My commission expires on: 9/10/2013



ACCEPTED IN OPEN SESSION

JAN 08 2012

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

Bond Safeguard INSURANCE COMPANY

KNOW ALL MEN BY THESE PRESENTS, that **BOND SAFEGUARD INSURANCE COMPANY**, an Illinois Corporation with its principal office in Woodridge, Illinois, does hereby constitute and appoint James I. Moore, Bonnie Kruse, Stephen T. Kazmer, Dawn L. Morgan, Peggy Faust, Kelly A. Gardner, Elaine Marcus, Jennifer J. McComb, Melissa Schmidt, Heather A. Beck, Tariese M. Pisciotto***** its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **BOND SAFEGUARD INSURANCE COMPANY** on the 7th day of November, 2001 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed \$1,000,000.00, One Million Dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **BOND SAFEGUARD INSURANCE COMPANY** has caused this instrument to be signed by its President, and its Corporate seal to be affixed this 7th day of November, 2001.



BOND SAFEGUARD INSURANCE COMPANY

BY *David E. Campbell*
David E. Campbell
President

ACKNOWLEDGEMENT

On this 7th day of November, 2001, before me, personally came David E. Campbell to me known, who being duly sworn, did depose and say that he is the President of **BOND SAFEGUARD INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

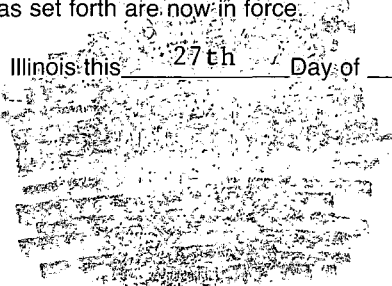
"OFFICIAL SEAL"
MAUREEN K. AYE
Notary Public, State of Illinois
My Commission Expires 09/21/13

Maureen K. Aye
Maureen K. Aye
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of **BOND SAFEGUARD INSURANCE COMPANY**, An Illinois Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Sealed at Woodridge, Illinois this 27th Day of June, 20 12



Philip G. Lauer
Philip G. Lauer
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."