

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: Carmen Mosley, Fiscal Operations Division Manager

From: Jane Oliver, Bond Coordinator 

Date: March 25, 2013

Approved in Open Session 4/4/13
Board of County Commissioners

Subject: THE RIVER CLUB PARK OF COMMERCE
PDMU-99-02/FSP-06-140
ACCEPT WETLAND MITIGATION SYSTEM AGREEMENT
ACCEPT LETTER OF CREDIT

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

- **Acceptance of**, and authorization for Chairman to execute *The River Club Park of Commerce Wetland Mitigation System Agreement* in the amount of \$11,640.30;
- **Acceptance of**, and authorization for Chairman to execute the Letter of Credit in conjunction with the above Agreement;
 - **Letter of Credit No.** 61000793-61100 issued through First America Bank;
 - **Amount** of Security \$11,640.30.

CM/mjo

cc: Records Management
Doug Means, Planning Division Mgr., Building & Development Svc.
Joel Christian, Environmental Program Mgr, Building & Development Svc.
Dorothy Rainey, Environmental Planner, Building & Development Svc.
Carmen Mosley, Fiscal Services Mgr. Public Works Dept.
Daniel Sterner, The Residences at River Club, LLC
First America Bank

Attachments

*A Corrected page provided by
Janet Hines ✓*

**THE RIVER CLUB PARK OF COMMERCE
WETLAND MITIGATION SYSTEM
AGREEMENT**

This SURETY AGREEMENT ("Agreement") is made and entered into by and between **MANATEE COUNTY**, a political subdivision of the State of Florida ("Manatee County" or "County"); and **THE RESIDENCES AT RIVER CLUB, LLC**, a Florida **LIMITED LIABILITY COMPANY formed in Delaware** with an address of **19 NEEDHAM STREET, NEWTON HIGHLANDS, MA 02461**, ("Developer").

RECITALS

WHEREAS, Developer has made application to the County for approval of a site plan or final plat identified as **THE RIVER CLUB PARK OF COMMERCE** (the "Project") to be developed on the property described in Exhibit "A", attached hereto and incorporated herein, (the "Property"); and

WHEREAS, in connection with the Project, Developer has submitted a Wetland Mitigation Plan, which is on file with the County's Planning Department and has been approved by the County, that provides for and requires the construction, maintenance, and operation of a Wetland Mitigation System; and

WHEREAS, Developer desires to obtain approval of the site plan or final plat for the Project; and

WHEREAS, the Developer is the responsible entity for construction, maintenance, and operation of the Wetland Mitigation System; and

WHEREAS, Section 719 of the Manatee County Land Development Code (the "Code") requires that Developer tender to the County a security, bond, escrow, or other form of surety acceptable to the County in the amount of one hundred fifteen percent (115%) of a cost estimate, certified by the Engineer of Record, of the estimated or actual costs and expenses of wetland mitigation construction, planting, maintenance, and monitoring the County may incur should the Developer fail to comply with or perform any requirement of the Wetland Mitigation Plan; and

WHEREAS, Developer has submitted such estimate certifying the construction, maintenance, and operation costs as **TEN THOUSAND ONE HUNDRED TWENTY-TWO & NO/100** dollars (\$10,122.00), as shown on Exhibit "B", attached hereto and incorporated herein.

WHEREAS, the Developer herewith tenders to the County **LETTER OF CREDIT** (Type of Security), Number **61000793-6100**, dated **MARCH 19, 2013** with **FIRST AMERICA BANK** (Financial Institution), in the amount of **ELEVEN THOUSAND SIX HUNDRED FORTY & 30/100** Dollars (words), \$ **11,640.30** (numbers), expiring on the **15TH** day of **APRIL, 2018**.

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WETLAND MITIGATION SYSTEM
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WHEREAS, in connection with the Project, Developer has submitted a Wetland Mitigation Plan, which is on file with the County’s Planning Department and has been approved by the County, that provides for and requires the construction, maintenance, and operation of a Wetland Mitigation System; and

WHEREAS, Developer desires to obtain approval of the site plan or final plat for the Project; and

WHEREAS, the Developer is the responsible entity for construction, maintenance, and operation of the Wetland Mitigation System; and

WHEREAS, Section 719 of the Manatee County Land Development Code (the “Code”) requires that Developer tender to the County a security, bond, escrow, or other form of surety acceptable to the County in the amount of one hundred fifteen percent (115%) of a cost estimate, certified by the Engineer of Record, of the estimated or actual costs and expenses of wetland mitigation construction, planting, maintenance, and monitoring the County may incur should the Developer fail to comply with or perform any requirement of the Wetland Mitigation Plan; and

WHEREAS, Developer has submitted such estimate certifying the construction, maintenance, and operation costs as TEN THOUSAND ONE HUNDRED TWENTY-TWO & NO/100 dollars (\$10,122.00), as shown on Exhibit “B”, attached hereto and incorporated herein.

WHEREAS, the Developer herewith tenders to the County LETTER OF CREDIT (Type of Security), Number 61000793-6100, dated MARCH 19, 2013 with FIRST AMERICA BANK (Financial Institution), in the amount of ELEVEN THOUSAND SIX HUNDRED FORTY & 30/100 Dollars (words), \$11,640.30 (numbers), expiring on the 15TH day of APRIL, 2018.

ACCEPTED in Open Session 4/4/13
Board of County Commissioners

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Developer's Obligations. The Developer hereby agrees to construct, maintain, and operate a Wetland Mitigation System such that the constructed mitigation (i) provides an equal or greater habitat function than the wetland being replaced, (ii) complies with the approved Wetland Mitigation Plan, and (iii) otherwise fully complies with Section 719 of the Code and all other applicable regulations, requirements, and agreements. Further, the Developer hereby agrees that it will correct any deleterious effects on wetlands or adjacent areas that may result from non-compliance with the Wetland Mitigation Plan.
2. Surety Requirement. Within sixty (60) days following execution of this Agreement, Developer shall tender to the County's Planning Director a performance and defect bond, letter of credit, or other surety in form and substance reasonably acceptable to the County (the "Security") in the amount of **ELEVEN THOUSAND SIX HUNDRED FORTY & 30/100** Dollars (words), \$ **11,640.30** (numbers), such amount being one hundred fifteen percent (115%) of the certified cost estimate, attached hereto as Exhibit "B" and incorporated herein. Said Security shall be issued by a bank or other financial institution authorized to transact business in the State of Florida (the "Surety Company"). Said Security shall remain valid throughout the effective period of this Agreement, as described in Paragraph 6 herein. Further, the Security shall not be canceled with less than ninety (90) days written notice to the County, provided by hand delivery or certified mail. Any such cancellation must be accompanied by the tender of an adequate replacement security, failing which a stop work order, requiring immediate cessation of any land alteration activities, shall be posted against all development activities occurring or permitted on the Property.
3. County's Obligation. Upon tendering of the Security by the Developer as required by Paragraph 2 hereof, the County may approve the applied-for site plan or final plat provided that all other requirements for such approval have been met.
4. County's Remedies. If the Developer should (i) fail or refuse to construct, maintain, or operate, to the reasonable satisfaction of the County, the required Wetland Mitigation System, (ii) fail to correct any deleterious effects on wetlands or adjacent areas during the effective period of this Agreement, or (iii) fail to maintain the security for its obligations hereunder in accordance with Section 2, hereof, and Section 719 of the Code, the County, at its sole option and upon ten (10) days written notice to the Developer, shall have the right to draw upon the security and enter upon the Property, to construct, maintain, and operate the aforesaid Wetland Mitigation System, and/or to correct any deleterious effects on wetlands or adjacent areas. Nothing herein shall be construed as affecting the County's right to resort to any and all legal and equitable remedies against the Developer or to collect against the Security posted for the Wetland Mitigation System.

5. Indemnity. The Developer shall indemnify and hold harmless the County against and from all claims, costs, fees, expenses, damages, injuries, or loss, whether direct or consequential, including without limitation all engineering, legal, and contingent costs and fees, which the County may sustain due to the failure of the Developer to fulfill its obligation as described herein during the time period specified, without regard to the amount of the Security. In the event the County exercises this right, the Developer shall reimburse the County for all costs and expenses.
6. Effective Date and Expiration. This Agreement shall be effective upon execution and shall continue in effect through a date five (5) years following the date on which construction of the required Wetland Mitigation System is deemed complete pursuant to Section 719 of the Code (i.e., the system has been certified by the Engineer of Record to have been constructed in compliance with the approved Wetland Mitigation Plan, and the County has completed an on-site review and approved the construction). Upon or prior to the expiration of said five (5) year period, Developer shall record in the public records of the County documents providing that the Developer and his successors shall be responsible for ongoing maintenance, data collection, and reporting for the Wetland Mitigation System.
7. No Development Rights Conferred. The parties understand, acknowledge, and agree that, unless otherwise specifically provided for herein, no approval is given hereby for the Project. Nothing contained in this Agreement shall (i) create any development rights in favor of the Developer or the Property; (ii) create, or otherwise acknowledge the existence of, any vested development rights by reason of estoppel, detrimental reliance, or otherwise; or (iii) authorize, permit, or otherwise allow any construction and/or development of or on any other property unless separately approved by the Board of County Commissioners pursuant to County Ordinances. All land use authorizations and all development and construction rights and authorizations shall be obtained upon proper application and in compliance with all standards and requirements of the Manatee County Comprehensive Plan, the Manatee County Land Development Code, any approved general development plan, preliminary or final site plan, and all conditions or stipulations thereto.
8. Integration. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
9. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Venue for any dispute shall be located in a civil court of competent jurisdiction of Manatee County, Florida.

- 10. Partial Invalidity. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect, provided that the part of this Agreement thus invalidated or declared unenforceable is not material to the intended operation of this Agreement.
- 11. Assignment. County specifically understands that the obligations of Developer herein may be assigned to a subsequent developer of the Project and that the rights and obligations of Developer herein shall run with the Project. The term "Assignment" shall not include acts by the Developer's primary contractor in subcontracting or ordering materials for portions of the Realignment Improvements.
- 12. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and no right or cause for action shall accrue to, or for the benefit of, any third party not a party hereto.
- 13. Notices. Every notice, request, or other communication provided for in this Agreement shall be in writing and shall be deemed to have been given or served at the time that the same is received, if hand delivered, or at the time the same shall be deposited in the United States mail, postage prepaid, addressed to the parties and signed by the designated representatives and addressed as provided below, until either party provides written notice of a different agent or address:

If to the County:

Manatee County
Attn: Director, Public Works Department
1022 26th Avenue East
Bradenton, Florida 34208

With copies to:

Manatee County
Attn: County Administrator
Post Office Box 1000
Bradenton, Florida 34206

Manatee County
Attn: County Attorney
Post Office Box 1000
Bradenton, Florida 34206

If to the Developer:

The Residences at River Club, LLC
19 Needham Street
Newton Highlands, MA 02461

With a copy to:

N/A

[SIGNATURE PAGE FOLLOWS]

Wetland Mitigation Agreement

For: River Club Park of Commerce
Project Name

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year set forth below.

MANATEE COUNTY, a political subdivision of the State of Florida



By: Board of County Commissioners

By: Larry Bustle
Chairman

ATTEST: R. B. SHORE,
Clerk of the Circuit Court

By: Lisa Lerner
Deputy Clerk

Date: April 4, 2013

THE RESIDENCES AT RIVER CLUB, LLC

a Florida Limited liability company formed in Delaware

By: D.B. Sterner

Print Name: Daniel B. Sterner

Title: Vice President of its Sole Member

Date: 03/22/2013

WITNESSES:

[Signature]
Signature

Michelle Dern
Print Name

Deborah St Paul
Signature

Deborah St. Paul
Print Name

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Lots 1 through 11 of RIVER CLUB PARK OF COMMERCE, according to the Map or Plat thereof as recorded in Plat Book 54, Page 172, of the Public Records of Manatee County, Florida.

EXHIBIT "B"

**CERTIFIED COST ESTIMATE FOR
THE WETLAND MITIGATION SYSTEM**



Fw: RCPOC - PDMU-99-02/FSP-06-140(R3) - Wetland mitigation bond

Joel Christian to: Jane Oliver

03/04/2013 02:48 PM

Cc: Bob Gause

Jane,

EPD has reviewed and approved the revised cost estimate of \$11,640.30 in the email below for the above referenced bond.

Joel D. Christian
Environmental Program Manager - Plan Review
Manatee County Building and Development Services Dept.

(941) 748-4501 ext. 6206
joel.christian@mymanatee.org

----- Forwarded by Joel Christian/MCG on 03/04/2013 02:45 PM -----

From: Bob Gause <Bob@allisongause.com>
To: "joel.christian@mymanatee.org" <joel.christian@mymanatee.org>
Date: 03/01/2013 01:43 PM
Subject: FW: RCPOC - PDMU-99-02/FSP-06-140(R3) - Wetland mitigation bond

See below.

Robert C. Gause, RLA, ISA
Vice President

Allison-Gause, Inc.



926 Tamiami Trail
Bradenton, FL 34205
p. 941.708.5400 | f.941.708.5405 | c.941.713.0782
bob@allisongause.com
www.allisongause.com
LA000942

From: Bob Gause
Sent: Friday, March 01, 2013 1:41 PM
To: Joel Christian (joel.christian@co.manatee.fl.us)
Cc: 'Daniel Sterner'
Subject: RCPOC - PDMU-99-02/FSP-06-140(R3) - Wetland mitigation bond

Joel,

As a follow-up to our conversation, the cost estimate for the created wetland on the above referenced project is as follows:

Planting: The cost to install the vegetative material into the mitigation area last October was \$5,472.00. ELM conducted the installation.

Maintenance: The contract for quarterly maintenance of the mitigation area is \$250 or \$1,000 annually. Rick Richards is the maintenance contractor.

Monitoring: Monitoring is about \$550 per event, and I think we are only required to do annual monitoring now.

If you assume that you will need to do that for three years, the cost for installation, monitoring and maintenance appears to be about \$10,122. . If we add the required 15%, the total grows to \$11,640.30. I don't anticipate they will need to do any additional earthwork on the site as it appears graded correctly. Would \$11,640.30 be an acceptable bond amount for you?

Let us know and Mr. Sterner will work with Ms. Jane Oliver to address the bond.

Again, thank you for working with us on this.

Sincerely,

Bob

Robert C. Gause, RLA, ISA

Vice President

Allison-Gause, Inc.



926 Tamiami Trail

Bradenton, Fl. 34205

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bob@allisongause.com

www.allisongause.com

LA000942



Post Office Box 470 Bradenton, FL 34206
www.firstamericabank.com

FIRST AMERICA BANK™

FOR LETTER OF CREDIT AS SECURITY FOR WETLAND MITIGATION SYSTEM

03/19/2013

Board of County Commissioners
Manatee County, Florida
Bradenton, FL 33505

Re: Our Clean Irrevocable Credit No. 61000793-61100
For The River Club Park of Commerce

Dear Commissioners:

By order of The Residences at River Club, LLC (the "Developer"), we hereby provide this Letter of Credit No. 61000793-61100 in favor of Manatee County, Florida, (the "County") in the amount of eleven thousand six hundred forty dollars and thirty cents (\$11,640.30), effective as of the above date, and expiring at our office at the close of business on April 15, 2018.

We provide this Letter of Credit on behalf of The Residences at River Club, LLC to secure the Developer's obligations under The River Club Park of Commerce Wetland Mitigation System Surety Agreement, entered into by and between the Developer and the County and dated as of **04/04/2013**, (the "Agreement"). The Agreement and this Letter of Credit have been entered into and provided in order to comply with section 719.9 of the Manatee County Land Development Code.

Funds not exceeding the stated amount of this Letter of Credit are available and will be paid promptly to the County upon presentation of a sight draft at the following location:

2811 Manatee Ave W, Bradenton, FL 34205

Such sight draft shall be accompanied by (i) a copy of this Letter of Credit and (ii) a statement purporting to be signed by a County Engineer or other authorized officer of the County stating that the Developer has failed to perform its obligations pursuant to the Agreement or post a substitute security acceptable to the County, at least ninety (90) days prior to the expiration date (including any extensions thereof) stated above or any condition of this letter of Credit; that the funds available hereunder are required to exercise the County's right to complete or correct the work and to pay costs incidental thereto; and that at least ten



Member
FDIC

ACCEPTED in Open Session 4/4/13
Board of County Commissioners



FIRST AMERICA BANK™

(10) days in advance of the presentation of the sight draft the County has provided to the Developer, by certified mail, return receipt requested, notice of the County's intention to draw funds on this Letter of Credit.

The amount of any draft under this Letter of Credit shall be endorsed on the reverse side hereof.

This Letter of Credit is issued subject to the International Standby Practices 1998 ("ISP98") International Chamber of Commerce Publication No. 590 and the laws of the state of Florida.

First America Bank

By: *Gregory G. Bort*

Print Name: Gregory G. Bort

Title: Vice President

Date: 3/19/2013

ATTEST/WITNESS:

J. McLoey
Signature

Joshua McLoey, Loan Processor
Print Name and Title

* * * * *

Approved and accepted for and on behalf of Manatee County, Florida, this 4th day of April, 2013.

MANATEE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Larry Burtis*
Chairman



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

By: *Weki Jessome*
Deputy Clerk

FW: Letter of Credit: The Residences at River Club, LLC

Daniel Sterner

to:

jane.oliver

03/20/2013 04:08 PM

Cc:

joel.christian

Show Details

Jane --

Here's the LoC. You'll be receiving the original either tomorrow or Friday.

Thanks,

Dan

From: Josh McCoy [<mailto:Josh.McCoy@firstamericabank.com>]

Sent: Wednesday, March 20, 2013 3:46 PM

To: dsterner@forestproperties.net

Cc: Greg Barr

Subject: Letter of Credit: The Residences at River Club, LLC

Letter of Credit Attached. Thanks!

Josh McCoy

Loan Processor

First America Bank

2811 Manatee Ave W

Bradenton, FL 34205

Direct: (941) 209-7913

Fax: (941) 729-8753

Josh.McCoy@firstamericabank.com

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