

(Extension)

For: Concession, Ph II, Block B & Ph III
Final Lift of Asphalt
(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, THE CONCESSION LAND DEVELOPMENT, LLC (Developer) has made application to Manatee County, Florida (County), for approval of a proposed subdivision or final site plan identified as CONCESSION, PHASE II, BLOCK B & PHASE III, (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; 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

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: Concession, Ph II, Block B & Ph III
(Name of Project)

WHEREAS, the Developer herewith tenders to the County a Letter of Credit, Number 388168861 dated APRIL 18, 2013 with SYNOVUS BANK (Financial Institution), in the amount of ONE HUNDRED SIXTY-THREE THOUSAND THREE HUNDRED NINE & 59/100 Dollars (words), \$163,309.59 (Numbers), expiring on the 18TH day of APRIL, 2015.

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.

- (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: Concession, Ph II, Block B & Ph III

SIGNED AND SEALED this 15th day of April, 20 13

WITNESSES:
[Signature]

Witness
Type or Print Name
MARKEE E. Russell

[Signature]
Witness

Type or Print Name
WALTER S. GORTNER

THE CONCESSION
LAND DEVELOPMENT, LLC

Developer
BY: [Signature]
Signature

Kevin Daves
Type or Print Name

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

916 East. Harry, Suite 104
Postal Address

Wichita Kansas 67207
City State Zip

NOTARY ACKNOWLEDGMENT

STATE OF Kansas
COUNTY OF Sequoyia

The foregoing instrument was acknowledged before me this 15th day of April, 20 13, by Kevin Daves, as Developer, (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

Dorothy K. Lewis
Print Name of Notary

Approved and accepted for and on behalf of Manatee County, Florida, this 23 day of APRIL, 20 13.

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

BY: [Signature]
Chairman

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





SYNOVUS BANK

Member FDIC

PO Box 30707
Tampa, FL 33630-3707
Phone 888-317-0085
www.synovusbankfl.com

April 18, 2013

Board of County Commissioners
Manatee County Florida
c/o Fiscal Services Division
Public Works Department
1022 26th Avenue East
Bradenton, FL 34208

Beneficiary:
Manatee County, Florida
1112 Manatee Avenue West
Bradenton, FL 34209

Applicant:
The Concession Land Development, LLC
9916 E. Harry, STE 104
Wichita, KS 67207

RE: Our Irrevocable Credit No. 388168861
For: Concession Phase II. Block B & Ph III

Dear Commissioners:

By order of The Concession Land Development, LLS (“Developer”), we hereby open our Irrevocable Credit No. 388168861 in favor of Manatee County, Florida (“County”), in the amount of One Hundred Sixty Three Thousand Three Hundred Nine and 59/100 Dollars (\$163,309.59), effective as of the date this Credit is accepted and approved, and expiring at our office at the close of business on April 18, 2015.

We are informed that the Developer has entered into a written Required Improvements Agreement with the County to develop a project to be known as Concession Phase II. Block B & Ph III (“Project”) and to construct and install the Required Improvements as defined therein, as shown in the construction drawings for the Project which are on file with and have been approved by the County. The Required Improvements are to be constructed and completed to the satisfaction of the County at least three (3) months prior to the expiration date of this Letter of Credit.

Funds under this Credit are available and will be paid promptly to the County hereunder not exceeding in the aggregate the amount of this Credit, against the County’s sight draft on us mentioning this Letter of Credit, accompanied by a statement purporting to be signed by a

ACCEPTED IN OPEN SESSION 4.23.13
BOARD OF COUNTY COMMISSIONERS, MANATEE COUNTY

County Engineer to the effect that the Developer has failed to complete the Required Improvements within the time period specified, and that such funds are required to exercise the County's right to complete the Required Improvements and to pay costs incidental thereto. The amount of any draft drawn under this Letter of Credit shall be endorsed on the reverse side hereof.

This letter of credit is subject to the Uniform Commercial Code Article 5 as governed by the laws of the State of Florida.

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.

Drawings may be presented at the following locations:

Synovus Bank
Commercial Banking
1999 Ringling Blvd.
Sarasota, FL 34236

Sincerely,

ATTEST/WITNESS:

By: *B. Edwin Wyatt, Jr.*
B. Edwin Wyatt, Jr. VP
Synovus Bank of Florida

L. Thomas Baker, Jr.
L. Thomas Baker, Jr. EVP
Synovus Bank of Florida

* * * * *

Approved and accepted for and on behalf of Manatee County, Florida, this 23 day of APRIL, 2013.

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

By: *Larry Buetto*
Chairman

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



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.myanatee.org

To: Vicki Tessemer, Board Records Manager, Clerk of the Circuit Court

Thru: Carmen Mosley, Fiscal Operations Division Manager

From: Jane Oliver, Bond Coordinator *Jane Oliver*

Date: April 15, 2013

Subject: CONCESSION PHASE II, BLOCK B & PHASE III
PDR-04-39/05-S-38 (F)
RELEASE PRIVATE IMPROVEMENTS AGREEMENT
(FOR FINAL LIFT OF ASPHALT)
RELEASE LETTER OF CREDIT
ACCEPT PRIVATE IMPROVEMENTS AGREEMENT
(FOR FINAL LIFT OF ASPHALT)
ACCEPT LETTER OF CREDIT

APPROVED IN OPEN SESSION

APR 23 2013

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 \$163,309.59 securing final lift of asphalt;
- **Authorization to release and return** the Letter of Credit, and any amendments associated with this Letter, in conjunction with the above Agreement. Documents will be returned to Wells Fargo Real Estate Managed Asset Group located at 333 Market, 3rd Floor, MAC A0109-035, San Francisco, CA 94105;
 - **Letter of Credit No. SM225637W** issued through Wells Fargo Bank (f/k/a Wachovia Bank);
 - **Amount of Performance Bond** \$163,309.59;

ORIGINALS to JANE OLIVER 4-26-13 UG

Vicki Tessemer – Concession, Phase II, Block B & Ph III
April 15, 2013
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- **Acceptance of** and authorization for Chairman to execute the *Required Improvements Agreement and Temporary Construction Easement for Private Improvements* securing the final lift of asphalt;
- **Acceptance of,** and authorization for Chairman to execute the Letter of Credit in conjunction with the above Agreement;
 - **Letter of Credit No. 388168861** issued through Synovus Bank;
 - **Amount of Performance \$163,309.59.**

CM/jo

cc: Records Management
Sia Mollanazar, P.E., Deputy Director – Engineering Services
Andy Fischer, Infrastructure Inspections Division Manager
Herk Russell, The Concession Land Development, LLC
Edwin Wyatt, Synovus Bank
Wells Fargo Bank

Attachments