

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 Tessmer, Board Records Manager, Clerk of the Circuit Court

Thru: Carmen Mosley, Fiscal Operations Division Manager

From: Jane Oliver, Bond Coordinator

Date: August 1, 2013

Subject: HERITAGE HARBOUR, PHASE I, SUBPHASE E
CONSTRUCTION PHASES 1, 2 & 3
PDMU-98-08/05-S-39 (F)
RELEASE PRIVATE IMPROVEMENTS AGREEMENT
SECURING FINAL LIFT OF ASPHALT
ACCEPT REDUCED PRIVATE IMPROVEMENTS
EXTENSION AGREEMENT
SECURING FINAL LIFT OF ASPHALT
ACCEPT LETTER OF CREDIT AMENDMENT

APPROVED IN OPEN SESSION

AUG 13 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 \$308,044.16 securing the private final lift of asphalt;

PLEASE DO NOT RELEASE LETTER OF CREDIT NO. FGAC-05333. This Letter 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 Letter of Credit previously accepted by the Board of County Commissioners.**

Vicki Tessemer – Heritage Harbour, Subph E, Construction Ph 1, 2 & 3
August 1, 2013
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- **Acceptance of**, and authorization for Chairman to execute the Amendment in conjunction with the above agreement;
 - **Letter of Credit No FGAC-05333** (on file), Amendment dated July 22, 2013 issued through Fidelity Guaranty and Acceptance Corp;
 - **Extension to August 22, 2014;**
 - **REDUCED From Performance - \$308,044.16**
 - **TO New Amount of Performance - \$296,567.78.**

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

Attachments

(Pvt Ext)

For: Heritage Harbour, Ph I, Subph E, Const. Ph 1, 2, & 3
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, 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 PHASES 1, 2, & 3 (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 1, 2, & 3
(Name of Project)

WHEREAS, the Developer herewith tenders to the County a Letter of Credit, Number FGAC-05333, dated SEPTEMBER 15, 2005 and AMENDMENT NO. 9 dated JULY 22, 2013 with FIDELITY GUARANTY AND ACCEPTANCE CORP. (Financial Institution), in the amount of TWO HUNDRED NINETY-SIX THOUSAND FIVE HUNDRED SIXTY-SEVEN & 78/100 (REDUCED FROM \$308,044.16) Dollars (Words) \$296,567.78 (Numbers), expiring on the 22ND day of AUGUST, 2014.

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 1, 2, & 3
(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.

(Part Imp./LOC- Developer is Corp.) For: Heritage Harbour, Ph I, Subph E, Const Ph 1, 2, & 3
SIGNED AND SEALED this 24 day of July, 2013

WITNESSES:

[Signature]
Witness
TEARA KIRCHNER
Type or Print Name
[Signature]
Witness
Tony Barrett
Type or Print Name

LENNAR HOMES, LLC
Developer

BY: [Signature]
Signature
Darin McMurray
Type or Print Name

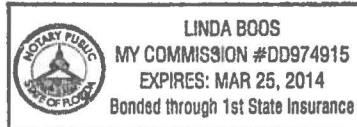
Title (If attorney-in-fact Attach Power of Attorney)
10481 Six Mile Cypress Pkwy
Postal Address
FT MYERS FL 33966
City State Zip

NOTARY ACKNOWLEDGMENT

STATE OF: Florida
COUNTY OF: MANATEE

The foregoing instrument was acknowledged before me this 24 day of July, 2013, by Darin McMurray, 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:



[Signature]
Notary Public
Linda Boos

Print Name of Notary

Approved and accepted for and on behalf of Manatee County, Florida, this 13 day of August, 2013

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

BY: [Signature]
Chairman

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



FIDELITY GUARANTY AND ACCEPTANCE CORP. FIDELITY GUARANTY AND ACCEPTANCE CORP. FIDELITY GUARANTY AND ACCEPTANCE CORP. FIDELITY GUARANTY AND ACCEPTANCE CORP. FIDELITY GUARANTY AND ACCEPTANCE CORP.

FIDELITY GUARANTY AND ACCEPTANCE CORP.

700 NW 107 AVENUE - SUITE 240

MIAMI, FLORIDA 33172

PHONE (305) 553-8724



JULY 22, 2013

IRREVOCABLE LETTER OF CREDIT NO. FGAG-05333

BENEFICIARY: BOARD OF COUNTY COMMISSIONERS

MANATEE COUNTY, FLORIDA

112 MANATEE AVENUE WEST

BRADENTON, FLORIDA 34025

APPLICANT: LENNAR HOMES, LLC

551 N. CATTLEMEN ROAD, SUITE 202

SARASOTA, FLORIDA 34232

GENTLEMEN:

TO AMEND CREDIT FGAC-05333 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 EXPIRATION DATE TO: AUGUST 22, 2014.

REDUCE DOLLAR AMOUNT FROM \$308,044.16 TO: \$296,567.78.

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

THIS IS AMENDMENT NO. 9.

VERY TRULY YOURS,

FIDELITY GUARANTY AND ACCEPTANCE CORP.

JACQUELINE DE SOUZA, VICE PRESIDENT

THIS AMENDMENT IS EFFECTIVE ONLY IF SIGNED BY BENEFICIARY AND A COPY OF THE SIGNED DOCUMENT IS RETURNED TO US EITHER VIA FAX TO (305) 553-8751 OR VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED OR BY FEDERAL EXPRESS OR ANY OTHER RECOGNIZED COURIER COMPANY MAIL TO FIDELITY GUARANTY AND ACCEPTANCE CORP. 700 NW 107 AVENUE - SUITE 240, MIAMI, FL 33172.

WE ACCEPT THIS AMENDMENT.

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

CHAIRMAN

ATTEST: R. B. SHORE
CLERK OF CIRCUIT COURT
BY: RUKI JARRETT
DEPUTY CLERK

