

# MEMORANDUM



Public Works Department  
Fiscal Services Division  
1022 26<sup>th</sup> Ave. E...  
Bradenton, FL 34285

## MANATEE COUNTY FLORIDA

Phone: 941-708-7450  
Fax: 941-708-7502  
[www.mymanatee.org](http://www.mymanatee.org)

**To:** Vicki Tessmer, Board Records Supervisor, Clerk of the Circuit Court

**Thru:** Carmen Mosley, Fiscal Operations Division Manager *C. Mosley*

**From:** Jane Oliver, Bond Coordinator *Jane Oliver*

**Date:** September 12, 2013 **APPROVED IN OPEN SESSION** 09/24/2013  
**BOARD OF COUNTY COMMISSIONERS, MANATEE COUNTY**

**Subject:** **MARSHALL'S LANDING** *Emailed 9/25/13 Jane O/jr*  
**PDMU-04-17/07-S-06 (F)**  
**RELEASE PRIVATE IMPROVEMENTS AGREEMENT**  
**ACCEPT PRIVATE IMPROVEMENTS EXTENSION AGREEMENT**  
**ACCEPT CONTINUATION CERTIFICATE**

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 \$363,622.00 securing landscape and irrigation;

**PLEASE DO NOT RELEASE SURETY BOND NO. 1020051.** This Surety will be used to secure the approved extension agreement securing landscape and irrigation (see below).

- **Acceptance of** and authorization for Chairman to execute the following *Required Improvements Agreement and Temporary Construction Easement for Private Improvements* securing landscape and irrigation;
- **Acceptance of** the following Continuation Certificate:
  - **Surety Bond No. 1020051** issued through Lexon Insurance Company (on file), Continuation Certificate dated August 30, 2013;

Vicki Tessmer – Marshall's Landing  
September 12, 2013  
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- **Continuation Certificate Expiring September 28, 2014**
- **Amount of Performance Bond \$363,622.00.**

CM/jo

cc: Records Management  
John McCloud, Braden River Investments, LLC  
Lexon Insurance Co.

Attachments

For: Marshall's Landing  
Landscape & Irrigation  
(Name of Project)

**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, BRADEN RIVER INVESTMENTS, LLC** (Developer) has made application to Manatee County, Florida (County), for approval of a proposed subdivision or final site plan identified as MARSHALL'S LANDING (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.**

**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:

(Pvt Impv Agree)

For: Marshall's Landing  
(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 LEXON 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 THREE HUNDRED SIXTY-THREE THOUSAND SIX HUNDRED TWENTY-TWO & N0/100 Dollars (words) \$363,622.00 (numbers), and the Developer herewith tenders to the County a Surety Bond, No. 1020051, dated SEPTEMBER 28, 2007, and CONTINUATION CERTIFICATE dated AUGUST 30, 2013 with LEXON INSURANCE COMPANY, in the amount of THREE HUNDRED SIXTY-THREE THOUSAND SIX HUNDRED TWENTY-TWO & N0/100 Dollars (words) \$363,622.00 (numbers) in effect until the 28<sup>TH</sup> day of SEPTEMBER, 2014. 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 28<sup>TH</sup> day of SEPTEMBER, 2014 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: Marshall's Landing  
(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: Marshall's Landing

SIGNED AND SEALED this 3 day of September, 20 13

WITNESSES:

John A. McLeod  
 Witness  
John A. McLeod  
 Type or Print Name  
Chal McLeod  
 Witness  
Charles McLeod  
 Type or Print Name

Braden River Investments, LLC

Developer  
 BY: [Signature]  
 Signature  
CARL F. WAGNER  
 Type or Print Name

Title (If attorney-in-fact Attach Power of Attorney)  
130 Lubrano Drive #211  
 Postal Address  
Annapolis MD 21401  
 City State Zip

NOTARY ACKNOWLEDGMENT

STATE OF: MARYLAND  
 COUNTY OF: ANNE ARUNDEL

The foregoing instrument was acknowledged before me this 3rd day of September, 2013, by Carl F. Wagner, as Partner, (Title), on behalf of the corporation identified herein as Developer and who is personally known to me or who has produced personally (Type of Identification) as identification.

NOTARY SEAL:

[Signature]  
 Notary Public  
Rocco A. Tripodi  
 Print Name of Notary



Approved and accepted for and on behalf of Manatee County, Florida, this 24th day of September, 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



# Lexon INSURANCE COMPANY

1289 Lebanon Road Mt. Juliet, TN 37122 (615) 553-9500

## CONTINUATION CERTIFICATE

BOND NUMBER 1020051 THE AMOUNT OF \$363,622.00

ISSUED BY **LEXON INSURANCE COMPANY**

ON BEHALF OF Braden River Investments.

IN FAVOR OF Manatee County, Florida

IS HEREBY CONTINUED IN FORCE FROM 09/13/2013 TO 10/23/2014

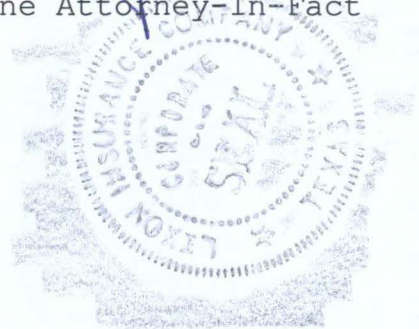
SUBJECT TO ALL THE COVENANTS AND CONDITIONS THEREOF

It is expressly stipulated that in no event shall the aggregated liability of the Surety for any one or more defaults of the principal during any one or more years of the suretyship under the bond hereinabove referred to, as extended by this or any other extension thereof, exceed the amount specifically set forth in said bond or any existing certificate changing the amount of said bond. It is known that this bond can be canceled by giving thirty (30) written notice to the Obligee.

Signed and dated this 13<sup>th</sup> day of September, 2013

LEXON INSURANCE COMPANY

By Robert H Delafontaine  
Robert Delafontaine Attorney-In-Fact



POWER OF ATTORNEY

LX - 067415

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that LEXON INSURANCE COMPANY, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint:

David E. Campbell, Cynthia L. Raftery, Gregory E. Semrow, Lynne K. Hupka, \*\*\*\*\*

Christopher L. Dobbs, Jalene Brown, Robert J. DeLafontaine, Mary F. Nau, Betsye Thomas (as employees of Lexon Insurance Company)\*\*\*\*\*

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 LEXON INSURANCE COMPANY on the 1st day of July, 2003 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 \$ 7,100,000.00 Seven million one hundred thousand dollars \*\*\*\*\* 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 of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, LEXON INSURANCE COMPANY has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 21st day of September, 2009.



LEXON INSURANCE COMPANY

BY [Signature] David E. Campbell President

ACKNOWLEDGEMENT

On this 21st day of September, 2009, before me, personally came David E. Campbell to me known, who being duly sworn, did depose and say that he is the President of LEXON 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

[Signature] Maureen K. Aye Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of LEXON INSURANCE COMPANY, A Texas 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 13th Day of September 20 13



[Signature] 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.



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**To:** Vicki Tessmer, Board Records Supervisor, Clerk of the Circuit Court

**Thru:** Carmen Mosley, Fiscal Operations Division Manager

**From:** Jane Oliver, Bond Coordinator

**Date:** September 12, 2013

**APPROVED IN OPEN SESSION** 9/24/2013/nr  
**BOARD OF COUNTY COMMISSIONERS, MANATEE COUNTY**

**Subject:** MARSHALL'S LANDING

PDMU-04-17/07-S-06 (F)

Emailed 9/25/13/nr

**RELEASE PRIVATE IMPROVEMENTS AGREEMENT**

**RELEASE SURETY BOND**

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* securing the conservation area signage in the amount of \$6,798.00;
- **Authorization to release and return** the following Surety Bond, and any riders associated with this surety bond, for performance of required private improvements. Documents will be returned to John McCloud with Braden River Investments, LLC located at 130 Lubrano Drive #211, Annapolis, MD 21401;
  - **Surety Bond No.** 1020050 through Lexon Insurance Company;
  - **Amount of Performance Bond** \$6,798.00;

CM/jo

cc: Records Management  
Andy Fischer, Infrastructure Inspections Division Manager  
Karen Wilson, ZNS Engineering  
Lexon Insurance Company