

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 Supervisor, Clerk of the Circuit Court

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

From: Jane Oliver, Bond Coordinator *Jane Oliver*

Date: October 25, 2013

APPROVED IN OPEN SESSION

NOV 05 2013

Subject: BRIDGEWATER, PHASE I AT LAKEWOOD RANCH
PDMU-05-19/13-S-14 (F)
RELEASE PERFORMANCE AGREEMENT
RELEASE LETTER OF CREDIT
ACCEPT DEFECT SECURITY AGREEMENT
ACCEPT LETTER OF CREDIT

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* (In conjunction with a Surety Bond as security guaranteeing completion of Required Improvements) in the amount of \$873,116.92 securing sanitary sewer and potable water improvements;
- **Authorization to release and return** the letter of credit and any amendments associated with the above agreement for performance of required improvements. Documents will be mailed to Lennar Homes, LLC located at 10481 Ben C. Pratt, Six Mile Cypress Parkway, Ft. Myers, FL 33966;
 - **Letter of Credit** No. FGAC-13082 issued through Fidelity Guaranty & Acceptance Corp;
 - **Amount** of Performance Bond \$873,116.92;
- **Acceptance of** and authorization for Chairman to execute the *Agreement in Conjunction with Surety Bond (Attachment "A") as Defect Security Warranting Required Improvements*.

Original Bonds: J. Oliver/C. Mosley, P/Wks, 11/6/13, RLL

NOV 05 2013

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

Vicki Tessmer – Bridgewater, Phase I
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- **Acceptance of**, the Letter of Credit in conjunction with the above Agreement;
 - **Letter of Credit No.** FGAC-13231 issued through Fidelity Guaranty & Acceptance Corp.;
 - **Amount** of Defect Security \$64,902.84.

CM/jo

cc: Records Management
Sia Mollanazar, P.E., Deputy Director – Engineering Services
Chad Butzow, P.E., Deputy Director – Field Services Operations
Mickey Lutz, Maintenance Operations Division Manager
Andy Fischer, Infrastructure Inspections Division Manager
Christina Taylor, General Accounting/Finance
Robin Tardiff, Property Appraiser's Office
Terry Kirschner, Lennar Homes, LLC
Fidelity Guaranty & Acceptance Corp.

For: Bridgewater, Ph I
(Name of Project)
Water & Wastewater Utilities

AGREEMENT WARRANTING REQUIRED IMPROVEMENTS

(Required with a Letter of credit as Defect Security
Warranting Required Improvements)

WHEREAS, LENNAR HOMES, LLC (Developer) has constructed certain Required Improvements as a condition of approval of a subdivision or final site plan identified as BRIDGEWATER, PHASE I (Project); and

WHEREAS, in connection with the Project the Developer has submitted "as built" construction drawings for the Required Improvements which are on file with and have been approved by Manatee County, Florida (County); and

WHEREAS, the Developer is requesting the County to accept for maintenance certain of these Required Improvements; and

WHEREAS, the Manatee County Land Development Code, Ordinance 90-01, requires that the Security identified below, which represents an amount equal to ten percent (10%) of the actual installation costs of the Required Improvements which the Developer is presently requesting the County to accept for maintenance, be executed prior to their acceptance by the County; and

WHEREAS, the Developer herewith tenders to the County a Letter of Credit, Number FGAC-13231, dated OCTOBER 21, 2013 with FIDELITY GUARANTY AND ACCEPTANCE CORP. (Financial Institution), in the amount of SIXTY-FOUR THOUSAND NINE HUNDRED TWO & 84/100 Dollars (words) \$ 64,902.84 (numbers), expiring on the 21ST day of DECEMBER, 2014.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

1. This Letter of Credit is posted for the purpose of correcting any construction, design or material defects or failures of or in those Required Improvements which the Developer is presently requesting the County to accept for maintenance (Defects), which appear within thirty-six (36) months from the date of the County's approval and acceptance of those Required Improvements as evidenced by the County's execution of this document.

2. After identifying any such Defects, the County may withdraw funds under the terms of the Letter of Credit identified above and incorporated herein by reference, for the purpose of correcting Defects or paying the costs incidental to the County's enforcement of its rights hereunder. The County may also withdraw funds prior to the termination of Letter of Credit No. FGAC-13231 if sufficient security is not posted to complete the 36 month duration of security required by Ordinance 90-01. At least ten (10) days in advance of any such withdrawal of funds, the County shall have sent to the Developer, by Certified Mail, return Receipt Requested, notice of the County's intention to draw funds under the Letter of Credit. Expiration of Defect Security for this project shall at no time be terminated during the thirty-six months following the County's approval and acceptance of the Required Improvements.

Alternatively, the Developer, with the concurrence and at the option of the County, may undertake to correct such Defects itself upon posting additional security acceptable to the County.

3. Developer warrants the Required Improvements to be free from defects, and agrees to indemnify and pay to the County the full cost of correcting any such Defects appearing within thirty-six (36) months of the date hereof without regard to the amount of the Letter of Credit identified above. Developer agrees to the use of the funds by the County as provided herein.
4. This agreement shall be binding upon the Developer, his assigns or successors in interest in BRIDGEWATER, PHASE I (Project).

Agreement Warranting Req'd Impv

For: Bridgewater, Ph I

SIGNED AND SEALED this 24 day of OCTOBER, 2013

WITNESSES:

[Signature]

Witness

Scott Edward [Signature]

Type or Print Name

Sara [Signature]

Witness

Tara Angeles

Type or Print Name

Lennar Homes, LLC
_____ Developer

BY: _____

[Signature]
DARIN MCMURRAY
Type or Print Name

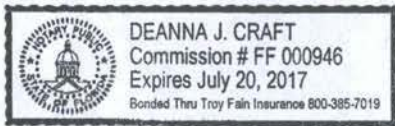
Title (If attorney-in-fact Attach Power of Attorney)
10481 Ben C Pratt, Six Mile Cypress Pkyw
Postal Address
Ft. Myers FL 33966
City State Zip

NOTARY ACKNOWLEDGMENT

STATE OF: FLORIDA
COUNTY OF: LEE

The foregoing instrument was acknowledged before me this 24th day of OCTOBER, 2013, by DARIN MCMURRAY, as V. 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
Deanna J. Craft
Print Name of Notary

Approved and accepted for and on behalf of Manatee County, Florida, this 5th day of November, 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.

700 NW 107 AVENUE - SUITE 240

MIAMI, FLORIDA 33172

PHONE (305) 563-8724

OCTOBER 21, 2013

CLEAN IRREVOCABLE STANDBY LETTER OF CREDIT NO. FGAC-13231

BENEFICIARY: BOARD OF COUNTY COMMISSIONERS, MANATEE COUNTY, FLORIDA

C/O PUBLIC WORKS DEPARTMENT/FISCAL SERVICES DIVISION

1022 26TH AVENUE EAST
BRADENTON, FL 34208

APPLICANT: LENNAR HOMES, LLC

1048 BENIC PRATT SIX MILE CYPRESS PARKWAY FT. MYERS, FL 33966

AMOUNT: USD \$64,902.84 (SIXTY FOUR THOUSAND NINE HUNDRED TWO AND 84/100 US DOLLARS)

EXPIRATION: OCTOBER 21, 2014

RE: BRIDGEWATER PHASE II (PDMU-05-19(R)/12-S-04(R)/ESP-12-12) (DTS#20120149) AND (PW#2020)

DEAR COMMISSIONERS:

BY ORDER OF LENNAR HOMES, LLC ("DEVELOPER"), WE HEREBY ISSUE OUR IRREVOCABLE CREDIT NO. FGAC-13231 IN FAVOR OF MANATEE COUNTY, FLORIDA ("COUNTY"), IN THE AMOUNT OF SIXTY FOUR THOUSAND NINE HUNDRED TWO AND 84/100 US DOLLARS (\$64,902.84), EFFECTIVE AS OF OCTOBER 21, 2013, AND EXPIRING AT OUR OFFICE AT THE CLOSE OF BUSINESS ON OCTOBER 21, 2014.

WE ARE INFORMED THAT THE DEVELOPER HAS COMPLETED CERTAIN REQUIRED IMPROVEMENTS ASSOCIATED WITH THE SUBDIVISION OR FINAL SITE PLAN IDENTIFIED AS BRIDGEWATER PHASE II (PROJECT), AS SHOWN ON THE AS-BUILT DRAWINGS FOR THE PROJECT WHICH ARE ON FILE WITH THE COUNTY, AND DEVELOPER HAS REQUESTED THE COUNTY TO ACCEPT THESE REQUIRED IMPROVEMENTS FOR MAINTENANCE.

WE ARE FURTHER INFORMED THAT THE MANATEE COUNTY LAND DEVELOPMENT CODE, ORDINANCE 90-01 REQUIRES THAT THIS SECURITY IN THE AMOUNT OF TEN PERCENT (10%) OF THE ACTUAL INSTALLATION COSTS OF THE REQUIRED IMPROVEMENTS WHICH THE DEVELOPER IS PRESENTLY REQUESTING THE COUNTY TO ACCEPT FOR MAINTENANCE BE POSTED FOR THE PURPOSE OF CORRECTING ANY CONSTRUCTION, DESIGN OR MATERIAL DEFECTS OR FAILURES OF OR IN THE REQUIRED IMPROVEMENTS (DEFECTS).

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(S) ON US MENTIONING THIS LETTER OF CREDIT ACCOMPANIED BY (i) A STATEMENT PURPORTING TO BE SIGNED BY A COUNTY ENGINEER TO THE EFFECT THAT SUCH FUNDS ARE REQUIRED TO EXERCISE THE COUNTY'S RIGHT TO CORRECT THE DEFECTS AND TO PAY COSTS INCIDENTAL THERETO, AND (ii) THAT AT LEAST 10 DAYS IN ADVANCE OF THE PRESENTATION OF THE SIGHT DRAFT FOR PAYMENT, 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.

FUNDS WILL ALSO BE AVAILABLE TO THE COUNTY IF AN EXTENSION OF THIS LETTER OF CREDIT OR SUBSTITUTION OF SECURITY IS NOT POSTED TO COMPLETE THE THREE YEAR PERIOD OF TIME FOR THE POSTING OF A DEFECT SECURITY AS REQUIRED BY ORDINANCE 90-01. NOTICE WILL BE GIVEN IN THE SAME MANNER AS TO REMEDY DEFECTS, BUT THE STATEMENT OF THE COUNTY'S ENGINEER SHALL NOT BE NECESSARY. THE AMOUNT OF ANY DRAFT UNDER THIS LETTER OF CREDIT SHALL BE ENDORSED ON THE REVERSE SIDE HEREOF.

ACCEPTED IN OPEN SESSION 11/5/13
BOARD OF COUNTY COMMISSIONERS, MANATEE COUNTY

ALL DRAFTS NEGOTIATED UNDER THIS CREDIT MUST BE NOTED BELOW

DATE	BANK	REASON FOR DRAW	AMOUNT OF DRAFT

FIDELITY GUARANTY AND ACCEPTANCE CORP.

700 NW 107 AVENUE - SUITE 240

MIAMI, FLORIDA 33172

PHONE (305)553-8724



THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NO. FGAC-13231

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THIS LETTER OF CREDIT IS SUBJECT TO, GOVERNED AND ENFORCED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA, AND EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98") AND IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF FLORIDA WILL CONTROL, WITHOUT REGARD TO PRIOR PRINCIPLES OF CONFLICT OF LAWS.

VERY TRULY YOURS,

FIDELITY GUARANTY AND ACCEPTANCE CORP.

Jacqueline de Souza
JACQUELINE DE SOUZA VICE PRESIDENT

ATTEST/WITNESS: *Grace Santaella*
GRACE SANTAELLA ASSISTANT SECRETARY

ALL DRAFTS NEGOTIATED UNDER THIS CREDIT MUST BE NOTED BELOW

DATE	BANK	REASON FOR DRAW	AMOUNT OF DRAFT