

MEMORANDUM



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

MANATEE COUNTY
FLORIDA

Phone: 941-708-7450
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www.myanatee.org

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

From: Carmen Shuler-Mosley, Sr. Fiscal Services Mgr. *C. Mosley*
Public Works Department

Date: November 12, 2013 *Contacted Carmen Mosley ext 7209 for pick up 11/20/2013/nr for*

Subject: HERITAGE HARBOUR, PHASE 2 - ROADWAY EXTENSIONS
PDMU-98-08(G)(Z)(R2)
RELEASE REQUIRED IMPROVEMENTS AGREEMENT
ACCEPT REQUIRED IMPROVEMENTS EXTENSION AGREEMENT
ACCEPT LETTER OF CREDIT AMENDMENT

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 the amount of \$2,299,201.78;**

PLEASE DO NOT RELEASE LETTER OF CREDIT NO. FGAC-11059. This Letter of Credit will be used to secure the one (1) year required improvements agreement.

- **Acceptance of, and authorization for Chairman to execute the *Required Improvements Agreement*. This Agreement will be for a one (1) year extension, secured by a Letter of Credit previously accepted by the Board of County Commissioners.**
- **Acceptance of, the Letter of Credit Amendment in conjunction with the above agreement;**
 - **Letter of Credit No. FGAC-11059 Amendment No. 1 dated November 4, 2013 issued through Fidelity Guaranty and Acceptance Corp.;**
 - **Extension to December 19, 2014;**
 - **Amount of Performance Bond \$2,299,201.78.**

Vicki Tessmer – Heritage Harbour, Phase 2 Roadway Extensions

November 12, 2013

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cc: Records Management
Sia Mollanzar, P.E., Deputy Director – Engineering Services
Chad Butzow, P.E., Deputy Director – Field Services Operations
Sage Kamiya, P.E., Deputy Director – Traffic Management
Mickey Lutz, Maintenance Operations Division Manager
Andy Fischer, Infrastructure Inspections Division Manager
Terry Kirschner, Lennar Homes, LLC
Fidelity Guaranty & Acceptance Corp.

Attachments

For: Heritage Harbour, Ph 2 Roadway Ext
(Name of Project)

REQUIRED IMPROVEMENTS AGREEMENT

(In conjunction 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 2 ROADWAY EXTENTION (Project); 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 certified 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 130% of that estimated cost; and

WHEREAS, the Developer herewith tenders to the County a Letter of Credit, Number FGAC-11059, dated DECEMBER 21, 2011, with FIDELITY GUARANTY AND ACCEPTANCE CORP. (Financial Institution), in the amount of TWO MILLION TWO HUNDRED NINETY-NINE THOUSAND TWO HUNDRED ONE & 78/100 Dollars (words), \$ 2,299,201.78 (numbers), expiring on the 19th day of DECEMBER, 2014.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

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 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 amounts as the County shall in its sole discretion determine, in accordance with the terms of the Letter of Credit.
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 Required Improvements, 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.

(Required Impv Agreement)

For: Heritage Harbour, Ph 2 Roadway Ext

SIGNED AND SEALED this 12th day of November, 2013
WITNESSES:

[Signature]
Witness
Russell Smith
Type or Print Name
[Signature]
Witness
TERRY KIRCHNER
Type or Print Name

LENNAR HOMES, LLC
Developer

BY: _____
Signature
Darin McMurray
Type or Print Name
Division President

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

NOTARY ACKNOWLEDGMENT

STATE OF: Florida
COUNTY OF: MANATEE

The foregoing instrument was acknowledged before me this 12 day of November, 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 19th day of November, 2013.

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

BY: [Signature]
Chairman

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





MANATEE COUNTY FLORIDA

November 1, 2013

Terry Kirschner, Development Mgr.
Lennar Homes, LLC
8411 Port Harbour Pkwy
Bradenton, FL 34212

**RE: HERITAGE HARBOUR, PHASE 2 ROADWAY EXTENSION
EXPIRATION OF LETTER OF CREDIT**

Dear Mr. Kirschner:

On January 24, 2012, the Board of County Commissioners accepted the *Required Improvements Agreement* for the above referenced project. Letter of Credit No. FGAC-11059 expires December 1, 2013. In order for the Developer to remain compliant, an amendment extending this expiration date must be provided immediately. Notice was sent to you regarding this issue via e-mail on September 24, 2013 with an "as soon as possible" time frame. As of this date Manatee County has not received an amendment to Letter of Credit No. FGAC-11059.

Please be advised this is a thirty (30) day notice, Manatee County will proceed to draw on funds in the amount of \$2,299,201.78 secured under Letter of Credit No. FGAC-11059. This draw notice will be mailed to Fidelity Guaranty and Acceptance Corp. November 20, 2013.

Should you have any questions, you may contact me at (941) 708-7476.

Sincerely,

Ron Schulhofer, Director
Public Works Department

RS/CM/mjo

cc: Records
Dan Schlandt, Deputy County Administrator
Ed Hunzeker, County Administrator
William Clague, Assistant County Attorney
Carmen Mosley, Sr Fiscal Services Mgr.
Fidelity Guaranty & Acceptance Corp.

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