

MEMORANDUM

Accepted in Open Session
Manatee County Board of County Commissioners

3/20/18



To: Ed Hunzeker
County Administrator

Thru: Ron Schulhofer, Director
Public Works Department

From: Carmen Mosley, Sr. Fiscal Services Mgr./
Jane Oliver, Bond Coordinator
Public Works Department

Date: March 6, 2018

Subject: **WILLOW WALK, PHASE I-B**
PDR-14-04/16-S-23 (F)
ACCEPT SURETY BOND
ADDING FINAL LIFT OF ASPHALT
TO PUBLIC IMPROVEMENTS AGREEMENT

The developer has started building the infrastructure for the development and is requesting to amend the *Agreement for Public Subdivision with Public Improvements* to include the final lift of asphalt, which was not be completed at the time of release of performance and acceptance of the defect security securing paving, storm sewer, water and fire distribution and sanitary sewer improvements. The Public Works Department has reviewed the request and is in agreement with the Developer. This action is to amend the current private improvements agreement to include the bonding of the final lift of asphalt and the required security in conjunction with this amendment. We therefore, per Resolution R-14-86, respectively request the County Administrator to approve the following:

- **Acceptance of** Addendum to the *Public Improvements Agreement* securing the final lift of asphalt improvements;
- **Acceptance of** and authorization for County Administrator to execute Surety Bond in conjunction with the above referenced *Agreement* securing the final lift of asphalt improvements.
 - **Surety Bond No.** 1154955 dated January 19, 2018 issued through Lexon Insurance Company.;
 - **Expiration Date** – January 19, 2019;
 - **Amount** of Performance \$60,297.25.


Public Works Department
Fiscal Division
1022 26th Avenue East, Bradenton, FL 34208
Phone number: (941) 708-7450

Instructions to Board Records

1. Copies of release request to: Claudia Campos (Claudia.campos@ManateeClerk.com), Julie Jensvold (Julie.jensvold@ManateeClerk.com), Abby Lindecamp (abby.lindecamp@ManateeClerk.com), Mathew Morris (mmorris@morrisengineering.net), and Jane Oliver (jane.oliver@mymanatee.org).

**MANATEE COUNTY, a political
subdivision of the State of Florida**

By: Board of County Commissioners

By: 
County Administrator, per R-14-86

RS/CM/jo

cc: Records Management
Ken LaBarr, Infrastructure Inspections Division Manager
Mike Brennan, Interim Maintenance Operations Division Manager
Mathew Morris, Agent for the Developer

Attachments

RESOLUTION NO.R-14-86

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, PROVIDING FOR THE DELEGATION OF CERTAIN AUTHORITY TO THE COUNTY ADMINISTRATOR AND COUNTY ATTORNEY REGARDING PERFORMAMCE SECURITIES AND DEFECT SECURITIES PURSUANT TO SECTION 910 OF THE MANATEE COUNTY LAND DEVELOPMENT CODE; REPEALING RESOLUTION NO. R-08-169; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Section 910 of the Manatee County Land Development Code (the "Code") sets forth the procedures for approval of subdivision plats, including requirements for the posting of performance securities and defect securities with the County to secure the completion of certain public and private improvements; and

WHEREAS, pursuant to Resolution No. R-08-169, the Board of County Commissioners of Manatee County, Florida, (the "Board") delegated certain authority to the County Administrator and County Attorney to exercise the County's rights against such securities in accordance with the Code; and

WHEREAS, it is in the best interest of the public health, safety and welfare of the County for the Board to repeal Resolution No. R-08-169 in its entirety and replace it with this Resolution, to further implement the provisions of Section 910 of the Code; and

WHEREAS, the Board finds that by delegating the authority in the specific circumstances set forth herein, the County is better able to protect the public interest.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Manatee County, Florida:

Section 1. Findings. The findings set forth above are hereby adopted as findings of the Board and incorporated herein by reference.

Section 2. Delegation of Authority. The Board hereby delegates to the County Administrator and the County Attorney, and their respective designees, the authority to accept, hold and draw upon performance securities and defect securities posted with the County pursuant to Section 910 of the Code. Such authority shall apply to any subdivision for which (a) the Board has approved the subdivision plat and a related improvements agreement in accordance with Section 910 of the Code. Such authority shall include, without limitation, the following:

- i. The authority to accept, hold, maintain and, upon completion of required improvements or expiration of the required defect guaranty period,

release performance securities and defect securities posted with the County pursuant to Section 910 of the Code;

- ii. The authority to administer and exercise the County's rights under any related improvements agreement, and to release such improvements agreement in accordance with the provisions thereof upon full performance by the developer;
- iii. The authority to sign and issue upon the County's behalf any notices of default when a developer defaults in its obligations under an improvements agreement (such notices of default to be issued to the obligor in default of its obligations and to any third-party guarantor, including any entity holding a letter of credit or surety bond in the County's favor);
- iv. The authority to call upon any such third-party guarantor to complete the required work or to provide the guaranteed monies to the County for the completion of same (in accordance with the performance security or defect security and the related agreement);
- v. The authority to draw upon a performance security or defect security whenever the County has the right to do so and it is necessary to do so in order to protect the public interest; and
- vi. The authority of the County Attorney to initiate judicial or administrative proceedings to enforce the County's rights under a performance security or defect security and related improvements agreement.

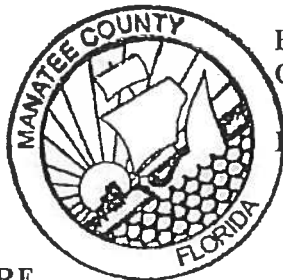
Such authority shall be vested concurrently in the County Administrator and the County Attorney. Should both such officials be unavailable, the authority shall rest with any Deputy County Administrator or any Assistant County Attorney designated in writing by the County Administrator or County Attorney, respectively.

Section 3. Repeal of Resolution No. R-08-169. Resolution No. R-08-169 is hereby repealed.

Section 4. Severability. If any section, sentence, clause, or other provision of this Resolution shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such section, sentence, clause, or other provision shall be deemed severable, and such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses, or provisions of this Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon adoption by the Board of County Commissioners.

PASSED AND DULY ADOPTED with a quorum present and voting this 9th day of September, 2014.



BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

By: Larry Butta
Chairperson

ATTEST: R.B.SHORE
Clerk of the Circuit Court

By: Robin Liberty
Deputy Clerk

Willow Walk, Ph I-B – Public Residential Project w/Public Improvement
 General Conditions, Earthwork, Paving, Storm Sewer, Sanitary Sewer & Water
DEFECT – Paving, Storm Sewer, Water & Fire Distribution, Sanitary Sewer
Performance – Final Lift of Asphalt

**EXHIBIT “B-1”
 IMPROVEMENTS**

	Improvement	Estimated Cost
1	General Conditions, Earthwork, Paving, Storm Sewer, Sanitary Sewer & Water	<u>\$1,296,329.39</u>
		\$
2	DEFECT ADDENDUM Paving, Storm Sewer, Water & Fire Distribution, Sanitary Sewer	<u>\$60,852.19</u>
3	PERFORMANCE ADDENDUM Final Lift of Asphalt	<u>\$60,297.25</u>



Manatee County Public Works Department
Engineering Services
1022 26th Avenue East
Bradenton, FL 34208
Phone: (941) 708-7462
www.mymanatee.org

January 31, 2018

Morris Engineering and Consulting, LLC
Attn: Mr. Matthew J. Morris, P.E.
6981 Professional Parkway East
Lakewood Ranch, FL 34240

(mmorris@morrisengineering.net)

RE: **WILLOW WALK – PHASE IB – (Public Subdivision)**
(PDR-14-04/16-S-23(F)) - (DTS #20160222)
Performance Cost Estimate
Required Public Improvements
Reason – (Final Lift of Asphalt)

Dear Mr. Morris:


This letter is revised and replaces the previous letter issued on 01/03/18, regarding this project, correcting to “Public Improvements”.

Your cost estimate for the above referenced bond, dated **December 18, 2017**, for the completion of site improvements to serve the above referenced development, is approved for the appropriate surety.

A Public Improvement Performance bond in the amount of **\$60,297.25**, which is 130% of your estimated cost, would be sufficient to assure the County completion of the required private improvements.

If we can be of further assistance, please contact me at (941) 708-7462.

Sincerely,



Sia Mollanazar, P.E., County Engineer
Deputy Director – Engineering Services

SM/jp/jh

cc: Record Management
Jane Oliver, Fiscal Analyst, Public Works Department
Carmen Mosley, Fiscal Operations Division Manager, Public Works Dept.
Ken LaBarr, Infrastructure Inspection Division Manager, Public Works Department
Karla Ripley, Senior Review Specialist, Public Works Dept.
Diana Lonergan, Planner, Building and Development Services



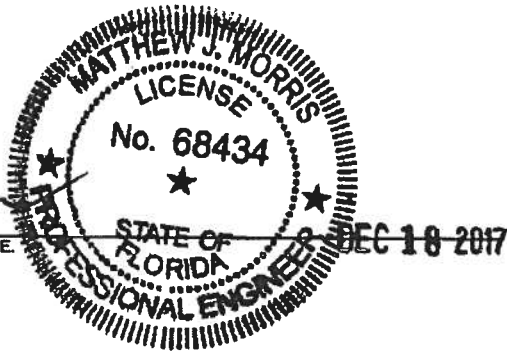
Performance Bond Estimate (Public Infrastructure - Final Asphalt Lift)
Willow Walk - Phase IB
December 15, 2017

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
PAVEMENT				
PERMANENT CONTROL POINTS	1	LS	\$1,600.00	\$1,600.00
SIGNAGE AND STRIPING	1	LS	\$5,000.00	\$5,000.00
3/4" TYPE S-III ASPHALT (FINAL LIFT)	7,525	SY	\$5.30	\$39,882.50
			SUBTOTAL PAVING	\$46,382.50

PROJECT CONSTRUCTION TOTAL \$46,382.50

BOND TOTAL (130%) \$ 60,297.25


Matthew J. Morris, P.E.
FL PE No. 68434



Willow Walk, Ph I-B – Public Residential Project w/Public Improvement
General Conditions, Earthwork, Paving, Storm Sewer, Sanitary Sewer & Water
DEFECT – Paving, Storm Sewer, Water & Fire Distribution, Sanitary Sewer
Performance – Final Lift of Asphalt

**EXHIBIT “C”
PERFORMANCE SECURITIES**

	Bond / LoC	Amount
1	Surety Bond No. SUR60000707 Issued through Ironshore Indemnity, Inc.	<u>\$1,296,329.39</u>
2	DEFECT ADDENDUM Surety Bond No. SUR60001269 Issued through Ironshore Indemnity, Inc.	<u>\$60,852.19</u>
31	PERFORMANCE ADDENDUM Surety Bond No. 1154955 Issued through Lexon Insurance Company	<u>\$60,297.25</u>

SURETY BOND
FOR PERFORMANCE OF REQUIRED IMPROVEMENTS
(Attachment "A") **BOND NO. 1154955**

KNOW ALL MEN BY THESE PRESENT:

That the Developer, OK WILLOW WALK LLC as Principal, and LEXON INSURANCE COMPANY, a Surety Company, duly authorized to transact business in the State of Florida, are held and firmly bound unto the County of Manatee, State of Florida, as Obligee, in the sum of \$ 60,297.25 (Numbers) Sixty Thousand Two Hundred Ninety-Seven and 25/100 (Words) for the payment of which we jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns, for the specific benefit of the County in accordance with the conditions set forth herein and in the "Agreement for Public Subdivision Improvements" which is hereby incorporated herein by reference.

THE CONDITION of the above obligation is such that, Whereas the Principal has entered into a contract, dated _____ (LEAVE BLANK Manatee County approval date) with the obligation to do and perform certain work relating to WILLOW WALK PHASE IB (Subdivision).

NOW THEREFORE, if the principal shall fully perform all the covenants and terms of said contract, then this obligation shall be null and void; otherwise this obligation shall remain in full force and effect, and Surety shall cause the contract to be fully performed or pay to obligee the cost of performing said contract in an amount not exceeding the said sum specified above. In the event such performance is not completed within the time specified in the attached "Agreement", the obligee shall be entitled to collection of this surety bond. Means of notification of intent to collect shall be by certified mail to the Surety at the address on page 2 {insert page number of surety's address}. Payment will be made to the County within 30 days by certified check drawn on behalf of the Board of County Commissioners at P. O. Box 1000, Bradenton, FL 34206.

The Surety does hereby consent to any and all alterations, extensions of time, or other modifications to the contract secured by this bond.

This Surety Bond shall be construed in accordance to the Laws of Florida, and any action of whatever nature, in connection with this Bond and "Agreement for Public Subdivision Improvements" shall be filed in the Twelfth Judicial Circuit in and for Manatee County, Florida.

INSURANCE COMPANY SIGNATURE FORM

FOR: WILLOW WALK PHASE IB
(Name of Project)

BOND NO. 1154955

SIGNED AND SEALED this 19th day of January, 2018

LEXON INSURANCE COMPANY

Surety Company Name

By: [Signature]
Signature - As its Agent

Brook T. Smith, Attorney-in-Fact

Print Name & Title

10002 Shelbyville Road, Suite 100

Address

Louisville

City

KY

State

40223

Zip

WITNESSES OR CORPORATE SEAL

Signature

Print Name

Signature

Print Name

NOTARY ACKNOWLEDGMENT

STATE OF: Kentucky

COUNTY OF Jefferson

The foregoing instrument was acknowledged before me this 19th day of January, 2018, by Brook T. Smith as Attorney-in-Fact (Title), on behalf of the Surety identified herein, and who is personally known to me or who has produced personally known (Type of Identification) as identification.

NOTARY SEAL:

[Signature]
Notary Public

Sandra L. Fusinetti

Print Name of Notary

Commission No. 549253 My Commission Expires: February 13, 2020

DEVELOPER SIGNATURE FORM

FOR: WILLOW WALK PHASE IB
BOND NO. 1154955

WITNESSES OR CORPORATE SEAL:

[Signature]
Witness
Kaye Figueroa
Type or Print Name
[Signature]
Witness
Deomatie Singh
Type or Print Name

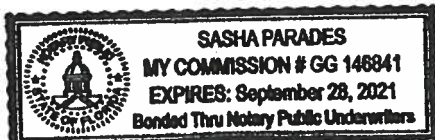
OK WILLOW WALK LLC

[Signature]
Developer
BY: [Signature]
Signature
Howard Erbstun
Type or Print Name
Authorized Signatory
Title (If attorney-in-fact Attach Power of Attorney)
701 S. Olive Avenue, Suite 104
Postal Address
West Palm Beach, FL 33401
City State Zip

NOTARY ACKNOWLEDGMENT

STATE OF: Florida
COUNTY OF: Palm Beach
The foregoing instrument was acknowledged before me this 22nd day of January, 2018,
by Howard Erbstun as Auth Signatory, on behalf of the corporation identified
herein as Developer and who is personally known to me or who has produced
[Signature] (Type of Identification) as identification.

NOTARY SEAL:



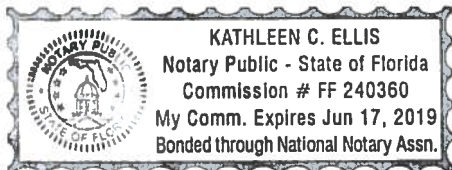
[Signature]
Notary Public
SASHA PARADES
Print Name of Notary

Approved and accepted for and on behalf of Manatee County, Florida, this 1st day of March, 2018.

MANATEE COUNTY
A political subdivision of the State of Florida
By: Board of County Commissioners
By: [Signature]
County Administrator

NOTARY ACKNOWLEDGMENT

STATE OF: FLORIDA
COUNTY OF: MANATEE
The foregoing instrument was acknowledged before me this 1st day of MARCH, 2018,
by ED HUNZEKER (County Administrator) for and on behalf of the Manatee County Board of County
Commissioners or has produced _____ as identification
who is personally known to me.



Kathleen C. Ellis
NOTARY
KATHLEEN C. ELLIS

POWER OF ATTORNEY

LX- 317348

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: Brook T. Smith, Raymond M. Hundley, Jason D. Cromwell, James H. Martin, Barbara Duncan, Sandra L. Fusinetti, Mark A. Guidry, Jill Kemp, Lynnette Long, Amy Meredith, Deborah Neichter, Theresa Pickerrell, Sheryon Quinn, Beth Frymire, Leigh McCarthy, Michael Dix 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 \$5,000,000.00, Five Million 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 5th day of August, 2015.

LEXON INSURANCE COMPANY



BY [Signature] David E. Campbell President

ACKNOWLEDGEMENT

On this 5th day of August, 2015, before me, personally came David E. Campbell to me known, who be 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.



AMY TAYLOR Notary Public- State of Tennessee Davidson County Mv Commission Expires 07-08-19

BY [Signature] Amy Taylor 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 forgoing 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 Seal at Mount Juliet, Tennessee this 19th Day of January, 2018.



BY [Signature] Andrew Smith Assistant Secretary

WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance 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."