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| Meeting Date |
| February 21, 2017 |



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| AGENDA | |
| Section | CONSENT |
| Item No. | II A. 16 |

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

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| SUBJECT: | Adopt Resolution and Release Performance Bond: Heritage Isle, Ph. 7B Developer: Lennar Homes, LLC Fiscal Impact: None District 4 |
| DEPT/OFFICE: | Public Works Department |

Requested Action:

In accordance with Section 62-2844(b), it is requested that the Board of County Commissioners adopt the attached Resolution and authorize the Chairman to sign the Resolution releasing the Contract and Surety Performance Bond dated January 28, 2014 for the above referenced project.

Summary Explanation & Background:

Heritage Isle, Phase 7B consists of 86 lots on approximately 29.07 acres located on the south side of Judge Fran Jamieson Way and the west side of Legacy Boulevard. It received final engineering and preliminary plat approval by the Board on July 11, 2006. These plans were subsequently updated to reflect the most up to date construction standards including roadways and lot drainage, and the engineering revision was approved by the Board on February 5, 2013. Per the approved plans, "Asphaltic pavement to be installed in two lifts as follows: Initial construction of a 1 & 1/4" S-1 and a second lift of 3/4" S-III. The Developer will bond the cost for the second lift and complete the second lift within two (2) years or forfeit such bond."

The infrastructure and first lift were completed as of October 24, 2013. On January 28, 2014, the Board released the contract and bond as well as granted contract approval for the second lift of asphaltic pavement.

As of February 7, 2017 the second lift of asphaltic pavement has been completed. We are requesting the Board of County Commissioners adopt the attached Resolution to Release the Contract and Surety Performance Bond back to the Developer.

Reference: SD0601006/12ER-00895/13SD-00097

Fiscal Impact: FY 16/17

Clerk to the Board instruction:
Please forward the Board action to the Public Works Department. Provide 2 originals of the Resolution.

Exhibits Attached: Resolution, Subdivision Infrastructure Contract (copy), and Surety Performance Bond (copy)

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|------------------------------------|--|-----------------------------|---|--------------------------|----|--------------------------|----|--------------------------|
| Contract /Agreement (If attached): | | Reviewed by County Attorney | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | PR | <input type="checkbox"/> |
| County Manager | | Assistant County Manager | Department Director / Extension John P. Denninghoff, Public Works, Director Ext. 56524 | | | | | |
| Stockton Whitten | | | | | | | | |



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

February 22, 2017

MEMORANDUM

TO: John Denninghoff, Public Works Director

RE: Item II.A.16., Resolution and Release of Performance Bond for Heritage Isle, Phase 7B
– Lennar Homes, LLC

The Board of County Commissioners, in regular session on February 21, 2017, adopted Resolution No. 17-024, releasing Contract and Surety Performance Bond dated January 28, 2014, for Heritage isle, Phase 7B – Lennar Homes, LLC. Enclosed are two fully-executed Resolutions.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

Encls. (2)

cc: Contracts Administration
Finance
Budget

RESOLUTION 17 -024

WHEREAS, the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, and Lennar Homes, LLC entered into a contract to guarantee the construction of improvements on property commonly known as Heritage Isle, Ph. 7B Subdivision.

WHEREAS, by execution of the Contract, the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA agreed to accept said improvements for private use at such time as said improvements were satisfactorily completed; and

WHEREAS, Lennar Homes, LLC completed all of the infrastructure improvements and has requested that the executed contract approved on January 28, 2014 be released and release of all undisbursed funds referenced in the Contract hereinabove described.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that:

1. The BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereby acknowledges that there is satisfactory completion of all improvements to that certain real property commonly known as the Heritage Isle, Ph. 7B Subdivision.
2. The BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereby releases the contract and performance bond executed on January 28, 2014.
3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the **21st** day of February, 2017.

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By:



Curt Smith, Chairman

As approved by the Board on February 21, 2017

**Subdivision Infrastructure
Contract**

THIS CONTRACT entered into this 28th day of January, 2014, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY", and Lennar Homes, LLC, hereinafter referred to as "PRINCIPAL".

WITNESSETH:

IN CONSIDERATION of the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. The PRINCIPAL agrees to construct the improvements described below:

Construct the second lift of Asphaltic pavement as depicted in the approved plans of 13SD-00097 for Heritage Isle, Phase 7B as recorded in Plat Book 59, pages 76-78 of the Public Records of Brevard County.
2. The PRINCIPAL agrees to construct said improvements strictly in accordance with the plans and specifications on file in the office of the Land Development Division, which have been incorporated herein by this reference.
3. The PRINCIPAL agrees to complete said construction on or before the 28th day of January, 2016.
4. In order to guarantee performance of PRINCIPAL'S obligations herein contained, PRINCIPAL shall furnish cash, letter of credit, certificate of deposit or surety bond in a form approved by the COUNTY, in the amount of \$65,974.06. If such bond is a cash bond or a certificate of deposit, said amount shall be deposited with the Board of County Commissioners. Said bond shall be 125% of the estimated cost of construction, as determined by the Land Development Division. PRINCIPAL shall maintain such records and accounts, including property, personnel, financial records, as are deemed necessary by the COUNTY to ensure proper accounting for all funds expended under the agreement. Said records shall be made available upon request for audit purposes to Brevard County and its auditors.
5. The COUNTY agrees to accept said plat above described for recording in the public records of Brevard County, Florida and to accept the areas depicted thereon as dedicated for public use, including but not limited to streets and parks, at such time as said improvements are satisfactorily completed. Satisfactory completion in accordance with the plans and specifications shall be determined by written approval of the County Development Engineer or designated assistant.
6. In the event, PRINCIPAL fails to complete said improvements within the time prescribed, the COUNTY may elect to take all or any of the following actions:

WITNESSES:

PRINCIPAL:

W. Cardinale
Whitney Cardinale

[Signature]

Laura Coffey
Laura Coffey

11/11/13 DATE

State of Florida
County of Hillsborough

The foregoing instrument was acknowledged before me this 11th day of NOVEMBER 2013, by Michael Southward who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

My commission expires: April 21, 2017 [Signature]
S E A L Notary Public
Commission Number: EE 885323 Kristen Joseph
Notary Name printed, typed or stamped



Pre-approved Form reviewed for
Legal form and content: 12/18/07.

This supersedes previous Surety Performance Bond (County Right-of-Way/Easement) issued on 08/12/2013.

SURETY PERFORMANCE BOND

Bond No. 0625700
Heritage Isle, Ph 7B
Subdivision #13SD-00097

KNOW ALL MEN BY THESE PRESENTS:

That we, Lennar Homes, LLC, hereinafter referred to as "Owner" and, International Fidelity Insurance Company, hereinafter referred to as "Surety", are held and firmly bound unto the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereinafter referred to as "County", in the sum of \$ 65,974.06, for the payment of which we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, Owner has entered into a contract with the County dated the 28th day of January, 2014, which contract is made a part hereof by reference.

NOW THEREFORE, the condition of this obligation is such that if Owner shall promptly and faithfully perform said contract and complete the work contemplated therein by January 28th, 2016, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

If the Owner shall be declared in default of said contract by the County, the Surety shall have sixty (60 days from the date of said default within which to take whatever action it deems necessary in order to insure performance. If, at the expiration of sixty (60) days from the date of said default, no arrangements have been made by the Owner or surety satisfactory to the County for the completion of said contract, then the County shall have the right to complete said contract and the Owner and Surety jointly and severally, shall pay all costs of completing said contract to the County, including but not limited to engineering, legal and other costs, together with any damages, either direct or consequential, which the County may sustain on account of the Owner's default of said contract. After the expiration of the aforesaid grace period, the County shall have the additional right to contract for the completion of said contract upon which the Owner has defaulted and upon the County's acceptance of the lowest responsible bid for the completion of said contract, the Owner and Surety shall become immediately liable for the amount of said bid and in the event the County is required to commence legal proceedings for the collection thereof, interest shall accrue at the rate of six percent (6%) per annum beginning with the commencement of such legal proceedings. The County, in its discretion, may permit the Surety to complete said contract, in the event of Owner's default.

In the event that the County commences suit for the collection of any sums due hereunder, the obligors and each of them agree to pay all costs incurred by the County, including attorney's fees.

EXECUTED this 10th day of December, 2013.

OWNER: Lennar Homes, LLC

[Signature]
Mick McKeever, Vice President
SURETY:

[Signature]
Irene Lau, Attorney-in-Fact
for International Fidelity Insurance
Company

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On DEC 10 2013 before me, Kathy R. Mair, Notary Public,
DATE [Name of Notary Public and Title "Notary Public"]

personally appeared Irene Lau -----
[Name(s) of Signer(s)]

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



(Seal)

WITNESS my hand and official seal.

Kathy R. Mair
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: Irene Lau

- Individual
- Corporate Officer – Title(s): _____
- Partner – Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

POWER OF ATTORNEY INTERNATIONAL FIDELITY INSURANCE COMPANY

HOME OFFICE: ONE NEWARK CENTER, 20TH FLOOR
NEWARK, NEW JERSEY 07102-5207

KNOW ALL MEN BY THESE PRESENTS: That INTERNATIONAL FIDELITY INSURANCE COMPANY, a corporation organized and existing laws of the State of New Jersey, and having its principal office in the City of Newark, New Jersey, does hereby constitute and appoint

KATHY R. MAIR, IRENE LAU, MECHELLE LARKIN

Newport Beach, CA.

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said INTERNATIONAL FIDELITY INSURANCE COMPANY, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of Article 3-Section 3, of the By-Laws adopted by the Board of Directors of INTERNATIONAL FIDELITY INSURANCE COMPANY at a meeting called and held on the 7th day of February, 1974.

The President or any Vice President, Executive Vice President, Secretary or Assistant Secretary, shall have power and authority

- (1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and,
- (2) To remove, at any time, any such attorney-in-fact and revoke the authority given.

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of said Company adopted at a meeting duly called and held on the 29th day of April, 1982 of which the following is a true excerpt:

Now therefore the signatures of such officers and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.



IN TESTIMONY WHEREOF, INTERNATIONAL FIDELITY INSURANCE COMPANY has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 16th day of October, A.D. 2007.

INTERNATIONAL FIDELITY INSURANCE COMPANY

STATE OF NEW JERSEY
County of Essex

[Signature]
Secretary

On this 16th day of October 2007, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of the INTERNATIONAL FIDELITY INSURANCE COMPANY; that the seal affixed to said instrument is the Corporate Seal of said Company; that the said Corporate Seal and his signature were duly affixed by order of the Board of Directors of said Company.



IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.

[Signature]

A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March, 27, 2014

CERTIFICATION

I, the undersigned officer of INTERNATIONAL FIDELITY INSURANCE COMPANY do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Section of the By-Laws of said Company as set forth in said Power of Attorney, with the ORIGINALS ON IN THE HOME OFFICE OF SAID COMPANY, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect

IN TESTIMONY WHEREOF, I have hereunto set my hand this day of DEC 10 2013

[Signature]
Assistant Secretary