

Meeting Date
March 7, 2017



AGENDA	
Section	CONSENT
Item No.	II.A.2

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Adopt Resolution and Release Performance Bond: Heritage Isle, Ph. 8A		
	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 May 26, 2015 for the above referenced project.

Summary Explanation & Background:

The Heritage Isle PUD Phase 8 subdivision is located on the south side of Judge Fran Jamieson Way and the east side of Legacy Boulevard, containing 130 single family lots and 54 villa units for a total 184 units on 50.73 acres.

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 November 24, 2014. On May 26, 2015, the Board released the contract and bond as well as granted contract approval for the second lift of asphaltic pavement.

As of February 13, 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: SD0601006/14SD-00320/14ER-00061

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)

Contract /Agreement (If attached):		Reviewed by County Attorney	Yes ☒	No ☐	PR ☐
County Manager					Department Director / Extension Andrew J. Holmes, Public Works, Assistant Director Ext. 56524
Stockton Whitten					Assistant County Manager



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

March 8, 2017

M E M O R A N D U M

TO: Andrew Holmes, Assistant Public Works Director

RE: Item II.A.2., Resolution Releasing Performance Bond for Heritage Isle, Phase 8A – Lennar Homes, LLC

The Board of County Commissioners, in regular session on March 7, 2017, adopted Resolution No. 17-035, releasing the Contract and Surety Performance Bond dated May 26, 2015, for Heritage Isle, Phase 8A – Lennar Homes. Enclosed are two fully-executed Resolutions.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

Encls. (2)

cc: Contracts Administration
Finance
Budget

RESOLUTION 17 -035

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. 8A 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 May 26, 2015 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. 8A Subdivision.
2. The BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereby releases the contract and performance bond executed on May 26, 2015.
3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the 7th day of March, 2017.

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By:



Curt Smith, Chairman

As approved by the Board on March 7, 2017

Subdivision No. SD0601006/14ER-00061/14SD-00320 **Project Name** Heritage Isle, Ph. 8A

**Subdivision Infrastructure
Contract**

THIS CONTRACT entered into this 26th day of May, 2015, 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:
Second Lift of Asphaltic Pavement

and all other improvements depicted in subdivision number SD0601006/14ER-00061/14SD-00320. A copy of said plat to be recorded in the Plat Books of the Public Records of Brevard County.

2. Principal agrees to construct the improvements strictly in accordance with the plans and specifications on file in the Land Development Division (which construction is hereinafter referred to as the "Work"). Such plans and specifications (hereinafter referred to as the "Plans") are hereby incorporated into this Agreement by reference and made a part hereof. Principal warrants to County that the Work will conform to the requirements of the Plans and other requirements specified in the County's approval of the Work. Principal also warrants to County that the Work will be free from faults and defects. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered to be defective. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this paragraph 2.

If within two (2) years after approval and acceptance of the improvements by County, any Work is found to be defective, Principal shall promptly, without cost to County, either correct such defective Work, or, if it has been rejected by County, remove it from the site and replace it with nondefective Work. If Principal does not promptly comply with the terms of such instructions, County may elect any of the remedies provided for in paragraph 6 herein below. Corrective Work shall be warranted to be free from defects for a period of six (6) months. Any defect in such Work shall be corrected again by Principal promptly upon notice of the defect from County. In the event the maintenance bond given by Principal in connection with County's acceptance of the improvements is extended, the two (2) year warranty period provided for herein shall be extended for a like period.

To the extent assignable, Principal assigns to County all of Principal's warranty rights under its construction contract with the contractor constructing the improvements (including all warranties provided by law of in equity with respect to such construction contract), which warranties may be asserted by County on behalf of Principal in the event Principal fails to perform its warranty obligations hereunder. Where warranties granted hereunder overlap, the more stringent requirement shall control."

3. The PRINCIPAL agrees to complete said construction on or before the 1st day of February, 2017.

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 \$ 64,968.75 . 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:
 - A. Vacate all or part of such recorded plat where improvements have not Been completed in accordance with the plans and specifications,
 - B. Complete the improvements utilizing COUNTY employees and materials and request payment from the bond or the PRINCIPAL,
 - C. Request the surety on said performance bond to complete such improvements, or
 - D. Contract for completion of said improvements.
7. The PRINCIPAL and Surety on said performance bond shall be liable for all costs, expenses, and damages incurred by the COUNTY, including attorney's fees, in the event the PRINCIPAL defaults on this contract.
8. In the performance of this Agreement, the PRINCIPAL shall keep books, records, and accounts of all activities, related to the agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this agreement shall be open to inspection during regular business hours by an authorized representative of the Office and shall be retained by the PRINCIPAL for a period of three years after termination of this agreement. All records, books and accounts related to the performance of this agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119 of the Florida Statutes.
9. No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this agreement shall be subject to copyright by PRINCIPAL in the United States or any other country.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST:

Scott Ellis
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Robin Fisher
Robin Fisher, Chairman

As approved by the Board on: May 26, 2015.

WITNESSES:

PRINCIPAL:

[Signature]
_____, as President

2-4-15

DATE

State of: Florida

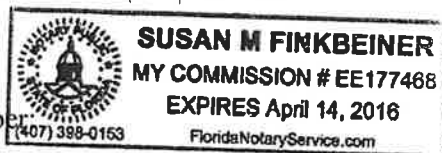
County of: Brevard

The foregoing instrument was acknowledged before me this 4th day of February, 2015, by Rob Bopp who is personally known to me or who has produced N/A as identification and who did (did not) take an oath.

My commission expires: 4/14/2016

S E A L

Commission Number:



Susan M. Finkbeiner

Notary Public

Susan M. Finkbeiner

Notary Name printed, typed or stamped

SURETY PERFORMANCE BOND

Bond No.: 0183362

Heritage Isle at Viera- Phase 8A

2nd Lift of Asphalt

KNOW ALL MEN BY THESE PRESENTS:

That we, Lennar Homes, LLC, hereinafter referred to as "Owner" and, Berkley 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 \$ 64,968.75, 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 26th day of May, 2016, 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 November 30, 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 13th day of October, 2014.

[Signature]
Lennar Homes, LLC
OWNER: Florida limited liability company

[Signature]
Mark Mothrap Vice President
SURETY: Berkley Insurance Company

[Signature]
Mechelle V. Larkin, Attorney-in-Fact

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On OCT 13 2014 before me, Kathy R. Mair, Notary Public,
DATE [Name of Notary Public and Title "Notary Public"]

personally appeared Mechelle V. Larkin -----
[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.

WITNESS my hand and official seal.



(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: Mechelle V. Larkin

- ☐ 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
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: *Jeffrey Strassner, Patricia Talavera, Tenzer V. Cunningham, Natalie K. Trofimoff, Irene Lau, Kathy R. Mair, Mechelle V. Larkin, Brenda Wong or Kari Davis of Marsh USA, Inc. of Los Angeles, CA* its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **Fifty Million and 00/100 U.S. Dollars (U.S.\$50,000,000.00)**, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety Group, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 23 day of January, 2014.

Attest:

(Seal)

By

Ira S. Lederman
Senior Vice President & Secretary

Berkley Insurance Company

By

Jeffrey M. Hafter
Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

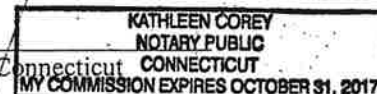
STATE OF CONNECTICUT)

) ss:

COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 23 day of January, 2014, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Senior Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

Kathleen Corey
Notary Public, State of Connecticut



CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this OCT 13 2014 day of _____

(Seal)

Andrew M. Tuma

WARNING - Any unauthorized reproduction or alteration of this document is prohibited. This power of attorney is void unless seals are readable and the certification seal at the bottom is embossed. The background imprint, warning and confirmation (on reverse) must be in blue ink.