



Agenda Report

Consent

F.10.

10/25/2022

Subject:

Adopt Resolution and Release Performance Bond: Bridgewater Central at Viera Subdivision - District 4
Developer: WCI Communities, LLC and The Viera Company

Fiscal Impact:

None

Dept/Office:

Public Works/Engineering

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 Chair to sign the Resolution releasing the Contract and Surety Performance Bond dated July 7, 2020 for the above referenced project.

Summary Explanation and Background:

Bridgewater Central at Viera subdivision is located within the Viera DRI south of Bridgewater North at Viera on the west side of Lake Andrew Drive. The proposed subdivision contains 262 residential lots on 114.25 acres.

The Bridgewater Central at Viera subdivision received preliminary plat and final engineering plans on October 16, 2018, and final plat and contract approval on February 26, 2019. The developer posted a Surety Performance Bond for guarantee of the completion of the infrastructure improvements according to the approved plans.

Per Section 62-2809(b)(2), "Construction after final plat recordation: ...the applicant shall provide security required in Section 62-2844 for the performance of such construction..." Section 62-2844(a) states: "An applicant shall be required to secure its performance security of the construction required under this article by a surety bond, letter of credit, savings account, certificate of deposit or execution of a tri-party escrow agreement. Such security shall not be required if a certificate of completion has been issued for all the subdivision improvements prior to final plat recordation." Because the applicant chose to plat the subdivision prior to completion of construction, the applicant entered into Contract with the Board and posted a Surety Performance Bond to guarantee the completion of the infrastructure improvements according to the approved plans.

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 15, 2019. On July 7, 2020, the Board released the contract and bond as well as granted contract approval to guarantee the construction of the second lift of asphaltic pavement. Please be advised, after the work was successfully completed, an error was identified in the Subdivision Infrastructure Contract naming The Viera Company as the Principal; it should have stated WCI Communities, LLC. WCI Communities, LLC did sign the Contract and provide the Performance bond.

As of September 30, 2022, the second lift of asphaltic pavement has been completed and has passed inspection. 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: 18SD00013

Contact: Christine Verrett, Special Projects Coordinator III, Extension 58328#

Clerk to the Board Instructions:

Please forward the Board action to the Public Works Department and provide 2 originals of the Resolution.



October 26, 2022

M E M O R A N D U M

TO: Marc Bernath, Public Works Director Attn: Christine Verrett

RE: Item F.10., Resolution and Release Performance Bond: Bridgewater Central at Viera Subdivision – Developer: WCI Communities, LLC and The Viera Company

The Board of County Commissioners, in regular session on October 25, 2022, executed and adopted Resolution No. 22-145, releasing the Contract and Surety Performance Bond dated July 7, 2020, for the Bridgewater Central at Viera Subdivision – Developer: WCI Communities, LLC and The Viera Company. Enclosed are two fully-executed Resolutions.

Your continued cooperation is always appreciated.

Sincerely,

**BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK**

for: Donna Scott
Kimberly Powell, Clerk to the Board

/ds

Encls. (2)

RESOLUTION 22-145

WHEREAS, the Board of County Commissioners of Brevard County, Florida and WCI Communities, LLC entered into a contract to guarantee the construction of improvements on property commonly known as Bridgewater Central 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

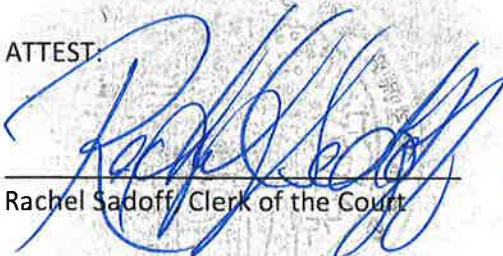
WHEREAS, WCI Communities, LLC completed all of the infrastructure improvements and has requested that the executed contract approved on July 7, 2020 be released and release of all undisbursed funds referenced in the Contract hereinabove described.

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 Bridgewater Central subdivision.
2. The Board of County Commissioners of Brevard County, Florida hereby releases the contract and performance bond executed on July 7, 2020.
3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the 25th day of October 2022.

ATTEST:



Rachel Sadoff, Clerk of the Court

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By: 

Kristine Zonka, Chair

As approved by the Board on October 25, 2022

Subdivision No. 18SD00013

Project Name Bridgewater Central at Viera

**Subdivision Infrastructure
Contract**

THIS CONTRACT entered into this 7th day of July, 2020, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY," and The Viera Company, 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:
Placement of the final lift of asphalt, pavement re-striping as needed, adjustment of any valves and the repair/replacement of any damaged curb as identified during final inspections with County Staff, and all other improvements depicted in subdivision number 18SD00013.
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 7th day of July, 2022.

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 \$ 588,221.88 . If such bond is a cash bond or a certificate of deposit, said amount shall be deposited with the Board of County Commissioners within five (5) business days of the County's acceptance of this contract. 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, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Bryan Andrew Lober
Bryan Lober, Chair

As approved by the Board on: July 7, 2020.

WITNESSES:

Lindsey Eilgenbach
Lindsey Eilgenbach

TJR Beer
TJR Beer

PRINCIPAL:

Jeff Alexander
JEFF ALEXANDER, as President
AUTHORIZED AGENT

05/06/2020
DATE

State of: FL

County of: PALM BEACH

The foregoing instrument was acknowledged before me this 7 day of MAY, 2020, by JEFF ALEXANDER who is personally known to me or who has produced KNOWN TO ME as identification and who did (did not) take an oath.

My commission expires:

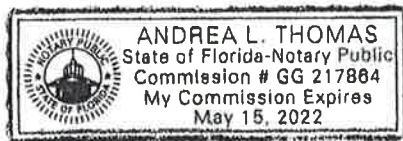
S E A L

Commission Number:

Andrea Thomas
Notary Public

ANDREA THOMAS

Notary Name printed, typed or stamped DIRECTOR OF CLOSINGS





SURETY RIDER

To be attached to and form a part of

Bond No. 30087811

Bridgewater Central at Viera, Phase II

dated November 12, 2019
effective (MONTH-DAY-YEAR)

executed by WCI Communities, LLC, as Principal,
(PRINCIPAL)

and by The Continental Insurance Company, as Surety,

in favor of Board of County Commissioners of Brevard County, FL
(OBLIGEE)

in consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to changing

The Bond Amount from:

Three Hundred Thirty-five Thousand Ninety-six & 88/100 (\$335,096.88)

To:

Five Hundred Eighty-eight Thousand Two Hundred Twenty-one & 88/100 (\$588,221.88)

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

This rider
is effective June 4, 2020
(MONTH-DAY-YEAR)

Signed and Sealed June 4, 2020
(MONTH-DAY-YEAR)

WCI Communities, LLC, a Delaware limited liability company
By: WCI Communities, Inc., a Delaware corporation, its sole member
(PRINCIPAL)

By: Jeff Alexander, Authorized Agent
(PRINCIPAL)

The Continental Insurance Company
(SURETY)

By: My Hua, Attorney in Fact



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Orange)

On JUN 04 2020 before me, Kathy R. Mair, Notary Public
DATE [Name of Notary Public and Title "Notary Public"]

personally appeared My Hua -----
[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.



A handwritten signature of Kathy R. Mair in cursive script.

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended 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(s)

Signer's Name: My Hua

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

Signer Is Representing: _____

Signer's Name: _____

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

Signer Is Representing: _____

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That The Continental Insurance Company, a Pennsylvania insurance company, is a duly organized and existing insurance company having its principal office in the City of Chicago, and State of Illinois, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Kathy R Mair, Mechelle Larkin, My Hua, Individually

of Irvine, CA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the insurance company and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Board of Directors of the insurance company.

In Witness Whereof, The Continental Insurance Company has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 19th day of October, 2018.



The Continental Insurance Company


Paul T. Bruffat Vice President

State of South Dakota, County of Minnehaha, ss:

On this 19th day of October, 2018, before me personally came Paul T. Bruffat to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of The Continental Insurance Company, a Pennsylvania insurance company, described in and which executed the above instrument; that he knows the seal of said insurance company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said insurance company and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance company.



My Commission Expires June 23, 2021


J. Mohr Notary Public

CERTIFICATE

I, D. Johnson, Assistant Secretary of The Continental Insurance Company, a Pennsylvania insurance company, do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the insurance company printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance company this _____ day of _____

JUN 04 2020



The Continental Insurance Company


D. Johnson Assistant Secretary

Form F6850-4/2012

Go to www.cnasurety.com > Owner / Obligor Services > Validate Bond Coverage, If you want to verify bond authenticity.

SURETY PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, WCI Communities, LLC, hereinafter referred to as "Owner" and, The Continental 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 \$ 335,096.88, 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 7th day of July, 2020, 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 July 7th, 2021, 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 12th day of November, 2019.

OWNER: WCI Communities, LLC,
a Delaware limited liability company

[Signature] WITH POWER

SURETY: The Continental Insurance Company

[Signature] My Hua, Attorney-in-Fact



PUBLIC WORKS

NOV 18 2019

ENGINEERING

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Orange)

On NOV 12 2019 before me, Kathy R. Mair, Notary Public,
DATE [Name of Notary Public and Title "Notary Public"]

personally appeared My Hua _____,
[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.



Place Notary Seal Above

WITNESS my hand and official seal.

Kathy R. Mair

Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

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Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: My Hua

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

Signer Is Representing: _____

Signer's Name: _____

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

Signer Is Representing: _____

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That The Continental Insurance Company, a Pennsylvania insurance company, is a duly organized and existing insurance company having its principal office in the City of Chicago, and State of Illinois, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Kathy R Mair, Mechelle Larkin, My Hua, Individually

of Irvine, CA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -


and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the insurance company and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Board of Directors of the insurance company.

In Witness Whereof, The Continental Insurance Company has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 19th day of October, 2018.



The Continental Insurance Company


Paul T. Bruflat Vice President

State of South Dakota, County of Minnehaha, ss:

On this 19th day of October, 2018, before me personally came Paul T. Bruflat to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of The Continental Insurance Company, a Pennsylvania insurance company, described in and which executed the above instrument; that he knows the seal of said insurance company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said insurance company and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance company.



My Commission Expires June 23, 2021


J. Mohr Notary Public

CERTIFICATE

I, D. Johnson, Assistant Secretary of The Continental Insurance Company, a Pennsylvania insurance company, do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the insurance company printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance company this _____ day of _____ NOV 12 2019.




The Continental Insurance Company

D. Johnson Assistant Secretary

Form F6850-4/2012

Go to www.cnasurety.com > Owner / Oblgee Services > Validate Bond Coverage, if you want to verify bond authenticity.