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**AGENDA REPORT
May 22, 2018**

**Resolution and Release of Performance Bond, Re: Bridgewater North at
Viera Subdivision - WCI Communities, LLC (District 4)**



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Viera Subdivision - WCI Communities, LLC (District 4)**

SUBJECT:

Adopt Resolution and Release Performance Bond: Bridgewater North at Viera Subdivision

FISCAL IMPACT:

None - FY 18/19

DEPT/OFFICE:

Public Works

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 September 19, 2016 for the above referenced project.

SUMMARY EXPLANATION and BACKGROUND:

Bridgewater North at Viera subdivision is located within the Viera DRI approximately 1.5 miles south of Wickham Road on the west side of Lake Andrew Drive. The proposed subdivision contains 207 residential lots on 147 acres.

The Bridgewater North at Viera subdivision received preliminary plat and final engineering plans on September 6, 2016, and final plat and contract approval on February 7, 2017. 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.

As of May 2, 2018, the Bridgewater North at Viera subdivision infrastructure improvements have been completed per the approved plans which allow for the 2" SP-9.5 (Fine Mix) asphalt to be placed in (2) separate 1" thick lifts. As such, the Developer will bond the cost and provide a contract for the second lift and complete the second lift by April 24, 2020.

Reference: 16SD00002

CLERK TO THE BOARD INSTRUCTIONS:

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

ATTACHMENTS:

Description

- ▣ **Resolution**
- ▣ **Copy of Infrastructure Contract and Bond**



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

May 23, 2018

M E M O R A N D U M

TO: Andy Holmes, Public Works Director

RE: Item II.A.6., Resolution and Release of Performance Bond for Bridgewater North at Viera Subdivision – WCI Communities, LLC

The Board of County Commissioners, in regular session on May 22, 2018, executed and adopted Resolution No. 18-072, releasing the Contract and Surety Performance Bond dated September 19, 2016, for Bridgewater North at Viera Subdivision – WCI Communities, LLC. Enclosed are two fully-executed Resolutions for your action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/ds

Encls. (2)

cc: Finance
Budget

RESOLUTION 18 -072

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 North at Viera 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 February 7, 2017 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 Bridgewater North at Viera Subdivision.
2. The BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereby releases the contract and performance bond executed on February 7, 2017.
3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the 22nd day of May, 2018.

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By: 

Rita Pritchett, Chair

As approved by the Board on May 22, 2018

Subdivision No. 16SD00002 Project Name Bridgewater North at Viera

**Subdivision Infrastructure
Contract**

THIS CONTRACT entered into this _____ day of _____ 2017, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY," and WCI Communities, 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:

and all other improvements depicted in subdivision number 16SD00002. 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 _____ day of _____, 2017.

RECEIVED

NOV 07 2016

BY: _____

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 \$ 4,404,163.63 . 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:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



[Signature]
Chairman

As approved by the Board on: February 7, 20 17.

WITNESSES:

PRINCIPAL:

[Signature]
[Signature]

[Signature]
Jon Rapoport as President - East Anglin
9/29/16
DATE

State of: Florida

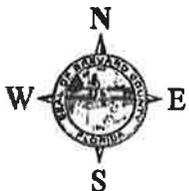
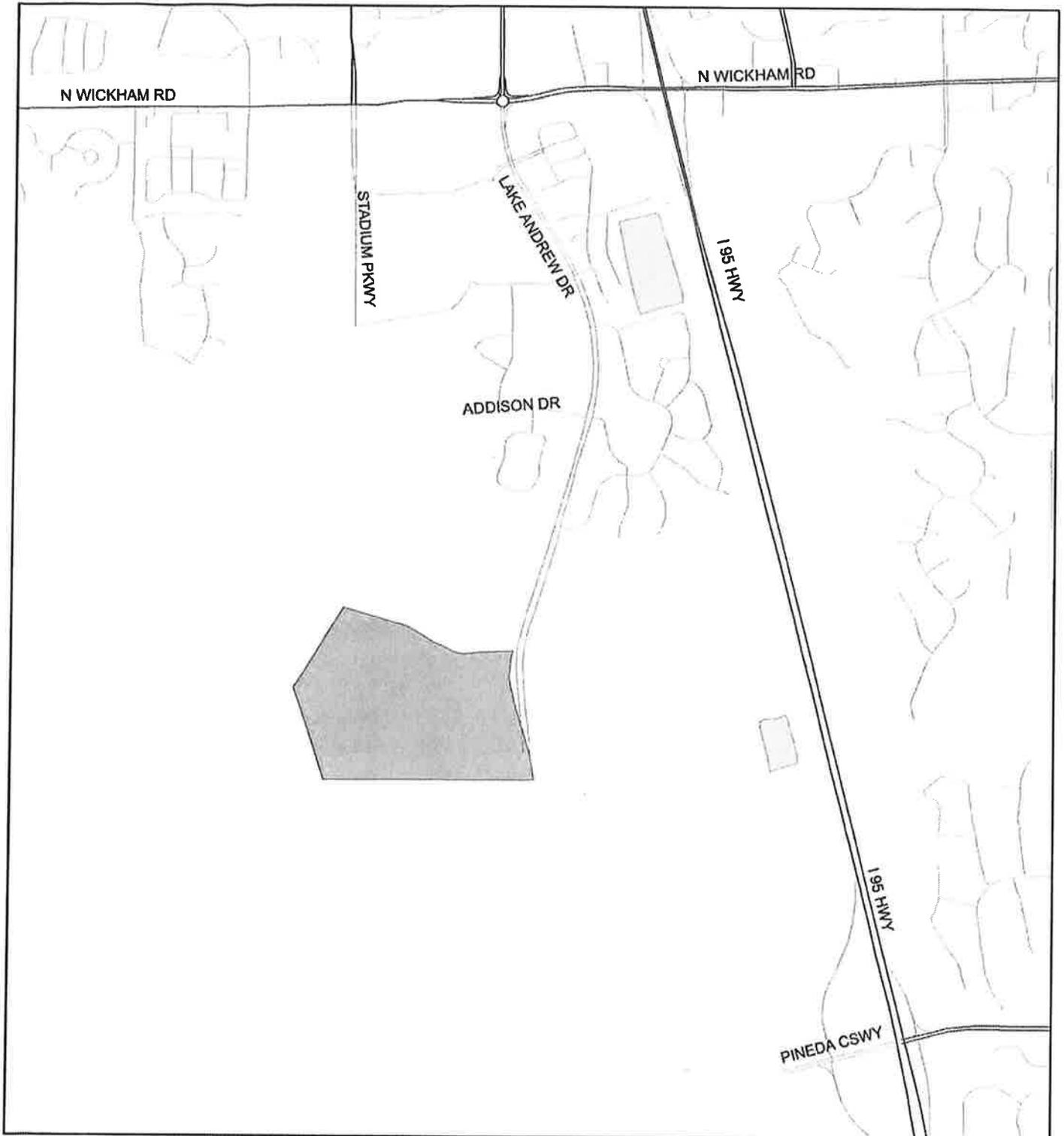
County of: Palm Beach

The foregoing instrument was acknowledged before me this 29 day of September 20 16, by Jon Rapoport 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: 6/19/18
JULIE ANNE DeMORE
NOTARY PUBLIC - STATE OF FLORIDA
COMMISSION # FF134285
S E A EXPIRES 6/19/2018
BONDED THRU 1-888-NOTARY1
Commission Number: FF134285

[Signature]
Notary Public
Julie Anne DeMore
Notary Name printed, typed or stamped

LOCATION MAP
BRIDGEWATER NORTH AT VIERA
16SD00002



1:24,000 or 1 inch = 2,000 feet

 Subject Property

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by the Brevard County Planning and Zoning Office - GIS Section Date: 8/12/2016

SURETY PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, WCI Communities, LLC, hereinafter referred to as "Owner" and, Aspen American 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 \$ 4,404,163.63, 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 February, 2017, 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 _____, 20____, 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 19th day of September 20 16.

Owner:

WCI Communities, LLC

By: Sheila Leith
Sheila Leith, Vice President

Surety:

Aspen American Insurance Company

By: Jeffrey M. Wilson
Jeffrey M. Wilson, Attorney-in-Fact





Aspen American Insurance Company
175 Capital Boulevard, Rocky Hill, CT 06067

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, THAT Aspen American Insurance Company, a corporation duly organized under the laws of the State of Texas, and having its principal offices in Rocky Hill, Connecticut, (hereinafter the "Company") does hereby make, constitute and appoint: Ronald B. Gladrosich; Mark W. Edwards, II, Jeffrey M. Wilson, Evondia H. Wuessner, William Milton Smith, Alisa B. Ferris, Robert R. Freel of McGriff Seibels & Williams, Inc. its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge on behalf of the Company, at any place within the United States, the following instrument(s) by his/her sole signature and act: any and all bonds, recognizances, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking and any and all consents incident thereto, and to bind the Company thereby as fully and to the same extent as if the same were signed by the duly authorized officers of the Company. All acts of said Attorney(s)-in-Fact done pursuant to the authority herein given are hereby ratified and confirmed.

This appointment is made under and by authority of the following Resolutions of the Board of Directors of said Company effective on April 7, 2011, which Resolutions are now in full force and effect;

VOTED: All Executive Officers of the Company (including the President, any Executive, Senior or Assistant Vice President, any Vice President, any Treasurer, Assistant Treasurer, or Secretary or Assistant Secretary) may appoint Attorneys-in-Fact to act for and on behalf of the Company to sign with the Company's name and seal with the Company's seal, bonds, recognizances, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said Executive Officers at any time may remove any such appointee and revoke the power given him or her.

VOTED: The foregoing authority for certain classes of officers of the Company to appoint Attorneys-in-Fact by virtue of a Power of Attorney to sign and seal bonds, recognizances, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, as well as to revoke any such Power of Attorney, is hereby granted specifically to the following individual officers of Aspen Specialty Insurance Management, Inc.:

Michael Toppi, Executive Vice President, Scott Sadowsky, Senior Vice President, Kevin W. Gillen, Senior Vice President, Mathew Raino, Vice President, and Ryan Field, Vice President.

This Power of Attorney may be signed and sealed by facsimile (mechanical or printed) under and by authority of the following Resolution voted by the Boards of Directors of Aspen American Insurance Company, which Resolution is now in full force and effect:

VOTED: That the signature of any of the Officers identified by title or specifically named above may be affixed by facsimile to any Power of Attorney for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any and all consents incident thereto, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company. Any such power so executed and certified by such facsimile signature and/or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking so executed.

IN WITNESS WHEREOF, Aspen American Insurance Company has caused this instrument to be signed and its corporate seal to be hereto affixed this 11th day of May, 2016.

STATE OF CONNECTICUT
COUNTY OF HARTFORD

SS. ROCKY HILL

Aspen American Insurance Company

Ryan Field, Vice President

On this 11th day of May, 2016 before me personally came Ryan Field to me known, who being by me duly sworn, did depose and say: that he/she is Vice President of Aspen American Insurance Company, the Company described in and which executed the above instrument; that he/she knows the seal of said corporation; the affixed to the said instrument is such corporate seal; and that he/she executed the said instrument on behalf of the Company by authority of his/her office under Resolutions thereof.

Vanessa Arias

Notary Public

My commission expires: February 28, 2019

CERTIFICATE

I, the undersigned, Ryan Field of Aspen American Insurance Company, a stock corporation of the State of Texas, do hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolutions of the Boards of Directors, as set forth above, are now in full force and effect.

Given under my hand and seal of said Company, in Rocky Hill, Connecticut, this ___ day of _____, _____.



By: *[Signature]*

Name: Ryan Field, Assistant Vice President

* For verification of the authenticity of the Power of Attorney you may call (860) 760-7728 or email: Vanessa.arias@aspen-insurance.com



RECEIVED
NOV 07 2016
BY: _____

CERTIFICATE OF ACKNOWLEDGEMENT OF CORPORATE SURETY

State of Alabama)

) ss

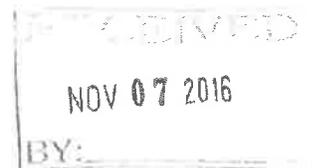
County of Jefferson)

On this 14th day of September, 2016, before me, appeared Jeffrey M. Wilson, to me personally known, who, being by me duly sworn, did say that he is the Attorney-In-Fact of Aspen American Insurance Company, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and said Jeffrey M. Wilson, acknowledged said instrument to be the free act and deed of said corporation.



Anna Keith Childress, Notary Public, State at Large

My commission expires: October 03, 2019



CORPORATE ACKNOWLEDGMENT FORM

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 19th day of September 2016, by Sheila Leith as Vice President of **WCI Communities, LLC.**, a Delaware limited liability company, who X is personally known to me.

My commission expires:

Ruth J. Marianetti
Notary Public
State of Florida



Ruth J. Marianetti
Printed Name of Notary Public

FF 106307
Notary Public Commission Number

RECORDED
NOV 07 2016
BY:

CORPORATE ACKNOWLEDGMENT FORM

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 19th day of September 2016, by Sheila Leith as Vice President of **WCI Communities, LLC.**, a Delaware limited liability company, who X is personally known to me.

My commission expires:

Ruth J. Marianetti
Notary Public
State of Florida



Ruth J. Marianetti
Printed Name of Notary Public

FF 106307
Notary Public Commission Number

NOV 07 2016