



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.11.

5/17/2022

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### Subject:

Contract and Surety Performance Bond: Bridgewater South at Viera, Section 2 Subdivision - District 4  
Developer: WCI Communities, LLC

### Fiscal Impact:

None

### Dept/Office:

Public Works/Engineering

### Requested Action:

In accordance with Section 62-2841(i) and 62-2844, it is requested that the Board of County Commissioners grant Subdivision Infrastructure Contract approval and authorize the Chairman to sign the contract for the above referenced project.

### Summary Explanation and Background:

The Bridgewater South at Viera Section 2 subdivision is located within the Viera Development of Regional Impact (DRI), at the southern end of Breakers Row Avenue. The proposed subdivision contains 248 single-family lots and 92 duplex units on 123.65 acres.

The Bridgewater South at Viera Section 2 subdivision received preliminary plat and final engineering plans on February 8, 2021, and final plat and contract approval on April 6, 2021. 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 April 15, 2022, the first lift of asphalt has been completed for the Bridgewater South at Viera Section 1 subdivision. Per the approved plans which allow for the 2" SP-9.5 (Fine Mix) asphalt to be placed in (2) separate 1" thick lifts, the Developer has posted a Surety Performance bond and contract for the second lift

which shall be completed by May 1, 2024.

Reference: 20SD00019, 21FM00005

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 1 original of the Contract and 1 certified copy.



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

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Kimberly.Powell@brevardclerk.us

May 18, 2022

**M E M O R A N D U M**

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

**RE:** Item F.11., Contract and Surety Performance Bond: Bridgewater South at Viera, Section 2 Subdivision – Developer: WCI Communities, LLC

The Board of County Commissioners, in regular session on May 17, 2022, approved and authorized the Chair to execute Subdivision Infrastructure Contract and Surety Performance Bond with WCI Communities, LLC for Bridgewater South at Viera, Section 2 Subdivision. Enclosed are two fully-executed Contracts.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

*Jo* *Donna Scott*  
Kimberly Powell, Clerk to the Board

/tr

Encls. (2)

cc: Contracts Administration

**Subdivision No.** 20SD00019 / 21FM00005

**Project Name** Bridgewater South at Viera, Section 2

**Subdivision Infrastructure  
Contract**

THIS CONTRACT entered into this 17<sup>th</sup> day of May 2022, 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:

Construction the 2nd lift of asphalt as per approved plan number 20SD00019 of the Bridgewater South at Viera, Section 2 plat which has been recorded in PB 69, PG 32.

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 1<sup>st</sup> day of May, 2024.

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 \$ 750,477.50 . 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:

*Rachel Sadoff*  
Rachel Sadoff, Clerk of the Court

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

*Kristine Zonka*  
Kristine Zonka, Chair

As approved by the Board on: May 17, 2022.

WITNESSES:

*[Signature]*  
*Haley Mall*

PRINCIPAL:

*[Signature]*  
Jeff Alexander, as Authorized Agent

04/29/2022  
DATE

State of: Florida

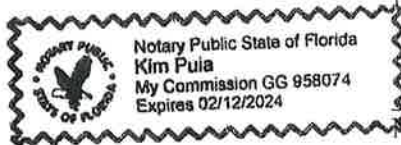
County of: Palm Beach

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of April, 2022, by Jeffrey Alexander who is personally known to me or who has produced as identification and who did (did not) take an oath.

My commission expires:

S E A L

Commission Number:



*[Signature]*  
Notary Public

Notary Name printed, typed or stamped

To replace original bond issued November 11, 2021

**SURETY PERFORMANCE BOND**

Bond No. LICX1200335  
Bridgewater South at Viera, Section 2

**KNOW ALL MEN BY THESE PRESENTS:**

That we, WCI Communities, LLC, hereinafter referred to as "Owner" and, Lexon 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 \$ 750,477.50, 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 17th day of May, 2022, 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 May 1, 2024, 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 3rd day of May, 2022.

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

[Signature]  
**SEFF ALEXANDER, AUTH AGENT**

SURETY: Lexon Insurance Company

[Signature]

Sokha Evans, Attorney-in-Fact

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT CIVIL CODE §1189**

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 San Francisco

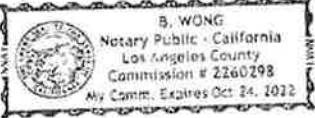
On 5/3/22 before me, B. Wong, Notary Public, personally appeared Sokha Evans who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ 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)

Signature   
B. Wong, Notary Public







**SOMPO INTERNATIONAL**

**INSURANCE**

# POWER OF ATTORNEY

2640

KNOW ALL BY THESE PRESENTS, that **Endurance Assurance Corporation**, a Delaware corporation, **Endurance American Insurance Company**, a Delaware corporation, **Lexon Insurance Company**, a Texas corporation, and/or **Bond Safeguard Insurance Company**, a South Dakota corporation, each, a "Company" and collectively, "**Sompo International**," do hereby constitute and appoint: **Mechelle Larkin, Kathy R. Mair, My Hua, Brenda Wong, Tenzer V. Cunningham, Martha Gonzales, Joaquin Perez, Jeffrey Strassner, Sokha Evans** as true and lawful Attorney(s)-In-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety; bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of **ONE HUNDRED MILLION Dollars (\$100,000,000.00)**.

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the sole shareholder of each Company by unanimous written consent effective the 15<sup>th</sup> day of June, 2019, a copy of which appears below under the heading entitled "Certificate".

This **Power of Attorney** is signed and sealed by facsimile under and by authority of the following resolution adopted by the sole shareholder of each Company by unanimous written consent effective the 15<sup>th</sup> day of June, 2019 and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above 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 signature or 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 WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 15<sup>th</sup> day of June, 2019.

**Endurance Assurance Corporation**

**Endurance American Insurance Company**

**Lexon Insurance Company**

**Bond Safeguard Insurance Company**

By: *Richard Appel*  
Richard Appel, SVP & Senior Counsel

By: *Richard Appel*  
Richard Appel, SVP & Senior Counsel

By: *Richard Appel*  
Richard Appel, SVP & Senior Counsel

By: *Richard Appel*  
Richard Appel, SVP & Senior Counsel



**ACKNOWLEDGEMENT**

On this 15<sup>th</sup> day of June, 2019, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/she is an officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: *Amy Taylor*  
Amy Taylor, Notary Public - My Commission Expires 5/9/23



**CERTIFICATE**

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the sole shareholder of each Company by unanimous written consent effective June 15, 2019 and said resolutions have not since been revoked, amended or modified:

"RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds, undertakings or obligations in surety or co-surety with others: **RICHARD M. APPEL, BRIAN J. BEGGS, CHRISTOPHER DONELAN, SHARON L. SIMS, CHRISTOPHER L. SPARRO, MARIANNE L. WILBERT** ; and be it further

RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."

3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 3rd day of May, 2022.

By: *Daniel S. Lurie*  
Daniel S. Lurie, Secretary

**NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)**

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. Please read this Notice carefully.

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website - <https://www.treasury.gov/resource-center/sanctions/SDN-List>.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.

Surety Claims Submission: [LexonClaimAdministration@sompo-intl.com](mailto:LexonClaimAdministration@sompo-intl.com)

Telephone: 615-563-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870