

**F. Consent Agenda - Public Works Department  
ITEM 9.**



**AGENDA REPORT  
May 7, 2019**

**Resolution and Release of Performance Bond, Re: Viera Village Center,  
Phase 1 Subdivision - The Viera Company (District 4)**

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**SUBJECT:**

Adopt Resolution and Release Performance Bond: Viera Village Center, Phase 1

**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 October 23, 2018 for the above referenced project.

**SUMMARY EXPLANATION and BACKGROUND:**

Viera Village Center, Phase 1 subdivision is located within the Viera DRI at the northwest corner of Spur Drive and Trafford Drive. The proposed subdivision contains one lot on 13.87 acres.

The Viera Village Center, Phase 1 subdivision received preliminary plat and final engineering plans on June 14, 2018, and final plat and contract approval on October 23, 2018. 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 17, 2019, the Viera Village Center, Phase 1 subdivision infrastructure improvements have been completed.

Reference: 18SD00004

**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 Subdivision Contract and Surety Performance 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 8, 2019

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

**TO:** Corinna Gumm, Interim Public Works Director

**RE:** Item F.9., Resolution and Release of Performance Bond for Viera Village Center, Phase 1 Subdivision – The Viera Company

The Board of County Commissioners, in regular session on May 7, 2019, adopted Resolution No. 19-080, releasing the Contract and Surety Performance Bond dated October 23, 2018, for Viera Village Center, Phase 1 Subdivision; and authorized the Chair to execute the Resolution. Enclosed is a fully-executed and a certified copy of the Resolution.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

/kp

Encls. (2)



**RESOLUTION 19- 080**

WHEREAS, the Board of County Commissioners of Brevard County, Florida and The Viera Company entered into a contract to guarantee the construction of improvements on property commonly known as Viera Village Center, Phase 1.

WHEREAS, by execution of the Contract, the Board of County Commissioners of Brevard County, Florida agreed to accept said improvements for public use at such time as said improvements were satisfactorily completed; and

WHEREAS, The Viera Company completed all of the infrastructure improvements and has requested that the executed contract approved on October 23, 2018 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 Viera Village Center, Phase 1.
2. The Board of County Commissioners of Brevard County, Florida hereby releases the contract and performance bond executed on October 23, 2018.
3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the 7<sup>th</sup> day of May 2019.

ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

By: 

Kristine Isnardi, Chair

As approved by the Board on May 7, 2019



Subdivision No. 18SD00004

Project Name Viera Village Center I Infra Imp

**Subdivision Infrastructure  
Contract**

THIS CONTRACT entered into this 23<sup>rd</sup> day of October 2018, 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:  
Viera Village I Infrastructure Improvements

and all other improvements depicted in subdivision number 18SD00004. 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 OCTOBER, 2019.




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 \$ 658,721.88 . 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:

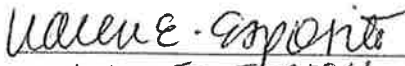
  
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

  
Rita Pritchett, Chair

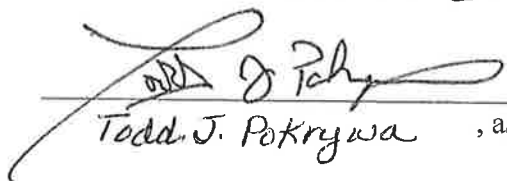
As approved by the Board on: Oct. 23, 20 18.

WITNESSES:

  
Karen E. Esposito

  
Mary Ellen McKibben

PRINCIPAL: The Viera Co.

  
Todd J. Pokrywa, as President

9-28-18  
DATE

State of: Florida

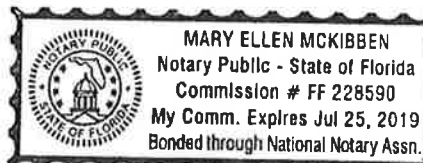
County of: Brevard

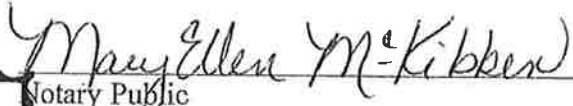
The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of Sept, 20 18, by Todd J. Pokrywa, Pres who is personally known to me or who has produced ~~as identification and who did~~ (did not) take an oath.

My commission expires:

S E A L

Commission Number:



  
Notary Public

  
Notary Name printed, typed or stamped







## PLAT BOOK \_\_\_\_, PAGE \_\_\_\_

SHEET 2 OF 2

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE



**LOCATION MAP**

w/15

#### SURVEY SYMBOL LEGEND

PERMANENT REFERENCE MARKERS (PROPS)  
SET AT 10' EACH CONCRETE MONUMENT (OM)  
WITH DISK STAMPED "SMA LAMBERT"  
DATE AND OFFICER'S NAME NOTED

PERMANENT CONTROL POINT (PROP) SET  
WITH DISK, AND DISK STAMPED "CH1 BAKK"  
UNLESS OTHERWISE NOTED

SET 3" 3/4" ALUM. ROD AND CAP. STAMPED  
"TOWNS 1" AND "SMA" OR "SMA LAMBERT"

## ABBREVIATIONS

[illegible]

66  
67  
68  
69

Source: U.S. Census Bureau, 1997.

CONSULTANTS, INC.	DATE
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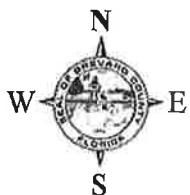
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18SD00004



**Subject Property**

Produced by BoCC - GIS Date: 10/1/2018



Bond # 106885117

198D00003  
Viera Village Center I  
#18SD00004

**SURETY PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

That we, THE VIERA COMPANY, hereinafter referred to as "Owner" and, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, 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 \$658,721.88 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 28<sup>th</sup> day of Sept., 2018, 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 October 1, 2019 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.

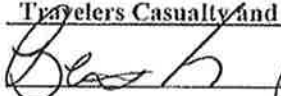
EXECUTED this 28<sup>th</sup> day of Sept., 2018.

OWNER: THE VIERA COMPANY

  
Todd J. Pokrywa, President

SURETY: Travelers Casualty and Surety Company of America

By:

  
Betty R. Suttle, Attorney-In-Fact





This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 27<sup>th</sup> day of September, 20 18

  
Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at [www.travelersbond.com](http://www.travelersbond.com). Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.