

MEMORANDUM

To: Cheri Coryea
Acting County Administrator



Thru: Chad Butzow, Interim Director
Public Works Department



From: Carmen Mosley, Sr. Fiscal Services Mgr./
Brandy Wilkins, Bond Coordinator
Public Works Department



Date: April 23, 2019

Subject: **ROSEDALE ADDITION, PHASE II
PDR-11-02/13-S-21 (F)
RELEASE PRIVATE IMPROVEMENTS AGREEMENT SECURING
FINAL LIFT OF ASPHALT
ACCEPT PRIVATE IMPROVEMENTS EXTENSION AGREEMENT
SECURING FINAL LIFT OF ASPHALT
ACCEPT LETTER OF CREDIT AMENDMENT**

The developer has requested an extension on the final lift of asphalt for this project, which will be privately maintained. The developer has started building homes in the development and is requesting the extension in order to complete the project without marring the roadway. The Public Works Department has reviewed the request and is in agreement with the developer. This action is to extend the agreement and security to ensure the developer is not in default with the agreement previously provided. We therefore respectively request the County Administrator to approve the following form of action:

- **Authorization to release the *Required Improvements Agreement and Temporary Construction Easement for Private Improvements* in the amount of \$233,821.25 securing the final lift of asphalt;**

LETTER OF CREDIT NO. 9661919210-00001 WILL REMAIN IN PLACE. This surety will be used to secure the one (1) year extension for the required private final lift of asphalt improvements agreement, (see below).

- **Acceptance of and authorization for County Administrator to execute the *Required Improvements Agreement and Temporary Construction Easement for Private Improvements*. This Agreement will be for a one (1) year extension, secured by a Letter of Credit previously accepted by the Board of County Commissioners;**
- **Acceptance of, the Letter of Credit Amendment of in conjunction with the above agreement;**

Public Works Department
Fiscal Services Division
1022 26th Avenue East, Bradenton, FL 34208
Phone number: (941)708-7450

- **Letter of Credit No 9661919210-00001**, Amendment dated September 19, 2018 issued through BB&T;
- **Expiration Date** – October 22, 2019;
- **Amount** of Performance Bond \$233,821.25.

cc: Records Management
Kenneth LaBarr, Infrastructure Inspections Div Mgr., Public Works
Pat Hogan, Newton Developments

Attachments

For: Rosedale Addition, Ph 2
(Name of Project)
Final Lift of Asphalt

**REQUIRED IMPROVEMENTS AGREEMENT AND TEMPORARY
CONSTRUCTION EASEMENT FOR PRIVATE IMPROVEMENTS**

(Required with a Letter of Credit as security guaranteeing completion of Required Improvements)

WHEREAS NEWTON DEVELOPMENTS, INC. (Developer) has made application to Manatee County, Florida (County), for approval of a proposed subdivision or final site plan identified ROSEDALE ADDITION, PHASE 2 (Project), the legal description for which is more particularly described in Exhibit "A", attached hereto and incorporated herein; and

WHEREAS, the Manatee County Land Development Code, Ordinance 90-01, requires that a final subdivision plat not be approved for recording, and that a Certificate of Occupancy not be issued in accordance with final site plan approval, until certain improvements required by the Land Development Code or required as a condition of approval of the plat or site plan (Required Improvements) have been duly constructed, completed, and approved, unless the Developer has provided performance security guaranteeing to the satisfaction of the County that such improvements will be duly constructed, completed, and approved; and

WHEREAS, in connection with the Project the Developer has submitted construction drawings for the Required Improvements which are on file with and have been approved by the County; and

WHEREAS, the Developer desires to obtain approval of the Project prior to installation of the Required Improvements; and

WHEREAS, the developer has submitted a cost estimate certificate by the Engineer of Record to be an accurate reflection of the cost to complete the remaining Required Improvements, and the Letter of Credit referred to below is in an amount which represents at least 200% of that estimated cost with a 3% administrative fee; and

WHEREAS, the Required Improvements shall be privately owned necessitating additional covenants and protections for the County and the public in the event that the Developer fails to complete the Required Improvements; and

WHEREAS, the Developer herewith tenders to the County a Letter of Credit, Number 9661919210-00001 dated OCTOBER 18, 2013 and AMENDMENT dated SEPTEMBER 19, 2018 with BB&T (BRANCH BANKING & TRUST COMPANY) (Financial Institution), in the amount TWO HUNDRED THIRTY-THREE THOUSAND EIGHT HUNDRED TWENTY-ONE & 25/100 (REDUCED FROM \$370,516.75) Dollars (words), \$233,821.25 (numbers), expiring on the 22ND day of OCTOBER, 2019.

NOW, THEREFORE, KNOW ALL MEN

1. That the Developer, in consideration of the County's approval of the proposed Project, and for other valuable consideration, hereby agrees to duly construct and complete the Required Improvements and to otherwise comply fully with the Land Development Code, any conditions of the Project's approval, and all other applicable regulations, requirements and agreements.
2. That in consideration of the foregoing, it is hereby mutually AGREED as follows:
 - (a) The Developer shall complete to the satisfaction of the County all Required Improvements, in accordance with the construction drawings or any amendments thereto approved by the County, at least three (3) months prior to the expiration date of the Letter of Credit and shall indemnify and save harmless the County against or from all claims, costs, expenses, damages, injury, or loss, either direct or consequential, including without limitation all engineering, legal, and contingent costs which the County may sustain on account of the failure of the Developer to fulfill within the time specified its obligations as described herein.
 - (b) In the event the Developer should fail or refuse to fulfill within the time specified its obligations under this Agreement, the County, at its option, shall have the right to enter upon that portion of the Project property, as determined necessary by the County and take all actions required to construct and complete, or cause to be constructed the Required Improvements. In the event the County should exercise such right, the County shall have the unqualified right to draw funds for the purpose of construction and completing the Required Improvements, or causing the same to be done, and for paying costs incidental to the exercise of its rights hereunder, in such amount as the County shall in its sole discretion determine, in accordance with the terms of the Letter of Credit.
 - (c) The Developer, his successors and assigns, hereby grants a temporary easement over property in the Project as necessary to allow the County to complete the Required Improvements.
 - (d) Should it become necessary for the County to complete the Required Improvements, the Developer hereby appoints the County as its agent for the purposes of using the approvals granted for the required improvements.
3. The Developer agrees that it is liable to the County for all costs and damages, as described above, that the County may incur in connection with constructing and completing the Required Improvements for the life of the Project, without regard to the amount of the Letter of Credit identified above. Should the Developer fail or refuse to complete the Required Improvements, as required, nothing herein shall be construed as affecting the County's right to resort to any and all legal and equitable remedies against the Developer, including specific performance, to which the Developer hereby agrees.

(Pvt Impv Agreement)

For: Rosedale Addition, Ph 2
(Name of Project)

4. The Developer understands and agrees that in the event that the Required Improvements are not constructed or installed in the manner or time consistent with this Agreement, the County shall withhold further permits or approvals for the Project until the Required Improvements have been completed or adequate progress, as determined by the Board of County Commissioners, toward completion of the Required Improvements has been demonstrated.
5. Upon the County's completion of private improvements, the improvement shall be transferred to the Homeowner's Association or that entity set up in the deed restriction to be responsible for ongoing maintenance of the improvements. In no event shall public funds be used for the maintenance of private improvements, unless they are dedicated to and accepted by the County.

(Pvt Imp./LOC- Developer is Corp.)

For: Rosedale Addition 2

SIGNED AND SEALED this 20TH day of SEPTEMBER, 2018

WITNESSES:

Danielle Riley
Witness

Danielle Riley
Type or Print Name

Amy Foltz
Witness

Amy Foltz
Type or Print Name

Newton Developments, Inc
Developer

BY: [Signature]
Signature

Patrick Hogan
Type or Print Name

Title (If attorney-in-fact Attach Power of Attorney)

5100 87th Street East

Postal Address

Lakewood Rch FL 34211

City State Zip

NOTARY ACKNOWLEDGMENT

STATE OF: FLORIDA

COUNTY OF: MANATEE

The foregoing instrument was acknowledged before me this 20TH day of SEPT, 2018, by PATRICK HOGAN, as V.P., (Title), on behalf of the corporation identified herein as Developer and who is personally known to me or who has produced N/A (Type of Identification) as identification.

NOTARY SEAL:



M. Jane Oliver
Notary Public
M. JANE OLIVER
Print Name of Notary

Approved and accepted for and on behalf of Manatee County, Florida, this _____ day of _____, 20__.

MANATEE COUNTY

A political subdivision of the State of Florida

By: Board of County Commissioners

By: [Signature]
County Administrator

NOTARY ACKNOWLEDGMENT

STATE OF: Florida

COUNTY OF: Manatee

The foregoing instrument was acknowledged before me this 26 day of April, 2019, by Cheri Conroy as County Administrator, (Title), for and on behalf of the Manatee County Board of County Commissioners and **who is personally known to me** or who has produced N/A (Type of Identification) as identification.

NOTARY SEAL:



Marianne Lopata
Notary Public
Marianne Lopata
Print Name of Notary

BB&T

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

Advise by Full Details by SWIFT
 REGISTERED MAIL OR COURIER

TO: Branch Banking and Trust Company
1800 2nd St Ste 100
Sarasota, FL 34236

Irrevocable Standby Letter of Credit No: 9661919210-00001	Date: September 19, 2018
Beneficiary (Name and Address): Manatee County Board of County Commissioners 1022 26 th Ave E. C/O Fiscal Services Division Attn: Jane Oliver Bradenton, FL 34208	Letter of Credit Amount (in US Dollars): \$233,821.25
Applicant (Name and Address): NEWTON DEVELOPMENTS, INC. 5100 87 th St E Bradenton, FL 34211	Expiration Date: October 22, 2019

The Letter of Credit is hereby amended as follows:

The Expiration Date of the Letter of Credit is hereby extended from October 22, 2018 to October 22, 2019.

THE UNDERSIGNED LENDER ACKNOWLEDGES THAT THIS AMENDMENT TO THE LETTER OF CREDIT IS SUBJECT TO ACCEPTANCE BY THE BENEFICIARY. ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL LETTER OF CREDIT SHALL REMAIN UNCHANGED.

BRANCH BANKING AND TRUST COMPANY

AUTHORIZED
SIGNER: 

NAME/TITLE: Allen Prewitt, Sr. Vice President