

DRAINAGE IMPROVEMENT AGREEMENT

**Development:** Drainage Acceptance 04-00051 (Cross reference Subdivision 80-06013)

**Effective Date:** October 19, 2012

**Developer:** SDC Delta Coves, LLC, A Delaware limited liability company

**Completion Period:** 2 years

**THESE SIGNATURES ATTEST TO THE PARTIES' AGREEMENT HERETO:**

CONTRA COSTA COUNTY  
Julia R. Bueren, Public Works Director

DEVELOPER  
SDC Delta Coves, LLC, A Delaware Limited Liability Company

By: \_\_\_\_\_

(Signature) SEE ATTACHED SIGNATURE PAGE  
(Print Name and Title)

RECOMMENDED FOR APPROVAL

By: \_\_\_\_\_  
Engineering Services Division

(Signature) \_\_\_\_\_  
(Print Name and Title)

FORM APPROVED: Victor J. Westman, County Counsel

(NOTE: All signatures to be acknowledged. If Developer is incorporated, signatures must conform with the designated representative groups pursuant to Corporations Code S313.)

1. PARTIES & DATE. Effective on the above date, the County of Contra Costa, California, hereinafter called "County," and the above-named Developer, mutually promise and agree as follows concerning this acceptance:

2. IMPROVEMENTS. Developer agrees to install certain off-tract drainage improvements and such other improvements (including appurtenant equipment) as required in the improvement plans for this subdivision as reviewed and on file with the Contra Costa County Public Works Department and in conformance with the Contra Costa County Ordinance Code (including future amendments thereto).

Developer shall complete said work and improvements (hereinafter called "work") within the above completion period from date hereof in a good workmanlike manner, in accordance with accepted construction practices and in a manner equal or superior to the requirements of the County Ordinance Code and rulings made thereunder; and where there is a conflict between the improvement plans and the County Ordinance Code, the stricter requirements shall govern.

3. IMPROVEMENT SECURITY. Upon executing this Agreement, the Developer shall provide as security to the County:

A. For Performance and Guarantee: \$3,175.00 cash, plus additional security, in the amount of \$1,263,000.00 together total one hundred percent (100%) of the estimated cost of the work. Such additional security is presented in the form of:

- \_\_\_\_\_ Cash, certified check, or cashier's check.  
\_\_\_x\_\_\_ Acceptable corporate surety bond.  
\_\_\_\_\_ Acceptable irrevocable letter of credit.

With this security, the Developer guarantees performance under this Agreement and maintenance of the work for one year after its completion and acceptance against any defective workmanship or materials or any unsatisfactory performance.

B. For Payment: Security in the amount of \$634,000.00, which is fifty percent (50%) of the estimated cost of the work. Such security is presented in the form of:

- \_\_\_\_\_ Cash, certified check, or cashier's check  
\_\_\_x\_\_\_ Acceptable corporate surety bond.  
\_\_\_\_\_ Acceptable irrevocable letter of credit.

With this security, the Developer guarantees payment to the contractor, to his subcontractors, and to persons renting equipment or furnishing labor or materials to them or to the Developer. Upon acceptance of the work as complete by the Board of Supervisors and upon request of the Developer, the amount of the securities may be reduced in accordance with S94-4.406 and S94-4.408 of the Ordinance Code.

4. GUARANTEE AND WARRANTY OF WORK. Developer guarantees that said work shall be free from defects in material or workmanship and shall perform satisfactorily for a period of one (1) year from and after the Board of Supervisors accepts the work as complete in accordance with Article 96-4.6, "Acceptance," of the Ordinance Code. Developer agrees to correct, repair, or replace, at his expense, any defects in said work.

5. IMPROVEMENT PLAN WARRANTY. Developer warrants the improvement plans for the work are adequate to accomplish the work as promised in Section 2 and as required by the Conditions of Approval for the development. If, at any time before the Board of Supervisors accepts the work as complete or during the one-year guarantee period, said improvement plans prove to be inadequate in any respect, Developer shall make whatever changes are necessary to accomplish the work as promised.

6. NO WAIVER BY COUNTY. Inspection of the work and/or materials, or approval of work and/or materials or statement by any officer, agent or employee of the County indicating the work or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of said work and/or materials, or payments therefor, or any combination or all of these acts, shall not relieve the Developer of his obligation to fulfill this agreement as prescribed; nor shall the County be thereby be stopped from bringing any action for damages arising from the failure to comply with any of the terms and conditions hereof.

7. INDEMNITY. Developer shall defend, hold harmless and indemnify the indemnities from the liabilities as defined in this section:

A. The indemnities benefitted and protected by this promise are the County and its special district, elective and appointive boards, commissions, officers, agents and employees.

B. The liabilities protected against are any liability or claim for damage of any kind allegedly suffered, incurred or threatened because of actions defined below, and including personal injury, death, property damage, inverse condemnation, or any combination of these, and regardless of whether or not such liability, claim or damage was unforeseeable at any time before the County reviewed said improvement plans or accepted the work as complete, and including the defense of any suit(s), action(s) or other proceeding(s) concerning said liabilities and claims.

C. The actions causing liability are any act or omission (negligent or non-negligent) in connection with the matters covered by this Agreement and attributable to the Developer, contractor, subcontractor or any officer, agent or employee of one or more of them.

D. Non-Conditions: The promise and agreement in this section are not conditioned or dependent on whether or not any indemnity has prepared, supplied, or reviewed any plan(s) or specification(s) in connection with this work or subdivision, or has insurance or other indemnification covering any of these matters, or that the alleged damage resulted partly from any negligent or willful misconduct of any Indemnity.

8. COSTS. Developer shall pay when due, all the costs of the work, including inspections thereof and relocating existing utilities required thereby.

9. NON-PERFORMANCE AND COSTS. If Developer fails to complete the work within the time specified in this Agreement, and subsequent extensions, or fails to maintain the work, the County may proceed to complete and/or maintain the work by contract or otherwise, and Developer agrees to pay all costs and charges incurred by the County (including, but not limited to: Engineering, inspection, surveys, contract, overhead, etc.) immediately upon demand.

Once action is taken by County to complete or maintain the work, Developer agrees to pay all costs incurred by the County, even if Developer subsequently proceeds to complete the work.

Should County sue to compel performance under this Agreement or to recover costs incurred in completing or maintaining the work, Developer agrees to pay all attorney's fees, and all other expenses of litigation incurred by County in connection therewith, even if Developer subsequently proceeds to complete the work.

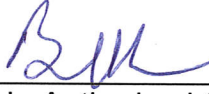
10. ASSIGNMENT. If, before the Board of Supervisors accepts the work as complete, the development is annexed to a city, the County may assign to that city the County's rights under this Agreement and/or any deposit, bond or letter of credit securing said rights.

Development: Drainage Acceptance 04-00051 (Cross reference Subdivision 80-06013)

Signature Page

Developer: SDC Delta Coves, LLC,  
a Delaware Limited Liability Company

By: SDC Fairway Delta JV, LLC,  
a Delaware Limited Liability Company

By:   
Bruce Cook, Authorized Signatory

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California

County of Orange

On October 23, 2012 before me,

**Elizabeth Menicucci, Notary Public**

Date

Here Insert Name and Title of the Officer

personally appeared

\*\*\* **Bruce Cook** \*\*\*

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

Signature

Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: Drainage Improvement Agreement (Cross reference Subdivision 80-06013)

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

☐ Individual

☐ Corporate Officer - Title(s): \_\_\_\_\_

☐ Partner - ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

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Signer's Name: \_\_\_\_\_

☐ Individual

☐ Corporate Officer - Title(s): \_\_\_\_\_

☐ Partner - ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

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OF SIGNER

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**Development No:** Drainage Acceptance 04-00051

**(Cross-reference:** Subdivision 80-06013)

**Bond:** 1075680      **Premium:** \$18,945.00

IMPROVEMENT SECURITY BOND  
FOR DRAINAGE IMPROVEMENT AGREEMENT  
(faithful performance & maintenance, AND labor and materials)

1. **OBLIGATION:** SDC Delta Coves, LLC, a Delaware limited liability company, as Principal, and Lexon Insurance Company (Surety), a corporation organized and existing under the laws of the State of Texas and organized and existing under the laws of the State of California, as Surety, hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns to the County of Contra Costa, California to pay it;
  - A. **Faithful Performance, & Maintenance:** One million two hundred sixty-three thousand Dollars (\$1,263,000.00) for itself or any city-assignee under the below-cited Drainage Improvement Agreement, plus
  - B. **Labor & Materials:** Six hundred thirty-four thousand Dollars (\$634,000.00) for the benefit of persons protected under Title 15 § et seq. of the California Civil Code.
2. **RECITAL OF CONTRACT:** The principal contracted with the County to install and pay for drainage and other improvements in perimeter embankments and off-site appurtenances, as specified in the Drainage Improvements Agreement, and to complete said work within the time specified in the Drainage Improvement Agreement for completion, all in accordance with State and local laws and rulings thereunder in order to satisfy the conditions of approval for Drainage Acceptance 04-00051 (Cross-reference: Subdivision 80-06013).
3. **CONDITION:** If the principal faithfully performs all things required according to the terms and conditions of said contract and improvement plan and improvements agreed on by the principal and the County, then this obligation as to Section 1-(A) above shall become null and void, except that the guarantee of maintenance continues for the one-year period; and if principal fully pays the contractors, subcontractors, and persons renting equipment or furnishing labor or materials to them for said work and improvement, and protects the premises from claims of such liens, then this obligation as to Section 1-(B) above shall become null and void; otherwise this obligation remains in full force and effect.

No alteration of said contract or any plans or specifications of said work agreed to by the Principal and the county shall relieve any surety from liability on this bond; and consent is hereby given to make such alterations without further notice to or consent by Surety; and the Surety hereby waives the provision of California Civil Code § 2819, and holds itself bound without regard to and independently of any action against Principal whenever taken, and agrees that if County sues on this bond, Surety will pay reasonable attorney fees fixed by court to be taxed as costs and included in the judgement.



3. CONDITION:

- A. The Condition of this obligation as to Section 2.(A) above is such that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on is or its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the County of Contra Costa (or city assignee), its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by County (or city assignee) in successfully enforcing such obligation, all to be taxed as costs and included in any judgement rendered.

- B. The condition of this obligation as to Section 2.(B) above is such that said Principal and the undersigned as corporate surety are held firmly bound unto the County of Contra Costa and all contractors, subcontractors, laborers, material men and other persons employed in the performance of the aforesaid agreement and referred to in the aforesaid Civil Code for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay, in addition to the fact amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by County (or city assignee) in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgement therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

- C. No alteration of said subdivision agreement or any plan or specification of said work agreed to by the Principal and the County shall relieve any Surety from liability on this bond; and consent is hereby given to make such alteration without further notice to or consent by Surety; and the Surety hereby waives the provisions of California Civil Code Section 2819, and holds itself bound without regard to and independently of any action against Principal whenever taken.

**SIGNED AND SEALED** on October 19, 2012

**PRINCIPAL** SDC Delta Coves, LLC, a Delaware  
limited liability company

By (SEE ATTACHED SIGNATURE PAGE)

Address 2392 Morse Ave., Irvine, CA 92614

**SURETY** Lexon Insurance Company

By  \_\_\_\_\_

Address 10002 Shelbyville Road, Suite 100  
Louisville, KY 40223

Bond No. 1075680

Signature Page

Principal: SDC Delta Coves, LLC,  
a Delaware Limited Liability Company

By: SDC Fairway Delta JV, LLC,  
a Delaware Limited Liability Company

By:   
\_\_\_\_\_  
Bruce Cook, Authorized Signatory

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California

County of Orange

On October 23, 2012 before me,

**Elizabeth Menicucci, Notary Public**

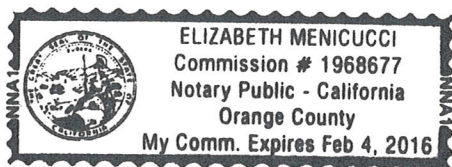
Date

Here Insert Name and Title of the Officer

personally appeared

\*\*\* **Bruce Cook** \*\*\*

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

Signature

*Elizabeth Menicucci*

Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: Improvement Security Bond (Bond #1075680)

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

☐ Individual

☐ Corporate Officer - Title(s): \_\_\_\_\_

☐ Partner - ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

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OF SIGNER

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Signer's Name: \_\_\_\_\_

☐ Individual

☐ Corporate Officer - Title(s): \_\_\_\_\_

☐ Partner - ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

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# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

County of ORANGE }

On OCTOBER 19, 2012 before me, CHERYL L. THOMAS, NOTARY PUBLIC  
Date Here Insert Name and Title of the Officer

personally appeared D.J. PICARD  
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.

Signature Cheryl L. Thomas  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: IMPROVEMENT SECURITY BOND

Document Date: OCTOBER 19, 2012 Number of Pages: 3

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity~~(ies)~~ Claimed by Signer~~(s)~~

Signer's Name: D.J. PICARD

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

**RIGHT THUMBPRINT  
OF SIGNER**

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Signer Is Representing:  
LEXON INSURANCE COMPANY

Signer's Name: \_\_\_\_\_

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

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OF SIGNER**

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Signer Is Representing: \_\_\_\_\_

## POWER OF ATTORNEY

LX - 062801

**Lexon Insurance Company**

KNOW ALL MEN BY THESE PRESENTS, that **LEXON INSURANCE COMPANY**, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint:

D.J. Picard, Todd M. Rohm, Cathy S. Kennedy, Beata A. Sensi, \*\*\*

Cheryl L. Thomas \*\*\*\*\*

its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **LEXON INSURANCE COMPANY** on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed \$ 3,000,000.00 Three million dollars \*\*\*\*\* dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **LEXON INSURANCE COMPANY** has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 21st day of September, 2009.

**LEXON INSURANCE COMPANY**

BY

David E. Campbell  
President

**ACKNOWLEDGEMENT**

On this 21st day of September, 2009, before me, personally came David E. Campbell to me known, who being duly sworn, did depose and say that he is the President of **LEXON INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

"OFFICIAL SEAL"  
MAUREEN K. AYE  
Notary Public, State of Illinois  
My Commission Expires 09/21/13

Maureen K. Aye  
Notary Public

**CERTIFICATE**

I, the undersigned, Assistant Secretary of **LEXON INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Sealed at Woodridge, Illinois this 19TH Day of OCTOBER, 20 12.



Philip G. Lauer  
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."