



CITY OF ST. MARYS, GEORGIA

SPECIAL CITY COUNCIL MEETING

September 18, 2013

5:00 p.m.

AMENDED AGENDA

I. CALL TO ORDER

II. INVOCATION: *Councilmember Nancy Stasinis*

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL

QUORUM: YES ___ NO ___

V. BUSINESS:

**A. SPECIAL ELECTION QUALIFYING DATES AND TIMES FOR CITY COUNCIL POST #1
VACANCY: Mayor William T. DeLoughy **TAB "A"****

**B. CONSENT AND AGREEMENT REGARDING SETTLEMENT AGREEMENT (CUMBERLAND
HARBOUR) M3 AMERICAN INVESTMENTS, LLC: Mayor William T. DeLoughy
(Added 9/18/2013) **TAB "B"****

VI. ADJOURNMENT:

This is a tentative agenda and is subject to change. Please check with City Hall prior to the Meeting for any revisions.

CONSENT AND AGREEMENT REGARDING SETTLEMENT AGREEMENT

Reference is hereby made to that certain Settlement Agreement (the "**Settlement Agreement**") dated April 4, 2013 among M3 American Investments, LLC ("**M3**") and each of the undersigned. Each capitalized term used herein and not otherwise defined herein shall have the meaning given to such term in the Settlement Agreement. A true, complete, and correct copy of the Settlement Agreement is attached hereto as Exhibit A.

WHEREAS, pursuant to the terms of a Loan Agreement dated September __, 2013 between Romspen Mortgage Limited Partnership, an Ontario limited partnership ("**Lender**") and M3 (as the same may be modified, amended or restated from time to time, the "**Loan Agreement**"), Lender is making a loan to M3 in the maximum principal amount of Three Million Two Hundred Thousand and No/100ths Dollars (\$3,200,000.00) (the "**Loan**") for the purposes specified in the Loan Agreement which include, among other things, development of the Subdivision.

WHEREAS, as security for the Loan, Lender is requiring M3 to assign M3's rights under the Settlement Agreement to Lender.

WHEREAS, in connection with such assignment, Lender is requiring the consent of each of the undersigned.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and agreements contained in this Consent and Agreement Regarding Settlement Agreement, and in order to induce Lender to extend credit to M3 for the development of the Subdivision:

1. Each of the undersigned hereby consents to M3's assignment (the "**Assignment**") to Lender of M3's rights under the Settlement Agreement as security for the Loan.

2. Each of the undersigned expressly acknowledges that by accepting the Assignment or by exercising any of its rights under the Assignment, Lender assumes no obligations or liabilities of M3 under the Settlement Agreement and that Lender shall have no obligation to any of the undersigned to exercise its rights under the Assignment or to declare a default under the Assignment or any of the other Loan Documents (as defined in the Loan Agreement), but that the right and option to exercise such rights or declare a default rests in the sole and absolute discretion of Lender. Upon the written request of Lender that any of the undersigned perform its obligations under the Settlement Agreement, such undersigned party agrees to complete such performance pursuant to the Settlement Agreement.

3. Each of the undersigned acknowledges that it has no interest whatsoever enforceable against Lender in proceeds of the Loan or any right of action under any Loan Documents (as defined in the Loan Agreement) to garnish, require or compel payment of proceeds of the Loan to be applied toward payment of M3's liabilities or obligations under the Settlement Agreement.

4. Each of the undersigned agrees that upon a default under the Assignment or any Loan Document (as defined in the Loan Agreement), Lender may elect to construct the

Improvements or cause the Improvements to be constructed and upon such election will be entitled to payment of the proceeds of the Trust Fund (in place of M3) to pay for the cost of the Improvements in accordance with the provisions of the Settlement Agreement.

5. Each of the undersigned agrees that it will not terminate or modify the Settlement Agreement without the prior written consent of Lender.

6. The parties agree that nothing contained in this CONSENT AND AGREEMENT REGARDING SETTLEMENT AGREEMENT shall in any way effect any change in the existence, priority or any other change to the Note and Deed to Secure Debt held by the City of St. Marys conveying certain lots in Cumberland Harbour.

7. It is expressly understood that nothing in this agreement shall in any way diminish the obligations of M3 under the Settlement Agreement including, without limitation, in regard to the funds of the Cumberland Harbour Property Owner's Association, Inc. as set forth in the Settlement Agreement, all of which shall continue in full force and effect and continue to be fully and legally binding on M3.

Dated as of September __, 2013.

[Separate Signature Pages Follow.]

This Consent has been executed as of the date first written above.

LEXON INSURANCE COMPANY

By: _____ [SEAL]
Name: _____
Title: _____

BOND SAFEGUARD INSURANCE COMPANY

By: _____ [SEAL]
Name: _____
Title: _____

CITY OF ST. MARYS, GEORGIA

By: _____ [SEAL]
William T. Deloughy, Mayor

M3 AMERICAN INVESTMENTS, LLC

By: _____ [SEAL]
Name: _____
Title: _____

EXHIBIT A

Settlement Agreement

[Attached]

SETTLEMENT AGREEMENT

Cell. 
April 2013

THIS AGREEMENT is made and entered into this 4th day of ~~March~~, 2013 by and between the **CITY OF ST. MARYS, GEORGIA**, a political subdivision of the State of Georgia, (hereinafter called "City") and **LEXON INSURANCE COMPANY**, a Texas Corporation and **BOND SAFEGUARD INSURANCE COMPANY**, an Illinois Corporation, (both of which are hereinafter collectively called "Bond Companies") and **M3 AMERICAN INVESTMENTS, LLC** (hereinafter called "M3") a Florida limited liability company.

WITNESSETH:

WHEREAS, the Bond Companies issued certain Bonds (hereinafter called "Bonds") on behalf of Point Peter, LLLP, as principal and the City of St. Marys as Obligee, guaranteeing the construction of certain improvements in various Phases of Cumberland Harbour Subdivision in Camden County, St. Marys, Georgia, (the "Subdivision") and

WHEREAS, the Bond Companies and the City are currently engaged in two lawsuits relating to said Bonds in the Superior Court of Camden County styled "City of St. Marys, Georgia vs. Bond Safeguard Insurance Company", being Civil Action No. 10V1370, and "City of St. Marys, Georgia vs. Lexon Insurance Company", being Civil Action No. 10V1371 (collectively hereinafter called "Lawsuits");

WHEREAS, M3 is the current owner 137 lots within the Subdivision and is the Declarant as that term is defined under the terms of the Declaration of Covenant Conditions and Easements for the Subdivision, and

Cell.



WHEREAS, the parties are desirous of settling all issues between themselves;
and

NOW, THEREFORE, in consideration of the mutual promises and understanding made in this Agreement, and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the City, the Bond Companies and M3 consent and agree as follows:

1. Within ten (10) business days of the Effective Date of this Agreement¹, the Bond Companies shall place Three Million Dollars (\$3,000,000.00) into a trust account (hereafter called "Trust Fund") to be held by the City in a non-interest bearing account in a bank of its choosing for the purposes and in accordance with the terms set forth herein.

2. Within ten (10) business of the Effective Date of this Agreement, M3 will place \$500,000.00 into the Trust Fund to be held by the City for the purposes and in accordance with the terms set forth herein.

3. M3 hereby represents and warrants that it is in control of or is otherwise able to have the Cumberland Harbour Property Owner's Association, Inc. (hereinafter called "HOA") for the Subdivision contribute \$450,000.00 to an account as set forth herein. M3, therefore agrees:

a. The HOA will deposit \$450,000.00 into a bank account owned by M3 and itself on or before ten (10) days after the effective date of this agreement to be used to pay for construction of the Improvements set forth in this Agreement in Phases 10 and 13. The HOA Account can be used to pay for Improvements in

¹ The Effective Date of this Agreement is the date that it has been executed by all Parties.



any Phase or portion of Cumberland Harbour Subdivision if all money in the Trust Fund is exhausted. Upon completion of all Improvements and City's acceptance of same, any funds remaining in the HOA Account shall be refunded to the HOA. In no event shall any funds be paid or withdrawn from the HOA Account nor shall it be closed unless approved in writing by the City. Should there be any failure by any person or entity to provide funds or use the HOA Account as provided in this Agreement, M3 shall be liable to City for any such failure.

b. This money will be used in accordance with the purposes set forth herein.

4. City specifically agrees that the obligations of M3 under this agreement and the deposit of the \$450,000.00 by the HOA are not part of its agreement with the Bond Companies and it is not a condition of the release of the Bond Companies as set forth in paragraph 10, below.

5. M3 shall build, construct, reconstruct and complete all infrastructure improvements in the Subdivision including in Phases 1, 3, 5, 7, 8, 9, 10, 11, 12 and 13 in accordance with the details set forth in the plats and surveys prepared by Privett-Bennett & Associates, Inc. and the plans prepared by P & A Engineering, Inc., particularly including the upgrade to the sewer system in Phases 1 and 3, (hereinafter called "Improvements") including securing all permits, engineering, design, surveying and contract bidding necessary and further, all in accordance with the published Subdivision Regulations of St. Marys, Georgia.

6. For further identification, the following details on the plats and surveys referred to above is provided: Final Subdivision Plats For various Phases of



Cumberland Harbour by Privett-Bennett & Assoc., Inc. more particularly described as follows:

- a. Phase 1, recorded Drawer 15, Page 8, Camden County, Georgia Records, dated December 6, 2002, consisting of 6 sheets;
 - b. Phase 3, recorded Drawer 16, Map No. 29, Camden County, Georgia Records, dated February 11, 2004, consisting of 9 sheets;
 - c. Phase 5, recorded Drawer 17, Map No. 63, Camden County, Georgia Records, dated October 22, 2004, consisting of 1 sheet;
 - d. Phase 7, recorded Drawer 19, Map No. 69, Camden County, Georgia Records, dated January 10, 2006, consisting of 2 sheets;
 - e. Phase 8, recorded Drawer 19, Map No. 68, Camden County, Georgia Records, dated January 10, 2006, consisting of 1 sheet;
 - f. Phase 9, recorded Drawer 24, Map No. 5, Camden County, Georgia Records, dated August 18, 2006, consisting of 3 sheets;
 - g. Phase 10, recorded Drawer 20, Map No. 72, Camden County, Georgia Records, dated July 12, 2006, consisting of 1 sheet;
 - h. Phase 11, recorded Drawer 23, Map No. 63, Camden County, Georgia Records, dated November 14, 2007, consisting of 1 sheet; and
 - i. Phase 12, recorded Drawer 23, Map No. 64, Camden County, Georgia Records, dated November 14, 2007, consisting of 1 sheet.
7. For further identification, the following details on the site development plans referred to above is provided: Site Development Plans for Cumberland Harbour

by P & A Engineering, Inc. for Land Resources Companies, LLC, more particularly described as follows:

- a. Phase 1, "As Built", last revised June 8, 2005, consisting of Sheets 1 to 27;
- b. Phase 3, dated February 2, 2004, consisting of Sheets 1 to 3, 16 to 22, 25 to 30, and 36;
- c. Phase 5, last revised November 14, 2005, consisting of Sheets 1 to 2, 2A, 3 to 17;
- d. Phase 7, last revised May 22, 2006, consisting of Sheets 1 to 9, 10a, 10b, 10c, 11 to 17;
- e. Phase 8, unsigned and undated, consisting of Sheets 1 to 5, 6, 6a, 7a, 7b, 7c, 8 to 14;
- f. Phase 9, last revised February 20, 2007, consisting of Sheets 1 to 9, 10a, 10b, 10c, 11 to 17;
- g. Phase 10, last revised February 20, 2007, consisting of Sheets 1 to 22;
Phase 11, noted as "received September 23, 2007," consisting of Sheets 1 to 18;
and
- h. Phase 12, noted as "received September 23, 2007," consisting of Sheets 1 to 21.

8. Time is of the essence concerning this Agreement. All work on Improvements shall be done in a good and workmanlike manner. No Improvements shall be considered complete as that term is used in this Settlement Agreement unless they have been submitted to City for inspection to ascertain whether the Improvements

have been constructed in accordance with City's Standards and received the City's approval that those standards have been met. The City shall not unreasonably withhold such approval. If such Improvements fail such inspection, they shall not be considered complete and M3 shall, within a reasonable time, make changes in the Improvements to bring them into compliance with City's Standards. As used herein, the term Improvements shall also include the repair, demolition and reconstruction of any work on any part of the Improvements which may have been constructed previously but which have failed to pass inspection by City.

As used herein, the term City's Standards shall mean compliance with all ordinances and regulations of the City including, without limitation, Chapter 86 of the Code of Ordinances, City of St. Marys, Georgia, the City Public Works Policies and Specifications Manual.

9. M3 shall begin constructing the Improvements within thirty (30) days of the Effective Date of this Agreement.

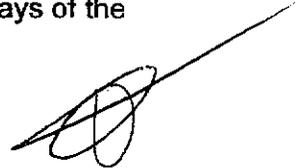
- a) All of the Improvements shall be completed within fifteen (15) months of the Effective Date. Failure to substantially complete the Improvements within fifteen months of the Effective Date shall be a material breach of this Agreement by M3.
- b) Time is of the essence of this Settlement Agreement. Only acts of God shall permit extension of the date for substantial completion.
- c) All work shall be begun and completed in accordance with a schedule to be agreed upon between the City and M3.



d) M3 shall timely obtain all permits and licenses necessary to construct the Improvements.

10. The Trust Fund created pursuant to paragraphs 1 and 2 above is for the benefit of M3 and is to be used to pay for the cost of the Improvements. Prior to beginning work on any Phase, M3 shall prepare a schedule of values for all Improvements on the appropriate AIA form. Disbursement from the Trust Fund shall be on a monthly basis. The procedure for payment from the Trust Fund will be as follows:

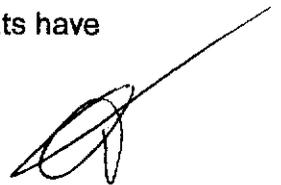
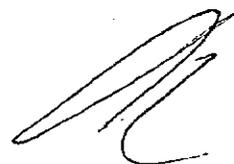
- a) By the 5th of each month following the month for which payment is to be received, M3 shall submit a standard AIA requisition to the City for work performed during the preceding month.
- b) Within 2 business days of receipt of M3's requisition, the City shall inspect the work and either:
 - (i) Approve the work and issue payment from trust, or
- c) If in the City's opinion that work has not progressed as indicated on M3's requisition or the quality of the work is not in accordance with the requirements of this Agreement, then the City will pay for the work to the extent it is approved and the parties will confer to resolve any differences. Disbursement from the Trust Fund for payment for all approved work shall be made within one (1) day following the City's approval.
- d) The City shall withhold ten percent (10%) retainage from each payment from trust. Retainage shall be paid within ten (10) days of the



City's final acceptance and approval of all Improvements, which acceptance and approval shall not be unreasonably withheld.

11. Within fifteen (15) days of the Effective Date, M3 shall deliver to City a Note and Deed to Secure Debt conveying Lots 904, 905, 906, 907, 908, 994, 932, 937, 949, 960, 1014, 1026, 1018, 1023, 1032, 1043, 1081 and 1083, in Cumberland Harbour, Phase 10 as security for the note and its full performance of its promises in this Agreement. The note shall be in amount sufficient to satisfy payment for such costs and or expenses for the performance of the improvements, if any, in the event that such costs or expenses of the improvements exceed the amount held in Trust. Such obligation shall not exceed \$1,400,000 payable to the City within 14 months from its delivery plus interest at the rate of 6% per annum. Such funds, if any, as shall be paid under this note shall be used exclusively for the payment of costs and expenses associated with the completion of the improvements. The Deed to Secure Debt shall contain provision for partial release of lots as the Improvements herein are completed and accepted by City provided the value of the lots continuing to be held by City shall never be less than the costs of the unfinished Improvements as estimated by P & A Engineering, Inc. dated November 8, 2011 plus any accrued retainage held under the terms of this Agreement. The lots conveyed in the Deed to Secure Debt on Beckett Road fronting the creek shall be valued \$200,000 each and the remaining lots shall be valued at \$17,000 each for this purpose. The Note and Deed to Secure Debt including any provision for partial release shall be in a form which is acceptable to City's attorney.

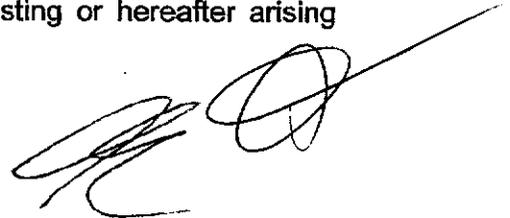
The Deed to Secure Debt shall be satisfied by City when all Improvements have been completed and accepted by City.



12. Within fifteen (15) days of the Effective Date, Bond Companies agree to reimburse the City for its attorneys' fees incurred in connection with this matter in the amount of \$105,526.44.

13. Upon the deposit of the amount set forth in paragraph 1 above and payment of the attorneys' fees as set forth in Paragraph 12 above, the City agrees the Bond Companies will have no further liability under its Bonds and, without the need for any further act or event, the City hereby releases the Bond Companies and its affiliates, subsidiaries, shareholders, officers, agents, servants, employees, attorneys, successors, assigns and all persons, and firms acting on any of their behalves from any and all claims, causes of action, defenses, set-offs, and counterclaims, in tort or in contract or of any other kind or character, whether known or unknown and whether now existing or hereafter arising from or related to any matter, cause or thing, including but not limited to claims arising out of or relating to Bond Numbers 5025871, 5030641, 5030640, 1010354, 1013293, 1013294, 1018332, 1018334 and 1007785 and the property commonly known as the Cumberland Harbour Subdivision located in St. Marys, Georgia.

14. The Bond Companies, the City and M3 and their members, managers, officers, directors, affiliates, subsidiaries, successors, assigns or other related parties, hereby release and forever discharge the other Parties and their affiliates, subsidiaries, shareholders, officers, agents, servants, employees, attorneys, successors, assigns and all persons, and firms acting on any of their behalves from any and all claims, causes of action, defenses, set-offs, and counterclaims, in tort or in contract or of any other kind or character, whether known or unknown and whether now existing or hereafter arising



from or related to any matter, cause or thing, including but not limited to claims arising out of or relating to Bond Numbers 5025871, 5030641, 5030640, 1010354, 1013293, 1013294, 1018334 and 1007785 and the property commonly known as the Cumberland Harbour Subdivision located in St. Marys, Georgia.

15. Within twenty (20) business days after receipt of full payment of the sums due from the Bond Companies under Paragraphs 1 and 12 of this Agreement, the City shall file all documents required to dismiss with prejudice the litigation now pending in the Superior Court of Camden County, Civil Action No. 10V1370 and Civil Action No. 10V1371.

16. Any notices, consents, waivers, directions, request or other instruments or communications in connection this Agreement shall be deemed properly given when delivered personally or when sent by registered, over-night or certified United States Mail, postage prepaid, as follows:

LEXON INSURANCE COMPANY:

Personally delivered:
Jeremy T. Sentman
Vice President of Engineering
Lexon Surety
900 South Frontage Road
Suite 250
Woodridge, IL 60517

Registered or certified mail:
Jeremy T. Sentman
Vice President of Engineering
Lexon Surety
900 South Frontage Road
Suite 250
Woodridge, IL 60517

Copy to:

Bruce L. Maas, Esq.
HARRIS BEACH PLLC
99 Garnsey Road
Pittsford, New York 14534

Bruce L. Maas, Esq.
HARRIS BEACH PLLC
99 Garnsey Road
Pittsford, New York 14534



BOND SAFEGUARD INSURANCE COMPANY

Personally delivered:
Jeremy T. Sentman
Vice President of Engineering
Lexon Surety
900 South Frontage Road
Suite 250
Woodridge, IL 60517

Registered or certified mail:
Jeremy T. Sentman
Vice President of Engineering
Lexon Surety
900 South Frontage Road
Suite 250
Woodridge, IL 60517

Copy to:

Bruce L. Maas, Esq.
HARRIS BEACH PLLC
99 Garnsey Road
Pittsford, New York 14534

Bruce L. Maas, Esq.
HARRIS BEACH PLLC
99 Garnsey Road
Pittsford, New York 14534

CITY OF ST. MARYS:

Personally delivered:
City of St. Marys
Attn: Office of the Mayor
418 Osborne Street
St. Marys, GA 31558

Registered or certified mail:
City of St. Marys
Attn: Office of the Mayor
418 Osborne Street
St. Marys, GA 31558

Copy to:

Gary Moore, Esq.
Taylor, Odachowski,
Schmidt & Crossland
300 Oak Street - Suite 200
St. Simons Island, GA 31522

Gary Moore, Esq.
Taylor, Odachowski,
Schmidt & Crossland
300 Oak Street - Suite 200
St. Simons Island, GA 31522

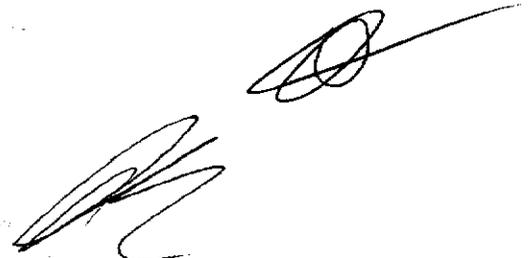
M3

Personally delivered:

Coilin McManus
Atlantic Development Group, LLC
250 North Orange Avenue, Suite 610
Orlando, FL 32801

Registered or certified mail:

Coilin McManus
Atlantic Development Group, LLC
250 North Orange Avenue, Suite 610
Orlando, FL 32801



17. This Agreement, including any attachments or exhibits, constitutes all of the understandings and agreements existing between the City and the Bond Companies with respect to the settlement of the litigation between them. Furthermore, this Agreement supersedes all prior agreements, negotiations and communications of whatever type, whether written or oral, between the parties hereto with respect to the settlement of the litigation between them.

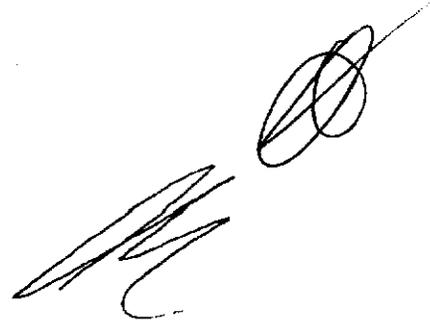
18. This Agreement shall not be amended or modified except by agreement in writing executed by the City, M3 and the Bond Companies.

19. This Agreement shall be deemed to have been made and shall be construed and enforced in accordance with the laws of the State of Georgia.

20. The parties agree that this agreement was prepared by all of them and that no interpretation, preference or presumption shall apply against any of them as the preparer.

21. Should any phrase, clause, sentence, or paragraph of this Agreement be held invalid or unconstitutional, the remainder of the Agreement shall remain in full force and effect as if such invalid or unconstitutional provision were not contained in the Agreement, unless the elimination of such provision detrimentally reduces the consideration that any party is to receive under this Agreement or otherwise materially affects the operation of this Agreement.

22. No consent or wavier, express or implied, by any party to this Agreement, to any breach of any covenant, condition or duty of another party shall not be construed as a consent to or wavier of any future breach of the same.



23. This Agreement may be executed electronically and in three counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

24. This Agreement shall not constitute a joint venture between any of the parties hereto and shall not be enforceable by any person or entity not a signatory hereto claiming to be a third party beneficiary or upon any other theory.

25. The improvements described above shall not constitute or be construed as a public works project. The parties hereby waive any applicable provisions of the Georgia Development Impact Fee Act as it may apply to all or any portion of this agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the date and year first above written.

LEXON INSURANCE COMPANY

By: _____

Its: _____

**BOND SAFEGUARD INSURANCE
COMPANY**

By: _____

Its: _____

Cell.

[Handwritten signature]

ST. MARYS, GEORGIA

(SEAL)

BY:

William T. Deloughy, Mayor

Attest:

City Clerk:

M3 AMERICAN INVESTMENTS, LLC (SEAL)

By:

Its:

Attest:

Secretary:

(SEAL)
C.H.

C.H.

[Handwritten signature]