

**CONTRACT FOR CONSTRUCTION
FOR FINAL LIFT OF ASPHALT**

CONTRACT NO. PD-17-02-01-FLA (99070081-80228)

THIS CONTRACT, made and entered into this 1 day of ^{May} ~~April~~, 2018, by and between **D. R. HORTON, INC., a Delaware corporation**, hereinafter referred to as "Developer," and INDIAN RIVER COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County".

WITNESSETH:

WHEREAS, Developer has commenced proceedings to effect a subdivision of land within Indian River County, Florida; and

WHEREAS, a certificate of completion for the subdivision shall not be issued until the Developer has installed the required improvements (with the exception of a final asphalt lift) and entered into a warranty agreement to warranty paving and drainage improvements for a 1-year period; and

WHEREAS, Developer has installed a 1¼-inch asphalt lift, but does not wish to install the final lift until such time as a majority of the homes have been constructed so as to make the subdivision more aesthetically pleasing; and

WHEREAS, Developer has guaranteed to the satisfaction of the County that such final lift of asphalt will be installed by posting either cash or a letter of credit with the County in an amount of 125% of the estimated cost as certified by Developer's engineer and approved by the County Engineer.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES HEREIN CONTAINED, the parties agree as follows:

1. Developer agrees to install in a good and workmanlike manner, the improvements described in **Exhibit "A"** attached hereto the earlier of 2 years from the project's projected date of Certificate of Completion; 60 days prior to turnover to homeowner association; or prior to certificate of occupancy for last residence in subdivision (or a separately platted phase of a subdivision).

2. Developer agrees to construct said improvements strictly in accordance with the land development permit, the most recent set of plans and specifications for this subdivision approved by the County and on file in the Planning and Development Division, and all County development regulations and standards, including conditions and requirements of any applicable County right-of-way permit, all of which are hereby incorporated by reference and made a part hereof.

3. In order to guarantee performance of this contract, Developer shall simultaneously herewith furnish either cash or a letter of credit, to be approved by the County Attorney, naming Indian River County Office of Management and Budget, as the escrow agent or beneficiary, in the amount of **\$100,485.00**, which amount is not less than one hundred twenty-five percent (125%) of the estimated total cost of the final lift of asphalt. It is understood that the full amount of the above-described security shall remain available to the County and shall not be reduced.

4. Developer agrees to indemnify, hold harmless, and defend the County against any and all claims, damages, losses, and expenses, including attorney's fees, for property damage, personal or bodily injury, or loss of life, arising from the negligent acts or omissions of the Developer, its officers, employees, agents, or contractors, subcontractors, laborers, or suppliers, relating to the installation of the final lift of asphalt, in an amount of not less than \$1,000,000.00, or the limits of any applicable underlying or excess insurance coverage carried by Developer.

5. In the event the Developer shall fail or neglect to fulfill its obligations under this contract, the Developer, as principal, and the posted funds shall be liable to pay for the cost of the final lift of asphalt to the final total cost, including but not limited to engineering, construction, legal and contingent costs, including reasonable attorney's fees incurred by the County, together with any damages, either direct or consequential, which the County may sustain as a result of the failure of Developer to carry out and execute all provisions of this contract and applicable ordinances of the County. Developer hereby gives permission to County, County's contractors and subcontractors to go on its property for purposes of completing the required improvements. If any portion of the property is sold by Developer, Developer acknowledges that the granting of this permission will be preserved and recited in any document transferring title to Developer's successor and/or assigns.

6. The parties agree that the County at its option shall have the right, but not the obligation, to construct/install or, pursuant to receipt of competitive bids, cause to be constructed and installed the final lift of asphalt in the event Developer shall fail or refuse to do so in accordance with the terms of this contract. Developer expressly agrees that the County may demand and draw upon the security posted for the final total cost of the work. Developer shall remain wholly liable for any resulting deficiency, should the posted security be exhausted prior to completion of the required improvements. In no event shall the County be obligated to expend public funds, or any fund other than those provided by the Developer to complete the work.

7. Any posted security provided to the County by Developer with respect to this contract shall exist solely for the use and benefit of the County and shall not be construed or intended in any way, expressly or impliedly, to benefit or secure payment

to any subcontractor, laborer, materialman or other party providing labor, material, supplies, or services for construction of the required improvements, or to benefit any lot purchaser(s), unless the County shall agree otherwise in writing.

8. This agreement is the full and complete understanding of the parties and shall not be construed or amplified by reference to any other agreement, discussion, or understanding, whether written or oral, except as specifically mentioned herein. This agreement shall not be assigned without the express written approval of the County. Any amendment, deletion, modification, extension, or revision hereof or hereto shall be in writing, executed by authorized representatives of both parties.


IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

D.R. HORTON, INC., a Delaware corporation
Developer

By: 
Daniel J. Liparini, Assistant Secretary


Authority: resolutions adopted by the
Consent of Executive Committee of the
Board of Directors of D.R. Horton, Inc.
dated January 12, 2015

**BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY, FLORIDA**
County

By: 
Jason E. Brown
County Administrator

Authority: Resolution No. 2006-155

APPROVED AS TO BUDGET MATTERS:

By: 
Michael Smykowski, OMB Director

projected date of Certificate of Completion: May 1, 2019

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

By: 
William K. DeBaal
Deputy County Attorney

EXHIBIT "A"



East Village at Pointe West - Phase 2A
 CERTIFIED COST ESTIMATE

4/3/2018

FINAL LIFT ASPHALT

Description	Quantity	Unit	Unit Price	TOTAL
Mobilization	1	LS	\$10,000.00	\$10,000.00
1" SP 9.5 - 2nd Lift	9,398	SY	\$6.00	\$56,388.00
Restripe Pavement	1	LS	\$8,000.00	\$8,000.00
Reset PCP's	1	LS	\$6,000.00	\$6,000.00
TOTAL				\$80,388.00

Surety Amount (125%)	\$100,485.00
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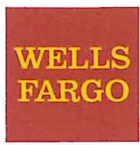
*IRC
 ENG
 @ 4/19/18*

CERTIFICATE OF COST ESTIMATE

I, Stephen E. Moler, a Florida registered engineering, License No. 33193, do hereby certify to Indian River County that this cost estimate has been prepared under my responsible direction for those improvements itemized in this exhibit and that the total cost estimate is true and accurate to the best of my knowledge. This estimate has been prepared, in part, to induce approval by the County of a final plat for the Pointe West East Village - Phase 2A project, and for the purpose of establishing proper surety amounts associated therewith.



Stephen E. Moler, P.E. FL #33193
 Vice President



Wells Fargo Bank, N.A.
 U.S. Trade Services
 Standby Letters of Credit
 401 N. Research Pkwy, 1st Floor
 MAC D4004-017,
 Winston-Salem, NC 27101-4157
 Phone: 1(800) 776-3862 Option 2
 E-Mail: sbic-new@wellsfargo.com

Irrevocable Standby Letter Of Credit

Number : IS000039534U
Issue Date : May 2, 2018

BENEFICIARY	APPLICANT
INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSIONERS 1801 27TH STREET VERO BEACH, FLORIDA 32960	D.R. HORTON, INC. 1341 HORTON CIRCLE ARLINGTON, TEXAS 76011

LETTER OF CREDIT ISSUE AMOUNT USD 100,485.00 EXPIRY DATE AUGUST 1, 2019

LADIES AND GENTLEMEN:

BY ORDER OF D.R. HORTON, INC., A DELAWARE CORPORATION, WELLS FARGO BANK, N.A. HEREBY ESTABLISHES AN IRREVOCABLE LETTER OF CREDIT NO. IS000039534U IN YOUR FAVOR IN THE AMOUNT OF US \$100,485.00 (USD ONE HUNDRED THOUSAND FOUR HUNDRED EIGHTY FIVE AND 00/100) EFFECTIVE AS OF MAY 2, 2018, AND INITIALLY EXPIRING AT OUR OFFICE AT THE CLOSE OF BUSINESS ON 08/01/2019.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT WRITTEN AMENDMENT FOR ONE YEAR PERIODS FROM THE PRESENT OR ANY FUTURE EXPIRY DATE UNLESS AT LEAST 90 CALENDAR DAYS PRIOR TO SUCH EXPIRATION DATE, WE SEND THE BENEFICIARY NOTICE AT THE ABOVE STATED ADDRESS BY CERTIFIED MAIL OR OVERNIGHT COURIER THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT BEYOND THE INITIAL OR ANY EXTENDED EXPIRY DATE HEREOF. IN THE EVENT THAT THE CUSTOMER DOES NOT PROVIDE ALTERNATE SECURITY WITHIN THIRTY (30) DAYS OF NOTICE, THE COUNTY SHALL HAVE THE RIGHT TO DRAW ON THE LETTER OF CREDIT NOTWITHSTANDING THE LACK OF ANY DEFAULT UNDER THE CONTRACT. THIS STANDBY LETTER OF CREDIT SHALL NOT BE EXTENDED BEYOND 08/01/2021 WHICH WILL BE CONSIDERED THE FINAL EXPIRATION DATE. ANY REFERENCE TO A FINAL EXPIRATION DATE DOES NOT IMPLY THAT WELLS FARGO BANK, N.A. IS OBLIGATED TO EXTEND THIS CREDIT BEYOND THE INITIAL EXPIRY DATE OR ANY EXTENDED DATE HEREOF.

WE HAVE BEEN INFORMED THAT THIS LETTER OF CREDIT IS PROVIDED TO YOU AS REQUIRED UNDER THE CONTRACT FOR CONSTRUCTION FOR FINAL LIFT OF ASPHALT BETWEEN D.R. HORTON, INC. AND INDIAN RIVER COUNTY RELATING TO POINTE WEST EAST VILLAGE, PHASE 2A PD WHICH CONTRACT IS NUMBERED PD-17-02-01-FLA (99070081-80228).

WELLS FARGO BANK, N.A. SHALL MAKE FUNDS AVAILABLE UNDER THIS CREDIT TO YOU NOT EXCEEDING IN THE AGGREGATE THE AMOUNT OF THIS CREDIT AGAINST YOUR SIGHT DRAFT TO US MENTIONING THIS LETTER OF CREDIT NO. IS000039534U, ACCOMPANIED BY A LETTER FROM THE COUNTY ADMINISTRATOR

Together we'll go far



OR HIS DESIGNEE, WITH APPROVAL SIGNATURES OF THE COUNTY ATTORNEY OR HIS DESIGNEE, AND THE DIRECTOR OF OFFICE OF MANAGEMENT AND BUDGET OR HIS DESIGNEE, STATING THAT D.R. HORTON, INC. HAS DEFAULTED UNDER THE TERMS OF THE AFOREMENTIONED CONTRACT FOR CONSTRUCTION FOR FINAL LIFT OF ASPHALT OR FAILED TO POST ALTERNATE SECURITY, AND THAT THE AMOUNT OF THE DRAFT REPRESENTS THE AMOUNT REQUIRED BY THE COUNTY TO FULFILL THE PERFORMANCE OF SAID CONTRACT FOR THE CONSTRUCTION FOR FINAL LIFT OF ASPHALT. DRAFTS PRESENTED FOR PAYMENT UNDER THE CREDIT SHALL BE MARKED, "DRAWN ON IRREVOCABLE LETTER OF CREDIT NO. IS000039534U OF WELLS FARGO BANK, N.A."

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING. SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, OR AMPLIFIED BY REFERENCE TO ANY DOCUMENT, INSTRUMENT, OR CONTRACT REFERRED TO HEREIN OR IN WHICH THIS LETTER OF CREDIT IS REFERRED TO OR TO WHICH THIS LETTER OF CREDIT RELATES AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT, INSTRUMENT, OR CONTRACT.

WE HEREBY AGREE THAT YOUR SIGHT DRAFT AND LETTER AS MENTIONED ABOVE SHALL BE DULY HONORED AND PAYMENT MADE UPON DUE PRESENTATION TO OUR OFFICE LOCATED AT THE ABOVE ADDRESS OR BY FACSIMILE TRANSMISSION SPECIFIED BELOW, BEFORE 5:00 P.M. NO LATER THAN AUGUST 1, 2019 OR ANY EXTENDED EXPIRATION DATE.

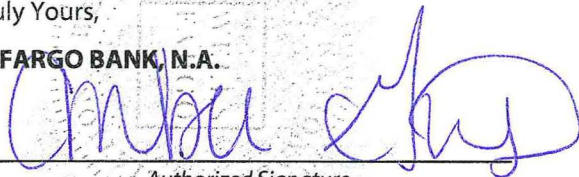
PRESENTATION OF DRAWING DOCUMENTS IN COMPLIANCE WITH THIS LETTER OF CREDIT SHALL BE PRESENTED AT OUR OFFICE AT 401 N. RESEARCH PKWY., 1ST FLOOR, WINSTON SALEM, NORTH CAROLINA 27101, ATTENTION: STANDBY LETTER OF CREDIT DEPARTMENT ON OR BEFORE THE EXPIRATION DATE. ALTERNATIVELY, DRAWINGS MAY ALSO BE PRESENTED TO US BY FACSIMILE TRANSMISSION TO FACSIMILE NUMBER 844-879-5593 (EACH SUCH DRAWING, A "FAX DRAWING"); PROVIDED, HOWEVER, THAT A FAX DRAWING WILL NOT BE EFFECTIVELY PRESENTED UNTIL YOU CONFIRM BY TELEPHONE OUR RECEIPT OF SUCH FAX DRAWING BY CALLING US AT TELEPHONE NUMBER 1-800-776-3862 OPTION 2. IF YOU PRESENT A FAX DRAWING UNDER THIS LETTER OF CREDIT YOU DO NOT NEED TO PRESENT THE ORIGINAL OF ANY DRAWING DOCUMENTS, AND IF WE RECEIVE ANY SUCH ORIGINAL DRAWING DOCUMENTS THEY WILL NOT BE EXAMINED BY US. IN THE EVENT OF A FULL OR FINAL DRAWING THE ORIGINAL STANDBY LETTER OF CREDIT MUST BE RETURNED TO US BY OVERNIGHT COURIER. ANY CHANGE IN FAX NUMBER, PHONE NUMBER, OR ADDRESS AFFECTING PRESENTATION, MUST BE PROVIDED IMMEDIATELY IN WRITING TO THE ATTENTION OF OFFICE OF MANAGEMENT AND BUDGET, AT BENEFICIARY'S ADDRESS.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS CREDIT IS SUBJECT TO AND GOVERNED BY THE LAWS OF THE STATE OF FLORIDA AND THE INTERNATIONAL STANDBY PRACTICE 1998 INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 (ISP98) AND, IN THE EVENT OF ANY CONFLICT, THE JURISDICTION IS IN FLORIDA, AND THE LAWS OF THE STATE OF FLORIDA WILL CONTROL.

Very Truly Yours,

WELLS FARGO BANK, N.A.

By:


Authorized Signature

The original of the Letter of Credit contains an embossed seal over the Authorized Signature.



Please direct any written correspondence or inquiries regarding this Letter of Credit, always quoting our reference number, to **Wells Fargo Bank, National Association**, Attn: U.S. Standby Trade Services

at either 794 Davis Street, 2nd Floor
MAC A0283-023,
San Leandro, CA 94577-6922

or 401 N. Research Pkwy, 1st Floor
MAC D4004-017,
WINSTON-SALEM, NC 27101-4157

Phone inquiries regarding this credit should be directed to our Standby Customer Connection Professionals

1-800-776-3862 Option 2
(Hours of Operation: 8:00 a.m. PT to 5:00 p.m. PT)

1-800-776-3862 Option 2
(Hours of Operation: 8:00 a.m. EST to 5:00 p.m. EST)

