CONTRACT FOR CONSTRUCTION OF REQUIRED IMPROVEMENTS NO. PD-17-09-06 (2004010124-82753)

THIS CONTRACT, made and entered into this 13th day of February, 2019 by and between **DIVOSTA HOMES, L.P., a Delaware limited partnership**, owner of the property being platted as Lakes At Waterway Village PD – Pods M, N, O, P, 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 is commencing proceedings to effect a subdivision of land within Indian River County, Florida; and

WHEREAS, a final plat of the subdivision within the unincorporated area of Indian River County shall not be recorded until the Developer has installed the required improvements or has guaranteed to the satisfaction of the County that such improvements will be installed; and

WHEREAS, Developer requests the approval and recordation of a certain plat to be known as Lakes At Waterway Village PD – Pods M, N, O, P; and

WHEREAS, the required improvements are to be installed after recordation of this plat under guarantees posted with the County.

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

1. Developer agrees to construct on or before February 19, 2020, in a good and workmanlike manner, those improvements described as follows:

See Exhibit "A" attached hereto

or otherwise required by the Indian River County Code in connection with the approval of said plat. A copy of the plat shall be recorded in the Public Records of Indian River County, Florida upon the final approval of the Board of County Commissioners and made a part hereof for all purposes.

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 an irrevocable letter of credit, having an expiration date of not less than ninety (90) days beyond the date set forth in Paragraph 1, provided by a banking institution authorized to transact such business in this state, in a form to be approved by the County, naming Developer as customer and Wells Fargo Bank, N.A., as the underwriting bank, in the amount of \$3,044,188.14, which amount is not less than one hundred twenty-five percent (125%) of the estimated total cost of improvements remaining to be constructed, as determined in accordance with the County's Subdivision and Platting Ordinance. It is understood that the full amount of the letter of credit shall remain available to the County and shall not be reduced during the course of construction. Developer may at any time substitute guarantees, subject to the approval as to form and amount by the County.
- 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 construction of the required improvements, in an amount of up to \$1,000,000.00, or the limits of any applicable underlying or excess insurance coverage carried by Developer or to be obtained during the course of the construction of the subdivision improvements, including all those improvements to be constructed on existing publicly dedicated or County-owned property, such as street, sidewalk, bikepath, lighting, signalization, traffic control, drainage, water, or sewer improvements.
- 5. The County agrees to approve the plat for recordation in the Public Records of Indian River County, Florida upon a finding as to compliance with all applicable provisions of the County's Subdivision and Platting Ordinance and upon execution hereof. The County shall accept those areas specifically dedicated to the County for the purposes indicated on the plat at the time of plat recordation. However, nothing herein shall be construed as creating an obligation upon the County to perform any act of construction or maintenance within such dedicated areas until such time as the required improvements are satisfactorily completed.

Developer shall remain responsible for utility meter boxes, sewer clean outs, and drainage culvert inverts, to be in good repair, accessible, correctly plumbed, and not covered with topsoil, concrete or impervious material for the 1-year maintenance period commencing after County issuance of a Certificate of Completion. Notice of this ongoing responsibility shall be provided by Developer to any subsequent builder/homeowner.

Satisfactory completion in accordance with the land development permit, plans, specifications, and ordinance requirements of Indian River County shall be

determined by the County and shall be indicated by specific written approval of the Public Works Director or his designated representative, after receipt of a signed and sealed Certificate of Completion from the project engineer of record. Once the required improvements are completed to the satisfaction of County, Developer acknowledges that Developer is responsible for posting a 1-year warranty for road and drainage improvements as well as utility facilities, if applicable, in the amount of 25% of the costs of such improvements; and that appropriate warranty agreement and bill(s) of sale will need to be entered into. The funds posted under this Contract for Construction of Required Improvements will not be released until the applicable 1-year warranty postings and appropriate warranty agreement and bill(s) of sale are in place.

- 6. In the event the Developer shall fail or neglect to fulfill its obligations under this contract and as required by the Indian River County Code, the Developer, as principal, and the letter of credit (or any County approved substituted guarantees) shall be jointly and severally liable to pay for the cost of construction and installment of the required improvements and warranty 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. In no event, however shall the liability of the underwriting bank (or any County approved substituted guarantees) under this paragraph exceed the total amount of the original obligation stated in the letter of credit (or any County approved substituted guarantees).
- 7. The parties agree that the County at its option shall have the right, but not the obligation, to construct and install or, pursuant to receipt of competitive bids, cause to be constructed and installed the required improvements 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 existing letter of credit (or any County approved substituted guarantees) for the final total cost of the improvements and warranty. Developer shall remain wholly liable for any resulting deficiency, should the letter of credit (or any County approved substituted guarantees) be exhausted prior to completion of the required improvements. In no event shall the County be obligated to expend public funds, or any funds other than those provided by the Developer, or the underwriting bank (or any County approved substituted guarantees) to construct and warranty the required improvements. Developer hereby gives permission to County, County's contractors and subcontractors to go on its property, known as proposed Lakes At Waterway Village PD - Pods M, N, O, P, 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.
- 8. Any letter of credit (or any County approved substituted guarantees) 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.

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.

> DIVOSTA HOMES, L.P., a Delaware limited partnership

By DIVOSTA HOMES HOLDINGS, LLC, a Delaware limited liability company, its General Partner

WITNESSES

Brent Baker, Division President

print name:

DEVELOPER

By:

Jason E. Brown

INDIAN RIVER COUN

County Administrator

WILLIAM K. DEBRAAL

Authority: Resolution No. 2005-121

COUNTY

projected BCC plat approval date: February 19, 2019

Subdivision Performance Bond Estimate For the Lakes at Waterway Village Plat MNOP

		E/	ARTI	HWORK			
DESCRIPTION	QUANTITY	UNIT		UNIT COST	TOTAL	COMPLETE	INCOMPLETE
MOBILIZATION	1	LS	\$	50,000.00	\$ 50,000.00	\$ 37,500.00	\$ 12,500.00
MOBILIZATION/DEMOBILIZATION	1	LS	\$	15,000.00	\$ 15,000.00	\$ 1=	\$ 15,000.00
NPDES	1	LS	\$	25,000.00	\$ 25,000.00	\$ 18,750.00	\$ 6,250.00
CLEARING & GRUBBING	58	AC	\$	5,000.00	\$ 290,000.00	\$ 290,000.00	\$ -
POND AND SITE EXCAVATION	350,000	CY	\$	10.00	\$ 3,500,000.00	\$ 3,150,000.00	\$ 350,000.00
PLACE FILL (FROM EXCAVATION/STOCKPILE)	350,000	CY	\$	7.00	\$ 2,450,000.00	\$ 1,837,500.00	\$ 612,500.00
FINAL SITE GRADING	280,000	SY	\$	0.50	\$ 140,000.00	\$ 112,000.00	\$ 28,000.00
PAD STABILIZATION (SEED)	150,000	SY	\$	0.40	\$ 60,000.00	\$ 48,000.00	\$ 12,000.00
BOC STABALIZATION (SOD)	36,000	SF	\$	0.20	\$ 7,200.00	\$ 3,600.00	\$ 3,600.00
LAKE BANK STABILIZATION (SOD)	450,000	SF	\$	0.20	\$ 90,000.00	\$ 67,500.00	\$ 22,500.00
тот	AL				\$ 6,627,200.00	\$ 5,564,850.00	\$ 1,062,350.00

ROADWAY **UNIT COST** COMPLETE DESCRIPTION QUANTITY UNIT TOTAL INCOMPLETE 1 1/4" ASPHALT (FIRST COURSE) 16,567 SY 8.50 \$ 140,819.50 \$ 126,737.55 \$ 14,081.95 \$ 1" ASPHALT (FINAL COURSE) 16,567 SY \$ 6.00 \$ 99,402.00 \$ \$ 99,402.00 12.00 \$ 8" ROCK BASE 5,380 64,560.00 \$ 58,104.00 \$ SY \$ 6,456.00 6.5" ROCK BASE 125,455.00 112,909.50 \$ 12,545.50 11,405 SY \$ 11.00 \$ \$ 36,447.40 12" STABILIZED SUBGRADE 32,802.66 \$ 16,567 SY \$ 2.20 \$ \$ 3,644.74 5,440.00 **PAVERS** 2,176 SF 2.50 5,440.00 \$ TYPE "F" CURB 315 LF 16.00 5,040.00 4,536.00 \$ 504.00 14,564.00 13,240 \$ \$ 145,640.00 131,076.00 \$ 2' VALLEY GUTTER LF 11.00 \$ TYPE "D" CURB 275 LF \$ 11.00 \$ 3,025.00 1,512.50 \$ 1,512.50 CONCRETE SIDEWALK 7,407 SY \$ 18.00 \$ 133,326.00 99,994.50 \$ 33,331.50 SIDEWALK STABILIZATION (2' SOD) 25,000 SF \$ 0.20 \$ 5,000.00 \$ 2,500.00 \$ 2,500.00 SIGNAGE AND STRIPING 1 LS \$ 8,000.00 | \$ 8,000.00 \$ \$ 8,000.00 201,982.19 FRC E16 TOTAL \$ 772,154.90 \$ 570,172.71 \$

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DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL	TOTAL COMPLETE		INCOMPLET	
15" RCP	25	LF	\$ 30.00	\$ 750.00	\$	675.00	\$	75.00
15" HDPE	1,686	LF	\$ 25.00	\$ 42,150.00	\$	37,935.00	\$	4,215.00
18" RCP	1,227	LF	\$ 34.00	\$ 41,718.00	\$	37,546.20	\$	4,171.80
18" HDPE	2,825	LF	\$ 30.00	\$ 84,750.00	\$	76,275.00	\$	8,475.00
18" CAP	140	LF	\$ 32.00	\$ 4,480.00	\$	4,032.00	\$	448.00
24" RCP	26	LF	\$ 50.00	\$ 1,300.00	\$	1,027.00	\$	273.00
36" RCP	549	LF	\$ 83.00	\$ 45,567.00	\$	41,010.30	\$	4,556.70
36" HDPE	104	LF	\$ 75.00	\$ 7,800.00	\$	7,020.00	\$	780.00
36" CAP	40	LF	\$ 88.00	\$ 3,520.00	\$	3,168.00	\$	352.00
CATCH BASINS / STORM MANHOLES	36	EA	\$ 4,000.00	\$ 144,000.00	\$	129,600.00	\$	14,400.00
YARD DRAINS	14	EA	\$ 1,500.00	\$ 21,000.00	\$	18,900.00	\$	2,100.00
TESTING	1	LS	\$ 5,000.00	\$ 5,000.00	\$	-	\$	5,000.00
	TOTAL	-		\$ 376,035.00	\$	338,288.50	\$	37,746.50

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		SANITAF	RY SEWER SYSTEM				
DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL	COMPLETE		INCOMPLETE
8" PVC (SDR 26) 0-6' CUT	651	LF	\$ 25.00	\$ 16,275.00	\$ 14,647.50	\$	1,627.50
8" PVC (SDR 26) 6-8' CUT	1,408	LF	\$ 32.00	\$ 45,056.00	\$ 40,550.40	\$	4,505.60
8" PVC (SDR 26) 8-10' CUT	1,845	LF	\$ 37.00	\$ 68,265.00	\$ 61,438.50	\$	6,826.50
8" PVC (SDR 26) 10-12' CUT	763	LF	\$ 47.00	\$ 35,861.00	\$ 32,274.90	\$	3,586.10
8" PVC (SDR 26) 12-14' CUT	491	LF	\$ 62.00	\$ 30,442.00	\$ 27,397.80	\$	3,044.20
8" PVC (SDR 26) 14-16' CUT	221	LF	\$ 93.00	\$ 20,553.00	\$ 18,497.70	\$	2,055.30
8" PVC (SDR 26) 16-18' CUT	57	LF	\$ 98.00	\$ 5,586.00	\$ 5,027.40	\$	558.60
4' DIA. MANHOLE 0-6' DEEP	6	EA	\$ 4,000.00	\$ 24,000.00	\$ 21,600.00	\$	2,400.00
4' DIA. MANHOLE 6-8' DEEP	14	EA	\$ 4,250.00	\$ 59,500.00	\$ 53,550.00	\$	5,950.00
4' DIA. MANHOLE 8-10' DEEP	11	EA	\$ 5,000.00	\$ 55,000.00	\$ 49,500.00	\$	5,500.00
4' DIA. MANHOLE 10-12' DEEP	2	EA	\$ 6,500.00	\$ 13,000.00	\$ 11,700.00	\$	1,300.00
4' DIA. MANHOLE 12-14' DEEP	1	EA	\$ 9,000.00	\$ 9,000.00	\$ 8,100.00	\$	900.00
4' DIA. DROP MANHOLE 12-14' DEEP	1	EA	\$ 11,000.00	\$ 11,000.00	\$ 9,900.00	\$	1,100.00
4' DIA. DROP MANHOLE 16-18' DEEP	1	EA	\$ 17,000.00	\$ 17,000.00	\$ 15,300.00	\$	1,700.00
SINGLE SERVICE W/ CLEANOUT	20	EA	\$ 560.00	\$ 11,200.00	\$ 10,080.00	\$	1,120.00
DOUBLE SERVICE W/ CLEANOUT	62	EA	\$ 640.00	\$ 39,680.00	\$ 35,712.00	\$	3,968.00
TV LINES	5,436	LF	\$ 4.30	\$ 23,374.80	\$ 11,687.40	\$	11,687.40
	TOTAL			\$ 484,792.80	\$ 426,963.60	\$	57,829.20

8 y		POTABL	E W	ATER SYSTEM				
DESCRIPTION	QUANTITY	UNIT		UNIT COST	TOTAL	COMPLETE		INCOMPLETE
8" C-900 WATERMAIN	6,817	LF	\$	21.00	\$ 143,157.00	\$ 128,841.30	\$	14,315.70
8" GV	17	EA	\$	1,880.00	\$ 31,960.00	\$ 28,764.00	\$	3,196.00
FIRE HYDRANT ASSEMBLY	9	EA	\$	3,970.00	\$ 35,730.00	\$ 32,157.00	\$	3,573.00
SAMPLE POINTS	5	EA	\$	510.00	\$ 2,550.00	\$ 637.50	\$	1,912.50
SINGLE WATER SERVICE (1")	20	EA	\$	960.00	\$ 19,200.00	\$ 17,280.00	\$	1,920.00
DOUBLE WATER SERVICE (1.5")	62	EA	\$	1,610.00	\$ 99,820.00	\$ 89,838.00	\$	9,982.00
FITTINGS / BENDS	1	LS	\$	20,000.00	\$ 20,000.00	\$ 18,000.00	\$	2,000.00
TEMPORARY JUMPER	1	EA	\$	1,000.00	\$ 1,000.00	\$ 900.00	\$	100.00
CONNECT TO EXIST. WATERMAIN	2	LS	\$	750.00	\$ 1,500.00	\$ 1,350.00	\$	150.00
TESTING	1	LS	\$	2,500.00	\$ 2,500.00	\$ 625.00	\$	1,875.00
	\$ 357,417.00	\$ 318,392.80	\$	39,024.20				

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DESCRIPTION	QUANTITY	UNIT	UNIT COST		TOTAL	COMPLETE	INCOMPLETE
TREES							
GUMBO LIMBO	46	EA	\$ 425.00	\$	19,550.00	\$ 5,865.00	\$ 13,685.00
JAPANESE BLUEBERRY	165	EA	\$ 426.00	\$	70,290.00	\$ 21,087.00	\$ 49,203.00
YAUPON HOLLY	4	EA	\$ 325.00	\$	1,300.00	\$ 390.00	\$ 910.00
WAX PRIVIT LIGIUSTRUM	208	EA	\$ 404.00	\$	84,032.00	\$ 25,209.60	\$ 58,822.40
D.D. BLANCHARD MAGNOLIA	34	EA	\$ 585.00	\$	19,890.00	\$ 5,967.00	\$ 13,923.00
MEDJOOL DATE PALM	3	EA	\$ 5,840.00	\$	17,520.00	\$ 5,256.00	\$ 12,264.00
PYGMY DATE PALM TRIPLE TRUNK	2	EA	\$ 216.00	\$	432.00	\$ 129.60	\$ 302.40
SOUTH FLORIDA SLASH PINE	107	EA	\$ 296.00	\$	31,672.00	\$ 9,501.60	\$ 22,170.40
LIVE OAK (20')	24	EA	\$ 2,215.00	\$	53,160.00	\$ 15,948.00	\$ 37,212.00
LIVE OAK (12'-14')	432	EA	\$ 585.00	\$	252,720.00	\$ 75,816.00	\$ 176,904.00
FLORIDA ROYAL PALM	16	EA	\$ 1,204.00	\$	19,264.00	\$ 5,779.20	\$ 13,484.80
SABAL PALM	227	EA	\$ 296.00	\$	67,192.00	\$ 20,157.60	\$ 47,034.40
BALD CYPRESS (12')	44	EA	\$ 296.00	\$	13,024.00	\$ 3,907.20	\$ 9,116.80
BALD CYPRESS (7'-8')	79	EA	\$ 181.00	\$	14,299.00	\$ 4,289.70	\$ 10,009.30
SHRUBS/GROUNDCOVERS							
SOFT TIPPED AGAVE	4	EA	\$ 120.90	\$	483.60	\$ 145.08	\$ 338.52
BEAUTY BERRY	227	EA	\$ 29.80	\$	6,764.60	\$ 2,029.38	\$ 4,735.22
GREEN COCOPLUM	711	EA	\$ 12.95	\$	9,207.45	\$ 2,762.24	\$ 6,445.22
RED TIP COCOPLUM	2,845	EA	\$ 7.50	\$	21,337.50	\$ 6,401.25	\$ 14,936.25
SMALL LEAF CLUSIA	1,278	EA	\$ 76.35	\$	97,575.30	\$ 29,272.59	\$ 68,302.71
GREEN ISLAND FICUS	4,628	EA	\$ 7.50	\$	34,710.00	\$ 10,413.00	\$ 24,297.00
DWARF FIRE BUSH	. 0	EA	\$ 7.15	\$	3.14	\$ 0.94	\$ 2.20
DWARF SCHILLINGS HOLLY	2,470	EA	\$ 8.95	\$	22,106.50	\$ 6,631.95	\$ 15,474.55



	TOTAL			\$ 1,175,869.74	\$ 352,760.92	\$ 823,108.82
PERIMETER IRRIGATION	1	LS	\$ 150,000.00	\$ 150,000.00	\$ 45,000.00	\$ 105,000.00
FAKAHATCHEE GRASS	9,076	SF	\$ 7.15	\$ 64,893.40	\$ 19,468.02	\$ 45,425.38
ORANGE BIRD OF PARADISE	5	EA	\$ 50.05	\$ 250.25	\$ 75.08	\$ 175.18
SAND CORDGRASS	3,576	EA	\$ 7.15	\$ 25,568.40	\$ 7,670.52	\$ 17,897.88
SILVER SAW PALMETTO	431	EA	\$ 100.60	\$ 43,358.60	\$ 13,007.58	\$ 30,351.02
WILD COFFEE	110	EA	\$ 7.85	\$ 863.50	\$ 259.05	\$ 604.45
PINK MUHLY GRASS	4,587	EA	\$ 7.50	\$ 34,402.50	\$ 10,320.75	\$ 24,081.75



	COMMON	AREA AN	D LAKESHO	ORE LANI	OSCA	APING					
DESCRIPTION	QUANTITY	UNIT	UNIT	COST	TOTAL		COMPLETE		COMPLETE		INCOMPLETE
ST. AUGUSTINE FLORATAM (COMMON AREA)	494,100	SF	\$	0.25	\$	123,525.00	\$	37,057.50	\$ 86,467.50		
ST. AUGUSTINE FLORATAM (LAKE BANK)	113,400	SF	\$	0.25	\$	28,350.00	\$	14,175.00	\$ 14,175.00		
MULCH	2,150	CY	\$	20.00	\$	43,000.00	\$	12,900.00	\$ 30,100.00		
ROOT BARRIER	660	LF	\$	18.00	\$	11,880.00	\$	3,564.00	\$ 8,316.00		
LITTORAL PLANTINGS											
SPIKERUSH	8,881	EA	\$	1.30	\$	11,545.30	\$	5,772.65	\$ 5,772.65		
BULRUSH	6,586	EA	\$	1.30	\$	8,561.80	\$	4,280.90	\$ 4,280.90		
FIRE FLAG	6,627	EA	\$	1.30	\$	8,615.10	\$	4,307.55	\$ 4,307.55		
WATER LILY	1,512	EA	\$	2.50	\$	3,780.00	\$	1,890.00	\$ 1,890.00		
TOTAL	\$	239,257.20	\$	83,947.60	\$ 155,309.60						



	ENGINEERING AND SURVEY													
DESCRIPTION	QUANTITY	UNIT	UNIT COST		TOTAL		COMPLETE		INCOMPLETE					
ENGINEERING SERVICES	1	LS	\$ 90,000.00	\$	90,000.00	\$	67,500.00	\$	22,500.00					
SURVEY SERVICES	1	LS	\$ 70,000.00	\$	70,000.00	\$	52,500.00	\$	17,500.00					
SET PRM'S, PCP'S, LOT CORNERS	1	LS	\$ 18,000.00	\$	18,000.00	\$	-	\$	18,000.00					
	TOTAL			\$	178,000.00	\$	120,000.00	\$	58,000.00					

TOTALS	\$ 10,210,726.64	\$ 7,775,376.13	\$ 2,435,350.51
% OF TOTAL COMPLETE		76.15%	23.85%
PROPOSED BOND AMOUNT (125%)			\$ 3,044,188.14

Kimley-Horn and Associates, Inc.

Kinan Husainy, P.E.

Kimley»Horn

No. 75481

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STATE OF