



AGENDA REPORT
May 7, 2019

**Resolution and Release of Performance Bond, Re: Panther Ridge, Phase 1
Subdivision - D.R. Horton, Inc (District 1)**

SUBJECT:

Adopt Resolution and Release Performance Bond: Panther Ridge, Phase 1

FISCAL IMPACT:

None - FY 18/19

DEPT/OFFICE:

Public Works

REQUESTED ACTION:

In accordance with Section 62-2844(b), it is requested that the Board of County Commissioners adopt the attached Resolution and authorize the Chair to sign the Resolution releasing the Contract and Surety Performance Bond dated October 9, 2018 for the above referenced project.

SUMMARY EXPLANATION and BACKGROUND:

Panther Ridge, Phase 1 is located within in the Sharpes area about .25 miles south of Camp Road. The proposed subdivision contains 224 units on approximately 56.17 acres. There are 109 units in this phase.

Panther Ridge, Phase 1 received preliminary plat and final engineering plans on October 24, 2017, and final plat and contract approval on October 9, 2018. The developer posted a Surety Performance Bond for guarantee of the completion of the infrastructure improvements according to the approved plans.

Per Section 62-2809(b)(2), "Construction after final plat recordation: ...the applicant shall provide security required in Section 62-2844 for the performance of such construction..." Section 62-2844(a) states: "An applicant shall be required to secure its performance security of the construction required under this article by a surety bond, letter of credit, savings account, certificate of deposit or execution of a tri-party escrow agreement. Such security shall not be required if a certificate of completion has been issued for all the subdivision improvements prior to final plat recordation." Because the applicant chose to plat the subdivision prior to completion of construction, the applicant entered into Contract with the Board and posted a Surety Performance Bond to guarantee the completion of the infrastructure improvements according to the approved plans.

As of April 18, 2019, the Panther Ridge, Phase 1 infrastructure improvements have been completed.

Reference: 17SD00006, 17WV00012

CLERK TO THE BOARD INSTRUCTIONS:

Please forward the Board action to the Public Works Department. Provide 2 originals of the Resolution.

ATTACHMENTS:

Description

- ☐ **Resolution**
- ☐ **Copy of Subdivision Contract and Surety Performance Bond**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

May 8, 2019

M E M O R A N D U M

TO: Corinna Gumm, Interim Public Works Director

RE: Item F.14., Resolution and Release of Surety Performance Bond for Panther Ridge, Phase 1 Subdivision – D.R. Horton, Inc.

The Board of County Commissioners, in regular session on May 7, 2019, adopted Resolution No. 19-083, releasing the Contract and Surety Performance Bond dated October 9, 2018, for Panther Ridge, Phase 1 Subdivision; and authorized the Chair to execute the Resolution. Enclosed is a fully-executed and a certified copy of the Resolution.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/kp

Encls. (2)

RESOLUTION 19- 083

WHEREAS, the Board of County Commissioners of Brevard County, Florida and D.R. Horton, Inc. entered into a contract to guarantee the construction of improvements on property commonly known as Panther Ridge, Phase 1.

WHEREAS, by execution of the Contract, the Board of County Commissioners of Brevard County, Florida agreed to accept said improvements for private use at such time as said improvements were satisfactorily completed; and

WHEREAS, D.R. Horton, Inc. has completed all of the infrastructure improvements and has requested that the executed contract approved on October 9, 2018 be released and release of all undisbursed funds referenced in the Contract hereinabove described.

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Brevard County, Florida that:

1. The Board of County Commissioners of Brevard County, Florida hereby acknowledges that there is satisfactory completion of all improvements to that certain real property commonly known as Panther Ridge, Phase 1.
2. The Board of County Commissioners of Brevard County, Florida hereby releases the contract and performance bond executed on October 9, 2018.
3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the 7th day of May 2019.

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By: 

Kristine Isnardi, Chair

As approved by the Board on May 9, 2019

Subdivision No. 17SD00006

Project Name Panther Ridge Phase I

**Subdivision Infrastructure
Contract**

THIS CONTRACT entered into this 9th day of October 2018, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY," and D.R. Horton Inc., hereinafter referred to as "PRINCIPAL."

WITNESSETH:

IN CONSIDERATION of the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. The PRINCIPAL agrees to construct the improvements described below:
All water, sewer, stormsewer, paving, drainage, earthwork, site work and vegetation restoration for Panther Ridge subdivision Phase 1
and all other improvements depicted in subdivision number 17SD00006. A copy of said plat to be recorded in the Plat Books of the Public Records of Brevard County.
2. Principal agrees to construct the improvements strictly in accordance with the plans and specifications on file in the Land Development Division (which construction is hereinafter referred to as the "Work"). Such plans and specifications (hereinafter referred to as the "Plans") are hereby incorporated into this Agreement by reference and made a part hereof. Principal warrants to County that the Work will conform to the requirements of the Plans and other requirements specified in the County's approval of the Work. Principal also warrants to County that the Work will be free from faults and defects. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered to be defective. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this paragraph 2.

If within two (2) years after approval and acceptance of the improvements by County, any Work is found to be defective, Principal shall promptly, without cost to County, either correct such defective Work, or, if it has been rejected by County, remove it from the site and replace it with nondefective Work. If Principal does not promptly comply with the terms of such instructions, County may elect any of the remedies provided for in paragraph 6 herein below. Corrective Work shall be warranted to be free from defects for a period of six (6) months. Any defect in such Work shall be corrected again by Principal promptly upon notice of the defect from County. In the event the maintenance bond given by Principal in connection with County's acceptance of the improvements is extended, the two (2) year warranty period provided for herein shall be extended for a like period.

To the extent assignable, Principal assigns to County all of Principal's warranty rights under its construction contract with the contractor constructing the improvements (including all warranties provided by law of in equity with respect to such construction contract), which warranties may be asserted by County on behalf of Principal in the event Principal fails to perform its warranty obligations hereunder. Where warranties granted hereunder overlap, the more stringent requirement shall control."

3. The PRINCIPAL agrees to complete said construction on or before the 12th day of September, 2020.

4. In order to guarantee performance of PRINCIPAL'S obligations herein contained, PRINCIPAL shall furnish cash, letter of credit, certificate of deposit or surety bond in a form approved by the COUNTY, in the amount of \$3,648,380. If such bond is a cash bond or a certificate of deposit, said amount shall be deposited with the Board of County Commissioners within five (5) business days of the County's acceptance of this contract. Said bond shall be 125% of the estimated cost of construction, as determined by the Land Development Division. PRINCIPAL shall maintain such records and accounts, including property, personnel, financial records, as are deemed necessary by the COUNTY to ensure proper accounting for all funds expended under the agreement. Said records shall be made available upon request for audit purposes to Brevard County and its auditors.
5. The COUNTY agrees to accept said plat above described for recording in the public records of Brevard County, Florida and to accept the areas depicted thereon as dedicated for public use, including but not limited to streets and parks, at such time as said improvements are satisfactorily completed. Satisfactory completion in accordance with the plans and specifications shall be determined by written approval of the County Development Engineer or designated assistant.
6. In the event, PRINCIPAL fails to complete said improvements within the time prescribed, the COUNTY may elect to take all or any of the following actions:
 - A. Vacate all or part of such recorded plat where improvements have not been completed in accordance with the plans and specifications,
 - B. Complete the improvements utilizing COUNTY employees and materials and request payment from the bond or the PRINCIPAL,
 - C. Request the surety on said performance bond to complete such improvements, or
 - D. Contract for completion of said improvements.
7. The PRINCIPAL and Surety on said performance bond shall be liable for all costs, expenses, and damages incurred by the COUNTY, including attorney's fees, in the event the PRINCIPAL defaults on this contract.
8. In the performance of this Agreement, the PRINCIPAL shall keep books, records, and accounts of all activities, related to the agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this agreement shall be open to inspection during regular business hours by an authorized representative of the Office and shall be retained by the PRINCIPAL for a period of three years after termination of this agreement. All records, books and accounts related to the performance of this agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119 of the Florida Statutes.
9. No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this agreement shall be subject to copyright by PRINCIPAL in the United States or any other country.

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

ATTEST:

Scott Ellis, Clerk



**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

Rita Pritchett, Chair

As approved by the Board on: Oct. 9, 2018.

WITNESSES:

Kaylene Wheeler
Lori Brady

PRINCIPAL:

DR Horton Inc. as President
Assistant Secretary

9/12/18

DATE

State of: Florida

County of: Brevard

The foregoing instrument was acknowledged before me this 12 day of Sept, 2018, by Daniel Liparini who is personally known to me or who has produced as identification and who did (did not) take an oath.

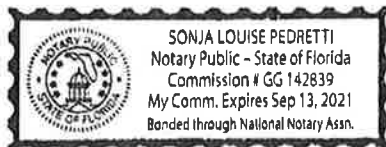
My commission expires:

S E A L

Commission Number:

Notary Public

Notary Name printed, typed or stamped

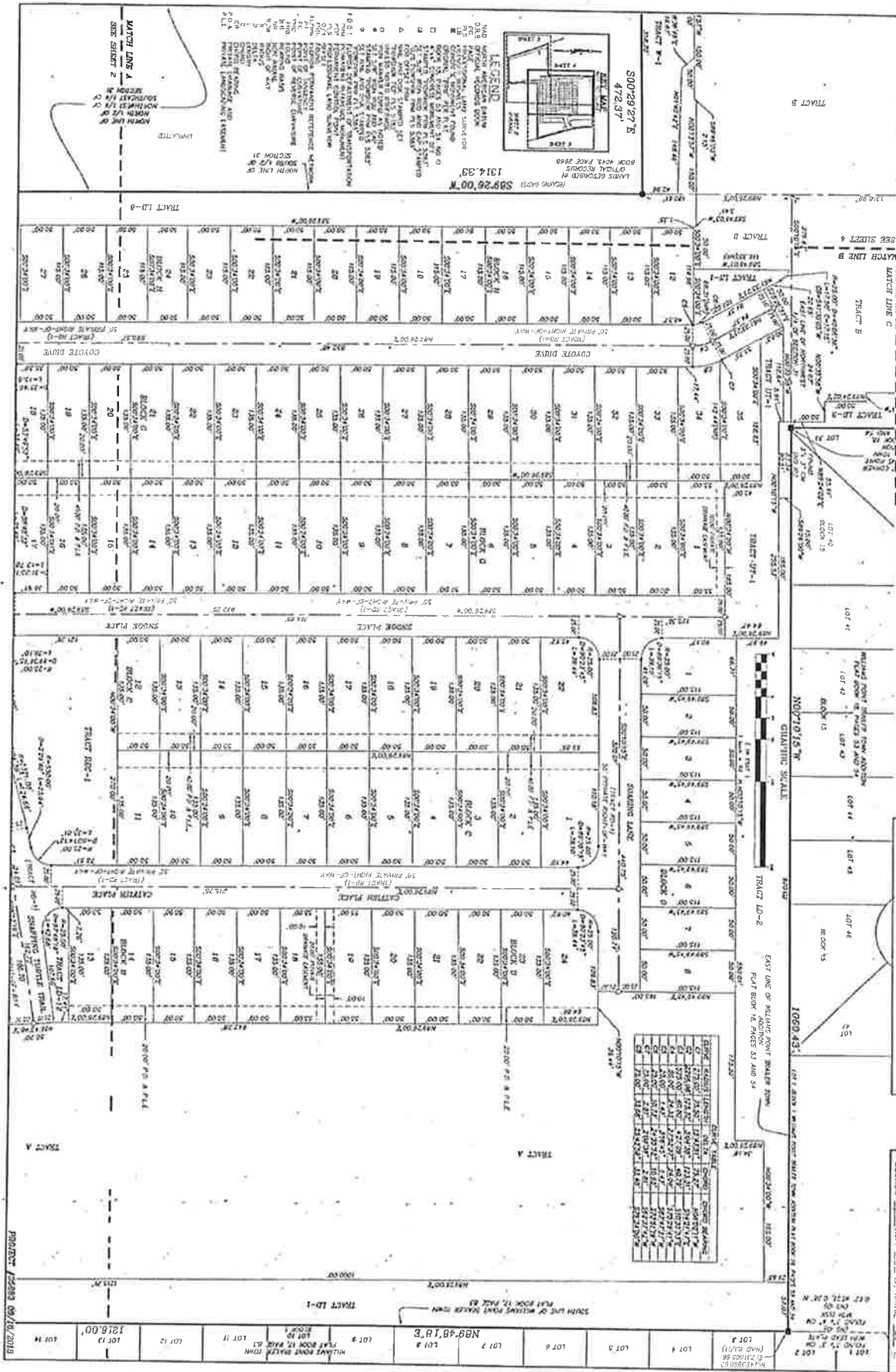


AL LAND SURVEYING SERVICES, INC.
REGISTERED PROFESSIONAL LAND SURVEYOR
NO. 12017
(201) 366-0110

PANTHER RIDGE PHASE ONE

FORMED BEING A PART OF LOT 1, BLOCK D,
GRAND PARK SUBDIVISION, PLAT BOOK 2, PAGE 22,
TOWNSHIP 23 SOUTH, RANGE 36 EAST, GREENWICH COUNTY, FLORIDA

PLAT BOOK _____ PAGE _____
SHEET 4 OF 5
SECTION 31 T23N R36E



ALL LAND SURVEYED BY
SOUTH FLORIDA SURVEYING, INC.

WEST MEETING CORNER
SECTION 21, TOWNSHIP 29 S., RANGE 35 E.

PANTHER RIDGE PHASE ONE
A PORTION BEING A REPLAT OF PART OF LOT 1, BLOCK 2,
LYING IN SECTION 21, TOWNSHIP 29 S., RANGE 35 E.,
ACCORDING TO THE RECORDS OF THE COUNTY CLERK.

NOTES: THIS PLAT IS PREPARED BY THE SURVEYOR FROM THE DATA
FURNISHED BY THE OWNER. THE SURVEYOR HAS NO KNOWLEDGE OF ANY
EXISTING EASEMENTS OR OTHER INTERESTS IN THE LAND SURVEYED
AND HAS NOT BEEN ADVISED OF ANY SUCH INTERESTS BY THE OWNER.

PLAT BOOK PAGE
SHEET 5 OF 5
SECTION 21 TWP. 29 S. RANGE 35 E.

LINE	BEARING	DISTANCE	AREA	PERCENT
1	N 89° 12' 15" E	141.00'	1.00	1.00
2	S 00° 29' 27" E	472.37'	1.00	1.00
3	N 89° 12' 15" W	16.00'	1.00	1.00
4	S 00° 29' 27" E	48.07'	1.00	1.00
5	N 89° 12' 15" E	141.00'	1.00	1.00
6	S 00° 29' 27" E	472.37'	1.00	1.00
7	N 89° 12' 15" W	16.00'	1.00	1.00
8	S 00° 29' 27" E	48.07'	1.00	1.00
9	N 89° 12' 15" E	141.00'	1.00	1.00
10	S 00° 29' 27" E	472.37'	1.00	1.00
11	N 89° 12' 15" W	16.00'	1.00	1.00
12	S 00° 29' 27" E	48.07'	1.00	1.00
13	N 89° 12' 15" E	141.00'	1.00	1.00
14	S 00° 29' 27" E	472.37'	1.00	1.00
15	N 89° 12' 15" W	16.00'	1.00	1.00
16	S 00° 29' 27" E	48.07'	1.00	1.00
17	N 89° 12' 15" E	141.00'	1.00	1.00
18	S 00° 29' 27" E	472.37'	1.00	1.00
19	N 89° 12' 15" W	16.00'	1.00	1.00
20	S 00° 29' 27" E	48.07'	1.00	1.00



FLORIDA EAST COAST RAIL ROAD
(100' R/W)

TRACT LD-4
N 89° 12' 15" W
141.00'

905.25'

TRACT B
N 89° 12' 15" E
141.00'

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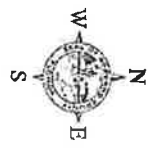
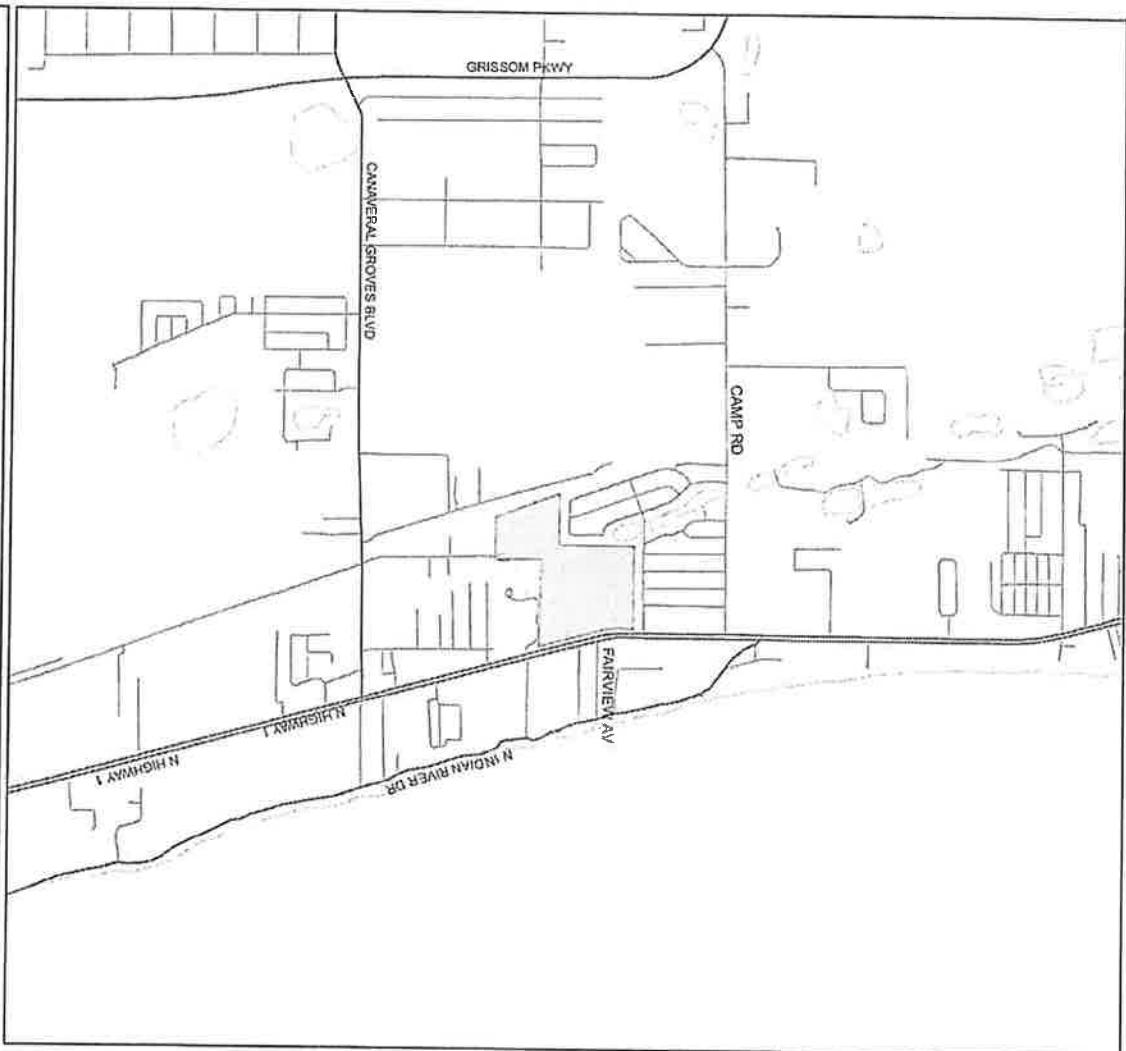
107.25'

107.25'

107.25'

PROJECT 20000 08/16/2010

LOCATION MAP PANTHER RIDGE PHASE ONE 17SD00006



1:24,000 or 1 inch = 2,000 feet

 Subject Property

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/9/2018

SURETY PERFORMANCE BOND

Bond No. 1162657

18BD00016

KNOW ALL MEN BY THESE PRESENTS:

That we, D.R. HORTON INC., hereinafter referred to as "Owner" and, Lexon Insurance Company, hereinafter referred to as "Surety", are held and firmly bound unto the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereinafter referred to as "County", in the sum of \$ 3,648,380.00, for the payment of which we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, Owner has entered into a contract with the County dated the 9th day of October, 2018, which contract is made a part hereof by reference.

NOW THEREFORE, the condition of this obligation is such that if Owner shall promptly and faithfully perform said contract and complete the work contemplated therein by September 12, 2020, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

If the Owner shall be declared in default of said contract by the County, the Surety shall have sixty (60) days from the date of said default within which to take whatever action it deems necessary in order to insure performance. If, at the expiration of sixty (60) days from the date of said default, no arrangements have been made by the Owner or surety satisfactory to the County for the completion of said contract, then the County shall have the right to complete said contract and the Owner and Surety jointly and severally, shall pay all costs of completing said contract to the County, including but not limited to engineering, legal and other costs, together with any damages, either direct or consequential, which the County may sustain on account of the Owner's default of said contract. After the expiration of the aforesaid grace period, the County shall have the additional right to contract for the completion of said contract upon which the Owner has defaulted and upon the County's acceptance of the lowest responsible bid for the completion of said contract, the Owner and Surety shall become immediately liable for the amount of said bid and in the event the County is required to commence legal proceedings for the collection thereof, interest shall accrue at the rate of six percent (6%) per annum beginning with the commencement of such legal proceedings. The County, in its discretion, may permit the Surety to complete said contract, in the event of Owner's default.

In the event that the County commences suit for the collection of any sums due hereunder, the obligors and each of them agree to pay all costs incurred by the County, including attorney's fees.

EXECUTED this 12th day of September, 2018.

Assistant Secretary D.R. Horton
OWNER: D.R. Horton, Inc.

SURETY: Lexon Insurance Company

Dawn L. Morgan
Dawn L. Morgan, Attorney-in-Fact

Pre-approved Form reviewed for
Legal form and content: 12/18/07



POWER OF ATTORNEY

LX - 1079

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **LEXON INSURANCE COMPANY**, a Texas Corporation, with its statutory home office in Austin, Texas, does hereby constitute and appoint: James I. Moore, Stephen T. Kazmer, Dawn L. Morgan, Kelly A. Gardner, Elaine Marcus, Jennifer J. McComb, Melissa Schmidt, Tariese M. Pisciotto, Diane Rubright, Amy Wickett 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 \$8,000,000.00, Eight Million 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 22nd day of June, 2018.

LEXON INSURANCE COMPANY



BY

Brian Beggs
President

ACKNOWLEDGEMENT

On this 22nd day of June, 2018, before me, personally came Brian Beggs to me known, who be 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.



AMY TAYLOR
Notary Public- State of Tennessee
Davidson County
My Commission Expires 07-06-19

BY

Amy Taylor
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 forgoing 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 Seal at Mount Juliet, Tennessee this 12th Day of September, 2018.



BY

Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance 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."

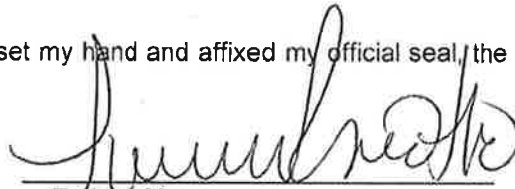
STATE OF ILLINOIS

COUNTY OF DUPAGE}

On September 12, 2018, before me, Tariese M. Pisciotto, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared, Dawn L. Morgan known to me to be Attorney-in-Fact of Lexon Insurance Company, the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument in behalf of the said corporation, and duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires, June 26, 2022


Tariese M. Pisciotto, Notary Public

