

**PERFORMANCE BOND****Performance Bond #30197195**

**KNOW ALL MEN BY THESE PRESENTS:** That **D.R. Horton, Inc.**, as **Principal**, whose address is 1430 Culver Drive, N.E., Palm Bay, Florida 32904, and **The Continental Insurance Company**, whose address is 801 Warrenville Road, Suite 700, Lisle, Illinois 60532, are held and firmly bound to the **CITY OF COCOA**, a Florida Municipal Corporation, in the penal sum of **\$1,505,572.48** lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents. This Performance Bond is issued for the full and complete construction of all infrastructure improvements to be constructed by the Principal and/or the Principal's agents or assigns for the subdivision named **ADAMSON CREEK PHASE 2**, located within the City of Cocoa, as set forth in the plans and specifications approved by the City Council on 8/22/2023 and prepared by B.S.E Consultants, Inc. (Project #11453.02.), initially dated by B.S.E on 12/18/2020 and as revised per all City approved comments and conditions ("Plans"). The infrastructure improvements are itemized and set forth in **ATTACHMENT A**, which is attached hereto and fully incorporated herein by this reference, and also depicted on the Plans. Construction of said infrastructure improvements shall be in accordance with all applicable City Ordinances, the Plans and the Principal related to the subdivision, which was approved by the City Council on 8/22/2023. ("City Development Approvals").

THE CONDITION OF THIS OBLIGATION is such that, the Principal has sought approval from the City to develop and construct the aforementioned subdivision on property located within the boundaries of the City of Cocoa, and said approval is contingent upon

the Principal providing to the City this Performance Bond to insure that any and all infrastructure improvements regarding the ADAMSON CREEK PHASE TWO subdivision are completely constructed in compliance with the City Development Approvals.

NOW, THEREFORE, if the Principal shall well and faithfully perform said construction of said infrastructure improvements in accordance with the City Development Approvals, and shall pay all direct and indirect damages to any person, firm, company or corporation suffered or sustained on account of the performance of said construction and development during the time thereof and until such is completed and fully accepted by the City. If not expressly stated otherwise in the City Development Approvals, all infrastructure covered by this Performance Bond shall be fully installed in a manner deemed acceptable to the City no later than one (1) year from the date of this Performance Bond. Principal and Surety agree that any extension of time granted by the City to complete the installation of the infrastructure shall not constitute a waiver or release of the City's right to make a claim under this Performance Bond. Principal and Surety, joint and severally, shall fully indemnify and save harmless the City of Cocoa from all costs, expenses (including reimbursement of reasonable attorney's fees through all appeals), claims, injuries and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the City of Cocoa all outlays of funds and expense in making good any default, and shall in all respects fully and faithfully comply with all the covenants, terms, conditions and agreements with the City of Cocoa related to the City Development Approvals.

In the event that the Principal fails to install and/or repair, remedy or correct any default and/or defect associated with the construction of the infrastructure improvements per the City Development Approvals, the Surety shall pay to install and/or remedy or correct any such default and/or defect, up to the aggregate amount of **\$1,505,572.48**. The City of

Cocoa shall furnish written notice to the Principal and Surety of any defect, non-performance or default on the part of the Principal. In the event the defect, non-performance or default is not cured within thirty (30) days following the date that said notice is received by the Surety, the City may elect, in its sole discretion, to require the Surety to tender to the City the full penal sum of this Performance Bond or proceed to have the work completed. If the City chooses to complete the work, upon completion by the City, the City shall present a statement of costs relative to any said corrective work. The Surety shall provide payment in full of the total amount contained in the statement of costs to the City within five (5) business days of the receipt of said statement of costs. Any sum not timely paid to the City shall also accrue interest at the highest rate allowed by law until fully paid regardless of, and in addition to, the penal sum of this Performance Bond. The Surety shall also pay all costs, expenses, and interest, including reasonable attorney's fees and costs through appeals, incurred by the City in successfully enforcing the terms of this Performance Bond in a court of competent jurisdiction regardless of, and in addition to, the penal sum of this Performance Bond. Nothing contained herein shall limit or restrict the City's rights and remedies against the Principal as provided under the City Development Approvals and by law including, but not limited to, the City's rights to recover all losses, damages, expenses, cost and attorney's fees under sections 627.428 or 627.756, Florida Statutes, including appellate proceedings, that the City sustains because of a default by Principal under the Performance Bond and City Development Approvals.

The amount of this Performance Bond may be reduced upon the receipt by the undersigned of a written statement executed by the City Manager of the City of Cocoa, or such other person as may be authorized by the City Manager, and signed, as such, stating that a particular infrastructure improvement or portion thereof has been completed and accepted or approved by the City. The amount of the reduction shall be specified in said written statement.

The Principal and Surety hereby stipulate and agree that no change, extension of time, alteration or addition to the terms and conditions of the City Development Approvals, or to the infrastructure improvements to be performed thereunder, shall in any way affect their obligations under this Performance Bond, and they hereby waive notice of any such change, extension of time, alteration or addition to the terms of the aforementioned approvals by the City. Any such change, extension of time, alteration or addition shall be deemed automatically incorporated hereunder by this reference. This Performance Bond shall be governed by, and shall be construed in accordance with the laws of the State of Florida. In the event any legal action filed upon this Performance Bond by the City, Principal or Surety, venue shall lie exclusively in the Circuit Court for Brevard County, Florida. All written notices required under this Performance Bond shall be provided to the addresses stated above, or if not so stated, to the entities duly authorized registered agent in Florida. This Performance Bond shall remain in full force and effect until such time all the work, labor and materials to construct the infrastructure improvements have been performed and provided to the City's complete satisfaction, through the expiration of all warranty periods. This Performance Bond may expire sooner only upon written release by the City.

IN WITNESS WHEREOF, this Performance Bond is executed by the Principal and Surety this 22<sup>nd</sup> day of August, 2023.

**D.R. Horton, Inc.**

  
Principal (Signature)

JOHN T. LYNCH ASST. SEC.

(Print Name and Title)

[Corporate Seal of Principal]

**The Continental Insurance Company**

  
Surety (Signature)

James I. Moore, Attorney-in-Fact

(Print Name and Title)

[Corporate Seal of Surety]

Acknowledgement of Acceptance of the Performance Bond as  
to Form for the City of Cocoa, Florida Only:

CITY OF COCOA

By: \_\_\_\_\_  
Print Name/Title: \_\_\_\_\_

Date: \_\_\_\_\_

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Exhibit D

Know All Men By These Presents, That The Continental Insurance Company, a Pennsylvania insurance company, is a duly organized and existing insurance company having its principal office in the City of Chicago, and State of Illinois, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**James I Moore, Stephen T Kazmer, Dawn L Morgan, Melissa Schmidt, Amy Wickett, Kelly A Gardner, Jennifer J Mc Comb, Tariese M Pisciotto, Diane M Rubright, Martin Moss, Individually**

of Downers Grove, IL, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

**- In Unlimited Amounts -**

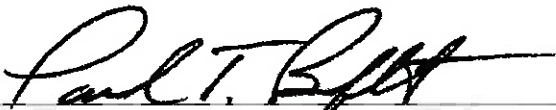
and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the insurance company and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Board of Directors of the insurance company.

In Witness Whereof, The Continental Insurance Company has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 20th day of June, 2021.

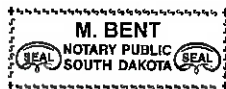


The Continental Insurance Company

  
Paul T. Bruflat Vice President

State of South Dakota, County of Minnehaha, ss:

On this 20th day of June, 2021, before me personally came Paul T. Bruflat to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of The Continental Insurance Company, a Pennsylvania insurance company, described in and which executed the above instrument; that he knows the seal of said insurance company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said insurance company and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance company.



My Commission Expires March 2, 2026

  
M. Bent Notary Public

**CERTIFICATE**

I, D. Johnson, Assistant Secretary of The Continental Insurance Company, a Pennsylvania insurance company, do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the insurance company printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance company this 22<sup>nd</sup> day of August 2023



The Continental Insurance Company

  
D. Johnson Assistant Secretary

Form F6850-4/2012

State of Illinois        }  
                                   } ss.  
 County of DuPage       }

On August 22, 2023, before me, Sinem Nava, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared James I. Moore known to me to be Attorney-in-Fact of The Continental 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 he 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 August 28, 2025

  
 Sinem Nava, Notary Public



Commission No. 859777