

SIDEWALK AGREEMENT

THIS SIDEWALK AGREEMENT (“**Agreement**”) is made and entered into as of the _____ day of _____, 2018, by and between **Manatee County**, a political subdivision of the State of Florida, whose address is 1112 Manatee Avenue West, Bradenton, Florida 34205, hereinafter referred to as (the “**County**”) and **D.R. Horton, Inc.**, a Delaware Corporation, whose address is 12602 Telecom Drive, Tampa, FL 33637, hereinafter referred to as (the “**Developer**”).

WITNESSETH:

WHEREAS, the Developer is the developer of a subdivision in Manatee County, Florida referred to as Braden River Shores (the “**Project**”), which is located on the real property described in **Exhibit “A”** attached hereto (“**Property**”); and

WHEREAS, the Board of County Commissioners passed Manatee County Ordinance PDR-17-07(Z)(P) (“**Zoning Ordinance**”), which approved a Preliminary Site Plan (“**PSP**”) for the Project; and

WHEREAS, Stipulation C.5 of the Zoning Ordinance requires Developer to enter into this Agreement to provide for payment to the County as a payment-in-lieu of construction for a sidewalk along both the north and south shoulders of 26th Avenue East from 39th Street East to the Project boundary, (as depicted in **Exhibit “B,”** attached hereto) in an amount calculated as provided herein; and

WHEREAS, Developer and County wish to set forth their mutual obligations with respect to the above matters in satisfaction of Stipulation C.5 of the Zoning Ordinance.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in the Zoning Ordinance and herein, Developer and County hereby agree as follows:

1. **Recitals.** The Recitals set forth above are true and correct and are incorporated herein by reference.
2. **Payment-in-Lieu.** Developer may satisfy its obligation to construct sidewalks along portions of 26th Avenue East right-of-way, as depicted in **Exhibit “B”** hereto, by making a payment-in-lieu thereof, in accordance with the following provisions:
 - a) Coincident with, and as a condition of, the approval of any Certificate of Completion for Phase I, in lieu of any requirement to construct the sidewalk, and provided the sidewalk has not already been constructed by others, Developer shall pay to County an amount equal to the total cost shown on the “Engineer’s Conceptual Opinion of Cost,” as set forth on **Exhibit “C,”** attached hereto; and
 - b) Should the Developer fail or refuse to make the aforesaid payment-in-lieu, nothing herein shall be construed as affecting the County’s right to resort to any and all legal and equitable remedies against the Developer, including

specific performance to which the Developer hereby unconditionally agrees.

3. **Satisfaction of LDC Requirement to Construct Sidewalk.** Developer's compliance with the provisions of Section 2 above shall satisfy any requirement imposed by the LDC, including, without limitation, Section 1001.6 of the LDC, for Developer to construct a sidewalk along 26th Avenue East.
4. **Litigation.** In the event there shall be any litigation between the parties hereto arising out of this Agreement, the prevailing party shall be entitled to recover all fees and costs incurred in such litigation, including reasonable attorneys' fees, through appeal if necessary.
5. **Agreement Runs with Land.** This Agreement shall run with the land and shall be binding on the successors of Developer.
6. **No Assignment.** This Agreement shall not be assigned by either party. Any successor in title within the Project shall be deemed to have accepted and assumed the obligations of Developer hereunder.
7. **Validity.** After consultation with their respective legal counsel, the County and Developer each represents and warrants to the other its respective authority and power under Florida law to enter into this Agreement, acknowledges the validity and enforceability of this Agreement, and waives any future right of defense based on claim of illegality, invalidity or unenforceability of any nature.
8. **No General Obligation.** Notwithstanding any other provisions of this Agreement, the obligations undertaken by the parties hereto shall not be construed to be or constitute general obligations, debts or liabilities of the County or the State of Florida or any political subdivision thereof within the meaning of the Constitution and laws of the State of Florida.
9. **Force Majeure.** No party shall be liable for any failure to perform, or delay in the performance of, any obligation under this Agreement if such failure is caused directly by hurricane, named storm, tornado, fire, earthquake, civil commotion or failure or disruption of utility services, or other like cause beyond the reasonable control of the party obliged to perform.
10. **Ambiguities.** Both parties have been allowed equal input regarding the terms and wording of this Agreement and have had the benefit of consultation with legal counsel prior to its execution, such that all language herein shall be construed equally against the parties, and no language shall be construed strictly against its drafter.
11. **Headings.** The headings or captions of sections or paragraphs used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

12. **Severability.** The terms and provisions of this Agreement are declared by the parties to be severable. In the event that any term or provision of this Agreement shall be held invalid by a Court of competent jurisdiction, such invalid term or provision shall not affect the validity of any term or provision hereof; and all such terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Agreement; provided, however if any term or provision of this Agreement is held to be invalid due to scope or extent thereof, then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.
13. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with laws of the State of Florida. Venue for any action to enforce any of the provisions of this Agreement shall be in the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida, or, to the extent any proceeding is removed to federal court, the United States District Court for the Middle District of Florida, Tampa Division.
14. **Full Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters addressed herein. Previous agreements and understandings of the parties with respect to such matters are null and void and of no effect.
15. **Notices.** All notices, elections, requests and other communications hereunder shall be in writing and shall be deemed given in the following circumstances: when personally delivered; or three (3) business days after being deposited in the United States Mail, postage prepaid, certified or registered; or the next business day after being deposited with a recognized overnight mail or courier delivery service; or when transmitted by facsimile or telecopy transmission, with receipt acknowledged upon transmission; and addressed as follows (or to such other person or at such other address, of which any party hereto shall give written notice as provided herein):

If to County: Manatee County Director of Public Works
 1022 26th Ave. West
 Bradenton, FL 34208
 Facsimile: (941)708-7500

With copy to: Manatee County Attorney's Office
 1112 Manatee Avenue West, Suite 969
 Bradenton, Florida 34205
 Attention: County Attorney
 Facsimile: (941)749-3089

If to Developer: D.R. Horton, Inc.
 12602 Telecom Drive
 Tampa, FL 33637

With copy to: Grimes Goebel Grimes Hawkins Gladfelter & Galvano, PL
1023 Manatee Avenue West
Bradenton, FL 34205
Facsimile: (941-748-0158

In all cases, notices shall be deemed delivered to a party only upon delivery of copies to the persons indicated above in the same manner as for the party being notified.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed in their names, by their authorized representatives effective as of the date set forth above.

WITNESSES:

Signed and sealed in the presence of:

Sign: _____

Print: _____

Sign: _____

Print: _____

D.R. Horton, a Delaware Corporation

By: **D.R. Horton, Inc.**, a Delaware corporation,
its Manager

By: _____
Darren Saltzberg, Division, President
(Corporate Seal)

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND
COMPROLLER

By: _____
Deputy Clerk

MANATEE COUNTY, a political
subdivision of the State of Florida

By: its Board of County Commissioners

By: _____
County Administrator

Exhibit "A"
Legal Description

PID #: 1418600001

LOTS 84, 86, 91, 92, 93, 94 & 96 OF ELWOOD PARK, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 76, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

PID#: 1538400001

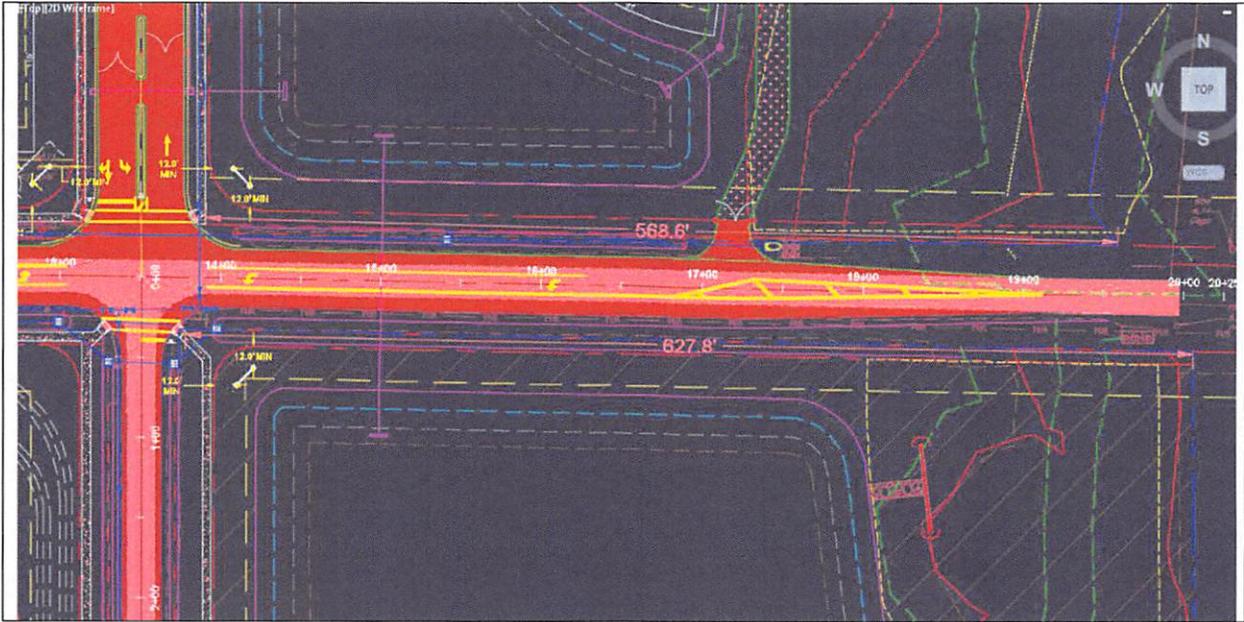
NE ¼ OF THE NE ¼ OF SECTION 5, TOWNSHIP 35 SOUTH, RANGE 18 EAST, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

PID#: 1528300005

LOT 90 OF ELWOOD PARK, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 76, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

Exhibit "B"
26th Avenue East Right-of-Way

East Portion



Portion of 26th Avenue East on South Side

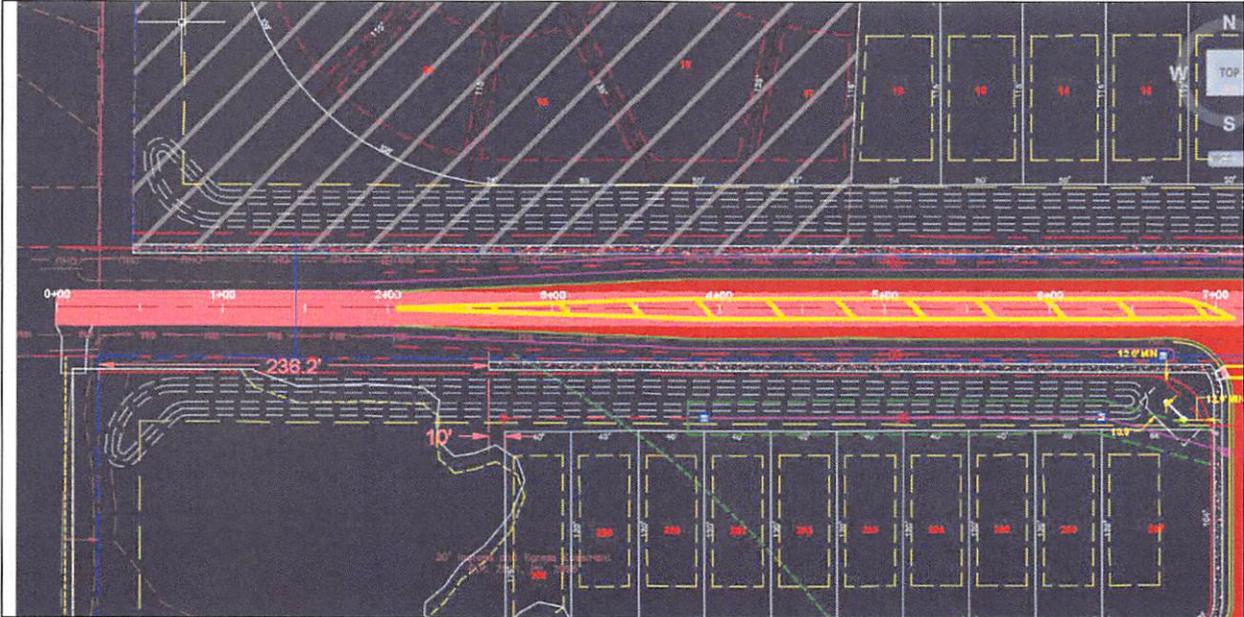


Exhibit "B"

Buffer Exhibit

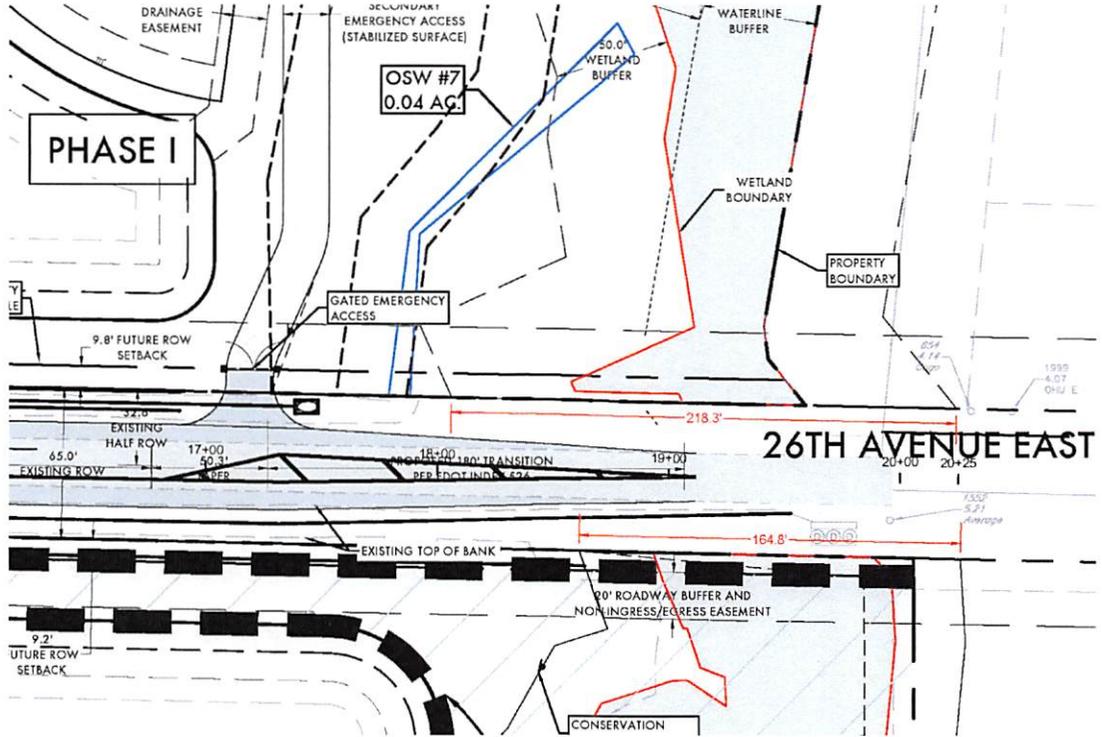


Exhibit "C"
Cost Estimate

ENGINEER'S CONCEPTUAL OPINION OF COST
BRADEN RIVER SHORES

JUNE 2018

EARTHWORK AND MISCELLANEOUS					
	ITEM	QUANTITY	UNIT	UNIT PRICE	TOTAL
	EARTHWORK AND MISCELLANEOUS	1	LS	12,000.00	\$ 12,000.00
SIDEWALK					
	ITEM	QUANTITY	UNIT	UNIT PRICE	TOTAL
1	4" concrete sidewalk (5' wide)	1,049.50	LF	17.00	\$ 17,841.50
2	Boardwalk crossing wetlands & buffers (PT all wood, SS hardware)	383.10	LF	238.00	\$ 91,177.80
SURVEYING					
	ITEM	QUANTITY	UNIT	UNIT PRICE	TOTAL
	Engineering Design & Surveying	1	LS	14,522.32	\$ 14,522.32
GRAND TOTAL					\$ 135,541.62