

**MARION COUNTY
SUBDIVISION IMPROVEMENT AGREEMENT
WITH SURETY BOND
(CORPORATION)**

THIS AGREEMENT made and entered into this _____ day of _____, 20_____, by, between and among **MARION COUNTY**, a political subdivision of the State of Florida, whose address is 601 SE 25th Avenue, Ocala, Florida 34471, hereinafter referred to as "COUNTY" and the below-listed DEVELOPER and SURETY.

WITNESSETH:

WHEREAS, DEVELOPER has made application to the Board of County Commissioners for the approval of a subdivision (the "Subdivision") and the DEVELOPER represents to the COUNTY that the below-listed information is true and correct, and

Developer: Clayton Properties Group, Inc. dba Highland Homes

Developer's Address: 3020 S. Florida Ave. Suite 101
Lakeland, Florida 33803

Project Engineer: Brett Tobias – HALFF Engineering

Engineer's Estimate of Costs of Improvements: \$1,036,683.30

Developer's Estimate of Time to Complete All Improvements: 4 months

Subdivision Name: Falls of Ocala Unit 2

Phase: _____

Plat Book _____ Page(s) _____

Surety: Berkshire Hathaway Specialty Insurance Company

Surety's Address: 1314 Douglas Street, Suite 1300
Omaha, NE 68102 - 1944

WHEREAS, it is mutually agreed and understood by the parties to this Agreement that this Agreement is entered into for the purpose of (1) protecting the COUNTY in the event DEVELOPER fails to complete the construction of required subdivision improvements, and (2) inducing COUNTY to approve the plat of the above-described subdivided lands for recordation in the Public Records, and

WHEREAS, the failure of DEVELOPER to comply with the terms and conditions of this Agreement may cause COUNTY to take whatever action may be deemed appropriate to assure the fulfillment of this Agreement, and

WHEREAS, DEVELOPER has represented to COUNTY that it intends to improve said Subdivision lands by construction of all subdivision improvements required by the Land Development Code of Marion County, Florida, as provided herein, and described in the Project Engineer's estimate of the cost of these improvements as set forth above (a copy of which is attached hereto as ***Exhibit A***, and by this reference made a part hereof), and

WHEREAS, the construction of improvements on the Subdivision lands has not progressed to completion and the DEVELOPER seeks to assure its obligations for the construction of subdivision improvements under this Agreement by arranging and agreeing with SURETY for the issuance of a surety bond as a performance guarantee to assure construction of all subdivision improvements.

NOW THEREFORE, IN CONSIDERATION of the mutual covenants and conditions contained herein, and other good and valuable consideration acknowledged by the parties, the parties do hereby promise, agree, and covenant as follows:

1. The recitals set forth above are true and correct and are incorporated into this Agreement by this reference.

2. The DEVELOPER hereby accepts the obligation to construct and shall construct or cause to be constructed, as provided in the Project Engineer's COUNTY-approved subdivision improvement plans dated October 24, 2022, and on file with the COUNTY Transportation Department, all roads, pavement and other improvements, including all catch basins and drainage facilities, monuments, street signs and other improvements of any nature (hereinafter the "Improvements") and in all respects complete the Improvements in accordance with the subdivision improvement plans. All Improvements shall be constructed in accordance with the Land Development Code of Marion County, Florida, in effect on the date of recording of the plat of the Subdivision lands or the date of this agreement, whichever is later. All required Improvements shall be certified by the Project Engineer, who shall be a State of Florida registered Engineer, as being constructed consistent with the requirements of the Land Development Code of Marion County. The Subdivision and the lands described in this Agreement are and shall remain privately owned, and the Subdivision Plat shall not contain any dedication of any Subdivision lands or infrastructure to the COUNTY. DEVELOPER shall provide to COUNTY with the final plat, documentation identifying a lawfully established property owner's association that will be responsible for maintenance of all Improvements upon completion of the construction thereof.

3. The DEVELOPER has presented to COUNTY a surety bond in an amount equal to the Engineer's Estimate of the Cost of Improvements attached hereto as ***Exhibit A***. A copy of the SURETY's surety bond is attached hereto as ***Exhibit B***. The condition of the surety bond is such that if DEVELOPER should fail to satisfactorily complete the Improvements within 180 days of the date of this Agreement, the COUNTY may, upon first giving DEVELOPER 90 days prior written notice and an opportunity to cure, draw upon the surety bond, pursuant to

instructions to be given SURETY by COUNTY, and the SURETY shall pay to the COUNTY such funds as are necessary to complete the Improvements based upon the good faith estimate of a Florida licensed general contractor. In the event such funds are not adequate to complete the work based upon such good faith estimate, the SURETY shall pay the full amount of such funds to COUNTY. In such event, COUNTY will not be responsible to SURETY for repayment of such funds, and the DEVELOPER shall not be relieved of its obligations under this agreement.

4. Upon verification of the completion of construction of all Improvements, the COUNTY Transportation Department shall, within 10 days after verification of completion of the Improvements, forward written instructions to SURETY authorizing to release and cancel the surety bond and/or shall deliver the original surety bond to SURETY, whichever the SURETY shall require. Should the COUNTY fail to timely provide notice as aforesaid, the DEVELOPER may deliver to the SURETY a true and correct copy of any verification of completion letter or certificate from the COUNTY, which the SURETY may, in good faith, rely upon and may thereafter release and cancel the surety bond. The SURETY shall not release and/or cancel the surety bond, either all or in part, except in keeping with the provisions of this Agreement. Any controversy arising under this Agreement shall be resolved in accordance with the laws of the State of Florida, acknowledging that the surety bond is being given for the protection and benefit of COUNTY to secure the DEVELOPER's obligation to complete all Improvements. In the event of any conflict between the terms of the surety bond and this Agreement, the terms of this Agreement shall control. COUNTY may only draw upon the surety bond and utilize such funds for the purpose of paying for the commercially reasonable costs to complete the Improvements and for no other purpose or use.

5. For and in consideration of the issuance of the surety bond, DEVELOPER agrees to pay SURETY such reasonable compensation which shall from time to time be agreed upon in writing by DEVELOPER and SURETY. In addition, DEVELOPER agrees to reimburse SURETY for any direct and actual out-of-pocket expense, including reasonable attorney's fees reasonably incurred by it in the administration of this Agreement. Such compensation and expenses shall not constitute a charge upon the surety bond.

6. Liability of SURETY, or its successors, is expressly limited and so long as SURETY, or its successor, accounts for and disburses the surety bond in good faith and in compliance with this Agreement, it shall not be liable for errors of judgment, and DEVELOPER agrees to indemnify SURETY, or its successor, for any losses it may suffer in the premises.

7. The COUNTY reserves the right to cancel or terminate this Agreement, with or without cause, upon thirty (30) days written notice of termination to the DEVELOPER. The COUNTY reserves the right to cancel or terminate this Agreement upon five (5) days written notice in the event the DEVELOPER will be placed in either voluntary or involuntary bankruptcy or an assignment is made for the benefit of creditors. Any termination by the COUNTY of this Agreement shall entitle SURETY to immediately release and cancel the surety bond without further instruction from the COUNTY and /or the DEVELOPER.

8. DEVELOPER hereby releases the COUNTY and its agents and employees from any claims and damages, now existing or hereafter occurring or related in any way to this Agreement, save and except for claims or damages arising out of willful, wanton or bad faith acts

on the part of the COUNTY. DEVELOPER agrees that the COUNTY shall incur no liability for subdivision improvements by executing this agreement.

9. DEVELOPER does hereby agree to indemnify and hold the COUNTY harmless from and against any and all claims, damages, losses, out-of-pocket expenses (including but not limited to attorneys' fees), causes of action, judgments and/or liabilities directly arising out of, or in connection with an uncured default on the part of DEVELOPER of the terms and provisions of this Agreement. This grant of indemnity shall be irrevocable. The grant of indemnity contained herein is absolute and unlimited.

10. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred including attorneys' fees, specifically including any appellate or bankruptcy proceeding related thereto.

11. The undersigned representative of the DEVELOPER hereby represents to the COUNTY that he/she is fully authorized by the DEVELOPER to represent the DEVELOPER in agreeing to the terms and conditions of this Agreement.

12. This Agreement may be amended by mutual written agreement of the parties and only by such written agreement. There are no understandings or agreements by the parties except as herein expressly stated.

IN WITNESS WHEREOF that parties have hereunto set their hands and seals and executed this Agreement on the day and year first above mentioned.

ATTEST:

**BOARD OF COMMISSIONERS
MARION COUNTY, FLORIDA**

Gregory C. Harrell, Clerk

Michelle Stone, Chair
Date: _____

Approved as to Form
and Legal Sufficiency:

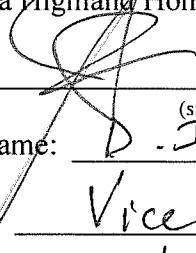
For: Marion County Attorney

SIGNATURE PAGE FOR DEVELOPER IMMEDIATELY FOLLOWS THIS PAGE

ATTEST:

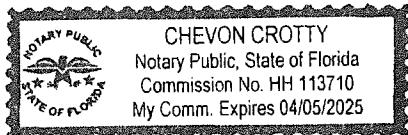
By: 
(signature)
Print name: Terrence Bobet
Title: Project manager
Date: 3/11/2024

DEVELOPER: Clayton Properties Group,
Inc. dba Highland Homes

By: 
(signature)
Print name: D. Joe Adams
Title: Vice Pres.
Date: 03/07/24

STATE OF Florida
COUNTY OF Polk

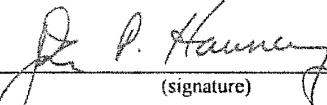
Before me by means of physical presence or online notarization this 11 day of March, 20 24 personally appeared D. Joe Adams, Vice president of DEVELOPER who is personally known to me or has produced _____ (type of identification) as identification and who executed the foregoing instrument, and who acknowledged that he/she did so as an officer of said DEVELOPER all by and with the authority of the Board of Directors of said DEVELOPER.



Chevon Crotty
Print/Type Name: Chevon Crotty
Notary Public in and for the County and State
aforesaid.
My Commission Expires: 04/05/2025
Serial No., if any: _____

SIGNATURE PAGE FOR SURETY IMMEDIATELY FOLLOWS THIS PAGE

ATTEST:

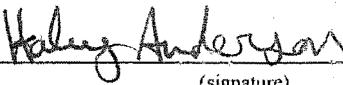
By: 
(signature)

Print name: John P. Harney

Title: Witness

Date: 3/6/2024

SURETY: #Berkshire Hathaway Specialty Insurance Company

By: 
(signature)

Print name: Haley Anderson

Title: Attorney-in-Fact

Date: 3/6/2024

STATE OF Illinois
COUNTY OF DuPage

Before me by means of physical presence or online notarization this 6th day of March, 2024 personally appeared Haley Anderson, Attorney-in-Fact of Berkshire Hathaway Specialty Insurance Company who is personally known to me or has produced N/A (type of identification) as identification and who executed the foregoing instrument, and who acknowledged that he/she did so as an officer of Berkshire Hathaway Specialty Insurance Company all by and with the authority of the Board of Directors of Berkshire Hathaway Specialty Insurance Company.

M. Labno

Print/Type Name: M. Labno

Notary Public in and for the County and State aforesaid.

My Commission Expires: August 18, 2027

Serial No., if any: 976916

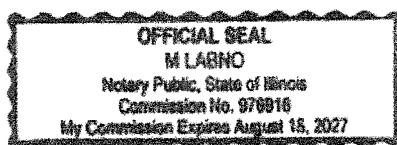


EXHIBIT "A"
FALLS OF OCALA

ENGINEERS ESTIMATE OF PROBABLE COST FOR REMAINING ITEMS

DESCRIPTION OF WORK	QUANTITY REMAINING	UNIT	UNIT COST	TOTAL VALUE
Grassing-Pond Slopes Only	4615	SY	\$ 2.75	\$ 12,691.25
Grassing-Slopes & Swales	6735	SY	\$ 2.75	\$ 18,521.25
Grassing-ROW	10095	SY	\$ 2.75	\$ 27,761.25
Seed & Mulch- Lots/ROW/Dist Areas	80015	SY	\$ 0.55	\$ 44,008.25
1.5" SP-9.5 Asphalt 40% (1 Lift)	8735	SY	\$ 15.65	\$ 136,702.75
8" Limerock Base	8735	SY	\$ 13.35	\$ 116,612.25
12" Stabilized Subgrade (LBR 40)	8845	SY	\$ 6.60	\$ 58,377.00
Curb	7535	LF	\$ 26.65	\$ 200,807.75
4" Concrete Sidewalk	7505	SF	\$ 7.25	\$ 54,411.25
Handicap Ramps	6	EA	\$ 1,092.50	\$ 6,555.00
Signage & Striping	1	LS	\$ 10,787.00	\$ 10,787.00
Mill Existing Pavement	3105	SY	\$ 5.75	\$ 17,853.75
2.5" SP-9.5 Asphalt	840	SY	\$ 27.95	\$ 23,478.00
1" FC-9.5 Asphalt	3945	SY	\$ 14.90	\$ 58,780.50
Signage & Striping	1	LS	\$ 11,695.50	\$ 11,695.50
Concrete Weir & Skimmer	3	EA	\$ 21,620.00	\$ 64,860.00
TOTAL				\$863,902.75
20%				\$172,780.55
120% Total				\$1,036,683.30

**Brett J
Tobias**

Digitally signed by Brett J
Tobias
DN: cn=Brett J Tobias,
c=US, o=Florida,
email=btobias@halff.com
Date: 2024.02.15
12:25:01 -05'00'

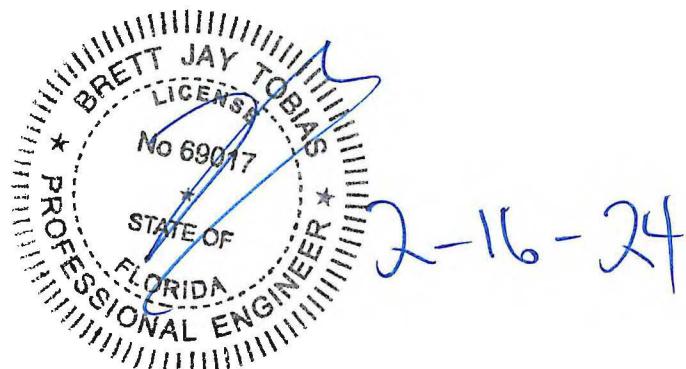


EXHIBIT "B"

Bond #: 47SUR300214010866

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That Clayton Properties Group, Inc. dba Highland Homes as Principal (hereinafter called the Principal) and Berkshire Hathaway Specialty Insurance Company a corporation organized and existing under the laws of the State of NE and authorized to transact surety business in the State of Florida, as Surety (hereinafter called the Surety) are held and firmly bound to Marion County (hereinafter called the Obligee) in the Penal Sum of One Million Thirty Six Thousand Six Hundred Eighty Three and 30/100 dollars (\$1,036,683.30) for the payment whereof, well and truly to be made, said Principal and Surety bind themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THE OBLIGATION IS SUCH THAT: The above-named Principal has or will enter into an agreement with the Obligee to do and perform work, to wit: Falls of Ocala Unit 2.

WHEREAS: If the above-bounden Principal shall well and truly perform the work referred to in such agreement, then this obligation shall be void, otherwise remain in full force and effect.

PROVIDE, HOWEVER: That this bond is subject to the following conditions:

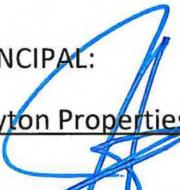
1. The Penal Sum amount of this bond shall not increase, absent Surety's written consent, regardless of any change, alterations, or modifications to the underlying documents. The aggregate liability of the surety is limited to the penal sum stated herein regardless of the number or amount of claims brought against this bond and regardless of the number of years this bond remains in force.
2. In no event shall the Surety be liable for fines, penalties, liquidated damages, or forfeitures assessed against the Principal.
3. No Claim, action, suit or proceeding, except as hereinafter set forth, shall be had or maintained against the Surety on this instrument unless same be brought or instituted upon the Surety within one (1) year from Principal default or termination.

4. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligee named herein or the heirs, executors, administrator or successors of Obligee.
5. If any conflict or inconsistency exists between the Surety's obligations or undertakings as described in this bond and as described in any underlying documents, then the terms of this bond shall prevail.

IN WITNESS WHEREOF, the seal and signature of said Principal is hereto affixed and the corporate seal and the name of the said Surety is hereto affixed and attested by its duly authorized Attorney in Fact the 6th day of March, 2024.

PRINCIPAL:

Clayton Properties Group, Inc. dba Highland Homes

 (SEAL)

D. JOEL ADAMS, V. Pres.
(Print Name & Title)

SURETY:

Berkshire Hathaway Specialty Insurance Company

Haley Anderson

Haley Anderson, Attorney-in-Fact

chevonClatty
Witness chevon crotty

