

**PAVING
LETTER OF CREDIT
PERFORMANCE AGREEMENT**

For Enclave at Powder Springs Subdivision

Account # 60042982

THIS AGREEMENT, entered into this 23rd day of February, 2018, between Powder Springs DD Investments, LLC (hereinafter called the "Subdivider"), with its principal place of business at 1132 West Peachtree Street NW, Atlanta, GA 30309 and the City of Powder Springs, Georgia, a Georgia municipal corporation, (hereinafter called "City"), and CharterBank, (hereinafter called "Issuer"), with its principal place of business at 3016 Atlanta Road, Smyrna, GA 30080.

WITNESSETH:

WHEREAS, the Unified Development Code Section 15-62, requires the deposit of a security for the performance of construction in an amount not less than \$167,477.60; and

WHEREAS, the Subdivider has received approval of the construction plans in accordance with the plans and specifications on file with the City for the improvements within the Enclave at Powder Springs Subdivision; and

WHEREAS, the Subdivider certifies that any and all persons, firms, or corporations providing labor and/or materials required for construction of said improvements will be paid in full; and

WHEREAS, the parties have agreed that the Issuer is acceptable to all parties to act in such capacity;

NOW, THEREFORE, in consideration of the foregoing premises, it is hereby agreed:

1. The Subdivider has secured the attached unconditional irrevocable Letter of Credit in the sum of One Hundred Sixty-Seven Thousand Four Hundred Seventy-Seven and 60/100 Dollars (\$167,477.60) with the Issuer, to guarantee that the improvements will be constructed as required by the Unified Development Code and other codes of the City.
2. The Issuer agrees to disburse funds to the full amount of the Letter of Credit only upon receipt of "Proper Authorization" as hereinafter defined. "Proper Authorization" shall mean authority in written form from the City of Powder Springs Community Development Department stating that a disbursement is authorized:
 - (a) To the Subdivider, or to any party designated by the Subdivider, upon delivery of "Proper Authorization" from the City of Powder; the City through the Community

Development Department, shall issue such "Proper Authorization" when the construction has progressed satisfactorily to the state of development for which payment is made and upon receipt of the City of a certificate to that effect signed by the Subdivider for the Subdivision and upon proof satisfactory to the City that all bills therefore have been paid to date, including but not limited to bills for surveying, engineering, land clearing, construction of improvements, and materials which are included in the plan of development.

- (b) To the City upon delivery of "Proper Authorization" from the City of Powder Springs Community Development Department, upon his determination that any portion or all of the said improvements have not been constructed by the Subdivider in accordance with the Unified Development Code. The City is authorized, but not obligated, to take over and perform any such uncompleted construction, and to use the funds acquired from the Letter of Credit for such purposes.
 - (c) To any person or corporation upon direction from the City, through the Community Development Department, that such funds be paid for any labor and/or materials used in constructing the improvements. The City will direct such payments if it determines that claims for labor and/or materials are just and unpaid. The Subdivider hereby consents to any such payments and authorizes and ratifies any such action on the part of the City and agrees to protect and save harmless the City from any claims of any persons or corporations whatsoever on account of any improvements which have not been completed or paid for.
3. A further condition of this Agreement is that the improvements to be made for the Enclave at Powder Springs Subdivision shall be completed within 24 months from the date of acceptance of this Agreement by the City and all costs incurred in connection therewith shall be paid in full and in accordance therewith and with the documents and specifications referred to therein or attached thereto, then upon acceptance of the improvements by the City for Subdivider's Maintenance this Agreement shall be null and void; otherwise, it shall remain in full force and effect. If the improvements are not completed within the specified 24 month period, the City is hereby authorized to complete the improvements as specified in Item 2(b) above, using the funds guaranteed under this Agreement.

4. The Issuer hereby acknowledges that it has extended an unconditional irrevocable Letter of Credit, referred to in Item 1 above, and represents that it has no obligation whatsoever to any of the parties hereto except to release said funds within 10 days upon delivery of "Proper Authorization" from the City of Powder Springs Community Development Department. The Subdivider does hereby release and hold the Issuer harmless from any and all claims whatsoever by it against the Issuer for releasing such funds to the City in accordance with the terms thereof. This Agreement shall not be terminated or otherwise allowed to expire without at least 30 days written notice to that effect from the Issuer to both the City and Subdivider.
5. If the funds are inadequate to pay for any costs covered by this Agreement, the Subdivider shall pay any and all costs beyond coverage.
6. Should any provision of the attached unconditional irrevocable Letter of Credit conflict with the terms of this Agreement, the terms of this Agreement shall control.

WITNESS the hands and official seals of the parties hereto on the day and year first above written.

CITY OF POWDER SPRINGS, GEORGIA

By: _____

SUBDIVIDER:
Powder Springs DD Investments, LLC

By: _____

DAVID C. DAVIDSON

Title: MANAGER

(Corporate Seal)

ISSUER:
CharterBank

By: _____

Lisa Sunday
Lisa Sunday

Title: **Senior Vice President**



Approved as to form:

By: _____
City Attorney

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