

**TENDER AGREEMENT AND GENERAL RELEASE**

**Principal:** Vimac USA, Inc.  
**Surety:** Developers Surety and Indemnity Company  
**Obligee:** Broward County, Florida  
**Project:** Cast-in-Place Transit Shelters and Amenities –  
 City of Lauderdale Lakes  
**Contract No.:** V1311511B1  
**Bond No.:** 481229P

This *Tender Agreement and General Release* (the “*Agreement*”) is made this 22<sup>nd</sup> day of July, 2017, by and between Broward County, Florida, a political subdivision organized and existing under the laws of the State of Florida (“*County*”), and its respective successors and assigns, and Developers Surety and Indemnity Company, a corporation organized and existing under the laws of the State of Iowa which is registered with and authorized to do business in the State of Florida (“*DSIC*”) (*County* and *DSIC* shall collectively be referred to herein as the “*Parties*”).

**WHEREAS**, on or about August 11, 2015, *County*, as owner, and Vimac USA, Inc. (“*Vimac*”), as contractor, entered into a written *Agreement* (the “*Contract*”) to perform certain work known as the “*Cast-in-Place Transit Shelters and Amenities – City of Lauderdale Lakes*” (the “*Project*”); and

**WHEREAS**, in connection with the *Contract*, *DSIC*, as surety, issued separate *Performance Bond* and *Labor and Payment Bond*, each bearing bond number 481229P (collectively, the “*Bonds*”), on behalf of *Vimac*, as principal, and in favor of *County*, as obligee; and

**WHEREAS**, pursuant to a reinsurance agreement, AmTrust Europe, Ltd. (“*AEL*”) is the reinsurer of the *Bonds* and provides coverage, where appropriate, to the risk undertaken by *DSIC*, as fronting company, and any payments contemplated herein will be issued by *AEL*; and

**WHEREAS**, *Vimac* performed a portion of the required work under the *Contract* on the *Project*, following which issues arose between *County* and *Vimac* concerning *Vimac*’s performance; and

**WHEREAS**, on or about November 18, 2016, *County* issued a notice of termination of *Vimac* under the *Contract*, and made demand upon *DSIC* under the *Performance Bond* for the completion of the *Contract*; and

**WHEREAS**, on or about January 11, 2017, the *County* modified its demand upon *DSIC*, limiting *DSIC*’s performance under the *Contract* and de-scoping certain shelters and associated work, as more fully discussed in paragraph 2 hereof (the “*Revised Contract Work*”);

**WHEREAS**, in an effort to mitigate damages by expediting the progress and completion of *Vimac*’s obligations under the *Contract*, *DSIC* has obtained a *Proposal* for the completion of the *Revised Contract Work* from C&I Construction & Design, Inc. (the “*Completion Contractor*”); and

**WHEREAS**, DSIC desires to tender the services of Completion Contractor and assign the *Proposal* to the County in full settlement and satisfaction of any and all obligations under its *Performance Bond*, subject to the terms of this *Agreement*; and

**WHEREAS**, the Parties wish to memorialize their agreement to ensure a diligent and satisfactory completion of the *Revised Contract Work*.

**NOW THEREFORE**, in consideration of the promises, and other good and valuable consideration, and the mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Recitals**. The recitals are part of this *Agreement* as if fully set forth herein.

2. **Scope of Revised Contract Work**. The original *Contract* contemplated eighteen (18) cast-in-place transit shelters, and accompanying amenities, in the City of Lauderdale Lakes, which scope was subsequently amended to fifteen (15) cast-in-place transit shelters and three (3) pre-fabricated metal transit shelters. Vimac commenced performing work on the following five (5) shelters and associated work, which constitute the *Revised Contract Work*:

- BS2145 - W Oakland Park Boulevard, 625' West of State Road 7 (WB);
- BS2148 - W Oakland Park Boulevard, 275' East of NW 50 Ave (WB);
- BS2529 - W Oakland Park Boulevard, 155' East of NW 43 Ave (WB);
- BS2646 - NW 31 Ave, 50' North of NW 39 St (NB); and
- BS2658 - NW 31 Ave, 60' South of NW 40 St (SB).

By entering into this *Agreement*, the County hereby de-scopes the remaining thirteen (13) shelters from the *Contract* where no work has been performed from the *Contract*, and DSIC shall have no further responsibility for the performance and/or obligations associated with such de-scoped work under the *Contract* and/or *Bonds*. DSIC's only obligation under its *Performance Bond* shall be the *Revised Contract Work*, which obligation is being satisfied by this *Agreement*.

3. **Tender and Assignment of Completion Contractor**. In accordance with paragraph 3.b. of the *Performance Bond*, DSIC hereby tenders, and County accepts upon approval by the Board of County Commissioners, the Completion Contractor to perform the *Revised Contract Work*. DSIC assigns to County the *Proposal* from the Completion Contractor, who represent that it is ready, willing and able to enter into the *Completion Contract* and to accept payment directly from County in such amount for the performance of the *Revised Contract Work*. As reflected in the *Proposal*, the Completion Contractor has pledged to furnish to County a *Performance Bond* and *Payment Bond*, issued in a form and by a surety acceptable to County. A true and correct copy of the Completion Contractor's *Proposal* is attached hereto as **Exhibit "A"**.

4. **Contract Accounting**. Based upon information compiled by County, County has identified the remaining scope required to complete the *Revised Contract Work* (see **Exhibit "B"**). The following represents the *Contract* accounting for the *Revised Contract Work*:



Pending Pay Applications due from County	\$89,169.83
Pending Retainage due from County	\$13,087.69
Remaining Scope per County (w/o allowances)	\$164,775.00
Pending Backcharge for Life Safety Work	(\$23,147.30)
Pending Backcharge for Clean Up	(\$3,631.42)
<i>Subtotal Contract Funds Available</i>	<i>\$240,253.80</i>
Completion Contractor Bid (w/o allowances)	<u>\$313,515.55</u>
<b>Contract Deficiency</b>	<b>\$73,261.75</b>

5. **AEL' Payment to County.** Within twenty (20) days of the final approval and execution of this *Agreement* by the County, AEL shall pay to County the sum of Seventy-Three Thousand Two Hundred Sixty-One and 75/100 Dollars (\$73,261.75) (the "*Performance Bond Payment*"), in satisfying DSIC's and Vimar's obligations under the *Performance Bond* and *Contract*. Upon receipt of the *Performance Bond* Payment, neither County nor the Completion Contractor shall be entitled to any further payments from DSIC.

6. **General Release as to Contract and Performance Bond.** Upon execution of this *Agreement* and receipt of the *Performance Bond* Payment, and in consideration of the Parties' performance as specified herein, County does hereby expressly RELEASE, ACQUIT and FOREVER DISCHARGE DSIC, Vimar, and their respective members, officers, directors, servants, heirs, administrators, executors, sureties, re-insurers, successors and/or assigns, all parent, subsidiary, or affiliated corporations or entities, predecessors in interest, successors in interests, divisions, consultants, and attorneys, of and from any and all actions, causes of actions, suits, demands, damages and/or claims of every kind or nature, whether at law, under statute or in equity, whether in contract or in tort, presently known or unknown, which County ever had, now has or which it hereinafter can, shall or may have against DSIC and/or Vimar under and/or by reason of the *Contract*, the *Performance Bond* and/or the Project. County specifically represents that this Release shall fully and completely discharge the *Performance Bond*, renders the *Performance Bond* null and void, and declares the *Performance Bond* of no further force or effect.

7. **Discharge and Return of Performance Bond.** Upon execution of this *Agreement* and receipt of the *Performance Bond* Payment, County shall deliver the original *Performance Bond* to DSIC, bearing the marking "Released / Discharged".

8. **Reservation of Rights as Between DSIC and Vimar.** This *Agreement* shall in no way alter, affect, impair or prejudice any rights, claims, causes of action and/or defenses between DSIC and Vimar (or its corporate and/or individual indemnitors) relating to the *Contract*, *Bonds*, *Indemnity Agreement* and/or any other agreements between such parties, regardless of whether such claims arise under contract, statute or at common law.

9. **DSIC's Continuing Obligations Under Payment Bond.** Nothing herein shall alter or affect DSIC's payment obligations to third party claimants, if any, under the *Payment Bond* issued on behalf of Vimar, provided however that the *Payment Bond* shall not apply to or



cover the Completion Contractor or any of its subcontractor(s) and/or suppliers for any work performed and/or materials delivered in connection with the *Completion Contract*. Further, DSIC shall have no Payment Bond obligations with respect to the de-scoped work.

10. **No Admission of Liability.** This *Agreement* does not constitute an admission of liability on the part of any of the Parties.

11. **Binding Agreement.** This *Agreement* shall only extend to and be binding upon the Parties hereto. Nothing contained in this *Agreement* shall create any third party beneficiaries to other claimants under the *Performance Bond*, nor confer any benefit or enforceable rights under this *Agreement* other than to the Parties hereto.

12. **No Modification Except as in Writing.** This *Agreement* may not be modified unless in writing and executed by the Parties hereto. No waiver of any provisions of this *Agreement* shall be valid unless in writing and signed by the Party against whom it is sought to be enforced.

13. **Interpretation of Agreement.** The provisions of this *Agreement* shall be applied and interpreted in a manner consistent with each other so as to carry out the purposes and intent of the Parties, but, if for any reason any provision is unenforceable or invalid, such provision shall be deemed severed from this *Agreement* and the remaining provisions shall be carried out with the same force and effect as if the severed portion had not been a part of this *Agreement*.

14. **Incorporation of All Prior Negotiations.** This *Agreement* incorporates, includes, and supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this *Agreement* that are not contained in this *Agreement*. Accordingly, the Parties agree that no deviations from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

15. **Acknowledgment of Release of Rights.** The Parties acknowledge and agree that they are releasing certain rights and assuming certain duties and obligations which, but for this *Agreement*, would not have been released or assumed. Accordingly, the Parties agree that this *Agreement* is fair and reasonable, that each of them has had an opportunity to consult with and have in fact consulted with such experts of their choice as they may have desired, and that they have had the opportunity to discuss and have in fact discussed this matter with counsel of their choice.

16. **Advice of Counsel.** The Parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this *Agreement* has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.



17. **Obligations of Further Execution.** The Parties agree to execute all such further instruments, and to take all such further actions as may be reasonably required by any Party to fully effectuate the terms and provisions of this *Agreement* and the transactions contemplated herein.

18. **Event of Enforcement.** In the event that it is necessary for any of the Parties to seek enforcement of this *Agreement*, the Parties agree that the *Agreement* will be interpreted and construed in accordance with, and governed by the laws of the State of Florida, and such proceedings shall occur in a court of competent jurisdiction servicing Broward County, Florida.

19. **Notices.** Any notices or other formal communications made under this *Agreement* shall be deemed to have been duly given if sent via electronic and United States Mail to the following:

**To DSIC/AEL**

Beatriz Crespo Cifrián  
AmTrust Europe, Ltd.  
Carretera de la Coruña km. 23,200  
Edificio Las Rozas 23  
28290 – Las Rozas (Madrid), Spain  
[Beatriz.crespo@amtrust.es](mailto:Beatriz.crespo@amtrust.es)

**With a copy to:**

Edward Etcheverry, Esq.  
Etcheverry Harrison LLP  
150 S. Pine Island Road, Suite 105  
Fort Lauderdale, FL 33324  
[etcheverry@etchlaw.com](mailto:etcheverry@etchlaw.com)

**To County:**

Broward County Attorneys' Office  
Broward County, Florida  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301

**With a copy to:**

Broward County Trans. Dept.  
Attn: Director of Transportation  
One N. University Drive  
Plantation, Florida 33324

or at such other address(es) as each of the foregoing may designate in writing by registered or certified mail to the other.

20. **Execution in Counterparts.** This *Agreement* may be executed in one or more counterparts, each of which, when executed and delivered, shall be deemed to be an original, but such counterparts shall together constitute one and the same instrument.

[SPACE LEFT INTENTIONALLY BLANK]



IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY signing by and through its County Administrator, authorized to execute same by Board action on the 6 day of June, 2017, and DSIC, signing by and through its \_\_\_\_\_ duly authorized to execute same.

COUNTY

WITNESSES:

BROWARD COUNTY, through its County Administrator

[Signature]  
Signature

By [Signature]  
Bertha Henry

DAARNE SOWAN  
Print/Type Name Above

22 day of July, 2017

[Signature]  
Signature

Approved as to form by  
Joni Armstrong Coffey  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

ALPHONSO JEFFERSON  
Print/Type Name Above

Insurance requirements approved by Broward County Risk Management Division

By: [Signature] 7/21/17  
Michael J. Kerr (Date)  
Deputy County Attorney

By [Signature] 8-7-17  
Signature (Date)

WAYNE FLETCHER RISK. MGR  
Print Name and Title Above



Developers Surety and Indemnity Company



By: Beatriz Crespo Cifrián  
Title: Authorized Representative  
Date: July 21<sup>st</sup>, 2017

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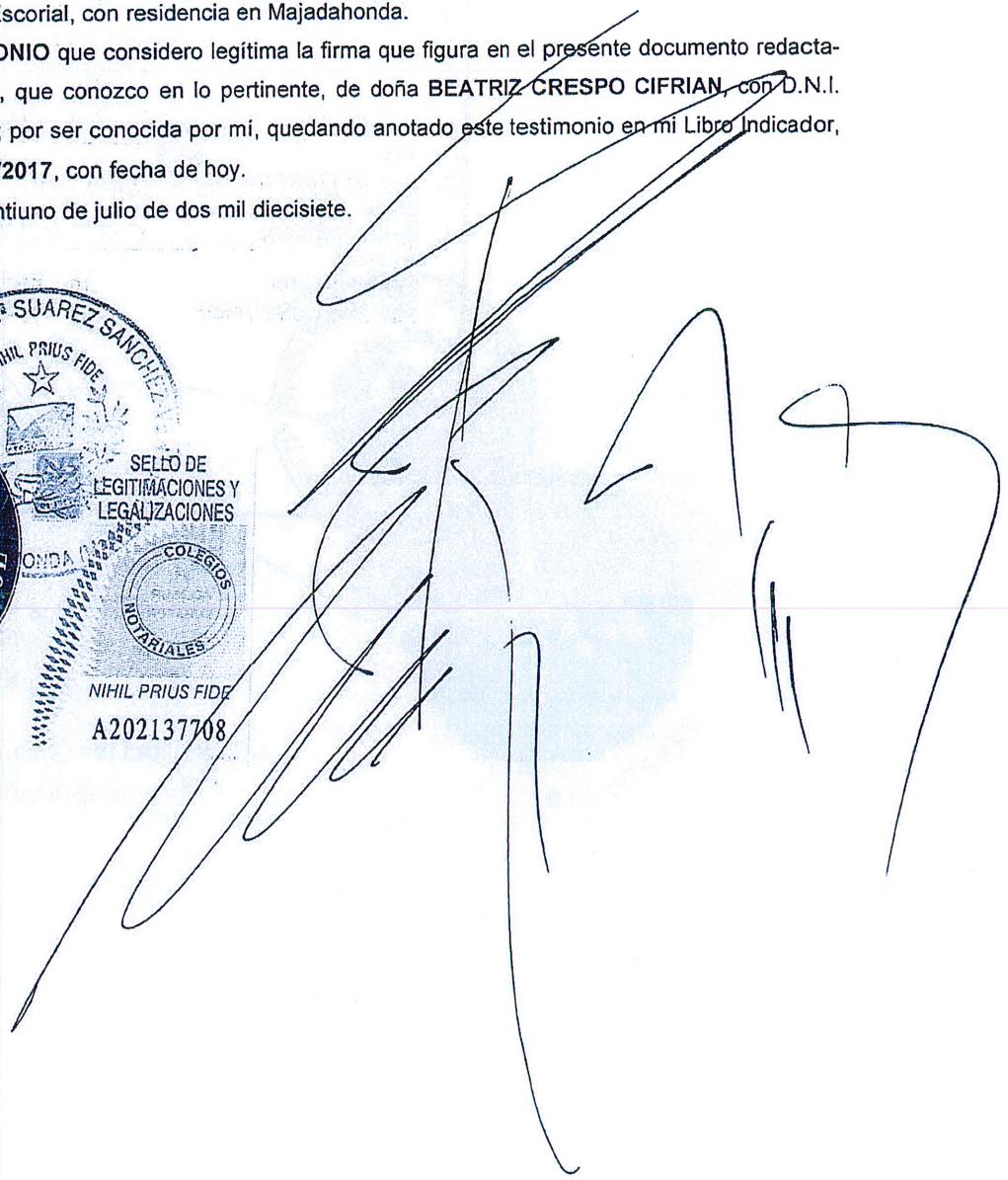
TERESA SANS MORALES  
Intérprete Jurada nº 2615  
Inglés - Francés

LEGITIMACION DE FIRMA.

Yo, JOSE-MARIA SUAREZ SANCHEZ-VENTURA, Notario del Ilustre Colegio de Madrid, distrito de San Lorenzo de El Escorial, con residencia en Majadahonda.

DOY FE Y TESTIMONIO que considero legítima la firma que figura en el presente documento redactado en idioma inglés, que conozco en lo pertinente, de doña BEATRIZ CRESPO CIFRIAN, con D.N.I. número 02894412-T; por ser conocida por mí, quedando anotado este testimonio en mi Libro Indicador, asiento número 571/2017, con fecha de hoy.

Majadahonda, a veintiuno de julio de dos mil diecisiete.



### APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Pais: **España**

Country: / Pays:

**El presente documento público**  
This public document / Le présent acte public

2. ha sido firmado por D. José María  
has been signed by / a été signé par

Suárez Sánchez-Ventura

3. quien actúa en calidad de **NOTARIO**  
acting in the capacity of / agissant en qualité de

4. y está revestido del sello / timbre de **su Notaría**  
bears the seal / stamp of / est revêtu du sceau / timbre de

**CERTIFICADO**  
Certified / Attesté

5. en **Madrid** 6. el día 21 JUL. 2017  
at / à the / le

7. por **el Decano del Colegio Notarial de Madrid**  
by / par

8. bajo el número 050219  
Nº / sous nº

9. **señalado / timbre:**  
Seal / stamp / Sceau / timbre

10. **Firma:**  
Signature: / Signature:



Don Juan Luis Guijarro de Miguel  
Firma delegada del Decano





*Tender Agreement and General Release*

Page 7

**Developers Surety and Indemnity Company**

(Hand signature)

By: Beatriz Crespo Cifrián

Title: Authorized Representative

Date: July 21<sup>st</sup>, 2017

**NOTARY AUTHENTICATION OF LEGAL SIGNATURE.**

I, **JOSE-MARIA SUAREZ SANCHEZ-VENTURA**, Member of the College of Notaries Public of Madrid, San Lorenzo de El Escorial district, resident of Majadahonda, Madrid.

**HEREBY AFFIRM AND ATTEST** that the signature on this English language document of Ms. **BEATRIZ CRESPO CIFRIAN**, a person known to me, who holds Spanish National ID Document number 02894412-T, is the legal signature of the aforementioned person.

In testimony whereof, I affix my stamp and issue this attestation of authentication, filed in my notarial record as No. **571/2017**, dated today.

Majadahonda, on July 21<sup>st</sup> 2017.

2 Round stamps:

1. **JOSE-MARIA SUAREZ SANCHEZ-VENTURA**  
Member of the College of Notaries Majadahonda - Madrid
2. General Council of Spanish Notaries Public  
European Notaries - Number: 0229038673

1 Square stamp:

1. Seal of authentications and legalizations  
College of Notaries, NIHIL PRIUS FIDE - Number A192137708

(Hand signatures)

**APOSTILLE**

(The Hague Convention, October 5, 1961)

1. Country: **SPAIN**  
This public document
2. Was signed by: M. José María SUÁREZ SÁNCHEZ-VENTURA
3. acting in the capacity of NOTARY
4. Was duly stamped/sealed with his Notary's office stamp  
Certified
5. In Madrid      6. on July 21<sup>st</sup> 2017
7. By the Chairman of the College of Notaries of Madrid
8. bearing number 05219
9. Stamp/seal
10. 10: Signed  
Mr. Jun Luis GUIJARRO DE MIGUEL  
Signature delegated of the Chairman

(Hand signature)

2 Round stamps:

1. JOSE-MARIA SUAREZ SANCHEZ-VENTURA  
Member of the College of Notaries Majadahonda - Madrid
2. General Council of Spanish Notaries Public  
European Notaries - Number: 0228762306

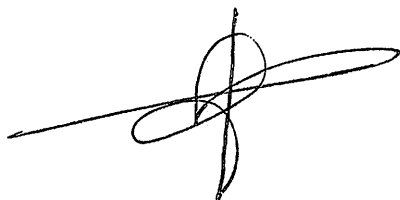
**Certificación**

D<sup>a</sup> TERESA SANS MORALES, Intérprete Jurado de Inglés y Francés nombrada por el Ministerio de Asuntos Exteriores y Cooperación, certifica que la que antecede es traducción fiel y completa al inglés de un documento redactado en español.

En Colmenar Viejo (Madrid), el 24 de julio de 2017

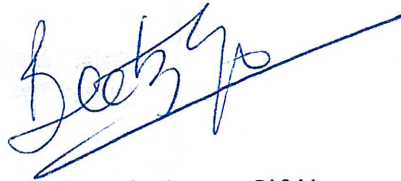
Ms. TERESA SANS, Sworn Interpreter & Translator for Spanish, French and English appointed by the Spanish Ministry of Foreign Affairs and Cooperation, hereby certifies that the preceding is the faithful and complete translation into English of a document drafted in Spanish.

Colmenar Viejo (Madrid), July 24<sup>th</sup> 2017



**TERESA SANS MORALES**  
Intérprete Jurada nº 2615  
Inglés - Francés

**Developers Surety and Indemnity Company**



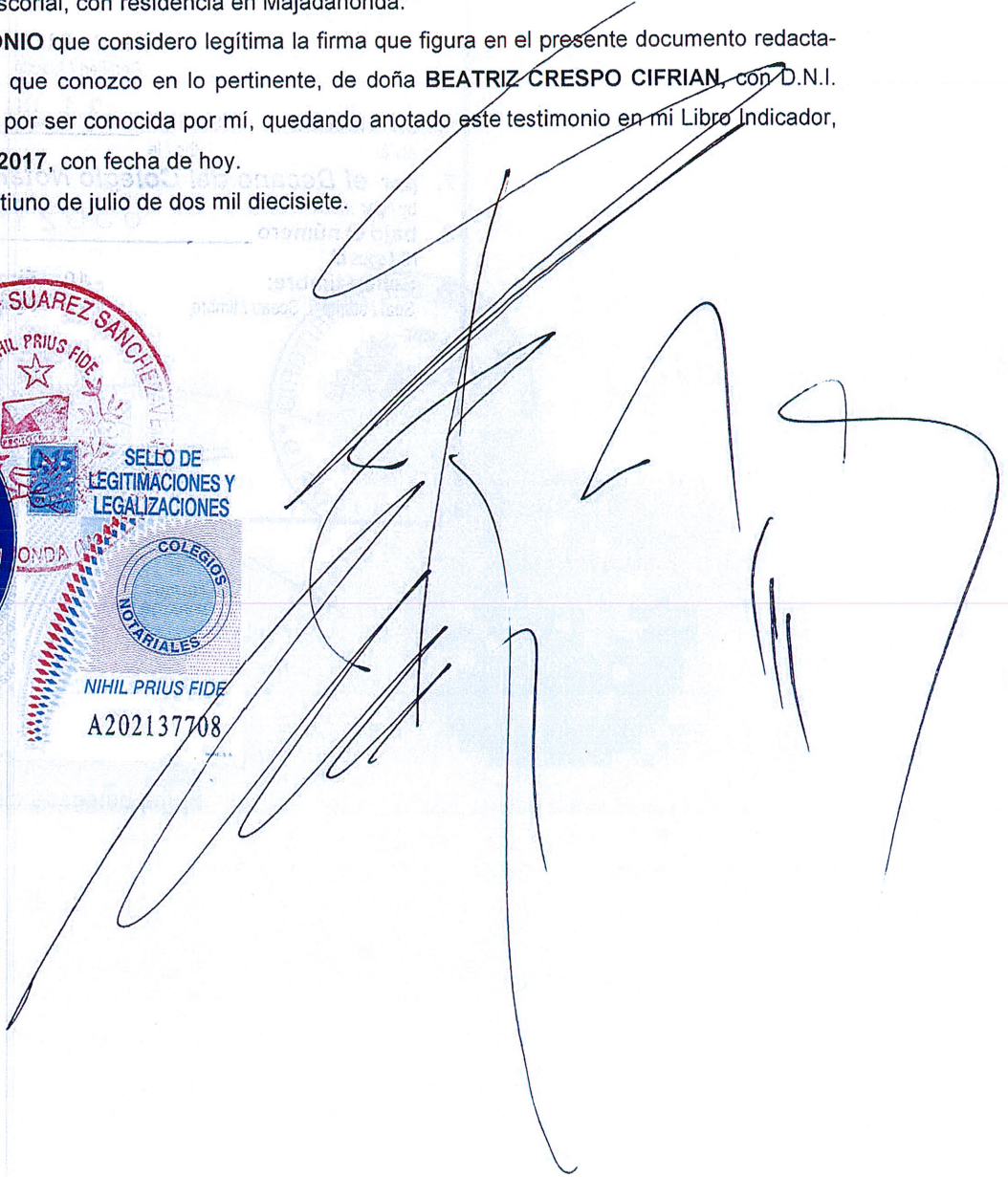
By: Beatriz Crespo Cifrián  
Title: Authorized Representative  
Date: July 21<sup>st</sup>, 2017

**LEGITIMACION DE FIRMA.**

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8. bajo el número 050219  
Nº / sous n°

Seal / timbre:  
Seal / Sceau / timbre

10. Firma:  
Signature: / Signature:



Don Juan Luis Guijarro de Miguel  
Firma delegada del Decano