

SUBDIVISION AGREEMENT
(Right of Way Landscaping)
(Government Code §66462 and §66463)

Subdivision: PA14-0043

Effective Date: _____

Subdivider: Western Pacific Housing, Inc.

Completion Period: 2 years

THESE SIGNATURES ATTEST TO THE PARTIES' AGREEMENT HERETO:

CONTRA COSTA COUNTY

SUBDIVIDER: (Name and Title)

Brian M. Balbas, Interim Public Works Director

Western Pacific Housing, Inc.

By: _____

(signature) 
(print name & title) _____

RECOMMENDED FOR APPROVAL:

Dean K. Mills
Division Vice President of Forward Planning

By: 
Engineering Services Division

(signature) _____
(print name & title) _____

FORM APPROVED: Victor J. Westman, County Counsel

(NOTE: All signatures to be acknowledged. If Subdivider is incorporated, signatures must conform with the designated representative groups pursuant to Corporations Code §313.)

1. PARTIES & DATE. Effective on the above date, the County of Contra Costa, California, hereinafter called "County," and the above-mentioned Subdivider, mutually promise and agree as follows concerning this subdivision:

2. IMPROVEMENTS. Subdivider agrees to install certain road improvements (both public and private), drainage improvements, signs, street lights, fire hydrants, landscaping, and such other improvements (including appurtenant equipment) as required in the improvement plans for this subdivision as reviewed and on file with the Contra Costa County Public Works Department and in conformance with the Contra Costa County Ordinance Code (including future amendments thereto).

Subdivider shall complete said work and improvements (hereinafter called "work") within the above completion period from date hereof as required by the California Subdivision Map act (Government Code §§66410 and following), in a good workmanlike manner, in accordance with accepted construction practices and in a manner equal or superior to the requirements of the County Ordinance Code and rulings made thereunder; and where there is a conflict between the improvement plans and the County Ordinance Code, the stricter requirements shall govern.

3. IMPROVEMENT SECURITY. Upon executing this Agreement, the Subdivider shall, pursuant to Government Code §66499, and the County Ordinance Code, provide as security to the County:

A. For Performance and Guarantee: \$ 7,000 cash, plus additional security, in the amount of \$677,000 which together total one hundred percent (100%) of the estimated cost of the work. Such additional security is presented in the form of:

- Cash, certified check or cashiers check.
- Acceptable corporate surety bond.
- Acceptable irrevocable letter of credit.

With this security, the Subdivider guarantees performance under this Agreement and maintenance of the work for one year after its completion and acceptance against any defective workmanship or materials or any unsatisfactory performance.

B. For Payment: Security in the amount of \$342,000, which is fifty percent (50%) of the estimated cost of the work. Such security is presented in the form of:

- Cash, certified check, or cashier's check
- Acceptable corporate surety bond.
- Acceptable irrevocable letter of credit.

With this security, the Subdivider guarantees payment to the contractor, to his subcontractors, and to persons renting equipment or furnishing labor or materials to them or to the Subdivider.

C. Upon acceptance of the work as complete by the Board of Supervisors and upon request of the Subdivider, the amount securities may be reduced in accordance with §94-4.406 and §94-4.408 of the Ordinance Code.

4. GUARANTEE AND WARRANTY OF WORK. Subdivider guarantees that said work shall be free from defects in material or workmanship and shall perform satisfactorily for a period of one-year from and after the Board of Supervisors accepts the work as complete in accordance with Article 96-4.6, "Acceptance", of the Ordinance Code. Subdivider agrees to correct, repair, or replace, at his expense, any defects in said work.

The guarantee period does not apply to road improvements for private roads which are not to be accepted into the County road system.

5. PLANT ESTABLISHMENT WORK. Subdivider agrees to perform establishment work for landscaping installed under this agreement. Said plant establishment work shall consist of adequately watering plants, replacing unsuitable plants, doing weed, rodent and other pest control and other work determined by the Public Works Department to be necessary to insure establishment of plants. Said plant establishment work shall be performed for a period of one-year from and after the Board of Supervisors accepts the work as complete. At the discretion of the County, bids may be released after final acceptance of landscaping improvements by the County.

6. IMPROVEMENT PLAN WARRANTY. Subdivider warrants the improvement plans for the work are adequate to accomplish the work as promised in Section 2 and as required by the Conditions of Approval for the Subdivision. If, at any time before the Board of Supervisors accepts the work as complete or during the one-year guarantee period, said improvement plans prove to be inadequate in any respect, Subdivider shall make whatever changes are necessary to accomplish the work as promised.

7. NO WAIVER BY COUNTY. Inspection of the work and/or materials, or approval of work and/or materials or statement by any officer, agent or employee of the County indicating the work or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of said work and/or materials, or payments, therefor, or any combination or all of these acts, shall not relieve the Subdivider of his obligation to fulfill this agreement as prescribed; nor shall the County be thereby be stopped from bringing any action for damages arising from the failure to comply with any of the terms and conditions hereof.

8. INDEMNITY: Subdivider shall hold harmless and indemnify the indemnitees from the liabilities as defined in this section:

A. The indemnities benefitted and protected by this promise are the County, and its special district, elective and appointive boards, commissions, officers, agents, and employees.

B. The liabilities protected against are any liability or claim for damage of any kind allegedly suffered, incurred or threatened because of actions defined below, and including personal injury, death, property damage, inverse condemnation, or any combination of these, and regardless of whether or not such liability, claim or damage was unforeseeable at any time before the County reviewed said improvement plans or accepted the work as complete, and including the defense of any suit(s), action(s), or other proceeding(s) concerning said liabilities and claims.

C. The actions causing liability are any act or omission (negligent or non-negligent) in connection with the matters covered by this Agreement and attributable to the Subdivider, contractor, subcontractor, or any officer, agent, or employee of one or more of them;

D. Non-Conditions: The promise and agreement in this section are not conditioned or dependent on whether or not any Indemnitee has prepared, supplied, or approved any plan(s) or specification(s) in connection with this work or subdivision, or has insurance or other indemnification covering any of these matters, or that the alleged damage resulted partly from any negligent or willful misconduct of any Indemnity.

9. COSTS: Subdivider shall pay when due, all the costs of the work, including inspections thereof and relocating existing utilities required thereby.

10. SURVEYS. Subdivider shall set and establish survey monuments in accordance with the filed map and to the satisfaction of the County Road Commissioner-Surveyor before acceptance of any work as complete by the Board of Supervisors.

11. NON-PERFORMANCE AND COSTS: If Subdivider fails to complete the work within the time specified in this Agreement, and subsequent extensions, or fails to maintain the work, the County may proceed to complete and/or maintain the work by contract or otherwise, and Subdivider agrees to pay all costs and charges incurred by the County (including, but not limited to: engineering, inspection, surveys, contract, overhead, etc.) immediately upon demand.

Subdivider hereby consents to entry on the subdivision property by the County and its forces, including contractors, in the event the County proceeds to complete and/or maintain the work.

Once action is taken by County to complete or maintain the work, Subdivider agrees to pay all costs incurred by the County, even if Subdivider subsequently completes the work.

Should County sue to compel performance under this Agreement or to recover costs incurred in completing or maintaining the work, Subdivider agrees to pay all attorney's fees, and all other expenses of litigation incurred by County in connection therewith, even if Subdivider subsequently proceeds to complete the work.

12. INCORPORATION/ANNEXATION. If, before the Board of Supervisors accepts the work as complete, the subdivision is included in territory incorporated as a city or is annexed to an existing city, the County's rights under this agreement and/or any deposit, bond, or letter of credit securing said rights shall be transferred to the new or annexing city. Such city shall have all the rights of a third party beneficiary against Subdivider, who shall fulfill all the terms of this agreement as though Subdivider had contracted with the city originally.

13. RECORD MAP. In consideration hereof, County shall allow Subdivider to file and record the Final Map or Parcel Map for said Subdivision.

Senate Bill 1050, amends Sections 1189 and 1195 of the Civil Code and Section 8202 of the Government Code, relating to notaries public. The below physical format of the new disclosure notice is an example, for purposes of illustration.

**CALIFORNIA ALL-PURPOSE CERTIFICATE OF
ACKNOWLEDGEMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

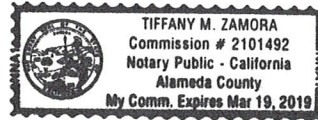
State of CA

County of Alameda

On 9/28, 15 before me, Tiffany M. Zamora _____ (notary public) personally appeared **Dean K. Mills** _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the law of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *Dean K. Mills*

(seal)

Subdivision: Amarante - Subdivision PA14-0043

Bond No.: 41305945

Premium: \$2,370.00

**IMPROVEMENT SECURITY BOND
FOR PUBLIC RIGHT OF WAY LANDSCAPE AGREEMENT**
(Performance, Guarantee, and Payment)
(Calif. Government Code sections 66462 and 66463)

1. **RECITAL OF SUBDIVISION AGREEMENT:** The Principal has executed an agreement with the County to install and pay for public right of way landscaping, and other related improvements in Subdivision Amarante - Subdivision PA14-0043 , as specified in the Subdivision Agreement (Right-of-Way Landscaping), and to complete said work within the time specified for completion in the Subdivision Agreement (Right-of-Way Landscaping), all in accordance with State and local laws and rulings thereunder in order to satisfy conditions for filing of the Final Map or Parcel Map for said Subdivision.

2. **OBLIGATION:** Western Pacific Housing, Inc., a Delaware Corporation, as Principal, and Platte River Insurance Company, a corporation organized existing under the laws of the State of Nebraska, and authorized to transact surety business in California, as Surety, hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns to the County of Contra Costa, California, to pay it:
 - A. **Performance and Guarantee:** Six Hundred Seventy Seven Thousand and 00/100 Dollars (\$677,000.00 -----) for itself or any city-assignee under the above County Subdivision Agreement (Right-of-Way Landscaping).
 - B. **Payment:** Three Hundred Forty Two Thousand and 00/100 ----- Dollars (\$342,000.00 -----) to secure the claims to which reference is made in Title XV (commencing with Section 3082) of Part 4 of Division III of the Civil Code of the State of California.

3. **CONDITION:** This obligation is subject to the condition set forth on the reverse side hereof.
 - A. The Condition of this obligation as to Section 2.(A) above is such that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on is or its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the County of Contra Costa (or city assignee), its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by County (or city assignee) in successfully enforcing such obligation, all to be taxed as costs and included in any judgement rendered.

B. The condition of this obligation as to Section 2.(B) above is such that said Principal and the undersigned as corporate surety are held firmly bound unto the County of Contra Costa and all other persons employed in the performance of the aforesaid agreement and referred to in the aforesaid Civil Code for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay, in addition to the fact amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by County (or city assignee) in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgement therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

C. No alteration of said Acquisition of Off-Site Right-of-Way Agreement agreed to by the Principal and the County shall relieve any Surety from liability on this bond; and consent is hereby given to make such alterations without further notice to or consent by Surety; and the Surety hereby waives the provisions of California Civil Code §§ 2819, and holds itself bound without regard to and independently of any action against Principal whenever taken.

SIGNED AND SEALED on September 24, 2015

Western Pacific Housing, Inc.,
PRINCIPAL: a Delaware Corporation

SURETY: Platte River Insurance Company

ADDRESS: 5050 Hopyard Rd. #180

ADDRESS: 500 Northridge Road, Ste. 375

CITY: Pleasanton **ZIP:** 94588

CITY: Atlanta, GA **ZIP:** 30350

BY: 

BY: 

PRINT NAME: Dean K. Mills

PRINT NAME: Margaret A. Ginem

TITLE: Vice President

TITLE: Attorney-in-Fact

Senate Bill 1050, amends Sections 1189 and 1195 of the Civil Code and Section 8202 of the Government Code, relating to notaries public. The below physical format of the new disclosure notice is an example, for purposes of illustration.

**CALIFORNIA ALL-PURPOSE CERTIFICATE OF
ACKNOWLEDGEMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

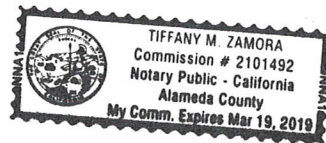
State of CA

County of Alameda

On 9/28, 15 before me, Tiffany M. Zamora _____ (notary public) personally appeared **Dean K. Mills** _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the law of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *Dean K. Mills*

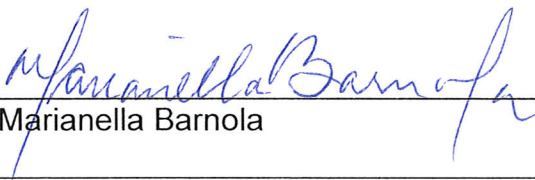
(seal)

ACKNOWLEDGEMENT BY SURETY

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH } SS.

On this 24th day of **September, 2015** before me, personally came **Margaret A. Ginem**, who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within Instrument as Attorney-In-Fact on behalf of **Platte River Insurance Company**, and acknowledged to me that he/she executed the within instrument on behalf of said surety company and was duly authorized to do.

In witness whereof, I have signed and affixed my official seal on the date in this certificate first above written.

Signature 
Marianella Barnola



This area for Official Notarial Seal

PLATTE RIVER INSURANCE COMPANY
POWER OF ATTORNEY

41305945

KNOW ALL MEN BY THESE PRESENTS, That the PLATTE RIVER INSURANCE COMPANY, a corporation of the State of Nebraska, having its principal offices in the City of Middleton, Wisconsin, does make, constitute and appoint

ANETT E CARDINALE; DAVID H CARR; MARGARET A GINEM; EILEEN C HEARD; DIANE SIDEBOTHAM

its true and lawful Attorney(s)-in-fact, to make, execute, seal and deliver for and on its behalf, as surety, and as its act and deed, any and all bonds, undertakings and contracts of suretyship, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of

ALL WRITTEN INSTRUMENTS IN AN AMOUNT NOT TO EXCEED \$20,000,000.00

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PLATTE RIVER INSURANCE COMPANY at a meeting duly called and held on the 8th day of January, 2002.

“RESOLVED, that the President, and Vice-President, the Secretary or Treasurer, acting individually or otherwise, be and they hereby are granted the power and authorization to appoint by a Power of Attorney for the purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, one or more vice-presidents, assistant secretaries and attorney(s)-in-fact, each appointee to have the powers and duties usual to such offices to the business of the company; the signature of such officers and the seal of the Corporation may be affixed to such power of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Corporation in the future with respect to any bond or undertaking or other writing obligatory in the nature thereof to which it is attached. Any such appointment may be revoked, for cause, or without cause, by any of said officers, at any time.”

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner – Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

IN WITNESS WHEREOF, the PLATTE RIVER INSURANCE COMPANY has caused these presents to be signed by its officer undersigned and its corporate seal to be hereto affixed duly attested, this 8th day of January, 2014.

Attest:

Richard W. Allen III

Richard W. Allen III
President
Surety & Fidelity Operations



PLATTE RIVER INSURANCE COMPANY

Stephen J. Stills

Stephen J. Stills
CEO & President

STATE OF WISCONSIN } S.S.:
COUNTY OF DANE

On the 8th day of January, 2014 before me personally came Stephen J. Stills, to me known, who being by me duly sworn, did depose and say: that he resides in the County of New York, State of New York; that he is President of PLATTE RIVER INSURANCE COMPANY, the corporation described herein and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.



Daniel W. Krueger

Daniel W. Krueger
Notary Public, Dane Co., WI
My Commission Is Permanent

STATE OF WISCONSIN } S.S.:
COUNTY OF DANE

CERTIFICATE

I, the undersigned, duly elected to the office stated below, now the incumbent in PLATTE RIVER INSURANCE COMPANY, a Nebraska Corporation, authorized to make this certificate, DO HEREBY CERTIFY that the foregoing attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolution of the Board of Directors, set forth in the Power of Attorney is now in force.

Signed and sealed at the City of Middleton, State of Wisconsin this 24th day of September, 2015.



Alan S. Ogilvie

Alan S. Ogilvie
Secretary