

**SUBDIVISION AGREEMENT**  
(Gov. Code, §§ 66462 and 66463)

**Subdivision:** DP18-3031                      **Effective Date:** \_\_\_\_\_ **Date Approved By BOS** \_\_\_\_\_  
**Subdivider:** Del Hombre Walnut Creek Holdings LLC      **Completion Period:** 2 years

THESE SIGNATURES ATTEST TO THE PARTIES' AGREEMENT HERETO:

CONTRA COSTA COUNTY

Brian M. Balbas, Public Works Director

By: \_\_\_\_\_

RECOMMENDED FOR APPROVAL:

By:  \_\_\_\_\_  
Engineering Services Division

SUBDIVIDER

**Del Hombre Walnut Creek Holdings LLC**

By: 3000 Del Hombre Holdings LLC, its managing member

By:  \_\_\_\_\_  
Judi Hopper, Vice President

By:  \_\_\_\_\_  
Kathy K. Binford, Secretary

FORM APPROVED: Silvano B. Marchesi, County Counsel

[Note: If Subdivider is a corporation, two officers must sign. The first must be the chairman of the board, president or any vice president; the second must be the secretary, assistant secretary, chief financial officer or any assistant treasurer. (Corp. Code, § 313; Civ. Code, § 1190.) If Subdivider is a limited liability company, Subdivider shall sign in the manner required of corporations, or by two managers, or by one manager, pursuant to the articles of organization (see Corp. Code, §§17151, 17154, 17157.) If Subdivider is a partnership, any authorized partner may sign. Signatures by Subdivider must be notarized.]

1. PARTIES & DATE. Effective on the above date, the County of Contra Costa, California (hereinafter "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, as required by the Conditions of Approval for this Subdivision, and in conformance with the Contra Costa County Ordinance Code, including future amendments thereto (hereinafter "Ordinance Code").

Subdivider shall complete said improvements (hereinafter "Work") within the above completion period from date hereof, as required by the California Subdivision Map Act (Gov. Code, §§ 66410 et. seq.) in a good workmanlike manner, in accordance with accepted construction practices and in a manner equal or superior to the requirements of the Ordinance Code and rulings made thereunder; and where there is a conflict among the improvement plans, the Conditions of Approval and the Ordinance Code, the stricter requirements shall govern.

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

A. For Performance and Guarantee: \$ 10,080.00 cash, plus additional security, in the amount of \$ 997,920.00, 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 cashier's check.
- \_\_\_\_\_ Acceptable corporate surety bond.
- \_\_\_\_\_ Acceptable irrevocable letter of credit.

With this security, 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: \$ 504,000.00, 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, Subdivider guarantees payment to the contractor, to its subcontractors and to persons renting equipment or furnishing labor or materials to them or to the Subdivider.

Upon acceptance of the Work as complete by the Board of Supervisors and upon request of Subdivider, the amounts held as security may be reduced in accordance with Sections 94-4.406 and 94-4.408 of the Ordinance Code.

4. GUARANTEE AND WARRANTY OF WORK. Subdivider guarantees that the Work shall be free from defects in material or workmanship and shall perform satisfactorily for a period of one (1) 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 Subdivider's expense, any defects in said Work.

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

5. PLANT ESTABLISHMENT WORK. Subdivider agrees to perform plant 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 ensure establishment of plants. Said plant establishment work shall be performed for a period of one (1) year from and after the Board of Supervisors accepts the Work as complete.

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 the 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 its obligation to fulfill this Agreement as prescribed; nor shall the County be thereby 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 defend, hold harmless and indemnify the indemnitees from the liabilities as defined in this section:

A. The indemnitees benefitted and protected by this promise are the County and its special districts, 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 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 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 indemnitee.

9. COSTS. Subdivider shall pay, when due, all the costs of the Work, including but not limited to the costs of relocations of existing utilities required thereby; inspections; material checks and tests; and other costs incurred by County staff arising from or related to the Work, and prior to acceptance of the Work as complete or expiration of any applicable warranty periods, whichever is later.

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 the 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, 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 County (including, but not limited to, engineering, inspection, surveys, contract, overhead, etc.) immediately upon demand.

Once action is taken by County to complete or maintain the Work, Subdivider agrees to pay all costs incurred by 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, staff costs 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, except as provided in this paragraph, 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. The provisions of paragraph 8 (Indemnity) shall continue to apply in favor of the indemnitees listed in paragraph 8.A. upon any such incorporation or annexation.

13. RECORD MAP. In consideration hereof, County shall allow Subdivider to file and record the final map or parcel map for said Subdivision.

14. RIGHT OF ENTRY. Subdivider hereby consents to entry onto the Subdivision property, and onto any other property over which Subdivider has land rights and upon which any portion of the Work is to be installed pursuant to the improvement plans, by County and its forces, including contractors, for the purpose of inspection, and, in the event of non-performance of this Agreement by Subdivider, completion and/or maintenance of the Work.

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

State of Texas )  
County of Harris )

On December 30, 2020, before me, Tracy Boone,  
a Notary Public, personally appeared Judi Hopper, 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.

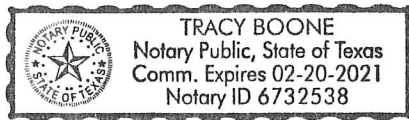
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Tracy Boone

Signature

(Seal)



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

State of Texas )  
County of Harris )

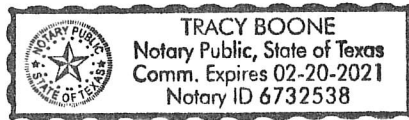
On December 30, 2020, before me, Tracy Boone,  
a Notary Public, personally appeared Kathy K. Binford, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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 laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Tracy Boone  
Signature

(Seal)



Subdivision: DP18-3031  
Bond No.: 1010073  
Premium: \$8,482.00  
Any claim under this Bond should be sent  
to the following address:  
THE HANOVER INSURANCE COMPANY  
440 Lincoln Street,  
Worcester MA 01653

**IMPROVEMENT SECURITY BOND  
FOR SUBDIVISION AGREEMENT**  
(Performance, Guarantee and Payment)  
(Gov. Code, §§ 66499-66499.10)

1. **RECITAL OF SUBDIVISION AGREEMENT.** The Principal has executed an agreement with the County of Contra Costa (hereinafter "County") to install and pay for street, drainage and other improvements in Subdivision 18-3031 as specified in the Subdivision Agreement, and to complete said work within the time specified for completion in the Subdivision Agreement, 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. Under the terms of the Subdivision Agreement, Principal is required to furnish a bond to secure the faithful performance of the Subdivision Agreement and payment to laborers and materialmen.

2. **OBLIGATION** DEL HOMBRE WALNUT CREEK HOLDINGS LLC, as Principal, and THE HANOVER INSURANCE COMPANY, a corporation organized and existing under the laws of the State of New Hampshire 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) NINE HUNDRED NINETY SEVEN THOUSAND NINE HUNDRED TWENTY AND 00/100 Dollars (\$ 997,920.00) for itself or any city assignee under the above Subdivision Agreement.

(B. Payment) FIVE HUNDRED FOUR THOUSAND AND 00/100 Dollars (\$ 504,000.00) 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 following condition.

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 his or their 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 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 the County of Contra Costa (or city assignee) in successfully enforcing such obligation, and to be taxed as costs and included in any judgment 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 contractors, subcontractors, laborers, materialmen and other persons employed in the performance of the aforesaid Subdivision 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 this work or labor, and that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the County of Contra Costa (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 judgment 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 change, extension of time, alteration, or addition to the terms of said Subdivision Agreement or the work to be performed thereunder or any plan or specifications of said work, agreed to by the Principal and the County of Contra Costa (or city assignee) shall relieve any Surety from liability on this bond; and consent is hereby given to make such change, extension of time, alteration or addition without further notice to or consent by Surety; and Surety hereby waives the provisions of Civil Code Section 2819 and holds itself bound without regard to and independently of any action against the Principal whenever taken.

SIGNED AND SEALED on December 29, 2020

Principal: Del Hombre Walnut Creek Holdings LLC  
Address: 1780 S. Post Oak Lane, Suite 400  
Houston, TX Zip: 77056

Surety: THE HANOVER INSURANCE COMPANY  
Address: 440 Lincoln Street,  
Worcester MA Zip: 01653

By: 3000 Del Hombre Holdings LLC, its managing member  
By: [Signature]  
Print Name: Brandt Bowden  
Title: Chief Executive Officer

By: [Signature]  
Print Name: Melissa L. Fortier  
Title: Attorney In Fact

[Note: All signatures must be acknowledged. For corporations, two officers must sign. The first signature must be that of the chairman of the board, president, or vice-president; the second signature must be that of the secretary, assistant secretary, chief financial officer, or assistant treasurer. (Civ. Code, § 1190 and Corps. Code, § 313.)

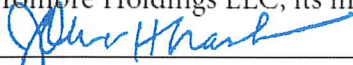
**SIGNED AND SEALED** on December 29, 2020

Principal: Del Hombre Walnut Creek Holdings LLC

Address: 1780 S. Post Oak Lane, Suite 400

Houston, TX Zip: 77056

By: 3000 Del Hombre Holdings LLC, its managing member

By: 

Print Name: John H. Nash

Title: President

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

POWER OF ATTORNEY

THIS Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

KNOW ALL PERSONS BY THESE PRESENTS:

That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, (hereinafter individually and collectively the "Company") does hereby constitute and appoint,

**Melissa L. Fortier, Donna L. Williams, Michael J. Herrod, Lupe Tyler, Lisa A. Ward, Vanessa Dominguez, Misty Wright, Terri L. Morrison, and/or Amanda George**

Of AON Risk Solutions of Houston, TX each individually, if there be more than one named, as its true and lawful attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, any and all surety bonds, recognizances, undertakings, or other surety obligations. The execution of such surety bonds, recognizances, undertakings or surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company, in their own proper persons. Provided however, that this power of attorney limits the acts of those named herein; and they have no authority to bind the Company except in the manner stated and to the extent of any limitation stated below:

**Any such obligations in the United States, not to exceed Twenty Five Million and No/100 (\$25,000,000) in any single instance**

That this power is made and executed pursuant to the authority of the following Resolutions passed by the Board of Directors of said Company, and said Resolutions remain in full force and effect:

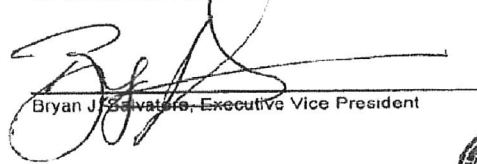
RESOLVED: That the President or any Vice President, in conjunction with any Vice President, be and they hereby are authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as it acts, to execute and acknowledge for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons.

RESOLVED: That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile. (Adopted October 7, 1981 – The Hanover Insurance Company; Adopted April 14, 1982 – Massachusetts Bay Insurance Company; Adopted September 7, 2001 – Citizens Insurance Company of America and affirmed by each Company on March 24, 2014)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 10<sup>th</sup> day of December, 2019.

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

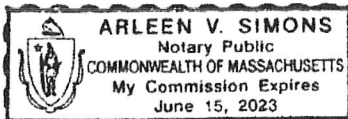
  
Bryan J. Swartz, Executive Vice President

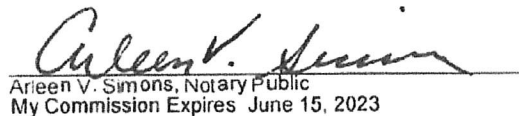
  
James H. Kawiecki, Vice President



THE COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF WORCESTER ) ss.

On this 10<sup>th</sup> day of December, 2019 before me came the above named Executive Vice President and Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



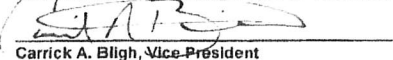
  
Arleen V. Simons, Notary Public  
My Commission Expires June 15, 2023

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 29<sup>th</sup> day of December 2020

CERTIFIED COPY

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

  
Carrick A. Bligh, Vice President

Aon Risk Services Southwest, Inc. dba Aon Risk Insurance Services Southwest, Inc.  
CA License 0559715

**CERTIFICATE OF ACKNOWLEDGMENT OF CORPORATE SURETY**

State of Texas           §

County of Harris       §

Before me, the undersigned authority, on this day personally appeared Melissa L. Fortier, known to me to be the person whose name is subscribed to the foregoing instrument as Attorney-in-Fact of The Hanover Insurance Company, and acknowledged to me that he/she executed the same for purposes and consideration therein expressed, and in the capacity therein stated.

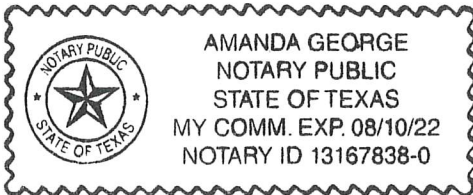
Given under my hand and seal of office this 29th day of December, 2020.

SEAL



Notary Public in and for  
The State of TEXAS  
Amanda George

My Commission expires: 08/10/2022





**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

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 Texas

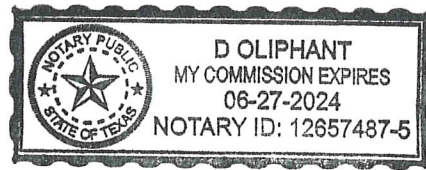
County of Harris

On January 4, 2021 before me D Oliphant, Notary Public, personally appeared Brandt Bowden 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 laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature   
Signature of Notary Public



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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State of Texas

County of Harris

On January 4, 2021 before me D Oliphant, Notary Public, personally appeared John H. Nash 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 laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Signature of Notary Public

