

ROAD IMPROVEMENT AGREEMENT

Developer: Scannell Properties #304, LLC

Effective Date: Date approved by BOS

Development: DP17-3045 (Parr Boulevard)

Completion Period: 2 years

Road: Parr Boulevard (0564C) / Richmond Parkway (0572B)

THESE SIGNATURES ATTEST TO THE PARTIES' AGREEMENT HERETO:

CONTRA COSTA COUNTY

Brian M. Balbas, Public Works Director


DEVELOPER

SEE ATTACHED
CALIFORNIA
ACKNOWLEDGEMENT

By: _____

(signature) _____
(print name & title)

RECOMMENDED FOR APPROVAL

By:  _____
Engineering Services Division

(signature) Todd Berryhill
(print name & title) MANAGING DIRECTOR

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 Developer, mutually promise and agree as follows concerning this development:

2. IMPROVEMENTS. Developer 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 development 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).

Developer shall complete said work and improvements (hereinafter called "work") within the above completion period from date hereof 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 Developer shall, pursuant to the County Ordinance Code, provide as security to the County:

A. For Performance and Guarantee: \$ 13,000.00 cash, plus additional security, in the amount of \$ 1,287,000.00 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 cashiers check.
☒ Acceptable corporate surety bond.
☐ Acceptable irrevocable letter of credit.

With this security, the Developer 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 \$ 650,000.00, 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, the Developer guarantees payment to the contractor, to his subcontractors, and to persons renting equipment or furnishing labor or materials to them or to the Developer. Upon acceptance of the work as complete by the Board of Supervisors and upon request of the Developer, the amount securities may be reduced in accordance with S94-4.406 and S94-4.408 of the Ordinance Code.

4. GUARANTEE AND WARRANTY OF WORK. Developer 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. Developer 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.** Developer 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.

6. **IMPROVEMENT PLAN WARRANTY.** Developer 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 development. 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, Developer 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 Developer 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:** Developer 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 Developer, 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 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:** Developer shall pay when due, all the costs of the work, including inspections thereof and relocating existing utilities required thereby.

10. **NON-PERFORMANCE AND COSTS:** If Developer 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 Developer 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.

Developer hereby consents to entry on the development 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, Developer agrees to pay all costs incurred by the County, even if Developer subsequently completes the work.

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

11. **INCORPORATION/ANNEXATION.** If, before the Board of Supervisors accepts the work as complete, the development 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 Developer, who shall fulfill all the terms of this agreement as though Developer had contracted with the city originally.

12. **CONSIDERATION.** In consideration hereof:

(Check applicable section(s))

- ☐ County shall allow Developer to obtain building permits for said development, assuming it fully complies with other applicable regulations.
☐ County agrees to accept the road(s) into the County-maintained road system, after the improvements are complete.
☐ Other (requires County Counsel approval _____)

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 California

County of CONTRA COSTA

On 02-15-2022 before me, IAN MCKINLAY, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared ROSS BERRYHILL
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.

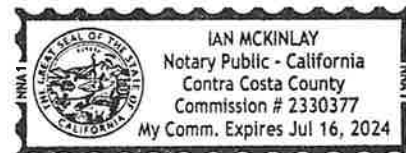
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Ian McKinlay

(Seal)



Bond No.: 82C235966

Development: DP17-3045

**IMPROVEMENT SECURITY BOND
FOR ROAD IMPROVEMENT AGREEMENT
(Performance, Guarantee, and Payment)
(California Government Code §§ 66499 - 66499.10)**

1. **RECITAL OF ROAD IMPROVEMENT AGREEMENT:** The Developer (Principal) has executed a Road Improvement Agreement with the County to install and pay for street, drainage and other improvements on, or along Parr Boulevard/ Richmond Parkway to complete said work within the time specified for completion in the Road Improvement Agreement, all in accordance with State and local laws and rulings.
2. **OBLIGATION:** Scannell Properties #304, LLC, as Principal and The Ohio Casualty Insurance Company, a corporation organized 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 as follows:
 - A. **Performance:** One million two hundred eighty seven thousand and 00/100 Dollars (\$ 1,287,000.00) for itself or any city assignee under the above County Road Improvement Agreement, plus
 - B. **Payment:** Six hundred fifty thousand and 00/100 Dollars (\$ 650,000.00) to secure the claims to which reference is made in Title 15 §§ et seq. of the Civil Code of the State of California.
3. **CONDITION:**
 - A. The Condition of this obligation as to Section (2.A.) above is such that if the above bonded Principal, or principal's 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 it 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 part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included reasonable costs, expenses and fees, including reasonable attorney's fees, incurred by the County of Contra Costa 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 contractors, subcontractors, laborers, material men and other persons employed in the performance of the aforesaid agreement and referred to in the aforesaid Civil Code, for materials furnished, labor of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor and that said undersigned 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 face amount thereof, reasonable costs, 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, all 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 of the State of California, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the work under the conditions 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 Road Improvement Agreement or any plan or specification of said work agreed to by the Principal and the County shall relieve the Surety from liability on this bond and consent is hereby given to make such alteration without further notice to or consent by the Surety and the Surety hereby waives the provisions of California Civil Code Section 2819 and holds itself bound without regard to and independently of any action against Principal whenever taken.

4. SIGNED AND SEALED:

The undersigned executed this document on February 9, 2022.

PRINCIPAL:

Scannell Properties #304, LLC

Address: 8801 River Crossing Blvd, Ste 300

City: Indianapolis, IN 46240

By: *Marc Pfleging*

Print Name: Marc Pfleging

Title: Manager

SURETY:

The Ohio Casualty Insurance Company

Address: 175 Berkeley St

City: Boston, MA 02116

By: *Leigh McCarthy*

Print Name: Leigh McCarthy

Title: Attorney-in-Fact



ACKNOWLEDGMENT

PRINCIPAL

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 Indiana)
County of Marion)

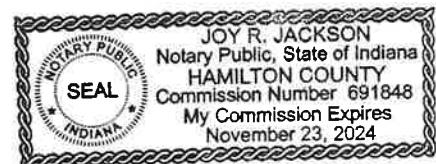
On February 10, 2022 before me, Joy R. Jackson, Notary Public
(insert name and title of the officer)

personally appeared Marc Fleming, Manager of Seawall Properties #304, LLC,
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 Joy R. Jackson (Seal)



ACKNOWLEDGMENT
SURETY

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 Kentucky)
County of Jefferson)

On February 9, 2022 before me, Barbara A. Duncan, Notary Public
(insert name and title of the officer)

personally appeared Leigh McCarthy,
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.

BARBARA A. DUNCAN
Notary Public, State at Large, KY
My comm. expires June 28, 2024
Notary ID #KYNP7318

Signature *Barbara A. Duncan* (Seal)



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.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8205942-014167

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Amy Bowers; Barbara Duncan; Beth Frymire; Brook T. Smith; Deborah Neichter; James H. Martin; James T. Smith; Jason D. Cromwell; Jill Kemp; Leigh McCarthy; Lynnette Long; Mark A. Guidry; Michele D. Lacrosse; Raymond M. Hundley; Sheryon Quinn

all of the city of Louisville state of KY each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 13th day of July, 2021.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 13th day of July, 2021 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 9th day of Feb., 2022



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.