



2019 00021835

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SURETY AGREEMENT FOR A BOND Bond No. 41386902

This Surety Agreement is entered into this 15th day of February, 2019 by and between the Town of Sutton a Massachusetts municipal corporation, acting through its planning board, with an address of 4 Uxbridge Road, Sutton, MA 01590 [hereinafter "town"]; Scannell Properties #360, LLC, with an address of 8801 River Crossing Blvd, Suite 300, Indianapolis, IN 46240 [hereinafter "owner"]; and Platte River Insurance Company, a corporation duly organized and existing under the laws of the state of Nebraska, licensed and registered to do business in the Commonwealth of Massachusetts, and with a usual place of business and address of P.O. Box 5900, Madison, Wisconsin 53705-0900 [hereinafter "surety"].

PREAMBLE

WHEREAS, on September 10, 2018, based on the application dated August 15, 2018, and after duly noticed public hearing(s), the planning board approved a definitive subdivision plan showing 2 lots, which is entitled 85 Gilmore Drive prepared by Andrews Survey & Engineering dated September 5, 2018 which is recorded at the Worcester District Registry of Deeds as Book 940 Plan 47;

WHEREAS, the approved definitive subdivision plan shows the division of a parcel of land located at 85 Gilmore Drive [hereinafter "subdivision"] and further described in a deed or deeds dated 9/30/2011 recorded at the Worcester District registry of Deeds as Book 47909 Page 41;

WHEREAS, M.G.L., ch. 41, § 81U requires the planning board to secure the construction of ways and the installation of services in an approved subdivision before endorsing its approval on the approved definitive subdivision plan and said;

WHEREAS, the owner has decided to secure the construction of ways and installation of services in the subdivision by means of a SURETY BOND in the penal sum of \$1,744,513.00 Dollars;

WHEREAS, the board has determined that the form of the surety bond is sufficient in form and amount to secure the construction of ways and installation of services in the subdivision and hereby accepts the aforesaid surety bond in the amount specified;

WHEREAS, the owner's construction of ways and installation of services within the subdivision are subject to the requirements of M.G.L., ch. 41 §§ 81K-81GG (The Subdivision Control Law); the board's Subdivision Rules and Regulations Applicable to this subdivision; the application submitted for approval of this subdivision; the certificate of approval; the recommendations, if any, of the board of health; the approved definitive plan; all conditions subsequent to approval of this subdivision due to any amendment, modification, or rescission of the approval of the definitive subdivision plan; all of the provisions set forth in this surety agreement and any amendments thereto [hereinafter "approval instruments"];

SECTION 1. INCORPORATION OF PREAMBLE

The Preamble shall be incorporated into and become an enforceable part of this surety agreement.

SECTION 2. EFFECTIVE DATE

This surety agreement shall be effective upon its execution by all parties hereto, subject to endorsement of approval of the definitive subdivision plan by the planning board and the recording or registering of the plan at the Worcester District Registry of Deeds at the expense of the owner.

SECTION 3. OBLIGATION, DUTIES, AND RIGHTS OF THE PLANNING BOARD

- a. Upon completion of the construction of ways and installation of services in accordance with the approved instruments, the planning board shall release the owner and surety from this surety agreement and shall issue a certificate of completion and release that shall be executed by a majority of the members of the planning board.
- b. Upon construction of a portion of the ways and installation of a portion of the services in accordance with the approval instruments, the planning board may release the owner and surety from this surety agreement, in full or in part, so long as the construction of ways and installation of services are, in the opinion of the planning board, sufficiently secured by another method as provided in M.G.L., ch. 41, §81U. A certificate of release shall be executed by a majority of the members of the planning board.
- c. The planning board may rescind approval of the definitive subdivision plan for breach of any provision of this surety agreement or any amendments thereto. Said rescission shall be in accordance with M.G.L., ch. 41, S 81W.
- d. The planning board shall notify the treasurer for the Town of Sutton of any release of the bond that secures this surety agreement in full or in part. Upon receipt of a release, the treasurer shall forthwith return the bond to the surety.
- e. If the owner fails to complete the construction of ways and installation of services as provided by the approval instruments, and within the time provided in this surety agreement, the planning board may apply the bond held by the treasurer of the Town of Sutton, in whole or in part, for the benefit of the said town to the extent of the reasonable costs to the said town to complete the construction of ways and installation of services as provided in the approval instruments. Any portion of the bond that is not applied as set forth above, shall be returned to the surety upon completion of the construction of ways and installation of services by the Town of Sutton.

SECTION 4. OBLIGATIONS, DUTIES, AND RIGHTS OF THE OWNER AND SURETY

- a. The surety, or owner on behalf of the surety, shall deliver a surety bond with the treasurer of the Town of Sutton, in the amount of \$1,744,513 for the purpose of securing construction of ways and installation of services in the subdivision.
- b. The surety agrees to and is obligated to notify the planning board of any lapse in the bond. Failure of the security company to provide such notice or any lapse of the surety bond shall result in automatic rescission of approval of the subdivision. Any issuance of a new bond by the surety shall require execution of a new surety agreement.
- c. The owner shall complete construction of the ways and installation of the services for this subdivision no later than February 11, 2020.
- d. The owner and surety agree and understand that the planning board will not release this surety bond in full, unless another method of security is provided, until the ways and services have been deemed by the planning board to be constructed and installed in accordance with the approval instruments, which shall include demonstration of adequate construction and installation over a reasonable period of time as determined by the town not to exceed 12 months prior to said release.
- e. No provision of this surety agreement shall prevent the owner from varying the method of securing the construction of ways and the installation of services from time to time or from securing by one, or in part by one and in part by another of the methods as provided in M.G.L., ch. 41 S 81U, as long as the planning board deems the method chosen for securing the construction of ways and the installation of services as sufficient.
- f. The owner shall at all times provide the board forthwith (no more than 14 days after transfer of title) with the name of the current owner or owners of this subdivision or portions thereof and the address of the owner or owners. The owner agrees and understands that failure to comply with this provision could result in rescission of approval of the definitive subdivision plan.
- g. The owner shall at all times provide the board forthwith (no more than 14 days after transfer of title) with the name of any mortgages of this subdivision or portions thereof and the address of the mortgagee or mortgagees. At the time of executing this surety agreement, the mortgagee(s) of this subdivision is/are _____ whose address is _____
- _____ N/A _____ whose address is _____
- The owner agrees and understands that failure to comply with the provision could result in rescission of approval of the definitive subdivision plan.

SECTION 5. BINDING EFFECT

This surety agreement, and any amendments thereto, shall be binding on the owner, the owner's agents and representatives, and any successors to the owner's title, interest, and rights in the parcel of land constituting this subdivision, including executors, administrators, devisees, heirs, successors and assigns of the owner. This surety agreement shall also be binding on the surety, its agents, representatives, successors, and assigns. The liability of the owner and surety to the Town of Sutton shall be joint and several.

SECTION 6. USE OF TERMINOLOGY

Use of the terms "owner" and "surety" in this surety agreement is for convenience only and should not be considered as limitation on those parties who may be subject to and bound by the provisions of this surety agreement and any amendments thereon. Use of the term "planning board of board" in this covenant is for convenience only and may include agents or representatives of the planning board.

SECTION 7. APPOINTMENT OF AN AGENT

If someone other than the owner will represent the owner, the owner must designate such representative below.

Name of representative: _____ N/A _____
Address of representative: _____
Tel. #: Days _____ Evenings _____
Relationship of representative to owner: _____

In executing this surety agreement, I hereby authorize the person or persons named above to represent my interest before the planning board with respect to the subdivision that is the subject of this surety agreement.

SECTION 8. AMENDMENTS

This surety agreement may be amended, in writing, by agreement of all of the parties to this agreement.

SECTION 9. GOVERNING LAW

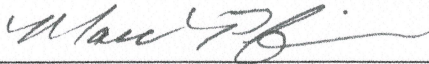
This surety agreement, and any amendments thereto, shall be governed by the laws of the Commonwealth of Massachusetts.

SECTION 10. SEVERABILITY

If a court of competent jurisdiction determines that any provision of this surety agreement is unenforceable, such determination shall not affect the remaining provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, I, the owner, hereby certify under the pains and penalties of perjury that the information contained in this surety agreement is true and complete; and we, the parties to this surety agreement, set our hands and seals to this agreement on the date(s) written below.

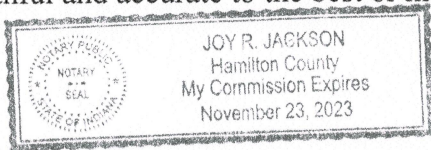
OWNER: Scannell Properties #360, LLC

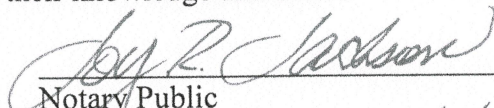


Signature of Owner
By: Marc Pfleging
Its: Manager
Duly authorized

State of Indiana, County of Marion:


On this the 20th day of February, 2019 before me, the undersigned Notary Public, personally appeared Marc Pfleging, who proved to me through satisfactory evidence of identity, which was/were: driver's license (IN) to be the person(s) whose name(s) was/were signed on the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her/their knowledge and belief.





Notary Public
My Commission Expires: 11/23/23

SURETY COMPANY: Platte River Insurance Company



Signature of Surety Company Rep.
By: Marsha J. Dawson
Its: Attorney-in-Fact
Duly authorized

Commonwealth of Massachusetts, County of Worcester:

MELISSA R. KRAMER
Notary Public, State of Indiana
Marion County
Commission Number: 669353
My Commission Expires
July 17, 2023

PLANNING BOARD

Planning Board Member

Planning Board Member

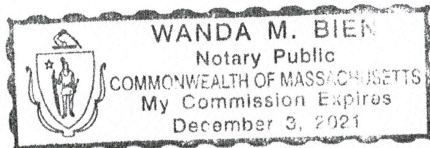
Planning Board Member

Planning Board Member

Planning Board Member

On this the 25th day of February, 2019 before me, the undersigned Notary Public, personally appeared personally known to, who proved to me through satisfactory evidence of identity, which was/were: Robert Burgess et al to be the person(s) whose name(s) was/were signed on the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her/their knowledge and belief.

My Commission Expires: _____



SITE IMPROVEMENT PERFORMANCE BOND

Bond No: 41386902

KNOW ALL MEN BY THESE PRESENTS That we, Scannell Properties #360, LLC located at 8801 River Crossing Blvd., Ste. 300, Indianapolis, IN 46240, as Principal, and Platte River Insurance Company, authorized to do business in the State of Massachusetts, as Surety, are held and firmly bound unto the Town of Sutton, MA, as Obligee, in the full and just sum of ****One Million Seven Hundred Forty Four Thousand Five Hundred Thirteen and 00/100 Dollars** (\$1,744,513.00)** lawful money of the United States of America, to be paid to said Obligee, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has received Definitive Subdivision Approval from the Obligee for a project described as Roadway and utility site construction at 85 Gilmore Drive as shown on the Definitive Subdivision Plans recorded at the Worcester District Registry of Deeds (WDRD) in Book 940 Plan 47 and subject to conditions set forth in the Certificate of Approval recorded at the WDRD in Book 60010 Page 174, the satisfactory completion of which is required per said Certificate of Approval and the related Bond Agreement dated February 15, 2019.

WHEREAS, the bond is subject to the following conditions:

- a) No party other than the Obligee shall have rights hereunder against the Surety.
- b) The aggregate liability of the Surety shall not exceed the above stated bond amount for any cause or reason whatsoever.

NOW, THEREFORE, the condition of this obligation is such that, if said Principal shall complete the improvements as agreed to in the Certificate of Approval and in accordance with the Definitive Subdivision Plans and related Bond Agreement referenced above then this obligation shall be null and void, otherwise to remain in full force and effect.

This bond shall become effective on February 15, 2019 and shall remain in force until released by the Obligee.

Signed sealed and dated this 15th day of February, 2019.

Principal: Scannell Properties #360, LLC

BY: _____

Marc Pfleging, Manager
Printed name and title

Surety: Platte River Insurance Company

BY: _____

Marsha J. Dawson
Attorney-in-Fact: Marsha J. Dawson

****Power of Attorney must be attached to the bond to be valid****

**PLATTE RIVER INSURANCE COMPANY
POWER OF ATTORNEY**

41386902

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

----- MARSHA J DAWSON; GAIL A PRICE; GERALD F O'CONNOR; CONNIE J MESSER; AMY LEWELLYN; -----
----- JESSICA K CALLAHAN; KASEY LIPPS; ELAINE K MILLER; THOMAS J MCGOVERN; JAMES R HUNTER -----

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-----

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.

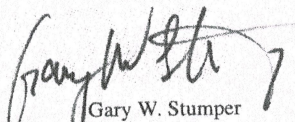
"RESOLVED, that the President, and Vice-President, the Secretary or Treasurer, acting individually or otherwise, be and they hereby are granted the power and authorization to appoint by a Power of Attorney for the purposes only of executing and attesting bonds and undertakings and other writings obligatory 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 27th day of July, 2015.

Attest:


Gary W. Stumper
President
Surety & Fidelity Operations

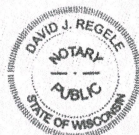


PLATTE RIVER INSURANCE COMPANY


Stephen J. Sills
CEO & President

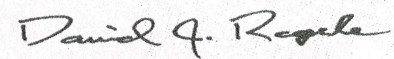
STATE OF WISCONSIN } S.S.:
COUNTY OF DANE

On the 27th day of July, 2015 before me personally came Stephen J. Sills, 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.



CERTIFICATE

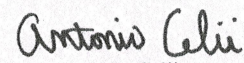
STATE OF WISCONSIN } S.S.:
COUNTY OF DANE


David J. Regele
Notary Public, Dane Co., WI
My Commission Is Permanent

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 15 day of February, 2019




Antonio Celii
Secretary

THIS DOCUMENT IS NOT VALID UNLESS PRINTED ON GREEN SHADED BACKGROUND WITH A RED SERIAL NUMBER IN THE UPPER RIGHT HAND CORNER. IF YOU HAVE ANY QUESTIONS CONCERNING THE AUTHENTICITY OF THIS DOCUMENT CALL, 800-475-4450. PR-POA (Rev. 12-2016)