

Subdivision: DA 04-00035 (x-ref SUB 8381)

Bond No.: 929 467 117

Premium: \$50.00 (Annual)

Alamo Creek

**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 DA 04-00035 (x-ref SUB 8381), 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:** Shapell Homes, a Division of Shapell Industries, Inc., a Delaware Corp., as Principal, and The Continental Insurance Company, a corporation organized existing under the laws of the State of PA, 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:** Ten Thousand Nine Hundred and 00/100 Dollars (\$ 10,900.00) for itself or any city-assignee under the above County Subdivision Agreement (Right-of-Way Landscaping).
 - B. **Payment:** Five Thousand Nine Hundred Fifty and 00/100 Dollars (\$ 5,950.00) 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 March 3, 2009

Shapell Homes, a Division of Shapell Industries, Inc.,
PRINCIPAL: a Delaware Corp.

SURETY: The Continental Insurance Company

ADDRESS: 100 N. Milpitas Blvd.

ADDRESS: 2355 E. Camelback Road, Suite 500

CITY: Milpitas, CA **ZIP:** 95035

CITY: Phoenix, AZ **ZIP:** 85016

BY: 

BY: 

PRINT NAME: Robert D. Moore

PRINT NAME: Pamela L. Stocks

TITLE: Asst. V.P.

TITLE: Attorney-in-Fact

BY: 

PRINTED NAME AND TITLE: John Luedemann, Assist. Secretary

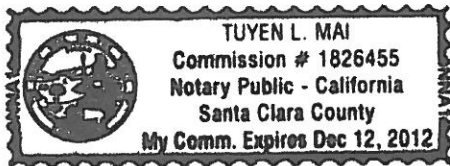
CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California

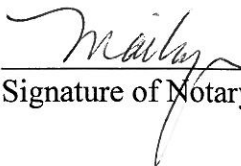
County of Santa Clara

On **March 9, 2009**, before me, **Tuyen L. Mai**, Notary Public personally appeared **Robert D. Moore and John Luedemann** who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signature on the instrument the person, or the entity upon behalf of which the person 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 of Notary Public

Optional Information

Title or Type of Document: **Improvement Security Bond (Bond Number 929-467-117)**

Capacity Claimed by Signer: **Assistant Vice President and Assistant Secretary of Shapell Industries, Inc.**

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That The Continental Insurance Company, a Pennsylvania insurance company, is a duly organized and existing insurance company having its principal office in the City of Chicago, and State of Illinois, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Pamela L Stocks, Beverly A Hall, Sandra V Hanner, Gina O'Shea, Individually

of Sherman Oaks, CA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the insurance company and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Board of Directors of the insurance company.

In Witness Whereof, The Continental Insurance Company has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 20th day of August, 2008.



The Continental Insurance Company

Robert M. Mann
Senior Vice President

State of Illinois, County of Cook, ss:

On this 20th day of August, 2008, before me personally came Robert M. Mann to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Chicago, State of Illinois; that he is a Senior Vice President of The Continental Insurance Company, a Pennsylvania insurance company, described in and which executed the above instrument; that he knows the seal of said insurance company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said insurance company and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance company.



My Commission Expires September 17, 2009

Eliza Price
Notary Public

CERTIFICATE

I, Mary A. Ribikawskis, Assistant Secretary of The Continental Insurance Company, a Pennsylvania insurance company, do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the insurance company printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance company this 3rd day of March, 2009.



The Continental Insurance Company

Mary A. Ribikawskis
Assistant Secretary

Authorizing By-Laws and Resolutions

ADOPTED BY THE BOARD OF DIRECTORS OF THE CONTINENTAL INSURANCE COMPANY:

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the Board of Directors of the company.

“Article VI-Execution of Documents

Section 3. Appointment of Attorney-in-Fact. The Chairman of the Board of Directors, the President or any Executive or Senior Vice President may, from time to time, appoint by written certificates attorneys-in-fact to act in behalf of the Company in the execution of policies of insurance, bonds, undertakings and other obligatory instruments of like nature. Such attorneys-in-fact, subject to the limitations set forth in their respective certificates of authority shall have full power to bind the Company by their signature and execution of any such instruments and to attach the seal of the Company thereto. The Chairman of the Board of Directors, the President or any Executive or Senior Vice President or the Board of Directors, may, at any time, revoke all power and authority previously given to any attorney-in-fact.

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolution adopted by the Executive Committee of the Board of Directors of The Continental Insurance Company by unanimous written consent dated the 13th day of January, 1989:

RESOLVED, that the signatures of such officers and the seal of the Company may be affixed to any 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 Company when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.”

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On March 3, 2009 before me, Beverly A. Hall, Notary Public
Date Here Insert Name and Title of the Officer

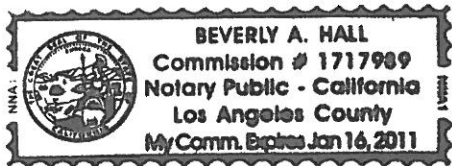
personally appeared Pamela L. Stocks
Name(s) of Signer(s)

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 Beverly A. Hall
Signature of Notary Public



Notary Seal