

ROAD IMPROVEMENT AGREEMENT

Developer: KB Home South Bay Inc.

Effective Date: July 11, 2017  
~~October 2, 2013~~

Development: RA 07-1235

Completion Period: 2 years

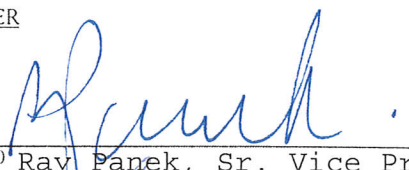
Road: Pacheco Boulevard

THESE SIGNATURES ATTEST TO THE PARTIES' AGREEMENT HERETO:

CONTRA COSTA COUNTY  
Julia R. Bueren, Public Works Director

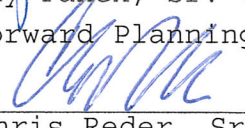
DEVELOPER

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

(signature)   
(print name & title) Ray Panek, Sr. Vice President  
Forward Planning

RECOMMENDED FOR APPROVAL

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

(signature)   
(print name & title) Chris Reder, Sr. Vice President  
Finance

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 S313.)

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: \$ 7,000 cash, plus additional security, in the amount of \$ 650,000 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 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 \$ 328,500, 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 \_\_\_\_\_)

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**


State of California

County of Contra Costa

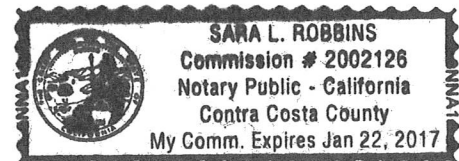
On October 2, 2013 before me, Sara L. Robbins, Notary Public, personally appeared Ray Panek and Chris Reder who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to me within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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.

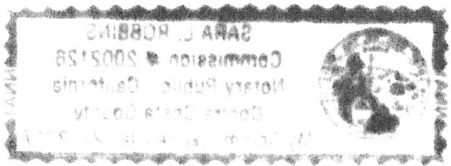
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Sara L. Robbins





**Bond No.:** 58629403

**Development:** RA 07-1235

**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 an agreement (Road Improvement Agreement) with the County to install and pay for street, drainage and other improvements on, or along Pacheco Boulevard 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:** KB Home South Bay Inc., as Principal and The Continental Insurance Company, a corporation organized under the laws of the State of Pennsylvania, 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:** Six Hundred Fifty Thousand and 00/100  
Dollars (\$ 650,000.00) for itself or any city assignee under the above County Road Improvement Agreement, plus
  - B. **Payment:** Three Hundred Twenty Eight Thousand Five Hundred and 00/100  
Dollars (\$ 328,500.00) 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, incase suit is brought upon this bond, will pay, in addition to the fact 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 December 17, 2013

Replaces Bond originally issued on 10/16/13

**PRINCIPAL:** KB Home South Bay Inc.

Address: 5000 Executive Pkwy

City: San Ramon, CA 94583

By: 

Print Name: Chris Apostolopoulos

Title: President

**SURETY:** The Continental Insurance Company

Address: 4150 N. Drinkwater Blvd. Suite 410

City: Scottsdale, AZ 85251

By: 

Print Name: Patricia Talavera

Title: Attorney-in-Fact

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

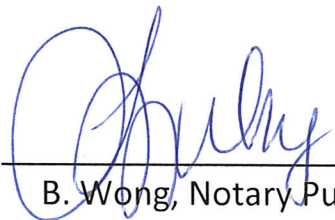
On December 17, 2013 before me, B. Wong, Notary Public, personally appeared Patricia Talavera who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~-subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ 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.

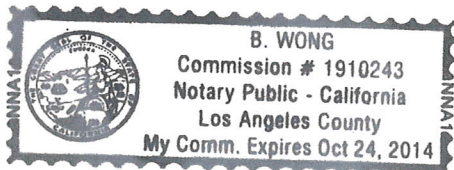
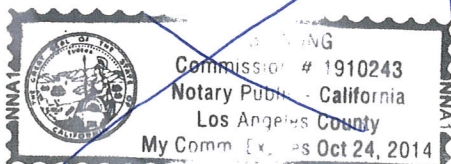
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

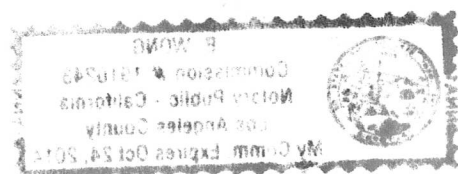
WITNESS my hand and official seal.

(seal)

Signature

  
B. Wong, Notary Public





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

Christina Johnson, Jeffrey Strassner, Cesar F Javier, Natalie K Trofimoff, Patricia Talavera, , Individually

of Los Angeles, 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 -

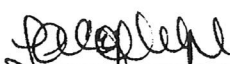
and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the insurance company and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

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 21st day of December, 2010.



The Continental Insurance Company

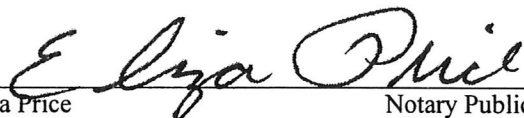
  
Jacquelyne M. Belcastro Senior Vice President

State of Illinois, County of Cook, ss:

On this 21st day of December, 2010, before me personally came Jacquelyne M. Belcastro to me known, who, being by me duly sworn, did depose and say: that she resides in the City of Chicago, State of Illinois; that she is a Senior Vice President of The Continental Insurance Company, a Pennsylvania insurance company, described in and which executed the above instrument; that she 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 she signed her name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance company.



My Commission Expires September 17, 2013

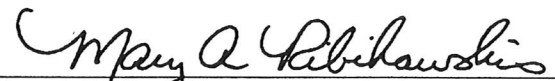
  
Eliza Price Notary Public

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 \_\_\_\_\_ day of \_\_\_\_\_, DEC 17 2013.



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 13<sup>th</sup> 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."