

**AGREEMENT  
FOR  
IMPROVEMENT WARRANTY**  
(After Construction is Complete)  
(Government Code § 66462 and § 66463)

(S1) **Development:** PA15-00044 (xref SD05-08971)

(S1) **Effective Date:** \_\_\_\_\_

(S1) **Developer:** Shapell Industries, Inc. a Delaware Co.

(S3) **Warranty Period:** 1 year

Deposits:

A. (cash) \$ 3,840

B. (bonds, etc.)

1. (faithful performance & maintenance) \$ 57,650

2. (payment) \$ 192,160

1. PARTIES & DATE. Effective on the above date, the County of Contra Costa, California, hereinafter called "County," and the above-named Developer, mutually promise and agree as follows concerning this development:

2. IMPROVEMENT WARRANTY. Developer warrants that the road and street improvements, tract drainage, street signs, and all other public improvements were constructed, installed and completed in this development in a manner equal or superior to the requirements of the county Ordinance Code, Title 9.

3. GUARANTEE & MAINTENANCE. Developer guarantees that the aforesaid development improvements are and will be free from defects and will perform satisfactorily in accordance with County Ordinance Code; and he shall maintain the improvements for one-year after the date of this agreement against any defective workmanship or materials or any unsatisfactory performance.

4. IMPROVEMENT SECURITY: DEPOSIT & BONDS. Upon executing this agreement, Developer shall deposit as security with the County:

A. Cash: \$1,000 cash or 1% of the estimated cost of the improvements, whichever is more; together with

B. Bond, etc.: (1 Faithful performance) additional security totaling 15% of the cost of the estimated improvements less the cash deposit in the form of a cash deposit, acceptable instrument of credit, or an acceptable corporate surety bond, guaranteeing his faithful performance of this agreement and maintenance of the work for one-year after the date of this agreement against any defective workmanship or materials or any unsatisfactory performance; plus (2 payment for labor and materials) another such additional security in at least the above -specified amount, which is 50% of the estimated cost of the aforementioned improvements, securing payment to the contractor, to his subcontractors, and to persons renting equipment or furnishing labor or materials to them or to the Developer. Said payment bond to become null and void six months after the completion of improvements.

5. NO WAIVER BY COUNTY. Inspection of the improvements and/or materials, or approval of improvements and/or materials inspected, or statement by any officer, agent or employee of the County indicating that the improvements or any part thereof comply with the requirements of this agreement, or acceptance of the whole or any part of said improvements 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.

6. INDEMNITY. Developer shall hold harmless and indemnify the indemnities from the liabilities as defined in this section:

A. The indemnities benefited 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 the County accepted the improvements as completed, and including the defense of any suit(s), actions(s), or other proceedings(s) concerning these;

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 Indemnity has prepared, supplied, or approved any plan(s) or specifications(s) in connection with the improvements or development, or has insurance or other indemnification covering any of these matters.

7. COSTS. Developer shall pay or have paid when due all the costs of the work, including inspection thereof and relocating existing utilities required thereby.

8. NONPERFORMANCE AND COSTS. If Developer fails to maintain the work and improvements during the time specified in this agreement, County pay proceed to maintain them by contract or otherwise, and Developer shall pay the costs and charges therefore immediately upon demand. If County sues to compel performance of this agreement or recover engineering costs and the cost of maintaining the improvements, Developer shall pay all reasonable attorneys' fees, costs of suit, and all other expenses of litigation incurred by County in connection therewith.

9. ASSIGNMENT. If before the completion of the maintenance period the development is annexed to a city, the County may assign to that city the County's rights under this agreement and any deposit or bond securing them.

10. LABOR & MATERIALS WARRANTY. Developer further warrants that the claims and liens of all persons, contractors, and subcontractors furnishing labor or materials for the installation of said improvements in the development have been satisfied. The Developer agree to satisfy any valid claims or liens of labor and materialmen as to the said improvements and development appearing hereafter upon demand by the County.

CONTRA COSTA COUNTY:

Brian M. Balbas, Public Works Director

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

RECOMMENDED FOR APPROVAL:

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

FORM APPROVED: Victor J. Westman, County Counsel

DEVELOPER:

(signature) Steve Savage  
(print name & title) Steve Savage  
Vice President  
(signature) Robert D. Moore  
(print name & title) Robert D. Moore (G.P.)

Note to Developer: Attach acknowledgment form below and affix corporate seal.

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   )  
  )ss.  
COUNTY OF ALAMEDA   )

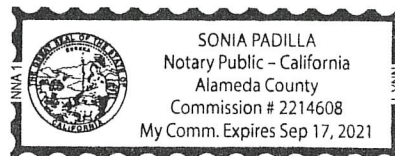
On March 1, 2018 before me Sonia Padilla, Notary Public personally appeared Robert D. Moore who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized 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 

(SEAL)



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   )  
  )ss.  
COUNTY OF ALAMEDA   )

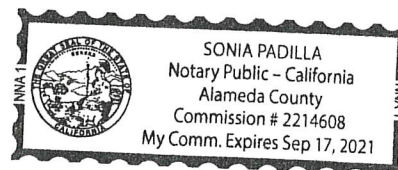
On March 1, 2018 before me Sonia Padilla, Notary Public personally appeared Steve Savage who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized 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 

(SEAL)



**Bond No.:** 30034551

**Development:** PA15-00044 (xref SD05-08971)

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

1. **RECITAL OF PARK IMPROVEMENT AGREEMENT:** The Developer (Principal) has executed a Park Improvement Agreement with the County to install and pay for park facilities, drainage and other improvements at Mosaic Park to complete said work within the time specified for completion in the Park Improvement Agreement, all in accordance with State and local laws and rulings.
2. **OBLIGATION:** Shapell Industries, Inc., a Delaware Corporation, as Principal and Western Surety Company, a corporation organized under the laws of the State of South Dakota, 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:** Fifty-Seven Thousand Six Hundred Fifty and 00/100 Dollars (\$57,650.00) for itself or any city assignee under the above County Park Improvement Agreement, plus
  - B. **Payment:** One Hundred Ninety-Two Thousand One Hundred Sixty and 00/100 Dollars (\$192,160.00) 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 Park 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 28, 2018.

**PRINCIPAL:** Shapell Industries, Inc.

**SURETY:** Western Surety Company

Address: \_\_\_\_\_

Address: 100 Matsonford Road, Suite 200

City: \_\_\_\_\_

City: Radnor, PA 19087

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

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

Print Name: Robert D. Moore

Print Name: Daniel P. Dunigan

Title: Group President

Title: Attorney-in-Fact

## 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 Alameda )

On March 2, 2018 before me, Sonia Padilla, Notary Public  
(insert name and title of the officer)

personally appeared Robert D. Moore,  
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.

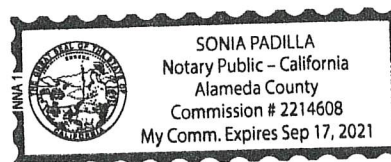
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

Civil Code § 1189

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 PENNSYLVANIA

County of CHESTER

On February 28, 2018 before me, ARLENE OSTROFF, Notary Public

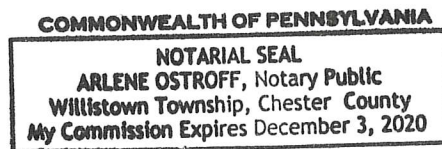
personally appeared DANIEL P. DUNIGAN

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 



Place Notary Public Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to the persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

## Description of Attached Document

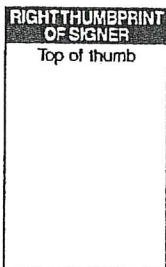
Title or Type of Document \_\_\_\_\_

Document Date \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

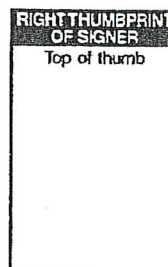
- ☐ Individual
- ☐ Corporate Officer – Title(s): \_\_\_\_\_
- ☐ Partner - ☐ Limited ☐ General
- ☐ Guardian or Conservator
- ☒ Attorney-in-Fact
- ☐ Trustee
- ☐ Other: \_\_\_\_\_

Signer is representing \_\_\_\_\_  
Western Surety Company



- ☐ Individual
- ☐ Corporate Officer – Title(s): \_\_\_\_\_
- ☐ Partner - ☐ Limited ☐ General
- ☐ Guardian or Conservator
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Other: \_\_\_\_\_

Signer is representing \_\_\_\_\_



# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

**Know All Men By These Presents,** That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**William F Simkiss, Richard J Decker, Daniel P Dunigan, Joseph W Kolok Jr, Brian C Block, James L Hahn, Individually**

of Paoli, PA, 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 it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

**In Witness Whereof,** WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 5th day of April, 2017.



WESTERN SURETY COMPANY

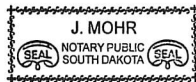
  
Paul T. Bruflat, Vice President

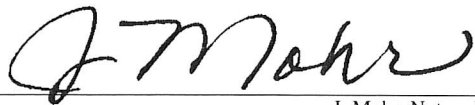
State of South Dakota }  
County of Minnehaha } ss

On this 5th day of April, 2017, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; 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 corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

June 23, 2021



  
J. Mohr, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation 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 corporation this 28TH day of FEBRUARY, 2018.



WESTERN SURETY COMPANY

  
L. Nelson, Assistant Secretary