

CERTIFIED COPY OF ORDER

STATE OF MISSOURI

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November Session of the October Adjourned

Term. 20 16

County of Boone

In the County Commission of said county, on the

10th

day of

November

20

16

the following, among other proceedings, were had, viz:

Now on this day the County Commission of the County of Boone does hereby approve the attached Erosion and Sediment Control Security Agreement and Performance Bond between the County of Boone and J & S Columbia Property LLC.

The terms of the agreement are stipulated in the attached security agreement. It is further ordered the Acting Presiding Commissioner is hereby authorized to sign said Agreement.

Done this 10th day of November, 2016.

ATTEST:

Wendy S. Noren
Wendy S. Noren
Clerk of the County Commission

Absent

Daniel K. Atwill
Presiding Commissioner

Karen M. Miller

Karen M. Miller
Acting Presiding Commissioner

Janet M. Thompson

Janet M. Thompson
District II Commissioner

Stormwater Erosion and Sediment Control Security Agreement

Date: September 26, 2016

Developer/Owner Name: J & S Columbia Property, LLC
Address: 1314 Hwy 179, Jefferson City, MO 65109

Development: Oakland Gravel Rd. Fill Site

This agreement is made by and between the above named developer (herein "Developer") and Boone County, Missouri, a political subdivision of the State of Missouri, through its Resource Management Department, (herein "County") and shall be effective on the above date when signed and approved by all persons listed below.

In consideration of the performance based by each party of their respective obligations described in this agreement, the parties agree to the following:

1. **Background and Purpose of Agreement** – The Developer is the owner or authorized agent of the owner for the real estate contained within the development described above which is subject to the Boone County Stormwater Regulations. This agreement is made pursuant to Section 8.4 Performance and Guarantee, in the Stormwater Regulations of Boone County, Missouri in order to permit the Developer to disturb land on the development described above, and to assure County of the required erosion and sediment control and stormwater management. By entering into this agreement the developer is agreeing to comply with the erosion and sediment plan described below in accordance with the County Stormwater Regulations and specifications and provide to County financial security in the event the developer fails to comply with the plan, or complete the improvements within the time and manner provided for by this agreement.
2. **Description of Improvements** – The Developer agrees to adhere to the Stormwater Pollution Prevention Plan (SWPPP) and Erosion and Sediment Control (ESC) Plans for Construction activities at Oakland Gravel Rd. Fill Site, 7630 N. Oakland Gravel Rd., Columbia, MO. The SWPPP and ESC was prepared by McClure Engineering Company on July 8, 2016.
3. **Time for Completion** – The Developer agrees to complete the land disturbance activities and stabilize the site as described in the SWPPP no later than the 19th day of September, 2018, and all such improvements shall pass County inspection as of this date.
4. **Security for Performance** – To secure the Developer's performance of its obligations under this agreement, Developer hereby agrees to provide the County with security in the amount of \$42,924.42, which County may use and apply for Completion of the above described improvements in the event the Developer fails to complete the above described improvements within the time or within manner required by County under its regulations.

The Security shall be provided to County as a condition precedent to the effectiveness of this agreement in the following form:

- Irrevocable standby letter of credit, with form to be approved by County and issued to Treasurer of Boone County, Missouri
- Corporate Surety Bond issued to Boone County, Missouri

5. **Use of Security** – The Developer hereby authorizes County to use, redeem, or otherwise obtain payment as applicable, from the security described above for purposes of completing improvements required of the Developer under this agreement in the event that such improvements are not completed within the time provided for by this agreement, or any extension thereof granted by County in its discretion, or in the event such improvements are not completed in accordance with regulatory requirements or specifications imposed by County. Developer authorizes County to cash the Letter of Credit contemplated herein upon written instructions from the duly-elected and serving Treasurer of Boone County without further authorization or signature required by Developer. In the event Developer fulfills its obligations in the time and manner required by this agreement and obtains a satisfactory final inspection from the County prior to September 19, 2018, then County shall provide Developer with written proof that the requirements of this Security Agreement are satisfied and the Letter of Credit can be released to Developer. If no written proof has been provided to the financial institution issuing the Letter of Credit that Developer has complied with the requirements of this Agreement, however, then the financial institution shall, on September 19, 2018, or such extended period as mutually-agreed by the parties in writing, shall immediately transfer the balance of the Letter of Credit to the account then-designated by the Boone County Treasurer. If the total sum of the Letter of Credit is not used for completion of any necessary permit items, then the remaining balance shall be paid to Developer within thirty (30) days of completion and acceptance of any required work, along with an itemization of charges detailing the expenditures made by the County.
6. **Additional Sums Due** – In the event that the security provided herein is insufficient to complete the required improvements as determined by the County, Developer will, upon demand by the County accompanied by a detailed itemization of the requested additional sum, deposit with County such additional monies which, in the opinion of the County, will be required to complete the necessary improvements. In the event that Developer does not deposit the additional monies with the County within ten (10) days, the Developer shall be deemed in default of this Agreement.
7. **Remedies Cumulative** – Exercise or waiver by the County of any enforcement action under this Agreement does not waive or foreclose any other or subsequent enforcement action whatsoever. The County shall be entitled to its costs, including reasonable attorneys' fees, in enforcement of Developer's obligations under this Agreement.
8. **Authority of Representative Signatories** – Signatories to this agreement who execute this agreement in a representative capacity for a corporation, limited liability company or partnership, or other business entity, hereby affirmatively represent that they have obtained all resolutions or orders needed to enter in this agreement and are duly authorized to enter into this agreement and bind the parties which they represent to all terms and conditions herein.

9. **Binding Effect** – This agreement shall be binding upon the parties hereto in their respective heirs, personal representative, administrators, successors and interest in successors in assigned offices. The County and Developer hereby accept this Agreement as a lawful and satisfactory Security Agreement.

In Witness Whereof the Developer and the County have executed this agreement to be effective on the day and year first above written.

ACKNOWLEDGED AND AGREED TO:

Developer/Owner:

By: J & S Columbia Property, LLC.

Printed Name: J & S COLUMBIA PROPERTY, LLC.

Title: SHARON SCHNIEDERS, MEMBER

BOONE COUNTY, MISSOURI:

Department of Resource Management

Stan Shawver
Stan Shawver, Director Resource Management

County Commission:

Karen M Miller
KAREN M MILLER, ACTING PRESIDING COMMISSIONER

Attest:

Wendy S. Noren
Wendy S. Noren, Boone County Clerk

County Treasurer

Tom Darrough
Tom Darrough, County Treasurer

Approved as to form:

C.J. Dykhouse
C.J. Dykhouse, County Counselor

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENT, that we,

J & S Columbia Property, LLC, 1314 Hwy 179, Jefferson City, MO 65109

as Principal, hereinafter called Principal, and **Merchants National Bonding, Inc.**

PO Box 14498, Des Moines, IA 50306

a Corporation, organized under the laws of the State of **Iowa**

and authorized to transact business in the State of Missouri, as Surety, hereinafter called Surety, are held and firmly bound unto the County of Boone, Missouri, as Obligee, hereinafter called Boone County, in the amount of **Forty-Two Thousand Nine Hundred Twenty-Four Dollars & 00/100** (**\$42,924.42**) Dollars, for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents:

WHEREAS, Principal has procured a Land Disturbance Permit **LD 1327** from the County of Boone

Project Name: Oakland Gravel Road Fill Site, 7630 N Oakland Gravel Rd., Columbia, MO 65203

and, as a condition of said Land Disturbance Permit, has agreed to comply with the terms of the filed Stormwater Pollution Prevention Plan (SWPPP), the Erosion and Sediment Control Plans (ESC), and the provisions of the Stormwater Ordinance of Boone County, Missouri, passed by the Boone County Commission in Commission Order 48-2010 on or about February 2, 2010, all of which is by reference made a part hereof, and is hereinafter referred to as the Stormwater Regulations.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly and faithfully perform the project in compliance with said Stormwater Regulations, then this obligation shall be null and void; otherwise it shall remain in full force and effect. Boone County may, in the event of a default, exercise its options herein as against surety to complete any required work to comply with the Stormwater Regulations within the time or within the manner as required by said regulations.

The Surety hereby waives notice of any alteration or extension of time made by the Boone County.

Whenever Principal shall be, and declared by Boone County to be, in default under the Stormwater Regulations, the Surety may promptly remedy the default, or shall promptly:

- 1) Complete the work required by the applicable Stormwater Regulations in accordance with their terms and conditions, or
- 2) Obtain a bid for submission to Boone County for completing the work required by the Stormwater Regulations in accordance with its terms and conditions, and upon determination by Boone County and Surety of the lowest responsible bidder, arrange for a Contract between such bidder and Boone County, and make available as work progresses sufficient funds to pay the cost of completion, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which the final construction activity contemplated under the Stormwater Regulations is actually completed on the subject site, or by September 19, 2018, whichever is later.


No right of action shall accrue on this bond to or for the use of any person or corporation other than the Boone County named herein or the heirs, executors, administrators, or successors of Boone County.

IN TESTIMONY WHEREOF, the Principal has hereunto set his hand and the Surety has caused these presents to be executed in its name, and its corporate seal to be affixed by its Attorney-In-Fact at Jefferson City, Missouri on this 7th day of October, 2016

J & S Columbia Property, LLC

(Principal)

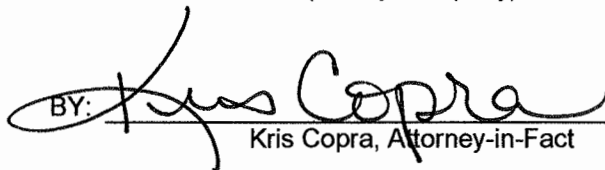
(SEAL)

BY:  Member

Merchants National Bonding, Inc.

(Surety Company)

(SEAL)

BY: 
Kris Copra, Attorney-in-Fact

BY: N/A
(Missouri Representative)

(Accompany this bond with Attorney-in-Fact's authority from the Surety Company certified to include the date of this bond).

Surety Contact Name: Merchants National Bonding, Inc.
Phone Number: 800-678-8171
Address: PO Box 14498
Des Moines, IA 50306


MERCHANTS
BONDING COMPANY™
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Allison Madrid; Darla Veltrop; Kris Copra; Louis A Landwehr

their true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver on behalf of the Companies, as Surety, bonds, undertakings and other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

TWENTY-FIVE MILLION (\$25,000,000.00) DOLLARS

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 24, 2011.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

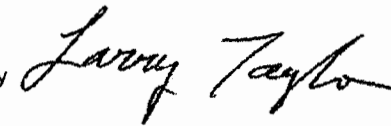
In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts 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 Companies have caused this instrument to be signed and sealed this 18th day of May, 2016.



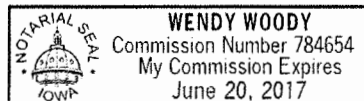
MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By 

President

STATE OF IOWA
COUNTY OF Dallas ss.

On this 18th day of May, 2016, before me appeared Larry Taylor, to me personally known, who being by me sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

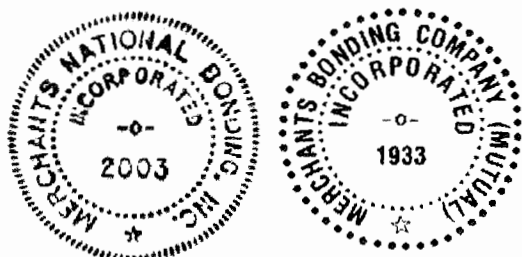


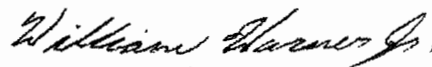
(Expiration of notary's commission does not invalidate this instrument)


Notary Public, Polk County, Iowa

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 7th day of October, 2016.




Secretary



MERCHANTS NATIONAL BONDING, INC. P.O. BOX 14498, DES MOINES, IOWA 50306-3498
PHONE: (800) 678-8171 FAX: (515) 243-3854

**NOTICE TO MISSOURI
POLICY HOLDERS AND
BOND HOLDERS**

Should you have a question about your bond or policy, please contact your insurance agent first. If you have been unable to contact or obtain information from your agent, you may contact our company at the following address and telephone number:

Merchants National Bonding, Inc.
6700 Westown Parkway, West Des Moines, Iowa 50266

(800) 678-8171