

From: Williams.Ann@epamail.epa.gov
To: [Davis.Gary \(DCR\)](mailto:Davis.Gary@epamail.epa.gov); [Jay Borkland](mailto:Jay.Borkland@epamail.epa.gov); [Chet Myers](mailto:Chet.Myers@epamail.epa.gov)
Cc: marsh.mike@epamail.epa.gov; Leclair.Jackie@epamail.epa.gov; [Sneeringer.Paul J NAE](mailto:Sneeringer.Paul.J@epamail.epa.gov); Catri.Cynthia@epamail.epa.gov; [Minkin.Paul NAE](mailto:Minkin.Paul@epamail.epa.gov)
Subject: South terminal -- EPA comments on final mitigation plan
Date: Wednesday, October 31, 2012 6:05:18 PM
Attachments: [Performance Bond.pdf](#)

Gary, Chet, and Jay --

Thank you for revising the compensatory mitigation plan in response to our 10/18/12 comment that the mitigation should be presented as a permittee-responsible mitigation rather than a mitigation bank. The 10/22/12 plan (with revisions of 10/25/12) does reflect that change; however there remain some features of the plan that are more appropriate for a mitigation bank and are not appropriate in this case. Below are our comments requesting changes related to this issue, as well as a few other corrections that are necessary. In a subsequent email, we will be sending additional comments, particularly on the sections of the Final Mitigation Plan describing the compensatory mitigation proposed at Rivers End Park. (We note that the Rivers End Park design is currently being revised by Beals and Thomas.) Please let me know if you have any questions.

Thanks,
Ann
617-918-1097

1. Section 4.1, Legal Arrangement, notes that the site protection instrument ("SPI") names EPA and the State Enhanced Remedy ("SER") Committee as the Interagency Review Team ("IRT") responsible for ensuring that the existing resources are adequately delineated, and the constructed mitigation meets the requirements of the approved mitigation design. Please amend this section and the SPI to eliminate any reference to the SER Committee. EPA is the sole entity responsible for reviewing and determining whether the mitigation that is constructed complies with the mitigation plan and any other requirements of the conditions established in EPA's Final Determination. The SER Committee will not play a role in this matter, nor is there any need for an IRT. Also please note that EPA is the only agency making the final determination and requiring mitigation, so please delete reference to the Corps here and in other sections (e.g., Section 3.2.5).
2. Section 5.1.1, Resource Identification and Direct Impact Assessment, refers on page 28 to the size of the freshwater wetland as being 0.109 acres. This should be corrected to read 0.106 acres. Also, somewhere in Section 5, it would be helpful to include a statement of the size of the existing salt marsh resource in addition to the size of the impacted area.
3. Section 6.0, Determination of Mitigation Credit, should be renamed to "Determination of Mitigation Ratios" to avoid confusion with the concept of mitigation credits in the mitigation banking context, and references to "credits" in the text should be changed to "ratios."
4. Section 8.2, Maintenance Plan for the Winter Flounder and OU-3 Mitigation Areas, please add, as was done for Section 8.3, that the assessment to be undertaken to determine if conditions warrant action by the Commonwealth will be conducted in consultation with EPA (we had requested this in our comments of 10/19/12)..
5. Section 12.2, Methods for Inspection and Assessment, states the following in the last bullet: "Consult with EPA and all appropriate regulatory agencies to determine any other safety, or construction practices that will be necessary moving forward for the selected remedy." This could be read to mean that the Commonwealth alone would determine the selected remedy and then EPA would be consulted on construction and safety practices. This should be amended to clarify that any remedy suggested by the Commonwealth is subject to EPA approval.
6. Section 13.7, Performance Security, refers to the "Transfer of the First Credit." This is a mitigation

bank concept and is not relevant to permittee-responsible mitigation. In addition, the section describes the Commonwealth's intent to provide the Performance Security to the SER Committee Chairman, and that the full amount of the Performance Security would remain in effect "until the SER Committee Chairman determines that all of the Performance Standards have been met and all the remaining obligations of the Mitigation Plan have been concluded." Similar to the comment above, EPA does not see a role for the SER Committee in reviewing and ensuring compliance with the mitigation plans. Rather, EPA will be solely responsible for this oversight.

In addition, there is not authority under Section 404 of the Clean Water Act for EPA to be the recipient or holder of a performance bond or letter of credit. Therefore, a different approach for both the performance security and the construction security will be necessary. Attached below is an example of a performance bond which I obtained from the Corps, which is similarly constrained in its ability to be a direct recipient of a bond or letter of credit. In this case, the Commonwealth would be the principal, and it would need to find a surety that would hold the bond. The surety would either perform the mitigation work itself (if the Commonwealth fails to perform) or would specify an agent that would perform the work (in the example bond, the agent is Woodlot Alternatives, a consulting company with experience in constructing and maintaining wetland creation). EPA would be the obligee, meaning we would have the ability to determine whether there's been nonperformance and the funds should be obligated and the work performed by the surety or its agent, etc. I assume a similar approach could be taken with an irrevocable letter of credit. Although we do not need to have all details worked out before EPA's final determination, we do need a draft template similar to the draft conservation restriction so that we can review and approve or modify the chosen approach.

7. Section 13.8, Endowment Fund, states that the "Commonwealth shall notify each member of the SER Committee of each Endowment Deposit made...." Again, EPA does not believe the SER Committee has a role in this project. Please substitute "EPA" as the recipient of such notifications.

8. Figure 2 of the final mitigation plan still shows the drainage swale mitigation; it should be deleted.

9. Appendix 9, Proposed Site Protection Instrument Template, still seems to be much more applicable to a mitigation bank than to a permittee-responsible mitigation. Please either substitute a more straightforward description that reflects that this is a permittee-responsible mitigation (our strong preference), or substantially revise this template. If the template is revised, all references to the SER Committee and an IRT should be eliminated. Only the Commonwealth, the City, and EPA need be referenced. In addition, EPA does not anticipate being a "party" to any site control and management agreement. Some of the definitions in the SPI are relevant only to mitigation banks, not to the mitigation for South Terminal, e.g., "Site Establishment Date," "Interim Management Period," "Service Area," "Property Assessment and Warranty," etc. The template refers to sections that are not actually labeled in the document. There are still residual references to mitigation credits (e.g., in the property assessment and warranty section, and the adaptive management plan section). Some sections are irrelevant or inappropriate (e.g., "Site Closure Plan," the "Termination" provisions, "Availability of Funds," some aspects of "Governing Laws") and should be deleted or amended.

Relevant to the salt marsh creation at River's End Park, the SPI states in the "Operation of Site" section that the property owner will implement long term management and monitoring of the property. The mitigation plan on page 28 states that the Commonwealth will maintain the mitigation area, but the discussion on page 67, regarding the endowment fund, suggests that the City will be responsible for long term maintenance. The draft conservation restriction is unclear on this point. Please clarify and reconcile all documents. Also, please clarify what agency will maintain long-term site control over the Winter Flounder Mitigation Area as well as the OU-3 Capping Area and how that control will be memorialized.

The force majeure provisions must be amended consistent with the point we made about this issue in our 10/19/12 comments. The mitigation plan was modified, but the SPI still in inconsistent with the final mitigation rule.

10. Appendix 13, Draft Declaration of Restriction, states: WHEREAS, the Commonwealth will be funding the creation of salt marsh, in concert with previously outlined plans of the Declarant to facilitate the construction of a park at the Property, to create and enhance wetlands and parkland within the City of New Bedford for

beautification and recreational purposes to serve the Citizens of New Bedford...." It is important to include in this statement the ecological purposes of the salt marsh creation. Please amend accordingly. We will have additional comments on the draft conservation restriction after the Final Determination is issued.

PERFORMANCE BOND

DATE BOND EXECUTED: August 7, 2007

OBLIGEE:
New England District, United States Army Corps of Engineers
696 Virginia Road
Concord, Massachusetts 01742-2751

PRINCIPAL:
Lowe's Home Centers, Inc.
Highway 268 East
North Wilkesboro, NC28656

SURETY:
Travelers Casualty and Surety
Company of America
One Tower Square,
Hartford, CT 06183

AGENT TO THE OBLIGEE:
Woodlot Alternatives, Inc.
30 Park Drive
Topsham, ME 04086

TYPE OR ORGANIZATION ("X" ONE)
Individual Partnership
Joint Venture X Corporation

PENAL SUM OF BOND, amount determined solely by Obligee:
Million(s) Thousand(s) Hundred(s) Cent(s)
391 300 49

STATE OF INCORPORATION:
North Carolina

PERMIT DATE: PERMIT NO.
January 17, 2007 NAE-2006-834

OBLIGATION:

We, the Principal and Surety hereto, are firmly bound as Obligors to the U.S. Army Corps of Engineers (being hereinafter called the Obligee) in the above penal sum. For the payment of the penal sum, we bind ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally. The Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown below the name of the Surety. The limit of liability shall be the full amount of the penal sum.

The Agent to the Obligee (the "Agent") named above binds itself for the fulfillment of the obligations, covenants, terms, conditions and agreements of the Wetland Mitigation Plan dated February 2006, as revised July 2006 and amended October 23, 2006 (the "Plan") if the Obligee determines that the Principal has defaulted on any of its obligations and all or any portion of the penal sum is tendered to the Agent as provided below. The obligation of the Agent hereunder is conditioned upon its receipt of all or any portion of the penal sum as provided below, and is limited to the obligation to implement the Plan or a similar plan to compensate for any wetland mitigation plan deficiencies as approved by the Obligee, which obligation shall not include incurring costs in excess of the amount of the penal sum received by the Agent.

CONDITIONS:

The above obligation is void if the Principal --

- (a) Specifically performs and fulfills all of the obligations, covenants, terms, conditions and agreements of the Plan and of the permit described above (the "Permit") during the original term of the Permit and any extensions thereof that may be granted by the Obligee, with or without notice to the Surety, and during the life of any guaranty required under the permit, and --
(b) Also specifically performs and fulfills all of the obligations, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the Permit that may hereafter be made. Notice of these modifications to the Surety is waived as against Obligee, but Principal covenants to provide notice thereof to Surety.

IT IS FURTHER EXPRESSLY PROVIDED THAT:

The Obligee shall have the full and final authority to determine whether the Principal, Surety and Agent have specifically performed and fulfilled some or all of the obligations, covenants, terms, conditions and agreements of the Permit and of the Plan.

Within thirty (30) business days of receiving notice from the Obligee that the Principal has defaulted on some or all of the obligations, covenants, terms, conditions and agreements of the permit, the Surety shall either --

- (a) Remedy the default of the Principal to the full satisfaction of the Obligee by a certain date determined by the Obligee or --
(b) Immediately tender to the Agent, or to another party or parties identified by the Obligee in its full and final discretionary authority, the portion of the penal sum that the Obligee determines is due and owing and necessary to remedy the default, such monies to be used to implement the Plan or a similar plan to compensate for any wetland mitigation plan deficiencies as approved by the Obligee. In no circumstance shall such a sum be tendered to the Obligee. Any new party or parties identified by the Obligee under this section shall immediately become an additional surety or sureties to this bond.

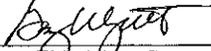
In the event that the Surety fails to respond within thirty (30) business days to the notice of default from the Obligee, or to honor commitments to the full satisfaction of the Obligee under (a) or (b) above of this section, the full penal sum may, at the election of the Obligee, immediately become due and owing and paid to the Agent, or to another party or parties identified by the Obligee in its full and final discretionary authority, such monies to be used to implement the Plan or a similar plan to compensate for any wetland mitigation plan deficiencies as approved by the Obligee. In no circumstance shall the full penal sum be tendered to the Obligee. Any new party or parties identified by the Obligee under this section shall immediately become an additional surety or sureties to this bond.

WITNESS:

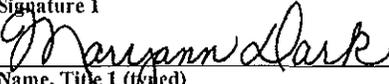
The Obligee, Principal, Surety and Agent have executed this performance bond and have affixed their seals on the date set forth above.

PRINCIPAL

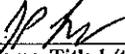
Lowe's Home Centers, Inc.
 Highway 268 East
 North Wilkesboro, NC 28656

Signature 1  (Seal)	Signature 2 (Seal)	Corporate Seal
Name, Title 1 (typed) Gary E. Wyatt Senior Vice President	Name, Title 2 (typed)	

SURETY

Name & Address Travelers Casualty and Surety Company of America One Tower Square, Hartford, CT 06183	State of Incorporation Connecticut	Liability limit \$391,300.49
Signature 1  (Seal)	Signature 2 (Seal)	
Name, Title 1 (typed) Maryann Dark, Attorney-in-Fact	Name, Title 2 (typed)	

AGENT TO THE OBLIGEE

Name & Address Woodlot Alternatives, Inc. 30 Park Drive Topsham, Maine 04086	State of Incorporation Maine	Liability limit
Signature 1  (Seal)	Signature 2 (Seal)	
Name, Title 1 (typed) John P. Lortie, President	Name, Title 2 (typed)	

OBLIGEE

New England District U.S. Army Corps of Engineers 696 Virginia Road Concord, Massachusetts 01742-2751	
Signature 1 (Seal)	Signature 2 (optional) (Seal)
Name, Title 1 (typed)	Name, Title 2 (typed)



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 216724

Certificate No. 000473358

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Maryann Dark, and Judie M. Chisolm

of the City of Charlotte, State of North Carolina, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 23rd day of May, 2006.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 23rd day of May, 2006, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal. My Commission expires the 30th day of June, 2006.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

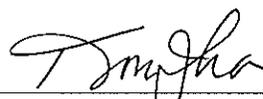
FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori M. Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company 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 in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 7 day of August, 2007.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER


Kori M. Johanson, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.stpaultravelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

SURETY RIDER

To be attached to and form a part of

Bond No. 104 793 323

Type of **Wetland Mitigation Surety Bond**
Bond:

dated
effective **August 07, 2007**
(MONTH-DAY-YEAR)

executed by **LOWE'S HOME CENTERS, INC.**

, as Principal,

(PRINCIPAL)

and by **Travelers Casualty and Surety Company of America**

, as Surety,

(SURETY)

in favor of **New England District, United States Army Corps of Engineers**

(OBLIGEE)

in consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to changing

The bond amount from \$391,300.49 to \$35,000.00.

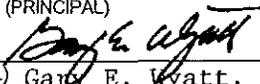
Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

This rider is effective **February 08, 2010**
(MONTH-DAY-YEAR)

Signed and Sealed **February 08, 2010**
(MONTH-DAY-YEAR)

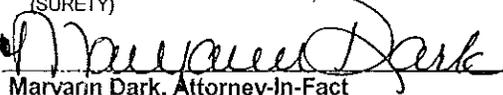
LOWE'S HOME CENTERS, INC.

(PRINCIPAL)

By: 
(PRINCIPAL) **Gary E. Wyatt, Senior Vice President**

Travelers Casualty and Surety Company of America

(SURETY)

By: 
Maryann Dark, Attorney-In-Fact



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 216724

Certificate No. 003371314

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Maryann Dark, and Judie M. Chisolm

of the City of Charlotte, State of North Carolina, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 12th day of May, 2009.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 12th day of May, 2009, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2011.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori M. Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company 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 in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 8th day of February, 2010

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER


Kori M. Johanson, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.