

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re:

Chapter 11

VERTEX ENERGY, INC., *et al.*,<sup>1</sup>

Case No. 24-90507 (CML)

Debtors.

(Jointly Administered)

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Related Dkts. Nos. 425 and 431

**OBJECTION AND RESERVATION OF RIGHTS OF LEXON INSURANCE COMPANY  
TO CONFIRMATION OF THE FIRST AMENDED JOINT CHAPTER 11 PLAN OF  
VERTEX ENERGY, INC. AND ITS DEBTOR AFFILIATES**

Lexon Insurance Company (“Lexon”) by and through its undersigned counsel, Harris Beach PLLC, submits this objection (“Objection”) to the confirmation of the *First Amended Joint Chapter 11 Plan of Vertex Energy, Inc. and its Debtor Affiliates* (the “Plan”) [Dkt. No. 425] and in support thereof respectfully states as follows:

**BACKGROUND**

1. On September 24, 2024 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code<sup>2</sup>.
2. On September 25, 2024, the Court entered an Order [Dkt. No. 39] authorizing the joint administration and procedural consolidation of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b).
3. The Debtors are operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the

<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street, Suite 250, Houston, Texas 77058.

<sup>2</sup> Capitalized terms not defined herein are defined in the Plan.



appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

4. Vertex was founded in 2001 and began as a used motor oil supplier based in Houston, Texas supplying used motor oil to third parties in the Gulf Coast region. Over the next twenty-three years, Vertex retained its headquarters in Houston but grew to become a leading energy transition company and marketer of high-quality refined products. Vertex currently has three (3) principal business segments: (a) conventional refining, (b) used motor oil operations, and (c) renewable fuel refining.

5. The Debtors assert that these Chapter 11 Cases were commenced to implement a comprehensive restructuring through the Plan and a Restructuring Support Agreement. The Debtors were also continuing a marketing process for some or all of their assets at the same time. Ultimately, the Debtors hope to reach the effective date of the Plan through either (a) a standalone recapitalization of the Company's balance sheet; or (b) following a sale of all, substantially all, or any portion of the Debtors' assets through one or more sales. Upon information and belief, the Debtors have abandoned the marketing process for the sale of the assets and have elected to proceed with the recapitalization of the Company's balance sheet.

6. The Debtors have obtained approximately eight (8) surety bonds (individually, a "Bond" and collectively, the "Bonds") from Lexon listing various municipalities and governmental entities (the "Obligees") as Obligees under the Bonds with a total penal sum of \$176,864.00. A spreadsheet identifying the Bonds, the obligee, and the amount of each Bond is attached hereto as **Exhibit A**.

7. As partial consideration for the execution of the Bonds, on or about August 13, 2010, Lexon and Debtor H&H Oil, L.P., as well as other entities and individuals, entered into a General

Agreement of Indemnity (the “First Indemnity Agreement”), under which Debtor H&H Oil, L.P. and “all subsidiaries and affiliates now owned and/or hereinafter created, controlled, managed or acquired” (collectively, “First Indemnitors”) agreed to, *inter alia*, indemnify and hold Lexon harmless from every claim that the Sureties may pay as a result of issuing the Bonds, including but not limited to, any loss adjustment expenses.

8. As further partial consideration for the execution of the Bonds, on August 20, 2014, Lexon and Debtors Vertex Energy, Inc., H&H Oil, LP and Vertex Energy, LP, Vertex Recovery, LP entered into a General Indemnity Agreement (the “Second Indemnity Agreement”) (the First Indemnity Agreement and Second Indemnity Agreement, collectively, the “Indemnity Agreements”), under which Debtors Vertex Energy, Inc., H&H Oil, LP and Vertex Energy, LP, Vertex Recovery, LP and all their “subsidiaries and affiliates now owned and/or hereafter crated, controlled, managed or acquired” (collectively, the “Second Indemnitors”) (the First Indemnitors and Second Indemnitors, collectively, the “Indemnitors”) agreed to, *inter alia*, indemnify and hold Lexon harmless from every claim that the Sureties may pay as a result of issuing the Bonds, including but not limited to, any loss adjustment expenses. Copies of the Indemnity Agreements are attached hereto as **Exhibit B**.

9. The surety relationship involves three (3) parties: (a) the principal, who is the primary obligor – Debtors; (b) the obligee – the party to whom the principal and surety owe the duty – the Obligee; and (c) the surety – who is the secondary obligator – Lexon.

10. Notably, the principal retains the primary duty to perform its obligations under the bonds. The principal cannot simply hand over its obligations for the surety to perform.

11. Importantly, on September 24, 2024, the Debtors filed the *Debtors’ Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Continue Insurance Coverage*

*Entered into Prepetition and Satisfy Prepetition Obligations Related Thereto, (B) Renew, Amend, Supplement, Extend, Purchase and Enter into New Insurance Policies, (C) Honor Prepetition Payment Arrangements, (D) Continue to Pay Brokerage Fees, and € Maintain the Surety Bond Program and (II) Granting Related Relief* (the “Surety Bond Motion”) [Dkt. No. 9] recognizing the pivotal role the Bonds play in the Debtors’ business operations.

12. Specifically, the Debtors acknowledged that the Bonds are issued in favor of various federal, state, and industry regulatory agencies to guarantee certain obligations related to various state and local customs and border tax obligations, and that the “[f]ailure to provide, maintain, or timely replace the Surety Bonds may prevent the Debtors from undertaking essential functions related to their operations and fulfilling, among other things, their public agency and governmental unit obligations during these chapter 11 cases.” *See* Surety Bond Motion, ¶ 16.

13. The Bonds are “essential” to the Debtors’ ongoing business operations and to preserve the value of the Debtors’ estates. *See id.* at ¶¶ 16-19.

14. On September 25, 2024, the Bankruptcy Court entered the Order approving the Surety Bond Motion [Dkt. No. 58].

15. On September 25, 2024, the Debtors filed the *Disclosure Statement for the Joint Chapter 11 Plan of Vertex Energy, Inc. and Its Debtor Affiliates* (as may be modified, amended, or supplemented from time to time, “Disclosure Statement”) [Dkt. No. 22] and Joint Chapter 11 Plan of Vertex Energy, Inc. and its Debtor Affiliates (the “Original Plan”) [Dkt. No. 21].

16. On October 9, 2024, the Debtors filed the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* (the “Assumption Notice”) [Dkt. No. 158]. The Assumption Notice improperly includes the Bonds as contracts which can be assumed and/or assigned and a cure amount of \$0.00.

17. On October 31, 2024, Lexon filed objections to the approval of the Disclosure Statement and the Assumption Notice [Dkt. Nos. 343 and 344].

18. The Debtors have informed counsel for Lexon that the Bonds will be removed from the Assumption Notice. Additionally, at the hearing relating to the approval of the Disclosure Statement, Debtors' counsel advised the Court that the Lexon Disclosure Statement objection would be carried through to the confirmation hearing as the objections raised by Lexon were more Plan confirmation objections than Disclosure Statement objections.

19. On November 18, 2024, this Court entered an Order approving the adequacy of the Disclosure Statement, among other things [Dkt. No. 431] (the "Disclosure Statement Order").

20. The Disclosure Statement Order set the deadline to object to confirmation to the Plan as December 18, 2024 and scheduled the confirmation hearing for December 20, 2024.

21. Notably, nowhere in the Disclosure Statement nor Plan do the Debtors reference Lexon, the Bonds or the Indemnity Agreements, despite acknowledging the importance of the Bonds in the Surety Bond Motion.

22. Prior to the filing of this Objection, counsel for Lexon and Liberty Mutual Surety sent Debtors' counsel language to be included in the Confirmation Order to resolve this Objection. The parties are still discussing the proposed language sent by Lexon and Liberty Mutual Surety.

### **ARGUMENT**

18. Lexon objects to the confirmation of the Plan because it does not reference how the Bonds or Indemnity Agreements are to be treated. Accordingly, it is not clear whether the Plan contemplates treatment of the Bonds and Indemnity Agreements in violation of the Bankruptcy Code, state law, other federal law and/or common law.

19. The Debtors make clear in the Disclosure Statement and Plan that they intend to sell their assets or restructure. The Debtors also acknowledge the importance of the Bonds since the Debtors are required by certain statutes, rules, and regulations to provide surety bonds to certain governmental units and other public agencies, to secure the Debtors' payment, performance or completion of certain obligations and the "[f]ailure to provide, maintain, or timely replace the Surety Bonds may prevent the Debtors from undertaking essential functions related to their operations and fulfilling, among other things, their public agency and governmental unit obligations during these chapter 11 cases." *See* Surety Bond Motion. However, despite acknowledging the critical importance of the Bonds to their business operations in the Surety Bond Motion, the Disclosure Statement and Plan fail to address the fact that the Bonds need to be replaced, released, or reaffirmed and ratified by the Reorganized Debtors or purchasers of the Debtors' assets<sup>3</sup>.

20. The Bonds are not property of the Debtors' bankruptcy estates. *See In re Lockard*, 884 F.2d 1171, 1177 (9th Cir. 1989) (a contractor does not have a property interest in surety bond issued by third-party to guarantee its performance)(citing cases); *In re Petroleum Piping Contractors*, 211 BR 290, 311-12.(Bankr. N.D. Ind. 1997) (a payment bond given by a surety for the bankruptcy debtor to a project owner is not property of the estate); *In re McLean Trucking Co.*, 74 B.R. 820, 827 (Bankr. W.D. N.C. 1987) (surety bond for workers' compensation claims are not an asset of the estate).

21. A surety bond is not insurance, it is a credit agreement. *Pearlman v. Reliance Insurance Co.*, 371 U.S. 132, 139 n.19 (1962) ("suretyship is not insurance"); *Buck Run Baptist Church v. Cumberland Surety Insurance Co., Inc.*, 983 S.W. 2d 501, 504 (Ky. 1998) ("a contract of suretyship is not a contract of insurance."). As referenced above, the surety relationship involves three (3) separate parties, including the principal, who is the primary obligor, the obligee, the party

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<sup>3</sup> It does not appear that there will be a purchaser of the Debtors' assets.

to whom the principal and surety owe a duty, and the surety, the secondary obligor. *Galligher*, The Law of Surety § 1 (American Bar Association, Tort and Insurance Practice Section, 1993). The Kentucky Supreme Court distinguished insurance policies and surety bonds as follows: With an insurance policy, “[t]he insurer undertakes the obligation based on an evaluation of the market’s wide risks and losses. An insurer expects losses, and they are actually predicted... [i]n contrast, a surety bond is written based on an evaluation of a particular contractor and the capacity to perform a given contract. Compensation for the issuance of a surety bond is based on fact-specific evaluation of the risks involved in each individual case. No losses are expected.” *Buck Run Baptist Church*, 983 S.W. 2d at 504-505. Far different from insurance, a surety bond is more like a credit transaction, and “surety bonds, issued by compensated sureties are meant to function as credit accommodations which the surety anticipates no loss.” Armand Shahinian, *The General Agreement of Indemnity*, in *The Law of Suretyship* 487 (Edward G. Galligher ed. 2d ed. 2000). Under the principles of surety law, the principal is an indemnitor to the surety. *See Safeco Ins. Co. of America v. Mountaineer Grading Co.*, Civil Action No. 2:10-cv-01301, 2012 WL 830158, at \*9 (S.D.W.Va. Mar. 09, 2012) (“Generally, the common law provides that a surety is entitled to indemnification from the principal for amounts paid pursuant to a bond. ... However, a surety may rely on this implicit indemnification obligation only when there is no express indemnification contract.”)(citing *Perkins v. Hall*, 123 W. Va. 707, 17 S.E.2d 795, 801 (W.Va.1941); Richard A. Lord, *Williston on Contracts* § 61:59 (4th ed. 2011); *Fidelity & Deposit Co. of Md. v. Bristol Steel & Iron Works, Inc.*, 722 F.2d 1160, 1163 (4th Cir. 1983); 18 *Michie's Jurisprudence of Virginia and West Virginia*, Suretyship § 30 (1996)).

22. Here, it appears that the Debtors are improperly treating the Bonds as executory contracts that can be assumed and assigned based on the inclusion of the Bonds in the Assumption

Notice (despite the fact that Debtors' counsel advised the Bonds would be removed). However, even if the Bonds were removed from the Assumption Notice, it is still not clear whether the Debtors are treating the Bonds as executory contracts that can be assumed or assigned under the Plan or not. There is nothing in the Disclosure Statement or Plan to indicate how the Bonds are treated. To the extent the Debtors are attempting to treat the Bonds and Indemnity Agreements as executory contracts that can be assumed and/or assigned, the Debtors cannot do so. The Bonds and Indemnity Agreements cannot be transferred, sold, assumed, and/or assigned because they are financial accommodations. *See In re James River Coal Co.*, 2006 WL 2548456 (Bankr. M.D. Tenn. 2006); *In re All Phase Electrical Contracting, Inc.*, 409 B.R. 272, 275 (Bankr. D. Conn. 2009); *see also* 11 U.S.C. §§ 365(c)(2) and 365(e)(2)(B). As the Bonds are specific to the individual Debtor named as principal on each Bond and are financial accommodations, they cannot be transferred to the extent any such transfer may be contemplated under the Plan and/or Assumption Notice.

23. Although the Bankruptcy Code does not define "financial accommodation," courts have held that the obligation to pay money on the obligation of another, such as the Bonds in this case, are financial accommodations. *See, e.g., In re Adana Mortg. Bankers, Inc.*, 12 B.R. 977, 987 (Bankr. N.D. Ga. 1980). As to matters of financial accommodation, as discussed above, prior to issuing bonds a surety's underwriters go through a careful and thorough investigation of the financial status of the entities seeking the bonds. *See generally, In re Wegner Farms Co.*, 49 B.R. 440, 444 (Bankr. N.D. Iowa 1985) ("[T]he issuance of a bond is intimately connected to debtor's financial integrity...").

24. Sections 365(c)(2) and Section 365(e)(2)(B) of the Bankruptcy Code prohibit the assumption of financial accommodations, such as the Bonds, by a debtor in bankruptcy because they represent obligations to pay money based on the obligations of another. *See In re Thomas B.*



*Hamilton Corp.*, 969 F.2d 1013, 1019 (11th Cir. 1992); *In re Wegner Farms*, 49 B.R. 440, 444 (Bankr. N.D. Iowa 1985) (in relation to surety bonds as financial accommodations only); *In re Edwards Mobile Home Sales, Inc.*, 119 B.R. 857, 859 (Bankr. M.D. Fla. 1990).

25. As a result, the Bonds cannot simply be transferred without the express consent of Lexon. A transfer to any entity of the Debtors' assets, whether a purchaser or the Reorganized Debtors, does not create any rights to acquire or assume any of the Bonds without the consent of Lexon. To the extent the Debtors are proposing or considering assuming and/or assigning the Bonds, it would violate 11 U.S.C. § 365(c)(2).

26. To the extent Lexon does consent to the assumption and/or reaffirmation of the Bonds, Lexon requires new indemnity agreements to be executed by the applicable parties since, as discussed previously, the Bonds are specific to each principal under the Bonds and the surety's underwriters carefully investigate the financial status of the entities seeking the Bonds. The new entities would need to undergo the underwriting process. The new entities would also need to agree to indemnify Lexon if the Bonds are to be reaffirmed or replaced by new entities by executing new indemnity agreements (i.e. a purchaser or the Reorganized Debtors).

27. Lastly, by this Objection, Lexon is advising that, in the absence of an agreement with the Debtors and/or Reorganized Debtors, it does not intend to release any Indemnitors or third-party, as they should not be afforded the benefit of a discharge injunction.

28. Accordingly, the Plan cannot be confirmed.

29. To resolve Lexon's objections to the Plan, Lexon proposes the following language be included in the Confirmation Order:

Notwithstanding any other provisions of the Plan, this Confirmation Order, any Plan Supplement or any other order of the Court, on the Effective Date, all rights and obligations of Liberty Mutual Insurance Company and Lexon Insurance Company (collectively, the “Sureties”, individually, a “Surety”) related to the (i) surety bonds of any kind issued by the Sureties and maintained in the ordinary course of business, (ii) payment and/or indemnity agreements between the Debtors and the Sureties, setting forth the Sureties’ rights against the Debtors, and the Debtors’ obligations to pay and indemnify the Sureties from any loss, cost, or expense that the Sureties may incur, in each case, on account of the issuance of any bonds on behalf of the Debtors, (iii) the Sureties’ collateral agreements, if any, governing collateral in connection with the Debtors’ bonds, including but not limited to, as applicable, control agreements, trust agreements, deposit accounts, letters of credit and proceeds therefrom and/or (iv) ordinary course premium payments to the Sureties for the Debtors’ bonds (collectively, the “Bond Program,” and the Debtors’ obligations arising therefrom, the “Bond Obligations”) shall be reaffirmed and ratified by the applicable Reorganized Debtors and continue in full force and effect according to their terms and applicable non-bankruptcy law and are not discharged or released by the Plan in any way. For the avoidance of any doubt, nothing in the Plan, this Order, any Plan Supplement, or other agreements between the Debtors and third-parties, including, without limitation, any exculpation, release, injunction, exclusions and discharge provisions of the Plan, including, without limitation, any of those provisions contained in Article IX of the Plan, shall bar, alter, limit, impair, release or modify or enjoin any of the Bond Obligations. The Sureties are deemed to have opted out of any release, discharge, exculpation and injunction provisions of the Plan that apply or could be interested to apply to the Sureties, their rights or claims in any response, and are otherwise not Releasing Parties under the Plan. Further, nothing in this Confirmation Order, the Plan, the Plan Supplement or any other documents including in or related thereto, shall authorize or permit the substitution of any principal under any of the surety bonds without the applicable Surety’s consent.

The Bond Program and all Bond Obligations related thereto shall be treated by the Reorganized Debtors and the Sureties in the ordinary course of business as if these Chapter 11 Cases had not been commenced; and in furtherance thereof, in the event that any of the Bond Obligations cease to be in effect upon the Effective Date for reasons other than their expiration or termination in accordance with the terms of the applicable agreements, the Reorganized Debtors and the Sureties shall execute the documents that are necessary to reinstitute such Surety Bond Obligations, including, without limitation, the indemnity obligations thereunder, as such Surety Bond Obligations were in effect immediately prior to the Effective Date; provided, however, that nothing in the foregoing shall be deemed to alter, limit, modify or expand any such Bond Obligations. The Sureties shall have no obligation to continue in place any existing surety bonds and/or renew any existing surety bonds or issue any new bonds on behalf of the Debtors, Reorganized Debtors and/or Plan Administrator. For the avoidance of any doubt, with a reservation of rights to all parties, and only to the extent applicable, all agreements related to the Bond Obligations are assumed by the Debtors and the Reorganized Debtors pursuant to

section 365 of the Bankruptcy Code upon the Effective Date. Finally, as part of the ordinary course of business of the Bond Program, the Debtors will pay any unpaid premiums and loss adjustment expenses that are due and owing to the Sureties on the Effective Date prior or contemporaneously thereto. Nothing in the Plan or these foregoing paragraphs shall affect in any way the Sureties' rights against any non-debtor, or any non-debtor's rights against the Sureties, including under the Bond Program or with regard to the Bond Obligations.

### **JOINDER**

30. In the event any other surety files an objection to the confirmation of the Plan, Lexon hereby joins, adopts and relies upon the arguments made in those objections to the extent they do not conflict with the factual assertions and arguments set forth in the instant Objection.

### **RESERVATION OF RIGHTS**

31. Nothing herein shall be considered a waiver of any rights or claims that Lexon might have against the Debtors and any Indemnitors. Lexon reserves the right to amend and supplement this Objection and/or join in any other statements and/or objections related to the relief requested by the Debtors. The submission of this Objection by Lexon is not intended as, and shall not be construed as:

- a. Lexon's admission of any liability or waiver of any defenses or limitations of any rights of Lexon with respect to any claims against one or more of the Bonds;
- b. Lexon's waiver or release of any rights to exoneration it may have against any one with respect to its obligations pursuant to the Bonds;
- c. Lexon's waiver or release of its right to be subrogated to the rights of one or more parties paid pursuant to the Bonds;
- d. An election of remedies; or

- e. Consent to the determination of Debtors' liability to Lexon by a particular Court, including, without limitations, the Bankruptcy Court.

**CONCLUSION**

Based on the foregoing, Lexon respectfully requests the Court sustain the Objection and deny confirmation of the Plan.

Dated: December 18, 2024

Respectfully submitted,

/s/ Brian D. Roy

Brian D. Roy, Esq. (*admitted pro hac vice*)

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 18, 2024, I electronically filed the foregoing with the Clerk of Court by using the Case Management/Electronic Case Filing (“CM/ECF”) system which will send a notice of electronic filing.

/s/ Brian D. Roy  
Brian D. Roy, Esq.

# Exhibit A

BOND #	ENTITY	BOND AMOUNT	OBLIGEE	INITIAL EFFECTIVE DATE
1055263	VERTEX RECOVERY, LP	\$8,200.00	TCEQ	4/2/2010
1055477	VERTEX RECOVERY, LP AND H&H OIL, LP	\$4,100.00	TCEQ	7/9/2010
1055569	VERTEX ENERGY, LP & VERTEX RECOVERY, LP	\$26,000.00	TCEQ	8/17/2010
1055570	H&H OIL, LP	\$25,420.00	TCEQ	8/17/2010
1055671	CEDAR MARINE TERMINALS, LP	\$30,000.00	TCEQ	9/15/2010
1084414	VERTEX ENERGY, INC DBA H&H OIL, LP	\$4,100.00	TCEQ	6/11/2013
1148328	VERTEX RECOVERY LP DBA NICKO RECYCLING	\$20,500.00	TCEQ	4/21/2017
LICX1293133	VERTEX REFINING, OH LLC	\$58,544.00	CITY OF COLUMBUS	4/26/2021

# Exhibit B



**Bond Safeguard Insurance Company  
Lexon Insurance Company  
Lombard, Illinois**

**GENERAL AGREEMENT OF INDEMNITY**

This Agreement entered into by and between the undersigned, herein called the Indemnitors, and Bond Safeguard Insurance Company, Illinois, and for Lexon Insurance Company, Texas, with Executive Offices in Lombard, Illinois hereinafter called the Company, witnesseth:

WHEREAS, in the transaction of business, certain bonds, undertakings and other writings obligatory in the nature of a bond have heretofore been, and may hereafter be, required by, for or on behalf of Indemnitors or any one or more of the parties included in the designation Indemnitors, and application has been made and will hereafter be made to the company to execute such bonds and as a prerequisite to the execution of such bond or bonds, the Company requires complete indemnification.

NOW, THEREFORE, in consideration of the premises, and the payment by the Company of the sum of One (\$1.00) Dollar to each of the Indemnitors, receipt whereof is hereby acknowledged, and for other good and valuable consideration, the Indemnitors do, for themselves, their heirs, executors, administrators and assigns, jointly and severally, agree with the Company as follows:

1. The Indemnitors will pay to the Company, at its Executive Offices in Lombard, Illinois, premiums and charges at the rates, and at the times specified in respect to each such bond in the Company's schedule of rates, which, with any additions, or amendments thereto, is by reference made a part hereof, and will continue to pay the same where such premium or charge is annual, until the Company shall be discharged and released from any and all liability and responsibility upon and from each such bond or matters arising there from, and until the Indemnitors shall deliver to the Company at its Executive Offices in Lombard, Illinois, competent written evidence satisfactory to the Company of its discharge from all liability on such bond or bonds.

2. The Indemnitors will indemnify and save the Company harmless from and against every claim, demand, liability, cost, charge, suit, judgment and expense which the Company may pay or incur in consequence of having executed, or procured the execution of, such bonds, or any renewals or continuations thereof or substitutes therefore, including fees of attorneys, whether on salary, retainer or otherwise, and the expense of procuring, or attempting to procure, release from liability, or in bringing suit to enforce the obligation of any of the Indemnitors under this Agreement. In the event of payment by the Company, the Indemnitors agree to accept the voucher or other evidence of such payment as prima facie evidence of the propriety thereof, and of the Indemnitor's liability therefore to the Company.

3. If the Company shall set up a reserve to cover any claim, suit or judgment under any such bond, the Indemnitors will, immediately upon demand, deposit with the Company a sum of money equal to such reserve, such sum to be held by the Company as collateral security on such bond, and such sum and any other money or property which shall have been, or shall hereafter be, pledged as collateral security on any such bond shall, unless otherwise agreed in writing by the Company, be available, in the discretion of the Company, as collateral security on any other or all bonds coming within the scope of this Agreement.

4. The Indemnitors immediately upon becoming aware of any demand, notice, or proceeding preliminary to determining or fixing any liability, with which the Company may be subsequently charged under any such bond, shall notify the Company thereof in writing at its Executive Offices in Lombard, Illinois.

5. The Company shall have the exclusive right to determine for itself and the Indemnitors whether any claim or suit brought against the Company or the Indemnitors upon any such bond shall be settled or defended and its decision shall be binding and conclusive upon the Indemnitors.

6. If such bond be given in connection with a contract, the Company is hereby authorized, but not required, to consent to any change in the contract or in the plans or specifications relating thereto; to make or guarantee advances or loans for the purposes of the contract without the necessity of seeing to the application thereof, it being understood that the amount of all such advances or loans, unless repaid with legal interest by the Indemnitors to the Company when due, shall be conclusively presumed to be a loss hereunder; in the event of the abandonment, forfeiture or breach of the contract, or the

breach of any bond given in connection therewith, or the failure, neglect or refusal to pay for labor or materials used in the prosecution of the contract, to take possession of the work under the contract and, at the expense of the Indemnitors, to complete the contract, or cause, or consent, to the completion thereof. The Indemnitors hereby assign, transfer, and set over to the Company (to be effective as of the date of any such bond, but only in the event of a default as aforesaid), all of their rights under the contract including their right, title and interest in and to all subcontracts let in connection therewith; all machinery, plant, equipment, tools and materials which shall be upon the site of the work or elsewhere for the purposes of the contract, including all materials ordered for the contract, and any and all sums due under the contract at the time of such abandonment, forfeiture, breach, failure, neglect or refusal, or which may thereafter become due, and the Indemnitors hereby authorize the Company to endorse in the name of the payee, and to collect any check, draft, warrant or other instrument made or issued in payment of any such sum, and to disburse the proceeds thereof.

7. That it shall not be necessary for the Company to give the Indemnitors, or any one or more of them, notice of the execution of any such bonds, nor of any fact or information coming to the notice or knowledge of the Company affecting its rights or liabilities, or the rights or liabilities of the Indemnitors under any such bond executed by it, notice of all such being hereby expressly waived.

8. In the event of any claim or demand being made by the Company against the Indemnitors, or any one or more of the parties so designated, by reason of the execution of a bond or bonds, the Company is hereby expressly authorized to settle with any one or more of the Indemnitors individually, and without reference to the others, and such settlement or composition shall not affect the liability of any of the others, and we hereby expressly waive the right to be discharged and released by reason of the release of one or more of the joint debtors, and hereby consent to any settlement or composition that may hereafter be made.

9. The Company at its option may decline to execute or participate in, or procure the execution of, any such bonds without impairing the validity of this General Agreement of Indemnity.

10. If the Company procures the execution of such bonds by other companies, or executes such bonds with co-sureties, or reinsures any portions of such bonds with reinsuring companies, then all the terms and conditions of this Agreement shall apply and operate for the benefit of such other companies, co-sureties, and re-insurers as their interests may appear.

11. The liability of the Indemnitors hereunder shall not be affected by the failure of the Principal to sign any such bond, nor by any claim that other indemnity or security was to have been obtained, nor by the release of any indemnity, or the return or exchange of any collateral that may have been obtained and if any party signing this Agreement is not bound for any reason, this Agreement shall still be binding upon each and every other party.

12. This Agreement may be terminated by the Indemnitors, or any one or more of the parties so designated, upon written notice to the Company of not less than ten (10) days, but any such notice of termination shall not operate to modify, bar or discharge the liability of any party hereto, upon or by reason of any and all such obligations that may be then in force.

13. Indemnitors agree that their liability shall be construed as the liability of a compensated surety, as broadly as the liability of the Company is construed toward its obligee.

14. The word Indemnitors, or personal pronouns used to refer to said word, shall apply regardless of number or gender, and to individuals, partnerships or corporations, as the circumstances require.

15. That no change or modification of or in the terms of this agreement shall be effective unless such change or modification is in writing and signed by the President, a Vice-President, a Secretary, or an Assistant Secretary of the Company.

16. That this Agreement shall constitute a security agreement to the Company, as a surety and also a financing statement, both in accordance with the provisions of the Uniform Commercial Code of every jurisdiction wherein such Code is in effect and may be so used by the Company without in any way abrogating, restricting or limiting the rights of the Company under this Agreement or under law, or in equity.

17. At any time, and until such time as the liability of the Company under any and all said Bonds is terminated, the Company shall have the right to reasonable access to the books, records, and accounts of the Indemnitor and Indemnitors; and any bank depository, material man, supply house, or other person, firm, or corporation when requested by the Company is hereby authorized to furnish the Company any information requested including, but not limited to, the status of the work under contracts being performed by the Indemnitor, the condition of the performance of such contracts and payments of accounts.

18. In the event of any breach, delay or default asserted by the obligee in any said Bonds, or the Indemnitors have suspended or ceased work on any contract or contracts covered by any said Bonds, or failed to pay obligations incurred in connection therewith, or in the event of the death, disappearance, Indemnitor's conviction for a felony, imprisonment, incompetence, insolvency, or bankruptcy of the Indemnitors, or the appointment of a receiver or trustee for the Indemnitors, or the property of the Indemnitors, or in the event of an assignment for the benefit of creditors of the Indemnitors, or if any action is taken by or against the Indemnitors under or by virtue of the National Bankruptcy Act, or should reorganization or arrangement proceedings be filed by or against the Indemnitors under said Act, or if any action is taken by or against the Indemnitors under the insolvency laws of any state, possession, or territory of the United States, the Surety shall have the right, at its option and in its sole discretion, and is hereby authorized, with or without exercising any other right or option conferred upon it by law or in the terms of this Agreement, to take possession of any part or all of the work under any contract or contracts covered by any said Bonds, and at the expense of the Indemnitors and Indemnitors to complete or arrange for the completion of the same, and the Indemnitors and Indemnitors shall promptly upon demand pay to the Surety all losses, and expenses so incurred.

19. THE INDEMNITORS HEREBY ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO COVER ANY BONDS (WHETHER OR NOT COVERED BY ANY APPLICATION SIGNED BY ANY ONE OR MORE OF THE INDEMNITORS— SUCH APPLICATION TO BE CONSIDERED BETWEEN THE PARTIES HERETO AS MERELY SUPPLEMENTARY TO THIS GENERAL AGREEMENT OF INDEMNITY) HERETOFORE OR HEREAFTER EXECUTED BY THE COMPANY ON BEHALF OF THE INDEMNITORS, OR ANY ONE OF THEM (WHETHER CONTRACTING ALONE OR AS A JOINT OR CO-ADVENTURER), FROM TIME TO TIME, AND OVER AN INDEFINITE PERIOD OF YEARS, UNTIL THIS AGREEMENT SHALL BE CANCELED IN ACCORDANCE WITH THE TERMS HEREOF.

WE HAVE READ THIS GENERAL AGREEMENT OF INDEMNITY CAREFULLY. THERE ARE NO SEPARATE AGREEMENTS OR UNDERSTANDINGS WHICH IN ANY WAY LESSEN OUR OBLIGATIONS AS ABOVE SET FORTH.

IN TESTIMONY WHEREOF, the undersigned Indemnitors agree that the effective date of this agreement of indemnity is the 13<sup>th</sup> day of August, 2010.

Addresses:

1331 GEMINI, SUITE 250  
HOUSTON, TEXAS 77058

1331 GEMINI, SUITE 250  
HOUSTON, TEXAS 77058

1331 GEMINI, SUITE 250  
HOUSTON, TEXAS 77058

1331 GEMINI, SUITE 250  
HOUSTON, TEXAS 77058

H&H OIL, LP and all subsidiaries and affiliates  
now owned and/or hereinafter created, controlled,  
managed or acquired.

By: X B. P. L. + (L.S.)

VERTEX RECOVERY, LP  
BENJAMIN COWART, PARTNER

VTX INC (GENERAL PARTNER)

By: X B. P. L. + (L.S.)

BENJAMIN COWART, PARTNER

VERTEX HOLDINGS and all subsidiaries and affiliates  
now owned and/or hereinafter created, controlled,  
managed or acquired.

By: X B. P. L. + (L.S.)

BENJAMIN COWART, PARTNER

VERTEX ENERGY, LP and all subsidiaries and affiliates  
now owned and/or hereinafter created, controlled,  
managed or acquired.

By: X B. P. L. + (L.S.)

BENJAMIN COWART, MANAGING PARTNER

Addresses:

[Redacted Address]

By: *B. P. Cowart* (L.S.)  
Benjamin P. Cowart, individually and all subsidiaries  
and affiliates now owned and/or hereinafter created,  
controlled, managed or acquired.

[Redacted Address]

By: *Shelley T. Cowart* (L.S.)  
Shelley T. Cowart, individually and all subsidiaries  
and affiliates now owned and/or hereinafter created,  
controlled, managed or acquired.

\_\_\_\_\_

By: \_\_\_\_\_ (L.S.)  
Name, Individually

\_\_\_\_\_

By: \_\_\_\_\_ (L.S.)  
Name, Individually

\_\_\_\_\_

By: \_\_\_\_\_ (L.S.)  
Name, Individually

\_\_\_\_\_

By: \_\_\_\_\_ (L.S.)  
Name, Individually

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By: \_\_\_\_\_ (L.S.)  
Name, Individually

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By: \_\_\_\_\_ (L.S.)  
Name, Individually

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By: \_\_\_\_\_ (L.S.)  
Name, Individually

\_\_\_\_\_

By: \_\_\_\_\_ (L.S.)  
Name, Individually

\_\_\_\_\_

By: \_\_\_\_\_ (L.S.)  
Name, Individually

\_\_\_\_\_

By: \_\_\_\_\_ (L.S.)  
Name, Individually

IMPORTANT: COMPLETE PHYSICAL ADDRESS INCLUDING ZIP CODE MUST BE GIVEN FOR ALL INDEMNITORS.  
INDIVIDUAL INDEMNITORS MUST FURNISH ADDRESS OF PRIMARY RESIDENCE.

ORIGINAL



**LEXON SURETY  
GROUP**

Lexon Insurance Company  
Bond Safeguard Insurance Company  
Boston Indemnity Company  
Ironshore Specialty Insurance Company  
Ironshore Indemnity Inc.

## **GENERAL AGREEMENT OF INDEMNITY**

This General Agreement of Indemnity, hereinafter called "Agreement", entered into by and between the undersigned, hereinafter called the "Indemnitors", and Lexon Insurance Company, Bond Safeguard Insurance Company, Boston Indemnity Company, Ironshore Specialty Insurance Company, and/or Ironshore Indemnity Inc., hereinafter called the "Surety".

### **WITNESSETH:**

WHEREAS, in the transaction of business, certain Bonds, undertakings and other writings obligatory in the nature of a Bond have heretofore been, and/or may hereafter be, required by, for or on behalf of the Indemnitors or any one or more of the parties included in the designation "Indemnitors", and application has been made and will hereafter be made to the Surety to execute such Bonds, and as a prerequisite to the execution of such Bond or Bonds, the Surety requires complete indemnification.

NOW, THEREFORE, in consideration of the premises, the execution and delivery of one or more Bonds or its refraining from attempting to cancel the same by the Surety, and for other good and valuable consideration, the Indemnitors do, for themselves, their heirs, successors, executors, administrators and assigns, jointly and severally, agree with the Surety as follows:

1. **PREMIUM.** The Indemnitors shall pay to the Surety all premiums and charges of the Surety for all Bonds issued and shall continue to pay the same where such premium or charge is annual, semi-annual or pro-rata, until the Surety shall be discharged and released from any and all liability and responsibility upon and from each such Bond or matters arising therefrom, and until the Indemnitors shall deliver to the Surety, competent written evidence satisfactory to the Surety of its discharge from all liability on such Bond or Bonds.

2. **INDEMNIFICATION.** The Indemnitors shall jointly, severally and/or collectively indemnify, exonerate and save the Surety harmless from and against any and all liability, loss and expense of whatsoever kind and nature, including, but not limited to, every claim, demand, liability, court costs, damages, attorneys' fees, whether on salary, retainer or otherwise, and interest which the Surety may pay or incur by reason of having executed, or procured the execution of, any Bond or Bonds for any entity as requested by the Indemnitors or their representatives, or any renewals or continuations thereof or substitutes therefore, and the expense of procuring, or attempting to procure, release from liability, or in bringing suit to enforce the obligation of any of the Indemnitors under this Agreement. Amounts due to the Surety shall be payable upon demand, whether or not the Surety shall have made any payment therefor or established a reserve. In accounting by the Surety for payments, the Indemnitors agree that the Surety shall be able to charge for any and all disbursements made by it in good faith under the belief that it is or was necessary or expedient to make such disbursements, whether or not such liability, expediency or necessity existed. In the event of payment by the Surety, the Indemnitors agree to accept the voucher(s) or any other evidence of such payment as prima facie evidence of the propriety thereof, and of the Indemnitor's liability to the Surety under this Agreement.

3. **COLLATERAL.** The Indemnitors will deposit with the Surety, as collateral security, immediately upon demand, a sum of money, at the option of the Surety, equal to (i) the liability of the Surety, if established, (ii) the liability asserted against the Surety, (iii) the reserve established by the Surety, or any increase thereof, or (iv) for any other reason whatsoever to cover any and all liability, loss, expense or possible liability for any loss or expense for which the Indemnitors may be obligated to indemnify the Surety under the terms of this Agreement. The Surety shall have the right to use the deposit, or any part thereof in payment or settlement of any liability, loss, and/or debt incurred to the Surety, and expense or premiums for which the Indemnitors are or would be obligated to indemnify the Surety under the terms of this Agreement. The Surety shall have no obligation to invest, or to provide a return on the deposit. Additionally, the Indemnitors expressly and specifically agree that the Surety, in its sole discretion and for any reason, may by written demand require the Indemnitors to secure within forty (40) days the full and complete discharge of any and all Bond(s) ("Discharge Demand"). Within forty-five (45) days of the Discharge Demand the Indemnitors shall provide to the Surety collateral in the amount representing the total of any undischarged liability under the Bond(s) as determined by the Surety in its sole discretion. The Surety's demand for collateral or for indemnification covered by this Agreement shall be sufficient if sent by registered or certified mail, facsimile transmission, personal service or via electronic mail to the Indemnitors, or any one of them, at the addresses stated herein, or at the addresses of the Indemnitors last known to the Surety, regardless of whether the



demand is actually received. The Indemnitors acknowledge that the failure to deposit the sums demanded as collateral security shall cause irreparable harm to the Surety for which the Surety has no adequate remedy at law. The Indemnitors agree that the Surety shall be entitled to injunctive relief for specific performance of the obligation of the Indemnitors to deposit with the Surety the sum demanded and hereby waive any claims or defenses to the contrary.

**4. ASSIGNMENT.** With respect to each Bond executed by the Surety, the Indemnitors hereby assign, transfer, and convey to the Surety as collateral to secure the obligations in any and all paragraphs of this Agreement and any other indebtedness and liabilities of the Indemnitors to the Surety, whether heretofore or hereafter incurred, but subject to the trust herein created: (i) all monies due or to become due to the Indemnitors under or as a result of the contract covered by the Bond(s) including, but not limited to, progress payments, deferred payments, retained percentages, compensation for extra work, and proceeds of damage claims; (ii) all right, title, and interest of the Indemnitors in and to all Property of every nature and description that may now or hereafter be in, on, or around the site of, or the work under, the contract covered by the Bond(s); (iii) all right, title, and interest of the Indemnitors in and to all subcontracts, let or to be let, in connection with said contract referred by the Bond(s) and in and to all surety bonds supporting such subcontracts; (iv) all right, title, and interest of the Indemnitors in machinery, plant, equipment, tools and materials which shall be upon the site of the work or elsewhere for the purposes of the contract, including all materials ordered for the contract; (v) all actions, causes of actions, claims, and/or the proceeds therefrom and any demands whatsoever which the Indemnitors may have against any party including, but not limited to, owners, obligees, subcontractors, laborers, materialmen, architects, engineers or any person furnishing or agreeing to furnish to supply labor, material, supplies, machinery, tools, or other equipment in connection with a contract covered by the Bond(s), and against any surety or sureties of any party including, but not limited to, such prime contractors, subcontractors, laborers, or materialmen; (vi) all the rights of the Indemnitors in and growing in any manner out of the Bond(s) or any contracts or Contracts referred to in the Bond(s); (vii) any and all percentages retained and any and all sums that may be due or hereafter become due on account of any and all contracts referred to in the Bond(s) and all other contracts whether bonded or not in which the Indemnitors have an interest; (viii) any and all accounts receivable, marketable securities, rents, proceeds of sale, instruments, chattel paper, letters of credit, documents of title, bills of lading, federal tax refunds, state and local tax refunds, and general intangibles; and, (ix) any and all policies of insurance (collectively referred to as "Collateral"). The Indemnitors agree that the Surety may, but is not required to, add such schedules to this Agreement as it deems advisable, describing more specifically items of security covered by this Assignment. The foregoing assignment shall be effective as of the date of the execution and delivery of this Agreement as to each contract covered by Bond(s) executed prior to such date although nothing herein shall limit the right of the Surety to claim under any prior assignment. With respect to any Bond(s) executed and delivered on or after the date of execution and delivery of this Agreement, the assignment shall become effective retroactive to the date of the first Bond in the Event of Default.

**5. TRUST FUNDS.** The Indemnitors agree and hereby expressly declare that all funds due or to become due under any contract, whether or not in the possession of any of the Indemnitors, or another, shall be held in trust as trust funds by the Indemnitors, for the benefit and payment of all persons to whom the Indemnitors incur obligations in the performance of such contract covered by the Bond(s) and/or for the benefit of, payment to, or reimbursement of the Surety for any liability, loss, or expense the Surety may incur under the Bond(s) or in enforcing this Agreement. If the Surety discharges any such obligations, it shall be entitled to assert the claim of such person to the trust funds. It is the express intention of the Indemnitors herein to fully comply with any legal requirements for the establishment of a valid and enforceable trust for the trust res consisting of all present and future bonded contract funds, for the benefit of the Surety and all persons to whom the Indemnitors incur obligations in the performance of bonded contracts. Said trust or trusts shall terminate on the payment by the Indemnitors of all the contractual obligations for the payment of which the trust or trusts are hereby created or upon the expiration of twenty years from the date hereof, whichever shall occur first. Notwithstanding anything to the contrary herein above, this section may be implemented in any manner provided at law or in equity.

**6. NOTICE OF CLAIMS.** The Indemnitors immediately upon becoming aware of any demand, notice, or proceeding preliminary to determining or fixing any liability, with which the Surety may be subsequently charged under any Bond(s), shall notify the Surety thereof in writing and shall fully cooperate with Surety in the defense of any demand, claim, suit, notice, arbitration proceeding or other action.

**7. CLAIM SETTLEMENT.** The Surety shall have the exclusive right, in its sole and absolute discretion, to determine for itself and the Indemnitors whether any claim, demand or suit brought against the Surety or the Indemnitors upon any Bonds shall be settled, defended, or compromised and its decision shall be binding and conclusive upon the Indemnitors. The Surety shall be entitled to immediate reimbursement of any and all loss incurred pursuant to the indemnification set forth herein.

**8. CONTRACT CHANGES/LOANS.** If such Bond be given in connection with a contract, the Surety is hereby authorized,

but not required, to consent to any change in the contract or in the plans or specifications relating thereto; to make or guarantee advances or loans for the purposes of the contract without the necessity of seeing to the application thereof, it being understood that the amount of all such advances or loans, unless repaid with legal interest by the Indemnitors to the Surety when due, shall be conclusively presumed to be a loss hereunder for which the Indemnitors shall be responsible, notwithstanding that said money or any part thereof might not be so used by the Indemnitors.

9. **WAIVER OF NOTICE.** It shall not be necessary for the Surety to give the Indemnitors, or any one or more of them, notice of the execution of, or changes to, any Bond(s) covered by this Agreement, nor of any fact or information coming to the notice or knowledge of the Surety affecting its rights or liabilities, or the rights or liabilities of the Indemnitors under any Bond(s) executed by it, notice of all such being hereby expressly waived. The Indemnitors and the Surety each hereby waive trial by jury in any action or proceeding pertaining to this Agreement, which waiver is knowingly, willingly and voluntarily made by the parties to this Agreement.

10. **SETTLEMENT WITH INDEMNITORS.** In the event of any claim or demand being made by the Surety against the Indemnitors, or any one or more of the parties so designated, by reason of the execution of any Bond(s), the Surety is hereby expressly authorized to settle with any one or more of the Indemnitors individually, without reference to the others, and such settlement or composition shall not affect the liability of any of the others, and each Indemnitor hereby expressly waives the right to be discharged and released by reason of the release of one or more of the joint debtors, and hereby consent to any settlement or composition that may hereafter be made.

11. **DECLINATION OF EXECUTION.** The Surety at its option may decline to execute or participate in, or procure the execution of, any Bond(s), or changes to any existing Bond(s), without impairing the validity of this General Agreement of Indemnity. Any and all such declinations shall not impair the validity of this Agreement.

12. **OTHER SURETIES.** If the Surety procures the execution of such Bond(s) by other companies, or executes such Bond(s) with co-sureties, or reinsures any portions of such Bond(s) with reinsuring companies, then all the terms and conditions of this Agreement shall apply and operate for the benefit of such other companies, co-sureties, and re-insurers or their successors and assigns, so as to give it or them a direct right of action against the Indemnitors to enforce this Agreement and in that event, the word "Surety" shall be deemed to include such company or companies as it or their interests may appear.

13. **INDEMNITOR LIABILITY.** The liability of the Indemnitors hereunder shall not be affected by the failure of an Indemnitor as Principal to sign any Bond(s), nor by any claim that other indemnity or security was to have been obtained, nor by the release of any indemnity, or the return or exchange of any collateral that may have been obtained and if any party signing this Agreement is not bound for any reason, this Agreement shall still be binding upon each and every other party.

14. **TERMINATION OF INDEMNITOR LIABILITY.** The obligations under this Agreement may be terminated by any one or more of the Indemnitors upon written notice, sent by certified mail, to the Surety but any such notice of termination shall not operate to modify, bar or discharge, limit, affect or impair the liability of any Indemnitor prior to thirty (30) days after receipt of the notice of termination by Surety and the obligations shall also not be terminated on Bonds executed after the date of termination (i) upon the award of a contract to the Indemnitor(s) on a bid or proposal with respect to which the Surety has executed a bid bond or similar undertaking, or (ii) on Bonds which the Surety has otherwise become obligated to execute prior to such termination date. Any notice of termination given hereunder shall operate only with respect to the Indemnitors on whose behalf such notice shall have been given. No change in marital, employment, economic status, ownership in a bonded entity or other condition shall in any manner alter the provisions of this provision or this Agreement.

15. **SECURITY INTEREST.** This Agreement shall constitute a Security Agreement for the benefit of the Surety and/or a Financing Statement, both in accordance with the provisions of the Uniform Commercial Code of every jurisdiction wherein such Code is in effect and may be so used by the Surety without in any way abrogating, restricting or limiting the rights of the Surety under this Agreement or under law, or in equity.

16. **RIGHT TO INFORMATION.** At any time, and until such time as the liability of the Surety under any and all Bonds is terminated, the Surety shall have unrestricted access to any and all books, records, trust funds, accounts, documents, or other information pertaining to the financial affairs or operations of the Indemnitors, in whatever form or wherever located, including the right to obtain credit reports or other investigative reports; and any bank depository, material man, subcontractor, obligee, government entity, creditor, accountant or other person, firm, or corporation when requested by the Surety is hereby authorized to furnish the Surety any information requested including, but not limited to, the status of

the work under contracts being performed by the Indemnitor(s), the condition of the performance of such contracts and payments of accounts.

**17. REMEDIES.** In the event of any breach, delay or default asserted by the obligee, or other claimant, concerning any Bond(s), or the Indemnitors have suspended or ceased work on any contract or contracts covered by any Bond(s), or failed to pay any obligations incurred in connection therewith, or in the event of the death, disappearance, Indemnitors' conviction for a felony, imprisonment, incompetence, or insolvency of the Indemnitors, or the appointment of a receiver or trustee for the Indemnitors, or the property of the Indemnitors, or in the event of an assignment for the benefit of creditors of the Indemnitors, or if any action is taken by or against the Indemnitors under or by virtue of the U.S. Bankruptcy Code, or should reorganization or arrangement proceedings be filed by or against the Indemnitors under said Code, or if any action is taken by or against the Indemnitors under the insolvency laws of any state, possession, or territory of the United States, the Surety shall have the right, at its option and in its sole discretion, and is hereby authorized, with or without exercising any other right or option conferred upon it by law or in the terms of this Agreement, to take possession of any part or all of the work under any contract or contracts covered by any Bond(s), and at the expense of the Indemnitors to complete or arrange for the completion of the same, or to take any other action Surety may deem appropriate to obtain a discharge of the Surety's obligations and the Indemnitors shall promptly, upon demand, pay to the Surety all losses, and expenses so incurred.

**18. HOMESTEAD.** The Indemnitors hereby waive, so far as their respective obligations under this Agreement are concerned, all rights to claim any of their property, including their respective homesteads, as exempt from levy, execution, sale or other legal process under the laws of any State, Territory or Possession.

**19. ATTORNEY-IN-FACT.** The Indemnitors hereby irrevocably nominate, constitute and appoint and designate the Surety and its designees as their attorney-in-fact with the right, power, and authority, but not the obligation, to exercise all of the rights and powers of the Indemnitors assigned, transferred and set over to the Surety in this Agreement, and in the name of the Indemnitors, or any one or more of them, to make, endorse, execute, sign and deliver any and all additional or other instruments, writings, including assignments, financing statements, documents, instruments, checks, drafts, deposits, ACH (automatic clearing house), and wire transfer directives and orders, change of address notices, liens and releases thereof, applications, certificates, draw requests, orders, releases, and papers deemed necessary or desirable by Surety, and to collect the proceeds thereof, in order to give full effect not only to the intent and meaning of the obligations assumed, and the agreements made by the Indemnitors hereunder, and the assignments and conveyances made herein, but also the full protection intended to be herein given to Surety under all other provisions of this Agreement.

**20. SURETYSHIP COVERED.** The Indemnitors hereby acknowledge that this Agreement is intended to cover any Bond(s) (whether or not covered by any application signed by any one or more of the Indemnitors, with such application to be considered between the parties hereto as merely supplementary to this General Agreement of Indemnity) heretofore or hereafter executed by the Surety on behalf of the Indemnitors, or any one of them (whether contracting alone or as a joint or co-adventurer) from time to time, and over an indefinite period of years, until this agreement shall be cancelled in accordance with the terms hereof. The Indemnitors shall continue to remain bound under the terms of this Agreement even though the Surety may have heretofore or hereafter, with or without notice to or knowledge of the Indemnitors, accepted or released other agreements of indemnity or collateral in connection with the execution or procurement of any bond(s), from the Indemnitors or others. The rights, powers and remedies given the Surety under this Agreement shall be and are in addition to and not in lieu of, any and all other rights, powers and remedies which the Surety may have or acquire against the Indemnitors or others, whether by the terms of any agreement or by operation of law.

**21. LIABILITY OF SURETY.** Indemnitors agree that their liability shall be construed as the liability of a compensated Surety, as broadly as the liability of the Surety is construed toward its obligee.

**22. PRONOUNS/SEVERABILITY.** The word Indemnitors, or personal pronouns used to refer to said word, shall apply regardless of number or gender, to Indemnitors, Principals, and/or to individuals, partnerships, corporations, or other legal entities as the circumstances require. If any provision or provisions of this Agreement are held to be void or unenforceable by law, this Agreement shall not be void or unenforceable, but shall continue in effect and be enforced as though such provision or provisions were omitted.

**23. MODIFICATIONS.** This Agreement, and the Bonds issued pursuant to this Agreement, constitutes the entire Agreement among the Indemnitors and the Surety regarding the rights and obligations of the Parties hereto. This Agreement and the rights and remedies of the Surety hereunder may not be changed or modified unless signed by an officer or other authorized representative of the Surety.





Witness:

Name:

Enter Principal Name Here and clear field  
and all subsidiaries and affiliates now owned and/or  
hereafter created, controlled, managed or acquired.

By: \_\_\_\_\_ (L.S.)  
Name, Title  
Address:  
City, ST Zip:

Witness:

Name:

Enter Principal Name Here and clear field  
and all subsidiaries and affiliates now owned and/or  
hereafter created, controlled, managed or acquired.

By: \_\_\_\_\_ (L.S.)  
Name, Title  
Address:  
City, ST Zip:

Witness:

Name:

Enter Principal Name Here and clear field  
and all subsidiaries and affiliates now owned and/or  
hereafter created, controlled, managed or acquired.

By: \_\_\_\_\_ (L.S.)  
Name, Title  
Address:  
City, ST Zip:

Witness:

Name:

Enter Principal Name Here and clear field  
and all subsidiaries and affiliates now owned and/or  
hereafter created, controlled, managed or acquired.

By: \_\_\_\_\_ (L.S.)  
Name, Title  
Address:  
City, ST Zip:

INDIVIDUAL INDEMNITORS

Witness:

Name:

By: \_\_\_\_\_  
Name:  
SSN:  
Address:  
City, ST Zip:

Witness:

Name:

By: \_\_\_\_\_  
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City, ST Zip: \_\_\_\_\_

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Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

SSN: \_\_\_\_\_

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

City, ST Zip: \_\_\_\_\_

Witness:

Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

SSN: \_\_\_\_\_

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

City, ST Zip: \_\_\_\_\_

**IMPORTANT: COMPLETE PHYSICAL ADDRESS INCLUDING ZIP CODE MUST BE GIVEN FOR ALL INDEMNITORS. INDIVIDUAL INDEMNITORS MUST FURNISH ADDRESS OF PRIMARY RESIDENCE AND SOCIAL SECURITY NUMBER.**