**LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT**

**DRAINAGE FACILITY**

**PERFORMANCE AND MAINTENANCE BOND**

     , as surety (“Surety”), and       (“Contractor”) and       (“Developer”) – collectively as Principals, enter into and execute this bond (“Performance and Maintenance Bond”) and jointly and severally bind themselves, their heirs, administrators, executors, successors and assigns in favor of the Louisville and Jefferson County Metropolitan Sewer District (“MSD”), as Obligee, in the penal sum of       ($     ), as determined by MSD as the cost of implementing the Approved Plans as referenced and discussed herein, as of this       day of      ,      .

WHEREAS Principals are presently making improvements to certain real estate located within MSD’s service area; and

WHEREAS, in order to facilitate the construction of the Development, the Principals desire to construct and install new water drainage facilities, improvements, and related appurtenances necessary to extend water drainage throughout the Development to be connected to MSD’s collection system (the “Drainage Facilities); and

WHEREAS, Principals have provided to MSD pursuant to all applicable MSD rules and regulations for development and stormwater permitting plans for construction, by Principals, of the Drainage Facilities and improvements in connection with a development known as       (the “Development”), MSD File #      , which plans were prepared for Principals by       and dated Click or tap to enter a date. and which plans were approved (which shall mean MSD review and allows work to proceed, but MSD does not thereby own or accept any defects in, or liability for, said plans, work, or improvements) by MSD on Click or tap to enter a date., which plans and approval are incorporated herein and made a part hereof by reference and are hereinafter collectively referred to as the “Approved Plans”; and

WHEREAS upon completion of the Drainage Facilities by the Principals, the Drainage Facilities will become connected to and a part of MSD’s collection system; and

WHEREAS MSD is agreeable pursuant to MSD’s Certificate of Sanitary Sewer and Drainage Easement to incorporating the Drainage Facilities into its collection system provided that such Drainage Facilities are designed, constructed, and installed in accordance with MSD’s specifications, its Rules and Regulations and according to all other applicable laws and regulations.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Principals shall fully and completely construct all and each of the drainage facilities and improvements as set out in the Approved Plans without defect or omission and in compliance with all applicable laws and regulations (the “Work”). Principals and Surety agree and shall indemnify and hold harmless and defend MSD against all claims, loss or damage, and expenses of the construction of the Approved Plans, as well as any reconstruction or additional work directly arising by reason of the failure of the Principals to construct, maintain and preserve any Work associated with said drainage facilities and improvements to be in compliance with the Approved Plans without defects or failures, and to guarantee the work performed under said Approved Plans for a period of no less than one year from the date of signed written Notice of Acceptance by MSD verifying a showing of satisfactory final completion of the Work by the Contractor on behalf of the Principals.

Only upon MSD’s signed written release of this Bond, which shall only occur upon written notice by the Principals and/or Surety providing MSD with notice of the expiration of one year from MSD’s signed written Notice of Acceptance, shall this obligation become null and void; otherwise, said Bond obligations shall remain in full force and effect in the full amount of the penal sum.

The Surety hereby waives notice of any alternation or extension of time made by MSD.

Whenever, Principals shall be, and are declared by MSD, in writing, to be in default of their obligations under the Approved Plans, the Surety shall, within ten (10) calendar days, undertake necessary action to promptly remedy the default, and shall promptly:

1. Cause the Approved Plans to be completed and/or remediated in accordance with any applicable terms and conditions associated with or required pursuant to MSD’s approval of said Approved Plans, or
2. Obtain a bid or bids for completing and/or remediating the Approved Plans in accordance with any applicable terms and conditions associated with or required pursuant to MSD’s approval of said Approved Plans, and upon determination by Surety of the lowest responsible bidder, arrange for a Contract between such bidder and Surety, and make available as work progresses (even though if there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion and/or remediation of the Approved Plans, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the penal sum set forth herein.

This Performance and Maintenance Bond is provided by Surety for the sole and exclusive benefit of MSD together with its successors or assigns. No other party, person or entity shall have any rights against Surety hereunder.

MSD's inspectors and engineers shall have free and unrestricted access to work being performed on the Drainage Facilities and shall have the authority to order any defective or unapproved material removed and replaced. Principals shall repair or reconstruct any defective workmanship or any workmanship not in conformity with MSD requirements at Principals' cost. Principals shall not backfill any portion of a sewer main trench before MSD’s inspectors have been given the opportunity to inspect and accept the work.

Principals shall comply with any and all applicable restrictions or conditions contained in any deeds, permits or licenses of record, and will comply with all applicable law and regulations, including, but not limited to, applicable environmental, construction, safety and health law and regulations.

This Bond shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest. Without the written consent of the other party to this Bond, such consent not to be unreasonably withheld, neither MSD nor Developer may assign this Bond to a third party.

Failure of MSD to enforce any provision of this Bond shall not constitute a waiver of any other provision or a future or continuing waiver of enforcement of the provision previously waived. Any holding of invalidity of any certain provision shall not affect the validity of the remaining paragraphs, sections, clauses, and provisions hereof.

Any and all notices to Surety, Principals or MSD shall be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

Surety: Name:

Attention to:

Address:

Telephone:

Email:

Principals: Developer

Name:

Attention to:

Address:

Telephone:

Email:

Contractor

Name:

Attention to:

Address:

Telephone:

Email:

MSD: Louisville and Jefferson County Metropolitan Sewer District

Attn:

700 West Liberty Street

Louisville, Kentucky 40203-1913

Telephone:

Email:

Should any proceedings be necessary to enforce this Performance and Maintenance Bond, MSD shall be entitled to all attorney’s fees, expenses, and costs incurred, in addition to any other sums found due.

This Performance and Maintenance Bond shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event that any legal action or proceedings are initiated with respect to this Performance and Maintenance Bond, the parties agree that the venue thereof shall be the state Circuit court of Jefferson County, Commonwealth of Kentucky, and all disputes shall be tried by the Court and all Parties agree to waive all rights to a jury.

IN TESTIMONY WHEREOF, Principals have signed this instrument in person or by duly authorized agent, **and Surety has caused its name to be hereunto signed by its duly authorized agent and its corporate seal hereto affixed**, this       day of      ,      .

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*[Signature Page Follows]*

**PRINCIPALS**

**Developer**

SIGNED:

BY:

TITLE:

DATE:

**Contractor**

SIGNED:

BY:

TITLE:

DATE:

**SURETY**

SIGNED:

BY:

TITLE:

(SEAL)

DATE: