

Date: February 20, 2007

Agenda Item No. 14(A)(1)

To: Honorable Chairman Bruno A. Barreiro and
Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Change Order No. 88 to Amended Agreement with Performing Arts Center
Builders (PACB)

RECOMMENDATION

It is recommended that the attached Change Order No. 88 to the Agency Construction Management contract between Performing Arts Center Builders (PACB) and Miami-Dade County be approved to increase the current contract amount by \$12.5 million to settle the final requests for equitable adjustments.

BACKGROUND

On September 25, 2001, by Resolution Number R-1073-01, the Board approved the terms of the Construction Management Agreement between Miami-Dade County and Performing Arts Center Builders (PACB), a joint venture, with a Guaranteed Maximum Price (GMP) of \$254.650 million for the construction of the Performing Arts Center (PAC). PACB is a consortium of three firms, Odebrecht Construction, Inc., The Haskell Company and Ellis Don Construction, Inc.

On July 27, 2004, the Board passed Resolution Number R-1021-04, which authorized a restructuring of the PAC Project. This approved plan provided for a number of important actions, including changing the form of contract from a Guaranteed Maximum Price to an Agency Construction Manager; establishment of a new completion date of August 4, 2006; settlement of asserted time and scope change claims (prior to June 30, 2004) from PACB and the subcontractors; and resolution of outstanding issues with the design architect. The Board also authorized, as part of the restructuring plan, an increase to the project budget of \$67.7 million. As part of the \$67.7 million, \$35 million was utilized to settle known claims through June 30, 2004.

As the Board had been previously advised, commencing in the summer of 2005, certain pressures were impacting the project and potentially threatening the August 4, 2006 completion deadline. This included serious problems with maintaining proper staffing at the job site due to the high volume of private sector construction work, and a larger than projected number of weather-related delay impacts. In my September 22, 2005 report to the Board, I summarized the PAC's Acceleration/Recovery Plan and provided more detail for the project's schedule slippage. On March 21, 2006, the Board approved the Acceleration/Recovery Plan (Change Order 85) via Resolution No. R-354-06. The Board's approval of this Acceleration/Recovery Plan provided the additional resources necessary to achieve the promised completion date of August 4, 2006.

Change Order 85 (Acceleration/Recovery Plan) created a Dedicated Owner's Allowance in the amount of \$28.3 million and an Owner's reserve to settle subcontractor requests for additional compensation in the amount of \$10 million; for a total change order value of \$38.3 million. The \$28.3 million provided for project acceleration, general conditions, non-recoverable backcharges, and the replenishment of the County's contingency for unanticipated and unforeseen direct costs and added scope. As the Board was advised at the time, the \$10 million for settlement of subcontractor claims (post June 30, 2004) was an estimate. It was always anticipated that we would come back to the Board, upon final completion of the project, for authorization of the additional funds required to settle the final claims.

I have previously reported to the Board of our desire to conclude the project with no litigation and to settle all requests for equitable adjustments and other claims in a fair and impartial manner. The process that has been utilized was outlined to the Board in my September 22, 2005 report and in Change Order 85. To summarize, all requests from subcontractors were initially reviewed by PACB. In the event the request was deemed valid, PACB developed a historical analysis of the events that surrounded the issue(s). This information was used by PACB to determine the relevance of the request for entitlement. Upon the completion of this effort, the request was forwarded to the County's independent claims analyst, URS. URS analyzed the request for both a merit and quantum assessment. Finally, a report/recommendation would be presented to my office and the Director of Construction for final settlement negotiations. Once a resolution was achieved, a Change Authorization was processed, containing a full and final settlement release.

To date, with the exception of only a handful of pending negotiations, all known requests for additional compensation from 20 subcontractors have been fully resolved with "full accord and satisfaction". Subsequent to the July 2004 restructuring, \$39.078 million in requests have been made with authorized settlements totaling \$20.762 million, equating to \$.53 per dollar. The total amount of settled requests is \$22.5 million, including an Owner's reserve (\$1.738 million) for any pending requests. As stated above, \$10 million was budgeted in Change Order No. 85 which leaves an additional \$12.5 million which is requested in this Change Order No. 88. Any remaining monies in the Owner's \$1.738 million reserve will be returned to the County in a final deductive change order.

Settling these issues equitably and timely provided needed goodwill and additional incentive for subcontractors to provide the manpower that was necessary during the Project's acceleration and accomplish the opening date of August 4, 2006. The majority of the settling subcontractors are local and, in some cases, were in the Project's CSBE program.

Detail of Change Order No. 88

This Change Order increases PACB's contract by \$12.5 million for a total construction contract sum of \$322.063 million, and a total project cost of \$ 472.971 million (See Attachment A). This Change Order will be funded by a Sunshine State Financing that will be issued later this year. As the Board is aware, I have been working with the City of Miami regarding opportunities for the Omni CRA to provide additional financial support for the PAC. There is an agreement with the City of Miami that Omni CRA funds will be used to assist with the completion of this capital project. The pledge for this \$12.5 million Sunshine Loan is a budget to appropriate from a non-ad valorem tax pledge, specifically convention development tax dollars until receipt of CRA funds which will ultimately cover this loan.



In March 2006, the provisional estimate of \$10 million to settle claims was authorized. While the number of impacts that affected the subcontractors in their prosecution of the work were numerous, a grouping of the major impacts include the following:

- There was a substantial amount of additional work necessary to adequately coordinate the contract documents with the work, above and beyond what was included in the July 2004 Restructuring Plan. The results of these scope additions forced some subcontractors to perform their work in an uneconomical and unproductive sequence. Often, these sequences and associated durations were beyond the dates established during the approved schedule issued under Change Order 73. Subsequently, additional compensation for extended general conditions, overhead and labor burden were warranted.
- In order to fully comply with the requirements of the permitting agencies, and to make the project more compatible with the user's requirements, additional scope was incorporated beyond the design baseline established by Change Order 73. These additions also resulted in added impacts to the general conditions costs, overheads, and other support costs as well as revisions to the logical sequencing of the work as laid out in the restructuring schedule and included in the subcontractor's restructuring budgets.
- The final costs of the work was further impacted due to extended durations of work activities requiring crane usage, common scaffolding and rental equipment provided by PACB on behalf of the County.

CHANGE ORDER NUMBER: 88

PROJECT NAME: Performing Arts Center

PROJECT NO: PAC

CONTRACT NO: 9501

PROJECT DESCRIPTION: Contract for the construction of the Miami Performing Arts Center

PROJECT LOCATION: 1300 Biscayne Boulevard (Ballet/Opera House) 1330 North Bayshore Drive (Concert Hall)

APPROVAL PATH: BCC

USING DEPARTMENT: Performing Arts Center Management

MANAGING DEPARTMENT: Performing Arts Center Management

PTP FUNDING: No

GOB FUNDING: No

**CHANGE ORDER
DESCRIPTION:**

1. This Change Order will fund settlements for requests for additional compensation from 20 subcontractors for settled amounts of \$20.762 million against asserted requested amounts of \$39.078 million which yields a negotiated rate of 53%. Change Order 85 funded \$ 10.0 million of the settled amounts of \$20.762 million; this Change Order will fund the remaining \$10.762 million.
2. Create an Owner's Reserve in the amount of \$1.738 million for pending requests. This amount will remain as an Owner's reserve; any remaining monies in this reserve will be returned to the County in a deductive change order. I will keep the Board apprised of any additional settlements in subsequent close out project reports.

**MONETARY
JUSTIFICATION:**

This is a Change Order for \$12.5 million, to be funded with a Sunshine State Financing. The pledge for this loan is a budget to appropriate from a non-ad valorem tax pledge or any other appropriate funding source, such as convention development tax dollars. Ultimately, it is anticipated that Omni CRA funds will be used to fund these final Project costs.

**TIME
JUSTIFICATION:**

No time is authorized for this Change Order.



Port Director

ATTACHMENT A

	FY 03-04 Approved Budget	FY 04-05 Approved Budget	FY05-06 Approved Budget	FY 06-07 Approved Budget	FY 07-08 Estimate
REVENUES					
Bond Proceeds	\$227,704,993	\$295,408,699	\$295,408,699	\$295,408,699	\$295,408,699
Interest Earnings	\$53,150,070	\$53,150,070	\$54,191,831	\$54,191,831	\$54,191,831
Sunshine State Financing	\$0	\$0	\$3,664,840	\$38,590,449	\$51,090,449
Private Sector Commitment (Including additional scope)	\$42,200,000	\$42,200,000	\$43,243,367	\$48,653,367	\$48,653,367
Municipal Contributions	\$5,900,000	\$5,900,000	\$5,900,000	\$6,312,787	\$6,312,787
Convention Development Tax	\$10,950,000	\$10,950,000	\$10,950,000	\$10,950,000	\$10,950,000
State Grants	\$1,725,000	\$1,725,000	\$2,225,000	\$2,725,000	\$2,725,000
Federal Grants	\$0	\$0	\$421,870	\$421,870	\$421,870
State of Florida Line Item for Land Purchase	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000
Safe Neighborhood Parks Bond	\$800,000	\$800,000	\$800,000	\$800,000	\$800,000
Miscellaneous Revenue	\$407,937	\$408,231	\$358,593	\$358,454	\$358,454
Art in Public Places	\$0	\$0	\$0	\$580,742	\$580,742
Total Revenue	\$344,338,000	\$412,038,000	\$418,662,000	\$480,471,000	\$472,971,000
EXPENSES					
Construction (Including Direct Material Purchased)	\$254,650,000	\$311,007,564	\$317,830,000	\$359,619,000	\$372,119,000 ¹
Capital Costs (design fees, furnishings, public art allowance)	\$36,944,000	\$53,892,000	\$53,892,000	\$51,782,000	\$51,782,000
Owner Development Costs (testing, permitting, contracted services, administration, insurance, printing, Sears demo., Intra-departmental costs, environmental testing, costs associated with land development, etc.)	\$27,644,000	\$43,945,436	\$43,947,000	\$46,133,000	\$46,770,000
Land Acquisition (Property South of Ballet/Opera House on NE 13th Street)	\$2,300,000	\$2,300,000	\$2,300,000	\$2,300,000	\$2,300,000
Project Reserve/Contingency	\$22,800,000	\$893,000	\$893,000	\$637,000	\$0
Total Expense	\$344,338,000	\$412,038,000	\$418,662,000	\$480,471,000	\$472,971,000

¹ The Actual Value of PACB's Contract is \$322,063,840 after Change Order 88; the difference between \$372,119,000 and \$322,063,840 is the estimated amount of the final direct purchases (\$50,055,160) which are materials that are purchased directly by the County in order to achieve tax savings. These materials are installed by PACB and thus is included as a construction expense.



MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: February 20, 2007

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 14(A)(1)

Please note any items checked.

"4-Day Rule" ("3-Day Rule" for committees) applicable if raised

6 weeks required between first reading and public hearing

4 weeks notification to municipal officials required prior to public hearing

Decreases revenues or increases expenditures without balancing budget

Budget required

Statement of fiscal impact required

Bid waiver requiring County Manager's written recommendation

Ordinance creating a new board requires detailed County Manager's report for public hearing

Housekeeping item (no policy decision required)

No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 14(A)(1)
2-20-07

RESOLUTION NO. _____

RESOLUTION APPROVING CHANGE ORDER NO. 88 TO THE AGENCY CONSTRUCTION MANAGEMENT CONTRACT BETWEEN PERFORMING ARTS CENTER BUILDERS (PACB) AND MIAMI-DADE COUNTY, WHICH INCREASES THE CURRENT CONTRACT AMOUNT BY UP TO \$12.5 MILLION; AUTHORIZING COUNTY MAYOR OR DESIGNEE TO EXECUTE THE SAME

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves Change Order No. 88 to the Agency Construction Management Contract between Performing Arts Center Builders (PACB) and Miami-Dade County, which Change Order increases the current contract amount by up to \$12.5 Million, in substantially the form attached hereto and made a part hereof; authorizes the County Mayor or his designee to execute same for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz
Carlos A. Gimenez
Joe A. Martinez
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto

Audrey M. Edmonson
Sally A. Heyman
Dennis C. Moss
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of February, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency. *DBM*

Deborah Bovarnick Mastin

By: _____
Deputy Clerk

TYPE OF C.O.: CO

CHANGE ORDER NO. 88 PROJECT NO. 2501
 PROJECT TITLE: PERFORMING ARTS CENTER OF GREATER MIAMI
 TO CONSTRUCTION MANAGER: PERFORMING ARTS CENTER BUILDERS (PACB)

DATE: 12/6/2006

YOU ARE HEREBY REQUESTED TO MAKE THE FOLLOWING CHANGES TO THE CONTRACT AS DESCRIBED ON THE DOCUMENT(S) ATTACHED HERETO AND TO COMPLETE THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.

Except with respect to rights, claims demands, costs, damages, and liabilities reserved in the separate writing submitted in connection with this Change Order, the Construction Manager waives and releases the Owner of liability for any and all known claims against the Owner and its officers and employees for any direct costs, damages and liabilities resulting from this change to the Work or additional work performed by the Construction Manager up to and including the date of this Change Order.

SUMMARY OF CONTRACT SUM

ORIGINAL CONTRACT SUM	<u>\$254,650,000.00</u>	
Net Change by previously authorized Change Order	<u>54,913,840.48</u>	54,913,840.48
Contract Sum prior to this Change Order	<u>\$309,563,840.48</u>	309,563,840.48
Amount of this Change Order (Not to Exceed)	<u>\$12,500,000.00</u>	
ADJUSTED CONTRACT SUM(including this Change Order)	<u>\$322,063,840.48</u>	322,063,840.48

Percent Increase/Decrease this Change Order 4.04%
 Total Percent Increase/Decrease to date 26.47%

AUTHORIZED EXTENSION ALLOWED 0 Calendar days

CERTIFYING STATEMENT: I hereby certify that this Change Order and the attached supporting documentation is accurate and consistent with fair and reasonable Cost of Changes established by (unit prices, lump sum, or cost plus) method as stipulated in the Contract. Furthermore, the Authorized Extension being granted is reasonable, accurate and in keeping with the actual progress of the Work.

[Signature]
 SIGNATURE CONSULTING ARCHITECT OR ENGINEER

P.J. VOLENET, SR. Proj. Mgr.
PELLI CLARKE PELLI ARCH
 (Please print name and title) Date 12.6.06

TO BE FILLED OUT BY DEPARTMENT INITIATING CHANGE ORDER

PAC Management Office CPE103CU1705
 DEPARTMENT FUNDS BUDGETED CODE

[Signature]
 RECOMMENDED: Tereza Hebert - Director of PAC Admin.

ACCEPTED BY: [Signature]
 Performing Arts Center Builders, Construction Manager

SURETY: [Signature]
 American Home Assurance Company (Company Seal)

MARIA TUDE - FINANCE MANAGER: 12-19-06
 (Please print name and title) Date

Ana W Oliveras, Attorney-in-Fact
 (Please print name) Date 12/14/06

RECOMMENDED: [Signature]
 Tim Ackert, Program Director, URS

APPROVED FOR LEGAL SUFFICIENCY:
 COUNTY'S ATTORNEY'S OFFICE

RECOMMENDED: [Signature] 12/19/06
 Ron Austin, Director of Construction

Miami-Dade County, Florida
 BOARD OF COUNTY COMMISSIONERS

APPROVED: [Signature]
 Bill Johnson, Assistant County Manager, CMO

By: _____
 George M. Burgess, County Manager

APPROVED: [Signature] 1/2/07
 Marsha E. Jackman, Director, OED

ATTEST:
 By: _____
 Deputy Clerk

APPROVED: [Signature]
 Jennifer Glazer-Mooh, Director, OSBM

TYPE OF C.O.: CO

CHANGE ORDER NO. 88 PROJECT NO. 9501
 PROJECT TITLE: PERFORMING ARTS CENTER OF GREATER MIAMI
 TO CONSTRUCTION MANAGER: PERFORMING ARTS CENTER BUILDERS (PACB)

Reason for Change:			
Value Engineering <input type="checkbox"/>	Unforeseen Condition <input type="checkbox"/>	Direct Purchase Program <input type="checkbox"/>	
Document Discrepancy <input type="checkbox"/>	Owner Change <input checked="" type="checkbox"/>	Owner's Controlled Insurance Program <input type="checkbox"/>	

Item No.	Change Order Request No.	Description	Amount (Estimated)
1	N/A	Increase the Dedicated OWNER'S Allowance Account for Executed Subcontractor Settlements for Requests for Additional Compensation	\$10,762,335.00
2	N/A	Increase the Dedicated OWNER'S Allowance Account for Pending Requests for Additional Compensation	\$1,737,665.00
TOTAL (NOT TO EXCEED) AMOUNT			\$12,500,000.00

JUSTIFICATION:

This Change Order will: 1) increase the Dedicated OWNER'S Allowance Account in the amount of \$10.762 million in order to fund settled Requests for Additional Compensation already committed in Change Authorizations and 2) Create a reserve of \$1.737 million in order to fund pending requests for subcontractor's requests for additional compensation.

This Change Order is in the total amount of \$12.5 million and any remaining funds within the above line items will be returned to the Owner through a Deductive Change Order. PACB must obtain written approval from the Owner through an executed Change Authorization signed by the Owner. The County may authorize the shifting of these funds to suit other Project requirements.

RELEASE OF CLAIM:

The fact in and of itself that this Change Order 88 has been issued shall not be the basis for the CONSTRUCTION MANAGER to request additional costs and/or time. Time, costs, and damages associated with the work and the procurement of the work contemplated by this Change Order will be addressed in Change Authorizations associated with this Change Order and not by this Change Order.

TO BE ATTACHED TO AND FORM A PART OF DOCUMENT 01028-CO
CHANGE ORDER TO ORIGINAL CONTRACT

ADDITIONAL SURETY SIGNATURES

Travelers Casualty and Surety Company of America

Ana W. Oliveras

Ana W. Oliveras, Attorney-in-Fact

Fidelity and Deposit Company of Maryland

Ana W. Oliveras

Ana W. Oliveras, Attorney-in-Fact.

FLORIDA DEPARTMENT OF INSURANCE

ANA W OLIVERAS

License Number E077488

**IS LICENSED TO TRANSACT THE FOLLOWING CLASSES OF INSURANCE
General Lines (Prop & Casu)**



**RESIDENT
LICENSE**

This Licensee must have an active appointment with the insurer or employer for which products are marketed. See reverse for additional requirements.
The Florida Community College System - If you are a public contractor, the following text is also for
the Florida Department of Transportation

POWER OF ATTORNEY

American Home Assurance Company
National Union Fire Insurance Company of Pittsburgh, PA.
Principal Bond Office: 175 Water Street, New York, NY 10038

Power No. 8028

No. 10-B-16523

KNOW ALL MEN BY THESE PRESENTS:

That American Home Assurance Company, a New York corporation, and National Union Fire Insurance Company of Pittsburgh, PA., a Pennsylvania corporation, does each hereby appoint

---Michael F. Yadach, Ana W. Oliveras, Juli A. Russell; of Sunrise, Florida---

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the respective company thereby.

IN WITNESS WHEREOF, American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA. have each executed these presents

this 14th day of November, 2006



Vincent P. Forte

Vincent P. Forte, Vice President

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

On this 14th day of November, 2006 before me came the above named officer of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA., to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seals of said corporations thereto by authority of his office.

Juliana E. Hallenbeck

JULIANA E. HALLENBECK
NOTARY PUBLIC, STATE OF NEW YORK
No. 01HA6125971
QUALIFIED IN BRONX COUNTY
MY COMMISSION EXPIRES APRIL 18, 2009

CERTIFICATE

Exerpts of Resolutions adopted by the Boards of Directors of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA. on May 18, 1976:

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business;

"RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance and other contract of indemnity and writing obligatory in the nature thereof;

"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Elizabeth M. Tuck, Secretary of American Home Assurance Company and of National Union Fire Insurance Company of Pittsburgh, PA. do hereby certify that the foregoing exerpts of Resolutions adopted by the Boards of Directors of these corporations, and the Powers of Attorney issued pursuant thereto, are true and correct, and that both the Resolutions and the Powers of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of each corporation



this 14th day of December 2006

Elizabeth M. Tuck

Elizabeth M. Tuck, Secretary



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. 216561

Certificate No. 001161213

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

Michael F. Yadach, Juli A. Russell, Nancy H. Zaleski, and Ana W. Oliveras

of the City of Sunrise, State of Florida, 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 8th day of September, 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 8th day of September, 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, 2011.



[Signature]
Marie C. Tetreault, Notary Public

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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.

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

DEC 14 2006

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said companies this _____ day of _____, 20 _____.

Kori M. Johanson
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.

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TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

HARTFORD, CONNECTICUT 06183

FINANCIAL STATEMENT AS OF JUNE 30, 2005

CAPITAL STOCK \$ 8,000,000

ASSETS		LIABILITIES & SURPLUS	
CASH & INVESTED CASH	\$ 170,958,981	UNEARNED PREMIUMS	\$ 494,258,895
BONDS	2,219,237,624	LOSSES	880,103,218
STOCK	11,708,010	LOSS ADJUSTMENT EXPENSES	108,071,434
INVESTMENT INCOME DUE AND ACCRUED	28,851,861	COMMISSIONS	19,107,409
PREMIUM BALANCES	182,463,888	TAXES, LICENSES AND FEES	9,298,188
REINSURANCE RECOVERABLE	22,898,718	OTHER EXPENSES	14,386,382
NET DEFERRED TAX ASSET	32,927,881	CURRENT FEDERAL AND FOREIGN INCOME TAXES	21,048,151
RECEIVABLE FOR SECURITIES	4,579,654	PAYABLE FOR SECURITIES	28,864,828
OTHER ASSETS	9,320,730	PAYABLE TO PARENT, SUBSIDIARIES & AFFILIATES	9,324,880
		OTHER ACCRUED EXPENSES AND LIABILITIES	371,392,888
		TOTAL LIABILITIES	\$1,738,157,197
		CAPITAL STOCK	\$ 8,000,000
		PAID IN SURPLUS	303,297,402
		OTHER SURPLUS	815,796,528
		TOTAL SURPLUS TO POLICYHOLDERS	\$ 1,927,093,930
TOTAL ASSETS	\$2,681,244,126	TOTAL LIABILITIES & SURPLUS	\$2,681,244,126

STATE OF CONNECTICUT)
 COUNTY OF HARTFORD)ss.
 CITY OF HARTFORD)

LAWRENCE A. SIUTA, BEING DULY SWORN, SAYS THAT HE IS CHIEF FINANCIAL OFFICER - BOND, OF THE TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, AND THAT TO THE BEST OF HIS KNOWLEDGE AND BELIEF, THE FOREGOING IS A TRUE AND CORRECT STATEMENT OF THE FINANCIAL CONDITION OF SAID COMPANY AS OF THE 30th DAY OF JUNE, 2005.



SUBSCRIBED AND SWORN TO BEFORE ME THIS 31ST DAY OF AUGUST, 2005

L. A. Siuta

 CHIEF FINANCIAL OFFICER - BOND

Cynthia K. Sabone

 NOTARY PUBLIC

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by M. P. HAMMOND, Vice President, and ERIC D. BARNES, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint Juli A. RUSSELL, Michael F. YADACH, Nancy H. ZALESKI and Ana W. OLIVERAS, all of Sunrise, Florida, EACH its true and lawful agent and Attorney-in-Fact to make, execute, seal and deliver for, and on its behalf as surety, and as its act and deed: any and all bonds and undertakings, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney is hereby issued on behalf of Juli A. RUSSELL, Michael F. YADACH, Nancy H. ZALESKI and Ana W. OLIVERAS, dated February 1, 2006.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 17th day of March, A.D. 2006.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Eric D. Barnes

Eric D. Barnes

M. P. Hammond

By:

Assistant Secretary

M. P. Hammond

Vice President

State of Maryland }
City of Baltimore } ss:

On this 17th day of March, A.D. 2006, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came M. P. HAMMOND, Vice President, and ERIC D. BARNES, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Constance A. Dunn

Constance A. Dunn

Notary Public

My Commission Expires: July 14, 2007

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,....and to affix the seal of the Company thereto."

CERTIFICATE

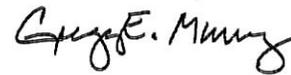
I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this _____ day of _____, **DEC 14 2006**



Assistant Secretary



FIDELITY AND DEPOSIT COMPANY

OF MARYLAND
3910 KESWICK ROAD, BALTIMORE, MD 21203

Statement of Financial Condition
As Of December 31, 2004

ASSETS

Table with 2 columns: Asset Name and Amount. Rows include Bonds, Stocks, Cash in Banks and Offices and Short Term Investments, Reinsurance Recoverable, Other Accounts Receivable, and TOTAL ADMITTED ASSETS.

LIABILITIES, SURPLUS AND OTHER FUNDS

Table with 2 columns: Liability/Surplus Name and Amount. Rows include Reserve for Taxes and Expenses, Ceded Reinsurance Premiums Payable, TOTAL LIABILITIES, Capital Stock, Paid Up, Surplus, Surplus as regards Policyholders, and TOTAL.

Securities carried at \$20,480,048 in the above statement are deposited as required by law.

Securities carried on the basis prescribed by the National Association of Insurance Commissioners. On the basis of December 31, 2004 market quotations for all bonds and stocks owned, the Company's total admitted assets would be \$218,087,378 and surplus as regards policyholders \$180,324,065.

I, DAVID A. BOWERS, Corporate Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company on the 31st day of December, 2004.

Handwritten signature of David A. Bowers over a horizontal line, with 'Corporate Secretary' printed below.

State of Illinois }
City of Schaumburg } SS:

Subscribed and sworn to, before me, a Notary Public of the State of Illinois, in the City of Schaumburg, this 5th day of April, 2005.

Handwritten signature of Betsy A. Baloun over a horizontal line, with 'Notary Public' printed below.

