

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A311

Performance Bond

Inst # 1994-26410

08/25/1994-26410
12:20 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 MCD 21.00

~~KNOW~~ ALL MEN BY THESE PRESENTS: that
CHARLES & VINZANT CONSTRUCTION CO.
500 SOUTHLAND DRIVE, SUITE 102
BIRMINGHAM, AL 35226

(Here insert full name and address or legal title of Contractor)

as Principal, hereinafter called Contractor, and,
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
210 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21203

(Here insert full name and address or legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto
WAL-MART STORES, INC.
701 S. WALTON BOULEVARD
BENTONVILLE, AR 72716

(Here insert full name and address or legal title of Owner)

as Obligor, hereinafter called Owner, in the amount of FOUR MILLION FOUR HUNDRED EIGHT THOUSAND
FOUR HUNDRED FIFTEEN AND NO/100
Dollars (\$ 4,408,415.00),

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators,
successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Contractor has by written agreement dated *August 16 19 94*, entered into a contract with Owner for

(Here insert full name, address and description of project)

WAL-MART
PELHAM, AL STORE NUMBER: 423

in accordance with Drawings and Specifications prepared by
W. ROGER RIDGEWAY, ARCHITECT OF RECORD
ONE WEST THIRD STREET, SUITE 100
TULSA, OK 74103-3501

(Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

PERFORMANCE BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

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

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1) Complete the Contract in accordance with its terms and conditions, or

2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though 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 less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

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

Signed and sealed this

19th day of August

19 94

CHARLES & VINZANT CONSTRUCTION CO.

(Principal)

(Seal)

Stephanie Barnett

(Witness)

A. Charles Furline, Partner

(Title)

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

(Surety)

(Seal)

Glenda Van Emst

(Witness)

Richard E. Thompson

(Title)

RICHARD E. THOMPSON, ATTORNEY-IN-FACT

THE AMERICAN INSTITUTE OF ARCHITECTS



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Labor and Material Payment Bond

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENTS: that

CHARLES & VINZANT CONSTRUCTION CO.
500 SOUTHLAND DRIVE, SUITE 102
BIRMINGHAM, AL 35226

(Here insert full name and address or legal title of Contractor)

as Principal, hereinafter called Principal, and,
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
210 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21203

(Here insert full name and address or legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto

(Here insert full name and address or legal title of Owner)

WAL-MART STORES, INC.
701 S. WALTON BOULEVARD
BENTONVILLE, AR 72716

as Oblige, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the

amount of FOUR MILLION FOUR HUNDRED EIGHT THOUSAND FOUR HUNDRED FIFTEEN AND NO/100
(Here insert a sum equal to at least one-half of the contract price) Dollars (\$ 4,408,415.00),

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated August 16 1994, entered into a contract with Owner for
(Here insert full name, address and description of project)

WAL-MART

PELHAM, AL STORE NUMBER: 423

in accordance with Drawings and Specifications prepared by

W. ROGER RIDGEWAY, ARCHITECT OF RECORD

ONE WEST THIRD STREET, SUITE 100

TULSA, OK 74103-3501

(Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

LABOR AND MATERIAL PAYMENT BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial

accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which Principal ceased Work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this

1944

day of August

1944

CHARLES & VINZANT CONSTRUCTION CO.

(Principal)

(Seal)

(Witness)

R. Charles Feltner, Partner
(Title)

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

(Surety)

(Seal)

(Witness)

Glenda Van Emst

Richard E. Thompson
(Title)

RICHARD E. THOMPSON, ATTORNEY-IN-FACT

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

HOME OFFICE, BALTIMORE, MD

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by C. M. PECOT, JR., Vice-President, and C. W. ROBBINS, 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 Robert J. Meshad, John F. Wood, James A. Mosley, Richard E. Thompson, Alvin B. Bresler, Patton Bradford, Jr. and Barbara Sue Garren, all of Birmingham, Alabama, 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 revokes that issued on behalf of Robert J. Meshad, et al., dated, October 9, 1990.

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 11th day of February, A.D. 1991

ATTEST:



FIDELITY AND DEPOSIT COMPANY OF MARYLAND

C. W. Robbins
Assistant Secretary

By

C. M. Pecot, Jr.
Vice-President

STATE OF MARYLAND
CITY OF BALTIMORE

{ SS:

On this 11th day of February, A.D. 1991, before the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and qualified, came the above-named Vice-President and 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, at the City of Baltimore, the day and year first above written.



CAROL J. FADER

Carol J. Fader
Notary Public, Commission Expires August 1, 1992

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy, is 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 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 16th day of July, 1969.

RESOLVED: "That the facsimile or mechanically reproduced signature of any 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 _____, 19____.

033-0210

J. Gregory Hamilton
Assistant Secretary

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."

* 1994-26410

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SHELBY COUNTY JUDGE OF PROBATE
006 MCD 21.00