



§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

**§ 7** If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

**§ 8** If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

**§ 9** The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

**§ 10** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**§ 11** Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**§ 12** Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

**§ 13** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### **§ 14 Definitions**

**§ 14.1 Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

**§ 14.2 Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

**§ 14.3 Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

**§ 14.4 Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

**§ 14.5 Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

**§ 15** If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

NOTWITHSTANDING ANYTHING IN THE PAYMENT BOND OR THE CONSTRUCTION CONTRACT TO THE CONTRARY, THE PROVISIONS AND LIMITATIONS OF SECTION 713.23, FLORIDA STATUTES, INCLUDING BUT NOT LIMITED TO THE TIME LIMITATIONS ARE INCORPORATED IN THIS BOND BY REFERENCE.

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ *(Corporate Seal)*

**SURETY**

Company: \_\_\_\_\_ *(Corporate Seal)*

Signature: \_\_\_\_\_

Name and Title:

Address

Signature: \_\_\_\_\_

Name and Title:

Address

Bond No. S7A2SU0002781

# Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

## Payment Bond

**CONTRACTOR:**  
*(Name, legal status and address)*

Hennessy Construction Services  
2300 22nd St. North  
St. Petersburg, FL 33713

**SURETY:**  
*(Name, legal status and principal place of business)*

American Alternative Insurance Corporation  
555 College Road East - P.O. Box 5241  
Princeton, NJ 08543  
Mailing Address for Notices

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

same as above

**OWNER:**  
*(Name, legal status and address)*

Eckerd College, Inc.  
4200 54th Avenue South  
St. Petersburg, FL 33711

### CONSTRUCTION CONTRACT

Date: June 14, 2024

Amount: \$ 13,674,689.00      Thirteen Million Six Hundred Seventy Four Thousand Six Hundred Eighty Nine Dollars and 00/100

Description:  
*(Name and location)*

New Cafeteria Building, 4200 54th Avenue South Street, St. Petersburg, FL 33711

**BOND**  
Date: July 19, 2024

*(Not earlier than Construction Contract Date)*

Amount: \$ 13,674,689.00      Thirteen Million Six Hundred Seventy Four Thousand Six Hundred Eighty Nine Dollars and 00/100

Modifications to this Bond:     None     See Section 18


**CONTRACTOR AS PRINCIPAL**  
Company: *(Corporate Seal)*

Hennessy Construction Services

Signature:   
Name: Mark J. Stalker  
and Title: President

**SURETY**  
Company: *(Corporate Seal)*

American Alternative Insurance Corporation

Signature:   
Name: Jennifer C. Hoehn  
and Title: Attorney-in-Fact

*(Any additional signatures appear on the last page of this Payment Bond.)*

*(FOR INFORMATION ONLY — Name, address and telephone)*

**AGENT or BROKER:**  
USI Holdings Corporation  
6100 Fairview Rd.  
Charlotte, NC 28210  
704-364-1233

**OWNER'S REPRESENTATIVE:**  
*(Architect, Engineer or other party:)*  
Sweet Sparkman Architects  
2168 Main Street  
Sarasota, FL 34237

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

**§ 10** The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

**§ 11** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**§ 12** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**§ 13** Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

**§ 14** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

**§ 15** Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### **§ 16 Definitions**

**§ 16.1 Claim.** A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

**§ 16.2 Claimant.** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

**§ 16.3 Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

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*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ *(Corporate Seal)*

**SURETY**

Company: \_\_\_\_\_ *(Corporate Seal)*

Signature: \_\_\_\_\_

Name and Title:

Address

Signature: \_\_\_\_\_

Name and Title:

Address



KNOW ALL MEN BY THESE PRESENTS: That the AMERICAN ALTERNATIVE INSURANCE CORPORATION, a corporation organized and existing by virtue of the laws of the State of Delaware ("Corporation") with offices at 555 College Road East, Princeton, N.J. 08543, has made, constituted and appointed, and by these presents, does make, constitute and appoint:

John David Pollack, III; G. Timothy Wilkerson; Jennifer C. Hoehn; Amy Daugherty; Katherine Fowler; and Angela D. Ramsey

its true and lawful Attorneys-in-Fact, at Princeton, in the State of New Jersey, each of them alone to have full power to act without the other or others, to make, execute and deliver on its behalf, as Surety or Co-surety, bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate said Company for any portion of the penal sum thereof in excess of the sum of One Hundred Million Dollars (\$100,000,000).

Such bonds and undertakings for said purposes, when duly executed by said Attorney(s)-in-Fact, shall be binding upon said Company as fully and to the same extent as if signed by the President of said Company under its corporate seal attested by its Secretary.

This appointment is made under and by authority of a certain Resolution adopted at a meeting of the Board of Directors of said Company duly held on the 27th day of August, 1975, a copy of which appears below.

IN WITNESS WHEREOF, the AMERICAN ALTERNATIVE INSURANCE CORPORATION has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officers this 24th day of September, 2021.



By:

*Michael G. Kerner*

Michael G. Kerner  
President

Attest:

*Ignacio Rivera*

Ignacio Rivera  
Deputy General Counsel & Secretary

STATE OF NEW JERSEY, COUNTY OF SOMERSET

The foregoing instrument was acknowledged before me by means of online notarization this 24th day of September, 2021, by Michael G. Kerner and Ignacio Rivera, who are personally known to me.



*Julian Sanfilippo*  
Julian Sanfilippo, Notary Public  
State of New Jersey  
My Commission Expires February 8, 2026

SECRETARY'S CERTIFICATE

The undersigned, Ignacio Rivera, hereby certifies:

- 1. That the undersigned is Secretary of American Alternative Insurance Corporation, a corporation of the State of Delaware;
- 2. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of said Corporation on the day of its date, and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with said original power of attorney, and that the same is a true and correct copy of said original power of attorney and of the whole thereof;
- 3. That the original resolution of which the following is a copy was duly adopted at, and recorded in the minutes of, a regular meeting of the Board of Directors of said Corporation duly held on August 4, 1998, and has not since been revoked, amended or modified.

RESOLVED, that each of the following officers of this Corporation, namely, the President, the Executive Vice President, the Senior Vice Presidents, and the Vice Presidents, be, and they hereby are, authorized, from time to time in their discretion, to appoint such agent or agents or attorney or attorneys-in-fact as deemed by them necessary or desirable for the purpose of carrying on this Corporation's business, and to empower such agent or agents or attorney or attorneys-in-fact to execute and deliver, in this Corporation's name and on its behalf, and under its seal or otherwise, surety bonds, surety undertakings or surety contracts made by this Corporation as surety thereon.

RESOLVED, that the signature of any authorized officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney and revocation of any power of attorney or certificate of either given for the execution of any surety bond, surety undertaking, or surety contract, such signature and seal, when so used being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed.

FURTHER RESOLVED, that any prior appointments by the Corporation of MGAs are, in all respects, hereby ratified, confirmed and approved.

FURTHER RESOLVED, that the Secretary or any Assistant Secretary of this Corporation is hereby authorized to certify and deliver to any person to whom such certification and delivery may be deemed necessary and desirable in the opinion of such Secretary or Assistant Secretary, a true copy of the foregoing resolution.

- 4. The undersigned has compared the foregoing copies of said original resolutions as so recorded, and they are the same true and correct copies of said original resolutions as so recorded and of the whole thereof.

Witness the hand of the undersigned and the seal of said Corporation this 19th day of July, 2024.



AMERICAN ALTERNATIVE INSURANCE CORPORATION

*Ignacio Rivera*  
Ignacio Rivera (Sep 24, 2021 16:06:01)

Ignacio Rivera  
Deputy General Counsel & Secretary

