



## SUBCONTRACT PERFORMANCE BOND

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That we \_\_\_\_\_

(Name and address of Principal), as Principal (hereinafter the "Subcontractor"), and THE GUARANTEE COMPANY OF NORTH AMERICA USA, One Towne Square, Suite 1470, SOUTHFIELD, MI 48076, a corporation duly incorporated under the laws of the State of Michigan as Surety, (hereinafter the "Surety"), are held and firmly bound unto \_\_\_\_\_

(Name and address of Contractor) (hereinafter the "Obligee"), in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (hereinafter the "Penal Sum"), for

the payment whereof the Subcontractor and Surety bind themselves, and their respective heirs, administrators, executors, successors and assigns, jointly and severally.

WHEREAS, the Subcontractor has by written agreement dated \_\_\_\_\_, \_\_\_\_\_ (hereinafter the "Subcontract") entered into a subcontract

with the Obligee for the performance of \_\_\_\_\_

(Describe the work ) (hereinafter the "Subcontract Work), for and at the \_\_\_\_\_

(hereinafter, the "Project") located at \_\_\_\_\_

in accordance with drawings and specifications prepared by \_\_\_\_\_

\_\_\_\_\_ (Insert name and address of Architect/Engineer) which Subcontract is by reference made a part hereof; except as otherwise provided herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Subcontractor shall perform the Subcontract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the conditions set forth herein below.

1. The Surety's obligations and undertakings hereunder shall arise only in the event that the Obligee is not itself in default of any provision or provisions of the Subcontract.
2. If the Obligee is not in default, and the Obligee contends that the Subcontractor is in default under the Subcontract, the Surety's obligations hereunder shall arise only after:
  - 2.1. The Obligee shall notify the Surety and the Subcontractor, in writing, by registered or certified mail, return receipt requested, describing with reasonable particularity the basis for the Obligee's contention that the Subcontractor is in default, and requesting a meeting to occur among representatives of the Obligee, Subcontractor and the Surety not later than fifteen (15) days after the receipt of such notice, to discuss the matters raised in the notice and the further performance of



the Subcontract by any party; and The Obligee has declared the Subcontractor to be in default and formally terminated the Subcontractor's right to complete the Subcontract. The Obligee shall not declare the Subcontractor to be in default earlier than twenty (20) days after the Surety and the Subcontractor have received notice as provided in paragraph hereinabove; and

- 2.2. The Obligee has agreed to pay the Balance of the Subcontract Price to the Surety in accordance with the terms of the Subcontract, or to another contractor selected to perform the Subcontract by the Surety at the written direction of the Surety, or in any other manner reasonably requested by the Surety. The "Balance of the Subcontract Price" is herein defined as the total amount payable by the Obligee to the Subcontractor under the Subcontract after all proper adjustments have been made thereto, including any allowances due the Subcontractor from the Obligee in settlement of any insurance or other claims for damages to which the Subcontractor is entitled, and reduced by all valid and proper payments made to or on behalf of the Subcontractor under the Subcontract.
3. After the Obligee has satisfied the conditions of Paragraphs 2.1, 2.2 and 2.3 hereinabove, then the Surety, at its option and at its expense, shall take one of the following actions:
  - 3.1. Arrange for the Subcontractor to perform and complete the Subcontract; or
  - 3.2. Enter into a takeover agreement with the Obligee and undertake to perform and complete, or cause the completion of the Subcontract, either itself, or through any agents or independent contractors of its choosing; or
  - 3.3. Obtain bids or negotiated proposals from qualified contractor(s) reasonably acceptable to the Obligee, for the completion of the Subcontract. Thereafter, the contractor(s) selected with the Obligee's concurrence, which shall not be unreasonably withheld, shall contract directly with the Obligee for the completion of the Subcontract (hereinafter, the "Completion Subcontract"). The Completion Subcontract shall be secured with a performance and payment bond executed by a qualified surety, equivalent to the bond or bonds issued in connection with the Subcontract. At the time the Obligee executes the Completion Subcontract, the Surety shall pay to the Obligee any difference between the price of the Completion Subcontract and the Balance of the Subcontract Price; subject to the limit of the Surety's liability as stated in the Penal Sum; or
  - 3.4. After investigation, determine the amount of money, if any, required to complete the Subcontract and tender payment therefore to the Obligee; or
  - 3.5. Deny liability in whole or in part.
4. The responsibilities of the Surety to the Obligee hereunder shall not in any event be greater than those of the Subcontractor to the Obligee under the Subcontract. The responsibilities of the Obligee to the Surety shall not be greater than those of the Obligee under the Subcontract. The Obligee hereby commits the Balance of the Subcontract Price to the Surety in mitigation of any costs incurred by the Surety in completing or causing the completion of the Subcontract, or in otherwise performing its obligations, if any, hereunder. Under any circumstances, the Surety's liability hereunder shall not exceed the Penal Sum of this Bond.



5. The Surety shall not be liable to the Obligee or others for any obligations of the Subcontractor that are unrelated to the Subcontract, and the Balance of the Subcontract 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 Obligee or its heirs, executors, administrators or assigns
6. Any proceeding, legal or equitable, under this Bond, must be instituted in a court of competent jurisdiction in the jurisdiction in which the Project or any part of it is located. Any proceeding, legal or equitable, must be instituted, if at all, within one (1) year after the Subcontractor first defaulted and/or was declared by the Obligee to be in default, or within one (1) year after the Subcontractor ceased work on the Project, or within one (1) year after the Surety has refused to perform pursuant to this Bond, whichever first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitations available to sureties as a defense in the jurisdiction where any proceeding is instituted shall apply.
7. Notice to the Surety, the Obligee and/or the Subcontractor shall be mailed or delivered to the addresses shown hereinabove.
8. If and when this Bond has been furnished to comply with any statutory or other legal requirement pertaining in any location where the Project is located, any provision in this Bond conflicting with said statutory or other legal requirements shall be deemed deleted here from and the minimum provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein.

Signed, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
BY:

\_\_\_\_\_  
ITS:

**The Guarantee Company of North America USA**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
BY:

\_\_\_\_\_  
Attorney-In-Fact