

DANIS

SUBCONTRACT PERFORMANCE BOND

PRINCIPAL (SUBCONTRACTOR)
(Name and Address):

SURETY (Name and Address of Surety
Company Office):

OBLIGEE (CONTRACTOR)

Danis Building Construction Company
3233 Newmark Drive
Miamisburg OH 45342

SUBCONTRACT

Danis Subcontract Number:
Date:
Name and Location of project:

BOND

Date (Not earlier than Subcontract Date):
Penal Amount (Subcontract Price): \$

SUBCONTRACTOR AS PRINCIPAL

Company:

Signature: _____

Name: _____

Title: _____

Witness: _____

SURETY

Company:

Signature: _____

Name: _____

Title: _____

Attach Power of Attorney

Witness: _____

FOR INFORMATION ONLY-
SURETY AGENT or BROKER:
(Name, Address and Telephone)

ARTICLES

1. **SCOPE OF BOND.** The Principal and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Oblige for the performance of the Subcontract, which is incorporated in this bond by reference and pursuant to which this bond is issued.
2. **EFFECT OF OBLIGATION.** If the Principal performs the Subcontract, then this bond shall be null and void; otherwise it shall remain in full force and effect.
3. **ALTERATION NOTICE WAIVER.** The Surety waives notice of any change, alteration or extension of the Subcontract, including but not limited to the Subcontract scope, price and/or time, made by the Oblige, or any forbearance on the part of either the Oblige or the Principal to the other. No such change, alteration, extension or forbearance shall in any way release the principal or the Surety from liability hereunder. Any increase in the Subcontract Price shall automatically result in a corresponding increase in the penal amount of this bond; decreases in the Subcontract Price shall not, however, reduce the penal amount of the bond unless specifically provided in a written change order.
4. **PRINCIPAL DEFAULT.** Whenever the Principal is declared by the Oblige to be in default under the Subcontract, with the Oblige having performed its obligations in the Subcontract, the Surety shall promptly:
 - 4.1 **REMEDY DEFAULT.** Remedy the default in all respects; or
 - 4.2 **COMPLETE SUBCONTRACT.** Complete the Subcontract in accordance with its terms and conditions; or
 - 4.3 **OBTAIN NEW CONTRACTORS.** Obtain a bid or bids formally, informally or negotiated for completing the Subcontract in accordance with its terms and conditions, and upon determination by the Surety of the lowest responsible bidder, or negotiated proposal, or, if the Oblige elects, upon determination by the Oblige and the Surety jointly of the lowest responsible bidder or negotiated proposal, arrange for a contract between such party and the Oblige. The Surety will make available as work progresses sufficient funds to pay the costs incurred, or
 - 4.4 **PAY OBLIGEE.** Determine the amount of which it is liable to the Oblige and pay the Oblige that amount as soon as practicable.
5. **RIGHT TO IMMEDIATE CURE.** Notwithstanding any provision of Article 4 to the contrary, should the Oblige reasonably determine that job progress will be delayed or that delay damages will be assessed unless immediate action is taken to cure the Principal's default, the Oblige may upon three days written notice to the Surety, relet or complete the Work of the Principal. The reasonable cost of such reletting or completion shall be considered as part of the cost of completion.
6. **SURETY DEFAULT.** Should Surety not proceed as provided in Article 4 with reasonable promptness, the Surety shall be deemed to be in default on this bond fifteen days after receipt of an additional written notice from the Oblige to the Surety demanding that the Surety perform its obligations under this bond, and the Oblige shall be entitled to enforce any remedy available to the Oblige. If the Surety proceeds as provided in Article 4.4 and the Oblige refuses the payment tendered or if the Surety has denied liability in whole or in part, the Oblige, without further notice, shall be entitled to enforce any remedy available to the Oblige.
7. **EXTENT OF SURETY OBLIGATION.** To the limit of the penal amount of this bond, the Surety is obligated without duplication for:
 - 7.1 All costs associated with performing responsibilities of the Principal for correction of defective work and completion of the Subcontract;
 - 7.2 Additional legal, design professional, and delay costs associated with the Principal's default, or resulting from the actions or the failure to act of Surety under Article 4; and
 - 7.3 Liquidated damages, or if no liquidated damages exist under the Subcontract, actual damages caused by delayed performance or non-performance of the Principal or the Surety.
8. **DENIAL OF LIABILITY.** Should the Surety deny liability in whole or in part on any claim asserted hereunder it shall notify the Oblige within thirty days of the declaration of default and state all reasons for the denial of liability.
9. **RIGHT OF ACTION.** Any suit under this bond may be instituted any time prior to the expiration of the later of (a) two years from the date on which final payment under the Subcontract is made or (b) the statute of limitations applicable to the Subcontract, it being agreed and intended that the statute of limitations applicable to action on this bond is coextensive with the statute of limitations applicable to the Subcontract. No right of action shall accrue on this bond to or for the use of any person or entity other than the Oblige named herein, its heirs, executors, administrators, assigns or successors. Any suit must be brought only in the courts of the jurisdiction in which the Oblige office shown on page one of this bond is located. The Principal, Oblige and Surety consent and agree to the exclusive jurisdiction and venue of those courts.
10. **STATUTORY BOND.** When this bond has been furnished to comply with a statutory or other legal requirement in the location where the construction is or was to be performed, any provision in this bond conflicting with such statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that in such situations this bond shall be construed as a statutory bond and not as a common law bond. Specifically, where required, this bond incorporates the provisions of Section 255.05 or Section 713.23 Florida Statutes, whichever is applicable, and all notice, time, and party limitations provided therein are incorporated herein by reference.
11. **NOTICE.** Notice to the Principal, the Surety, or the Oblige shall be mailed or delivered to the address shown on the signature page.
12. **MULTIPLE PARTIES.** Any singular reference to the Principal, the Surety, the Oblige, or other party shall be considered plural where applicable.

Form: DBCC Midwest ~ August 2007