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CONSENSUSDOCS 470 DESIGN-BUILD PERFORMANCE BOND

(Where the Surety is Liable for the Design Costs of the Work)

This document was developed through a collaborative effort of entities representing a wide cross-section of the construction industry. The organizations endorsing this document believe it represents a fair and reasonable consensus among the collaborating parties of allocation of risk and responsibilities in an effort to appropriately balance the critical interests and concerns of all project participants.

These endorsing organizations recognize and understand that users of this document must review and adapt this document to meet their particular needs, the specific requirements of the project, and applicable laws. Users are encouraged to consult legal, insurance and surety advisors before modifying or completing this document. Further information on this document and the perspectives of endorsing organizations is available in the ConsensusDOCS Guidebook.

The Owner, _____, (the "Owner") and the Design-Builder _____, (the "Design-Builder") have entered into a Contract (the "Contract") dated _____ for _____ (the "Project"). The Contract is incorporated by reference into this Performance Bond (the "Bond").

By virtue of this Bond, the Design-Builder as Principal and _____ as Surety ("Surety"), are bound to the Owner as Oblige in the maximum amount of _____ Dollars

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(§ _____) (the "Bond Sum"). The Design-Builder and Surety hereby bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein.

1. **GENERAL CONDITIONS** It is the condition of this Bond that if the Design-Builder performs its Contract obligations (the "Work") the Surety's obligations under this Bond are null and void. Otherwise the Surety's obligations shall remain in full force and effect. The Surety waives any requirement to be notified of alterations or extensions of time made by the Owner in the Contract. The Owner may not invoke the provisions of this Bond unless the Owner has performed its obligations pursuant to the Contract. Upon making demand on this Bond, the Owner shall make the Contract Balance (the total amount payable by the Owner to the Design-Builder pursuant to the Contract less amounts properly paid by the Owner to the Design-Builder) available to the Surety for completion of the Work.

2. **SURETY OBLIGATIONS** If the Design-Builder is in default pursuant to the Contract and the Owner has declared the Design-Builder in default, the Surety promptly may remedy the default or shall:

- a. Complete the Work, with the consent of the Owner, through the Design-Builder or otherwise;
- b. Arrange for the completion of the Work by a design-builder acceptable to the Owner and secured by performance and payment bonds equivalent to those for the Contract issued by a qualified surety. The Surety shall make available as Work progresses sufficient funds to pay the cost of completion of the Work less the Contract Balance up to the Bond Sum, or
- c. Waive its right to complete the Work and reimburse the Owner the amount of its reasonable costs, not to exceed the Bond Sum, to complete the Work less the Contract Balance.

3. **LIMITED LIABILITY FOR DESIGN** This Bond shall cover the costs to complete the Work, but shall not cover any damages of the type specified to be covered by the Design-Builder's Liability Insurance or by the Professional Liability Insurance required pursuant to the Contract, whether or not such insurance is provided or in an amount sufficient to cover such damages.

4. **DISPUTE RESOLUTION** All disputes pursuant to this Bond shall be instituted in any court of competent jurisdiction in the location in which the Project is located and shall be commenced within two years after default of the Design-Builder or Substantial Completion of the Work, whichever occurs first. If this provision is prohibited by law, the minimum period of limitation available to sureties in the jurisdiction shall be applicable.

This Bond is entered into as of _____.

SURETY _____ (seal)

By:

Print Name: _____

Print Title: _____

(Attach Power of Attorney)

Witness:

DESIGN-BUILDER _____ (seal)

By:

IMPORTANT: A vertical line in the margin indicates a change has been made to the original text. Prior to signing, recipients may wish to request from the party producing the document a "redlined" version indicating changes to the original text. Consultation with legal and insurance counsel and careful review of the entire document are strongly encouraged.

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Print Name: _____

Print Title: _____

Witness:

(Additional signatures, if any, appear on attached page)

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