

RED ZONE DESIGN & CONSTRUCTION,
INC., a Pennsylvania corporation,

Claimant,

vs.

CLEARFIELD MALL ASSOCIATES, LP,

Owner or Reputed Owner,

* IN THE COURT OF COMMON PLEAS
* OF
* CLEARFIELD COUNTY, PENNSYLVANIA

* NO. 2006-
*
*

MECHANICS' LIEN CLAIM

AND NOW, comes the Claimant, Red Zone Design & Construction, Inc., by and through its attorney, Michael A. Sossong, Esquire, and files the following Mechanics' Lien Claim.

1. The Claimant is Red Zone Design & Construction, Inc., a Pennsylvania corporation, with its principal office located at 647 Main Street, Suite 200, Johnstown, Cambria County, Pennsylvania 15901, and it files this claim as Contractor.

2. The Owner or Reputed Owner is Clearfield Mall Associates, LP, with a principal office located at 300 Market Street, Johnstown, Pennsylvania 15901.

3. The Claimant contracted with Clearfield Mall Associates, LP, on February 28, 2005, pursuant to a written agreement for the renovation of approximately 42,000 square feet of the existing Ames Department Store for use as an Ollie's Department Store at the Clearfield Mall, Lawrence Township, Clearfield, Pennsylvania. A true and correct copy of the February 28, 2005 Agreement, Change Order and Lump Sum Proposal governing the services performed by Claimant for Clearfield Mall Associates, LP is attached hereto, made a part hereof and marked as Exhibit "A".

4. The Claimant completed the services required by the Agreement on April 24, 2006.

5. The Claimant is owed \$31,961.90, plus interest at the contract rate of eighteen (18%) percent per annum on the unpaid balance.

6. The Claimant asserts a Mechanics' Lien against the approximately 42,000 square feet Ollie's Department Store located at the Clearfield Mall located in Lawrence Township, Clearfield County, Pennsylvania.

WHEREFORE, the Claimant hereby asserts a Mechanics' Lien Claim upon the premises described above in the amount of \$31,961.90, plus interest at the contract rate of eighteen (18%) percent per annum from April 24, 2006, plus costs, against the Owner or Reputed Owner, Clearfield Mall Associates, LP.

Respectfully submitted,

Dated: July 6, 2006

By: 

Michael A. Sossong, Esquire
Attorney for Claimant,
Red Zone Design & Construction, Inc.
3133 New Germany Road
Suite 59, Mini Mall
Ebensburg, PA 15931
(814) 472-7160
Supreme Court I.D.# 43957

RED ZONE DESIGN & CONSTRUCTION,
INC., a Pennsylvania corporation,

Claimant,

vs.

CLEARFIELD MALL ASSOCIATES, LP,

Owner or Reputed Owner,

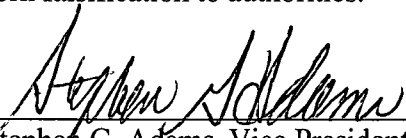
* IN THE COURT OF COMMON PLEAS
* OF
* CLEARFIELD COUNTY, PENNSYLVANIA
*
*
*

* NO. 2006-
*
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VERIFICATION

I, Stephen G. Adams, Vice President of Red Zone Design & Construction, Inc., verify that the statements made in the foregoing Mechanics' Lien Claim are true and correct to the best of my knowledge and belief. I understand that false statements herein are made subject to the penalties provided by 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Dated: JULY 5, 2006



Stephen G. Adams, Vice President of
Red Zone Design & Construction, Inc.



AIA[®] Document A191[™] – 1996 Part 1

Standard Form of Agreement Between Owner and Design/Builder Part 1 Agreement

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9. BASIS OF COMPENSATION
10. OTHER CONDITIONS AND SERVICES

AGREEMENT made as of the twenty-eighth day of February in the year of 2005

(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name and address)

Clearfield Mall Associates, LP
300 Market Street
Johnstown, Pennsylvania 15901

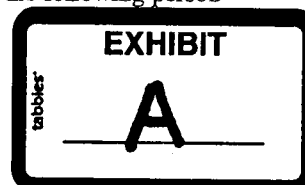
and the Design/Builder:
(Name and address)

Red Zone Design & Construction, Inc.
647 Main Street, Suite 200
Johnstown, Pennsylvania 15901

For the following Project:
(Include Project name, location and a summary description.)

Renovation of approximately 42,000 square feet of the existing Ames Department Store for use as an Ollie's Department Store at the Clearfield Mall, Clearfield Pennsylvania

The architectural services described in Article 1 will be provided by the following person or entity who is lawfully licensed to practice architecture:



ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

Before executing this Part 1 Agreement, the parties should reach substantial agreement on the Part 2 Agreement.

Name and address

R. L. Beattie Jr., Architect
2141 Ardmore Boulevard, Suite 1
Pittsburgh, Pennsylvania 15221

Registration Number

RA009553EX

Relationship to Design/Builder

Contract to Design/Builder

Normal structural, mechanical and electrical engineering services will be provided contractually through the Architect except as indicated below:

Name, address and discipline**Registration Number****Relationship to Design/Builder**

The Owner and the Design/Builder agree as set forth below.

Provide feasibility and basic cost estimates for renovation of the project.

TERMS AND CONDITIONS – PART 1 AGREEMENT

ARTICLE 1 DESIGN/BUILDER

§ 1.1 SERVICES

§ 1.1.1 Preliminary design, budget, and schedule comprise the services required to accomplish the preparation and submission of the Design/Builder's Proposal as well as the preparation and submission of any modifications to the Proposal prior to execution of the Part 2 Agreement.

§ 1.2 RESPONSIBILITIES

§ 1.2.1 Design services required by this Part 1 Agreement shall be performed by qualified architects and other design professionals. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of the Design/Builder.

§ 1.2.2 The agreements between the Design/Builder and the persons or entities identified in this Part 1 Agreement, and any subsequent modifications, shall be in writing. These agreements, including financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon request.

§ 1.2.3 Construction budgets shall be prepared by qualified professionals, cost estimators or contractors retained by and acting in the interest of the Design/Builder.

§ 1.2.4 The Design/Builder shall be responsible to the Owner for acts and omissions of the Design/Builder's employees, subcontractors and their agents and employees, and other persons, including the Architect and other design professionals, performing any portion of the Design/Builder's obligations under this Part 1 Agreement.

§ 1.2.5 If the Design/Builder believes or is advised by the Architect or by another design professional retained to provide services on the Project that implementation of any instruction received from the Owner would cause a violation of any applicable law, the Design/Builder shall notify the Owner in writing. Neither the Design/Builder nor the Architect shall be obligated to perform any act which either believes will violate any applicable law.

§ 1.2.6 Nothing contained in this Part 1 Agreement shall create a contractual relationship between the Owner and any person or entity other than the Design/Builder.

§ 1.3 BASIC SERVICES

§ 1.3.1 The Design/Builder shall provide a preliminary evaluation of the Owner's program and project budget requirements, each in terms of the other.

§ 1.3.2 The Design/Builder shall visit the site, become familiar with the local conditions, and correlate observable conditions with the requirements of the Owner's program, schedule, and budget.

§ 1.3.3 The Design/Builder shall review laws applicable to design and construction of the Project, correlate such laws with the Owner's program requirements, and advise the Owner if any program requirement may cause a violation of such laws. Necessary changes to the Owner's program shall be accomplished by appropriate written modification or disclosed as described in Section 1.3.5.

§ 1.3.4 The Design/Builder shall review with the Owner alternative approaches to design and construction of the Project.

§ 1.3.5 The Design/Builder shall submit to the Owner a Proposal, including the completed Preliminary Design Documents, a statement of the proposed contract sum, and a proposed schedule for completion of the Project. Preliminary Design Documents shall consist of preliminary design drawings, outline specifications or other documents sufficient to establish the size, quality and character of the entire Project, its architectural, structural, mechanical and electrical systems, and the materials and such other elements of the Project as may be appropriate. Deviations from the Owner's program shall be disclosed in the Proposal. If the Proposal is accepted by the Owner, the parties shall then execute the Part 2 Agreement. A modification to the Proposal before execution of the Part 2 Agreement shall be recorded in writing as an addendum and shall be identified in the Contract Documents of the Part 2 Agreement.

§ 1.4 ADDITIONAL SERVICES

§ 1.4.1 The Additional Services described under this Section 1.4 shall be provided by the Design/Builder and paid for by the Owner if authorized or confirmed in writing by the Owner.

§ 1.4.2 Making revisions in the Preliminary Design Documents, budget or other documents when such revisions are:

- .1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
- .2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
- .3 due to changes required as a result of the Owner's failure to render decisions in a timely manner.

§ 1.4.3 Providing more extensive programmatic criteria than that furnished by the Owner as described in Section 2.1. When authorized, the Design/Builder shall provide professional services to assist the Owner in the preparation of the program. Programming services may consist of:

- .1 consulting with the Owner and other persons or entities not designated in this Part 1 Agreement to define the program requirements of the Project and to review the understanding of such requirements with the Owner;
- .2 documentation of the applicable requirements necessary for the various Project functions or operations;
- .3 providing a review and analysis of the functional and organizational relationships, requirements, and objectives for the Project;
- .4 setting forth a written program of requirements for the Owner's approval which summarizes the Owner's objectives, schedule, constraints, and criteria.

§ 1.4.4 Providing financial feasibility or other special studies.

§ 1.4.5 Providing planning surveys, site evaluations or comparative studies of prospective sites.

§ 1.4.6 Providing special surveys, environmental studies, and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

§ 1.4.7 Providing services relative to future facilities, systems and equipment.

§ 1.4.8 Providing services at the Owner's specific request to perform detailed investigations of existing conditions or facilities or to make measured drawings thereof.

§ 1.4.9 Providing services at the Owner's specific request to verify the accuracy of drawings or other information furnished by the Owner.

§ 1.4.10 Coordinating services in connection with the work of separate persons or entities retained by the Owner, subsequent to the execution of this Part 1 Agreement.

§ 1.4.11 Providing analyses of owning and operating costs.

§ 1.4.12 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

§ 1.4.13 Providing services for planning tenant or rental spaces.

§ 1.4.14 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

ARTICLE 2 OWNER

§ 2.1 RESPONSIBILITIES

§ 2.1.1 The Owner shall provide full information in a timely manner regarding requirements for the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria.

§ 2.1.2 The Owner shall establish and update an overall budget for the Project, including reasonable contingencies. This budget shall not constitute the contract sum.

§ 2.1.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Design/Builder in order to avoid unreasonable delay in the orderly and sequential progress of the Design/Builder's services. The Owner may obtain independent review of the documents by a separate architect, engineer, contractor, or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Design/Builder's services.

§ 2.1.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 2.1.5 The Owner shall furnish the services of geotechnical engineers when such services are stipulated in this Part 1 Agreement, or deemed reasonably necessary by the Design/Builder. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 2.1.6 The Owner shall disclose, to the extent known to the Owner, the results and reports of prior tests, inspections or investigations conducted for the Project involving: structural or mechanical systems; chemical, air and water pollution; hazardous materials; or other environmental and subsurface conditions. The Owner shall disclose all information known to the Owner regarding the presence of pollutants at the Project's site.

§ 2.1.7 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Design/Builder's Applications for Payment.

§ 2.1.8 The Owner shall promptly obtain easements, zoning variances and legal authorizations regarding site utilization where essential to the execution of the Owner's program.

§ 2.1.9 Those services, information, surveys, and reports required by Sections 2.1.4 through 2.1.8 which are within the Owner's control shall be furnished at the Owner's expense, and the Design/Builder shall be entitled to rely upon the accuracy and completeness thereof, except to the extent the Owner advises the Design/Builder to the contrary in writing.

§ 2.1.10 If the Owner requires the Design/Builder to maintain any special insurance coverage, policy, amendment, or rider, the Owner shall pay the additional cost thereof except as otherwise stipulated in this Part 1 Agreement.

§ 2.1.11 The Owner shall communicate with persons or entities employed or retained by the Design/Builder through the Design/Builder, unless otherwise directed by the Design/Builder.

ARTICLE 3 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ 3.1 Drawings, specifications, and other documents and electronic data furnished by the Design/Builder are instruments of service. The Design/Builder's Architect and other providers of professional services shall retain all common law, statutory and other reserved rights, including copyright in those instruments of service furnished by them. Drawings, specifications, and other documents and electronic data are furnished for use solely with respect to this Part 1 Agreement. The Owner shall be permitted to retain copies, including reproducible copies, of the

drawings, specifications, and other documents and electronic data furnished by the Design/ Builder for information and reference in connection with the Project except as provided in Sections 3.2 and 3.3.

§ 3.2 If the Part 2 Agreement is not executed, the Owner shall not use the drawings, specifications, and other documents and electronic data furnished by the Design/Builder without the written permission of the Design/Builder. Drawings, specifications, and other documents and electronic data shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, except by agreement in writing and with appropriate compensation to the Design/Builder, unless the Design/ Builder is adjudged to be in default under this Part 1 Agreement or under any other subsequently executed agreement, or by agreement in writing.

§ 3.3 If the Design/Builder defaults in the Design/Builder's obligations to the Owner, the Architect shall grant a license to the Owner to use the drawings, specifications, and other documents and electronic data furnished by the Architect to the Design/Builder for the completion of the Project, conditioned upon the Owner's execution of an agreement to cure the Design/Builder's default in payment to the Architect for services previously performed and to indemnify the Architect with regard to claims arising from such reuse without the Architect's professional involvement.

§ 3.4 Submission or distribution of the Design/Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section 3.1.

ARTICLE 4 TIME

§ 4.1 Upon the request of the Owner, the Design/Builder shall prepare a schedule for the performance of the Basic and Additional Services which shall not exceed the time limits contained in Section 10.1 and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 4.2 If the Design/Builder is delayed in the performance of services under this Part 1 Agreement through no fault of the Design/Builder, any applicable schedule shall be equitably adjusted.

ARTICLE 5 PAYMENTS

§ 5.1 The initial payment provided in Article 9 shall be made upon execution of this Part 1 Agreement and credited to the Owner's account as provided in Section 9.1.2.

§ 5.2 Subsequent payments for Basic Services, Additional Services, and Reimbursable Expenses provided for in this Part 1 Agreement shall be made monthly on the basis set forth in Article 9.

§ 5.3 Within ten (10) days of the Owner's receipt of a properly submitted and correct Application for Payment, the Owner shall make payment to the Design/Builder.

§ 5.4 Payments due the Design/Builder under this Part 1 Agreement which are not paid when due shall bear interest from the date due at the rate specified in Section 9.5, or in the absence of a specified rate, at the legal rate prevailing where the Project is located.

ARTICLE 6 DISPUTE RESOLUTION – MEDIATION AND ARBITRATION

§ 6.1 Claims, disputes or other matters in question between the parties to this Part 1 Agreement arising out of or relating to this Part 1 Agreement or breach thereof shall be subject to and decided by mediation or arbitration. Such mediation or arbitration shall be conducted in accordance with the Construction Industry Mediation or Arbitration Rules of the American Arbitration Association currently in effect.

§ 6.2 In addition to and prior to arbitration, the parties shall endeavor to settle disputes by mediation. Demand for mediation shall be filed in writing with the other party to this Part 1 Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of repose or limitations.

§ 6.3 Demand for arbitration shall be filed in writing with the other party to this Part 1 Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

§ 6.4 An arbitration pursuant to this Section may be joined with an arbitration involving common issues of law or fact between the Design/Builder and any person or entity with whom the Design/Builder has a contractual obligation to arbitrate disputes. No other arbitration arising out of or relating to this Part 1 Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Part 1 Agreement or not a party to an agreement with the Design/Builder, except by written consent containing a specific reference to this Part 1 Agreement signed by the Owner, the Design/Builder and all other persons or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Part 1 Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 6.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Unless otherwise provided, this Part 1 Agreement shall be governed by the law of the place where the Project is located.

§ 7.2 The Owner and the Design/Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Part 1 Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Part 1 Agreement. Neither the Owner nor the Design/Builder shall assign this Part 1 Agreement without the written consent of the other.

§ 7.3 Unless otherwise provided, neither the design for nor the cost of remediation of hazardous materials shall be the responsibility of the Design/Builder.

§ 7.4 This Part 1 Agreement represents the entire and integrated agreement between the Owner and the Design/Builder and supersedes all prior negotiations, representations or agreements, either written or oral. This Part 1 Agreement may be amended only by written instrument signed by both the Owner and the Design/Builder.

§ 7.5 Prior to the termination of the services of the Architect or any other design professional designated in this Part 1 Agreement, the Design/Builder shall identify to the Owner in writing another architect or design professional with respect to whom the Owner has no reasonable objection, who will provide the services originally to have been provided by the Architect or other design professional whose services are being terminated.

ARTICLE 8 TERMINATION OF THE AGREEMENT

§ 8.1 This Part 1 Agreement may be terminated by either party upon seven (7) days' written notice should the other party fail to perform substantially in accordance with its terms through no fault of the party initiating the termination.

§ 8.2 This Part 1 Agreement may be terminated by the Owner without cause upon at least seven (7) days' written notice to the Design/Builder.

§ 8.3 In the event of termination not the fault of the Design/Builder, the Design/Builder shall be compensated for services performed to the termination date, together with Reimbursable Expenses then due and Termination Expenses. Termination Expenses are expenses directly attributable to termination, including a reasonable amount for overhead and profit, for which the Design/Builder is not otherwise compensated under this Part 1 Agreement.

ARTICLE 9 BASIS OF COMPENSATION

The Owner shall compensate the Design/Builder in accordance with Article 5, Payments, and the other provisions of this Part 1 Agreement as described below.

§ 9.1 COMPENSATION FOR BASIC SERVICES

§ 9.1.1 FOR BASIC SERVICES, compensation shall be as follows:

§ 9.1.2 AN INITIAL PAYMENT of one dollar (\$ 1.00) shall be made upon execution of this Part 1 Agreement and credited to the Owner's account as follows:

§ 9.1.3 SUBSEQUENT PAYMENTS shall be as follows:

None.

§ 9.2 COMPENSATION FOR ADDITIONAL SERVICES

§ 9.2.1 FOR ADDITIONAL SERVICES, compensation shall be as follows:

In accordance with Paul C. Rizzo Associates basic rate schedule, attached.

§ 9.3 REIMBURSABLE EXPENSES

§ 9.3.1 Reimbursable Expenses are in addition to Compensation for Basic and Additional Services, and include actual expenditures made by the Design/Builder and the Design/Builder's employees and contractors in the interest of the Project, as follows:

Building permits, water & sewer tap fees.

§ 9.3.2 FOR REIMBURSABLE EXPENSES, compensation shall be a multiple of one decimal point one (1.1) times the amounts expended.

§ 9.4 DIRECT PERSONNEL EXPENSE is defined as the direct salaries of personnel engaged on the Project, and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

§ 9.5 INTEREST PAYMENTS

§ 9.5.1 The rate of interest for past due payments shall be as follows:

As per Commonwealth of Pennsylvania Statute.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design/Builder's principal places of business, at the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification or other requirements, such as written disclosures or waivers.)

§ 9.6 IF THE SCOPE of the Project is changed materially, the amount of compensation shall be equitably adjusted.

§ 9.7 The compensation set forth in this Part 1 Agreement shall be equitably adjusted if through no fault of the Design/Builder the services have not been completed within one hundred twenty (120) days of the date of this Part 1 Agreement.

ARTICLE 10 OTHER CONDITIONS AND SERVICES

§ 10.1 The Basic Services to be performed shall be commenced on November 1, 2004 and, subject to authorized adjustments and to delays not caused by the Design/Builder, shall be completed in one hundred twenty (120

) calendar days. The Design/Builder's Basic Services consist of those described in Section 1.3 as part of Basic Services, and include normal professional engineering and preliminary design services, unless otherwise indicated.

§ 10.2 Services beyond those described in Section 1.4 are as follows:

(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

None.

§ 10.3 The Owner's preliminary program, budget and other documents, if any, are enumerated as follows:

Title

Date

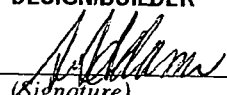
None.

This Agreement entered into as of the day and year first written above.

OWNER

DESIGN/BUILDER


(Signature)


(Signature)

STEPHEN G. ZAMIAS
(Printed name and title) OK

Stephen G. Adams
Vice-President
(Printed name and title)



AIA® Document A191™ – 1996 Part 2

Standard Form of Agreement Between Owner and Design/Builder Part 2 Agreement

TABLE OF ARTICLES

PART 2 AGREEMENT

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

AGREEMENT made as of the twenty-eighth day of February in the year of 2005
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name and address)

Clearfield Mall Associates, LP
300 Market Street
Johnstown, PA 15901

and the Design/Builder:
(Name and address)

Red Zone Design & Construction, Inc.
647 Main Street, Suite 200
Johnstown, PA 15901

For the following Project:
(Include Project name, location and a summary description.)

Renovation of approximately 42,000 square feet of the existing Ames Department store for use as an Ollie's Department Store at the Clearfield Mall, Clearfield, Pennsylvania.

The architectural services described in Article 3 will be provided by the following person or entity who is lawfully licensed to practice architecture:

Name and address

R. L. Beattie Jr., Architect
2141 Ardmore Boulevard Suite 1
Pittsburgh, Pennsylvania 15221

Registration Number

RA009553EX

Relationship to Design/Builder

Contracted to

Normal structural, mechanical and electrical engineering services will be provided contractually through the Architect except as indicated below:

Name, address and discipline**Registration Number****Relationship to Design/Builder**

The Owner and the Design/Builder agree as set forth below.

Design and perform renovation services for the project previously . This includes:

- 1) Demising wall;
- 2) Ceiling grid repair and tile change-out;
- 3) Rework all utility services;
- 4) Painting of all interior walls;
- 5) Floor sanding, leveling and sealing. Tile removal is by others via non-mechanical means;
- 6) Change-out existing RTUs including new curb adapters;
- 7) Install new loading dock, roof and doors.

4.A Columns to be painted RED All.
3.A Includes Wm, Blot, Lowen & GAS All.
150

TERMS AND CONDITIONS – PART 2 AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 The Contract Documents consist of the Part 1 Agreement to the extent not modified by this Part 2 Agreement, this Part 2 Agreement, the Design/Builder's Proposal and written addenda to the Proposal identified in Article 14, the Construction Documents approved by the Owner in accordance with Section 3.2.3 and Modifications issued after execution of this Part 2 Agreement. A Modification is a Change Order or a written amendment to this Part 2 Agreement signed by both parties, or a Construction Change Directive issued by the Owner in accordance with Section 8.3.

§ 1.1.2 The term "Work" means the construction and services provided by the Design/Builder to fulfill the Design/Builder's obligations.

§ 1.2 EXECUTION, CORRELATION AND INTENT

§ 1.2.1 It is the intent of the Owner and Design/Builder that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with and reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.2 If the Design/Builder believes or is advised by the Architect or by another design professional retained to provide services on the Project that implementation of any instruction received from the Owner would cause a violation of any applicable law, the Design/Builder shall notify the Owner in writing. Neither the Design/Builder nor the Architect shall be obligated to perform any act which either believes will violate any applicable law.

§ 1.2.3 Nothing contained in this Part 2 Agreement shall create a contractual relationship between the Owner and any person or entity other than the Design/Builder.

§ 1.3 OWNERSHIP AND USE OF DOCUMENTS

§ 1.3.1 Drawings, specifications, and other documents and electronic data furnished by the Design/Builder are instruments of service. The Design/Builder's Architect and other providers of professional services shall retain all common law, statutory and other reserved rights, including copyright in those instruments of service furnished by them. Drawings, specifications, and other documents and electronic data are furnished for use solely with respect to this Part 2 Agreement. The Owner shall be permitted to retain copies, including reproducible copies, of the drawings, specifications, and other documents and electronic data furnished by the Design/Builder for information and reference in connection with the Project except as provided in Sections 1.3.2 and 1.3.3.

§ 1.3.2 Drawings, specifications, and other documents and electronic data furnished by the Design/Builder shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, except by agreement in writing and with appropriate compensation to the Design/Builder, unless the Design/Builder is adjudged to be in default under this Part 2 Agreement or under any other subsequently executed agreement.

§ 1.3.3 If the Design/Builder defaults in the Design/Builder's obligations to the Owner, the Architect shall grant a license to the Owner to use the drawings, specifications, and other documents and electronic data furnished by the Architect to the Design/Builder for the completion of the Project, conditioned upon the Owner's execution of an agreement to cure the Design/Builder's default in payment to the Architect for services previously performed and to indemnify the Architect with regard to claims arising from such reuse without the Architect's professional involvement.

§ 1.3.4 Submission or distribution of the Design/Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section 1.3.1.

ARTICLE 2. OWNER

§ 2.1 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall examine documents submitted by the Design/Builder and shall render decisions in a timely manner and in accordance with the schedule accepted by the Owner. The Owner may obtain independent review of the Contract Documents by a separate architect, engineer, contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ 2.2 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and Design/Builder agree in writing.

§ 2.3 The Owner shall cooperate with the Design/Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the Design/Builder's Proposal.

§ 2.4 The Owner shall furnish services of land surveyors, geotechnical engineers and other consultants for subsoil, air and water conditions, in addition to those provided under the Part 1 Agreement, when such services are deemed necessary by the Design/Builder to properly carry out the design services required by this Part 2 Agreement.

§ 2.5 The Owner shall disclose, to the extent known to the Owner, the results and reports of prior tests, inspections or investigations conducted for the Project involving: structural or mechanical systems; chemical, air and water pollution; hazardous materials; or other environmental and subsurface conditions. The Owner shall disclose all information known to the Owner regarding the presence of pollutants at the Project's site.

§ 2.6 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Design/Builder's Applications for Payment.

§ 2.7 Those services, information, surveys and reports required by Sections 2.4 through 2.6 which are within the Owner's control shall be furnished at the Owner's expense, and the Design/Builder shall be entitled to rely upon the accuracy and completeness thereof, except to the extent the Owner advises the Design/Builder to the contrary in writing.

§ 2.8 If the Owner requires the Design/Builder to maintain any special insurance coverage, policy, amendment, or rider, the Owner shall pay the additional cost thereof, except as otherwise stipulated in this Part 2 Agreement.

§ 2.9 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the Design/Builder's Proposal or the Construction Documents, the Owner shall give prompt written notice thereof to the Design/Builder.

§ 2.10 The Owner shall, at the request of the Design/Builder, prior to execution of this Part 2 Agreement and promptly upon request thereafter, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract.

§ 2.11 The Owner shall communicate with persons or entities employed or retained by the Design/Builder through the Design/Builder, unless otherwise directed by the Design/Builder.

ARTICLE 3 DESIGN/BUILDER

§ 3.1 SERVICES AND RESPONSIBILITIES

§ 3.1.1 Design services required by this Part 2 Agreement shall be performed by qualified architects and other design professionals. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of the Design/Builder.

§ 3.1.2 The agreements between the Design/Builder and the persons or entities identified in this Part 2 Agreement, and any subsequent modifications, shall be in writing. These agreements, including financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon request.

§ 3.1.3 The Design/Builder shall be responsible to the Owner for acts and omissions of the Design/Builder's employees, subcontractors and their agents and employees, and other persons, including the Architect and other design professionals, performing any portion of the Design/Builder's obligations under this Part 2 Agreement.

§ 3.2 BASIC SERVICES

§ 3.2.1 The Design/Builder's Basic Services are described below and in Article 14.

§ 3.2.2 The Design/Builder shall designate a representative authorized to act on the Design/Builder's behalf with respect to the Project.

§ 3.2.3 The Design/Builder shall submit Construction Documents for review and approval by the Owner. Construction Documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the intent of the Design/Builder's Proposal;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

§ 3.2.4 The Design/Builder, with the assistance of the Owner, shall file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.2.5 Unless otherwise provided in the Contract Documents, the Design/Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.2.6 The Design/Builder shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under this Part 2 Agreement.

§ 3.2.7 The Design/Builder shall keep the Owner informed of the progress and quality of the Work.

§ 3.2.8 The Design/Builder shall be responsible for correcting Work which does not conform to the Contract Documents.

§ 3.2.9 The Design/Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the construction will be free from faults and defects, and that the construction will conform with the requirements of the Contract Documents. Construction not conforming to these requirements, including substitutions not properly approved by the Owner, shall be corrected in accordance with Article 9.

§ 3.2.10 The Design/Builder shall pay all sales, consumer, use and similar taxes which had been legally enacted at the time the Design/Builder's Proposal was first submitted to the Owner, and shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are either customarily secured after execution of a contract for construction or are legally required at the time the Design/Builder's Proposal was first submitted to the Owner.

§ 3.2.11 The Design/Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ 3.2.12 The Design/Builder shall pay royalties and license fees for patented designs, processes or products. The Design/Builder shall defend suits or claims for infringement of patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer is required by the Owner. However, if the Design/Builder has reason to believe the use of a required design, process or product is an infringement of a patent, the Design/Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

§ 3.2.13 The Design/Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Part 2 Agreement. At the completion of the Work, the Design/Builder shall remove from the site waste materials, rubbish, the Design/Builder's tools, construction equipment, machinery, and surplus materials.

§ 3.2.14 The Design/Builder shall notify the Owner when the Design/Builder believes that the Work or an agreed upon portion thereof is substantially completed. If the Owner concurs, the Design/Builder shall issue a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibility of each party for security, maintenance, heat, utilities, damage to the Work and insurance, shall include a list of items to be completed or corrected and shall fix the time within which the Design/Builder shall complete items listed therein. Disputes between the Owner and Design/Builder regarding the Certificate of Substantial Completion shall be resolved in accordance with provisions of Article 10.

§ 3.2.15 The Design/Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other modifications, in good order and regularly updated to record the completed construction. These shall be delivered to the Owner upon completion of construction and prior to final payment.

§ 3.3 ADDITIONAL SERVICES

§ 3.3.1 The services described in this Section 3.3 are not included in Basic Services unless so identified in Article 14, and they shall be paid for by the Owner as provided in this Part 2 Agreement, in addition to the compensation for Basic Services. The services described in this Section 3.3 shall be provided only if authorized or confirmed in writing by the Owner.

§ 3.3.2 Making revisions in drawings, specifications, and other documents or electronic data when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or electronic data.

§ 3.3.3 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

§ 3.3.4 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding, except where the Design/Builder is a party thereto.

§ 3.3.5 Providing coordination of construction performed by the Owner's own forces or separate contractors employed by the Owner, and coordination of services required in connection with construction performed and equipment supplied by the Owner.

§ 3.3.6 Preparing a set of reproducible record documents or electronic data showing significant changes in the Work made during construction.

§ 3.3.7 Providing assistance in the utilization of equipment or systems such as preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

ARTICLE 4 TIME

§ 4.1 Unless otherwise indicated, the Owner and the Design/Builder shall perform their respective obligations as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Project.

§ 4.2 Time limits stated in the Contract Documents are of the essence. The Work to be performed under this Part 2 Agreement shall commence upon receipt of a notice to proceed unless otherwise agreed and, subject to authorized Modifications, Substantial Completion shall be achieved on or before the date established in Article 14.

§ 4.3 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

§ 4.4 Based on the Design/Builder's Proposal, a construction schedule shall be provided consistent with Section 4.2 above.

§ 4.5 If the Design/Builder is delayed at any time in the progress of the Work by an act or neglect of the Owner, Owner's employees, or separate contractors employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, adverse weather conditions not reasonably anticipatable, unavoidable casualties or other causes beyond the Design/Builder's control, or by delay authorized by the Owner pending arbitration, or by other causes which the Owner and Design/Builder agree may justify delay, then the Contract Time shall be reasonably extended by Change Order.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 The Design/Builder shall deliver to the Owner itemized Applications for Payment in such detail as indicated in Article 14.

§ 5.1.2 Within ten (10) days of the Owner's receipt of a properly submitted and correct Application for Payment, the Owner shall make payment to the Design/Builder.

§ 5.1.3 The Application for Payment shall constitute a representation by the Design/Builder to the Owner that the design and construction have progressed to the point indicated, the quality of the Work covered by the application is in accordance with the Contract Documents, and the Design/Builder is entitled to payment in the amount requested.

§ 5.1.4 Upon receipt of payment from the Owner, the Design/Builder shall promptly pay the Architect, other design professionals and each contractor the amount to which each is entitled in accordance with the terms of their respective contracts.

§ 5.1.5 The Owner shall have no obligation under this Part 2 Agreement to pay or to be responsible in any way for payment to the Architect, another design professional or a contractor performing portions of the Work.

§ 5.1.6 Neither progress payment nor partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

§ 5.1.7 The Design/Builder warrants that title to all construction covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design/Builder further warrants that upon submittal of an Application for Payment all construction for which payments have been received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Design/Builder or any other person or entity performing construction at the site or furnishing materials or equipment relating to the construction.

§ 5.1.8 At the time of Substantial Completion, the Owner shall pay the Design/Builder the retainage, if any, less the reasonable cost to correct or complete incorrect or incomplete Work. Final payment of such withheld sum shall be made upon correction or completion of such Work.

§ 5.2 FINAL PAYMENTS

§ 5.2.1 Neither final payment nor amounts retained, if any, shall become due until the Design/Builder submits to the Owner: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner; (3) a written statement that the Design/Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment; and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a contractor or other person or entity entitled to assert a lien against the Owner's property refuses to furnish a release or waiver required by the Owner, the Design/Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the

Design/Builder shall indemnify the Owner for all loss and cost, including reasonable attorneys' fees incurred as a result of such lien.

§ 5.2.2 When the Work has been completed and the contract fully performed, the Design/Builder shall submit a final application for payment to the Owner, who shall make final payment within 30 days of receipt.

§ 5.2.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 5.2.4 Acceptance of final payment shall constitute a waiver of all claims by the Design/Builder except those previously made in writing and identified by the Design/Builder as unsettled at the time of final Application for Payment.

§ 5.3 INTEREST PAYMENTS

§ 5.3.1 Payments due the Design/Builder under this Part 2 Agreement which are not paid when due shall bear interest from the date due at the rate specified in Article 13, or in the absence of a specified rate, at the legal rate prevailing where the Project is located.

ARTICLE 6 PROTECTION OF PERSONS AND PROPERTY

§ 6.1 The Design/Builder shall be responsible for initiating, maintaining and providing supervision of all safety precautions and programs in connection with the performance of this Part 2 Agreement.

§ 6.2 The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Design/Builder or the Design/Builder's contractors; and (3) other property at or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal relocation or replacement in the course of construction.

§ 6.3 The Design/Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury or loss.

§ 6.4 The Design/Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance provided or required by the Contract Documents) to property at the site caused in whole or in part by the Design/Builder, a contractor of the Design/Builder or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

ARTICLE 7 INSURANCE AND BONDS

§ 7.1 DESIGN/BUILDER'S LIABILITY INSURANCE

§ 7.1.1 The Design/Builder shall purchase from and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, such insurance as will protect the Design/Builder from claims set forth below which may arise out of or result from operations under this Part 2 Agreement by the Design/Builder or by a contractor of the Design/Builder, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit laws that are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design/Builder's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of persons other than the Design/Builder's employees;
- .4 claims for damages covered by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Design/Builder or (2) by another person;

- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- .7 claims involving contractual liability insurance applicable to the Design/Builder's obligations under Section 11.5.

§ 7.1.2 The insurance required by Section 7.1.1 shall be written for not less than limits of liability specified in this Part 2 Agreement or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ 7.1.3 Certificates of Insurance acceptable to the Owner shall be delivered to the Owner immediately after execution of this Part 2 Agreement. These Certificates and the insurance policies required by this Section 7.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the application for final payment. Information concerning reduction of coverage shall be furnished by the Design/Builder with reasonable promptness in accordance with the Design/Builder's information and belief.

§ 7.2 OWNER'S LIABILITY INSURANCE

§ 7.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under this Part 2 Agreement. The Design/Builder shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

§ 7.3 PROPERTY INSURANCE

§ 7.3.1 Unless otherwise provided under this Part 2 Agreement, the Owner shall purchase and maintain, in a company or companies authorized to do business in the jurisdiction in which the principal improvements are to be located, property insurance upon the Work to the full insurable value thereof on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property required by this Section 7.3 to be insured, whichever is earlier. This insurance shall include interests of the Owner, the Design/Builder, and their respective contractors and subcontractors in the Work.

§ 7.3.2 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the services and expenses of the Design/Builder's Architect and other professionals required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

§ 7.3.3 If the Owner does not intend to purchase such property insurance required by this Part 2 Agreement and with all of the coverages in the amount described above, the Owner shall so inform the Design/Builder prior to commencement of the construction. The Design/Builder may then effect insurance which will protect the interests of the Design/Builder and the Design/Builder's contractors in the construction, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Design/Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 7.3.4 Unless otherwise provided, the Owner shall purchase and maintain such boiler and machinery insurance required by this Part 2 Agreement or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner. This insurance shall include interests of the Owner, the Design/Builder, the Design/Builder's contractors and subcontractors in the Work, and the Design/Builder's Architect and other design professionals. The Owner and the Design/Builder shall be named insureds.

§ 7.3.5 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 7.3.10. The Design/Builder shall pay contractors their shares of insurance proceeds received by the Design/Builder, and by appropriate agreement, written where legally required for validity, shall require contractors to make payments to their subcontractors in similar manner.

§ 7.3.6 Before an exposure to loss may occur, the Owner shall file with the Design/Builder a copy of each policy that includes insurance coverages required by this Section 7.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Design/Builder.

§ 7.3.7 If the Design/Builder requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Owner shall, if possible, obtain such insurance, and the cost thereof shall be charged to the Design/Builder by appropriate Change Order.

§ 7.3.8 The Owner and the Design/Builder waive all rights against each other and the Architect and other design professionals, contractors, subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section 7.3 or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as trustee. The Owner or Design/Builder, as appropriate, shall require from contractors and subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated in this Section 7.3. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 7.3.9 If required in writing by a party in interest, the Owner as trustee shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Article 10. If after such loss no other special agreement is made, replacement of damaged Work shall be covered by appropriate Change Order.

§ 7.3.10 The Owner as trustee shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing, within five (5) days after occurrence of loss to the Owner's exercise of this power; if such objection be made, the parties shall enter into dispute resolution under procedures provided in Article 10. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ 7.3.11 Partial occupancy or use prior to Substantial Completion shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design/Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall not, without mutual written consent, take any action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of coverage.

§ 7.4 LOSS OF USE OF INSURANCE

§ 7.4.1 The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design/Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

ARTICLE 8 CHANGES IN THE WORK

§ 8.1 CHANGES

§ 8.1.1 Changes in the Work may be accomplished after execution of this Part 2 Agreement, without invalidating this Part 2 Agreement, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in the Contract Documents.

§ 8.1.2 A Change Order shall be based upon agreement between the Owner and the Design/Builder; a Construction Change Directive may be issued by the Owner without the agreement of the Design/Builder; an order for a minor change in the Work may be issued by the Design/Builder alone.

§ 8.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 8.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or the Design/Builder, the applicable unit prices shall be equitably adjusted.

§ 8.2 CHANGE ORDERS

§ 8.2.1 A Change Order is a written instrument prepared by the Design/Builder and signed by the Owner and the Design/Builder, stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

§ 8.2.2 If the Owner requests a proposal for a change in the Work from the Design/Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Contract Documents.

§ 8.3 CONSTRUCTION CHANGE DIRECTIVES

§ 8.3.1 A Construction Change Directive is a written order prepared and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.

§ 8.3.2 Except as otherwise agreed by the Owner and the Design/Builder, the adjustment to the Contract Sum shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including the expenditures for design services and revisions to the Contract Documents. In case of an increase in the Contract Sum, the cost shall include a reasonable allowance for overhead and profit. In such case, the Design/Builder shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, costs for these purposes shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment exclusive of hand tools, whether rented from the Design/Builder or others;
- .4 costs of premiums for all bonds and insurance permit fees, and sales, use or similar taxes;
- .5 additional costs of supervision and field office personnel directly attributable to the change; and fees paid to the Architect, engineers and other professionals.

§ 8.3.3 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Design/Builder to the Owner for deletion or change which results in a net decrease in the Contract Sum will be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

§ 8.3.4 When the Owner and the Design/Builder agree upon the adjustments in the Contract Sum and Contract Time, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ 8.4 MINOR CHANGES IN THE WORK

§ 8.4.1 The Design/Builder shall have authority to make minor changes in the Construction Documents and construction consistent with the intent of the Contract Documents when such minor changes do not involve adjustment in the Contract Sum or extension of the Contract Time. The Design/Builder shall promptly inform the Owner, in writing, of minor changes in the Construction Documents and construction.

§ 8.5 CONCEALED CONDITIONS

§ 8.5.1 If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Contract Sum shall be equitably adjusted for such concealed or unknown conditions by Change Order upon claim by either party made within 21 days after the claimant becomes aware of the conditions.

§ 8.6 REGULATORY CHANGES

§ 8.6.1 The Design/Builder shall be compensated for changes in the construction necessitated by the enactment or revisions of codes, laws or regulations subsequent to the submission of the Design/Builder's Proposal.

ARTICLE 9 CORRECTION OF WORK

§ 9.1 The Design/Builder shall promptly correct Work rejected by the Owner or known by the Design/Builder to be defective or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Design/Builder shall bear costs of correcting such rejected Work, including additional testing and inspections.

§ 9.2 If, within one (1) year after the date of Substantial Completion of the Work or, after the date for commencement of warranties established in a written agreement between the Owner and the Design/Builder, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Design/Builder a written acceptance of such condition.

§ 9.3 Nothing contained in this Article 9 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time period of one (1) year as described in Section 9.2 relates only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

§ 9.4 If the Design/Builder fails to correct nonconforming Work as required or fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the Owner's right to stop the Work shall not give rise to a duty on the part of the Owner to exercise the right for benefit of the Design/Builder or other persons or entities.

§ 9.5 If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may give a second written notice to the Design/Builder and, seven (7) days following receipt by the Design/Builder of that second written notice and without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design/Builder, the costs of correcting such deficiencies. If the payments then or thereafter due the Design/Builder are not sufficient to cover the amount of the deduction, the Design/Builder shall pay the difference to the Owner. Such action by the Owner shall be subject to dispute resolution procedures as provided in Article 10.

ARTICLE 10 DISPUTE RESOLUTION – MEDIATION AND ARBITRATION

§ 10.1 Claims, disputes or other matters in question between the parties to this Part 2 Agreement arising out of or relating to this Part 2 Agreement or breach thereof shall be subject to and decided by mediation or arbitration. Such mediation or arbitration shall be conducted in accordance with the Construction Industry Mediation or Arbitration Rules of the American Arbitration Association currently in effect.

§ 10.2 In addition to and prior to arbitration, the parties shall endeavor to settle disputes by mediation. Demand for mediation shall be filed in writing with the other party to this Part 2 Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

§ 10.3 Demand for arbitration shall be filed in writing with the other party to this Part 2 Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

§ 10.4 An arbitration pursuant to this Article may be joined with an arbitration involving common issues of law or fact between the Design/Builder and any person or entity with whom the Design/Builder has a contractual obligation to arbitrate disputes. No other arbitration arising out of or relating to this Part 2 Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Part 2 Agreement or not a party to an agreement with the Design/Builder, except by written consent containing a specific reference to this Part 2 Agreement signed by the Owner, the Design/Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Part 2 Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 10.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Unless otherwise provided, this Part 2 Agreement shall be governed by the law of the place where the Project is located.

§ 11.2 SUBCONTRACTS

§ 11.2.1 The Design/Builder, as soon as practicable after execution of this Part 2 Agreement, shall furnish to the Owner in writing the names of the persons or entities the Design/Builder will engage as contractors for the Project.

§ 11.3 WORK BY OWNER OR OWNER'S CONTRACTORS

§ 11.3.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of insurance and waiver of subrogation identical to the provisions of this Part 2 Agreement. If the Design/Builder claims that delay or additional cost is involved because of such action by the Owner, the Design/Builder shall assert such claims as provided in Section 11.4.

§ 11.3.2 The Design/Builder shall afford the Owner's separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design/Builder's construction and operations with theirs as required by the Contract Documents.

§ 11.3.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

§ 11.4 CLAIMS FOR DAMAGES

§ 11.4.1 If either party to this Part 2 Agreement suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim of additional cost or time related to this claim is to be asserted, it shall be filed in writing.

§ 11.5 INDEMNIFICATION

§ 11.5.1 To the fullest extent permitted by law, the Design/Builder shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Design/Builder, anyone directly or indirectly employed by the Design/Builder or anyone for whose acts the Design/Builder may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 11.5.

§ 11.5.2 In claims against any person or entity indemnified under this Section 11.5 by an employee of the Design/Builder, anyone directly or indirectly employed by the Design/Builder or anyone for whose acts the Design/Builder may be liable, the indemnification obligation under this Section 11.5 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design/Builder under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 11.6 SUCCESSORS AND ASSIGNS

§ 11.6.1 The Owner and Design/Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Part 2 Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Part 2 Agreement. Neither the Owner nor the Design/Builder shall assign this Part 2 Agreement without the written consent of the other. The Owner may assign this Part 2 Agreement to any institutional lender providing construction financing, and the Design/Builder agrees to execute all consents reasonably required to facilitate such an assignment. If either party makes such an assignment, that party shall nevertheless remain legally responsible for all obligations under this Part 2 Agreement, unless otherwise agreed by the other party.

§ 11.7 TERMINATION OF PROFESSIONAL DESIGN SERVICES

§ 11.7.1 Prior to termination of the services of the Architect or any other design professional designated in this Part 2 Agreement, the Design/Builder shall identify to the Owner in writing another architect or other design professional with respect to whom the Owner has no reasonable objection, who will provide the services originally to have been provided by the Architect or other design professional whose services are being terminated.

§ 11.8 EXTENT OF AGREEMENT

§ 11.8.1 This Part 2 Agreement represents the entire agreement between the Owner and the Design/Builder and supersedes prior negotiations, representations or agreements, either written or oral. This Part 2 Agreement may be amended only by written instrument and signed by both the Owner and the Design/Builder.

ARTICLE 12 TERMINATION OF THE AGREEMENT

§ 12.1 TERMINATION BY THE OWNER

§ 12.1.1 This Part 2 Agreement may be terminated by the Owner upon 14 days' written notice to the Design/Builder in the event that the Project is abandoned. If such termination occurs, the Owner shall pay the Design/Builder for Work completed and for proven loss sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit and applicable damages.

§ 12.1.2 If the Design/Builder defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform the provisions of this Part 2 Agreement, the Owner may give written notice that the Owner intends to terminate this Part 2 Agreement. If the Design/Builder fails to correct the defaults, failure

or neglect within seven (7) days after being given notice, the Owner may then give a second written notice and, after an additional seven (7) days, the Owner may without prejudice to any other remedy terminate the employment of the Design/Builder and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Design/Builder and finish the Work by whatever method the Owner may deem expedient. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Work and all damages incurred by the Owner, such excess shall be paid to the Design/Builder. If the expense of completing the Work and all damages incurred by the Owner exceeds the unpaid balance, the Design/Builder shall pay the difference to the Owner. This obligation for payment shall survive termination of this Part 2 Agreement.

§ 12.2 TERMINATION BY THE DESIGN/BUILDER

§ 12.2.1 If the Owner fails to make payment when due, the Design/Builder may give written notice of the Design/Builder's intention to terminate this Part 2 Agreement. If the Design/Builder fails to receive payment within seven (7) days after receipt of such notice by the Owner, the Design/Builder may give a second written notice and, seven (7) days after receipt of such second written notice by the Owner, may terminate this Part 2 Agreement and recover from the Owner payment for Work executed and for proven losses sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit and applicable damages.

ARTICLE 13 BASIS OF COMPENSATION

The Owner shall compensate the Design/Builder in accordance with Article 5, Payments, and the other provisions of this Part 2 Agreement as described below.

§ 13.1 COMPENSATION

§ 13.1.1 For the Design/Builder's performance of the Work, as described in Section 3.2 and including any other services listed in Article 14 as part of Basic Services, the Owner shall pay the Design/Builder in current funds the Contract Sum as follows:

Four hundred ~~five~~ thousand dollars, (~~\$405,000.00~~)

200,000 MM. 470

§ 13.1.2 For Additional Services, as described in Section 3.3 and including any other services listed in Article 14 as Additional Services, compensation shall be as follows:

In accordance with Paul C. Rizzo Associates, Inc. standard rate schedule, Exhibit 1-B, attached.

§ 13.2 REIMBURSABLE EXPENSES

§ 13.2.1 Reimbursable Expenses are in addition to the compensation for Basic and Additional Services, and include actual expenditures made by the Design/Builder and the Design/Builder's employees and contractors in the interest of the Project, as follows:

Building permits, water & sewer tap fees.

§ 13.2.2 FOR REIMBURSABLE EXPENSES, compensation shall be a multiple of one decimal point one (1.1) times the amounts expended.

§ 13.3 INTEREST PAYMENT

§ 13.3.1 The rate of interest for past due payments shall be as follows:

As per Commonwealth of Pennsylvania statute.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design/Builder's principal places of business, at the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification or other requirements, such as written disclosures or waivers.)

ARTICLE 14 OTHER CONDITIONS AND SERVICES

§ 14.1 The Basic Services to be performed shall be commenced on March 1, 2005 and, subject to authorized adjustments and to delays not caused by the Design/Builder, Substantial Completion shall be achieved in the Contract Time of one hundred twenty three (123) calendar days, *July 31, 2005. JUNE 15, 2005. MM.*

§ 14.2 The Basic Services beyond those described in Article 3 are as follows:

None.

§ 14.3 Additional Services beyond those described in Article 3 are as follows:

None.

§ 14.4 The Design/Builder shall submit an Application for Payment on the first day of each month.

§ 14.5 The Design/Builder's Proposal includes the following documents:

(List the documents by specific title and date; include any required performance and payment bonds.)

Title

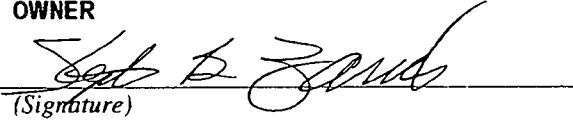
Date

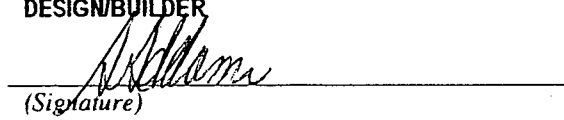
None.

This Agreement entered into as of the day and year first written above.

OWNER

DESIGN/BUILDER


(Signature)


(Signature)

STEPHEN G. ZAMIAS
(Printed name and title) OK

Stephen G. Adams
Vice-President
(Printed name and title)

Red Zone Design & Construction, Inc.

Johnstown Office

Ollie's, Clearfield

STANDARD RATES - Exhibit 1-B

Classification	Standard Rate
Officer	\$155
Principal	\$129
Project Manager	\$129
Senior Consultant	\$129
Project Supervisor	\$97
Staff Consultant	\$97
Project Consultant	\$97
Sr. Project Engineer	\$97
Sr. Project Engineer	\$97
Assistant Project Engineer	\$65
Biologist	\$65
Scientist	\$65
Engineer	\$51
Engineering Assistant	\$39
Engineering Tech III	\$57
Engineering Tech II	\$53
Engineering Tech I	\$51
Draftsman II	\$51
Draftsman I	\$39
Field Tech V	\$52
Field Tech IV	\$46
Field Tech III	\$44
Field Tech II	\$43
Field Tech I	\$41
Survey Party Chief	\$64
2-Man Survey Crew	\$106
Administration Assistant	\$54

- > a. Hourly rates are Portal to Portal.
- > b. Hotel, air travel and rental vehicles will be invoiced at Cost.
- > c. Per-diem will be invoiced at \$20.00 per day for work days exceeding 12 hours and \$35.00 per day for all travel requiring an overnight stay.
- > d. Hourly rates do NOT include company or employee vehicle usage. Vehicles will be invoiced at \$0.445 per mile.
- > e. Survey equipment will be invoiced at \$30.00 per hour per Survey Crew billable hours.
- > f. Subcontractor, laboratory, material purchases and equipment rentals will be invoiced at Cost plus 10% mark-up.
- > g. Reproduction of reports / drawings will be invoiced on a per-unit basis.
- > h. Long distance communication charges for telephone, facsimile, postage, special delivery and overnight delivery will be invoiced at Cost plus 10% mark-up.

AIA Document G701TM – 2001

Change Order

PROJECT (Name and address):	CHANGE ORDER NUMBER: 001	OWNER: <input type="checkbox"/>
Ollies Department Store Clearfield Mall	DATE: March 23, 2005	ARCHITECT: <input type="checkbox"/>
TO CONTRACTOR (Name and address):	ARCHITECT'S PROJECT NUMBER: N/A	CONTRACTOR: <input type="checkbox"/>
Red Zone Design & Construction, Inc. 647 Main Street Suite 200 Johnstown, PA 15901	CONTRACT DATE: February 28, 2005	FIELD: <input type="checkbox"/>
	CONTRACT FOR: Design/Build	OTHER: <input type="checkbox"/>

THE CONTRACT IS CHANGED AS FOLLOWS:

(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

AIA Document A191 - 1996 Part 1

Article 5.3 Change payment from ten (10) days to forty-five (45) days.

AIA Document A191 - 1996 Part 2

The scope of the Work as identified on page No. 2, is modified as follows:

2) Change to read: Ceiling grid repair and 100% tile change out in the Ollies space only.

3) Add: The fire protection system et al is not included in utility services.

7) Add: Doors include 8-foot roll-up door and 3-foot emergency exit/access door.

8) Add Entire Item: The existing main circuits and cash register drops will be reconnected and maintained as is.

9) Add Entire Item: If additions, upgrades and/or modifications to the fire alarm or smoke detection systems are required by the current building code, that work is specifically not included in this scope of Work.

Article 3.3.6 Record drawings will be provided as part of basic services as provided for under Article 3.2

Article 3.3.7 Maintenance manuals, system testing, and startup, including initial training of Owner's personnel will be provided as part of basic services as provided for under Article 3.2.

Article 5.1.2 Change payment from ten (10) days to forty five (45) days.

Article 5.1.7 Lien waivers will be provided with each application for payment.

Article 5.2.2 Change final payment from thirty (30) days to forty-five (45) days.

Article 7.2.1 The Owner, Clearfield Mall Associates, LP and Zamias Services, Inc. will be named as additional insured on the Red Design & Construction, Inc. insurance certificate. Additional self protection insurance shall be purchased by Clearfield Mall Associates LP as it deems necessary.

Article 8.2.2 The Owner shall be permitted to request a reasonable number of proposals for a change in the Work from the Design/Builder without being required to reimburse the Design/Builder for the cost of the preparing the proposal, even if the Owner elects not to proceed with the change.

Clearfield Mall Associates, LP and Red Zone Design & Construction, Inc. agree that:

\$308,000.00 is for construction work (bonded);

\$92,000.00 is for professional services (unbonded).

Red Zone Design & Construction, Inc. will cause to have bonds issued in the amount of \$308,000.00 to Clearfield Mall Associates, LP.

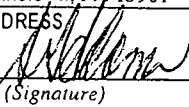
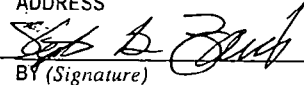
The original Contract Sum was	\$	400,000.00
The net change by previously authorized Change Orders	\$	0.00
The Contract Sum prior to this Change Order was	\$	400,000.00
The Contract Sum will be unchanged by this Change Order in the amount of	\$	0.00
The new Contract Sum including this Change Order will be	\$	400,000.00

The Contract Time will be unchanged by Zero (0) days.

The date of Substantial Completion as of the date of this Change Order therefore is June 15, 2005

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

N/A	Red Zone Design & Construction, Inc.	Clearfield Mall Associates, LP
ARCHITECT (Firm name)	CONTRACTOR (Firm name)	OWNER (Firm name)
N/A	647 Main Street Suite 200	300 Market Street
ADDRESS	Johnstown, PA 15901	Johnstown, PA 15901
ADDRESS	ADDRESS	ADDRESS
BY (Signature)		
BY (Signature)	BY (Signature)	BY (Signature)
N/A	Stephen G. Adams	Stephen G. Zamias
(Typed name)	(Typed name)	(Typed name)
DATE	03-24-05	4/28/05
DATE	DATE	DATE

January 14, 2005

Project No. R05-3264.00

Attn: Mr. Keith C. Vasas
Vice President Construction and Development
Zamias Services, Inc.
300 Market Street
Johnstown, PA 15901

**LUMP SUM PROPOSAL
DESIGN/BUILD SERVICES
OLLIE'S STORE
FORMER AMES STORE RENOVATIONS
CLEARFIELD MALL
CLEARFIELD, PENNSYLVANIA**

Dear Mr. Vasas:

Red Zone Design & Construction, Inc. (Red Zone) is pleased to submit to Zamias Services, Inc. (Zamias) our lump sum proposal for complete Design / Build services for the renovations necessary for the Ollie's Store within a portion of the former Ames Store as referenced above. Pursuant to our conversations with Zamias, our Basis of Design and subsequent price is based upon the following:

- 1) Within the Ollie's space, remove and dispose of:
 - a) All extension walls and backer panels;
 - b) All through ceiling register conduits and communication systems; and
 - c) All existing 2-foot by 4-foot ceiling tiles.
- 2) Provide a new 1-hour fire rated wall at approximately Column Line No. 5 that is continuous between Column Nos. "A" through "F," floor to roof deck.
- 3) Rework the existing ceiling tile grid system as required and provide all new 2-foot by 4-foot, white in color, acoustical ceiling tiles within the new Ollie's space.
- 4) Reconfigure the existing electrical system and split the system such that a 600-amp service, complete with a power consumption meter, disconnects and distribution panel(s) needed to power the new Ollie's space. With the remaining power available, provide a properly sized disconnect with a power consumption meter and rework / rewire the existing panels into the un-renovated space to the west side of the proposed Ollie's space.
- 5) Repair and repaint all walls within the Ollie's space.
- 6) Remove all existing floor tile within the Ollie's space. Repair, level, sand and seal the concrete floor in the sales area only.
- 7) Change out 6-each 15-ton RTU's complete with new adapter curbs.

- 8) Provide a new truck unloading dock on the north side of the building. The truck ramp will be an in-the-ground sloped ramp set at approximately 44-inches deep on the deepest end and extend between 20 to 30-feet in a northwesterly direction along the existing delivery road behind the facility. The ramp will include a guard rail system on the traffic side to prevent other traffic from falling into the ramp system. The ramp will have a gravity drain at its deepest end. The existing roof will be extended / replaced such that it covers the complete existing dock area only. The existing emergency exit door will be relocated approximately 6-feet east of its current location to make room for a new 8-foot wide roll-up or double-door system to be used for the unloading of Ollie's merchandise.

Excluded from this proposal are the following:

- A) Anything within the un-renovated space to the west side of the proposed Ollie's space excepting for the electrical rework indicated in Item No. 4 above.
- B) Existing water supplies and sewer risers are available in the un-developed space to the west side of the proposed Ollie's space. As such, no water or sewer expansion through the Ollie's space is included.
- C) The existing fire protection system is a wet system with heat activated drop heads. As such, no splitting or modifications of this system is included.
- D) Our review indicates a fire alarm / smoke detection system is not currently installed at this facility and under the Code, no system is included since the space is being renovated for in-kind operations.
- E) The existing ceiling florescent lighting strips are operational and acceptable as is. As such, no modification or renovation is required.
- F) The existing water and sewer systems are operational and require no additional modifications or taps into other existing systems.
- G) No electrical drops to the cash register stations are included but we will provide 4-each circuits in the distribution panel (see Item No. 4 above) for this use.
- H) No communication, i.e., telephone, data, intercom, TV. etc. is included.
- I) The existing exit sign system is intact and requires no modifications.
- J) The existing restrooms have 48-inch access doors and are considered ADA compliant as is.
- K) The existing storefront and internal mall corridor are acceptable as is and they require no additional modifications.
- L) Excepting for the unloading ramp system (see Item No. 8 above), no other exterior repairs / modifications are required or included.
- M) It is assumed that all environmental issues, i.e., asbestos, lead paints and the like are either non-existent or will have already been abated by Zamias prior to our mobilization of the project.
- N) Red Zone will coordinate all permits for Zamias but the cost of such permits is considered a pass-through cost.

Our Lump Sum price, firm through January 28, 2005, to complete all required designs, construction and construction management services associated with the renovations at the Ollie's Clearfield Mall in accordance with the Basis of Design as referenced above will be:

Four hundred fifty eight thousand three hundred sixty four dollars (\$458,364).

We thank you for the opportunity to price this project to Zamias. Know that we will strive to do our best so as to continue the excellent relationship that exists between our respective firms.

Should you have any questions or comments, please contact me at (814) 536-6767, extension 242, or by facsimile to (814) 536-6770.

Respectfully submitted,

Red Zone Design & Construction, Inc.

Stephen G. Adams
Vice President

SGA/ljr

No. 2006-

IN THE COURT OF COMMON PLEAS
OF
CLEARFIELD COUNTY, PENNSYLVANIA

RED ZONE DESIGN & CONSTRUCTION, INC.,
a Pennsylvania corporation,

Claimant,

vs.

CLEARFIELD MALL ASSOCIATES, LP,

Owner or Reputed Owner,

MECHANICS' LIEN CLAIM

MICHAEL A. SOSSONG
ATTORNEY AT LAW
3133 NEW GERMANY ROAD
SUITE 59 - MINI MALL
EBENSBURG, PENNSYLVANIA 15931-4348

FILED

JUL 10 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ,
PENNSYLVANIA
STATEMENT OF JUDGMENT

COPY

Red Zone Design & Construction, Inc.
Plaintiff(s)

No.: 2006-01095-CD

Real Debt: \$31,961.90

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Clearfield Mall Associates, L.P.
Defendant(s)

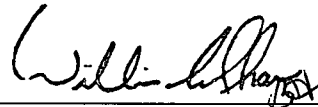
Entry: \$20.00

Instrument: Mechanic's Lien Claim

Date of Entry: July 10, 2006

Expires: July 10, 2026

Certified from the record this 10th day of July, 2006.



William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment,
Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101698
NO: 06-1095-CD
SERVICE # 1 OF 1
MECHANIC'S LIEN CLAIM

PLAINTIFF: RED ZONE DESIGN & CONSTRUCTION, INC.
vs.
DEFENDANT: CLEARFIELD MALL ASSOCIATES, LP

SHERIFF RETURN

NOW, July 11, 2006, SHERIFF OF CAMBRIA COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN MECHANIC'S LIEN CLAIM ON CLEARFIELD MALL ASSOCIATES, LP.

NOW, July 12, 2006 AT 3:15 PM SERVED THE WITHIN MECHANIC'S LIEN CLAIM ON CLEARFIELD MALL ASSOCIATES, LP, DEFENDANT. THE RETURN OF CAMBRIA COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

FILED
013:2361
JUL 24 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101698
NO: 06-1095-CD
SERVICES 1
MECHANIC'S LIEN CLAIM

PLAINTIFF: RED ZONE DESIGN & CONSTRUCTION, INC.
vs.
DEFENDANT: CLEARFIELD MALL ASSOCIATES, LP

SHERIFF RETURN

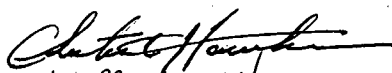
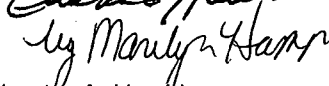
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	RED ZONE	922	10.00
SHERIFF HAWKINS	RED ZONE	922	21.00
CAMBRIA CO.	RED ZONE	923	32.13

Sworn to Before Me This

_____ Day of _____ 2006

So Answers,



Chester A. Hawkins
Sheriff

CASE # PLAINTIFF
90176-06 RED ZONE DESIGN 06-1095
DATE 7/12/06

DEFENDANT
CLEARFIELD MALL ASSOCIATES

AT 1515 HRS. - SERVED THE MECHANIC'S LIEN UPON CLEARFIELD MALL ASSOCIATES BY HANDING TRUE AND ATTESTED COPY THEREOF TO SHELLY L. MOSE, LEGAL ASSISTANT, SHE BEING THE PERSON IN CHARGE AT 300 MARKET ST. JOHNSTOWN, CAMBRIA COUNTY, PA AND MAKING CONTENTS THEREO KNOWN TO HER. MY COSTS PAID BY PLAINTIFF.

SO ANSWERS.

Bill Kolar
SHERIFF

SHERIFF COSTS: \$29.13
PROTHONOTARY: \$3.00
TOTAL COSTS: \$32.13

SWORN AND SUBSCRIBED TO BEFORE ME THIS 20TH DAY OF JULY, 06.
PROTHONOTARY *Patricia Dubiele*

RED ZONE DESIGN &
CONSTRUCTION, INC., a
Pennsylvania corporation,

Plaintiff

vs.

CLEARFIELD MALL ASSOCIATES,
LP,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
: No.: 2006-1095-CD

FILED

JUL 24 2006

William A. Shaw
Prothonotary/Clerk of Courts

ENTRY OF APPEARANCE

Enter our appearance for Defendant, Clearfield Mall Associates, LP only in the above-captioned case. Papers may be served at the address stated below.

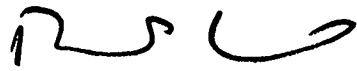
DEMAND FOR JURY TRIAL

Pursuant to Rule 1007.1 of the Pennsylvania Rules of Civil Procedure, as amended, a Jury Trial is demanded on all issues raised by the pleadings in the above-captioned action.

We certify that this entry of Appearance and Demand for Jury Trial shall be served forthwith by ordinary mail upon all parties.

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC
AmeriServ Financial Building
Post Office Box 280
Johnstown, Pennsylvania 15907

By


Ronald P. Carnevali, Jr., Esquire
I. D. No.: 47733
Michael J. Parrish, Jr., Esquire
I. D. No.: 74834
Attorneys for Defendant,
Clearfield Mall Associates, LP

DATED: July 21, 2006

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 21st day of July, 2006, a certified true and correct copy of the Defendant, Clearfield Mall Associates, LP's Entry of Appearance was forwarded by first-class mail, postage prepaid to the following persons:

Michael A. Sossong, Esquire
3133 New Germany Road
Suite No. 59, Mini Mall
Ebensburg, Pennsylvania 15931

George P. Wolfe, Esquire
Zamias Services, Inc.
300 Market Street
Johnstown, Pennsylvania 15901

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

By



Ronald P. Carnevali, Jr., Esquire
Attorneys for Defendant,
Clearfield Mall Associates, LP

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA
No. 2006-1095-CD

~~RED ZONE REGION & CONSERVATION,~~
INC., a Pennsylvania corporation,

Plaintiff,

vs.

CLEARFIELD MALL ASSOCIATES, LP

Defendant

ENTRY OF APPEARANCE

William A. Shaw
Prothonotary/Clerk of Courts

2006 JUL 24

FILED

LAW OFFICES
SPENCE, CUSTER, SAYLOR, WOLFE
& ROSE, L.L.C.
P.O. BOX 280
JOHNSTOWN, PENNSYLVANIA 15907

RED ZONE DESIGN &
CONSTRUCTION, INC., a
Pennsylvania corporation,

Plaintiff

vs.

CLEARFIELD MALL ASSOCIATES,
LP,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
: No.: 2006-1095-CD

: **PRELIMINARY OBJECTIONS TO**
: **MECHANICS LIEN CLAIM**

: **COUNSEL OF RECORD FOR PARTY:**

: RONALD P. CARNEVALI, JR., ESQUIRE
: I. D. No.: 47733
: MICHAEL J. PARRISH, JR., ESQUIRE
: I. D. No.: 74834
: SPENCE, CUSTER, SAYLOR, WOLFE &
: & ROSE, LLC
: AMERISERV FINANCIAL BUILDING
: POST OFFICE BOX 280
: JOHNSTOWN, PENNSYLVANIA 15907
: (814) 536-0735

FILED

AUG 03 2006

W/12:15
William A. Shaw

Prothonotary/Clerk of Courts

No 46

RED ZONE DESIGN &
CONSTRUCTION, INC., a
Pennsylvania corporation,

Plaintiff

vs.

CLEARFIELD MALL ASSOCIATES,
LP,

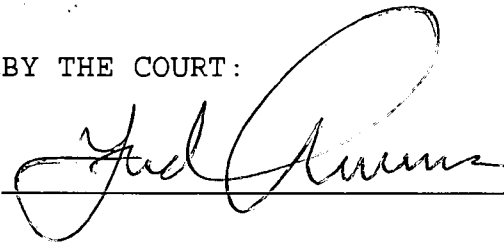
Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
: No.: 2006-1095-CD

SCHEDULING ORDER

AND NOW, this 7 day of August, 2006,
argument on the Defendant, Clearfield Mall Associates, LP's
Preliminary Objections to Mechanics Lien Claim is scheduled on
the 18th day of September, 2006 at 10:30 A.M.
O'clock before the Honorable Fredric J. Ammerman,
in Courtroom No. 1 at the Clearfield County Courthouse.

BY THE COURT:


J.

FILED

AUG 07 2006

0/4:00/2

William A. Shaw
Prothonotary/Clerk of Courts

1 SENT TO ATT

RED ZONE DESIGN &	:	IN THE COURT OF COMMON PLEAS OF
CONSTRUCTION, INC., a	:	CLEARFIELD COUNTY, PENNSYLVANIA
Pennsylvania corporation,	:	No.: 2006-1095-CD
	:	
Plaintiff	:	
	:	
vs.	:	
	:	
CLEARFIELD MALL ASSOCIATES,	:	
LP,	:	
	:	
Defendant	:	

PRELIMINARY OBJECTIONS TO MECHANICS LIEN CLAIM

NOW COMES, the Defendant, Clearfield Mall Associates, LP, by and through their counsel, Spence, Custer, Saylor, Wolfe & Rose, LLC and files the following Preliminary Objections to Mechanics Lien Claim:

MOTION TO STRIKE MECHANICS LIEN CLAIM
PURSUANT TO WAIVER OF LIEN

1. Defendant, Clearfield Mall Associates, LP (hereinafter referred to as the "Defendant") is the owner of property known as the Clearfield Mall in Lawrence Township, Clearfield County, Pennsylvania.

2. On February 28, 2005, the Defendant and the Plaintiff, Red Zone Design & Construction, Inc. (hereinafter referred to as the "Plaintiff") entered into an agreement

whereby the Plaintiff would furnish engineering construction services for the retrofitting of the former Ames Store into an Ollie's Department Store located at the Clearfield Mall. (A copy of the Agreement is attached to Plaintiff's Complaint as Exhibit "A").

3. On July 25, 2005, for and in consideration of \$30,490.00 and other good and valuable consideration, Plaintiff executed and delivered to the Defendant a written waiver of its right to file a mechanics lien, a copy of which is attached hereto as Exhibit "A".

4. On July 10, 2006, after the execution of the waiver, the Plaintiff filed a lien claim on said property in the amount of \$31,961.90.

5. Notwithstanding Plaintiff's waiver and notice given by the Defendant requesting that the Plaintiff release and discharge the mechanics lien claim filed, Plaintiff refused and still refuses to discharge the claim.

6. Said claim is void as a result of the waiver and is a cloud on the Defendant's title.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter judgment in its favor and issue an Order striking off the Plaintiff's claim.

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

By 

Ronald P. Carnevali, Jr., Esquire

I. D. No.: 47733

Michael J. Parrish, Jr., Esquire

I. D. No.: 74834

Attorneys for Defendant,

Clearfield Mall Associates, LP

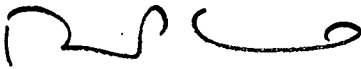
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 1st day of August, 2006, a certified true and correct copy of the Defendant, Clearfield Mall Associates, LP's Preliminary Objections was forwarded by first-class mail, postage prepaid to the following persons:

Michael A. Sosson, Esquire
3133 New Germany Road
Suite No. 59, Mini Mall
Ebensburg, Pennsylvania 15931

George P. Wolfe, Esquire
Zamias Services, Inc.
300 Market Street
Johnstown, Pennsylvania 15901

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

By 

Ronald P. Carnevali, Jr., Esquire
Attorneys for Defendant,
Clearfield Mall Associates, LP

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA
No. 2006-1095-CD

~~RFD-ZONE DESIGN & CONSTRUCTION,~~
INC., a Pennsylvania corporation,

Plaintiff,

vs.

CLEARFIELD MALL ASSOCIATES, LP

Defendant

PRELIMINARY OBJECTIONS
TO MECHANICS LIEN CLAIM

LAW OFFICES
SPENCE, CUSTER, SAYLOR, WOLFE
& ROSE, L.L.C.
P.O. BOX 280
JOHNSTOWN, PENNSYLVANIA 15907

FILED

AUG 03 2006

William A. Shaw
Prothonotary/Clerk of Courts

RED ZONE DESIGN &
CONSTRUCTION, INC., a
Pennsylvania corporation,

Plaintiff

vs.

CLEARFIELD MALL ASSOCIATES,
LP,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
: No.: 2006-1095-CD

:
: **AMENDED PRELIMINARY OBJECTIONS**
: **TO MECHANICS LIEN CLAIM**

:
: **COUNSEL OF RECORD FOR PARTY:**

: RONALD P. CARNEVALI, JR., ESQUIRE
: I. D. No.: 47733
: MICHAEL J. PARRISH, JR., ESQUIRE
: I. D. No.: 74834
: SPENCE, CUSTER, SAYLOR, WOLFE &
: & ROSE, LLC
: AMERISERV FINANCIAL BUILDING
: POST OFFICE BOX 280
: JOHNSTOWN, PENNSYLVANIA 15907
: (814) 536-0735

FILED

AUG 07 2006

William A. Shaw
Prothonotary/Clerk of Courts

RED ZONE DESIGN &
CONSTRUCTION, INC., a
Pennsylvania corporation,

Plaintiff

vs.

CLEARFIELD MALL ASSOCIATES,
LP,

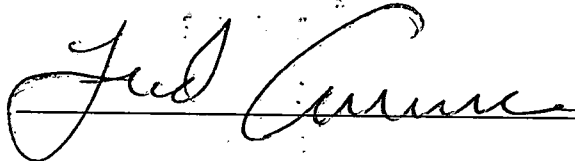
Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
: No.: 2006-1095-CD

SCHEDULING ORDER

AND NOW, this 9th day of August, 2006,
argument on the Defendant, Clearfield Mall Associates, LP's
Amended Preliminary Objections to Mechanics Lien Claim is
scheduled on the 18th day of September, 2006 at
10:30 A.M. O'clock before the Honorable
Fredric J. Ammerman, in Courtroom No. 1 at
the Clearfield County Courthouse.

BY THE COURT:


J.

FILED 3cc
013:51/301 Amy Carnevali
AUG 09 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/9/06

☒ You are responsible for serving all appropriate parties.

☐ The Probationary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

FILED

AUG 09 2006

William A. Shaw
Prothonotary/Clerk of Courts

RED ZONE DESIGN &	:	IN THE COURT OF COMMON PLEAS OF
CONSTRUCTION, INC., a	:	CLEARFIELD COUNTY, PENNSYLVANIA
Pennsylvania corporation,	:	No.: 2006-1095-CD
	:	
Plaintiff	:	
	:	
VS.	:	
	:	
CLEARFIELD MALL ASSOCIATES,	:	
LP,	:	
	:	
Defendant	:	

AMENDED PRELIMINARY OBJECTIONS TO MECHANICS LIEN CLAIM

NOW COMES, the Defendant, Clearfield Mall Associates, LP, by and through their counsel, Spence, Custer, Saylor, Wolfe & Rose, LLC and files the following Amended Preliminary Objections to Mechanics Lien Claim:

MOTION TO STRIKE MECHANICS LIEN CLAIM
PURSUANT TO WAIVER OF LIEN

1. Defendant, Clearfield Mall Associates, LP (hereinafter referred to as the "Defendant") is the owner of property known as the Clearfield Mall in Lawrence Township, Clearfield County, Pennsylvania.

2. On February 28, 2005, the Defendant and the Plaintiff, Red Zone Design & Construction, Inc. (hereinafter referred to as the "Plaintiff") entered into an agreement

whereby the Plaintiff would furnish engineering construction services for the retrofitting of the former Ames Store into an Ollie's Department Store located at the Clearfield Mall. (A copy of the Agreement is attached to Plaintiff's Complaint as Exhibit "A").

3. On July 25, 2005, for and in consideration of \$30,490.00 and other good and valuable consideration, Plaintiff executed and delivered to the Defendant a written waiver of its right to file a mechanics lien, a copy of which is attached hereto as Exhibit "A".

4. On July 10, 2006, after the execution of the waiver, the Plaintiff filed a lien claim on said property in the amount of \$31,961.90.

5. Notwithstanding Plaintiff's waiver and notice given by the Defendant requesting that the Plaintiff release and discharge the mechanics lien claim filed, Plaintiff refused and still refuses to discharge the claim.

6. Said claim is void as a result of the waiver and is a cloud on the Defendant's title.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter judgment in its favor and issue an Order striking off the Plaintiff's claim.

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

By



Ronald P. Carnevali, Jr., Esquire

I. D. No.: 47733

Michael J. Parrish, Jr., Esquire

I. D. No.: 74834

Attorneys for Defendant,

Clearfield Mall Associates, LP

CERTIFICATE OF SERVICE

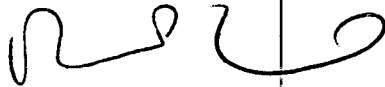
I, the undersigned, hereby certify that on the 4th day of August, 2006, a certified true and correct copy of the Defendant, Clearfield Mall Associates, LP's Amended Preliminary Objections was forwarded by first-class mail, postage prepaid to the following persons:

Michael A. Sossong, Esquire
3133 New Germany Road
Suite No. 59, Mini Mall
Ebensburg, Pennsylvania 15931

George P. Wolfe, Esquire
Zamias Services, Inc.
300 Market Street
Johnstown, Pennsylvania 15901

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

By



Ronald P. Carnevali, Jr., Esquire
Attorneys for Defendant,
Clearfield Mall Associates, LP

FINAL AND UNCONDITIONAL WAIVER OF LIEN

WHEREAS, Red Zone Design & Construction, Inc. has been contracted by Clearfield Mall Associates LP to furnish engineering and construction services et al for the retrofitting of the former Ames Store into an Ollie's Department Store located at the Clearfield Mall in Clearfield, Pennsylvania.

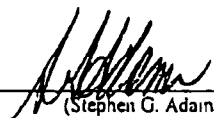
WHEREAS, Red Zone Design & Construction, Inc., for and in consideration of \$30,490 retention dollars (to date aggregate sum of \$396,900) and other good and valuable consideration, the pending receipt whereof is hereby acknowledged, does hereby waive and release any and all lien or claim right of lien under the statutes of the Commonwealth of Pennsylvania relating to Mechanics Liens, on the above described premises and improvements thereon, and on monies or other consideration due or to become from the owner in account of labor or services, fixtures or apparatus theretofore furnished at any time by Red Zone Design & Construction, Inc. for the above described premises.

WHEREAS, Red Zone Design & Construction, Inc. and the undersigned certifies that it has paid all indebtedness relating to wages, subcontractors, and material suppliers it utilized as well as all taxes, insurances, and other necessary and legally required items in its performance of the services it was contracted to do by Clearfield Mall Associates LP at the above subject project.

IN WITNESS WHEREOF, the undersigned has caused this Final Waiver of Lien to be executed by its duly authorized officer this 25th day of July 2005.

Design/Builder: Red Zone Design & Construction, Inc.

By:


(Stephen G. Adams)

Vice President

IN WITNESS:
Commonwealth of Pennsylvania
County of Cambria

SWORN TO AND SUBSCRIBED BEFORE ME THIS 25th DAY OF JULY, 2005.

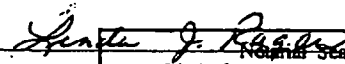

Notary Seal
Linda J. Rager, Notary Public
City of Johnstown, Cambria County
My Commission Expires May 17, 2007
Member, Pennsylvania Association of Notaries

EXHIBIT "A"

GW

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA
No. 2006-1095-CD

RED ZONE DESIGN & CONSTRUCTION
INC., a Pennsylvania corporation,

Plaintiff,

vs.

CLEARFIELD MALL ASSOCIATES, LP

Defendant

AMENDED PRELIMINARY OBJECTIONS
TO MECHANICS LIEN CLAIM

LAW OFFICES
SPENCE, CUSTER, SAYLOR, WOLFE
& ROSE, L.L.C.

P.O. BOX 280

JOHNSTOWN, PENNSYLVANIA 15907

RED ZONE DESIGN & CONSTRUCTION,
INC., a Pennsylvania corporation,

Claimant,

vs.

CLEARFIELD MALL ASSOCIATES, LP,

Owner or Reputed Owner,

* IN THE COURT OF COMMON PLEAS
* OF
* CLEARFIELD COUNTY, PENNSYLVANIA
*
*

* NO. 2006-1095-CD
*
*

* TYPE OF DOCUMENT:
* AFFIDAVIT OF SERVICE
*
*

* FILED ON BEHALF OF CLAIMANT:
* RED ZONE DESIGN &
* CONSTRUCTION, INC.
*
*

* ATTORNEY FOR CLAIMANT:
* MICHAEL A. SOSSONG, ESQUIRE
* 3133 NEW GERMANY ROAD
* SUITE NO. 59, MINI MALL
* EBENSBURG, PA 15931
* TELE. NO. (814) 472-7160
* SUPREME CT. ID #43957

FILED

AUG 07 2006

14/11:10/6
William A. Shaw
Prothonotary/Clerk of Courts (CR)

2 CERT to App

RED ZONE DESIGN & CONSTRUCTION,
INC., a Pennsylvania corporation,

Claimant,

vs.

CLEARFIELD MALL ASSOCIATES, LP,

Owner or Reputed Owner,

* IN THE COURT OF COMMON PLEAS
* OF
* CLEARFIELD COUNTY, PENNSYLVANIA

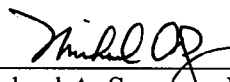
* NO. 2006-1095-CD
*
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*

AFFIDAVIT OF SERVICE

Commonwealth Of Pennsylvania
County Of Cambria

*
* SS:

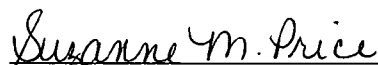
Before me personally appeared, Michael A. Sossong, Esquire, Attorney for Claimant, Red Zone Design & Construction, Inc., in the above captioned action and being duly sworn according to law, deposes and says that he caused to be served by the Sheriff of Cambria County, Pennsylvania, upon Clearfield Mall Associates, LP, a Notice of Filing of Mechanics' Lien Claim, a copy of which is attached hereto, filed by the Claimant in the above action, on the 26th day of July, 2006, by personal service upon the duly authorized employee and agent of Clearfield Mall Associates, LP. A copy of the Sheriff's Return is attached hereto.



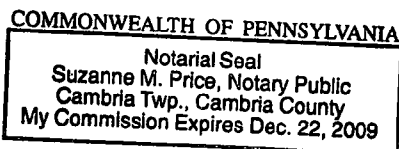
Michael A. Sossong, Esquire
Attorney for Claimant
Red Zone Design & Construction, Inc.

Sworn to and subscribed before me

this 3rd day of August, 2006.



Notary Public



RED ZONE DESIGN & CONSTRUCTION,
INC., a Pennsylvania corporation,

Claimant,

vs.

CLEARFIELD MALL ASSOCIATES, LP,

Owner or Reputed Owner,

* IN THE COURT OF COMMON PLEAS
* OF
* CLEARFIELD COUNTY, PENNSYLVANIA

* NO. 2006-1095-CD
*
*

* TYPE OF DOCUMENT:
* NOTICE OF FILING OF MECHANICS'
* LIEN CLAIM
*

* FILED ON BEHALF OF CLAIMANT:
* RED ZONE DESIGN &
* CONSTRUCTION, INC.
*

* ATTORNEY FOR CLAIMANT:
* MICHAEL A. SOSSONG, ESQUIRE
* 3133 NEW GERMANY ROAD
* SUITE NO. 59, MINI MALL
* EBENSBURG, PA 15931
* TELE. NO. (814) 472-7160
* SUPREME CT. ID #43957

RED ZONE DESIGN & CONSTRUCTION,
INC., a Pennsylvania corporation,

Claimant,

vs.

CLEARFIELD MALL ASSOCIATES, LP,

Owner or Reputed Owner,

IN THE COURT OF COMMON PLEAS
OF
CLEARFIELD COUNTY, PENNSYLVANIA

NO. 2006-1095-CD

VS.

Owner or Reputed Owner,

BY:

Michael A. Sosson, Esquire
Attorney for Claimant
Red Zone Design & Construction, Inc.
3133 New Germany Road
Suite 59, Mini Mall
Ebensburg, PA 15931
(814) 472-7160
Supreme Court I.D.# 43957

RED ZONE DESIGN & CONSTRUCTION,
INC., a Pennsylvania corporation,

Claimant,

vs.

CLEARFIELD MALL ASSOCIATES, LP,

Owner or Reputed Owner,

* IN THE COURT OF COMMON PLEAS
* OF
* CLEARFIELD COUNTY, PENNSYLVANIA
*

* NO. 2006-
*
*

MECHANICS' LIEN CLAIM

AND NOW, comes the Claimant, Red Zone Design & Construction, Inc., by and through its attorney, Michael A. Sossong, Esquire, and files the following Mechanics' Lien Claim.

1. The Claimant is Red Zone Design & Construction, Inc., a Pennsylvania corporation, with its principal office located at 647 Main Street, Suite 200, Johnstown, Cambria County, Pennsylvania 15901, and it files this claim as Contractor.

2. The Owner or Reputed Owner is Clearfield Mall Associates, LP, with a principal office located at 300 Market Street, Johnstown, Pennsylvania 15901.

3. The Claimant contracted with Clearfield Mall Associates, LP, on February 28, 2005, pursuant to a written agreement for the renovation of approximately 42,000 square feet of the existing Ames Department Store for use as an Ollie's Department Store at the Clearfield Mall, Lawrence Township, Clearfield, Pennsylvania. A true and correct copy of the February 28, 2005 Agreement, Change Order and Lump Sum Proposal governing the services performed by Claimant for Clearfield Mall Associates, LP is attached hereto, made a part hereof and marked as Exhibit "A".

4. The Claimant completed the services required by the Agreement on April 24, 2006.

5. The Claimant is owed \$31,961.90, plus interest at the contract rate of eighteen (18%) percent per annum on the unpaid balance.

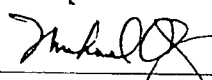
6. The Claimant asserts a Mechanics' Lien against the approximately 42,000 square feet Ollie's Department Store located at the Clearfield Mall located in Lawrence Township, Clearfield County, Pennsylvania.

WHEREFORE, the Claimant hereby asserts a Mechanics' Lien Claim upon the premises described above in the amount of \$31,961.90, plus interest at the contract rate of eighteen (18%) percent per annum from April 24, 2006, plus costs, against the Owner or Reputed Owner, Clearfield Mall Associates, LP.

Respectfully submitted,

Dated: July 6, 2006

By:



Michael A. Sossong, Esquire
Attorney for Claimant,
Red Zone Design & Construction, Inc.
3133 New Germany Road
Suite 59, Mini Mall
Ebensburg, PA 15931
(814) 472-7160
Supreme Court I.D.# 43957

RED ZONE DESIGN & CONSTRUCTION,
INC., a Pennsylvania corporation,

Claimant,

vs.

CLEARFIELD MALL ASSOCIATES, LP,

Owner or Reputed Owner,

* IN THE COURT OF COMMON PLEAS
* OF
* CLEARFIELD COUNTY, PENNSYLVANIA
*
*
* NO. 2006-
*
*
*

vs.

Owner or Reputed Owner,

VERIFICATION

Dated:

Stephen G. Adams, Vice President of
Red Zone Design & Construction, Inc.



AIA®

Document A191™ – 1996 Part 1

Standard Form of Agreement Between Owner and Design/Builder Part 1 Agreement

TABLE OF ARTICLES

PART 1 AGREEMENT

1. DESIGN/BUILDER
2. OWNER
3. OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA
4. TIME
5. PAYMENTS
6. DISPUTE RESOLUTION – MEDIATION AND ARBITRATION
7. MISCELLANEOUS PROVISIONS
8. TERMINATION OF THE AGREEMENT
9. BASIS OF COMPENSATION
10. OTHER CONDITIONS AND SERVICES

AGREEMENT made as of the twenty-eighth day of February in the year of 2005
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name and address)

Clearfield Mall Associates, LP
300 Market Street
Johnstown, Pennsylvania 15901

and the Design/Builder:
(Name and address)

Red Zone Design & Construction, Inc.
647 Main Street, Suite 200
Johnstown, Pennsylvania 15901

For the following Project:
(Include Project name, location and a summary description.)

Renovation of approximately 42,000 square feet of the existing Ames Department Store for use as an Ollie's Department Store at the Clearfield Mall, Clearfield Pennsylvania

The architectural services described in Article 1 will be provided by the following person or entity who is lawfully licensed to practice architecture:



ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

Before executing this Part 1 Agreement, the parties should reach substantial agreement on the Part 2 Agreement.

Name and address	Registration Number	Relationship to Design/Builder
R. L. Beattie Jr., Architect 2141 Ardmore Boulevard, Suite 1 Pittsburgh, Pennsylvania 15221	RA009553EX	Contract to Design/Builder

Normal structural, mechanical and electrical engineering services will be provided contractually through the Architect except as indicated below:

Name, address and discipline	Registration Number	Relationship to Design/Builder
-------------------------------------	----------------------------	---------------------------------------

The Owner and the Design/Builder agree as set forth below.

Provide feasibility and basic cost estimates for renovation of the project.

TERMS AND CONDITIONS - PART 1 AGREEMENT

ARTICLE 1 DESIGN/BUILDER

§ 1.1 SERVICES

§ 1.1.1 Preliminary design, budget, and schedule comprise the services required to accomplish the preparation and submission of the Design/Builder's Proposal as well as the preparation and submission of any modifications to the Proposal prior to execution of the Part 2 Agreement.

§ 1.2 RESPONSIBILITIES

§ 1.2.1 Design services required by this Part 1 Agreement shall be performed by qualified architects and other design professionals. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of the Design/Builder.

§ 1.2.2 The agreements between the Design/Builder and the persons or entities identified in this Part 1 Agreement, and any subsequent modifications, shall be in writing. These agreements, including financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon request.

§ 1.2.3 Construction budgets shall be prepared by qualified professionals, cost estimators or contractors retained by and acting in the interest of the Design/Builder.

§ 1.2.4 The Design/Builder shall be responsible to the Owner for acts and omissions of the Design/Builder's employees, subcontractors and their agents and employees, and other persons, including the Architect and other design professionals, performing any portion of the Design/Builder's obligations under this Part 1 Agreement.

§ 1.2.5 If the Design/Builder believes or is advised by the Architect or by another design professional retained to provide services on the Project that implementation of any instruction received from the Owner would cause a violation of any applicable law, the Design/Builder shall notify the Owner in writing. Neither the Design/Builder nor the Architect shall be obligated to perform any act which either believes will violate any applicable law.

§ 1.2.6 Nothing contained in this Part 1 Agreement shall create a contractual relationship between the Owner and any person or entity other than the Design/Builder.

§ 1.3 BASIC SERVICES

§ 1.3.1 The Design/Builder shall provide a preliminary evaluation of the Owner's program and project budget requirements, each in terms of the other.

§ 1.3.2 The Design/Builder shall visit the site, become familiar with the local conditions, and correlate observable conditions with the requirements of the Owner's program, schedule, and budget.

§ 1.3.3 The Design/Builder shall review laws applicable to design and construction of the Project, correlate such laws with the Owner's program requirements, and advise the Owner if any program requirement may cause a violation of such laws. Necessary changes to the Owner's program shall be accomplished by appropriate written modification or disclosed as described in Section 1.3.5.

§ 1.3.4 The Design/Builder shall review with the Owner alternative approaches to design and construction of the Project.

§ 1.3.5 The Design/Builder shall submit to the Owner a Proposal, including the completed Preliminary Design Documents, a statement of the proposed contract sum, and a proposed schedule for completion of the Project. Preliminary Design Documents shall consist of preliminary design drawings, outline specifications or other documents sufficient to establish the size, quality and character of the entire Project, its architectural, structural, mechanical and electrical systems, and the materials and such other elements of the Project as may be appropriate. Deviations from the Owner's program shall be disclosed in the Proposal. If the Proposal is accepted by the Owner, the parties shall then execute the Part 2 Agreement. A modification to the Proposal before execution of the Part 2 Agreement shall be recorded in writing as an addendum and shall be identified in the Contract Documents of the Part 2 Agreement.

§ 1.4 ADDITIONAL SERVICES

§ 1.4.1 The Additional Services described under this Section 1.4 shall be provided by the Design/Builder and paid for by the Owner if authorized or confirmed in writing by the Owner.

§ 1.4.2 Making revisions in the Preliminary Design Documents, budget or other documents when such revisions are:

- 1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
- 2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
- 3 due to changes required as a result of the Owner's failure to render decisions in a timely manner.

§ 1.4.3 Providing more extensive programmatic criteria than that furnished by the Owner as described in Section 2.1. When authorized, the Design/Builder shall provide professional services to assist the Owner in the preparation of the program. Programming services may consist of:

- 1 consulting with the Owner and other persons or entities not designated in this Part 1 Agreement to define the program requirements of the Project and to review the understanding of such requirements with the Owner;
- 2 documentation of the applicable requirements necessary for the various Project functions or operations;
- 3 providing a review and analysis of the functional and organizational relationships, requirements, and objectives for the Project;
- 4 setting forth a written program of requirements for the Owner's approval which summarizes the Owner's objectives, schedule, constraints, and criteria.

§ 1.4.4 Providing financial feasibility or other special studies.

§ 1.4.5 Providing planning surveys, site evaluations or comparative studies of prospective sites.

§ 1.4.6 Providing special surveys, environmental studies, and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

§ 1.4.7 Providing services relative to future facilities, systems and equipment.

§ 1.4.8 Providing services at the Owner's specific request to perform detailed investigations of existing conditions or facilities or to make measured drawings thereof.

§ 1.4.9 Providing services at the Owner's specific request to verify the accuracy of drawings or other information furnished by the Owner.

§ 1.4.10 Coordinating services in connection with the work of separate persons or entities retained by the Owner, subsequent to the execution of this Part 1 Agreement.

§ 1.4.11 Providing analyses of owning and operating costs.

§ 1.4.12 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

§ 1.4.13 Providing services for planning tenant or rental spaces.

§ 1.4.14 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

ARTICLE 2 OWNER

§ 2.1 RESPONSIBILITIES

§ 2.1.1 The Owner shall provide full information in a timely manner regarding requirements for the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria.

§ 2.1.2 The Owner shall establish and update an overall budget for the Project, including reasonable contingencies. This budget shall not constitute the contract sum.

§ 2.1.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Design/Builder in order to avoid unreasonable delay in the orderly and sequential progress of the Design/Builder's services. The Owner may obtain independent review of the documents by a separate architect, engineer, contractor, or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Design/Builder's services.

§ 2.1.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 2.1.5 The Owner shall furnish the services of geotechnical engineers when such services are stipulated in this Part 1 Agreement, or deemed reasonably necessary by the Design/Builder. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 2.1.6 The Owner shall disclose, to the extent known to the Owner, the results and reports of prior tests, inspections or investigations conducted for the Project involving: structural or mechanical systems; chemical, air and water pollution; hazardous materials; or other environmental and subsurface conditions. The Owner shall disclose all information known to the Owner regarding the presence of pollutants at the Project's site.

§ 2.1.7 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Design/Builder's Applications for Payment.

§ 2.1.8 The Owner shall promptly obtain easements, zoning variances and legal authorizations regarding site utilization where essential to the execution of the Owner's program.

§ 2.1.9 Those services, information, surveys, and reports required by Sections 2.1.4 through 2.1.8 which are within the Owner's control shall be furnished at the Owner's expense, and the Design/Builder shall be entitled to rely upon the accuracy and completeness thereof, except to the extent the Owner advises the Design/Builder to the contrary in writing.

§ 2.1.10 If the Owner requires the Design/Builder to maintain any special insurance coverage, policy, amendment, or rider, the Owner shall pay the additional cost thereof except as otherwise stipulated in this Part 1 Agreement.

§ 2.1.11 The Owner shall communicate with persons or entities employed or retained by the Design/Builder through the Design/Builder, unless otherwise directed by the Design/Builder.

ARTICLE 3 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ 3.1 Drawings, specifications, and other documents and electronic data furnished by the Design/Builder are instruments of service. The Design/Builder's Architect and other providers of professional services shall retain all common law, statutory and other reserved rights, including copyright in those instruments of service furnished by them. Drawings, specifications, and other documents and electronic data are furnished for use solely with respect to this Part 1 Agreement. The Owner shall be permitted to retain copies, including reproducible copies, of the

drawings, specifications, and other documents and electronic data furnished by the Design/Builder for information and reference in connection with the Project except as provided in Sections 3.2 and 3.3.

§ 3.2 If the Part 2 Agreement is not executed, the Owner shall not use the drawings, specifications, and other documents and electronic data furnished by the Design/Builder without the written permission of the Design/Builder. Drawings, specifications, and other documents and electronic data shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, except by agreement in writing and with appropriate compensation to the Design/Builder, unless the Design/Builder is adjudged to be in default under this Part 1 Agreement or under any other subsequently executed agreement, or by agreement in writing.

§ 3.3 If the Design/Builder defaults in the Design/Builder's obligations to the Owner, the Architect shall grant a license to the Owner to use the drawings, specifications, and other documents and electronic data furnished by the Architect to the Design/Builder for the completion of the Project, conditioned upon the Owner's execution of an agreement to cure the Design/Builder's default in payment to the Architect for services previously performed and to indemnify the Architect with regard to claims arising from such reuse without the Architect's professional involvement.

§ 3.4 Submission or distribution of the Design/Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section 3.1.

ARTICLE 4 TIME

§ 4.1 Upon the request of the Owner, the Design/Builder shall prepare a schedule for the performance of the Basic and Additional Services which shall not exceed the time limits contained in Section 10.1 and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 4.2 If the Design/Builder is delayed in the performance of services under this Part 1 Agreement through no fault of the Design/Builder, any applicable schedule shall be equitably adjusted.

ARTICLE 5 PAYMENTS

§ 5.1 The initial payment provided in Article 9 shall be made upon execution of this Part 1 Agreement and credited to the Owner's account as provided in Section 9.1.2.

§ 5.2 Subsequent payments for Basic Services, Additional Services, and Reimbursable Expenses provided for in this Part 1 Agreement shall be made monthly on the basis set forth in Article 9.

§ 5.3 Within ten (10) days of the Owner's receipt of a properly submitted and correct Application for Payment, the Owner shall make payment to the Design/Builder.

§ 5.4 Payments due the Design/Builder under this Part 1 Agreement which are not paid when due shall bear interest from the date due at the rate specified in Section 9.5, or in the absence of a specified rate, at the legal rate prevailing where the Project is located.

ARTICLE 6 DISPUTE RESOLUTION – MEDIATION AND ARBITRATION

§ 6.1 Claims, disputes or other matters in question between the parties to this Part 1 Agreement arising out of or relating to this Part 1 Agreement or breach thereof shall be subject to and decided by mediation or arbitration. Such mediation or arbitration shall be conducted in accordance with the Construction Industry Mediation or Arbitration Rules of the American Arbitration Association currently in effect.

§ 6.2 In addition to and prior to arbitration, the parties shall endeavor to settle disputes by mediation. Demand for mediation shall be filed in writing with the other party to this Part 1 Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of repose or limitations.

УЧАТОНОНТОН

DEFENDANT
CLEARFIELD MALL ASSOCIATES

SHERIFF COSTS	40.25
PRO	3.00
TOTAL COSTS	43.25

SO ANSWERS.
Bob Kofar

SWORN AND SUBSCRIBED TO BEFORE ME, THIS 28TH DAY OF JULY, 06.

SCRIBED TO BEFORE ME THIS 28TH DAY OF J
Patty Berkibit

§ 6.3 Demand for arbitration shall be filed in writing with the other party to this Part 1 Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

§ 6.4 An arbitration pursuant to this Section may be joined with an arbitration involving common issues of law or fact between the Design/Builder and any person or entity with whom the Design/Builder has a contractual obligation to arbitrate disputes. No other arbitration arising out of or relating to this Part 1 Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Part 1 Agreement or not a party to an agreement with the Design/Builder, except by written consent containing a specific reference to this Part 1 Agreement signed by the Owner, the Design/Builder and all other persons or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Part 1 Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 6.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Unless otherwise provided, this Part 1 Agreement shall be governed by the law of the place where the Project is located.

§ 7.2 The Owner and the Design/Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Part 1 Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Part 1 Agreement. Neither the Owner nor the Design/Builder shall assign this Part 1 Agreement without the written consent of the other.

§ 7.3 Unless otherwise provided, neither the design for nor the cost of remediation of hazardous materials shall be the responsibility of the Design/Builder.

§ 7.4 This Part 1 Agreement represents the entire and integrated agreement between the Owner and the Design/Builder and supersedes all prior negotiations, representations or agreements, either written or oral. This Part 1 Agreement may be amended only by written instrument signed by both the Owner and the Design/Builder.

§ 7.5 Prior to the termination of the services of the Architect or any other design professional designated in this Part 1 Agreement, the Design/Builder shall identify to the Owner in writing another architect or design professional with respect to whom the Owner has no reasonable objection, who will provide the services originally to have been provided by the Architect or other design professional whose services are being terminated.

ARTICLE 8 TERMINATION OF THE AGREEMENT

§ 8.1 This Part 1 Agreement may be terminated by either party upon seven (7) days' written notice should the other party fail to perform substantially in accordance with its terms through no fault of the party initiating the termination.

§ 8.2 This Part 1 Agreement may be terminated by the Owner without cause upon at least seven (7) days' written notice to the Design/Builder.

§ 8.3 In the event of termination not the fault of the Design/Builder, the Design/Builder shall be compensated for services performed to the termination date, together with Reimbursable Expenses then due and Termination Expenses. Termination Expenses are expenses directly attributable to termination, including a reasonable amount for overhead and profit, for which the Design/Builder is not otherwise compensated under this Part 1 Agreement.

ARTICLE 9 BASIS OF COMPENSATION

The Owner shall compensate the Design/Builder in accordance with Article 5, Payments, and the other provisions of this Part 1 Agreement as described below.

§ 9.1 COMPENSATION FOR BASIC SERVICES

§ 9.1.1 FOR BASIC SERVICES, compensation shall be as follows:

§ 9.1.2 AN INITIAL PAYMENT of one dollar (\$ 1.00) shall be made upon execution of this Part 1 Agreement and credited to the Owner's account as follows:

§ 9.1.3 SUBSEQUENT PAYMENTS shall be as follows:

None.

§ 9.2 COMPENSATION FOR ADDITIONAL SERVICES

§ 9.2.1 FOR ADDITIONAL SERVICES, compensation shall be as follows:

In accordance with Paul C. Rizzo Associates basic rate schedule, attached.

§ 9.3 REIMBURSABLE EXPENSES

§ 9.3.1 Reimbursable Expenses are in addition to Compensation for Basic and Additional Services, and include actual expenditures made by the Design/Builder and the Design/Builder's employees and contractors in the interest of the Project, as follows:

Building permits, water & sewer tap fees.

§ 9.3.2 FOR REIMBURSABLE EXPENSES, compensation shall be a multiple of one decimal point one (1.1) times the amounts expended.

§ 9.4 DIRECT PERSONNEL EXPENSE is defined as the direct salaries of personnel engaged on the Project, and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

§ 9.5 INTEREST PAYMENTS

§ 9.5.1 The rate of interest for past due payments shall be as follows:

As per Commonwealth of Pennsylvania Statute.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design/Builder's principal places of business, at the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification or other requirements, such as written disclosures or waivers.)

§ 9.6 IF THE SCOPE of the Project is changed materially, the amount of compensation shall be equitably adjusted.

§ 9.7 The compensation set forth in this Part 1 Agreement shall be equitably adjusted if through no fault of the Design/Builder the services have not been completed within one hundred twenty (120) days of the date of this Part 1 Agreement.

ARTICLE 10 OTHER CONDITIONS AND SERVICES

§ 10.1 The Basic Services to be performed shall be commenced on November 1, 2004 and, subject to authorized adjustments and to delays not caused by the Design/Builder, shall be completed in one hundred twenty (120)

) calendar days. The Design/Builder's Basic Services consist of those described in Section 1.3 as part of Basic Services, and include normal professional engineering and preliminary design services, unless otherwise indicated.

§ 10.2 Services beyond those described in Section 1.4 are as follows:

(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

None.

§ 10.3 The Owner's preliminary program, budget and other documents, if any, are enumerated as follows:

Title

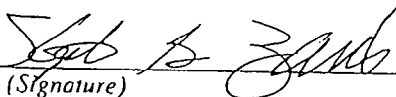
Date

None.

This Agreement entered into as of the day and year first written above.

OWNER

DESIGN/BUILDER

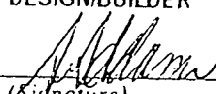


(Signature)

STEPHEN G. ZAMIAS

(Printed name and title)

OK



(Signature)

Stephen G. Adams
Vice-President

(Printed name and title)



Document A191™ – 1996 Part 2

Standard Form of Agreement Between Owner and Design/Builder *Part 2 Agreement*

TABLE OF ARTICLES

PART 2 AGREEMENT

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

AGREEMENT made as of the twenty-eighth day of February in the year of 2005
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name and address)

Clearfield Mall Associates, LP
300 Market Street
Johnstown, PA 15901

and the Design/Builder:
(Name and address)

Red Zone Design & Construction, Inc.
647 Main Street, Suite 200
Johnstown, PA 15901

For the following Project:
(Include Project name, location and a summary description.)

Renovation of approximately 42,000 square feet of the existing Ames Department store for use as an Ollie's Department Store at the Clearfield Mall, Clearfield, Pennsylvania.

The architectural services described in Article 3 will be provided by the following person or entity who is lawfully licensed to practice architecture:

Name and address

R. L. Beattie Jr., Architect
2141 Ardmore Boulevard Suite 1
Pittsburgh, Pennsylvania 15221

Registration Number

RA009553EX

Relationship to Design/Builder

Contracted to

Normal structural, mechanical and electrical engineering services will be provided contractually through the Architect except as indicated below:

Name, address and discipline**Registration Number****Relationship to Design/Builder**

The Owner and the Design/Builder agree as set forth below.

Design and perform renovation services for the project previously. This includes:

- 1) Demising wall;
- 2) Ceiling grid repair and tile change-out;
- 3) Rework all utility services;
- 4) Painting of all interior walls;
- 5) Floor sanding, leveling and sealing. Tile removal is by others via non-mechanical means;
- 6) Change-out existing RTUs including new curb adapters;
- 7) Install new loading dock, roof and doors.

4.A Columns to be painted Red All.

3.A Includes WTR, ELEC, Sewer & GAS All.

430

TERMS AND CONDITIONS – PART 2 AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 The Contract Documents consist of the Part 1 Agreement to the extent not modified by this Part 2 Agreement, this Part 2 Agreement, the Design/Builder's Proposal and written addenda to the Proposal identified in Article 14, the Construction Documents approved by the Owner in accordance with Section 3.2.3 and Modifications issued after execution of this Part 2 Agreement. A Modification is a Change Order or a written amendment to this Part 2 Agreement signed by both parties, or a Construction Change Directive issued by the Owner in accordance with Section 8.3.

§ 1.1.2 The term "Work" means the construction and services provided by the Design/Builder to fulfill the Design/Builder's obligations.

§ 1.2 EXECUTION, CORRELATION AND INTENT

§ 1.2.1 It is the intent of the Owner and Design/Builder that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all: performance by the Design/Builder shall be required only to the extent consistent with and reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.2 If the Design/Builder believes or is advised by the Architect or by another design professional retained to provide services on the Project that implementation of any instruction received from the Owner would cause a violation of any applicable law, the Design/Builder shall notify the Owner in writing. Neither the Design/Builder nor the Architect shall be obligated to perform any act which either believes will violate any applicable law.

§ 1.2.3 Nothing contained in this Part 2 Agreement shall create a contractual relationship between the Owner and any person or entity other than the Design/Builder.

§ 1.3 OWNERSHIP AND USE OF DOCUMENTS

§ 1.3.1 Drawings, specifications, and other documents and electronic data furnished by the Design/Builder are instruments of service. The Design/Builder's Architect and other providers of professional services shall retain all common law, statutory and other reserved rights, including copyright in those instruments of service furnished by them. Drawings, specifications, and other documents and electronic data are furnished for use solely with respect to this Part 2 Agreement. The Owner shall be permitted to retain copies, including reproducible copies, of the drawings, specifications, and other documents and electronic data furnished by the Design/Builder for information and reference in connection with the Project except as provided in Sections 1.3.2 and 1.3.3.

§ 1.3.2 Drawings, specifications, and other documents and electronic data furnished by the Design/Builder shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, except by agreement in writing and with appropriate compensation to the Design/Builder, unless the Design/Builder is adjudged to be in default under this Part 2 Agreement or under any other subsequently executed agreement.

§ 1.3.3 If the Design/Builder defaults in the Design/Builder's obligations to the Owner, the Architect shall grant a license to the Owner to use the drawings, specifications, and other documents and electronic data furnished by the Architect to the Design/Builder for the completion of the Project, conditioned upon the Owner's execution of an agreement to cure the Design/Builder's default in payment to the Architect for services previously performed and to indemnify the Architect with regard to claims arising from such reuse without the Architect's professional involvement.

§ 1.3.4 Submission or distribution of the Design/Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section 1.3.1.

ARTICLE 2 OWNER

§ 2.1 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall examine documents submitted by the Design/Builder and shall render decisions in a timely manner and in accordance with the schedule accepted by the Owner. The Owner may obtain independent review of the Contract Documents by a separate architect, engineer, contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ 2.2 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and Design/Builder agree in writing.

§ 2.3 The Owner shall cooperate with the Design/Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the Design/Builder's Proposal.

§ 2.4 The Owner shall furnish services of land surveyors, geotechnical engineers and other consultants for subsoil, air and water conditions, in addition to those provided under the Part 1 Agreement, when such services are deemed necessary by the Design/Builder to properly carry out the design services required by this Part 2 Agreement.

§ 2.5 The Owner shall disclose, to the extent known to the Owner, the results and reports of prior tests, inspections or investigations conducted for the Project involving: structural or mechanical systems; chemical, air and water pollution; hazardous materials; or other environmental and subsurface conditions. The Owner shall disclose all information known to the Owner regarding the presence of pollutants at the Project's site.

§ 2.6 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Design/Builder's Applications for Payment.

§ 2.7 Those services, information, surveys and reports required by Sections 2.4 through 2.6 which are within the Owner's control shall be furnished at the Owner's expense, and the Design/Builder shall be entitled to rely upon the accuracy and completeness thereof, except to the extent the Owner advises the Design/Builder to the contrary in writing.

§ 2.8 If the Owner requires the Design/Builder to maintain any special insurance coverage, policy, amendment, or rider, the Owner shall pay the additional cost thereof, except as otherwise stipulated in this Part 2 Agreement.

§ 2.9 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the Design/Builder's Proposal or the Construction Documents, the Owner shall give prompt written notice thereof to the Design/Builder.

§ 2.10 The Owner shall, at the request of the Design/Builder, prior to execution of this Part 2 Agreement and promptly upon request thereafter, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract.

§ 2.11 The Owner shall communicate with persons or entities employed or retained by the Design/Builder through the Design/Builder, unless otherwise directed by the Design/Builder.

ARTICLE 3 DESIGN/BUILDER

§ 3.1 SERVICES AND RESPONSIBILITIES

§ 3.1.1 Design services required by this Part 2 Agreement shall be performed by qualified architects and other design professionals. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of the Design/Builder.

§ 3.1.2 The agreements between the Design/Builder and the persons or entities identified in this Part 2 Agreement, and any subsequent modifications, shall be in writing. These agreements, including financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon request.

§ 3.1.3 The Design/Builder shall be responsible to the Owner for acts and omissions of the Design/Builder's employees, subcontractors and their agents and employees, and other persons, including the Architect and other design professionals, performing any portion of the Design/Builder's obligations under this Part 2 Agreement.

§ 3.2 BASIC SERVICES

§ 3.2.1 The Design/Builder's Basic Services are described below and in Article 14.

§ 3.2.2 The Design/Builder shall designate a representative authorized to act on the Design/Builder's behalf with respect to the Project.

§ 3.2.3 The Design/Builder shall submit Construction Documents for review and approval by the Owner. Construction Documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the intent of the Design/Builder's Proposal;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

§ 3.2.4 The Design/Builder, with the assistance of the Owner, shall file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.2.5 Unless otherwise provided in the Contract Documents, the Design/Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.2.6 The Design/Builder shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under this Part 2 Agreement.

§ 3.2.7 The Design/Builder shall keep the Owner informed of the progress and quality of the Work.

§ 3.2.8 The Design/Builder shall be responsible for correcting Work which does not conform to the Contract Documents.

§ 3.2.9 The Design/Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the construction will be free from faults and defects, and that the construction will conform with the requirements of the Contract Documents. Construction not conforming to these requirements, including substitutions not properly approved by the Owner, shall be corrected in accordance with Article 9.

§ 3.2.10 The Design/Builder shall pay all sales, consumer, use and similar taxes which had been legally enacted at the time the Design/Builder's Proposal was first submitted to the Owner, and shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are either customarily secured after execution of a contract for construction or are legally required at the time the Design/Builder's Proposal was first submitted to the Owner.

§ 3.2.11 The Design/Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ 3.2.12 The Design/Builder shall pay royalties and license fees for patented designs, processes or products. The Design/Builder shall defend suits or claims for infringement of patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer is required by the Owner. However, if the Design/Builder has reason to believe the use of a required design, process or product is an infringement of a patent, the Design/Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

§ 3.2.13 The Design/Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Part 2 Agreement. At the completion of the Work, the Design/Builder shall remove from the site waste materials, rubbish, the Design/Builder's tools, construction equipment, machinery, and surplus materials.

§ 3.2.14 The Design/Builder shall notify the Owner when the Design/Builder believes that the Work or an agreed upon portion thereof is substantially completed. If the Owner concurs, the Design/Builder shall issue a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibility of each party for security, maintenance, heat, utilities, damage to the Work and insurance, shall include a list of items to be completed or corrected and shall fix the time within which the Design/Builder shall complete items listed therein. Disputes between the Owner and Design/Builder regarding the Certificate of Substantial Completion shall be resolved in accordance with provisions of Article 10.

§ 3.2.15 The Design/Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other modifications, in good order and regularly updated to record the completed construction. These shall be delivered to the Owner upon completion of construction and prior to final payment.

§ 3.3 ADDITIONAL SERVICES

§ 3.3.1 The services described in this Section 3.3 are not included in Basic Services unless so identified in Article 14, and they shall be paid for by the Owner as provided in this Part 2 Agreement, in addition to the compensation for Basic Services. The services described in this Section 3.3 shall be provided only if authorized or confirmed in writing by the Owner.

§ 3.3.2 Making revisions in drawings, specifications, and other documents or electronic data when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or electronic data.

§ 3.3.3 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

§ 3.3.4 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding, except where the Design/Builder is a party thereto.

§ 3.3.5 Providing coordination of construction performed by the Owner's own forces or separate contractors employed by the Owner, and coordination of services required in connection with construction performed and equipment supplied by the Owner.

§ 3.3.6 Preparing a set of reproducible record documents or electronic data showing significant changes in the Work made during construction.

§ 3.3.7 Providing assistance in the utilization of equipment or systems such as preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

ARTICLE 4 TIME

§ 4.1 Unless otherwise indicated, the Owner and the Design/Builder shall perform their respective obligations as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Project.

§ 4.2 Time limits stated in the Contract Documents are of the essence. The Work to be performed under this Part 2 Agreement shall commence upon receipt of a notice to proceed unless otherwise agreed and, subject to authorized Modifications, Substantial Completion shall be achieved on or before the date established in Article 14.

§ 4.3 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

§ 4.4 Based on the Design/Builder's Proposal, a construction schedule shall be provided consistent with Section 4.2 above.

§ 4.5 If the Design/Builder is delayed at any time in the progress of the Work by an act or neglect of the Owner, Owner's employees, or separate contractors employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, adverse weather conditions not reasonably anticipatable, unavoidable casualties or other causes beyond the Design/Builder's control, or by delay authorized by the Owner pending arbitration, or by other causes which the Owner and Design/Builder agree may justify delay, then the Contract Time shall be reasonably extended by Change Order.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 The Design/Builder shall deliver to the Owner itemized Applications for Payment in such detail as indicated in Article 14.

§ 5.1.2 Within ten (10) days of the Owner's receipt of a properly submitted and correct Application for Payment, the Owner shall make payment to the Design/Builder.

§ 5.1.3 The Application for Payment shall constitute a representation by the Design/Builder to the Owner that the design and construction have progressed to the point indicated, the quality of the Work covered by the application is in accordance with the Contract Documents, and the Design/Builder is entitled to payment in the amount requested.

§ 5.1.4 Upon receipt of payment from the Owner, the Design/Builder shall promptly pay the Architect, other design professionals and each contractor the amount to which each is entitled in accordance with the terms of their respective contracts.

§ 5.1.5 The Owner shall have no obligation under this Part 2 Agreement to pay or to be responsible in any way for payment to the Architect, another design professional or a contractor performing portions of the Work.

§ 5.1.6 Neither progress payment nor partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

§ 5.1.7 The Design/Builder warrants that title to all construction covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design/Builder further warrants that upon submittal of an Application for Payment all construction for which payments have been received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Design/Builder or any other person or entity performing construction at the site or furnishing materials or equipment relating to the construction.

§ 5.1.8 At the time of Substantial Completion, the Owner shall pay the Design/Builder the retainage, if any, less the reasonable cost to correct or complete incorrect or incomplete Work. Final payment of such withheld sum shall be made upon correction or completion of such Work.

§ 5.2 FINAL PAYMENTS

§ 5.2.1 Neither final payment nor amounts retained, if any, shall become due until the Design/Builder submits to the Owner: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner; (3) a written statement that the Design/Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment; and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a contractor or other person or entity entitled to assert a lien against the Owner's property refuses to furnish a release or waiver required by the Owner, the Design/Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the

Design/Builder shall indemnify the Owner for all loss and cost, including reasonable attorneys' fees incurred as a result of such lien.

§ 5.2.2 When the Work has been completed and the contract fully performed, the Design/Builder shall submit a final application for payment to the Owner, who shall make final payment within 30 days of receipt.

§ 5.2.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 5.2.4 Acceptance of final payment shall constitute a waiver of all claims by the Design/Builder except those previously made in writing and identified by the Design/Builder as unsettled at the time of final Application for Payment.

§ 5.3 INTEREST PAYMENTS

§ 5.3.1 Payments due the Design/Builder under this Part 2 Agreement which are not paid when due shall bear interest from the date due at the rate specified in Article 13, or in the absence of a specified rate, at the legal rate prevailing where the Project is located.

ARTICLE 6 PROTECTION OF PERSONS AND PROPERTY

§ 6.1 The Design/Builder shall be responsible for initiating, maintaining and providing supervision of all safety precautions and programs in connection with the performance of this Part 2 Agreement.

§ 6.2 The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Design/Builder or the Design/Builder's contractors; and (3) other property at or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 6.3 The Design/Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury or loss.

§ 6.4 The Design/Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance provided or required by the Contract Documents) to property at the site caused in whole or in part by the Design/Builder, a contractor of the Design/Builder or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

ARTICLE 7 INSURANCE AND BONDS

§ 7.1 DESIGN/BUILDER'S LIABILITY INSURANCE

§ 7.1.1 The Design/Builder shall purchase from and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, such insurance as will protect the Design/Builder from claims set forth below which may arise out of or result from operations under this Part 2 Agreement by the Design/Builder or by a contractor of the Design/Builder, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit laws that are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design/Builder's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of persons other than the Design/Builder's employees;
- .4 claims for damages covered by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Design/Builder or (2) by another person;

- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- .7 claims involving contractual liability insurance applicable to the Design/Builder's obligations under Section 11.5.

§ 7.1.2 The insurance required by Section 7.1.1 shall be written for not less than limits of liability specified in this Part 2 Agreement or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ 7.1.3 Certificates of Insurance acceptable to the Owner shall be delivered to the Owner immediately after execution of this Part 2 Agreement. These Certificates and the insurance policies required by this Section 7.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the application for final payment. Information concerning reduction of coverage shall be furnished by the Design/Builder with reasonable promptness in accordance with the Design/Builder's information and belief.

§ 7.2 OWNER'S LIABILITY INSURANCE

§ 7.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under this Part 2 Agreement. The Design/Builder shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

§ 7.3 PROPERTY INSURANCE

§ 7.3.1 Unless otherwise provided under this Part 2 Agreement, the Owner shall purchase and maintain, in a company or companies authorized to do business in the jurisdiction in which the principal improvements are to be located, property insurance upon the Work to the full insurable value thereof on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property required by this Section 7.3 to be insured, whichever is earlier. This insurance shall include interests of the Owner, the Design/Builder, and their respective contractors and subcontractors in the Work.

§ 7.3.2 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the services and expenses of the Design/Builder's Architect and other professionals required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

§ 7.3.3 If the Owner does not intend to purchase such property insurance required by this Part 2 Agreement and with all of the coverages in the amount described above, the Owner shall so inform the Design/Builder prior to commencement of the construction. The Design/Builder may then effect insurance which will protect the interests of the Design/Builder and the Design/Builder's contractors in the construction, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Design/Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 7.3.4 Unless otherwise provided, the Owner shall purchase and maintain such boiler and machinery insurance required by this Part 2 Agreement or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner. This insurance shall include interests of the Owner, the Design/Builder, the Design/Builder's contractors and subcontractors in the Work, and the Design/Builder's Architect and other design professionals. The Owner and the Design/Builder shall be named insureds.

§ 7.3.5 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 7.3.10. The Design/Builder shall pay contractors their shares of insurance proceeds received by the Design/Builder, and by appropriate agreement, written where legally required for validity, shall require contractors to make payments to their subcontractors in similar manner.

§ 7.3.6 Before an exposure to loss may occur, the Owner shall file with the Design/Builder a copy of each policy that includes insurance coverages required by this Section 7.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Design/Builder.

§ 7.3.7 If the Design/Builder requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Owner shall, if possible, obtain such insurance, and the cost thereof shall be charged to the Design/Builder by appropriate Change Order.

§ 7.3.8 The Owner and the Design/Builder waive all rights against each other and the Architect and other design professionals, contractors, subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section 7.3 or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as trustee. The Owner or Design/Builder, as appropriate, shall require from contractors and subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated in this Section 7.3. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 7.3.9 If required in writing by a party in interest, the Owner as trustee shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Article 10. If after such loss no other special agreement is made, replacement of damaged Work shall be covered by appropriate Change Order.

§ 7.3.10 The Owner as trustee shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing, within five (5) days after occurrence of loss to the Owner's exercise of this power; if such objection be made, the parties shall enter into dispute resolution under procedures provided in Article 10. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ 7.3.11 Partial occupancy or use prior to Substantial Completion shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design/Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall not, without mutual written consent, take any action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of coverage.

§ 7.4 LOSS OF USE OF INSURANCE

§ 7.4.1 The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design/Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

ARTICLE 8 CHANGES IN THE WORK

§ 8.1 CHANGES

§ 8.1.1 Changes in the Work may be accomplished after execution of this Part 2 Agreement, without invalidating this Part 2 Agreement, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in the Contract Documents.

§ 8.1.2 A Change Order shall be based upon agreement between the Owner and the Design/Builder: a Construction Change Directive may be issued by the Owner without the agreement of the Design/Builder; an order for a minor change in the Work may be issued by the Design/Builder alone.

§ 8.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 8.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or the Design/Builder, the applicable unit prices shall be equitably adjusted.

§ 8.2 CHANGE ORDERS

§ 8.2.1 A Change Order is a written instrument prepared by the Design/Builder and signed by the Owner and the Design/Builder, stating their agreement upon all of the following:

- 1 a change in the Work;
- 2 the amount of the adjustment, if any, in the Contract Sum; and
- 3 the extent of the adjustment, if any, in the Contract Time.

§ 8.2.2 If the Owner requests a proposal for a change in the Work from the Design/Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Contract Documents.

§ 8.3 CONSTRUCTION CHANGE DIRECTIVES

§ 8.3.1 A Construction Change Directive is a written order prepared and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.

§ 8.3.2 Except as otherwise agreed by the Owner and the Design/Builder, the adjustment to the Contract Sum shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including the expenditures for design services and revisions to the Contract Documents. In case of an increase in the Contract Sum, the cost shall include a reasonable allowance for overhead and profit. In such case, the Design/Builder shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, costs for these purposes shall be limited to the following:

- 1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- 2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- 3 rental costs of machinery and equipment exclusive of hand tools, whether rented from the Design/Builder or others;
- 4 costs of premiums for all bonds and insurance permit fees, and sales, use or similar taxes;
- 5 additional costs of supervision and field office personnel directly attributable to the change; and fees paid to the Architect, engineers and other professionals.

§ 8.3.3 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Design/Builder to the Owner for deletion or change which results in a net decrease in the Contract Sum will be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

§ 8.3.4 When the Owner and the Design/Builder agree upon the adjustments in the Contract Sum and Contract Time, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ 8.4 MINOR CHANGES IN THE WORK

§ 8.4.1 The Design/Builder shall have authority to make minor changes in the Construction Documents and construction consistent with the intent of the Contract Documents when such minor changes do not involve adjustment in the Contract Sum or extension of the Contract Time. The Design/Builder shall promptly inform the Owner, in writing, of minor changes in the Construction Documents and construction.

§ 8.5 CONCEALED CONDITIONS

§ 8.5.1 If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Contract Sum shall be equitably adjusted for such concealed or unknown conditions by Change Order upon claim by either party made within 21 days after the claimant becomes aware of the conditions.

§ 8.6 REGULATORY CHANGES

§ 8.6.1 The Design/Builder shall be compensated for changes in the construction necessitated by the enactment or revisions of codes, laws or regulations subsequent to the submission of the Design/Builder's Proposal.

ARTICLE 9 CORRECTION OF WORK

§ 9.1 The Design/Builder shall promptly correct Work rejected by the Owner or known by the Design/Builder to be defective or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Design/Builder shall bear costs of correcting such rejected Work, including additional testing and inspections.

§ 9.2 If, within one (1) year after the date of Substantial Completion of the Work or, after the date for commencement of warranties established in a written agreement between the Owner and the Design/Builder, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Design/Builder a written acceptance of such condition.

§ 9.3 Nothing contained in this Article 9 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time period of one (1) year as described in Section 9.2 relates only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

§ 9.4 If the Design/Builder fails to correct nonconforming Work as required or fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the Owner's right to stop the Work shall not give rise to a duty on the part of the Owner to exercise the right for benefit of the Design/Builder or other persons or entities.

§ 9.5 If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may give a second written notice to the Design/Builder and, seven (7) days following receipt by the Design/Builder of that second written notice and without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design/Builder, the costs of correcting such deficiencies. If the payments then or thereafter due the Design/Builder are not sufficient to cover the amount of the deduction, the Design/Builder shall pay the difference to the Owner. Such action by the Owner shall be subject to dispute resolution procedures as provided in Article 10.

ARTICLE 10 DISPUTE RESOLUTION – MEDIATION AND ARBITRATION

§ 10.1 Claims, disputes or other matters in question between the parties to this Part 2 Agreement arising out of or relating to this Part 2 Agreement or breach thereof shall be subject to and decided by mediation or arbitration. Such mediation or arbitration shall be conducted in accordance with the Construction Industry Mediation or Arbitration Rules of the American Arbitration Association currently in effect.

§ 10.2 In addition to and prior to arbitration, the parties shall endeavor to settle disputes by mediation. Demand for mediation shall be filed in writing with the other party to this Part 2 Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

§ 10.3 Demand for arbitration shall be filed in writing with the other party to this Part 2 Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

§ 10.4 An arbitration pursuant to this Article may be joined with an arbitration involving common issues of law or fact between the Design/Builder and any person or entity with whom the Design/Builder has a contractual obligation to arbitrate disputes. No other arbitration arising out of or relating to this Part 2 Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Part 2 Agreement or not a party to an agreement with the Design/Builder, except by written consent containing a specific reference to this Part 2 Agreement signed by the Owner, the Design/Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Part 2 Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 10.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Unless otherwise provided, this Part 2 Agreement shall be governed by the law of the place where the Project is located.

§ 11.2 SUBCONTRACTS

§ 11.2.1 The Design/Builder, as soon as practicable after execution of this Part 2 Agreement, shall furnish to the Owner in writing the names of the persons or entities the Design/Builder will engage as contractors for the Project.

§ 11.3 WORK BY OWNER OR OWNER'S CONTRACTORS

§ 11.3.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of insurance and waiver of subrogation identical to the provisions of this Part 2 Agreement. If the Design/Builder claims that delay or additional cost is involved because of such action by the Owner, the Design/Builder shall assert such claims as provided in Section 11.4.

§ 11.3.2 The Design/Builder shall afford the Owner's separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design/Builder's construction and operations with theirs as required by the Contract Documents.

§ 11.3.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

§ 11.4 CLAIMS FOR DAMAGES

§ 11.4.1 If either party to this Part 2 Agreement suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim of additional cost or time related to this claim is to be asserted, it shall be filed in writing.

§ 11.5 INDEMNIFICATION

§ 11.5.1 To the fullest extent permitted by law, the Design/Builder shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Design/Builder, anyone directly or indirectly employed by the Design/Builder or anyone for whose acts the Design/Builder may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 11.5.

§ 11.5.2 In claims against any person or entity indemnified under this Section 11.5 by an employee of the Design/Builder, anyone directly or indirectly employed by the Design/Builder or anyone for whose acts the Design/Builder may be liable, the indemnification obligation under this Section 11.5 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design/Builder under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 11.6 SUCCESSORS AND ASSIGNS

§ 11.6.1 The Owner and Design/Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Part 2 Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Part 2 Agreement. Neither the Owner nor the Design/Builder shall assign this Part 2 Agreement without the written consent of the other. The Owner may assign this Part 2 Agreement to any institutional lender providing construction financing, and the Design/Builder agrees to execute all consents reasonably required to facilitate such an assignment. If either party makes such an assignment, that party shall nevertheless remain legally responsible for all obligations under this Part 2 Agreement, unless otherwise agreed by the other party.

§ 11.7 TERMINATION OF PROFESSIONAL DESIGN SERVICES

§ 11.7.1 Prior to termination of the services of the Architect or any other design professional designated in this Part 2 Agreement, the Design/Builder shall identify to the Owner in writing another architect or other design professional with respect to whom the Owner has no reasonable objection, who will provide the services originally to have been provided by the Architect or other design professional whose services are being terminated.

§ 11.8 EXTENT OF AGREEMENT

§ 11.8.1 This Part 2 Agreement represents the entire agreement between the Owner and the Design/Builder and supersedes prior negotiations, representations or agreements, either written or oral. This Part 2 Agreement may be amended only by written instrument and signed by both the Owner and the Design/Builder.

ARTICLE 12 TERMINATION OF THE AGREEMENT

§ 12.1 TERMINATION BY THE OWNER

§ 12.1.1 This Part 2 Agreement may be terminated by the Owner upon 14 days' written notice to the Design/Builder in the event that the Project is abandoned. If such termination occurs, the Owner shall pay the Design/Builder for Work completed and for proven loss sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit and applicable damages.

§ 12.1.2 If the Design/Builder defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform the provisions of this Part 2 Agreement, the Owner may give written notice that the Owner intends to terminate this Part 2 Agreement. If the Design/Builder fails to correct the defaults, failure

or neglect within seven (7) days after being given notice, the Owner may then give a second written notice and, after an additional seven (7) days, the Owner may without prejudice to any other remedy terminate the employment of the Design/Builder and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Design/Builder and finish the Work by whatever method the Owner may deem expedient. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Work and all damages incurred by the Owner, such excess shall be paid to the Design/Builder. If the expense of completing the Work and all damages incurred by the Owner exceeds the unpaid balance, the Design/Builder shall pay the difference to the Owner. This obligation for payment shall survive termination of this Part 2 Agreement.

§ 12.2 TERMINATION BY THE DESIGN/BUILDER

§ 12.2.1 If the Owner fails to make payment when due, the Design/Builder may give written notice of the Design/Builder's intention to terminate this Part 2 Agreement. If the Design/Builder fails to receive payment within seven (7) days after receipt of such notice by the Owner, the Design/Builder may give a second written notice and, seven (7) days after receipt of such second written notice by the Owner, may terminate this Part 2 Agreement and recover from the Owner payment for Work executed and for proven losses sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit and applicable damages.

ARTICLE 13 BASIS OF COMPENSATION

The Owner shall compensate the Design/Builder in accordance with Article 5, Payments, and the other provisions of this Part 2 Agreement as described below.

§ 13.1 COMPENSATION

§ 13.1.1 For the Design/Builder's performance of the Work, as described in Section 3.2 and including any other services listed in Article 14 as part of Basic Services, the Owner shall pay the Design/Builder in current funds the Contract Sum as follows:

| Four hundred ~~five~~ thousand dollars, (~~\$405,000.00~~)

400,000 MWA 450

§ 13.1.2 For Additional Services, as described in Section 3.3 and including any other services listed in Article 14 as Additional Services, compensation shall be as follows:

| In accordance with Paul C. Rizzo Associates, Inc. standard rate schedule, Exhibit J-B, attached.

§ 13.2 REIMBURSABLE EXPENSES

§ 13.2.1 Reimbursable Expenses are in addition to the compensation for Basic and Additional Services, and include actual expenditures made by the Design/Builder and the Design/Builder's employees and contractors in the interest of the Project, as follows:

| Building permits, water & sewer tap fees.

| § 13.2.2 FOR REIMBURSABLE EXPENSES, compensation shall be a multiple of one decimal point one (1.1) times the amounts expended.

§ 13.3 INTEREST PAYMENT

§ 13.3.1 The rate of interest for past due payments shall be as follows:

| As per Commonwealth of Pennsylvania statute.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design/Builder's principal places of business, at the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification or other requirements, such as written disclosures or waivers.)

ARTICLE 14 OTHER CONDITIONS AND SERVICES

§ 14.1 The Basic Services to be performed shall be commenced on March 1, 2005 and, subject to authorized adjustments and to delays not caused by the Design/Builder, Substantial Completion shall be achieved in the Contract Time of one hundred twenty three (123) calendar days, July 31, 2005. *JUNE 15, 2005 MWA*

§ 14.2 The Basic Services beyond those described in Article 3 are as follows:

None.

§ 14.3 Additional Services beyond those described in Article 3 are as follows:

None.

§ 14.4 The Design/Builder shall submit an Application for Payment on the first day of each month.

§ 14.5 The Design/Builder's Proposal includes the following documents:

(List the documents by specific title and date; include any required performance and payment bonds.)

Title

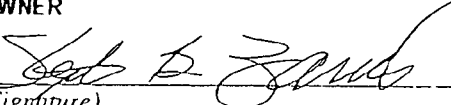
Date

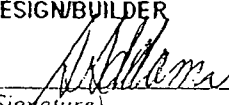
None.

This Agreement entered into as of the day and year first written above.

OWNER

DESIGN/BUILDER


(Signature)


(Signature)

STEPHEN G. ZAMIAS
(Printed name and title) OK

Stephen G. Adams
Vice-President
(Printed name and title)

Red Zone Design & Construction, Inc.
Johnstown Office
Ollie's, Clearfield

STANDARD RATES - Exhibit 1-B

Classification	Standard Rate
Officer	\$155
Principal	\$129
Project Manager	\$129
Senior Consultant	\$129
Project Supervisor	\$97
Staff Consultant	\$97
Project Consultant	\$97
Sr. Project Engineer	\$97
Sr. Project Engineer	\$97
Assistant Project Engineer	\$65
Biologist	\$65
Scientist	\$65
Engineer	\$51
Engineering Assistant	\$39
Engineering Tech III	\$57
Engineering Tech II	\$53
Engineering Tech I	\$51
Draftsman II	\$51
Draftsman I	\$39
Field Tech V	\$52
Field Tech IV	\$46
Field Tech III	\$44
Field Tech II	\$43
Field Tech I	\$41
Survey Party Chief	\$64
2-Man Survey Crew	\$106
Administration Assistant	\$54

- > a. Hourly rates are Portal to Portal
- > b. Hotel, air travel and rental vehicles will be invoiced at Cost.
- > c. Per-diem will be invoiced at \$20.00 per day for work days exceeding 12 hours and \$35.00 per day for all travel requiring an overnight stay
- > d. Hourly rates do NOT include company or employee vehicle usage. Vehicles will be invoiced at \$0.445 per mile
- > e. Survey equipment will be invoiced at \$30.00 per hour per Survey Crew billable hours.
- > f. Subcontractor, laboratory, material purchases and equipment rentals will be invoiced at Cost plus 10% mark-up
- > g. Reproduction of reports / drawings will be invoiced on a per-unit basis.
- > h. Long distance communication charges for telephone, facsimile, postage, special delivery and overnight delivery will be invoiced at Cost plus 10% mark-up.



Document G701™ – 2001

Change Order

PROJECT (Name and address): Ollies Department Store Clearfield Mall	CHANGE ORDER NUMBER: 001 DATE: March 23, 2005	OWNER: <input type="checkbox"/>
TO CONTRACTOR (Name and address): Red Zone Design & Construction, Inc. 647 Main Street Suite 200 Johnstown, PA 15901	ARCHITECT'S PROJECT NUMBER: N/A CONTRACT DATE: February 28, 2005 CONTRACT FOR: Design/Build	ARCHITECT: <input type="checkbox"/> CONTRACTOR: <input type="checkbox"/> FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>

THE CONTRACT IS CHANGED AS FOLLOWS:

(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

AIA Document A191 - 1996 Part 1

Article 5.3 Change payment from ten (10) days to forty-five (45) days.

AIA Document A191 - 1996 Part 2

The scope of the Work as identified on page No. 2, is modified as follows:

2) Change to read: Ceiling grid repair and 100% tile change out in the Ollies space only

3) Add: The fire protection system et al is not included in utility services.

7) Add: Doors include 8-foot roll-up door and 3-foot emergency exit/access door

8) Add Entire Item. The existing main circuits and cash register drops will be reconnected and maintained as is.

9) Add Entire Item. If additions, upgrades and/or modifications to the fire alarm or smoke detection systems are required by the current building code, that work is specifically not included in this scope of Work.

Article 3.3.6 Record drawings will be provided as part of basic services as provided for under Article 3.2

Article 3.3.7 Maintenance manuals, system testing, and startup, including manual training of Owner's personnel will be provided as part of basic services as provided for under Article 3.2.

Article 5.1.2 Change payment from ten (10) days to forty-five (45) days

Article 5.1.7 Lien waivers will be provided with each application for payment

Article 5.2.2 Change final payment from thirty (30) days to forty-five (45) days

Article 7.2.1 The Owner, Clearfield Mall Associates, LP and Zamas Services, Inc. will be named as additional insured on the Red Design & Construction, Inc. insurance certificate. Additional self protection insurance shall be purchased by Clearfield Mall Associates LP as it deems necessary.

Article 8.2.2 The Owner shall be permitted to request a reasonable number of proposals for a change in the Work from the Design/Builder without being required to reimburse the Design/Builder for the cost of the preparing the proposal, even if the Owner elects not to proceed with the change.

Clearfield Mall Associates, LP and Red Zone Design & Construction, Inc. agree that:

\$308,000.00 is for construction work (bonded);

\$92,000.00 is for professional services (unbonded).

Red Zone Design & Construction, Inc. will cause to have bonds issued in the amount of \$308,000.00 to Clearfield Mall Associates, LP.

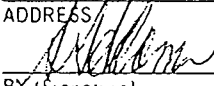
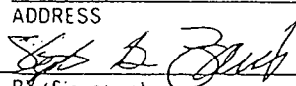
The original Contract Sum was	\$	400,000.00
The net change by previously authorized Change Orders	\$	0.00
The Contract Sum prior to this Change Order was	\$	400,000.00
The Contract Sum will be unchanged by this Change Order in the amount of	\$	0.00
The new Contract Sum including this Change Order will be	\$	400,000.00

The Contract Time will be unchanged by Zero (0) days.

The date of Substantial Completion as of the date of this Change Order therefore is June 15, 2005

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

N/A	Red Zone Design & Construction, Inc.	Clearfield Mall Associates, LP
ARCHITECT (Firm name)	CONTRACTOR (Firm name)	OWNER (Firm name)
N/A	647 Main Street Suite 200	300 Market Street
ADDRESS	Johnstown, PA 15901	Johnstown, PA 15901
ADDRESS	ADDRESS	ADDRESS
BY (Signature)		
BY (Signature)	BY (Signature)	BY (Signature)
N/A	Stephen G. Adams	Stephen G. Zamias
(Typed name)	(Typed name)	(Typed name)
DATE	03-24-05	4/28/05
DATE	DATE	DATE

January 14, 2005

Project No. R05-3264.00

Attn: Mr. Keith C. Vasas
Vice President Construction and Development
Zamias Services, Inc.
300 Market Street
Johnstown, PA 15901

**LUMP SUM PROPOSAL
DESIGN/BUILD SERVICES
OLLIE'S STORE
FORMER AMES STORE RENOVATIONS
CLEARFIELD MALL
CLEARFIELD, PENNSYLVANIA**

Dear Mr. Vasas:

Red Zone Design & Construction, Inc. (Red Zone) is pleased to submit to Zamias Services, Inc. (Zamias) our lump sum proposal for complete Design / Build services for the renovations necessary for the Ollie's Store within a portion of the former Ames Store as referenced above. Pursuant to our conversations with Zamias, our Basis of Design and subsequent price is based upon the following:

- 1) Within the Ollie's space, remove and dispose of:
 - a) All extension walls and backer panels;
 - b) All through ceiling register conduits and communication systems; and
 - c) All existing 2-foot by 4-foot ceiling tiles.
- 2) Provide a new 1-hour fire rated wall at approximately Column Line No. 5 that is continuous between Column Nos. "A" through "F," floor to roof deck.
- 3) Rework the existing ceiling tile grid system as required and provide all new 2-foot by 4-foot, white in color, acoustical ceiling tiles within the new Ollie's space.
- 4) Reconfigure the existing electrical system and split the system such that a 600-amp service, complete with a power consumption meter, disconnects and distribution panel(s) needed to power the new Ollie's space. With the remaining power available, provide a properly sized disconnect with a power consumption meter and rework / rewire the existing panels into the un-renovated space to the west side of the proposed Ollie's space.
- 5) Repair and repaint all walls within the Ollie's space.
- 6) Remove all existing floor tile within the Ollie's space. Repair, level, sand and seal the concrete floor in the sales area only.
- 7) Change out 6-each 15-ton RTU's complete with new adapter curbs.

- 8) Provide a new truck unloading dock on the north side of the building. The truck ramp will be an in-the-ground sloped ramp set at approximately 44-inches deep on the deepest end and extend between 20 to 30-feet in a northwesterly direction along the existing delivery road behind the facility. The ramp will include a guard rail system on the traffic side to prevent other traffic from falling into the ramp system. The ramp will have a gravity drain at its deepest end. The existing roof will be extended / replaced such that it covers the complete existing dock area only. The existing emergency exit door will be relocated approximately 6-feet east of its current location to make room for a new 8-foot wide roll-up or double-door system to be used for the unloading of Ollie's merchandise.

Excluded from this proposal are the following:

- A) Anything within the un-renovated space to the west side of the proposed Ollie's space excepting for the electrical rework indicated in Item No. 4 above.
- B) Existing water supplies and sewer risers are available in the un-developed space to the west side of the proposed Ollie's space. As such, no water or sewer expansion through the Ollie's space is included.
- C) The existing fire protection system is a wet system with heat activated drop heads. As such, no splitting or modifications of this system is included.
- D) Our review indicates a fire alarm / smoke detection system is not currently installed at this facility and under the Code, no system is included since the space is being renovated for in-kind operations.
- E) The existing ceiling florescent lighting strips are operational and acceptable as is. As such, no modification or renovation is required.
- F) The existing water and sewer systems are operational and require no additional modifications or taps into other existing systems.
- G) No electrical drops to the cash register stations are included but we will provide 4-each circuits in the distribution panel (see Item No. 4 above) for this use.
- H) No communication, i.e., telephone, data, intercom, TV, etc. is included.
- I) The existing exit sign system is intact and requires no modifications.
- J) The existing restrooms have 48-inch access doors and are considered ADA compliant as is.
- K) The existing storefront and internal mall corridor are acceptable as is and they require no additional modifications.
- L) Excepting for the unloading ramp system (see Item No. 8 above), no other exterior repairs / modifications are required or included.
- M) It is assumed that all environmental issues, i.e., asbestos, lead paints and the like are either non-existent or will have already been abated by Zamias prior to our mobilization of the project.
- N) Red Zone will coordinate all permits for Zamias but the cost of such permits is considered a pass-through cost.

Our Lump Sum price, firm through January 28, 2005, to complete all required designs, construction and construction management services associated with the renovations at the Ollie's Clearfield Mall in accordance with the Basis of Design as referenced above will be:

Four hundred fifty eight thousand three hundred sixty four dollars (\$458,364).

We thank you for the opportunity to price this project to Zamias. Know that we will strive to do our best so as to continue the excellent relationship that exists between our respective firms.

Should you have any questions or comments, please contact me at (814) 536-6767, extension 242, or by facsimile to (814) 536-6770.

Respectfully submitted,

Red Zone Design & Construction, Inc.

Stephen G. Adams
Vice President

SGA/ljr

No. 2006-1095-CD

IN THE COURT OF COMMON PLEAS
OF
CLEARFIELD COUNTY, PENNSYLVANIA

RED ZONE DESIGN & CONSTRUCTION, INC.,
a Pennsylvania corporation,

Claimant,

vs.

CLEARFIELD MALL ASSOCIATES, LP,

Owner or Reputed Owner,

AFFIDAVIT OF SERVICE

MICHAEL A. SOSONG
ATTORNEY AT LAW
3133 NEW GERMANY ROAD
SUITE 59 - MINI MALL
EBBERSBURG, PENNSYLVANIA 15931-4348

FILED

AUG 07 2006

William A. Shaw
Prothonotary/Clerk of Courts

FILED No. 11, 100-100
M. 11-484m disc. issued
SEP 15 2006 to Amy Sassong.
William A. Shaw copy to CIA
Notary/Clerk of Courts

Michael A. Sossong

Attorney at Law

3133 New Germany Road

Suite 59-Mini Mall

Ebensburg, Pennsylvania 15931

Telephone: (814) 472-7160

Fax: (814) 472-4533

E-mail: AttyMAS@verizon.net

Additional Location:

Non-Mailing Address

713 Mountain Avenue

Portage, PA 15946

Tel.: (814) 736-9620

Of Counsel:
Thomas P. Leiden, Esquire

September 14, 2006

William A. Shaw, Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: Red Zone Design & Construction, Inc. vs. Clearfield Mall Associates, LP;
No. 2006-1095-CD

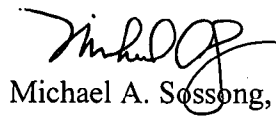
Dear Sir or Madam:

Enclosed for filing please find a Praecipe to Discontinue in the above action. In that regard, by copy of this letter to the Court Administrator, I am requesting that the Argument on the Amended Preliminary Objections scheduled for Monday, September 18, 2006 at 10:30 a.m. be cancelled.

If you should have any questions, please feel free to contact me.

Thank you for your attention.

Sincerely,



Michael A. Sossong, Esquire

MAS/kp
Enclosures

cc: David S. Meholick, Court Administrator
Ronald P. Carnevali, Jr., Esquire
Red Zone Design & Construction, Inc./Mr. Stephen G. Adams
(all w. enc.)

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Red Zone Design & Construction, Inc.

Vs.

No. 2006-01095-CD

Clearfield Mall Associates, L.P.

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on September 15, 2006, marked:

Discontinued

Record costs in the sum of \$20.00 have been paid in full by Michael A. Sossong Esq. .

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 18th day of September A.D. 2006.



William A. Shaw, Prothonotary