

07-181-CD  
David Degol vs West Branch Area S.D.

David Degol vs West Branch Area S.D.  
2007-181-CD

DAVID A. BEGOL, DONALD A.  
DEGOL, DENNIS W. DEGOL,  
BRUNO A. DEGOL, JR., GLORIA  
J. BURGAN, T/A DEGOL  
BROTHERS CARPET,  
a Fictitious Name,  
Plaintiffs

VS.

**WEST BRANCH AREA SCHOOL  
DISTRICT,** Defendant

IN THE COURT OF  
COMMON PLEAS  
CLEARFIELD COUNTY,  
PENNSYLVANIA  
  
07-181-CD  
2007 GN \_\_\_\_\_  
Civil Action - Law  
Complaint

## COMPLAINT

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Parties**

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William A. Shaw  
Prothonotary/Clerk of Courts

DAVID A. DEGOL, DONALD A.  
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vs.

WEST BRANCH AREA SCHOOL  
DISTRICT  
Defendant

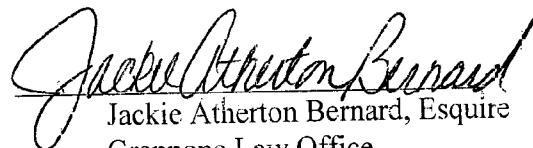
: IN THE COURT OF  
: COMMON PLEAS  
: CLEARFIELD COUNTY,  
: PENNSYLVANIA  
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: 2007 GN \_\_\_\_\_  
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: Civil Action - Law  
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#### NOTICE TO PLEAD

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this New Matter is served by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the New Matter or for any other claims or relief requested by the Plaintiffs. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

MidPenn Legal Services  
211 ½ E. Locust Street  
Clearfield, PA 16830  
1-800-326-9177 or 765-9646



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<b>DAVID A. DEGOL, DONALD A. DEGOL, DENNIS W. DEGOL, BRUNO A. DEGOL, JR, GLORIA J. BURGAN, T/A DEGOL BROTHERS CARPET a Fictitious Name,</b>	<b>:</b>	<b>IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA</b>
<b>Plaintiffs</b>	<b>:</b>	<b>:</b>
<b>vs.</b>	<b>:</b>	<b>2007 GN</b>
<b>WEST BRANCH AREA SCHOOL DISTRICT</b>	<b>:</b>	<b>Civil Action - Law</b>
<b>Defendant</b>	<b>:</b>	<b>:</b>

**COMPLAINT**

**AND NOW**, comes the Plaintiffs, David A. DeGol, Donald A. DeGol, Dennis W. DeGol, Bruno A. DeGol, Jr., and Gloria J. Burgan t/a DEGOL BROTHERS CARPET, who by and through its attorney, Grappone Law Offices, files this Complaint and in support thereof avers as follows:

1. The Plaintiffs, David A. DeGol, Donald A. DeGol, Dennis W. DeGol, Bruno A. DeGol, Jr., and Gloria J. Burgan are and adult individuals t/a DEGOL BROTHERS CARPET, a fictitious name, (hereinafter DEGOL) having the principal place of business at 851 Old Route 220 North. Duncansville, Pennsylvania 16635.
2. Defendant is the WEST BRANCH AREA SCHOOL DISTRICT, operating a public school with an address of 356 Allport Cutoff, R.R. #2, Box 194, Morrisdale, PA 16858-9312.
3. Defendant is the owner of a junior/senior high school building located at the same address.
4. On or about December 13, 2003, Defendant Owner contracted with Plaintiff (hereinafter the "Contract"), as the General Contractor, for the installation of "Carpet and Resilient Flooring" in the Junior/Senior High School, hereinafter the "Project." A true and correct copy of the Contract, along with General and Supplementary Conditions, collectively attached hereto and marked as Exhibit "A" and made a part hereof.
5. Pursuant to the Contract, Plaintiffs performed the carpet and resilient flooring work on the junior/senior high school building achieving timely substantial completion on or before May 10, 2005.

6. Article 5 of the Contract requires that Plaintiffs submit applications for progress payments, which applications need to be certified for payment by the Construction Manager and Architect.
7. Upon the applications for progress payments being certified, Articles 5.1 and 5.3 require that the Owner make progress payments no later than the thirtieth day of the month following submission for certification, as long as Plaintiffs submitted the payment prior to the twenty-fifth of the preceding month.
8. Should the Defendant Owner's Construction Manager and/or Architect decide to withhold certification of an Application for Payment, the conditions of the Contract mandate that the reasons for withholding certification be provided to the Plaintiffs. See Sections 9.4.2 and 9.5 et. seq. of the General Conditions of Construction Contract, part and parcel, of Exhibit "A."
9. The Defendant Owner's Construction Manager and/or Architect may also withhold a portion of the payment requested in the application in which case, the Plaintiffs are entitled to a receive the partial payment and written explanation for the portion withheld. See Sections 9.4.2 and 9.5 et. seq. of the General Conditions of Construction Contract, part and parcel, of Exhibit "A."
10. Payments due and unpaid under the Contract shall bear interest from the date payment is due at the legal rate prevailing where the Project was located pursuant to Article 7.
11. Applications for Payment 6, 7, and 8 have been properly submitted to the Owner, yet remain outstanding and unpaid by Defendant Owner.
12. Application 7 in the amount of \$18,758.52 was submitted on August 31, 2005, and was certified for payment by the Construction Manager on the same day.
13. It is verily believed and therefore averred the Architect certified \$14,914.83 of the balance on the payment application. A true and correct copy of the Application and Certification for Payment and a letter from the Architect to the Defendant is collectively attached hereto, marked as Exhibit "B" and made a part hereof.
14. Despite, the certification of Application 7 in September 2005, Defendant owner has failed to make any payment, including any partial payments, in breach of the Contract.
15. Payment Application 6 in the amount of \$12,613.95 was submitted for approval and certification on April 30, 2005 as evidenced by Exhibit "C", attached hereto and incorporated herein.
16. Plaintiffs believe and therefore aver that Application 6 was certified and approved by the Construction Manager and the Architect, Yet, no payment on said Application has been received from Defendant to date. Likewise, no explanation for withholding payment has been received from Defendant or its agent.

17. Application 8 in the amount of \$7,805.31 was also submitted by Plaintiffs for approval and certification on March 31, 2006, as evidenced by Exhibit "D", attached hereto and incorporated herein.
18. Plaintiffs believe and therefore aver that Application 8 was approved and certified and still, Defendant has failed to pay Plaintiffs any amount due under Application 8 or provide any explanation for the withholding of payment, as required under the Contract.
19. Despite, submission by Plaintiffs prior to the twenty-fifth day of a month for each of these applications, no payments has been tendered by the Owner to the Contractor by the thirtieth day of the following month.
20. Plaintiffs have tried unsuccessfully on several occasions to determine the payment status of Applications 6, 7 and 8.
21. Likewise, Plaintiffs has received no explanation on any withholding of certification and/or the withholding of payment for: Application 6 in the amount of \$12,613.95 or Application 8 in the amount of \$7,805.31.
22. Defendant Owner has not responded to these inquiries and thus, refuses to pay the balance due under the Contract.
23. Accordingly, Defendant Owner owes Plaintiffs the sum of \$39,177.78, with interest, in accordance with the Contract between the parties.
24. Furthermore, pursuant to the Contractor and Subcontractor Payment Act ( the "Act"), 73 P.S., Section 501 et seq., Plaintiffs are entitled to interest at the rate of 1% per month, penalties at the rate of 1% per month and attorney's fees and costs and expenses as a result of the Defendant Owner's failure to pay Plaintiffs in accordance with the Contract.

**COUNT ONE  
BREACH OF CONTRACT**

25. Plaintiffs incorporate herein by reference hereto the foregoing averments in Paragraph 1 through 24 hereof, inclusive, as though fully set forth herein.
26. Plaintiffs have fully and timely performed its work in a workmanlike manner in conformance with the specifications under the contract. Which work, Defendant has utilized and benefited by.
27. Specifically, Plaintiffs have performed the work set forth in Applications 6 through 8. Yet, Defendant Owner and its representatives have failed to timely act upon those applications in contravention to the terms of the Contract.

**COUNT THREE**  
**CONTRACTOR AND SUBCONTRACTOR PAYMENT ACT**  
**(THE "ACT") 73 P.S. Section 501 ET. SEQ.**

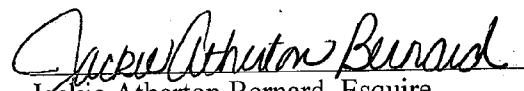
36. The Plaintiffs incorporate by reference the foregoing averments in Paragraphs 1 through 35 hereof, inclusive, as though fully set forth herein.
37. The Act provides that performance by Contractor in accordance with the provisions of the Contract entitles the Contractor to payment from the party with whom it has contracted. 73 Pa.C.S. Section 504.
38. Under the Act, the Owner must pay the contractor according to the provisions of the Act for any item which appears on the invoice and has been satisfactorily completed. 73 Pa.C. S. Section 506.
39. According to the Act, the Owner is obligated to pay interest at the rate of 1% per month on the outstanding balance beginning seven days after the payment was due and the Owner is liable for reasonable attorney's fees upon Plaintiffs' success in litigation. 73 Pa.C.S. Section 505 (d) and Section 512, respectively.
40. If the Owner withholds payment alleging a deficiency, the Owner must notify the Contractor of the alleged deficiency within seven days of the date that the invoice is received. 73 Pa. C. S. Section 506 (b).
41. In the instant matter, despite the approval and certification of Payment Application 7 by the Defendant Owner's Construction Manager and Architect, Defendant Owner has failed to render payment.
42. Additionally, the Defendant Owner has failed to comply with the notice requirements of the Act, as set forth in Section 506 (b), relative to Applications 6 through 8 to support any good faith claim for withholding payment.
43. Under the Act, the Defendant Owner is liable to the Plaintiffs for 1% penalty per month on the outstanding balance due for the wrongfully withholding payment for the work by the Plaintiffs which the Defendant Owner has accepted by virtue of the certification process.
44. Furthermore, the Defendant Owner is liable for the Plaintiffs' reasonable attorney's fees if Plaintiffs are successful in this litigation. 73 Pa. C.S. Section 512.
45. With regard to the work represented by Application 6 through 8, the Plaintiffs performed fully, timely, and as per all specifications and Plaintiffs believe and therefore aver that all work was accepted and utilized by Defendant Owner for Defendant Owner's benefit. Thus, all conditions precedent to Plaintiffs' entitlement to payment under Contract and under the Act has been fulfilled.

therefore aver that all work was accepted and utilized by Defendant Owner for Defendant Owner's benefit. Thus, all conditions precedent to Plaintiffs' entitlement to payment under Contract and under the Act has been fulfilled.

46. The Defendant Owner's failure and refusal to pay the Plaintiffs the balance due on Application 6 through 8 in the amount of \$39,177.78, entitles the Plaintiffs to seek interest, penalties, attorney's fees and costs as permitted under the Act.

WHEREFORE, the Plaintiffs demand judgment in its favor and against the Defendant Owner, in the sum of \$39,177.78 together with interest, penalties, and attorney's fees and costs from the date said sums were due and owing under the Contract.

Respectfully submitted,



Jackie Atherton Bernard, Esquire  
Grappone Law Offices  
Attorney for the Plaintiff



# AIA® Document A101/CMa™ – 1992

## Standard Form of Agreement Between Owner and Contractor where the basis of payment is a STIPULATED SUM

### AGREEMENT

made as of the Thirtieth day of December in the year of Two Thousand Three  
(In words, indicate day, month and year)

### BETWEEN the Owner:

(Name and address)

West Branch Area School District  
356 Allport Cutoff  
R.R. #2, Box 194  
Morrisdale, PA 16858-9312

### and the Contractor:

(Name and address)

DeGol Brother Carpet  
851 Old Route 220N  
Duncansville, PA 16635

This document has important

legal consequences.

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

The 1992 Edition of AIA  
Document A201/CMa, General  
Conditions of the Contract for  
Construction, Construction  
Manager-Adviser Edition, is  
adopted in this document by  
reference. Do not use with other  
general conditions unless this  
document is modified.

### For the following Project:

(Include detailed description of Project, location, address and scope.)

West Branch Area School District  
356 Allport Cutoff  
Morrisdale, PA 16858  
Additions and Alterations to the Junior/Senior High School

The Construction Manager is:  
(Name and address)

The Quandel Group, Inc.  
4755 Linglestown Road, Suite 201  
Harrisburg, PA 17112

The Architect is:  
(Name and address)

Roth Marz Partnership, PC  
3505 Chapin Street  
Erie, PA 16508

The Owner and Contractor agree as set forth below.

## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

Contract No. 5 – Carpet and Resilient Flooring

## ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement is the date from which the Contract Time of Section 3.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

The commencement date will be fixed in a notice to proceed.

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner, through the Construction Manager, in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than four hundred fifty (450) days after the Date of Commencement.

*(Insert the calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)*

### Portion of Work

### Substantial Completion date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)*

The Contractor and the Contractor's Surety shall be liable for and shall pay the Owner liquidated damages in accordance with provisions of the General Conditions and as modified by the Supplementary Conditions.

## ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of One Hundred Forty-two Thousand Five Hundred Fifty-five Dollars And Zero Cents (\$ 142,555.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date until which that amount is valid.)*

Alternate Numbers 1, 6a, 9, 10, 12, 13

§ 4.3 Unit prices, if any, are as follows:

Description	Units	Price (\$ 0.00)
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#### ARTICLE 5 PROGRESS PAYMENTS

§ 5.1 Based upon Applications for Payment submitted by the Contractor to the Construction Manager, and upon Project Applications and Certificates for Payment issued by the Construction Manager and Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.3 Provided an Application for Payment is submitted to the Construction Manager not later than the twenty-fifth day of a month, the Owner shall make payment to the Contractor not later than the thirtieth day of the following month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment shall be made by the Owner not later than the next billing cycle        days after the Construction Manager receives the Application for Payment.

§ 5.4 Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager or Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of ten percent (10.00%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.7 of the General Conditions;

§ 5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10.00%);

§ 5.6.3 Subtract the aggregate of previous payments made by the Owner; and

§ 5.6.4 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

§ 5.7 The progress payment amount determined in accordance with Section 5.6 shall be further modified under the following circumstances:

§ 5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to (      ) of the Contract Sum, less such amounts as the Construction Manager recommends and the Architect determines for incomplete Work and unsettled claims; and

**§ 5.7.2** Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of the General Conditions.

**§ 5.8** Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.6.1 and 5.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

Owner's right to hold retainage is per the requirements of the General Conditions and Supplementary General Conditions.

#### **ARTICLE 6 FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Section 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final Project Certificate for Payment has been issued by the Construction Manager and Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Project Certificate for Payment, or as follows:

#### **ARTICLE 7 MISCELLANEOUS PROVISIONS**

**§ 7.1** Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 7.2** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

(      ) per annum

*(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 Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

**§ 7.3** Temporary facilities and services:

*(Here insert temporary facilities and services which are different from or in addition to those included elsewhere in the Contract Documents.)*

**§ 7.4** Other Provisions:

*(Here list any special provisions affecting the Contract.)*

#### **ARTICLE 8 TERMINATION OR SUSPENSION**

**§ 8.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

**§ 8.2** The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 9.1.1 The Agreement is this executed Standard Form of Agreement Between Owner and Contractor, AIA Document A101/CMa, 1992 Construction Manager-Adviser Edition.

§ 9.1.2 The General Conditions are the General Conditions of the Contract for Construction, AIA Document A201/CMa, 1992 Construction Manager-Adviser Edition.

§ 9.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated October 22, 2003, and are as follows:

Document	Title	Pages
<u>The Supplementary and other conditions of the Contract are enumerated in the project manual and include modifications contained in the Addenda listed under Subparagraph 9.1.6 of this Agreement</u>		

§ 9.1.4 The Specifications are those contained in the Project Manual dated as in Section 9.1.3, and are as follows:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
<u>The Specifications are enumerated in the Table of Contents of the Project Manual and include modifications contained in the Addenda List under Subparagraph 9.1.6 of this Agreement</u>		

§ 9.1.5 The Drawings are as follows, and are dated October 22, 2003 unless a different date is shown below:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
<u>The Drawings are enumerated in the Table of Contents of the Project Manual and include modifications contained in the Addenda listed under Subparagraph 9.1.6 of this Agreement.</u>		

§ 9.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
<u>Addendum No. 1</u>	<u>11/10/2003</u>	<u>35</u>

<u>Addendum No. 2</u>	<u>11/12/2003</u>	<u>19</u>
<u>Addendum No. 3</u>	<u>11/19/2003</u>	<u>89</u>
<u>Addendum No. 4</u>	<u>11/26/2003</u>	<u>6</u>
<u>Addendum No. 5</u>	<u>12/5/2003</u>	<u>8</u>
<u>Addendum No. 6</u>	<u>12/11/2003</u>	<u>34</u>

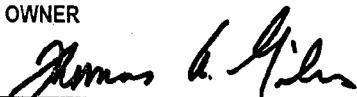
Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

**§ 9.1.7** Other documents, if any, forming part of the Contract Documents are as follows:

*(List here any additional documents which are intended to form part of the Contract Documents. The General Conditions provide that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

This Agreement is entered into as of the day and year first written above and is executed in at least four original copies of which one is to be delivered to the Contractor, one each to the Construction Manager and Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER



(Signature)

Mr. Thomas A. Giles, Superintendent

(Printed name and title)

CONTRACTOR



(Signature)

David DeGol

(Printed name and title)

PERFORMANCE BOND      BOND # S-426668

KNOW ALL MEN BY THESE PRESENTS, that we, DEGOL CARPET, as Principal (the "Principal") and NATIONAL GRANGE MUTUAL INSURANCE CO. located at (include city, state & zip code) BENEDICT & LMKE STREETS CARROLLTOWN, PA 15722, a corporation organized and existing under the laws of the STATE of PENNSYLVANIA as Surety (the "Surety"), are held and firmly bound unto WEST BRANCH AREA SCHOOL DISTRICT as Obligee (the "Obligee"), as hereinafter set forth, in the full and just sum of ONE HUNDRED FORTY TWO THOUSAND FIVE HUNDRED FIFTY FIVE Dollars(\$ 142,555.00---), lawful money of the United States of America, for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

## WITNESSETH THAT:

WHEREAS, The Principal heretofore has submitted to the Obligee a certain Proposal, dated DECEMBER 31, 2003 (the "Proposal"), to perform certain work for the Obligee, in connection with the construction of CONTRACT # 5 CARPET & RESILIENT FLOORING - JUNIOR/SR. HIGH SCHOOL pursuant to plans, specifications and other related documents constituting the Contract Documents, which are incorporated into the Proposal by reference (the "Contract Documents"), as prepared by ROTH MARZ PARTNERSHIP PC, Registered ARCHITECT; and

WHEREAS, the Obligee is a "contracting body" under provisions of Act No. 385 of the General Assembly of the Commonwealth of Pennsylvania, approved by the Governor on December 20, 1967, known and cited as the "Public Works Contractors' Bond Law of 1967" (the "Act"); and

WHEREAS, The Act, in Section 3 (a), requires that, before an award shall be made to the Principal by the Obligee in accordance with the Proposal, the Principal shall furnish this Bond to the Obligee, with this Bond to become binding upon the award of a Contract to the Principal by the Obligee in accordance with the Proposal; and

WHEREAS, It also is a condition of the Contract Documents that this Bond shall be furnished by the Principal to the Obligee; and

WHEREAS, Under the Contract Documents, it is provided, inter alia, that if the Principal shall furnish this Bond to the Obligee, and if the Obligee shall make an award to the Principal in accordance with the Proposal, the Principal and the Obligee shall enter into an agreement with respect to performance of such work (the "Contract"), and the form of Agreement is set forth in the Contract Documents.

NOW, THEREFORE, the terms and conditions of this Bond are and shall be that if the Principal well, truly and faithfully shall comply with and shall perform the Contract in accordance with the Contract Documents, at the time and in the manner provided in the Agreement and in the Contract Documents, and if the Principal shall satisfy all claims and demands incurred in or related to the performance of the Contract by the Principal or growing out of the performance of the Contract by the Principal, and if the Principal shall indemnify completely and shall save harmless the Obligee and all of its officers, agents and employees including its Engineer from any and all costs and damages which the Obligee and all of its officers, agents and employees including its Engineer may sustain or suffer by reason of the failure of the Principal to do so, and if the Principal shall reimburse completely and shall pay to the Obligee any and all costs and expenses which the Obligee and all of its officers, agents and employees including its Engineer may incur by reason of any such default or failure of the Principal, then this Bond shall be void; otherwise this Bond shall be and shall

PERFORMANCE BOND  
WEST BRANCH JR.-SR. HIGH SCHOOL  
ADDITIONS AND ALTERATIONS

remain in force and effect.

This Bond is executed and delivered under and subject to the Act to which reference hereby is made.

The Principal and Surety agrees that any alterations, changes and/or additions to the Contract Documents, and/or any alterations, changes and/or additions to the work to be performed under the Contract in accordance with the Contract Documents, and/or any alterations, changes and/or additions to the Contract, and/or any giving by the Obligee of any extensions of time for the performance of the Contract in accordance with the Contract Documents, and/or any act of forbearance of either the Principal or the Obligee toward the other with respect to the Contract Documents and the Contract, and/or the reduction of any percentage to be retained by the Obligee as permitted by the Contract Documents and by the Contract, shall not release, in any manner whatsoever, the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors and assigns, from liability and obligations under this Bond; and the Surety, for value received, does waive notice of any such alterations, changes, additions, extensions of time, acts of forbearance and/or reduction of retained percentage.

If the Principal is a foreign corporation (incorporated under any laws other than those of the Commonwealth of Pennsylvania) then further terms and conditions of this Bond are and shall be that the Principal or the Surety shall not be discharged from liability on the Bond, nor this Bond surrendered until such Principal files with the Obligee a certificate from the Pennsylvania Department of Revenue, evidencing the payment in full of all bonus taxes, penalties and interest, and a certificate from the Bureau of Employment and Unemployment Compensation of the Pennsylvania Department of Labor and Industry, evidencing the payment of all unemployment compensation, contributions, penalties and interest due the Commonwealth of Pennsylvania from said Principal or any foreign corporation, subcontractor thereunder or for which liability has accrued but the time for payment has not arrived, all in accordance with provisions of the Act of June 10, 1947, P.L. 493, of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the Principal and the Surety cause this Bond to be signed, sealed and delivered this 31ST day of DECEMBER, 2003.

(Individual Principal)

(SEAL)

Witness:

(Signature of Individual)  
Trading and doing business as:

(Partnership Principal)

Witness:

DEGOL CARPET

(Name of Partnership)

By: DAVID DEGOL (SEAL)  
Partner DAVID DEGOL

By: \_\_\_\_\_ (SEAL)  
Partner

By: \_\_\_\_\_ (SEAL)  
Partner

By: \_\_\_\_\_ (SEAL)

PERFORMANCE BOND  
WEST BRANCH JR.-SR. HIGH SCHOOL  
ADDITIONS AND ALTERATIONS

Partner

(Corporation Principal)

ATTEST:

(Name of Corporation)

(Assistant Secretary)

By:

(Vice) President

(CORPORATE SEAL)

or (if appropriate)

Witness:

(Name of Corporation)

\*By:

Authorized Representative

(CORPORATE SEAL)

\* Attach appropriate proof, dated as of the same date as the Bond, evidencing authority to execute in behalf of the corporation.

(Corporation Surety)

Witness:

NATIONAL GRANGE MUTUAL INSURANCE COMPANY

(Name of Corporation)

(CORPORATE SEAL)

\*\*By: Patricia J. Holtz-Woodley

(Attorney-In-Fact) PATRICIA J. HOLTZ-WOODLEY PA. RESIDENT AGENT

\*\* Attach an appropriate power of attorney, dated as of the same date as the Bond, evidencing the authority of the Attorney-in-Fact to act in behalf of the corporation.

PERFORMANCE BOND  
 WEST BRANCH JR.-SR. HIGH SCHOOL  
 ADDITIONS AND ALTERATIONS



# NATIONAL GRANGE MUTUAL INSURANCE COMPANY

## POWER OF ATTORNEY

KNC ALL MEN BY THESE PRESENTS: That the National Grange Mutual Insurance Company, a New Hampshire corporation having its principal office in the City of Keene, State of New Hampshire, pursuant to Article V, Section 2 of the By-Laws of said Company, to wit:

"Section 2. The board of directors, the president, any vice president, secretary, or the treasurer shall have the power and authority to appoint attorneys-in-fact and to authorize them to execute on behalf of the company and affix the seal of the company thereto, bonds, recognizances, contracts of indemnity or writings obligatory in the nature of a bond, recognizance or conditional undertaking and to remove any such attorneys-in-fact at any time and revoke the power and authority given to them. " Pursuant to said by-law does hereby make, constitute and appoint **Patrick J Sharbaugh, Paul J Sharbaugh**

**Mary Dubetsky, Patricia J Holtz-Woodley,**

its true and lawful Attorneys-in-fact, to make, execute, seal and deliver for and on its behalf, and as its act and deed, bonds, undertakings recognizances, contracts of indemnity, or other writings obligatory in the nature of a bond subject to the following limitation:

**1. No one bond to exceed One Million Dollars (\$1,000,000.00).**

and to bind the National Grange Mutual Insurance Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of the National Grange Mutual Insurance Company, and all the acts of said Attorney are hereby ratified and confirmed.

This power of attorney is signed and sealed by facsimile under and by the authority of the following resolution adopted by the Directors of The National Grange Mutual Insurance Company at a meeting duly called and held on the 2nd day of December 1977.

Voted: That the signature of any officer authorized by the By-Laws and the company seal may be affixed by facsimile to any power of attorney or special power of attorney or certification of either given for the execution of any bond, undertaking, recognizance or other written obligation in the nature thereof; such signature and seal, when so used being hereby adopted by the company as the original signature of such office and the original seal of the company, to be valid and binding upon the company with the same force and effect as though manually affixed.

By execution of this Power of Attorney, National Grange Mutual Insurance Company does hereby revoke, rescind and declare null and void any previous Power of Attorney at any time previously furnished to the aforesaid individuals or agencies.

**IN WITNESS WHEREOF**, The National Grange Mutual Insurance Company has caused these presents to be signed by its Corporate Secretary and its corporate seal to be hereto affixed this 6th day of December, 2002. **THIS APPOINTMENT SHALL CEASE**  
**AN** **RMINATE AUTOMATICALLY AS OF DECEMBER 31ST**, unless sooner revoked as provided.

NATIONAL GRANGE MUTUAL INSURANCE COMPANY By:

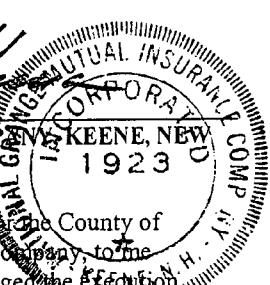
THIS POWER IS INVALID IF RED DIAGONAL IMPRINT " NATIONAL GRANGE MUTUAL INSURANCE COMPANY KEENE, NEW HAMPSHIRE " IS NOT SHOWN IN ITS ENTIRETY.

State of New Hampshire, County of Cheshire

On this 6th day of December, 2002, before the subscriber a Notary Public of the State of New Hampshire in and for the County of Cheshire duly commissioned and qualified, came William C. McKenna of the National Grange Mutual Insurance Company, to me personally known to be the officer described herein, and who executed the preceding instrument, and he acknowledged the execution of same, and being by me fully sworn, deposed and said that he is an officer of said Company, aforesaid: that the seal affixed to the preceding instrument is the corporate seal of said Company, and the said corporate seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Company; that Article V, Section 2 of the By-Laws of said Company is now in force.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed by official seal at Keene, New Hampshire this 6th day of December, 2002.

*Susan M. Fortini*

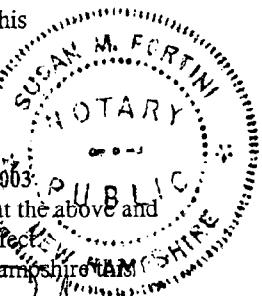


Notary Public

My Commission Expires: May 13, 2003

I Lyn E. Landry, Assistant Vice President of the National Grange Mutual Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by said Company which is still in force and effect.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of said Company at Keene, New Hampshire



31ST day of DECEMBER, 2003

*Susan M. Fortini*  
Assistant Vice President

68-7340.002 brittonc

**WARNING** — Any unauthorized reproduction or alteration of this document is prohibited. This power is void unless seals are readable and the certification seal at the bottom is **embossed**. The diagonal imprint, warning and confirmation must be in red ink.

**CONFIRMATION** Of validity of attached bond, call NGM at: Keene 603-358-1339; Richmond 804-270-6611 ext. 138; Syracuse 315-434-1410.

**PAYMENT BOND**

BOND # S-426668

KNOW ALL MEN BY THESE PRESENTS, that we, DEGOL CARPET, as Principal (the "Principal"), and NATIONAL GRANGE MUTUAL located at BENEDICT & LEME STREETS CARROLLTOWN, PA 15722, a corporation organized and existing under the laws of the STATE of PENNSYLVANIA, as Surety (the "Surety"), are held and firmly bound unto Obligee; (the "Obligee"), as hereinafter set forth, in the full and just sum of ONE HUNDRED FORTY TWO THOUSAND FIVE HUNDRED FIFTY FIVE (\$ 142,555.00), lawful money of the United States of America, for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WITNESSETH THAT:**

WHEREAS, The Principal heretofore has submitted to the Obligee a certain Proposal, dated DEC 31, 2003 (the "Proposal"), to perform certain work for the Obligee, in connection with the construction of CONTRACT #5 CARPET & RESILIENT FLOORING JUNIOR/SR HIGH SCHOOL pursuant to plans, specifications and other related documents constituting the Contract Documents, which are incorporated into the Proposal by reference (the "Contract Documents"), as prepared by ROTH MARZ PARTNERSHIP PC Registered ARCHITECT and

WHEREAS, the Obligee is a "contracting body" under provisions of Act No. 385 of the General Assembly of the Commonwealth of Pennsylvania, approved by the Governor on December 20, 1967, known as and cited as the "Public Works Contractors' Bond Law of 1967" (the "Act"); and

WHEREAS, The Act, in Section 3 (a), requires that, before an award shall be made to the Principal by the Obligee in accordance with the Proposal, the Principal shall furnish this Bond to the Obligee, with this Bond to become binding upon the award of a Contract to the Principal by the Obligee in accordance with the Proposal; and

WHEREAS, It also is a condition of the Contract Documents that this Bond shall be furnished by the Principal to the Obligee; and

WHEREAS, Under the Contract Documents, it is provided, inter alia, that if the Principal shall furnish this Bond to the Obligee, and if the Obligee shall make an award to the Principal in accordance with the Proposal, then the Principal and the Obligee shall enter into an agreement with respect to performance of such work (the "Contract"), and the form of Agreement is set forth in the Contract Documents.

NOW, THEREFORE, the terms and conditions of this Bond are and shall be that if the Principal and any subcontractor of the Principal to whom any portion of the work under the Contract shall be subcontracted, and if all assignees of the Principal and of any such subcontractor, promptly shall pay or shall cause to be paid, in full, all money which may be due any claimant supplying labor or materials in the prosecution and performance of the work in accordance with the Contract and in accordance with the Contract Documents, including any amendment, extension or addition to the Contract and/or to the Contract Documents, for material furnished or labor supplied or labor performed, then this Bond shall be void; otherwise this Bond shall be and shall remain in force and effect.

This Bond, as provided by the Act, shall be solely for the protection of claimants supplying labor or materials to the Principal or to any subcontractor of the Principal in the prosecution of the work covered by the Contract, including any amendment, extension or addition to the Contract. The term "Claimant", when used herein and as required by the Act, shall mean any individual, firm, partnership, association or corporation. The phrase "labor or materials", when used herein and as required by the Act, shall include public utility services.

**PAYMENT BOND  
WEST BRANCH JR.-SR. HIGH SCHOOL  
ADDITIONS AND ALTERATIONS**

and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site of the work covered by the Contract. As required by the Act, the provisions of this Bond shall be applicable whether or not the material furnished or labor performed enters into and becomes a component part of the public building, public work or public improvement contemplated by the Contract Documents and the Contract.

As provided and required by the Act, the Principal and the Surety agree that any claimant, who has performed labor or furnished material in the prosecution of the work in accordance with the Contract and in accordance with the Contract Documents, including any amendment, extension or addition to the Contract and/or to the Contract Documents, and who has not been paid therefore, in full, before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which payment is claimed, may institute an action upon this Bond, in the name of the claimant, in assumpsit, to recover any amount due the claimant for such labor or material, and may prosecute such action to final judgment and may have execution upon the judgment; Provided, however, that: (a) any claimant who has a direct contractual relationship with any subcontractor of the Principal, but has no contractual relationship, express or implied, with the Principal, may institute an action upon this Bond only if such claimant first shall have given written notice, served in the manner provided in the Act, to the Principal, within ninety (90) days from the date upon which such claimant performed the last of the labor or furnished the last of the materials for which payment is claimed, stating, with substantial accuracy, the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished; and (b) no action upon this Bond shall be commenced after the expiration of one (1) year from the day upon which the last of the labor was performed or material was supplied, for the payment of which such action is instituted by the Claimant; and (c) every action upon this Bond shall be instituted either in the appropriate court of the County where the Contract is to be performed or of such other County as Pennsylvania statutes shall provide, or in the United States District Court for the district in which the project, to which the Contract relates, is situated, and not elsewhere.

This Bond is executed and delivered under and subject to the Act, to which reference hereby is made.

The Principal and the Surety agree that any alterations, changes and/or additions to the Contract Documents, and/or any alterations, changes and/or additions to the work to be performed under the Contract in accordance with the Contract Documents, and/or any alterations, changes and/or additions to the Contract, and/or any giving by the Obligee of any extensions of time for the performance of the Contract in accordance with the Contract Documents, and/or any act of forbearance of either the Principal or the Obligee toward the other with respect to the Contract Documents and the Contract, and/or the reduction of any percentage to be retained by the Obligee as permitted by the Contract Documents and by the Contract, shall not release, in any manner whatsoever, the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors and assigns, from liability and obligations under this Bond; and the Surety, for value received, does waive notice of any such alterations, changes, additions, extensions of time, acts of forbearance and/or reduction of retained percentage.

If the Principal is a foreign corporation (incorporated under any laws other than those of the Commonwealth of Pennsylvania) then further terms and conditions of this Bond are and shall be that the Principal or the Surety shall not be discharged from liability on this Bond, nor this Bond surrendered until such Principal files with the Obligee a certificate from the Pennsylvania Department of Revenue, evidencing the payment in full of all bonus taxes, penalties and interest, and a certificate from the Bureau of Employment and Unemployment Compensation of the Pennsylvania Department of Labor and Industry, evidencing the payment of all unemployment compensation, contributions, penalties and interest due the Commonwealth of Pennsylvania from said Principal or any foreign corporation, subcontractor thereunder or for which liability has accrued but the time for payment has not arrived, all in accordance with provisions of the Act of June 10, 1947, P.L. 493, of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the Principal and the Surety cause this Bond to be signed, sealed and delivered this 31ST day of DECEMBER, 2003.

(Individual Principal)

\_\_\_\_\_(SEAL)

(Signature of Individual)  
Trading and doing business as

Witness:

(Partnership Principal)

Witness:

(Name of Partnership)

By: DECOL CARPET \_\_\_\_\_ (SEAL)  
Partner

By: DAVID DEGOL \_\_\_\_\_ (SEAL)  
Partner  
DAVID DEGOL

By: \_\_\_\_\_ (SEAL)  
Partner

By: \_\_\_\_\_ (SEAL)  
Partner

(Corporation Principal)

ATTEST:

\_\_\_\_\_(Name of Corporation)

\_\_\_\_\_(Assistant Secretary)

By: \_\_\_\_\_  
(Vice) President

PAYMENT BOND  
WEST BRANCH JR.-SR. HIGH SCHOOL  
ADDITIONS AND ALTERATIONS

(CORPORATE SEAL)

or (if appropriate)

Witness:

(Name of Corporation)

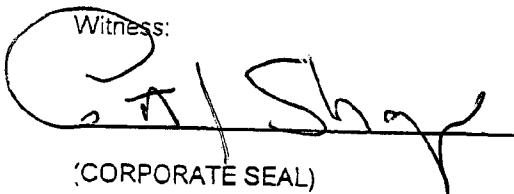
Authorized Representative

\*By:

\* Attach appropriate proof, dated as of the same date as the Bond, evidencing authority to execute in behalf of the corporation.

(Corporation Surety)

Witness:



(CORPORATE SEAL)

NATIONAL GRANGE MUTUAL INSURANCE COMPANY

(Name of Corporation)

\*\*By: Patricia J. Holtz-Woodley

(Attorney-In-Fact)

PATRICIA J HOLTZ-WOODLEY

PA. RESIDENT  
AGENT

\*\* Attach an appropriate power of attorney, dated as of the same date as the Bond, evidencing the authority of the Attorney-in-Fact to act in behalf of the Corporation.

PAYMENT BOND  
 WEST BRANCH JR.-SR. HIGH SCHOOL  
 ADDITIONS AND ALTERATIONS



# NATIONAL GRANGE MUTUAL INSURANCE COMPANY

## POWER OF ATTORNEY

**KNOW ALL MEN BY THESE PRESENTS:** That the National Grange Mutual Insurance Company, a New Hampshire corporation having principal office in the City of Keene, State of New Hampshire, pursuant to Article V, Section 2 of the By-Laws of said Company, to wit:

"Section 2. The board of directors, the president, any vice president, secretary, or the treasurer shall have the power and authority to appoint attorneys-in-fact and to authorize them to execute on behalf of the company and affix the seal of the company thereto, bonds, recognizances, contracts of indemnity or writings obligatory in the nature of a bond, recognition or conditional undertaking and to remove any such attorneys-in-fact at any time and revoke the power and authority given to them. " Pursuant to said by-law does hereby make, constitute and appoint **Patrick J Sharbaugh, Paul J Sharbaugh**

**Mary Dubetsky, Patricia J Holtz-Woodley,**  
its true and lawful Attorneys-in-fact, to make, execute, seal and deliver for and on its behalf, and as its act and deed, bonds, undertakings recognizances, contracts of indemnity, or other writings obligatory in the nature of a bond subject to the following limitation:

**1. No one bond to exceed One Million Dollars (\$1,000,000.00).**

and to bind the National Grange Mutual Insurance Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of the National Grange Mutual Insurance Company, and all the acts of said Attorney are hereby ratified and confirmed.

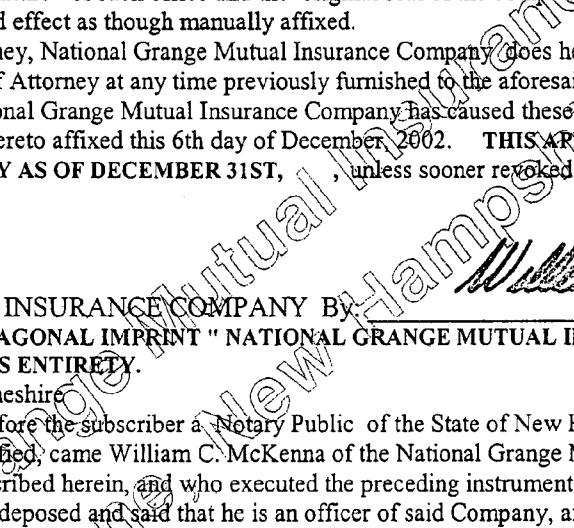
This power of attorney is signed and sealed by facsimile under and by the authority of the following resolution adopted by the Directors of The National Grange Mutual Insurance Company at a meeting duly called and held on the 2nd day of December 1977.

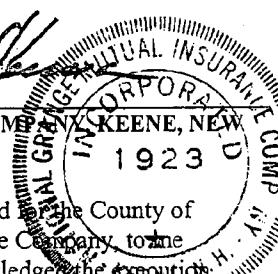
Voted: That the signature of any officer authorized by the By-Laws and the company seal may be affixed by facsimile to any power of attorney or special power of attorney or certification of either given for the execution of any bond, undertaking, recognition or other written obligation in the nature thereof; such signature and seal, when so used being hereby adopted by the company as the original signature of such office and the original seal of the company to be valid and binding upon the company with the same force and effect as though manually affixed.

By execution of this Power of Attorney, National Grange Mutual Insurance Company does hereby revoke, rescind and declare null and void any previous Power of Attorney at any time previously furnished to the aforesaid individuals or agencies.

**IN WITNESS WHEREOF**, The National Grange Mutual Insurance Company has caused these presents to be signed by its Corporate Secretary and its corporate seal to be hereto affixed this 6th day of December 2002. **THIS APPOINTMENT SHALL CEASE AND TERMINATE AUTOMATICALLY AS OF DECEMBER 31ST**, unless sooner revoked as provided.

**NATIONAL GRANGE MUTUAL INSURANCE COMPANY BY**   
**THIS POWER IS INVALID IF RED DIAGONAL IMPRINT " NATIONAL GRANGE MUTUAL INSURANCE COMPANY, KEENE, NEW HAMPSHIRE " IS NOT SHOWN IN ITS ENTIRETY.**

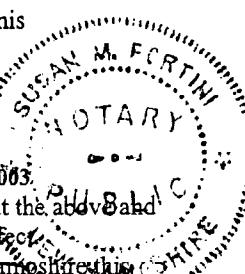
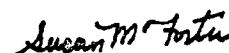




State of New Hampshire, County of Cheshire.

On this 6th day of December, 2002, before the subscriber a Notary Public of the State of New Hampshire in and for the County of Cheshire duly commissioned and qualified, came William C. McKenna of the National Grange Mutual Insurance Company, to me personally known to be the officer described herein, and who executed the preceding instrument, and he acknowledged the execution of same, and being by me fully sworn, deposed and said that he is an officer of said Company, aforesaid: that the seal affixed to the preceding instrument is the corporate seal of said Company, and the said corporate seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Company; that Article V, Section 2 of the By-Laws of said Company is now in force.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed by official seal at Keene, New Hampshire this 6th day of December, 2002.



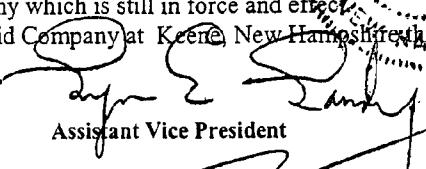
Notary Public

My Commission Expires: May 13, 2003

I Lyn E. Landry, Assistant Vice President of the National Grange Mutual Insurance Company, do hereby certify that the above signed foregoing is a true and correct copy of a Power of Attorney executed by said Company which is still in force and effect.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of said Company at Keene, New Hampshire this

31ST day of DECEMBER, 2003

  
Assistant Vice President

68-7540.002 brittonc

**WARNING** — Any unauthorized reproduction or alteration of this document is prohibited. This power is void unless seals are readable and the certification seal at the bottom is embossed. The diagonal imprint, warning and confirmation must be in red ink.

**CONFIRMATION** Of validity of attached bond, call NGM at: Keene 603-358-1339; Richmond 804-270-6611 ext. 138; Syracuse 315-434-1410.

# General Conditions of the Contract for Construction

Where the Construction Manager is NOT a Constructor

## 1992 Construction Manager-Adviser Edition

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS MODIFICATION. AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401.

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## GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

### ARTICLE 1 GENERAL PROVISIONS

#### 1.1 BASIC DEFINITIONS

##### 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a

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Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of addenda relating to bidding requirements).

#### **1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Construction Manager and Contractor, (3) between the Architect and Construction Manager, (4) between the Owner and a Subcontractor or Sub-subcontractor or (5) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

#### **1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **1.1.4 THE PROJECT**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors and by the Owner's own forces including persons or entities under separate contracts not administered by the Construction Manager.

#### **1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### **1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

#### **1.1.7 THE PROJECT MANUAL**

The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

### **1.2 EXECUTION, CORRELATION AND INTENT**

**1.2.1** The Contract Documents shall be signed by the Owner and Contractor as provided in the Agreement. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

**1.2.2** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

**1.2.3** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

**1.2.4** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**1.2.5** Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### **1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

**1.3.1** The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or

material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and produce applicable portions of the Drawings, Specifications

and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

#### 1.4 CAPITALIZATION

**1.4.1** Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

#### 1.5 INTERPRETATION

**1.5.1** In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### ARTICLE 2 OWNER

#### 2.1 DEFINITION

**2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

**2.1.2** The Owner upon reasonable written request shall furnish to the Contractor in writing information which is necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein at the time of execution of the Agreement and, within five days after any change, information of such change in title, recorded or unrecorded.

#### 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

**2.2.1** The Owner shall, at the request of the Contractor, prior to execution of the Agreement and promptly from time to time thereafter, furnish to the Contractor reasonable evidence

that financial arrangements have been made to fulfill the Owner's obligations under the Contract. (Note: Unless such reasonable evidence were furnished on request prior to the execution of the Agreement, the prospective contractor would not be required to execute the Agreement or to commence the Work.)

**2.2.2** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

**2.2.3** Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit.

**2.2.4** Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

**2.2.5** Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

**2.2.6** The Owner shall forward all communications to the Contractor through the Construction Manager and shall contemporaneously provide the same communications to the Architect.

**2.2.7** The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Other Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

#### 2.3 OWNER'S RIGHT TO STOP THE WORK

**2.3.1** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently 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 Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

#### 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

**2.4.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails

within a seven-day period 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 after such seven-day period give the Contractor a second written notice to correct such deficiencies within a second seven-day period. If the Contractor within such second seven-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, 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 Contractor the cost of correcting such deficiencies, including compensation for the Construction Manager's and Architect's and their respective consultants' additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect, after consultation with the Construction Manager. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

### ARTICLE 3 CONTRACTOR

#### 3.1 DEFINITION

**3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout this Agreement as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**3.1.2** The plural term "Contractors" refers to persons or entities who perform construction under Conditions of the Contract that are administered by the Construction Manager, and that are identical or substantially similar to these Conditions.

#### 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

**3.2.1** The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.2 and shall at once report to the Construction Manager and Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner, Construction Manager or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Construction Manager and Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Construction Manager and Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

**3.2.2** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Construction Manager and Architect at once.

**3.2.3** The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

#### 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

**3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract, subject to overall coordination of the Construction Manager as provided in Subparagraphs 4.6.3 and 4.6.4.

**3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

**3.3.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by person other than the Contractor.

**3.3.4** The Contractor shall inspect portions of the Project related to the Contractor's Work in order to determine that such portions are in proper condition to receive subsequent Work.

#### 3.4 LABOR AND MATERIALS

**3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for 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.

**3.4.2** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

#### 3.5 WARRANTY

**3.5.1** The Contractor warrants to the Owner, Construction Manager and Architect 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 Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### **3.6 TAXES**

**3.6.1** The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **3.7 PERMITS, FEES AND NOTICES**

**3.7.1** Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for the building permit and the Contractor shall secure and pay for all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

**3.7.2** The Contractor shall comply with and give notices required by laws, ordinances, rules and regulations and lawful orders of public authorities bearing on performance of the Work.

**3.7.3** It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Construction Manager, Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

**3.7.4** If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Construction Manager, Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

### **3.8 ALLOWANCES**

**3.8.1** The Contractor shall include in the Contract Sum all

allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.

**3.8.2** Unless otherwise provided in the Contract Documents:

- .1** materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;
- .2** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .3** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;
- .4** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.2 and (2) changes in Contractor's costs under Clause 3.8.2.3.

### **3.9 SUPERINTENDENT**

**3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

### **3.10 CONTRACTOR'S CONSTRUCTION SCHEDULE**

**3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information and the Construction Manager's approval a Contractor's Construction Schedule for the Work. Such schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project construction schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**3.10.2** The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work of

other Contractors or the construction or operations of the Owner's own forces.

**3.10.3** The Contractor shall prepare and keep current, for the Construction Manager's and Architect's approval, a schedule of submittals which is coordinated with the Contractor's Construction Schedule and allows the Construction Manager and Architect reasonable time to review submittals.

**3.10.4** The Contractor shall conform to the most recent schedules.

### **3.11 DOCUMENTS AND SAMPLES AT THE SITE**

**3.11.1** The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Construction Manager and Architect and shall be delivered to the Construction Manager for submittal to the Owner upon completion of the Work.

### **3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**3.12.3** Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.6.12.

**3.12.5** The Contractor shall review, approve and submit to the Construction Manager, in accordance with the schedule and sequence approved by the Construction Manager, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other Contractors. Submittals made by the Contractor which are not

required by the Contract Documents may be returned without action.

**3.12.6** The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Construction Manager and Architect. Such Work shall be in accordance with approved submittals.

**3.12.7** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**3.12.8** The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Construction Manager's and Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Construction Manager and Architect in writing of such deviation at the time of submittal and the Construction Manager and Architect have given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Construction Manager's and Architect's approval thereof.

**3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals.

**3.12.10** Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents.

**3.12.11** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Construction Manager and Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

### **3.13 USE OF SITE**

**3.13.1** The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**3.13.2** The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

### **3.14 CUTTING AND PATCHING**

**3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner's own forces or of other Contractors by cutting, patching, excavating or otherwise altering such construction. The Contractor shall not cut or otherwise alter such construction by other Contractors or by the Owner's own forces except with written consent of the Construction Manager, Owner and such other Contractors; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the other Contractors or the Owner the Contractor's consent to cutting or otherwise altering the Work.

### 13.5 CLEANING UP

**13.5.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

**3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Construction Manager may do so with the Owner's approval and the cost thereof shall be charged to the Contractor.

### 16 ACCESS TO WORK

**3.16.1** The Contractor shall provide the Owner, Construction Manager and Architect access to the Work in preparation and progress wherever located.

### 17 ROYALTIES AND PATENTS

**3.17.1** The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner, Construction Manager and Architect 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 or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### 18 INDEMNIFICATION

**3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect'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 Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they 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 Paragraph 3.18.

**3.18.2** In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

**3.18.3** The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Construction Manager, Architect, their consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Construction Manager, Architect, their consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

## ARTICLE 4 'ADMINISTRATION OF THE CONTRACT'

### 4.1 ARCHITECT

**4.1.1** The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

### 4.2 CONSTRUCTION MANAGER

**4.2.1** The Construction Manager is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Construction Manager" means the Construction Manager or the Construction Manager's authorized representative.

**4.3** Duties, responsibilities and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction

Manager, Architect and Contractor. Consent shall not be unreasonably withheld.

**4.4** In case of termination of employment of the Construction Manager or Architect, the Owner shall appoint a construction manager or architect against whom the Contractor makes no reasonable objection and whose status under the Contract Documents shall be that of the former construction manager or architect, respectively.

**4.5** Disputes arising under Paragraphs 4.3 and 4.4 shall be subject to arbitration.

## **4.6 ADMINISTRATION OF THE CONTRACT**

**4.6.1** The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representatives (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Construction Manager and Architect will advise and consult with the Owner and will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

**4.6.2** The Construction Manager will determine in general that the Work is being performed in accordance with the requirements of the Contract Documents, will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

**4.6.3** The Construction Manager will provide for coordination of the activities of other Contractors and of the Owner's own forces with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other Contractors and the Construction Manager and Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall constitute the schedules to be used by the Contractor, other Contractors, the Construction Manager and the Owner until subsequently revised.

**4.6.4** The Construction Manager will schedule and coordinate the activities of the Contractors in accordance with the latest approved Project construction schedule.

**4.6.5** The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress of the

Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

**4.6.6** The Construction Manager, except to the extent required by Subparagraph 4.6.4, and Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3, and neither will be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

**4.6.7 Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Construction Manager, and shall contemporaneously provide the same communications to the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager and shall be contemporaneously provided to the Architect.

**4.6.8** The Construction Manager will review and certify all Applications for Payment by the Contractor, including final payment. The Construction Manager will assemble each of the Contractor's Applications for Payment with similar Applications from other Contractors into a Project Application and Project Certificate for Payment. After reviewing and certifying the amounts due the Contractors, the Construction Manager will submit the Project Application and Project Certificate for Payment, along with the applicable Contractors' Applications and Certificates for Payment, to the Architect.

**4.6.9** Based on the Architect's observations and evaluations of Contractors' Applications for Payment, and the certifications of the Construction Manager, the Architect will review and certify the amounts due the Contractors and will issue a Project Certificate for Payment.

**4.6.10** The Architect will have authority to reject Work which does not conform to the Contract Documents, and to require additional inspection or testing, in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed, but will take such action only after notifying the Construction Manager. Subject to review by the Architect, the Construction Manager will have the authority to reject Work which does not conform to the Contract Documents. Whenever the Construction Manager considers it necessary or advisable for implementation of the intent of the Contract Documents, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed.

The foregoing authority of the Construction Manager will be subject to the provisions of Subparagraphs 4.6.18 through 4.6.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this paragraph 4.6.10 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.

**4.6.11** The Construction Manager will receive from the Contractor and review and approve all Shop Drawings, Product Data and Samples, coordinate them with information received from other Contractors, and transmit to the Architect those recommended for approval. The Construction Manager's actions will be taken with such reasonable promptness as to cause no delay in the Work of the Contractor or in the activities of other Contractors, the Owner, or the Architect.

**4.6.12** The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work of the Contractor or in the activities of the other Contractors, the Owner, or the Construction Manager, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**4.6.13** The Construction Manager will prepare Change Orders and Construction Change Directives.

**4.6.14** Following consultation with the Construction Manager, the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7 and will have authority to order minor changes in the Work as provided in Paragraph 7.4.

**4.6.15** The Construction Manager will maintain at the site for the Owner one record copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and

similar required submittals. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

**4.6.16** The Construction Manager will assist the Architect in conducting inspections to determine the dates of Substantial Completion and final completion, and will receive and forward to the Architect written warranties and related documents required by the Contract and assembled by the Contractor. The Construction Manager will forward to the Architect a final Project Application and Project Certificate for Payment upon compliance with the requirements of the Contract Documents.

**4.6.17** If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

**4.6.18** The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Construction Manager, Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.6, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

**4.6.19** Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

**4.6.20** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

## 4.7 CLAIMS AND DISPUTES

**4.7.1 Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**4.7.2 Decision of Architect.** Claims, including those alleging an error or omission by the Construction Manager or Architect, shall be referred initially to the Architect for action as provided in Paragraph 4.8. A decision by the Architect, as

provided in Subparagraph 4.8.4, shall be required as a condition precedent to arbitration or litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to arbitration or litigation in the event (1) the position of Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 4.8.4 within 30 days after the Claim is made, (4) 45 days have passed after the Claim has been referred to the Architect or (5) the Claim relates to a mechanic's lien.

**4.7.3 Time Limits on Claims.** Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

**4.7.4 Continuing Contract Performance.** Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**4.7.5 Waiver of Claims: Final Payment.** 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.

**4.7.6 Claims for Concealed or Unknown Conditions.** 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 Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or

both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.8.

**4.7.7 Claims for Additional Cost.** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

#### **4.7.8 Claims for Additional Time.**

**4.7.8.1** If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

**4.7.8.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

**4.7.9 Injury or Damage to Person or Property.** If either party to the Contract 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 for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.7.7 or 4.7.8.

### **4.8 RESOLUTION OF CLAIMS AND DISPUTES**

**4.8.1** The Architect will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in

whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party, or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

**4.8.2** If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

**4.8.3** If a Claim has not been resolved, the party making the Claim shall, within ten days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim or (3) notify the Architect that the initial Claim stands.

**4.8.4** If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven days, which decision shall be final and binding on the parties but subject to arbitration. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

## 4.9 ARBITRATION

### 4.9.1 Controversies and Claims Subject to Arbitration.

Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof, except controversies or Claims relating to aesthetic effect and except those waived as provided for in Subparagraph 4.7.5. Such controversies or Claims upon which the Architect has given notice and rendered a decision as provided in Subparagraph 4.8.4 shall be subject to arbitration upon written demand of either party. Arbitration may be commenced when 45 days have passed after a Claim has been referred to the Architect as provided in Paragraph 4.7 and no decision has been rendered.

**4.9.2 Rules and Notices for Arbitration.** Claims between the Owner and Contractor not resolved under Paragraph 4.8 shall, if subject to arbitration under Subparagraph 4.9.1, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. Notice of demand for arbitration shall be filed in writing with the other party to the Agreement between the Owner and Contractor and with the American Arbitration Association, and copies shall be filed with the Construction Manager and Architect.

**4.9.3 Contract Performance During Arbitration.** During arbitration proceedings, the Owner and Contractor shall comply with Subparagraph 4.7.4.

**4.9.4 When Arbitration May Be Demanded.** Demand for arbitration of any Claim may not be made until the earlier of (1) the date on which the Architect has rendered a final written decision on the Claim, (2) the tenth day after the parties have presented evidence to the Architect or have been given reasonable opportunity to do so, if the Architect has not rendered a final written decision by that date, or (3) any of the five events described in Subparagraph 4.7.2.

**4.9.4.1** When a written decision of the Architect states that (1) the decision is final but subject to arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

**4.9.4.2** A demand for arbitration shall be made within the time limits specified in Subparagraphs 4.9.1 and 4.9.4 and Clause 4.9.4.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.

**4.9.5 Limitation on Consolidation or Joinder.** No arbitration arising out of or relating to the Contract Documents shall include, by consolidation or joinder or in any other manner, the Construction Manager, the Architect, or the Construction Manager's or Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Construction Manager, Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, other Contractors as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No persons or entities other than the Owner, Contractor or other Contractors as defined in Subparagraph 3.1.2 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a dispute not described therein 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 parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**4.9.6 Claims and Timely Assertion of Claims.** A party who files a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. When a party fails to include a Claim through oversight, inadvertence or excusable neglect, or when a Claim has matured or been acquired subsequently, the arbitrator or arbitrators may permit amendment.

**4.9.7 Judgment on Final Award.** 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 5 SUBCONTRACTORS

### 5.1 DEFINITIONS

**5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Contractors or subcontractors of other Contractors.

**5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

**5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Construction Manager will promptly reply to the Contractor in writing stating whether or not the Owner, Construction Manager or Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Construction Manager to reply promptly shall constitute notice of no reasonable objection.

**5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**5.2.3** If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the

Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**5.2.4** The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such change.

### 5.3 SUBCONTRACTUAL RELATIONS

**5.3.1** By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

**5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

**5.4.2** If the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS

### 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION WITH OWN FORCES AND TO AWARD OTHER CONTRACTS

**6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager. The Owner further reserves the right to award other contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.

**6.1.2** When the Owner performs construction or operations with the Owner's own forces including persons or entities under separate contracts not administered by the Construction Manager, the Owner shall provide for coordination of such forces with the Work of the Contractor, who shall cooperate with them.

**6.1.3** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in this Article 6 and in Articles 3, 10, 11 and 12.

### 6.2 MUTUAL RESPONSIBILITY

**6.2.1** The Contractor shall afford the Owner's own forces, Construction Manager and other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Construction Manager and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's own forces or other Contractors' completed or partially completed construction is

fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

**6.2.4** The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed construction or partially completed construction or to property of the Owner or other Contractors as provided in Subparagraph 10.2.5.

**6.2.5** Claims and other disputes and matters in question between the Contractor and other Contractors shall be subject to the provisions of Paragraph 4.7 provided the other Contractors have reciprocal obligations.

**6.2.6** The Owner and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.14.

### 6.3 OWNER'S RIGHT TO CLEAN UP

**6.3.1** If a dispute arises among the Contractor, other Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Construction Manager, in consultation with the Architect, determines to be just.

## ARTICLE 7 CHANGES IN THE WORK

### 7.1 CHANGES

**7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**7.1.2** A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor; a Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

**7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

**7.1.4** 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 Contractor, the applicable unit prices shall be equitably adjusted.

## 7.2 CHANGE ORDERS

**7.2.1** A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect and Contractor, stating their agreement upon all of the following:

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

**7.2.2** Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

## 7.3 CONSTRUCTION CHANGE DIRECTIVES

**7.3.1** A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Subparagraph 7.3.6.

**7.3.4** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager and

Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**7.3.5** A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**7.3.6** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Construction Manager on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 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 Contractor or others;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 additional costs of supervision and field office personnel directly attributable to the change.

**7.3.7** 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 Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager. 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 net increase, if any, with respect to that change.

**7.3.8** If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Construction Manager for determination.

**7.3.9** When the Owner and Contractor agree with the determination made by the Construction Manager concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately issued through the Construction Manager and shall be recorded by preparation and execution of an appropriate Change Order.

#### 7.4 MINOR CHANGES IN THE WORK

**7.4.1** The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order issued through the Construction Manager and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

### ARTICLE 8 TIME

#### 8.1 DEFINITIONS

**8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**8.1.2** The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

**8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 9.8.

**8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### 8.2 PROGRESS AND COMPLETION

**8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

**8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### 8.3 DELAYS AND EXTENSIONS OF TIME

**8.3.1** If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner's own forces, Construction Manager, Architect, any of the other Contractors or an employee of any of them, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending arbitration, or by other causes which the Architect, based on the recommendation of the Construction Manager, determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

**8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.7.

**8.3.3** This Paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

### ARTICLE 9 PAYMENTS AND COMPLETION

#### 9.1 CONTRACT SUM

**9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

#### 9.2 SCHEDULE OF VALUES

**9.2.1** Before the first Application for Payment, the Contractor shall submit to the Architect, through the Construction Manager, a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

#### 9.3 APPLICATIONS FOR PAYMENT

**9.3.1** At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment for Work completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner, Construction Manager or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.

**9.3.1.1** Such applications may, include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

**9.3.1.2** Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

**9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **9.4 CERTIFICATES FOR PAYMENT**

**9.4.1** The Construction Manager will assemble a Project Application for Payment by combining the Contractor's applications with similar applications for progress payments from other Contractors and, after certifying the amounts due on such applications, forward them to the Architect within seven days.

**9.4.2** Within seven days after the Architect's receipt of the Project Application for Payment, the Construction Manager and Architect will either issue to the Owner a Project Certificate for Payment, with a copy to the Contractor, for such amount as the Construction Manager and Architect determine is properly due, or notify the Contractor and Owner in writing of the Construction Manager's and Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1. Such notification will be forwarded to the Contractor by the Construction Manager.

**9.4.3** The issuance of a separate Certificate for Payment or a Project Certificate for Payment will constitute representations made separately by the Construction Manager and Architect to the Owner, based on their individual observations at the site

and the data comprising the Application for Payment submitted by the Contractor, that the Work has progressed to the point indicated and that, to the best of the Construction Manager's and Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Construction Manager or Architect. The issuance of a separate Certificate for Payment or a Project Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a separate Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**9.5.1** The Construction Manager or Architect may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Subparagraph 9.4.3 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager or Architect will notify the Contractor and Owner as provided in Subparagraph 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Construction Manager and Architect will promptly issue a Certificate for Payment for the amount for which the Construction Manager and Architect are able to make such representations to the Owner. The Construction Manager or Architect may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

**9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

## 9.6 PROGRESS PAYMENTS

**9.6.1** After the Construction Manager and Architect have issued a Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

**9.6.2** The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

**9.6.3** The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

**9.6.4** Neither the Owner, Construction Manager nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

**9.6.5** Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

**9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

## 9.7 FAILURE OF PAYMENT

**9.7.1** If, through no fault of the Contractor, 1) the Construction Manager and Architect do not issue a Project Certificate for Payment within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment or 2) the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Construction Manager and Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be accomplished as provided in Article 7.

## 9.8 SUBSTANTIAL COMPLETION

**9.8.1** 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.

**9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

**9.8.3** Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Construction Manager and Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

## **9.9 PARTIAL OCCUPANCY OR USE**

**9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.3.11 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.

**9.9.2** Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **9.10 FINAL COMPLETION AND FINAL PAYMENT**

**9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager will forward the notice and Application to the Architect who will promptly make such inspection. When the Architect, based on the recommendation of the Construction Manager, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the Work has been completed in

accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by 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 Contractor 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 Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor 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 Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims. The making of final payment shall constitute a waiver of Claims by the Owner as provided in Subparagraph 4.4.5.

**9.10.4** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final

Application for Payment. Such waivers shall be in addition to the waiver described in Subparagraph 4.7.5.1

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### 10.1 SAFETY PRECAUTIONS AND PROGRAMS

**10.1.1** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors.

**10.1.2** In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, Construction Manager and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Architect on which arbitration has not been demanded, or by arbitration under Article 4.

**10.1.3** The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

**10.1.4** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Construction Manager, Architect, their 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 in the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, 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 Owner, anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner 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 Subparagraph 10.1.4.

**10.1.5** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the Contractor, the Contractor shall, upon recognizing the

condition, immediately stop Work in the affected area and report the condition to the Owner, Construction Manager and Architect in writing. The Owner, Contractor, Construction Manager and Architect shall then proceed in the same manner described in Subparagraph 10.1.2.

**10.1.6** The Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection.

### 10.2 SAFETY OF PERSONS AND PROPERTY

**10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work of 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 Contractor or the Contractor's Subcontractors or Subsubcontractors;
- .3 other property at the site 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; and
- .4 construction or operations by the Owner or other Contractors.

**10.2.2** The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

**10.2.3** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

**10.2.4** When use for storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

**10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect.

**10.2.7** The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

### **10.3 EMERGENCIES**

**10.3.1** In an emergency affecting safety or persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.7 and Article 7.

## **ARTICLE 11 INSURANCE AND BONDS**

### **11.1 CONTRACTOR'S LIABILITY INSURANCE**

**11.1.1** The Contractor 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 Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor 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 acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured 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 Contractor, 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 Contractor's obligations under Paragraph 3.18.

**11.1.2** The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents 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.

**11.1.3** Certificates of insurance acceptable to the Owner shall be submitted to the Construction Manager for transmittal to the Owner with a copy to the Architect prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 11.1 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 and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

### **11.2 OWNER'S LIABILITY INSURANCE**

**11.2.1** 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 the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract documents.

### 11.3 PROPERTY INSURANCE

**11.3.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary 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 as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.3 to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

**11.3.1.1** 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 Architect's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

**11.3.1.2** If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor, then the Owner shall bear all reasonable costs properly attributable thereto.

**11.3.1.3** If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles.

**11.3.1.4** Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

**11.3.1.5** The insurance required by this Paragraph 11.3 is not intended to cover machinery, tools or equipment owned or rented by the Contractor which are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment which shall be subject to the provisions of Subparagraph 11.3.7.

**11.3.2 Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents 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, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

**11.3.3 Loss of Use Insurance.** 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 Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

**11.3.4** If the Contractor 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, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

**11.3.5** If during the Project construction period the Owner insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.3.7 for damages caused by fire or other perils covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**11.3.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Paragraph 11.3. 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 Contractor.

**11.3.7 Waivers of Subrogation.** The Owner and Contractor waive all rights against each other and against the Construction Manager, Architect, Owner's other Contractors and own forces described in Article 6, if any, and the subcontractors, sub-subcontractors, consultants, agents and employees of any of them, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Paragraph 11.3 or other property insurance applicable to the Work, except such rights as the Owner and Contractor may have to the proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, Owner's separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. 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.

**11.3.8** A loss insured under 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 Subparagraph 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**11.3.9** If required in writing by a party in interest, the Owner as fiduciary 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 Paragraph 4.9. If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Change Order.

**11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection be made, arbitrators shall be chosen as provided in Paragraph 4.9. The Owner as fiduciary shall, in that case, make settlement with insurers in accordance with directions of such arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

**11.3.11** Partial occupancy or use in accordance with Paragraph 9.9 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 Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

#### **11.4 PERFORMANCE BOND AND PAYMENT BOND**

**11.4.1** The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

**11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **12.1 UNCOVERING OF WORK**

**12.1.1** If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by either, be uncovered for their observation and be replaced at the Contractor's expense without change in the Contract Time.

**12.1.2** If a portion of the Work has been covered which the Construction Manager or Architect has not specifically requested to observe prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or one of the other Contractors in which event the Owner shall be responsible for payment of such costs.

#### **12.2 CORRECTION OF WORK**

**12.2.1** The Contractor shall promptly correct Work rejected by the Construction Manager or Architect 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 Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the

Construction Manager's and Architect's services and expenses made necessary thereby.

**12.2.2** If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Paragraph 9.9.1, 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 Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

**12.2.3** The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**12.2.4** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect issued through the Construction Manager, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

**12.2.5** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or other Contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**12.2.6** Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor 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 Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **12.3 ACCEPTANCE OF NONCONFORMING WORK**

**12.3.1** If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **13.1 GOVERNING LAW**

**13.1.1** The Contract shall be governed by the law of the place where the Project is located.

### **13.2 SUCCESSORS AND ASSIGNS**

**13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### **13.3 WRITTEN NOTICE**

**13.3.1** Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

### **13.4 RIGHTS AND REMEDIES**

**13.4.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**13.4.2** No action or failure to act by the Owner, Construction Manager, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

## 13.5 TESTS AND INSPECTIONS

**13.5.1** Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so the Construction Manager and Architect may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

**13.5.2** If the Construction Manager, Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so the Construction Manager and Architect may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 13.5.3.

**13.5.3** If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses.

**13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

**13.5.5** If the Construction Manager or Architect is to observe tests, inspections or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing.

**13.5.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## 13.6 INTEREST

**13.6.1** Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the

absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

## 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

**13.7.1** As between the Owner and Contractor:

**.1 Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

**.2 Between Substantial Completion and Final Certificate for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

**.3 After Final Certificate for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Paragraph 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### 14.1 TERMINATION BY THE CONTRACTOR

**14.1.1** The Contract may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

- .1** issuance of an order of a court or other public authority having jurisdiction;
- .2** an act of government, such as a declaration of national emergency, making material unavailable;

- .3 because the Construction Manager or Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.2, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;
- .4 if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less; or
- .5 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Subparagraph 2.2.1.

**14.1.2** If one of the above reasons exists, the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

**14.1.3** If the Work is stopped for a period of 60 days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.2.

#### **14.2 TERMINATION BY THE OWNER FOR CAUSE**

**14.2.1** The Owner may terminate the Contract if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**14.2.2** When any of the above reasons exist, the Owner, after consultation with the Construction Manager, and upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Paragraph 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient.

**14.2.3** When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Architect after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

#### **14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**14.3.2** An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of this Contract.

**14.3.3** Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

**EXHIBIT "B"**

**PAYMENT APPLICATION**

TO:

WEST BRANCH AREA SCHOOL DISTRICT

PROJECT

WEST BRANCH JUNIOR HIGH SCHOOL

APPLICATION #

7

08/31/2005  OWNER CONSTRUCTION

PROJECT #:

03408  MANAGER

MANAGER

 ARCHITECT CONTRACTOR

FROM:

346 ALLPORT CUTOFF R. R. #2, Box 194

MORRISDALE, PA. 16858-9312

Attn: Accounts Payable

Degol Carpet

851 Old Route 220 North

Duncansville, PA. 16635

ARCHITECT: ROTH MARZ PARTNERSHIP, PC

3505 CHAPIN STREET

ERIE, PA. 16508

CONSTRUCTION MANAGER: QUASEL GROUP, INC.

ERIE, PA. 16508

DATE OF CONTRACT: 12/13/2003

 CONTRACTOR ARCHITECT OWNER CONSTRUCTION MANAGER ARCHITECT CONTRACTOR OWNER CONSTRUCTION MANAGER ARCHITECT CONTRACTOR

Page 1

**CONTRACTOR'S SUMMARY OF WORK**Application is made for payment as shown below.  
Continuation Page is attached.

1. CONTRACT AMOUNT
2. SUM OF ALL CHANGE ORDERS
3. CURRENT CONTRACT AMOUNT
4. TOTAL COMPLETED AND STORED

(Continuing on Continuation Page)

5. RETAINAGE:a. % of Completed Work  
(Collins D + E on Continuation Page)

b. % of未完成 Work

(Continuing on Continuation Page)

Total Retainage (Line 5a + 5b)

Column 1 on Continuation Page)

6. TOTAL COMPLETED AND STORED LESS RETAINAGE

(Line 4 minus Line 5 Total)

7. LESS PREVIOUS PAYMENT APPLICATIONS

(Line 6 from prior Application)

8. PAYMENT DUE

9. BALANCE TO COMPLETION

(Line 3 minus Line 8)

PROJECT: WEST BRANCH JUNIOR HIGH SCHOOL  
LOCATION: 346 ALLPORT CUTOFF  
FEDD THRU: 08/31/2005  OWNER  
PROJECT #: 03408  CONSTRUCTION  
MANAGER: ROTH MARZ PARTNERSHIP, PC  
DATE OF CONTRACT: 12/13/2003  ARCHITECT  
 CONTRACTOR

Contractor's signature below is his assurance to Owner, concerning the payment herein applied for, that: (1) the Work has been performed as required in the Contract Documents, (2) all sums previously paid to Contractor under the Contract have been used to pay Contractor's costs for labor, materials and other obligations under the Contract for Work previously paid for, and (3) Contractor is legally entitled to this payment.

CONTRACTOR: DeGol Carpet  
By: John M. Mihalek Date: 08/22/2005  
PROJECT MANAGER

State of: PENNSYLVANIA

County of: BLAIR

Subscribed and sworn to before me this 25 day of August 2005Notary Public: Matthew P. Fink, Notary Public  
Duncansville Borough, Blair County  
My Commission Expires Nov. 10, 2008My Commission Expires: 11/10/2008

## COMMONWEALTH OF PENNSYLVANIA

**CERTIFICATION**  
The Construction Manager and Architect's signatures below are their assurance to Owner, concerning the payment herein applied for, that: (1) they have inspected the Work represented by this Application, (2) such work has been completed to the extent indicated in this Application, and the quality of workmanship and materials conforms with the Contract Documents, (3) this Application for Payment accurately states the amount of Work completed and payment due therefor, and (4) Construction Manager and Architect know of no reason why payment should not be made.

CERTIFIED AMOUNT \$14,914.83 \$14,914.83 \$14,914.83  
(If the certified amount is different from the payment due, you should attach an explanation.)

CONSTRUCTION MANAGER: John M. Mihalek  
By: John M. Mihalek Date: 08/18/05  
ARCHITECT: John M. Mihalek Date: 08/18/05  
Neither this Application for payment applied for herein is assignable or negotiable. Payment shall be made only to Contractor, and is without prejudice to the rights of Owner or Contractor under the Contract Documents or otherwise.

SUMMARY OF CHANGE ORDERS	ADDITIONS	DEDUCTIONS
Total changes approved in previous months	\$0.00	(\$11,377.00)
Total approved this month	\$0.00	\$0.00
<b>TOTALS</b>	<b>\$0.00</b>	<b>(\$11,377.00)</b>
<b>NET CHANGES</b>	<b>\$0.00</b>	<b>(\$11,377.00)</b>

PAYMENT APPLICATION

QSS, INC. DOCUMENT

**ROTH MARZ PARTNERSHIP P.C.**ARCHITECTS  
INTERIORS  
PLANNERS  
PROJECT MANAGERSDale H. Roth, President  
Robert L. Marz, Vice President3505 Chapin Street  
Erie, PA 16508  
Ph: (814) 860-8356  
Fax: (814) 860-8606  
info@rothmarz.com

September 9, 2005

Mr. Paul Carr  
West Branch Area School District  
326 Airport Cutoff Box 289  
Morrisdale, PA 16858

Dear Paul:

Enclosed is payment application no. 7 from DeGol. I have reduced the amount of their request by (\$3,843.69) to allow for a balance to completion of \$12,000.

This amount will allow for 150% of the Library Carpet Replacement + the balance of floor prep not used (\$1,681.48).

Carpet \$6,000 x 150% =	\$ 9,000.00
Labor to remove and replace	
Furniture/Books =	1,318.52
Floor prep not used =	<u>1,681.48</u>
	\$12,000.00

Please call me if you have any questions.

Sincerely,

  
Robert L. Marz, R.A.  
Vice President

RLM/cd

Copy: DeGol Carpet  
Dave Marsden

**EXHIBIT "C"**

## PAYMENT APPLICATION

TO: WEST BRANCH AREA SCHOOL DISTRICT 366 ALPORT CUTOFF R.R. #2, Box 194 MORRISDALE, PA 16858-9312 Attn: Accounts Payable		PROJECT NAME AND LOCATION: WEST BRANCH JRSR HIGH SCHOOL CARPET & RESILIENT FLOOR COVERING 356 ALPORT CUTOFF MORRISDALE, PA 16858		APPLICATION #: 6 04/30/2005 <input type="checkbox"/> OWNER 03/08 <input type="checkbox"/> CONSTRUCTION PROJECT #: <input type="checkbox"/> MANAGER 12/13/2003 <input type="checkbox"/> ARCHITECT ERIE, PA 16508 <input type="checkbox"/> CONTRACTOR <input type="checkbox"/>																								
FROM: DeGol Carpet 851 Old Route 220 North Duncansville, PA 16835		ARCHITECT: ROTH MARZ PARTNERSHIP, PC 3505 CHAPIN STREET ERIE, PA 16508		DATE OF CONTRACT: CONSTRUCTION MANAGER: QUANDEL GROUP, INC.																								
<b>CONTRACTOR'S SUMMARY OF WORK</b> <p>Application is made for payment as shown below. Continuation Page is attached.</p> <table border="1"> <tr> <td>1. CONTRACT AMOUNT</td> <td>\$142,566.00</td> </tr> <tr> <td>2. SUM OF ALL CHANGE ORDERS</td> <td>(\$11,377.00)</td> </tr> <tr> <td>3. CURRENT CONTRACT AMOUNT</td> <td>\$131,178.00</td> </tr> <tr> <td>4. TOTAL COMPLETED AND STORED</td> <td>\$115,847.97</td> </tr> <tr> <td>5. RETAINAGE:</td> <td></td> </tr> <tr> <td>a. 10.00% of Completed Work (Columns D + E on Continuation Page)</td> <td>\$11,584.80</td> </tr> <tr> <td>b. 10.00% of Material Stored (Column F on Continuation Page)</td> <td>\$0.00</td> </tr> <tr> <td>Total Retainage (Line 5a + 5b or Column I on Continuation Page)</td> <td>\$11,584.80</td> </tr> <tr> <td>6. TOTAL COMPLETED AND STORED LESS RETAINAGE</td> <td>\$104,263.17</td> </tr> <tr> <td>7. LESS PREVIOUS PAYMENT APPLICATIONS</td> <td>\$91,849.22</td> </tr> <tr> <td>8. PAYMENT DUE</td> <td>\$12,613.95</td> </tr> <tr> <td>9. BALANCE TO COMPLETION</td> <td>\$26,914.83</td> </tr> </table>					1. CONTRACT AMOUNT	\$142,566.00	2. SUM OF ALL CHANGE ORDERS	(\$11,377.00)	3. CURRENT CONTRACT AMOUNT	\$131,178.00	4. TOTAL COMPLETED AND STORED	\$115,847.97	5. RETAINAGE:		a. 10.00% of Completed Work (Columns D + E on Continuation Page)	\$11,584.80	b. 10.00% of Material Stored (Column F on Continuation Page)	\$0.00	Total Retainage (Line 5a + 5b or Column I on Continuation Page)	\$11,584.80	6. TOTAL COMPLETED AND STORED LESS RETAINAGE	\$104,263.17	7. LESS PREVIOUS PAYMENT APPLICATIONS	\$91,849.22	8. PAYMENT DUE	\$12,613.95	9. BALANCE TO COMPLETION	\$26,914.83
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<p><b>CERTIFICATION</b> The Construction Manager and Architect's signatures below are their assurance to Owner, concerning the payment herein applied for, that: (1) they have inspected the Work represented by this Application, (2) such Work has been completed to the extent indicated in this Application, and the quality of workmanship and materials conforms with the Contract Documents, (3) this Application for Payment accurately states the amount of Work completed and payment due therefor, and (4) Construction Manager and Architect know of no reason why payment should not be made.</p> <p>CERTIFIED AMOUNT ..... (If the certified amount is different from the payment due, you should attach an explanation.) Initial all the figures that are changed to match the certified amount.)</p> <p>CONSTRUCTION MANAGER: By: _____ Date: _____ ARCHITECT: _____ Date: _____</p> <p>Neither this Application nor payment applied for herein is assignable or negotiable. Payment shall be made only to Contractor, and is without prejudice to any rights of Owner or Contractor under the Contract Documents or otherwise.</p>																												
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PAYMENT APPLICATION

QSS, INC. DOCUMENT

## CONTINUATION PAGE

Page 2 of 3

PROJECT: WEST BRANCH JR/SR HIGH SCHOOL  
CARPET & RESILIENT FLOOR COVERINGSDATE OF APPLICATION:  
PERIOD THRU:APPLICATION #:  
PROJECT #:  
04182005  
04302005  
0348

Payment Application containing Contractor's signature is attached.

ITEM #	WORK DESCRIPTION*	SCHEDULED AMOUNT	COMPLETED WORK		STORED MATERIALS (NOT IN DORE)	TOTAL COMPLETED AND STORED (D+E+F)	PERCENT COMPLETE (G/C)	BALANCE TO COMPLETION (C-G)	RETAINAGE (IF VARIABLE)
			AMOUNT PREVIOUS PERIODS	AMOUNT THIS PERIOD					
1-L	CARPET #1 - LABOR	\$2,750.00	\$400.00	\$1,150.00	\$0.00	\$1,550.00	56%	\$1,200.00	\$155.00
1-M	CARPET #1 - MATERIAL	\$29,820.00	\$25,754.60	\$3,065.40	\$0.00	\$26,820.00	100%	\$0.00	\$2,882.00
2-L	CARPET #1 BASE - LABOR	\$520.50	\$0.00	\$210.00	\$0.00	\$210.00	40%	\$310.50	\$21.00
2-M	CARPET #1 BASE - MATERIAL	\$3,383.25	\$2,544.75	\$838.50	\$0.00	\$3,383.25	100%	\$0.00	\$338.33
3-L	CARPET #2 - LABOR	\$935.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$935.00	\$0.00
3-M	CARPET #2 - MATERIAL	\$8,258.60	\$0.00	\$8,258.60	\$0.00	\$8,258.60	100%	\$0.00	\$825.86
4-L	CARPET #2 BASE - LABOR	\$87.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$87.00	\$0.00
4-M	CARPET #2 BASE - MATERIAL	\$493.00	\$0.00	\$493.00	\$0.00	\$493.00	100%	\$0.00	\$49.30
5-L	CARPET #3 - LABOR	\$211.75	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$211.75	\$0.00
5-M	CARPET #3 - MATERIAL	\$1,998.15	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$1,998.15	\$0.00
6-L	VCT - LABOR	\$14,105.00	\$10,605.35	\$0.00	\$0.00	\$10,605.35	75%	\$3,489.85	\$1,060.54
6-M	VCT - MATERIAL	\$34,255.00	\$34,255.00	\$0.00	\$0.00	\$34,255.00	100%	\$0.00	\$3,425.50
7-L	BASE - LABOR	\$2,338.20	\$816.30	\$0.00	\$0.00	\$816.30	35%	\$1,521.90	\$81.63
7-M	BASE - MATERIAL	\$5,455.80	\$4,158.00	\$0.00	\$0.00	\$4,158.00	76%	\$1,297.80	\$415.80
8-L	RUBBER ATHLETIC FLOOR - LABOR	\$1,124.40	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$1,124.40	\$0.00
8-M	RUBBER ATHLETIC FLOOR - MATERIAL	\$10,588.10	\$10,588.10	\$0.00	\$0.00	\$10,588.10	100%	\$0.00	\$1,058.81
	SUB-TOTALS	\$115,323.75	\$89,122.10	\$14,016.50	\$0.00	\$103,137.60	89%	\$12,198.15	\$10,313.77

CONTINUATION PAGE FOR PAYMENT APPLICATION

QSS, INC. DOCUMENT

CONTINUATION PAGE

Page 3 of 3

**PROJECT:** WEST BRANCH JR/SR HIGH SCHOOL  
**CARPET & RESILIENT FLOOR COVERING**

Bilateral Audit in a Contingent Contracture Situation

APPLICATION #:  
APPLICATION  
PERIOD THRU:  
PROJECT #:

A	B	C	D	E	F	G	H	I	
ITEM #	WORK DESCRIPTION *	SCHEDULED AMOUNT	COMPLETED WORK		STORED MATERIALS (NOT IN D OR E)	TOTAL COMPLETED AND STORED (D + E + F)	PERCENT COMPLETE (G / C)	BALANCE TO COMPLETION (C - G)	RETAINAGE (IF VARIABLE)
			AMOUNT PREVIOUS PERIODS	AMOUNT THIS PERIOD					
9-L	RUBBER TILE - LABOR	\$705.00	\$240.00	\$0.00	\$0.00	\$240.00	34%	\$465.00	\$24.00
9-M	RUBBER TILE - MATERIAL	\$8,401.25	\$8,401.25	\$0.00	\$0.00	\$8,401.25	100%	\$0.00	\$840.13
10-L	RUBBER TREADS - LABOR	\$650.00	\$550.00	\$0.00	\$0.00	\$650.00	100%	\$0.00	\$65.00
10-M	RUBBER TREADS - MATERIAL	\$3,445.00	\$3,445.00	\$0.00	\$0.00	\$3,445.00	100%	\$0.00	\$344.50
11-X	WAX	\$4,030.00	\$675.60	\$0.00	\$0.00	\$675.60	17%	\$3,354.40	\$67.56
12-X	FLOOR PREP UP TO 18 INCH	\$10,000.00	\$8,713.52	\$0.00	\$0.00	\$8,713.52	87%	\$1,286.48	\$871.35
13-X	CHANGE ORDER #1	(\$1,050.00)	(\$1,050.00)	\$0.00	\$0.00	(\$1,050.00)	100%	\$0.00	(\$105.00)
14-X	CHANGE ORDER #2	(\$8,365.00)	(\$8,365.00)	\$0.00	\$0.00	(\$8,365.00)	100%	\$0.00	(\$836.50)
15-X	CHANGE ORDER #3	(\$1,962.00)	\$0.00	\$0.00	\$0.00	\$0.00	0%	(\$1,962.00)	\$0.00
<b>TOTALS</b>		<b>\$131,176.00</b>	<b>\$10,832.47</b>	<b>\$14,015.50</b>	<b>\$0.00</b>	<b>\$115,847.97</b>	<b>88%</b>	<b>\$15,350.03</b>	<b>\$11,584.80</b>

**CONTINUATION PAGE FOR PAYMENT APPLICATION**

**EXHIBIT "D"**

## PAYMENT APPLICATION

MENT APPUCATION

CSS, INC. DOCUMENT

## CONTINUATION PAGE

Page 2 of 3

PROJECT: WEST BRANCH JURSR HIGH SCHOOL  
CARPET & RESILIENT FLOOR COVERINGSDATE OF APPLICATION:  
03/15/2006  
PERIOD THRU:  
03/31/2006  
PROJECT #:  
03408

Payment Application containing Contractor's signature is attached.

APPLICATION #:

8

03/15/2006  
03/31/2006  
03408

ITEM #	WORK DESCRIPTION	SCHEDULED AMOUNT	COMPLETED WORK		STORED MATERIALS (NOT IN D OR E)	TOTAL COMPLETED AND STORED (D - E + F)	PERCENT COMPLETE (G/C)	BALANCE TO COMPLETION (C-G)	RETAINAGE (IF VARIABLE)
			AMOUNT PREVIOUS PERIOD	AMOUNT THIS PERIOD					
1-L	CARPET #1 - LABOR	\$2,750.00	\$2,750.00	\$0.00	30.00	\$2,750.00	100%	\$0.00	\$0.00
1-M	CARPET #1 - MATERIAL	\$28,320.00	\$28,820.00	30.00	30.00	\$28,820.00	100%	\$0.00	\$0.00
2-L	CARPET #1 BASE - LABOR	\$520.50	\$520.50	30.00	30.00	\$520.50	100%	\$0.00	\$0.00
2-M	CARPET #1 BASE - MATERIAL	\$3,383.25	\$3,383.25	30.00	30.00	\$3,383.25	100%	\$0.00	\$0.00
3-L	CARPET #2 - LABOR	\$925.00	\$925.00	30.00	30.00	\$925.00	100%	\$0.00	\$0.00
3-M	CARPET #2 - MATERIAL	\$8,258.60	\$8,258.60	30.00	30.00	\$8,258.60	100%	\$0.00	\$0.00
4-L	CARPET #2 BASE - LABOR	\$87.00	\$87.00	30.00	30.00	\$87.00	100%	\$0.00	\$0.00
4-M	CARPET #2 BASE - MATERIAL	\$483.00	\$483.00	30.00	30.00	\$483.00	100%	\$0.00	\$0.00
5-L	CARPET #3 - LABOR	\$2,117.75	\$2,117.75	30.00	30.00	\$2,117.75	100%	\$0.00	\$0.00
5-M	CARPET #3 - MATERIAL	\$1,988.15	\$1,988.15	30.00	30.00	\$1,988.15	100%	\$0.00	\$0.00
6-L	VCT - LABOR	\$14,105.00	\$14,105.00	30.00	30.00	\$14,105.00	100%	\$0.00	\$0.00
6-M	VCT - MATERIAL	\$34,255.00	\$34,255.00	30.00	30.00	\$34,255.00	100%	\$0.00	\$0.00
7-L	BASE - LABOR	\$2,338.20	\$2,338.20	30.00	30.00	\$2,338.20	100%	\$0.00	\$0.00
7-M	BASE - MATERIAL	\$5,455.50	\$5,455.50	30.00	30.00	\$5,455.50	100%	\$0.00	\$0.00
8-L	RUBBER ATHLETIC FLOOR - LABOR	\$1,124.40	\$1,124.40	30.00	30.00	\$1,124.40	100%	\$0.00	\$0.00
8-M	RUBBER ATHLETIC FLOOR - MATERIAL	\$10,588.10	\$10,588.10	30.00	30.00	\$10,588.10	100%	\$0.00	\$0.00
SUB-TOTALS		\$115,323.75	\$115,323.75	\$0.00	\$0.00	\$115,323.75	100%	\$0.00	\$0.00

CONTINUATION PAGE FOR PAYMENT APPLICATION

QSS, INC. DOCUMENT

## CONTINUATION PAGE

Page 3 of 3

PROJECT: WEST BRANCH JRSR HIGH SCHOOL  
CARPET & RESILIENT FLOOR COVERINGSDATE OF APPLICATION:  
PERIOD THRU:  
PROJECT #: 03408APPLICATION #: 8  
03/15/2006  
03/31/2006  
03408

Payment Application containing Contractor's signature is attached.

ITEM #	WORK DESCRIPTION	SCHEDULED AMOUNT	COMPLETED WORK		STORED MATERIALS (NOT IN D OR E)	TOTAL COMPLETED AND STORED (D + E + F)	PERCENT COMPLETE (G / C)	BALANCE TO COMPLETION (C-G)	RETAINAGE (IF VARIABLE)
			AMOUNT PREVIOUS PERIOD	AMOUNT THIS PERIOD					
9-L	RUBBER TILE - LABOR	\$705.00	\$705.00	\$0.00	\$0.00	\$705.00	100%	\$0.00	\$0.00
9-M	RUBBER TILE - MATERIAL	\$8,401.25	\$8,401.25	\$0.00	\$0.00	\$8,401.25	100%	\$0.00	\$0.00
10-L	RUBBER TREADS - LABOR	\$650.00	\$650.00	\$0.00	\$0.00	\$650.00	100%	\$0.00	\$0.00
10-M	RUBBER TREADS - MATERIAL	\$3,445.00	\$3,445.00	\$0.00	\$0.00	\$3,445.00	100%	\$0.00	\$0.00
11-X	WAX	\$4,020.00	\$4,020.00	\$0.00	\$0.00	\$4,020.00	100%	\$0.00	\$0.00
12-X	FLOOR PREP UP TO 1.8 INCH	\$10,000.00	\$8,318.52	\$1,681.48	\$0.00	\$10,000.00	100%	\$0.00	\$0.00
13-X	CHANGE ORDER #1	(\$1,050.00)	(\$1,050.00)	\$0.00	\$0.00	(\$1,050.00)	100%	\$0.00	\$0.00
14-X	CHANGE ORDER #2	(\$8,385.00)	(\$8,385.00)	\$0.00	\$0.00	(\$8,385.00)	100%	\$0.00	\$0.00
15-X	CHANGE ORDER #3	(\$1,962.00)	(\$1,962.00)	\$0.00	\$0.00	(\$1,962.00)	100%	\$0.00	\$0.00
16-X	CHANGE ORDER #4	(\$351.00)	\$0.00	\$0.00	(\$351.00)	\$0.00	100%	\$0.00	\$0.00
	<b>TOTALS</b>	<b>\$130,827.00</b>	<b>\$129,488.52</b>	<b>\$1,330.48</b>	<b>\$0.00</b>	<b>\$130,827.00</b>	<b>100%</b>	<b>\$0.00</b>	<b>\$0.00</b>

CONTINUATION PAGE FOR PAYMENT APPLICATION

QSS, INC. DOCUMENT

**FILED**

**FEB 05 2007**

William A. Shaw  
Prothonotary/Clerk of Courts

UW  
FILED <sup>rec</sup>  
M 10:33 AM Atty Hall  
FEB 26 2007  
6K

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL ACTION - LAW

DAVID A. DEGOL, DONALD A. )  
DEGOLA, DENNIS W. DEGOL, )  
BRUNO A DEGOL, JR., GLORIA )  
J. BURGAN, t/a DEGOL BROTHERS )  
CARPET, a Fictitious Name, )  
Plaintiffs ) No.: 07-181-CD  
 )  
v. )  
 )  
WEST BRANCH AREA SCHOOL )  
DISTRICT, )  
Defendant )  
NOTICE

**TO: David A. DeGol, Donald A. DeGol,  
Dennis W. Degol, Bruno A. Degol, Jr.,  
and Gloria J. Burgan, t/a DeGol  
Brothers Carpet, a fictitious name  
c/o Jackie Bernard, Esquire  
Grappone Law Offices  
411 A Logan Blvd.  
Lakemont, Altoona, PA 16602**

Defendant West Branch Area School District has filed Preliminary Objections with  
to Plaintiffs' Complaint with the Court on February 23, 2007. Your reply is to be filed  
within twenty (20) days or on or before March 15, 2007.

LAW OFFICES OF MILLER & HALL

By

  
Stuart L. Hall, Esquire  
Attorney for Defendant  
138 East Water Street  
Lock Haven, PA 17745  
570-748-4802

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL ACTION - LAW

DAVID A. DEGOL, DONALD A. )  
DEGOLA, DENNIS W. DEGOL, )  
BRUNO A DEGOL, JR., GLORIA )  
J. BURGAN, t/a DEGOL BROTHERS )  
CARPET, a Fictitious Name, )  
Plaintiffs )  
v. )  
WEST BRANCH AREA SCHOOL )  
DISTRICT, )  
Defendant )



**ORIGINAL**

No.: 07-181-CD

**DEFENDANT'S PRELIMINARY OBJECTIONS TO**  
**PLAINTIFFS' COMPLAINT**

AND NOW, comes Defendant West Branch Area School District, by and through its counsel, Stuart L. Hall, Esquire, and files its Preliminary Objections to Plaintiff's Complaint. In support of its Preliminary Objections, Defendant avers as follows:

1. Plaintiffs have commenced this action alleging counts of breach of contract, unjust enrichment and violation of the Contract and Subcontractor Payment Act as a result of a contract allegedly between the parties, a copy of which is allegedly attached to the Complaint.

2. Plaintiffs are identified in the caption and paragraph One (1) of the Complaint as David A. DeGol, Donald A. DeGol, Dennis W. DeGol, Bruno A. DeGol, Jr., and Gloria J. Burgan, t/a DeGol Brothers Carpet, a fictitious name.

3. Page six (6) of the purported contract attached to the Complaint is signed by David DeGol, who is identified as contractor.

4. Nowhere in the Complaint, does it allege that the fictitious name of DeGol Brothers Carpet has been registered as required under the Fictitious Names Act, 54 Pa. C.S. §301, et seq.

5. It is believed and therefore averred that DeGol Brothers Carpet is not registered as fictitious name with the Department of State. A Copy of the printout from the Department of State, which indicates this fictitious name has not been registered is attached as Exhibit "A."

6. Pursuant to 54 Pa. C.S. §331(a) no entity which has failed to register a fictitious name as required by this Chapter shall be permitted to maintain any action in any tribunal of this Commonwealth until such entity shall have complied with the provisions of this Chapter.

7. Failure to register under the Fictitious Names Act may be challenged by a preliminary objection asserting the defense of lack of capacity to sue. Paoletta d/b/a Savannah v. Aetna Casualty Surety Company, 44 Pa. D. & C. 3d 230 (Mercer County 1986); Dennis v. Mitchell, 10 Pa. D. & C. 2d 635 (Fayette County 1957).

8. Pursuant to Pa. R.C.P. No. 1028(a)(5), preliminary objections may be filed to any pleading concerning the lack of capacity to sue.

9. Pursuant to Pa. R.C.P. No. 1028(a)(3), preliminary objections may be filed for insufficient specificity in a pleading.

10. Since Plaintiffs have failed to allege that DeGol Brothers Carpet has been registered as a fictitious name, the Complaint lacks the specificity required.

11. The Complaint also lacks the specificity in that it does not identify the type of entity, nor the standing of the individual Plaintiffs, to be parties to this action.

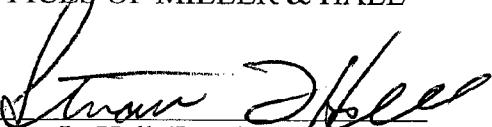
12. Since the fictitious name DeGol Brothers Carpet has not been registered as is required by law, these preliminary objections should be sustained and Plaintiffs' Complaint dismissed.

THEREFORE, Defendant West Branch Area School District respectfully requests that this Honorable Court sustain its preliminary objections and dismiss this action. In the alternative, it is respectfully requested that Plaintiffs be required to file an amended Complaint with the requisite specificity.

Respectfully submitted,

LAW OFFICES OF MILLER & HALL

By

  
Stuart L. Hall, Esquire  
Attorney for Defendant  
138 East Water Street  
Lock Haven, PA 17745  
(570) 748-4802

**VERIFICATION**

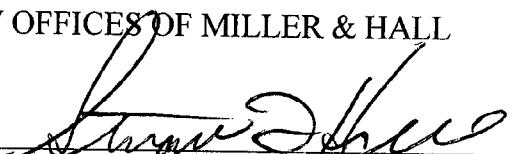
The undersigned hereby deposes and states that he is the attorney for Defendant West Branch Area School District and that he is authorized to make this verification and that the statements contained in the foregoing Preliminary Objections are true and correct to the best of his knowledge, information and belief.

Defendant West Branch Area School District is unavailable and the verification cannot be obtained within the time allowed for the filing of these Preliminary Objections. The undersigned understands that false statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities

LAW OFFICES OF MILLER & HALL

Date: February 22, 2007

By

  
Stuart L. Hall, Esquire  
Attorney for Defendant  
138 East Water Street  
Lock Haven, PA 17745  
570-748-4802

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL ACTION - LAW

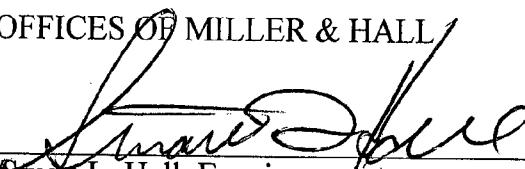
DAVID A. DEGOL, DONALD A.	)	
DEGOLA, DENNIS W. DEGOL,	)	
BRUNO A DEGOL, JR., GLORIA	)	
J. BURGAN, t/a DEGOL BROTHERS	)	
CARPET, a Fictitious Name,	)	
	Plaintiffs	)
		No.: 07-181-CD
V.	)	
	)	
WEST BRANCH AREA SCHOOL	)	
DISTRICT,	)	
	Defendant	)

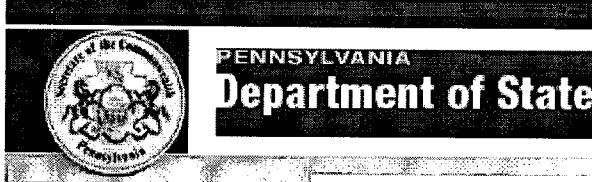
**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of February, 2007, I served a copy of the foregoing Preliminary Objections upon Jackie Bernard, Esquire, Grappone Law Offices, 411 A Logan Blvd., Lakemont, Altoona, Pennsylvania 16602, by United States first class mail, postage prepaid, the original being filed with the Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania.

LAW OFFICES OF MILLER & HALL

By \_\_\_\_\_

  
Stuart L. Hall, Esquire  
Attorney for Defendant  
138 East Water Street  
Lock Haven, PA 17745  
(570) 748-4802



## Corporations

[Corporations](#) | [Forms](#) | [Contact Corporations](#) | [Business Services](#)

Search  
By Business Name  
By Business Entity ID  
Verify  
Verify Certification

Search Type: Starting With  
Search Date: 2/22/2007

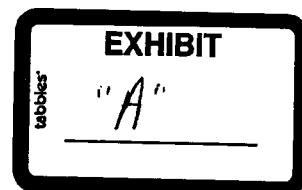
Search Criteria: DeGol Brothers Carpet  
Search Time: 15:04

No Records were found for the search criteria 'DeGol Brothers Carpet' on 2/22/2007  
3:04:53 PM

[Home](#) | [Site Map](#) | [Site Feedback](#) | [View as Text Only](#) | [Employment](#)



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**FILED**

**FEB 26 2007**

William A. Shaw  
Prothonotary/Clerk of Courts

DAVID A. DEGOL, DONALD A.  
DEGOL, DENNIS W. DEGOL,  
BRUNO A. DEGOL, JR, GLORIA  
J. BURGAN, T/A DEGOL  
CARPET, a Fictitious Name,  
A/K/A DEGOL BROTHERS  
CARPET

### Plaintiffs

VS.

**WEST BRANCH AREA SCHOOL  
DISTRICT,**  
Defendant

**AMENDED COMPLAINT**

**Counsel of Record for these  
Parties**

**Jackie Atherton Bernard Esquire  
PA ID # 30370  
GRAPPONE LAW OFFICES  
411 A Logan Blvd., Lakemont  
Altoona, PA 16602  
Telephone No. (814) 946-4405  
Fax No. (814) 946-1396**

**GRAPPONE LAW OFFICES**  
JOSEPH A. GRAPPONE  
JACKIE A. BERNARD  
411A LOGAN BLVD., LAKEMONT  
ALTOONA, PENNSYLVANIA 16602  

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**(814) 946-4405**

FILED NO  
MAR 14 2007 CC

William A. Shaw  
Prothonotary/Clerk of Courts

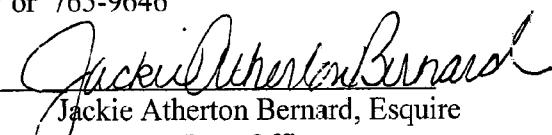
<b>DAVID A. DEGOL, DONALD A. DEGOL, DENNIS W. DEGOL, BRUNO A. DEGOL, JR, GLORIA J. BURGAN, T/A DEGOL CARPET, a Fictitious Name, A/K/A DEGOL BROTHERS CARPET</b>	: IN THE COURT OF
	: COMMON PLEAS
	: CLEARFIELD COUNTY,
	: PENNSYLVANIA
Plaintiffs	:
vs.	:
<b>WEST BRANCH AREA SCHOOL DISTRICT</b>	: No.: 07-181-CD
Defendant	: Civil Action - Law

**NOTICE TO DEFEND**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Amended Complaint is served by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Amended Complaint or for any other claims or relief requested by the Plaintiffs. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

MidPenn Legal Services  
 211 ½ E. Locust Street  
 Clearfield, PA 16830  
 1-800-3269177 or 765-9646

  
 Jackie Atherton Bernard, Esquire

Grappone Law Office  
 Attorney for Plaintiff  
 411 A Logan Blvd., Lakemont  
 Altoona, PA 16602

GRAPPONE LAW OFFICES  
 JOSEPH A. GRAPPONE  
 JACKIE A. BERNARD  
 411A LOGAN BLVD., LAKEMONT  
 ALTOONA, PENNSYLVANIA 16602

(814) 946-4405

<b>DAVID A. DEGOL, DONALD A. DEGOL, DENNIS W. DEGOL, BRUNO A. DEGOL, JR, GLORIA J. BURGAN, T/A DEGOL CARPET, a Fictitious Name, A/K/A DEGOL BROTHERS CARPET</b>	<b>:</b>	<b>IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA</b>
<b>Plaintiffs</b>	<b>:</b>	
<b>vs.</b>	<b>:</b>	<b>No.: 07-181-CD</b>
<b>WEST BRANCH AREA SCHOOL DISTRICT</b>	<b>:</b>	<b>Civil Action - Law</b>
<b>Defendant</b>	<b>:</b>	

**AMENDED COMPLAINT**

AND NOW, come the Plaintiffs, DAVID A. DEGOL, DONALD A. DEGOL, DENNIS W. DEGOL, BRUNO A. DEGOL, JR., and GLORIA J. BURGAN t/a DEGOL CARPET, a fictitious name A/K/A DEGOL BROTHERS CARPET, who by and through its attorney, Grappone Law Offices, files this Amended Complaint and in support thereof avers as follows:

1. The Plaintiffs, DAVID A. DEGOL, DONALD A. DEGOL, DENNIS W. DEGOL, BRUNO A. DEGOL, JR., and GLORIA J. BURGAN are adult individuals t/a DEGOL CARPET, a fictitious name, A/K/A DEGOL BROTHERS CARPET, as referenced by Defendant in the contract, having the principal place of business at 851 Old Route 220 North, Duncansville, Pennsylvania 16635.
2. Defendant is the WEST BRANCH AREA SCHOOL DISTRICT, operating a public school with an address of 356 Allport Cutoff, R.R. #2, Box 194, Morrisdale, PA 16858-9312.
3. Defendant is the owner of a junior/senior high school building located at the same address.
4. On or about December 13, 2003, Defendant Owner contracted with Plaintiff (hereinafter the "Contract"), as the General Contractor, for the installation of "Carpet and Resilient Flooring" in the Junior/Senior High School, hereinafter the "Project." A true and correct copy of the Contract, along with General and Supplementary Conditions, collectively attached hereto and marked as Exhibit "A" and made a part hereof.
5. Pursuant to the Contract, Plaintiffs performed the carpet and resilient flooring work on the junior/senior high school building achieving timely substantial completion on or before May 10, 2005.

5. Article 5 of the Contract requires that Plaintiffs submit applications for progress payments, which applications need to be certified for payment by the Construction Manager and Architect.
7. Upon the applications for progress payments being certified, Articles 5.1 and 5.3 require that the Owner make progress payments no later than the thirtieth day of the month following submission for certification, as long as Plaintiffs submitted the payment prior to the twenty-fifth of the preceding month.
8. Should the Defendant Owner's Construction Manager and/or Architect decide to withhold certification of an Application for Payment, the conditions of the Contract mandate that the reasons for withholding certification be provided to the Plaintiffs. See Sections 9.4.2 and 9.5 et. seq. of the General Conditions of Construction Contract , part and parcel, of Exhibit "A."
9. The Defendant Owner's Construction Manager and/or Architect may also withhold a portion of the payment requested in the application in which case, the Plaintiffs are entitled to a receive the partial payment and written explanation for the portion withheld. See Sections 9.4.2 and 9.5 et. seq. of the General Conditions of Construction Contract , part and parcel, of Exhibit "A."
10. Payments due and unpaid under the Contract shall bear interest from the date payment is due at the legal rate prevailing where the Project was located pursuant to Article 7.
11. Applications for Payment 6, 7, and 8 have been properly submitted to the Owner, yet remain outstanding and unpaid by Defendant Owner.
12. Application 7 in the amount of \$18,758.52 was submitted on August 31, 2005, 2005 and was certified for payment by the Construction Manager on the same day.
13. It is verily believed and therefore averred the Architect certified \$14,914.83 of the balance on the payment application. A true and correct copy of the Application and Certification for Payment and a letter from the Architect to the Defendant is collectively attached hereto, marked as Exhibit "B" and made a part hereof.
14. Despite, the certification of Application 7 in September 2005, Defendant owner has failed to make any payment, including any partial payments, in breach of the Contract.
15. Payment Application 6 in the amount of \$12,613.95 was submitted for approval and certification on April 30, 2005 as evidenced by Exhibit "C", attached hereto and incorporated herein.
16. Plaintiffs believe and therefore aver that Application 6 was certified and approved by the Construction Manager and the Architect, Yet, no payment on said Application has

been received from Defendant to date. Likewise, no explanation for withholding payment has been received from Defendant or its agent.

17. Application 8 in the amount of \$7,805.31 was also submitted by Plaintiffs for approval and certification on March 31, 2006, as evidenced by Exhibit "D", attached hereto and incorporated herein.
18. Plaintiffs believe and therefore aver that Application 8 was approved and certified and still, Defendant has failed to pay Plaintiffs any amount due under Application 8 or provide any explanation for the withholding of payment, as required under the Contract.
19. Despite, submission by Plaintiffs prior to the twenty-fifth day of a month for each of these applications, no payments has been tendered by the Owner to the Contractor by the thirtieth day of the following month.
20. Plaintiffs have tried unsuccessfully on several occasions to determine the payment status of Applications 6, 7 and 8.
21. Likewise, Plaintiffs has received no explanation on any withholding of certification and/or the withholding of payment for: Application 6 in the amount of \$12,613.95 or Application 8 in the amount of \$7,805.31.
22. Defendant Owner has not responded to these inquiries and thus, refuses to pay the balance due under the Contract.
23. Accordingly, Defendant Owner owes Plaintiffs the sum of \$39,177.78, with interest, in accordance with the Contract between the parties.
24. Furthermore, pursuant to the Contractor and Subcontractor Payment Act (the "Act"), 73 P.S., Section 501 et seq., Plaintiffs are entitled to interest at the rate of 1% per month, penalties at the rate of 1% per month and attorney's fees and costs and expenses as a result of the Defendant Owner's failure to pay Plaintiffs in accordance with the Contract.

**COUNT ONE  
BREACH OF CONTRACT**

25. Plaintiffs incorporate herein by reference hereto the foregoing averments in Paragraph 1 through 24 hereof, inclusive, as though fully set forth herein.
26. Plaintiffs have fully and timely performed its work in a workmanlike manner in conformance with the specifications under the contract. Which work, Defendant has utilized and benefited by.

27. Specifically, Plaintiffs have performed the work set forth in Applications 6 through 8. Yet, Defendant Owner and its representatives have failed to timely act upon those applications in contravention to the terms of the Contract.
28. Defendant Owner's failure and/or refusal to pay Plaintiffs the balance due and owing for the work completed on the above referenced project is without basis in law and/or fact.
29. Defendant Owner breached the Contract between the parties, whereby Defendant Owner agreed to pay Plaintiffs in full for the work which Defendant Owner requested Plaintiffs to perform on the Project and to comply with the process of tendering payments.
30. Defendant Owner owes Plaintiffs an outstanding contract balance in the amount of \$39,177.78, plus interest, fees, and costs.

WHEREFORE, the Plaintiffs respectfully request this Honorable Court enter judgment for Plaintiffs and against Defendant in the amount of \$39,177.78, plus interest at six percent until judgment is satisfied.

**COUNT TWO**  
**UNJUST ENRICHMENT**

31. Plaintiffs incorporate herein by reference hereto the foregoing averments in Paragraphs 1 through 30 hereof, inclusive, as though more fully set forth herein.
32. Plaintiffs provided materials and services in the performance of installation of carpet and resilient flooring on the Project for the benefit of Defendant Owner.
33. Defendant Owner induced Plaintiffs to provide such materials and perform such services by expressly promising to compensate Plaintiff.
34. Nevertheless, and despite Plaintiffs' timely and competent performance, as well as Defendant's use of Plaintiffs' work, Defendant Owner has failed and refuses to pay in the full the balances due.
35. For all of the reasons above, Defendant has been unjustly enriched in the amount of \$39,177.78.

WHEREFORE, the Plaintiff prays judgment in its favor and against the Defendant Owner in the sum of \$39,177.78, together with costs, interest, penalties, and attorney's fees from the date said sums were due.

**COUNT THREE**  
**CONTRACTOR AND SUBCONTRACTOR PAYMENT ACT**  
**(THE "ACT") 73 P.S. Section 501 ET. SEQ.**

36. The Plaintiffs incorporate by reference the foregoing averments in Paragraphs 1 through 35 hereof, inclusive, as though fully set forth herein.
37. The Act provides that performance by Contractor in accordance with the provisions of the Contract entitles the Contractor to payment from the party with whom it has contracted. 73 Pa.C.S. Section 504.
38. Under the Act, the Owner must pay the contractor according to the provisions of the Act for any item which appears on the invoice and has been satisfactorily completed. 73 Pa.C.S. Section 506.
39. According to the Act, the Owner is obligated to pay interest at the rate of 1% per month on the outstanding balance beginning seven days after the payment was due and the Owner is liable for reasonable attorney's fees upon Plaintiffs' success in litigation. 73 Pa.C.S. Section 505 (d) and Section 512, respectively.
40. If the Owner withholds payment alleging a deficiency, the Owner must notify the Contractor of the alleged deficiency within seven days of the date that the invoice is received. 73 Pa. C. S. Section 506 (b).
41. In the instant matter, despite the approval and certification of Payment Application 7 by the Defendant Owner's Construction Manager and Architect, Defendant Owner has failed to render payment.
42. Additionally, the Defendant Owner has failed to comply with the notice requirements of the Act, as set forth in Section 506 (b), relative to Applications 6 through 8 to support any good faith claim for withholding payment.
43. Under the Act, the Defendant Owner is liable to the Plaintiffs for 1% penalty per month on the outstanding balance due for the wrongfully withholding payment for the work by the Plaintiffs which the Defendant Owner has accepted by virtue of the certification process.
44. Furthermore, the Defendant Owner is liable for the Plaintiffs' reasonable attorney's fees if Plaintiffs are successful in this litigation. 73 Pa. C.S. Section 512.
45. With regard to the work represented by Application 6 through 8, the Plaintiffs performed fully, timely, and as per all specifications and Plaintiffs believe and therefore aver that all work was accepted and utilized by Defendant Owner for Defendant Owner's benefit. Thus, all conditions precedent to Plaintiffs' entitlement to payment under Contract and under the Act has been fulfilled.

46. The Defendant Owner's failure and refusal to pay the Plaintiffs the balance due on Application 6 through 8 in the amount of \$39, 177.78, entitles the Plaintiffs to seek interest, penalties, attorney's fees and costs as permitted under the Act.

WHEREFORE, the Plaintiffs demand judgment in its favor and against the Defendant Owner, in the sum of \$39,177.78 together with interest, penalties, and attorney's fees and costs from the date said sums were due and owing under the Contract.

Respectfully submitted,

  
Jackie Atherton Bernard, Esquire  
Grappone Law Offices  
Attorney for the Plaintiff

## VERIFICATION

I, David DeGol, verify the statements made in the foregoing Amended Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.



\_\_\_\_\_  
David DeGol t/a DeGol Carpet  
a/k/a Degol Brothers Carpet

**EXHIBIT "A"**



# AIA® Document A101/CMa™ – 1992

## Standard Form of Agreement Between Owner and Contractor where the basis of payment is a STIPULATED SUM

### AGREEMENT

made as of the Thirtieth day of December in the year of Two Thousand Three  
(In words, indicate day, month and year)

### BETWEEN the Owner:

(Name and address)

West Branch Area School District  
356 Allport Cutoff  
R.R. #2, Box 194  
Morrisdale, PA 16858-9312

### and the Contractor:

(Name and address)

DeGol Brother Carpet  
851 Old Route 220N  
Duncansville, PA 16635

This document has important legal consequences.

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

The 1992 Edition of AIA Document A201/CMa, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

### For the following Project:

(Include detailed description of Project, location, address and scope.)

West Branch Area School District  
356 Allport Cutoff  
Morrisdale, PA 16858  
Additions and Alterations to the Junior/Senior High School

### The Construction Manager is:

(Name and address)

The Quandel Group, Inc.  
4755 Linglestown Road, Suite 201  
Harrisburg, PA 17112

### The Architect is:

(Name and address)

Roth Marz Partnership, PC  
3505 Chapin Street  
Erie, PA 16508

The Owner and Contractor agree as set forth below.

## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

Contract No. 5 – Carpet and Resilient Flooring

## ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement is the date from which the Contract Time of Section 3.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

The commencement date will be fixed in a notice to proceed.

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner, through the Construction Manager, in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than four hundred fifty (450) days after the Date of Commencement.

*(Insert the calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)*

### Portion of Work

### Substantial Completion date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)*

The Contractor and the Contractor's Surety shall be liable for and shall pay the Owner liquidated damages in accordance with provisions of the General Conditions and as modified by the Supplementary Conditions.

## ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of One Hundred Forty-two Thousand Five Hundred Fifty-five Dollars And Zero Cents (\$ 142,555.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date until which that amount is valid.)*

Alternate Numbers 1, 6a, 9, 10, 12, 13

§ 4.3 Unit prices, if any, are as follows:

Description	Units	Price (\$ 0.00)
-------------	-------	-----------------

#### ARTICLE 5 PROGRESS PAYMENTS

§ 5.1 Based upon Applications for Payment submitted by the Contractor to the Construction Manager, and upon Project Applications and Certificates for Payment issued by the Construction Manager and Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.3 Provided an Application for Payment is submitted to the Construction Manager not later than the twenty-fifth day of a month, the Owner shall make payment to the Contractor not later than the thirtieth day of the following month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment shall be made by the Owner not later than the next billing cycle ( ) days after the Construction Manager receives the Application for Payment.

§ 5.4 Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager or Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of ten percent (10.00%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.7 of the General Conditions;

§ 5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10.00%);

§ 5.6.3 Subtract the aggregate of previous payments made by the Owner; and

§ 5.6.4 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

§ 5.7 The progress payment amount determined in accordance with Section 5.6 shall be further modified under the following circumstances:

§ 5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to ( ) of the Contract Sum, less such amounts as the Construction Manager recommends and the Architect determines for incomplete Work and unsettled claims; and

**§ 5.7.2** Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of the General Conditions.

**§ 5.8** Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.6.1 and 5.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

Owner's right to hold retainage is per the requirements of the General Conditions and Supplementary General Conditions.

#### **ARTICLE 6 FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Section 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final Project Certificate for Payment has been issued by the Construction Manager and Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Project Certificate for Payment, or as follows:

#### **ARTICLE 7 MISCELLANEOUS PROVISIONS**

**§ 7.1** Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 7.2** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

(      ) per annum

*(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 Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

**§ 7.3** Temporary facilities and services:

*(Here insert temporary facilities and services which are different from or in addition to those included elsewhere in the Contract Documents.)*

**§ 7.4** Other Provisions:

*(Here list any special provisions affecting the Contract.)*

#### **ARTICLE 8 TERMINATION OR SUSPENSION**

**§ 8.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

**§ 8.2** The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 9.1.1 The Agreement is this executed Standard Form of Agreement Between Owner and Contractor, AIA Document A101/CMa, 1992 Construction Manager-Adviser Edition.

§ 9.1.2 The General Conditions are the General Conditions of the Contract for Construction, AIA Document A201/CMa, 1992 Construction Manager-Adviser Edition.

§ 9.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated October 22, 2003, and are as follows:

Document	Title	Pages
<u>The Supplementary and other conditions of the Contract are enumerated in the project manual and include modifications contained in the Addenda listed under Subparagraph 9.1.6 of this Agreement</u>		

§ 9.1.4 The Specifications are those contained in the Project Manual dated as in Section 9.1.3, and are as follows: *(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

Section	Title	Pages
<u>The Specifications are enumerated in the Table of Contents of the Project Manual and include modifications contained in the Addenda List under Subparagraph 9.1.6 of this Agreement</u>		

§ 9.1.5 The Drawings are as follows, and are dated October 22, 2003 unless a different date is shown below: *(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*

Number	Title	Date
<u>The Drawings are enumerated in the Table of Contents of the Project Manual and include modifications contained in the Addenda listed under Subparagraph 9.1.6 of this Agreement.</u>		

§ 9.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
<u>Addendum No. 1</u>	<u>11/10/2003</u>	<u>35</u>

<u>Addendum No. 2</u>	<u>11/12/2003</u>	<u>19</u>
<u>Addendum No. 3</u>	<u>11/19/2003</u>	<u>89</u>
<u>Addendum No. 4</u>	<u>11/26/2003</u>	<u>6</u>
<u>Addendum No. 5</u>	<u>12/5/2003</u>	<u>8</u>
<u>Addendum No. 6</u>	<u>12/11/2003</u>	<u>34</u>

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

**§ 9.1.7 Other documents, if any, forming part of the Contract Documents are as follows:**

*(List here any additional documents which are intended to form part of the Contract Documents. The General Conditions provide that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

This Agreement is entered into as of the day and year first written above and is executed in at least four original copies of which one is to be delivered to the Contractor, one each to the Construction Manager and Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER

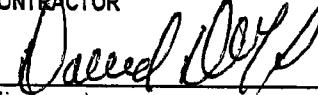


(Signature)

Mr. Thomas A. Giles, Superintendent

(Printed name and title)

CONTRACTOR



(Signature)

David DeGol

(Printed name and title)

PERFORMANCE BOND      BOND # S-426668

KNOW ALL MEN BY THESE PRESENTS, that we, DEGOL CARPET, as Principal (the "Principal") and NATIONAL GRANGE MUTUAL INSURANCE CO. located at (include city, state & zip code) BENEDICT & LMKE STREETS CARROLLTOWN, PA 15722, a corporation organized and existing under the laws of the STATE PENNSYLVANIA of PENNSYLVANIA as Surety (the "Surety"), are held and firmly bound unto WEST BRANCH AREA SCHOOL DISTRICT as Obligee (the "Obligee"), as hereinafter set forth, in the full and just sum of ONE HUNDRED FORTY TWO THOUSAND FIVE HUNDRED FIFTY FIVE Dollars(\$ 142,555.00-----), lawful money of the United States of America, for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WITNESSETH THAT:

WHEREAS, The Principal heretofore has submitted to the Obligee a certain Proposal, dated DECEMBER 31, 20 03 (the "Proposal"), to perform certain work for the Obligee, in connection with the construction of CONTRACT # 5 CARPET & RESILIENT FLOORING - JUNIOR/SR. HIGH SCHOOL pursuant to plans, specifications and other related documents constituting the Contract Documents, which are incorporated into the Proposal by reference (the "Contract Documents"), as prepared by ROTH MARZ PARTNERSHIP PC, Registered ARCHITECT; and

WHEREAS, the Obligee is a "contracting body" under provisions of Act No. 385 of the General Assembly of the Commonwealth of Pennsylvania, approved by the Governor on December 20, 1967, known and cited as the "Public Works Contractors' Bond Law of 1967" (the "Act"); and

WHEREAS, The Act, in Section 3 (a), requires that, before an award shall be made to the Principal by the Obligee in accordance with the Proposal, the Principal shall furnish this Bond to the Obligee, with this Bond to become binding upon the award of a Contract to the Principal by the Obligee in accordance with the Proposal; and

WHEREAS, It also is a condition of the Contract Documents that this Bond shall be furnished by the Principal to the Obligee; and

WHEREAS, Under the Contract Documents, it is provided, inter alia, that if the Principal shall furnish this Bond to the Obligee, and if the Obligee shall make an award to the Principal in accordance with the Proposal, the Principal and the Obligee shall enter into an agreement with respect to performance of such work (the "Contract"), and the form of Agreement is set forth in the Contract Documents.

NOW, THEREFORE, the terms and conditions of this Bond are and shall be that if the Principal well, truly and faithfully shall comply with and shall perform the Contract in accordance with the Contract Documents, at the time and in the manner provided in the Agreement and in the Contract Documents, and if the Principal shall satisfy all claims and demands incurred in or related to the performance of the Contract by the Principal or growing out of the performance of the Contract by the Principal, and if the Principal shall indemnify completely and shall save harmless the Obligee and all of its officers, agents and employees including its Engineer from any and all costs and damages which the Obligee and all of its officers, agents and employees including its Engineer may sustain or suffer by reason of the failure of the Principal to do so, and if the Principal shall reimburse completely and shall pay to the Obligee any and all costs and expenses which the Obligee and all of its officers, agents and employees including its Engineer may incur by reason of any such default or failure of the Principal, then this Bond shall be void; otherwise this Bond shall be and shall

PERFORMANCE BOND  
WEST BRANCH JR.-SR. HIGH SCHOOL  
ADDITIONS AND ALTERATIONS

remain in force and effect.

This Bond is executed and delivered under and subject to the Act to which reference hereby is made.

The Principal and Surety agrees that any alterations, changes and/or additions to the Contract Documents, and/or any alterations, changes and/or additions to the work to be performed under the Contract in accordance with the Contract Documents, and/or any alterations, changes and/or additions to the Contract, and/or any giving by the Obligee of any extensions of time for the performance of the Contract in accordance with the Contract Documents, and/or any act of forbearance of either the Principal or the Obligee toward the other with respect to the Contract Documents and the Contract, and/or the reduction of any percentage to be retained by the Obligee as permitted by the Contract Documents and by the Contract, shall not release, in any manner whatsoever, the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors and assigns, from liability and obligations under this Bond; and the Surety, for value received, does waive notice of any such alterations, changes, additions, extensions of time, acts of forbearance and/or reduction of retained percentage.

If the Principal is a foreign corporation (incorporated under any laws other than those of the Commonwealth of Pennsylvania) then further terms and conditions of this Bond are and shall be that the Principal or the Surety shall not be discharged from liability on the Bond, nor this Bond surrendered until such Principal files with the Obligee a certificate from the Pennsylvania Department of Revenue, evidencing the payment in full of all bonus taxes, penalties and interest, and a certificate from the Bureau of Employment and Unemployment Compensation of the Pennsylvania Department of Labor and Industry, evidencing the payment of all unemployment compensation, contributions, penalties and interest due the Commonwealth of Pennsylvania from said Principal or any foreign corporation, subcontractor thereunder or for which liability has accrued but the time for payment has not arrived, all in accordance with provisions of the Act of June 10, 1947, P.L. 493, of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the Principal and the Surety cause this Bond to be signed, sealed and delivered this 31ST day of DECEMBER, 2003.

(Individual Principal)

Witness:

\_\_\_\_\_  
(Signature of Individual)  
Trading and doing business as:

(Partnership Principal)

Witness:

DEGOL CARPET

\_\_\_\_\_  
Name of Partnership

By: DAVID DEGOL (SEAL)  
Partner

By: \_\_\_\_\_ (SEAL)  
Partner

By: \_\_\_\_\_ (SEAL)  
Partner

By: \_\_\_\_\_ (SEAL)

PERFORMANCE BOND  
WEST BRANCH JR.-SR. HIGH SCHOOL  
ADDITIONS AND ALTERATIONS

Partner

(Corporation Principal)

ATTEST:

(Name of Corporation)

(Assistant Secretary)

By:

(Vice) President

(CORPORATE SEAL)

or (if appropriate)

Witness:

(Name of Corporation)

(CORPORATE SEAL)

By:

Authorized Representative

\* Attach appropriate proof, dated as of the same date as the Bond, evidencing authority to execute in behalf of the corporation.

(Corporation Surety)

Witness:

NATIONAL GRANGE MUTUAL INSURANCE COMPANY

(Name of Corporation)

(CORPORATE SEAL)

By: Patricia J. Holtz-Woodley

(Attorney-In-Fact)

PATRICIA J. HOLTZ-WOODLEY

PA. RESIDENT AGENT

\*\* Attach an appropriate power of attorney, dated as of the same date as the Bond, evidencing the authority of the Attorney-in-Fact to act in behalf of the corporation.

PERFORMANCE BOND  
WEST BRANCH JR.-SR. HIGH SCHOOL  
ADDITIONS AND ALTERATIONS



# NATIONAL GRANGE MUTUAL INSURANCE COMPANY

## POWER OF ATTORNEY

KNC ALL MEN BY THESE PRESENTS: That the National Grange Mutual Insurance Company, a New Hampshire corporation having its principal office in the City of Keene, State of New Hampshire, pursuant to Article V, Section 2 of the By-Laws of said Company, to wit:

"Section 2. The board of directors, the president, any vice president, secretary, or the treasurer shall have the power and authority to appoint attorneys-in-fact and to authorize them to execute on behalf of the company and affix the seal of the company thereto, bonds, recognizances, contracts of indemnity or writings obligatory in the nature of a bond, recognizance or conditional undertaking and to remove any such attorneys-in-fact at any time and revoke the power and authority given to them." Pursuant to said by-law does hereby make, constitute and appoint **Patrick J Sharbaugh, Paul J Sharbaugh**

**Mary Dubetsky, Patricia J Holtz-Woodley,**

its true and lawful Attorneys-in-fact, to make, execute, seal and deliver for and on its behalf, and as its act and deed, bonds, undertakings recognizances, contracts of indemnity, or other writings obligatory in the nature of a bond subject to the following limitation:

**1. No one bond to exceed One Million Dollars (\$1,000,000.00).**

and to bind the National Grange Mutual Insurance Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of the National Grange Mutual Insurance Company, and all the acts of said Attorney are hereby ratified and confirmed.

This power of attorney is signed and sealed by facsimile under and by the authority of the following resolution adopted by the Directors of The National Grange Mutual Insurance Company at a meeting duly called and held on the 2nd day of December 1977.

Voted: That the signature of any officer authorized by the By-Laws and the company seal may be affixed by facsimile to any power of attorney or special power of attorney or certification of either given for the execution of any bond, undertaking, recognizance or other written obligation in the nature thereof; such signature and seal, when so used being hereby adopted by the company as the original signature of such office and the original seal of the company, to be valid and binding upon the company with the same force and effect as though manually affixed.

By execution of this Power of Attorney, National Grange Mutual Insurance Company does hereby revoke, rescind and declare null and void any previous Power of Attorney at any time previously furnished to the aforesaid individuals or agencies.

**IN WITNESS WHEREOF**, The National Grange Mutual Insurance Company has caused these presents to be signed by its Corporate Secretary and its corporate seal to be hereto affixed this 6th day of December, 2002. **THIS APPOINTMENT SHALL CEASE**  
**AN** **RMINATE AUTOMATICALLY AS OF DECEMBER 31ST**, unless sooner revoked as provided.

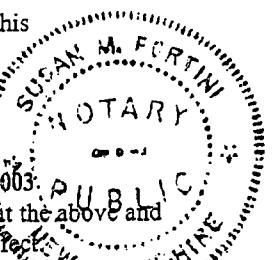
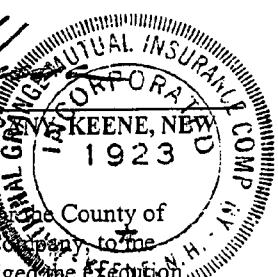
NATIONAL GRANGE MUTUAL INSURANCE COMPANY By:

THIS POWER IS INVALID IF RED DIAGONAL IMPRINT " NATIONAL GRANGE MUTUAL INSURANCE COMPANY, KEENE, NEW HAMPSHIRE " IS NOT SHOWN IN ITS ENTIRETY.

State of New Hampshire, County of Cheshire

On this 6th day of December, 2002, before the subscriber a Notary Public of the State of New Hampshire in and for the County of Cheshire duly commissioned and qualified, came William C. McKenna of the National Grange Mutual Insurance Company, to me personally known to be the officer described herein, and who executed the preceding instrument, and he acknowledged the execution of same, and being by me fully sworn, deposed and said that he is an officer of said Company, aforesaid: that the seal affixed to the preceding instrument is the corporate seal of said Company, and the said corporate seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Company; that Article V, Section 2 of the By-Laws of said Company is now in force.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed by official seal at Keene, New Hampshire this 6th day of December, 2002.



Notary Public

My Commission Expires: May 13, 2003.

I Lyn E. Landry, Assistant Vice President of the National Grange Mutual Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by said Company which is still in force and effect.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of said Company at Keene, New Hampshire this

31ST day of DECEMBER, 2003

  
Assistant Vice President

68-7340.002 brittonc

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**CONFIRMATION** Of validity of attached bond, call NGM at: Keene 603-358-1339; Richmond 804-270-6611 ext. 138;  
Syracuse 315-434-1410.

PAYMENT BONDBOND # S-426668

KNOW ALL MEN BY THESE PRESENTS, that we, DEGOL CARPET, as Principal (the "Principal"), and NATIONAL GRANGE MUTUAL located at BENEDICT & LEME STREETS CARROLL TOWN, PA 15722, a corporation organized and existing under the laws of the STATE of PENNSYLVANIA as Surety (the "Surety"), are held and firmly bound unto Obligee; (the "Obligee"), as hereinafter set forth, in the full and just sum of ONE HUNDRED FORTY TWO THOUSAND FIVE HUNDRED FIFTY FIVE (\$ 142,555.00), lawful money of the United States of America, for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WITNESSETH THAT:

WHEREAS, The Principal heretofore has submitted to the Obligee a certain Proposal, dated DEC 31 2003 (the "Proposal"), to perform certain work for the Obligee, in connection with the construction of CONTRACT #5 CARPET & RESILIENT FLOORING JUNIOR/SR HIGH SCHOOL pursuant to plans, specifications and other related documents constituting the Contract Documents, which are incorporated into the Proposal by reference (the "Contract Documents"), as prepared by ROTH MARZ PARTNERSHIP REGISTERED ARCHITECT; and

WHEREAS, the Obligee is a "contracting body" under provisions of Act No. 385 of the General Assembly of the Commonwealth of Pennsylvania, approved by the Governor on December 20, 1967, known as and cited as the "Public Works Contractors' Bond Law of 1967" (the "Act"); and

WHEREAS, The Act, in Section 3 (a), requires that, before an award shall be made to the Principal by the Obligee in accordance with the Proposal, the Principal shall furnish this Bond to the Obligee, with this Bond to become binding upon the award of a Contract to the Principal by the Obligee in accordance with the Proposal; and

WHEREAS, It also is a condition of the Contract Documents that this Bond shall be furnished by the Principal to the Obligee; and

WHEREAS, Under the Contract Documents, it is provided, inter alia, that if the Principal shall furnish this Bond to the Obligee, and if the Obligee shall make an award to the Principal in accordance with the Proposal, then the Principal and the Obligee shall enter into an agreement with respect to performance of such work (the "Contract"), and the form of Agreement is set forth in the Contract Documents.

NOW, THEREFORE, the terms and conditions of this Bond are and shall be that if the Principal and any subcontractor of the Principal to whom any portion of the work under the Contract shall be subcontracted, and if all assignees of the Principal and of any such subcontractor, promptly shall pay or shall cause to be paid, in full, all money which may be due any claimant supplying labor or materials in the prosecution and performance of the work in accordance with the Contract and in accordance with the Contract Documents, including any amendment, extension or addition to the Contract and/or to the Contract Documents, for material furnished or labor supplied or labor performed, then this Bond shall be void; otherwise this Bond shall be and shall remain in force and effect.

This Bond, as provided by the Act, shall be solely for the protection of claimants supplying labor or materials to the Principal or to any subcontractor of the Principal in the prosecution of the work covered by the Contract, including any amendment, extension or addition to the Contract. The term "Claimant", when used herein and as required by the Act, shall mean any individual, firm, partnership, association or corporation. The phrase "labor or materials", when used herein and as required by the Act, shall include public utility services

and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site of the work covered by the Contract. As required by the Act, the provisions of this Bond shall be applicable whether or not the material furnished or labor performed enters into and becomes a component part of the public building, public work or public improvement contemplated by the Contract Documents and the Contract.

As provided and required by the Act, the Principal and the Surety agree that any claimant, who has performed labor or furnished material in the prosecution of the work in accordance with the Contract and in accordance with the Contract Documents, including any amendment, extension or addition to the Contract and/or to the Contract Documents, and who has not been paid therefore, in full, before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which payment is claimed, may institute an action upon this Bond, in the name of the claimant, in assumpsit, to recover any amount due the claimant for such labor or material, and may prosecute such action to final judgment and may have execution upon the judgment; Provided, however, that: (a) any claimant who has a direct contractual relationship with any subcontractor of the Principal, but has no contractual relationship, express or implied, with the Principal, may institute an action upon this Bond only if such claimant first shall have given written notice, served in the manner provided in the Act, to the Principal, within ninety (90) days from the date upon which such claimant performed the last of the labor or furnished the last of the materials for which payment is claimed, stating, with substantial accuracy, the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished; and (b) no action upon this Bond shall be commenced after the expiration of one (1) year from the day upon which the last of the labor was performed or material was supplied, for the payment of which such action is instituted by the claimant; and (c) every action upon this Bond shall be instituted either in the appropriate court of the County where the Contract is to be performed or of such other County as Pennsylvania statutes shall provide, or in the United States District Court for the district in which the project, to which the Contract relates, is situated, and not elsewhere.

This Bond is executed and delivered under and subject to the Act, to which reference hereby is made.

The Principal and the Surety agree that any alterations, changes and/or additions to the Contract Documents, and/or any alterations, changes and/or additions to the work to be performed under the Contract in accordance with the Contract Documents, and/or any alterations, changes and/or additions to the Contract, and/or any giving by the Obligee of any extensions of time for the performance of the Contract in accordance with the Contract Documents, and/or any act of forbearance of either the Principal or the Obligee toward the other with respect to the Contract Documents and the Contract, and/or the reduction of any percentage to be retained by the Obligee as permitted by the Contract Documents and by the Contract, shall not release, in any manner whatsoever, the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors and assigns, from liability and obligations under this Bond; and the Surety, for value received, does waive notice of any such alterations, changes, additions, extensions of time, acts of forbearance and/or reduction of retained percentage.

If the Principal is a foreign corporation (incorporated under any laws other than those of the Commonwealth of Pennsylvania) then further terms and conditions of this Bond are and shall be that the Principal or the Surety shall not be discharged from liability on this Bond, nor this Bond surrendered until such Principal files with the Obligee a certificate from the Pennsylvania Department of Revenue, evidencing the payment in full of all bonus taxes, penalties and interest, and a certificate from the Bureau of Employment and Unemployment Compensation of the Pennsylvania Department of Labor and Industry, evidencing the payment of all unemployment compensation, contributions, penalties and interest due the Commonwealth of Pennsylvania from said Principal or any foreign corporation, subcontractor thereunder or for which liability has accrued but the time for payment has not arrived, all in accordance with provisions of the Act of June 10, 1947, P.L. 493, of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the Principal and the Surety cause this Bond to be signed, sealed and delivered this 31ST day of DECEMBER, 2003.

(Individual Principal)

\_\_\_\_\_ (SEAL)

Witness:

(Signature of Individual)  
Trading and doing business as

(Partnership Principal)

Witness:

(Name of Partnership)

By: DEGOL CARPET (SEAL)  
Partner

By: David Degol (SEAL)  
Partner  
DAVID DEGOL

By: \_\_\_\_\_ (SEAL)  
Partner

By: \_\_\_\_\_ (SEAL)  
Partner

(Corporation Principal)

ATTEST:

(Name of Corporation)

\_\_\_\_\_  
(Assistant Secretary)

By: \_\_\_\_\_  
(Vice) President

PAYMENT BOND  
WEST BRANCH JR.-SR. HIGH SCHOOL  
ADDITIONS AND ALTERATIONS

(CORPORATE SEAL)

or (if appropriate)

Witness:

(Name of Corporation)

Authorized Representative

\*By:

\* Attach appropriate proof, dated as of the same date as the Bond, evidencing authority to execute in behalf of the corporation.

(Corporation Surety)

Witness:

(CORPORATE SEAL)

NATIONAL GRANGE MUTUAL INSURANCE COMPANY  
(Name of Corporation)\*\*By: Patricia J. Holtz-Woodley(Attorney-In-Fact)  
PATRICIA J. HOLTZ-WOODLEYPA. RESIDENT  
AGENT

\*\* Attach an appropriate power of attorney, dated as of the same date as the Bond, evidencing the authority of the Attorney-in-Fact to act in behalf of the Corporation.

PAYMENT BOND  
WEST BRANCH JR.-SR. HIGH SCHOOL  
ADDITIONS AND ALTERATIONS



# NATIONAL GRANGE MUTUAL INSURANCE COMPANY

## POWER OF ATTORNEY

**KNO'W ALL MEN BY THESE PRESENTS:** That the National Grange Mutual Insurance Company, a New Hampshire corporation having principal office in the City of Keene, State of New Hampshire, pursuant to Article V, Section 2 of the By-Laws of said Company, to wit:

"Section 2. The board of directors, the president, any vice president, secretary, or the treasurer shall have the power and authority to appoint attorneys-in-fact and to authorize them to execute on behalf of the company and affix the seal of the company thereto, bonds, recognizances, contracts of indemnity or writings obligatory in the nature of a bond, recognition or conditional undertaking and to remove any such attorneys-in-fact at any time and revoke the power and authority given to them." Pursuant to said by-law does hereby make, constitute and appoint **Patrick J Sharbaugh, Paul J Sharbaugh**

**Mary Dubetsky, Patricia J Holtz-Woodley,** its true and lawful Attorneys-in-fact, to make, execute, seal and deliver for and on its behalf, and as its act and deed, bonds, undertakings recognizances, contracts of indemnity, or other writings obligatory in the nature of a bond subject to the following limitation:

**1. No one bond to exceed One Million Dollars (\$1,000,000.00).**

and to bind the National Grange Mutual Insurance Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of the National Grange Mutual Insurance Company, and all the acts of said Attorney are hereby ratified and confirmed.

This power of attorney is signed and sealed by facsimile under and by the authority of the following resolution adopted by the Directors of The National Grange Mutual Insurance Company at a meeting duly called and held on the 2nd day of December 1977.

Voted: That the signature of any officer authorized by the By-Laws and the company seal may be affixed by facsimile to any power of attorney or special power of attorney or certification of either given for the execution of any bond, undertaking, recognition or other written obligation in the nature thereof; such signature and seal, when so used being hereby adopted by the company as the original signature of such office and the original seal of the company, to be valid and binding upon the company with the same force and effect as though manually affixed.

By execution of this Power of Attorney, National Grange Mutual Insurance Company does hereby revoke, rescind and declare null and void any previous Power of Attorney at any time previously furnished to the aforesaid individuals or agencies.

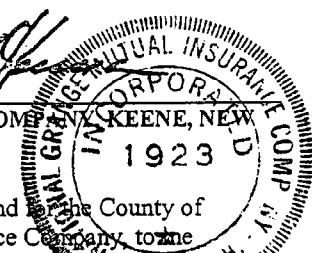
**IN WITNESS WHEREOF**, The National Grange Mutual Insurance Company has caused these presents to be signed by its Corporate Secretary and its corporate seal to be hereto affixed this 6th day of December, 2002. **THIS APPOINTMENT SHALL CEASE AND TERMINATE AUTOMATICALLY AS OF DECEMBER 31ST**, unless sooner revoked as provided.

NATIONAL GRANGE MUTUAL INSURANCE COMPANY BY \_\_\_\_\_  
THIS POWER IS INVALID IF RED DIAGONAL IMPRINT " NATIONAL GRANGE MUTUAL INSURANCE COMPANY KEENE, NEW  
HAMPSHIRE " IS NOT SHOWN IN ITS ENTIRETY.

State of New Hampshire, County of Cheshire

On this 6th day of December, 2002, before the subscriber a Notary Public of the State of New Hampshire in and for the County of Cheshire duly commissioned and qualified, came William C. McKenna of the National Grange Mutual Insurance Company, to me personally known to be the officer described herein, and who executed the preceding instrument, and he acknowledged the execution of same, and being by me fully sworn, deposed and said that he is an officer of said Company, aforesaid: that the seal affixed to the preceding instrument is the corporate seal of said Company, and the said corporate seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Company; that Article V, Section 2 of the By-Laws of said Company is now in force.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed by official seal at Keene, New Hampshire this 6th day of December, 2002.



Notary Public

My Commission Expires: May 13, 2003

I Lyn E. Landry, Assistant Vice President of the National Grange Mutual Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by said Company which is still in force and effect.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of said Company at Keene, New Hampshire this

31ST day of DECEMBER, 2003

  
Assistant Vice President

68-7540.002 brittonc

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**CONFIRMATION** Of validity of attached bond, call NGM at: Keene 603-358-1339; Richmond 804-270-6611 ext. 138; Syracuse 315-434-1410.

# General Conditions of the Contract for Construction

Where the Construction Manager is NOT a Constructor

1992 Construction Manager-Adviser Edition

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS MODIFICATION. AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401.

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GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION - CONSTRUCTION MANAGER-ADVISER EDITION - 1992 EDITION - AIA® -

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## GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

### ARTICLE 1 GENERAL PROVISIONS

#### 1.1 BASIC DEFINITIONS

##### 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a

• Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of addenda relating to bidding requirements).

### 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Construction Manager and Contractor, (3) between the Architect and Construction Manager, (4) between the Owner and a Subcontractor or Sub-subcontractor or (5) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

### 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

### 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors and by the Owner's own forces including persons or entities under separate contracts not administered by the Construction Manager.

### 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

### 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

### 1.1.7 THE PROJECT MANUAL

The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

## 1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed by the Owner and Contractor as provided in the Agreement. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

1.2.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

## 1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

1.3.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or

material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and produce applicable portions of the Drawings, Specifications

and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

## 1.4 CAPITALIZATION

1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

## 1.5 INTERPRETATION

1.5.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

# ARTICLE 2 OWNER

## 2.1 DEFINITION

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

2.1.2 The Owner upon reasonable written request shall furnish to the Contractor in writing information which is necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein at the time of execution of the Agreement and, within five days after any change, information of such change in title, recorded or unrecorded.

## 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner shall, at the request of the Contractor, prior to execution of the Agreement and promptly from time to time thereafter, furnish to the Contractor reasonable evidence

that financial arrangements have been made to fulfill the Owner's obligations under the Contract. *[Note: Unless such reasonable evidence were furnished on request prior to the execution of the Agreement, the prospective contractor would not be required to execute the Agreement or to commence the Work.]*

2.2.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

2.2.3 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit.

2.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.2.6 The Owner shall forward all communications to the Contractor through the Construction Manager and shall contemporaneously provide the same communications to the Architect.

2.2.7 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Other Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

## 2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently 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 Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

## 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails

within a seven-day period 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 after such seven-day period give the Contractor a second written notice to correct such deficiencies within a second seven-day period. If the Contractor within such second seven-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, 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 Contractor the cost of correcting such deficiencies, including compensation for the Construction Manager's and Architect's and their respective consultants' additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect, after consultation with the Construction Manager. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## ARTICLE 3 CONTRACTOR

### 3.1 DEFINITION

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout this Agreement as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 The plural term "Contractors" refers to persons or entities who perform construction under Conditions of the Contract that are administered by the Construction Manager, and that are identical or substantially similar to these Conditions.

### 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.2 and shall at once report to the Construction Manager and Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner, Construction Manager or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Construction Manager and Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Construction Manager and Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

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3.2.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Construction Manager and Architect at once.

3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

### 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract, subject to overall coordination of the Construction Manager as provided in Subparagraphs 4.6.3 and 4.6.4.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

3.3.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by person other than the Contractor.

3.3.4 The Contractor shall inspect portions of the Project related to the Contractor's Work in order to determine that such portions are in proper condition to receive subsequent Work.

### 3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for 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.

3.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

### 3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner, Construction Manager and Architect 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 Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### 3.6 TAXES

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### 3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for the building permit and the Contractor shall secure and pay for all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules and regulations and lawful orders of public authorities bearing on performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Construction Manager, Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Construction Manager, Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

### 3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all

allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

- 1 materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;
- 2 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- 3 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;
- 4 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.2 and (2) changes in Contractor's costs under Clause 3.8.2.3.

### 3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

### 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULE

3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information and the Construction Manager's approval a Contractor's Construction Schedule for the Work. Such schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project construction schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.10.2 The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work of

other Contractors or the construction or operations of the Owner's own forces.

**3.10.3** The Contractor shall prepare and keep current, for the Construction Manager's and Architect's approval, a schedule of submittals which is coordinated with the Contractor's Construction Schedule and allows the Construction Manager and Architect reasonable time to review submittals.

**3.10.4** The Contractor shall conform to the most recent schedules.

### **3.11 DOCUMENTS AND SAMPLES AT THE SITE**

**3.11.1** The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Construction Manager and Architect and shall be delivered to the Construction Manager for submittal to the Owner upon completion of the Work.

### **3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**3.12.3** Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.6.12.

**3.12.5** The Contractor shall review, approve and submit to the Construction Manager, in accordance with the schedule and sequence approved by the Construction Manager, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other Contractors. Submittals made by the Contractor which are not

required by the Contract Documents may be returned without action.

**3.12.6** The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Construction Manager and Architect. Such Work shall be in accordance with approved submittals.

**3.12.7** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**3.12.8** The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Construction Manager's and Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Construction Manager and Architect in writing of such deviation at the time of submittal and the Construction Manager and Architect have given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Construction Manager's and Architect's approval thereof.

**3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals.

**3.12.10** Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents.

**3.12.11** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Construction Manager and Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

### **3.13 USE OF SITE**

**3.13.1** The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**3.13.2** The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

### **3.14 CUTTING AND PATCHING**

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner's own forces or of other Contractors by cutting, patching, excavating or otherwise altering such construction. The Contractor shall not cut or otherwise alter such construction by other Contractors or by the Owner's own forces except with written consent of the Construction Manager, Owner and such other Contractors; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the other Contractors or the Owner the Contractor's consent to cutting or otherwise altering the Work.

### 13.5 CLEANING UP

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Construction Manager may do so with the Owner's approval and the cost thereof shall be charged to the Contractor.

### 16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner, Construction Manager and Architect access to the Work in preparation and progress wherever located.

### 3.17 ROYALTIES AND PATENTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner, Construction Manager and Architect 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 or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### 3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect'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 Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they 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 Paragraph 3.18.

3.18.2 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

3.18.3 The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Construction Manager, Architect, their consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Construction Manager, Architect, their consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

## ARTICLE 4 ADMINISTRATION OF THE CONTRACT

### 4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

### 4.2 CONSTRUCTION MANAGER

4.2.1 The Construction Manager is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Construction Manager" means the Construction Manager or the Construction Manager's authorized representative.

4.3 Duties, responsibilities and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction

Manager, Architect and Contractor. Consent shall not be unreasonably withheld.

**4.4** In case of termination of employment of the Construction Manager or Architect, the Owner shall appoint a construction manager or architect against whom the Contractor makes no reasonable objection and whose status under the Contract Documents shall be that of the former construction manager or architect, respectively.

**4.5** Disputes arising under Paragraphs 4.3 and 4.4 shall be subject to arbitration.

## **4.6 ADMINISTRATION OF THE CONTRACT**

**4.6.1** The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representatives (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Construction Manager and Architect will advise and consult with the Owner and will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

**4.6.2** The Construction Manager will determine in general that the Work is being performed in accordance with the requirements of the Contract Documents, will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

**4.6.3** The Construction Manager will provide for coordination of the activities of other Contractors and of the Owner's own forces with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other Contractors and the Construction Manager and Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall constitute the schedules to be used by the Contractor, other Contractors, the Construction Manager and the Owner until subsequently revised.

**4.6.4** The Construction Manager will schedule and coordinate the activities of the Contractors in accordance with the latest approved Project construction schedule.

**4.6.5** The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress of the

Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

**4.6.6** The Construction Manager, except to the extent required by Subparagraph 4.6.4, and Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3, and neither will be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

**4.6.7 Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Construction Manager, and shall contemporaneously provide the same communications to the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager and shall be contemporaneously provided to the Architect.

**4.6.8** The Construction Manager will review and certify all Applications for Payment by the Contractor, including final payment. The Construction Manager will assemble each of the Contractor's Applications for Payment with similar Applications from other Contractors into a Project Application and Project Certificate for Payment. After reviewing and certifying the amounts due the Contractors, the Construction Manager will submit the Project Application and Project Certificate for Payment, along with the applicable Contractors' Applications and Certificates for Payment, to the Architect.

**4.6.9** Based on the Architect's observations and evaluations of Contractors' Applications for Payment, and the certifications of the Construction Manager, the Architect will review and certify the amounts due the Contractors and will issue a Project Certificate for Payment.

**4.6.10** The Architect will have authority to reject Work which does not conform to the Contract Documents, and to require additional inspection or testing, in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed, but will take such action only after notifying the Construction Manager. Subject to review by the Architect, the Construction Manager will have the authority to reject Work which does not conform to the Contract Documents. Whenever the Construction Manager considers it necessary or advisable for implementation of the intent of the Contract Documents, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed.

The foregoing authority of the Construction Manager will be subject to the provisions of Subparagraphs 4.6.18 through 4.6.20, inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this paragraph 4.6.10 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.

**4.6.11** The Construction Manager will receive from the Contractor and review and approve all Shop Drawings, Product Data and Samples, coordinate them with information received from other Contractors, and transmit to the Architect those recommended for approval. The Construction Manager's actions will be taken with such reasonable promptness as to cause no delay in the Work of the Contractor or in the activities of other Contractors, the Owner, or the Architect.

**4.6.12** The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work of the Contractor or in the activities of the other Contractors, the Owner, or the Construction Manager, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**4.6.13** The Construction Manager will prepare Change Orders and Construction Change Directives.

**4.6.14** Following consultation with the Construction Manager, the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7 and will have authority to order minor changes in the Work as provided in Paragraph 7.4.

**4.6.15** The Construction Manager will maintain at the site for the Owner one record copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and

similar required submittals. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

**4.6.16** The Construction Manager will assist the Architect in conducting inspections to determine the dates of Substantial Completion and final completion, and will receive and forward to the Architect written warranties and related documents required by the Contract and assembled by the Contractor. The Construction Manager will forward to the Architect a final Project Application and Project Certificate for Payment upon compliance with the requirements of the Contract Documents.

**4.6.17** If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

**4.6.18** The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Construction Manager, Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.6, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

**4.6.19** Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

**4.6.20** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

## 4.7 CLAIMS AND DISPUTES

**4.7.1 Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**4.7.2 Decision of Architect.** Claims, including those alleging an error or omission by the Construction Manager or Architect, shall be referred initially to the Architect for action as provided in Paragraph 4.8. A decision by the Architect, as

provided in Subparagraph 4.8.4. shall be required as a condition precedent to arbitration or litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to arbitration or litigation in the event (1) the position of Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 4.8.4 within 30 days after the Claim is made, (4) 45 days have passed after the Claim has been referred to the Architect or (5) the Claim relates to a mechanic's lien.

**4.7.3 Time Limits on Claims.** Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

**4.7.4 Continuing Contract Performance.** Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**4.7.5 Waiver of Claims: Final Payment.** 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.

**4.7.6 Claims for Concealed or Unknown Conditions.** 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 Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or

both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.8.

**4.7.7 Claims for Additional Cost.** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

#### **4.7.8 Claims for Additional Time.**

**4.7.8.1** If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

**4.7.8.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

**4.7.9 Injury or Damage to Person or Property.** If either party to the Contract 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 for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.7.7 or 4.7.8.

### **4.8 RESOLUTION OF CLAIMS AND DISPUTES**

**4.8.1** The Architect will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in

whole or in part, stating reasons for rejection; (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

4.8.2 If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

4.8.3 If a Claim has not been resolved, the party making the Claim shall, within ten days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim or (3) notify the Architect that the initial Claim stands.

4.8.4 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven days, which decision shall be final and binding on the parties but subject to arbitration. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

## 4.9 ARBITRATION

### 4.9.1 Controversies and Claims Subject to Arbitration.

Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof, except controversies or Claims relating to aesthetic effect and except those waived as provided for in Subparagraph 4.7.5. Such controversies or Claims upon which the Architect has given notice and rendered a decision as provided in Subparagraph 4.8.4 shall be subject to arbitration upon written demand of either party. Arbitration may be commenced when 45 days have passed after a Claim has been referred to the Architect as provided in Paragraph 4.7 and no decision has been rendered.

**4.9.2 Rules and Notices for Arbitration.** Claims between the Owner and Contractor not resolved under Paragraph 4.8 shall, if subject to arbitration under Subparagraph 4.9.1, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. Notice of demand for arbitration shall be filed in writing with the other party to the Agreement between the Owner and Contractor and with the American Arbitration Association, and copies shall be filed with the Construction Manager and Architect.

### 4.9.3 Contract Performance During Arbitration.

During arbitration proceedings, the Owner and Contractor shall comply with Subparagraph 4.7.4.

**4.9.4 When Arbitration May Be Demanded.** Demand for arbitration of any Claim may not be made until the earlier of (1) the date on which the Architect has rendered a final written decision on the Claim, (2) the tenth day after the parties have presented evidence to the Architect or have been given reasonable opportunity to do so, if the Architect has not rendered a final written decision by that date, or (3) any of the five events described in Subparagraph 4.7.2.

**4.9.4.1** When a written decision of the Architect states that (1) the decision is final but subject to arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

**4.9.4.2** A demand for arbitration shall be made within the time limits specified in Subparagraphs 4.9.1 and 4.9.4 and Clause 4.9.4.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.

**4.9.5 Limitation on Consolidation or Joinder.** No arbitration arising out of or relating to the Contract Documents shall include, by consolidation or joinder or in any other manner, the Construction Manager, the Architect, or the Construction Manager's or Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Construction Manager, Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, other Contractors as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No persons or entities other than the Owner, Contractor or other Contractors as defined in Subparagraph 3.1.2 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a dispute not described therein 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 parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**4.9.6 Claims and Timely Assertion of Claims.** A party who files a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. When a party fails to include a Claim through oversight, inadvertence or excusable neglect, or when a Claim has matured or been acquired subsequently, the arbitrator or arbitrators may permit amendment.

**4.9.7 Judgment on Final Award.** 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 5 SUBCONTRACTORS

### 5.1 DEFINITIONS

**5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Contractors or subcontractors of other Contractors.

**5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

**5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Construction Manager will promptly reply to the Contractor in writing stating whether or not the Owner, Construction Manager or Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Construction Manager to reply promptly shall constitute notice of no reasonable objection.

**5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**5.2.3** If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the

Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**5.2.4** The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such change.

### 5.3 SUBCONTRACTUAL RELATIONS

**5.3.1** By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

**5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 If the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS

### 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION WITH OWN FORCES AND TO AWARD OTHER CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager. The Owner further reserves the right to award other contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided elsewhere in the Contract Documents.

6.1.2 When the Owner performs construction or operations with the Owner's own forces including persons or entities under separate contracts not administered by the Construction Manager, the Owner shall provide for coordination of such forces with the Work of the Contractor, who shall cooperate with them.

6.1.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in this Article 6 and in Articles 3, 10, 11 and 12.

### 6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner's own forces, Construction Manager and other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Construction Manager and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's own forces or other Contractors' completed or partially completed construction is

fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed construction or partially completed construction or to property of the Owner or other Contractors as provided in Subparagraph 10.2.5.

6.2.5 Claims and other disputes and matters in question between the Contractor and other Contractors shall be subject to the provisions of Paragraph 4.7 provided the other Contractors have reciprocal obligations.

6.2.6 The Owner and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.14.

### 6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises among the Contractor, other Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Construction Manager, in consultation with the Architect, determines to be just.

## ARTICLE 7 CHANGES IN THE WORK

### 7.1 CHANGES

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor; a Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

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

7.1.4 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 Contractor, the applicable unit prices shall be equitably adjusted.

## 7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect and Contractor, stating their agreement upon all of the following:

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

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

## 7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Subparagraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager and

Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Construction Manager on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 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 Contractor or others;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 additional costs of supervision and field office personnel directly attributable to the change.

7.3.7 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 Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager. 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 net increase, if any, with respect to that change.

7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Construction Manager for determination.

**7.3.9** When the Owner and Contractor agree, with the determination made by the Construction Manager concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately issued through the Construction Manager and shall be recorded by preparation and execution of an appropriate Change Order.

#### **7.4 MINOR CHANGES IN THE WORK**

**7.4.1** The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order issued through the Construction Manager and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

### **ARTICLE 8 TIME**

#### **8.1 DEFINITIONS**

**8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**8.1.2** The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

**8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 9.8.

**8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### **8.2 PROGRESS AND COMPLETION**

**8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

**8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### **8.3 DELAYS AND EXTENSIONS OF TIME**

**8.3.1** If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner's own forces, Construction Manager, Architect, any of the other Contractors or an employee of any of them, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending arbitration, or by other causes which the Architect, based on the recommendation of the Construction Manager, determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

**8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.7.

**8.3.3** This Paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

### **ARTICLE 9 PAYMENTS AND COMPLETION**

#### **9.1 CONTRACT SUM**

**9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

#### **9.2 SCHEDULE OF VALUES**

**9.2.1** Before the first Application for Payment, the Contractor shall submit to the Architect, through the Construction Manager, a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

#### **9.3 APPLICATIONS FOR PAYMENT**

**9.3.1** At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment for Work completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner, Construction Manager or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.

**9.3.1.1** Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

**9.3.1.2** Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

**9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **9.4 CERTIFICATES FOR PAYMENT**

**9.4.1** The Construction Manager will assemble a Project Application for Payment by combining the Contractor's applications with similar applications for progress payments from other Contractors and, after certifying the amounts due on such applications, forward them to the Architect within seven days.

**9.4.2** Within seven days after the Architect's receipt of the Project Application for Payment, the Construction Manager and Architect will either issue to the Owner a Project Certificate for Payment, with a copy to the Contractor, for such amount as the Construction Manager and Architect determine is properly due, or notify the Contractor and Owner in writing of the Construction Manager's and Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1. Such notification will be forwarded to the Contractor by the Construction Manager.

**9.4.3** The issuance of a separate Certificate for Payment or a Project Certificate for Payment will constitute representations made separately by the Construction Manager and Architect to the Owner, based on their individual observations at the site

and the data comprising the Application for Payment submitted by the Contractor, that the Work has progressed to the point indicated and that, to the best of the Construction Manager's and Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Construction Manager or Architect. The issuance of a separate Certificate for Payment or a Project Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a separate Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**9.5.1** The Construction Manager or Architect may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Subparagraph 9.4.3 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager or Architect will notify the Contractor and Owner as provided in Subparagraph 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Construction Manager and Architect will promptly issue a Certificate for Payment for the amount for which the Construction Manager and Architect are able to make such representations to the Owner. The Construction Manager or Architect may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

**9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

## 9.6 PROGRESS PAYMENTS

**9.6.1** After the Construction Manager and Architect have issued a Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

**9.6.2** The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

**9.6.3** The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

**9.6.4** Neither the Owner, Construction Manager nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

**9.6.5** Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

**9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

## 9.7 FAILURE OF PAYMENT

**9.7.1** If, through no fault of the Contractor, 1) the Construction Manager and Architect do not issue a Project Certificate for Payment within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment or 2) the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Construction Manager and Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be accomplished as provided in Article 7.

## 9.8 SUBSTANTIAL COMPLETION

**9.8.1** 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.

**9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

**9.8.3** Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Construction Manager and Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

## 9.9 PARTIAL OCCUPANCY OR USE

**9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.3.11 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.

**9.9.2** Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## 9.10 FINAL COMPLETION AND FINAL PAYMENT

**9.10.1** Upon completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager will forward the notice and Application to the Architect who will promptly make such inspection. When the Architect, based on the recommendation of the Construction Manager, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the Work has been completed in

accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by 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 Contractor 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 Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor 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 Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims. The making of final payment shall constitute a waiver of Claims by the Owner as provided in Subparagraph 4.4.5.

**9.10.4** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final

Application for Payment. Such waivers shall be in addition to the waiver described in Subparagraph 4.7.5.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### 10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors.

10.1.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, Construction Manager and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Architect on which arbitration has not been demanded, or by arbitration under Article 4.

10.1.3 The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

10.1.4 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Construction Manager, Architect, their 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 in the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, 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 Owner, anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner 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 Subparagraph 10.1.4.

10.1.5 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the Contractor, the Contractor shall, upon recognizing the

condition, immediately stop Work in the affected area and report the condition to the Owner, Construction Manager and Architect in writing. The Owner, Contractor, Construction Manager and Architect shall then proceed in the same manner described in Subparagraph 10.1.2.

10.1.6 The Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection.

### 10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work of 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 Contractor or the Contractor's Subcontractors or Sub-subcontractors;
- .3 other property at the site 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; and
- .4 construction or operations by the Owner or other Contractors.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

**10.2.4** When use for storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

**10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect.

**10.2.7** The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

### **10.3 EMERGENCIES**

**10.3.1** In an emergency affecting safety or persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.7 and Article 7.

## **ARTICLE 11 INSURANCE AND BONDS**

### **11.1 CONTRACTOR'S LIABILITY INSURANCE**

**11.1.1** The Contractor 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 Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor 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 acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured 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 Contractor, 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 Contractor's obligations under Paragraph 3.18.

**11.1.2** The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents 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.

**11.1.3** Certificates of insurance acceptable to the Owner shall be submitted to the Construction Manager for transmittal to the Owner with a copy to the Architect prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 11.1 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 and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

### **11.2 OWNER'S LIABILITY INSURANCE**

**11.2.1** 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 the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract documents.

### 11.3 PROPERTY INSURANCE

**11.3.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary 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 as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.3 to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

**11.3.1.1** 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 Architect's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

**11.3.1.2** If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor, then the Owner shall bear all reasonable costs properly attributable thereto.

**11.3.1.3** If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles.

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**11.3.1.4** Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

**11.3.1.5** The insurance required by this Paragraph 11.3 is not intended to cover machinery, tools or equipment owned or rented by the Contractor which are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment which shall be subject to the provisions of Subparagraph 11.3.7.

**11.3.2 Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents 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, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

**11.3.3 Loss of Use Insurance.** 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 Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

**11.3.4** If the Contractor 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, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

**11.3.5** If during the Project construction period the Owner insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.3.7 for damages caused by fire or other perils covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**11.3.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Paragraph 11.3. 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 Contractor.

**11.3.7 Waivers of Subrogation.** The Owner and Contractor waive all rights against each other and against the Construction Manager, Architect, Owner's other Contractors and own forces described in Article 6, if any, and the subcontractors, sub-subcontractors, consultants, agents and employees of any of them, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Paragraph 11.3 or other property insurance applicable to the Work, except such rights as the Owner and Contractor may have to the proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, Owner's separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. 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.

**11.3.8** A loss insured under 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 Subparagraph 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**11.3.9** If required in writing by a party in interest, the Owner as fiduciary 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 Paragraph 4.9. If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Change Order.

**11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection be made, arbitrators shall be chosen as provided in Paragraph 4.9. The Owner as fiduciary shall, in that case, make settlement with insurers in accordance with directions of such arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

**11.3.11** Partial occupancy or use in accordance with Paragraph 9.9 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 Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

#### **11.4 PERFORMANCE BOND AND PAYMENT BOND**

**11.4.1** The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

**11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **12.1 UNCOVERING OF WORK**

**12.1.1** If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by either, be uncovered for their observation and be replaced at the Contractor's expense without change in the Contract Time.

**12.1.2** If a portion of the Work has been covered which the Construction Manager or Architect has not specifically requested to observe prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or one of the other Contractors in which event the Owner shall be responsible for payment of such costs.

#### **12.2 CORRECTION OF WORK**

**12.2.1** The Contractor shall promptly correct Work rejected by the Construction Manager or Architect 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 Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the

• Construction Manager's and Architect's services and expenses made necessary thereby.

**12.2.2** If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after date for commencement of warranties established under

Paragraph 9.9.1, 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 Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

**12.2.3** The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**12.2.4** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect issued through the Construction Manager, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

**12.2.5** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or other Contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**12.2.6** Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor 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 Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **12.3 ACCEPTANCE OF NONCONFORMING WORK**

**12.3.1** If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **13.1 GOVERNING LAW**

**13.1.1** The Contract shall be governed by the law of the place where the Project is located.

### **13.2 SUCCESSORS AND ASSIGNS**

**13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### **13.3 WRITTEN NOTICE**

**13.3.1** Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

### **13.4 RIGHTS AND REMEDIES**

**13.4.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**13.4.2** No action or failure to act by the Owner, Construction Manager, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### 13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so the Construction Manager and Architect may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If the Construction Manager, Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so the Construction Manager and Architect may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 13.5.3.

13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses.

13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

13.5.5 If the Construction Manager or Architect is to observe tests, inspections or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing.

13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### 13.6 INTEREST

13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the

absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 As between the Owner and Contractor:

- 1 **Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- 2 **Between Substantial Completion and Final Certificate for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
- 3 **After Final Certificate for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Paragraph 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### 14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contract may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

- 1 issuance of an order of a court or other public authority having jurisdiction;
- 2 an act of government, such as a declaration of national emergency, making material unavailable;

- .3 because the Construction Manager or Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.2, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;
- .4 if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less; or
- .5 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Subparagraph 2.2.1.

**14.1.2** If one of the above reasons exists, the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

**14.1.3** If the Work is stopped for a period of 60 days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.2.

#### **14.2 TERMINATION BY THE OWNER FOR CAUSE**

**14.2.1** The Owner may terminate the Contract if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**14.2.2** When any of the above reasons exist, the Owner, after consultation with the Construction Manager, and upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Paragraph 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient.

**14.2.3** When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Architect after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

#### **14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**14.3.2** An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of this Contract.

**14.3.3** Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

**EXHIBIT "B"**

**PAYMENT APPLICATION**

TO: WEST BRANCH AREA SCHOOL DISTRICT

346 ALPORT CUTOFF R. R. #2, Box 184

MORRISDALE, PA. 16656-9312

A/c: Accounts Payable

FROM: Degol Carpet

881 Old Route 220 North

Dimonaville, PA 16935

FOR: CARPET &amp; RESILIENT FLOOR COVERINGS

**CONTRACTOR'S SUMMARY OF WORK**

Application is made for payment as shown below.

Continuation Page is attached.

1. CONTRACT AMOUNT	\$3142,555.00
2. SUM OF ALL CHANGE ORDERS	(\$11,377.00)
3. CURRENT CONTRACT AMOUNT	\$3131,178.00
4. TOTAL COMPLETED AND STORED (Column G on Continuation Page)	\$3128,498.52
5. RETAINAGE: a. 5.00% of Completed Work (Columns D + E on Continuation Page) b. 5.00% of Material Stored (Column F on Continuation Page)	\$5,474.83
Total Retainage (Line 5a + 5b of Column I on Continuation Page)	\$5,474.83
6. TOTAL COMPLETED AND STORED LESS RETAINAGE (Line 4 minus Line 5 Total)	\$3123,021.59
7. LESS PREVIOUS PAYMENT APPLICATIONS (Line 6 from prior Application)	\$104,263.17
8. PAYMENT DUE (Line 3 minus Line 6)	14,914.83
SPARS 31	1/2 occ. <i>1/2 occ.</i>

Contractor's signature below is his assurance to Owner, concerning the payment herein applied for, that: (1) the Work has been performed as required in the Contract Documents, (2) all sums previously paid to Contractor under the Contract have been used to pay Contractor's costs for labor, materials and other obligations under the Contract for Work previously paid for, and (3) Contractor is legally entitled to this payment.

CONTRACTOR: *Joe S. Degol* Date: 08/22/2005  
By: *Joe S. Degol* PROJECT MANAGER

State of: PENNSYLVANIA  
County of: BLAIR

Subscribed and sworn to before  
me this 25th day of August 2005

Notary Public: *Marklyn P. Parker* Notary Public  
Duncansville Borough, Blair County

My Commission Expires Nov. 10, 2009  
W/C Commission Expires 11/10/08  
Marklyn Parker, Notary Public, Duncansville Borough, Blair County

**CERTIFICATION**

The Construction Manager and Architect's signatures below are their assurance to Owner, concerning the payment herein applied for, that: (1) they have inspected the Work represented by this Application, (2) such Work has been completed to the extent indicated in this Application, and the quality of workmanship and materials conforms with the Contract Documents, (3) this Application for Payment accurately states the amount of Work completed and payment due therefor, and (4) Construction Manager and Architect know of no reason why payment should not be made.

APPLICATION FOR PAYMENT  
CERTIFIED AMOUNT: *14,914.83* *14,914.83* *14,914.83*  
(The certified amount is different from the payment due, you should attach an explanation.)  
Initial all the figures that are changed to match the certified amount.)

CONSTRUCTION MANAGER: *Joe S. Degol* Date: 08/22/2005  
By: *Joe S. Degol*

ARCHITECT: *Marklyn P. Parker* Date: 08/22/2005  
By: *Marklyn P. Parker*  
Neither this Application for Payment applied for herein is assignable or negotiable. Payment shall be made only to Contractor, and is without prejudice to any rights of Owner or Contractor under the Contract Documents or otherwise.

PAYMENT APPLICATION  
OSS, INC. DOCUMENT

Page 1

**ROTH MARZ PARTNERSHIP P.C.**

ARCHITECTS  
INTERIORS  
PLANNERS  
PROJECT MANAGERS

Dale H. Roth, President  
Robert L. Marz, Vice President

3505 Chapin Street  
Erie, PA 16508  
Ph: (814) 860-8356  
Fax: (814) 860-8606  
Info@rothmarz.com

September 9, 2005

Mr. Paul Carr  
West Branch Area School District  
326 Airport Cutoff Box 289  
Morrisdale, PA 16858

Dear Paul:

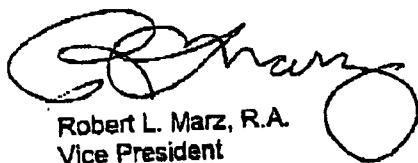
Enclosed is payment application no. 7 from DeGol. I have reduced the amount of their request by (\$3,843.69) to allow for a balance to completion of \$12,000.

This amount will allow for 150% of the Library Carpet Replacement + the balance of floor prep not used (\$1,681.48).

Carpet \$6,000 x 150% =	\$ 9,000.00
Labor to remove and replace	
Furniture/Books =	1,318.52
Floor prep not used =	<u>1,681.48</u>
	\$12,000.00

Please call me if you have any questions.

Sincerely,



Robert L. Marz, R.A.  
Vice President

RLM/cd

Copy: DeGol Carpet  
Dave Marsden

**EXHIBIT "C"**



## CONTINUATION PAGE

Page 2 of 3

01-22-2007 08:17

FROM-DEGOL CARPET

+8146852181 T-178 P. 003/007 F-886

## PROJECT:

WEST BRANCH JRSR HIGH SCHOOL

CARPET &amp; RESILIENT FLOOR COVERINGS

DATE OF APPLICATION:

04/18/2005

PERIOD THRU:

04/30/2005

PROJECT #: 03408

Payment Application containing Contractor's signature is attached.

ITEM #	WORK DESCRIPTION*	SCHEDULED AMOUNT	COMPLETED WORK		STORED MATERIALS (NOT IN D OR E)	TOTAL COMPLETED AND STORED (D + E + F)	PERCENT COMPLETE (G/C)	BALANCE TO COMPLETION (C-G)	RETAINAGE (IF VARIABLE)
			AMOUNT PREVIOUS PERIODS	THIS PERIOD					
1-L	CARPET #1 - LABOR	\$2,750.00	\$400.00	\$1,150.00	\$0.00	\$1,550.00	55%	\$1,200.00	\$165.00
1-M	CARPET #1 - MATERIAL	\$28,620.00	\$25,754.80	\$3,065.40	\$0.00	\$28,820.00	100%	\$0.00	\$2,882.00
2-L	CARPET #1 BASE - LABOR	\$520.50	\$0.00	\$210.00	\$0.00	\$210.00	40%	\$310.50	\$21.00
2-M	CARPET #1 BASE - MATERIAL	\$3,383.25	\$2,544.75	\$838.50	\$0.00	\$3,383.25	100%	\$0.00	\$338.33
3-L	CARPET #2 - LABOR	\$935.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$935.00	\$0.00
3-M	CARPET #2 - MATERIAL	\$8,258.60	\$0.00	\$8,258.60	\$0.00	\$8,258.60	100%	\$0.00	\$825.86
4-L	CARPET #2 BASE - LABOR	\$87.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$87.00	\$0.00
4-M	CARPET #2 BASE - MATERIAL	\$493.00	\$0.00	\$493.00	\$0.00	\$493.00	100%	\$0.00	\$49.30
5-L	CARPET #3 - LABOR	\$211.75	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$211.75	\$0.00
5-M	CARPET #3 - MATERIAL	\$1,998.15	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$1,998.15	\$0.00
6-L	VCT - LABOR	\$14,105.00	\$10,605.35	\$0.00	\$0.00	\$10,605.35	75%	\$3,488.85	\$1,080.54
6-M	VCT - MATERIAL	\$34,255.00	\$34,255.00	\$0.00	\$0.00	\$34,255.00	100%	\$0.00	\$3,425.50
7-L	BASE - LABOR	\$2,338.20	\$816.30	\$0.00	\$0.00	\$816.30	35%	\$1,521.90	\$81.63
7-M	BASE - MATERIAL	\$5,455.60	\$4,158.00	\$0.00	\$0.00	\$4,158.00	76%	\$1,297.80	\$415.80
8-L	RUBBER ATHLETIC FLOOR - LABOR	\$1,124.40	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$1,124.40	\$0.00
8-M	RUBBER ATHLETIC FLOOR - MATERIAL	\$10,588.10	\$10,588.10	\$0.00	\$0.00	\$10,588.10	100%	\$0.00	\$1,058.81
	SUB-TOTALS	\$115,323.75	\$89,122.10	\$14,015.60	\$0.00	\$103,137.60	89%	\$12,188.15	\$10,313.77

CONTINUATION PAGE FOR PAYMENT APPLICATION

QSS, INC. DOCUMENT



**EXHIBIT "D"**

## PAYMENT APPLICATION

TO: WEST BRANCH AREA SCHOOL DISTRICT  
 358 ALLPORT CUTOFF R. R. #2, Box 194  
 MORRISDALE, PA 16858-9312  
 Attn: Accounts Payable

FROM: Degol Carpet  
 451 Old Route 220 North  
 Duncansville, PA 16635

FOR: CARPET & RESILIENT FLOOR COVERINGS

PROJECT NAME AND LOCATION

WEST BRANCH JVR/S HIGH SCHOOL.  
 CARPET & RESILIENT FLOOR COVERIN

358 ALLPORT CUTOFF

MORRISDALE, PA 16858

ARCHITECT: ROTHMARS PARTNERSHIP, PC

3505 CHAPIN STREET

ERIE, PA 16508

CONSTRUCTION MANAGER: QUANDEL GROUP, INC.

## CONTRACTOR'S SUMMARY OF WORK

Application is made for payment as shown below.  
 Continuation Page is attached.

## 1. CONTRACT AMOUNT

\$142,555.00

\$51,728.00

\$130,827.00

\$130,827.00

\$0.00

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\$0.00

NAME AND LOCATION

CARPET &amp; RESILIENT FLOOR COVERIN

358 ALLPORT CUTOFF

MORRISDALE, PA 16858

DATE OF CONTRACT: 12/13/2003

PROJECT #: 03408

CONSTRUCTION MANAGER: PROJECT MANAGER

ARCHITECT: CONTRACTOR

CONTRACTOR

CONTRACTOR

CONTRACTOR

CONTRACTOR

CONTRACTOR

Contractor's signature below is his assurance to Owner, concerning the payment herein applied for.  
 That: (1) the Work has been performed as required in the Contract Documents, (2) all sums previously paid to Contractor under the Contract have been used to pay Contractor's costs for labor, materials and other obligations under the Contract for Work previously paid for, and (3) Contractor is legally entitled to this payment.

CONTRACTOR: DEGOL CARPET

3Y

PROJECT MANAGER

1/1/08

Date: 03/15/2006

SUBSCRIBED AND SWEORN TO BEFORE

ME THIS 16<sup>th</sup> day of March 2008  
 NOTARY PUBLIC: Marilyn P. Rader  
 My Commission Expires: 11/10/08

## CERTIFICATION

The Construction Manager and Architect's signatures below are their assurance to Owner, concerning the payment herein applied for, that: (1) they have inspected the Work represented by this Application, (2) such Work has been completed to the extent indicated in this Application, and the quality of workmanship and materials conforms with the Contract Documents, (3) this Application for Payment accurately states the amount of Work completed and payment due therefor, and (4) Construction Manager and Architect know of no reason why payment should not be made.

## CERTIFIED AMOUNT

If the certified amount is different from the payment due, you should attach an explanation.  
 Initial all the figures that are changed to match the certified amount.

## CONSTRUCTION MANAGER:

By:

ARCHITECT:

By:

Neither this Application nor payment applied for herein is assignable or negotiable. Payment shall be made only to Contractor, and is without prejudice to any rights of Owner or Contractor under the Contract Documents or otherwise.

YMENT APPLICATION

QSS, INC. DOCUMENT

## CONTINUATION PAGE

Page 2 of 3

01-22-2007 09:18

FROM-DEGOL CARPET

+8146852181

T-178 P. 006/007 F-886

## PROJECT:

WEST BRANCH JHS/HS HIGH SCHOOL

CARPET &amp; RESILIENT FLOOR COVERINGS

DATE OF APPLICATION:  
PERIOD THRU:  
PROJECT #:S:

APPLICATION #:

8  
03/15/2006  
03/31/2006  
03408

Payment Application containing Contractor's signature is attached.

ITEM #	WCRK DESCRIPTION	SCHEDULED AMOUNT	COMPLETED WORK		STORED MATERIALS (NOT IN D OR E)	TOTAL COMPLETED AND STORED (D - E + F)	PERCENT COMPLETE (G/C)	BALANCE TO COMPLETION (C-G)	RETAINAGE (F VARIABLE)
			AMOUNT PREVIOUS PERIOD	AMOUNT THIS PERIOD					
1-L	CARPET #1 - LABOR	\$2,750.00	\$2,750.00	\$0.00	\$0.00	\$2,750.00	100%	\$0.00	\$0.00
1-M	CARPET #1 - MATERIAL	\$28,820.00	\$28,820.00	\$0.00	\$0.00	\$28,820.00	100%	\$0.00	\$0.00
2-L	CARPET #1 BASE - LABOR	\$520.50	\$520.50	\$0.00	\$0.00	\$520.50	100%	\$0.00	\$0.00
2-M	CARPET #1 BASE - MATERIAL	\$3,383.25	\$3,383.25	\$0.00	\$0.00	\$3,383.25	100%	\$0.00	\$0.00
3-L	CARPET #2 - LABOR	\$935.00	\$935.00	\$0.00	\$0.00	\$935.00	100%	\$0.00	\$0.00
3-M	CARPET #2 - MATERIAL	\$8,258.60	\$8,258.60	\$0.00	\$0.00	\$8,258.60	100%	\$0.00	\$0.00
4-L	CARPET #2 BASE - LABOR	\$87.00	\$87.00	\$0.00	\$0.00	\$87.00	100%	\$0.00	\$0.00
4-M	CARPET #2 BASE - MATERIAL	\$489.00	\$489.00	\$0.00	\$0.00	\$489.00	100%	\$0.00	\$0.00
5-L	CARPET #3 - LABOR	\$211.75	\$211.75	\$0.00	\$0.00	\$211.75	100%	\$0.00	\$0.00
5-M	CARPET #3 - MATERIAL	\$1,988.15	\$1,988.15	\$0.00	\$0.00	\$1,988.15	100%	\$0.00	\$0.00
6-L	VCT - LABOR	\$14,105.00	\$14,105.00	\$0.00	\$0.00	\$14,105.00	100%	\$0.00	\$0.00
6-M	VCT - MATERIAL	\$34,255.00	\$34,255.00	\$0.00	\$0.00	\$34,255.00	100%	\$0.00	\$0.00
7-L	BASE - LABOR	\$2,338.20	\$2,338.20	\$0.00	\$0.00	\$2,338.20	100%	\$0.00	\$0.00
7-M	BASE - MATERIAL	\$5,455.80	\$5,455.80	\$0.00	\$0.00	\$5,455.80	100%	\$0.00	\$0.00
8-L	RUBBER ATHLETIC FLOOR - LABOR	\$1,124.40	\$1,124.40	\$0.00	\$0.00	\$1,124.40	100%	\$0.00	\$0.00
8-M	RUBBER ATHLETIC FLOOR - MATERIAL	\$10,588.10	\$10,588.10	\$0.00	\$0.00	\$10,588.10	100%	\$0.00	\$0.00
	SUB-TOTALS	\$115,323.75	\$115,323.75	\$0.00	\$0.00	\$115,323.75	100%	\$0.00	\$0.00

CONTINUATION PAGE FOR PAYMENT APPLICATION

QSS, INC. DOCUMENT

CONTINUATION PAGE

Payment Application containing Contractor's signature is attached

Page 3 of 3

WEST BRANCH JR/SR HIGH SCHOOL  
CARBET & PESIDENT JR/SR HIGH SCHOOL

## CONTINUATION PAGE FOR PAYMENT APPLICATION

ASS, INC. DOCUMENT

**FILED**

**MAR 14 2007**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL ACTION - LAW

DAVID A. DEGOL, DONALD A. DEGOL, )  
DENNIS W. DEGOL, BRUNO A DEGOL, )  
JR., GLORIA J. BURGAN, t/a DEGOL )  
CARPET a Fictitious Name, a/k/a DEGOL )  
BROTHERS CARPET, )  
Plaintiffs ) No.: 07-181-CD  
)  
v. )  
)  
WEST BRANCH AREA SCHOOL )  
DISTRICT, )  
Defendant )

**FILED**

APR 13 2007  
m/10:30 (60)  
William A. Shaw  
Prothonotary/Clerk of Courts  
1 cent to Acct

**NOTICE TO PLEAD**

**TO: David A. DeGol, et al.,  
c/o Jackie Atherton Bernard, Esquire  
Grappone Law Offices  
411 A Logan Blvd., Lakemont  
Altoona, PA 16602**

You are hereby notified to plead to the enclosed New Matter within twenty (20) days from the service hereof or a Default Judgment may be entered against you.

Respectfully submitted,

MILLER & HALL

By \_\_\_\_\_

  
Stuart L. Hall, Esquire  
Attorney for Defendant  
138 East Water Street  
Lock Haven, PA 17745  
(570) 748-4802

Date: April 10, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL ACTION - LAW

DAVID A. DEGOL, DONALD A. DEGOL, )  
DENNIS W. DEGOL, BRUNO A DEGOL, )  
JR., GLORIA J. BURGAN, t/a DEGOL )  
CARPET a Fictitious Name, a/k/a DEGOL )  
BROTHERS CARPET, )  
Plaintiffs ) No.: 07-181-CD  
v. )  
WEST BRANCH AREA SCHOOL )  
DISTRICT, )  
Defendant )

 ORIGINAL

ANSWER WITH NEW MATTER TO AMENDED COMPLAINT

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted in part, denied in part. It is admitted that Plaintiffs performed carpet and resilient flooring work on the Junior/Senior High building. It is denied that Plaintiffs achieved timely substantial completion on or before May 10, 2005.

6. The contract including the general conditions and other documents attached to Plaintiff's Amended Complaint as Exhibit "A" are written documents which speak for themselves.

7. Articles 5.1 and 5.3 of the contract, as well as all terms of the contract, general conditions and other documents attached to the Complaint as Plaintiffs' Exhibit "A" are written documents which speak for themselves and therefore no response is required to the allegations in this paragraph. To the extent a response is deemed required, the averments are denied.

8. Section 9.4.2 and 9.5, et seq., of the General Conditions of the Construction Contract are written documents which speak for themselves. In addition, the averments in this paragraph state legal conclusions to which no responses are required. By way of further response, the alleged mandate to provide reasons for withholding the certification is an alleged requirement of the construction manager and/or architect, rather than the owner.

9. Sections 9.4.2 and 9.5, et seq., of the General Conditions of the Construction Contract are written documents, along with the other terms of the contract and general conditions, which speak for themselves and therefore no response is required to the allegations in this paragraph.

10. It is admitted that Article 7.2 states that payments due and unpaid under the contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the project is located. It is denied that Plaintiffs are entitled to any payments or interest. By way of further response, the contract, including the General Conditions and other documents are written documents which speak for themselves.

11. Denied. It is denied that Applications 6, 7 and 8 have been properly submitted to the owner. It is denied Plaintiff is entitled to the amounts requested in these applications. By way of further response it is admitted that the amounts requested have not been paid.

12. Denied. It is denied that Application 7 was certified for payment by the Construction Manager. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the date application was submitted and therefore the averment that it was submitted on August 31, 2005 is denied. By way of further response, the application appears to be dated by Plaintiffs on August 22, 2005. In addition, the Certification attached as Exhibit "B" shows the amount requested was reduced and the reduced amount was noted to be held for library carpet.

13. Denied. It is denied that the architect certified \$14,914.83. The notations on Exhibit "B" indicate to hold that amount for library carpet.

14. Admitted in part, denied in part. It is admitted that Defendant did not make any payments on Application 7. It is denied that any payments are due on this Application. It is also denied that Plaintiffs are owed any money by Defendant. It is denied that Defendant breached the contract.

15. Denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to whether payment Application 6 (Exhibit "C") was submitted on April 30, 2005. By way of further response, the document appears to have been signed on behalf of DeGol Carpet on April 25, 2005 with the Notary showing a date of April 26, 2005. By way of further response, Exhibit "C" does not appear to be signed by the Construction Manager or Architect.

16. Denied. It is denied that Application 6 was certified and approved by the Construction Manager and Architect. Application 6 does not appear to be signed by either the Construction Manager or Architect. It is admitted that Defendant has not made a payment to Plaintiffs on this Application. It is denied Defendant has not provided Plaintiffs with an explanation for withholding payment.

17. Denied. It is denied Application 8 was submitted to Defendant. It is admitted Application 8 purportedly is in the amount of \$7,805.31. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the date Plaintiffs purportedly submitted the application to the Construction Manager. By way of

further response, the purported application appears to be signed and dated March 15, 2006 on behalf of DeGol Carpets and the Notary is dated March 16, 2006. By way of further response, Application 8 was not signed or certified by the Construction Manager or Architect.

18. Denied. It is denied that Application 8 was approved and certified by the Construction Manager or the Architect. It is denied any amount is due under Application 8. It is also denied Plaintiffs were not provided with an explanation for the withholding of this or other payments.

19. Denied. It is denied any payment is due on any of these applications. It is denied that Applications 6 and 8 were submitted to Defendants. It is admitted no payments were made by Defendant to Plaintiffs on these applications.

20. Denied. It is denied payments are due and owing on Applications 6, 7 and 8. Any suggestion that Plaintiffs were not made aware by Defendant of the reasons payments were not made on the amounts Plaintiffs allege are due is denied.

21. Denied. It is denied any payment is due on these applications. Neither Application 6 nor Application 8 were certified by the Construction Manager or the Architect. Any suggestion Plaintiffs have not been informed why Defendant has not paid any amounts Plaintiffs allege are due is denied.

22. Denied. It is denied that Defendant has not responded to the alleged inquiries of Plaintiff. By way of further response, Defendant has informed Plaintiffs of the defective and unfinished work of Plaintiffs. It is denied any balances are due Plaintiffs under the contract.

23. Denied. It is specifically denied Defendant owes Plaintiff the sum of \$39,177.78 with interest or any other amount.

24. Denied. The averments in this paragraph state legal conclusions to which no responses are required. To the extent responses are deemed required, the averments are denied.

#### **Count - Breach of Contract**

25. Paragraphs One (1) through Twenty-four (24) of this Answer with New Matter are hereby incorporated by reference as if fully set forth.

26. Denied. It is denied that Plaintiffs have fully and timely performed its work in a workmanlike manner in conformance with the specifications under the contract. By way of further response, Plaintiffs have not completed their work and much of their work was of an unworkmanlike condition. Plaintiffs' work resulted in uneven floors, sections of tile in numerous locations which is of a color different than the surrounding tile, improperly laid carpet and other unworkmanlike work.

27. Denied. It is denied that Plaintiffs have performed the work set forth in Application 6 through 8 in a workmanlike manner. It is denied Plaintiffs are owed any amount on Application 6 through 8. Any suggestion that Defendant breached the terms of the contract is denied.

28. Denied. It is denied that there is any balance due and owing to Plaintiffs. By way of further response, the work for which Plaintiffs seek payment was either unfinished or done in an unworkmanlike manner. By way of further response, the cost to remedy the defective and/or unfinished work of Plaintiffs is in excess of the amount sought by Plaintiffs.

30. Denied. It is denied that Defendant owes Plaintiffs any amount  
THEREFORE, West Branch Area School District respectfully requests this Honorable Court to enter judgment in its favor and against Plaintiffs.

#### **Count II - Unjust Enrichment**

31. Paragraphs One (1) through Thirty (30) of this Answer with New Matter are hereby incorporated by reference as if fully set forth.

32. Admitted. By way of further response, the installation of carpet and resilient flooring was done in an unworkmanlike manner and will need to be replaced. In addition, the flooring has numerous areas of tile which is of a different color than the surrounding tile.

33. Denied as stated. It is denied that Defendant owner promised to pay Plaintiffs for work completed in an unworkmanlike fashion.

34. Denied. It is denied that Plaintiffs performed in a competent or timely manner. By way of further response, Defendant will have to repair, replace and/or complete much of the work for which Plaintiffs seek payment. It is admitted that Defendant refuses to pay the amounts sought by Plaintiffs.

35. Denied. It is denied Defendant has been unjustly enriched in the amount of \$39,177.78. By way of further response, Plaintiffs are not entitled to payment by Defendant of any amount. In addition, much of the work for which Plaintiffs seek payment was done in an unworkmanlike manner, will need to be replaced and/or repaired and/or has not been completed.

THEREFORE, Defendant West Branch Area School District respectfully requests that judgment be entered in its favor and against Plaintiffs.

**Count III - Contract and Subcontractor Payment  
Act (the "Act") 73 P.S. §501, et seq.**

36. Paragraphs One (1) through Thirty-five (35) of this Answer with New Matter are hereby incorporated by reference as if fully set forth.

37-40. The Act is a written document which speaks for itself. In addition, any payment requirements concerning the contract in question are set forth in the contract's

general conditions and other documents. To the extent these paragraphs suggest

Defendant violated the Act, the averments are denied.

41. Denied. No payment is due under payment Application 7 which indicates the amount noted in the application should be held for library carpet.

42. Denied. It is denied that Defendant failed to comply with notice requirements of the Act or the contract. It is also denied there is no good faith claim for withholding the payment. By way of further response, no payment was ever due on Application 6 through 8.

43. Denied. It is denied that owner is liable to Plaintiff for any amount. It is denied that Defendant wrongfully withheld payment and it is denied that Defendant accepted the work in question by virtue of the certification process. By way of further response, Application 6 and 8 were not certified by the Construction Manager or Architect and Application 7 directed that the monies sought be held for library carpet.

44. Denied. It is denied that owner is liable to Plaintiffs for attorneys fees.

45. Denied. It is specifically denied that Plaintiffs fully, timely and as per all specifications completed the work in question. It is also denied that all work was accepted and utilized by Defendant for Defendant's benefit. It is further denied that all conditions precedent to Plaintiffs' entitlement to payment under the contract and under the Act have been fulfilled.

46. Denied. It is denied that Plaintiffs are owed any amount from Defendant. It is denied there is any balance due on Application 6 through 8. It is also denied that Plaintiffs are entitled to interest, penalties, attorneys fees or costs. By way of further response, none of the applications in question were certified for Plaintiffs to be entitled to any amount. By way of further response, Plaintiffs work was defective and done in an unworkmanlike fashion and/or unfinished. In addition to the unsightly appearance of much of the work, Defendant will incur substantial expenses repairing, replacing and finishing the work in question.

THEREFORE, Defendant West Branch Area School District requests judgment in its favor and against Plaintiffs.

**New Matter**

47. Paragraphs One (1) through Forty-six (46) are hereby incorporated by reference as if fully set forth.

48. Application 6 was not certified by either the Construction Manager or the Architect.

49. Application for payment number 8 was not certified by the Construction Manager or the Architect.

50. Application 7 noted that the monies listed should be held for library carpet.

51. Plaintiffs are not entitled to any monies sought.

52. Plaintiffs' unworkmanlike performance resulted in the flooring containing numerous sections of tile which are of a color significantly different from the color of the surrounding tile resulting in an unsightly and unprofessional appearance.

53. The flooring installed by Plaintiffs is not level resulting in the tile being worn unevenly from use of the buffer and other cleaning machines thereby reducing the tile's useful life.

54. Due to the flooring being installed in an unworkmanlike manner, Defendant incurs additional expense attempting to clean and maintain the flooring.

55. Numerous areas of flooring installed by Plaintiffs are so uneven that the legs on the students' desks do not all touch the floor, causing the desks to rock as students sit in them.

56. The carpeting in the library has visible and unsightly seems which will require the carpeting to be removed and replaced.

57. Plaintiffs have not performed the conditions precedent necessary for them to be entitled to any additional payments from Defendant.

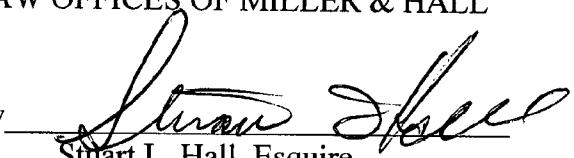
58. Plaintiffs breached the terms of the contract including the general conditions.

59. Despite Defendant's numerous requests, Plaintiffs have failed and refused to correct the defective flooring.

60. Due to Plaintiffs' defective and unworkmanlike work, the flooring at the school is unsightly, uneven, disruptive to the educational process and embarrassing.

THEREFORE, Defendant West Branch Area School District respectfully requests that judgment be entered in its favor and against Plaintiffs.

Respectfully submitted,  
LAW OFFICES OF MILLER & HALL

By 

Stuart L. Hall, Esquire  
Attorney for Defendant  
138 East Water Street  
Lock Haven, PA 17745  
(570) 748-4802

**VERIFICATION**

I, Paul Carr, Business Manager of West Branch Area School District, hereby state that the language of the foregoing Answer with New Matter is that of counsel and not necessarily my own; however, I have read the foregoing document and, to the extent it is based upon information that I have given to counsel, it is true and correct to the best of my knowledge, information, and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsifications to authorities.

West Branch Area School District

By   
Paul Carr,  
Superintendent  
Business Mgr

Date: April 7, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL ACTION - LAW

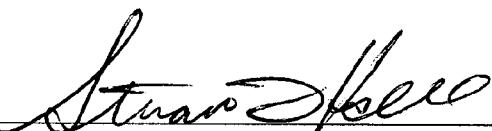
DAVID A. DEGOL, DONALD A. DEGOL,	)	
DENNIS W. DEGOL, BRUNO A DEGOL,	)	
JR., GLORIA J. BURGAN, t/a DEGOL	)	
CARPET a Fictitious Name, a/k/a DEGOL	)	
BROTHERS CARPET,	)	
	Plaintiffs	)
v.	)	No.: 07-181-CD
	)	
WEST BRANCH AREA SCHOOL	)	
DISTRICT,	)	
	Defendant	)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of April, 2007, I served a copy of the foregoing Answer with New Matter upon Jackie Atherton Bernard, Esquire, Grappone Law Offices, 411 A Logan Blvd., Lakemont, Altoona, Pennsylvania 16602, by United States first class mail, postage prepaid, the original being filed with the Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania.

LAW OFFICES OF MILLER & HALL

By \_\_\_\_\_

  
\_\_\_\_\_  
Stuart L. Hall, Esquire  
Attorney for Defendant  
138 East Water Street  
Lock Haven, PA 17745  
(570) 748-4802

Prothonotary/Clerk of Courts  
William A. Shaw

APR 13 2007

FILED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102418  
NO: 07-181-CD  
SERVICE # 1 OF 1  
COMPLAINT

PLAINTIFF: DAVID A. DEGOL, DONALD A. DEGOL, DENNIS W. DEGOL, BRUNO A. DEGO. JR.,  
GLORIDA J. BURGAN t/a DEGOL BROTHERS CARPET

vs.

DEFENDANT: WEST BRANCH AREA SCHOOL DISTRICT

**SHERIFF RETURN**

---

NOW, February 08, 2007 AT 1:55 PM SERVED THE WITHIN COMPLAINT ON WEST BRANCH AREA SCHOOL DISTRICT DEFENDANT AT 356 ALLPORT CUTOFF, MORRISDALE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO CINDY GORMONT, SECRETARY A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER / DEHAVEN

**FILED**  
9/11/2007  
MAY 07 2007  


William A. Shaw  
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	GRAPPONE	10559	10.00
SHERIFF HAWKINS	GRAPPONE	10559	31.00

Sworn to Before Me This

\_\_\_\_ Day of \_\_\_\_\_ 2007

So Answers,

  
Chester A. Hawkins  
Sheriff

FILED  
MAY 07 2007

William A. Shaw  
Prothonotary/Clerk of Courts

DAVID A. DEGOL, DONALD A.  
DEGOL, DENNIS W. DEGOL,  
BRUNO A. DEGOL, JR., GLORIA  
J. BURGAN, T/A DEGOL  
CARPET, a Fictitious Name,  
A/K/A DEGOL BROTHERS  
CARPET

## Plaintiffs

VS.

## **WEST BRANCH AREA SCHOOL DISTRICT.**

**Defendant**

## Answer to New Matter

**Counsel of Record for these  
Parties**

**For the Plaintiff:**

**Jackie Atherton Bernard Esquire  
PA ID # 30370  
GRAPPONE LAW OFFICES  
411 A Logan Blvd., Lakemont  
Altoona, PA 16602  
Telephone No. (814) 946-4405  
Fax No. (814) 946-1396**

**For the Defendant:**

**Stuart L. Hall, Esquire  
MILLER & HALL  
138 East Water Street  
Lock Haven, PA 17745  
570-748-4802**

FILED  
JUN 13 2007  
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William A. Shaw  
Prothonotary/Clerk of Courts  
1 Cent to Att  
(GK)

**GRAPPONE LAW OFFICES**  
JOSEPH A. GRAPPONE  
JACKIE A. BERNARD  
411A LOGAN BLVD., LAKEMONT  
ALTOONA, PENNSYLVANIA 16602

(814) 946-4405

<b>DAVID A. DEGOL, DONALD A. DEGOL, DENNIS W. DEGOL, BRUNO A. DEGOL, JR, GLORIA J. BURGAN, T/A DEGOL CARPET, a Fictitious Name, A/K/A DEGOL BROTHERS CARPET</b>	<b>:</b>	<b>IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA</b>
<b>Plaintiffs</b>	<b>:</b>	<b>:</b>
<b>vs.</b>	<b>:</b>	<b>No.: 07-181-CD</b>
<b>WEST BRANCH AREA SCHOOL DISTRICT</b>	<b>:</b>	<b>Civil Action - Law</b>
<b>Defendant</b>	<b>:</b>	<b>:</b>

**PLAINTIFFS' ANSWER TO NEW MATTER**

And now, come the Plaintiffs, who by and through their counsel, Grappone Law Offices, files this Answer to Defendants New Matter and in support thereof avers as follows:

47. Plaintiffs incorporate the averments of its Complaint and the Answer to New Matter as though set forth in full herein.
48. After reasonable investigation, the certification status of Payment Application # 6 is unknown to Plaintiffs and therefore the Defendant's allegation is denied. Strict proof is demanded at the time of trial.
49. After reasonable investigation, the certification status of Payment Application # 8 is unknown to Plaintiffs and therefore, Defendant's allegation is denied. Strict proof is demanded at the time of trial.
50. Denied. Per Application 7 and the accompanying Architects letter, the Payment Application was approved and certified but reduced by the Architect in the amount of \$3,843.69. Therefore, at the very least, prompt payment of \$14,914.83 was required under the Contract pursuant to certified Application #7.
51. Defendant's allegation is a legal conclusion to which no response is required. To the extent that one is necessary, the same is denied. By way of further answer the Plaintiffs incorporates the averments of its Complaint and the Answer to New Matter as though set forth in full herein. The contract speaks for itself as to payment and performance.
52. Denied. Plaintiff acted professionally, in a workmanlike manner, and consistent with industry standards and customs throughout the course of the Project. By way of further answer, any color variations were the result of several factors including but not limited to indecisiveness by Defendant, untimely notice by Defendant of changes,

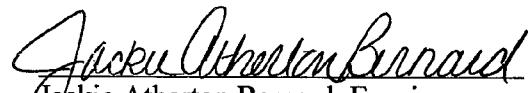
poor oversight of the construction project by Defendant's agents; and poor coordination of other trades by Defendant's agents. The Defendant ordered a change of the tile in certain corridors, requiring the removal of previously laid tile and replacement with new tile. Plaintiffs warned Defendant that exhaustion of extra stock from the same dye lot as the laid tile on changes would risk variations of color because replacement tile would be from a different dye lot. Also, untimely notice of changes resulted in removal of tile and replacement of tile where floors were already waxed, which waxing process causes color variations. Furthermore, Plaintiffs repeatedly advised Defendant's agent that other trades prohibited installation and curing of the tile, as well as caused damage to installed tiles, which Defendant and/or Defendant's agent took no action to prevent or remedy.

53. Denied. Plaintiffs' work was done in a workmanlike manner; according to industry standards; and consistent with the specifications of the contract, as well as the Defendant's direction or the direction of Defendant's agents and representatives. Plaintiffs are unaware of Defendant's proper use or operation of buffers or other cleaning machines and therefore, the allegation is denied.
54. Denied that the floor was installed in an unworkmanlike manner. Plaintiff's work was done in a workmanlike manner; according to industry standards; and consistent with the specifications of the contract, as well as, the Defendant's direction or the direction of Defendant's agents and representatives. Further, after reasonable investigation Plaintiffs are without sufficient knowledge or information to form a belief as to what expense, if any Defendant incurs attempting to clean and maintain the flooring.
55. Denied. Plaintiffs incorporate the answers as set forth in paragraphs 52 and 54. By way of further answer, Plaintiffs demand that Defendant prove, at the time of trial, the materiality and relevance of this allegation to the breach of contract action. Despite Defendant's claims in its Answer to the Complaint, Defendant has used the floor without modification in excess of two years.
56. Denied that any carpet seams in the library are unsightly or that the carpet will require removal and replacement. The carpet in the library was chosen by Defendant or Defendant's agent and is such a variety that seams will be visible. Defendant's use of the floor in excess of the past two years constitutes acceptance of the same. Furthermore, Defendant has failed to replace or modify the floor and instead has used the flooring for the last two years, contrary to the assertions of its Answer to the Complaint.
57. Denied. This is a legal conclusion to which no response is required. To the extent that one is required, Plaintiffs incorporate the averments of its Complaint and the Answer to New Matter as through set forth in full herein.

58. Denied. This is a legal conclusion to which no response is required. To the extent that one is required, Plaintiffs incorporate the averments of the Complaint and the Answer to New Matter as though set forth in full herein
59. Denied. In the interest of attempting to keep an amicable working relationship with the Defendant, Plaintiffs replaced floor in and consistently remedied areas of Defendant complaints despite the fact the Defendant's complaints were without a contractual basis and were untimely. Plaintiffs did all work promptly, in a workmanlike manner, pursuant to contract terms and the Defendant's directions, and consistent with industry standards.
60. Denied. By way of further answer Plaintiff incorporates the averments of the Complaint and the Answer to New Matter as though set forth at length herein. Strict proof is demanded at the time of trial.

WHEREFORE, Plaintiffs respectfully request that judgment be entered in its favor and against the Defendant.

Respectfully submitted,



Jackie Atherton Bernard, Esquire  
Grappone Law Offices  
Attorney for the Plaintiffs

## VERIFICATION

I, David DeGol, duly authorized agent of DeGol Carpet, a/k/a DeGol Brothers Carpet, do hereby verify the statements made in the foregoing Answers to New Matter are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.



---

David DeGol t/a DeGol Carpet a/k/a  
DeGol Brothers Carpet

**CERTIFICATE OF SERVICE**

I, Jackie Atherton Bernard, Esquire, of Grappone Law Office do hereby certify that I have served on the Defendant in the above referenced matter a true and correct copy of Plaintiff's Answer to New Matter on their attorney of record as follows:

Stuart L. Hall, Esquire  
138 East Water Street  
Lock Haven, PA 17745

By sending same United States First Class Mail, postage prepaid, on June 13<sup>th</sup>, 2007.

Jackie Atherton Bernard  
Jackie Atherton Bernard, Esquire  
Grappone Law Office  
411 A Logan Blvd., Lakemont  
Altoona, PA 16602

Prothonotary/Clerk of Courts  
William A. Shaw

JUN 13 2007

FILED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL ACTION - LAW

DAVID A. DEGOL, DONALD A. )  
DEGOL, DENNIS W. DEGOL, )  
BRUNO A DEGOL, JR., GLORIA )  
J. BURGAN, t/a DEGOL BROTHERS )  
CARPET, a Fictitious Name, )  
Plaintiffs )  
v. )  
WEST BRANCH AREA SCHOOL )  
DISTRICT, )  
Defendant )

 ORIGINAL

No.: 07-181-CD

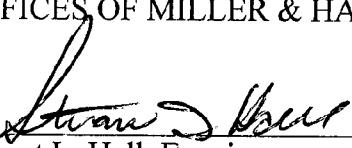
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JUN 21 2007  


William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of June, 2007, I served a copy of Defendant West Branch Area School District's First Set of Interrogatories Directed to Plaintiff upon Jackie Bernard, Esquire, Grappone Law Offices, 411 A Logan Blvd., Lakemont, Altoona, Pennsylvania 16602, by United States first class mail, postage prepaid.

LAW OFFICES OF MILLER & HALL

By 

Stuart L. Hall, Esquire  
Attorney for Defendant  
138 East Water Street  
Lock Haven, PA 17745  
(570) 748-4802

FILED

JUN 21 2007

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL ACTION - LAW

DAVID A. DEGOL, DONALD A. )  
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Plaintiffs )  
 )  
v. )  
 )  
WEST BRANCH AREA SCHOOL )  
DISTRICT, )  
Defendant )

 ORIGINAL

No.: 07-181-CD

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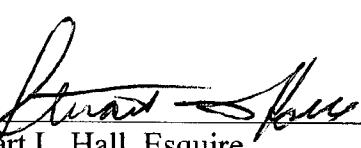
William A. Shaw  
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that on the 19<sup>th</sup> day of June, 2007, I served a copy of Defendant West Branch Area School District's First Request for Production of Documents Directed to Plaintiffs upon Jackie Bernard, Esquire, Grappone Law Offices, 411 A Logan Blvd., Lakemont, Altoona, Pennsylvania 16602, by United States first class mail, postage prepaid.

LAW OFFICES OF MILLER & HALL

By \_\_\_\_\_

  
Stuart L. Hall, Esquire  
Attorney for Defendant  
138 East Water Street  
Lock Haven, PA 17745  
(570) 748-4802

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**JUN 21 2007**

William A. Shaw  
Prothonotary/Clerk of Courts

DAVID A. DEGOL, DONALD A.  
DEGOL, DENNIS W. DEGOL,  
BRUNO A. DEGOL, JR, GLORIA  
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CARPET, a Fictitious Name,  
A/K/A DEGOL BROTHERS  
CARPET

Plaintiffs

vs.

WEST BRANCH AREA SCHOOL  
DISTRICT,

Defendant

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

:

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: No.: 07-181-CD

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: Civil Action - Law

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William A. Shaw  
Prothonotary/Clerk of Courts

1 CIVIL TO

ATTY

TO: PROTHONOTARY OF CLEARFIELD COUNTY:

**PRAECIPE TO DISCONTINUE**

Please discontinue the above referenced matter with prejudice.

*Jackie Atherton Bernard*  
Jackie Atherton Bernard, Esquire  
Grappone Law Office  
411 S Logan Blvd., Ste 1  
Altoona, PA 16602  
(814) 946-4405

GRAPPONE LAW OFFICES  
JOSEPH A. GRAPPONE  
JACKIE A. BERNARD  
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ALTOONA, PENNSYLVANIA 16602  
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DAVID A. DEGOL, DONALD A. DEGOL, DENNIS W. DEGOL, BRUNO A. DEGOL, JR, GLORIA J. BURGAN, T/A DEGOL CARPET, a Fictitious Name, A/K/A DEGOL BROTHERS CARPET	:	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
vs.	:	
WEST BRANCH AREA SCHOOL DISTRICT,	:	No.: 07-181-CD
Defendant	:	Civil Action - Law

### CERTIFICATE OF SERVICE

I, Jackie Atherton Bernard, Esquire, of Grappone Law Office do hereby certify that I have served on Defendant in the above referenced matter a true and correct copy of Plaintiff's Preacipe to Discontinue on their attorney of record as follows:

Stuart L. Hall, Esquire  
138 East Water Street  
Lock Haven, PA 17745

AND

Allen Levin, Esquire  
27 West 3<sup>rd</sup> Street  
P.O. Box 231  
Lewistown, PA 17044-0231

By sending same United States First Class Mail, postage prepaid, on May 7<sup>th</sup>, 2009.

  
 Jackie Atherton Bernard, Esquire  
 Grappone Law Office  
 411 A Logan Blvd., Lakemont  
 Altoona, PA 16602

GRAPPONE LAW OFFICES  
 JOSEPH A. GRAPPONE  
 JACKIE A. BERNARD  
 411 A LOGAN BLVD., LAKEMONT  
 ALTOONA, PENNSYLVANIA 16602  
 (814) 946-4405

Protective/Clerk of Courts  
William A. Shaw

MAY 08 2009

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