
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported):

August 25, 2005

SKECHERS U.S.A., INC.

(Exact name of registrant as specified in its charter)

Delaware

001-14429

95-4376145

(State or other jurisdiction
of incorporation)

(Commission
File Number)

(I.R.S. Employer
Identification No.)

228 Manhattan Beach Boulevard, Manhattan
Beach, California

90266

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code:

(310) 318-3100

Not Applicable

Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry into a Material Definitive Agreement.

On August 25, 2005, Duncan Investments, LLC, a wholly owned subsidiary of Skechers U.S.A., Inc. (the "Company"), entered into a construction agreement with Morley Construction Company ("Morley"). Under the terms of the agreement, Morley is responsible as the general contractor for the construction of the Company's new corporate facility in Manhattan Beach, California (the "Facility"). The agreement has a guaranteed maximum payment clause in which Morley agrees that the construction cost of the Facility will not exceed approximately \$18.1 million, which amount is subject to change based on agreed upon changes to the scope of work. Morley will be responsible for covering any costs in excess of the guaranteed maximum price. If the ultimate cost of the project is less than the guaranteed maximum price of \$18.1 million, then a portion of the cost savings will be shared with Morley. Morley has no material relationship with the Company or any of its affiliates.

Item 9.01 Financial Statements and Exhibits.

(c) Exhibits

The following exhibits are filed as part of this report:

10.1 Agreement dated August 25, 2005 between Duncan Investments, LLC, a wholly owned subsidiary of the Registrant, and Morley Construction Company regarding 330 South Sepulveda Boulevard, Manhattan Beach, California.

10.2 General Conditions of the Contract for Construction regarding 330 South Sepulveda Boulevard, Manhattan Beach, California.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

SKECHERS U.S.A., INC.

August 29, 2005

By: /s/ David Weinberg

*Name: David Weinberg
Title: Chief Financial Officer*

Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
10.1	Agreement dated August 25, 2005 between Duncan Investments, LLC, a wholly owned subsidiary of the Registrant, and Morley Construction Company regarding 330 South Sepulveda Boulevard, Manhattan Beach, California.
10.2	General Conditions of the Contract for Construction regarding 330 South Sepulveda Boulevard, Manhattan Beach, California.

AIA Document A111 — 1997

Standard Form of Agreement Between Owner and Contractor

Where the basis for payment is the COST OF THE WORK PLUS A FEE with a negotiated Guaranteed Maximum Price

AGREEMENT made as of the 25th day of August in the year 2005
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

Duncan Investments, LLC
225 South Sepulveda Blvd.
Manhattan Beach, CA 90266

and the Contractor:
(Name, address and other information)

Morley Construction Company
2901 28th Street, Suite 100
Santa Monica, CA 90405

The Project is:
(Name and location)

Skechers Office Building
330 South Sepulveda Blvd.
Manhattan Beach, CA 90266

The Architect is:
(Name, address and other information)

David Forbes Hibbert AIA

1544 20th Street, Suite 103
Santa Monica, CA 90404

The Owner and Contractor agree as follows.

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 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement 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.)

If, prior to commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

§ 4.2 The Contract Time shall be measured from the date of commencement. The Date of Commencement shall be five (5) working days after the Owner's Notice to Proceed.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than 462 calendar days from the date of commencement, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

As Shown on Exhibit "F", the anticipated date of Commencement is September 1, 2005. Based on the date, the calculated date of Substantive Completion is December 6, 2006.

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, or for bonus payments for early completion of the Work.)

§ 4.4 If Contractor achieves Substantial Completion of the Work prior to the Scheduled Completion Date, as adjusted by Change Orders, then Contractor shall be entitled to an early completion bonus equal to \$20,000 dollars.

§ 4.5 Owner and Contractor acknowledge and agree that if Contractor fails to achieve Substantial Completion of the Work within the Contract Time, as adjusted by Change Order, Owner will suffer substantial damages which are both extremely difficult and impracticable to ascertain. Therefore, Owner and Contractor agree that in the event Contractor fails to achieve Substantial Completion within thirty (30) days after the final Scheduled Completion Date, Contractor shall pay to Owner as liquidated damages, not as a penalty but as a reasonable estimate of the amount of damages Owner will suffer, \$ 1,000 dollars for each day of delay (after the expiration of said thirty (30) day grace period), until the Work is Substantially Complete. If Contractor fails to achieve Substantial Completion within sixty (60) days after the final scheduled completion date, Contractor shall pay to Owner as liquidated damages \$2,000 dollars for each day of delay after the sixtieth day. Owner and Contractor acknowledge and agree that this liquidated damages provision shall be the only remedy to Owner for damages caused by Contractor's failure to achieve Substantial Completion within the Contract Time.

ARTICLE 5 BASIS FOR PAYMENT

§ 5.1 CONTRACT SUM

§ 5.1.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.2 The Contractor's Fee shall be \$ 655,096 dollars.

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee, and describe the method of adjustment of the Contractor's Fee for changes in the Work.)

§ 5.1.3 Changes (Change Order and Construction Change Directives) that affect the Cost of the Work shall be handled as follows:

5.1.3.1 For changes which increase the Cost of the Work, the estimated value shall be the Cost of the work (computed in accordance with Article 7), plus an allowance for jobsite General Conditions of eight percent (8%) and Contractor's Fixed Fee of three and three-quarters (3.75%) percent.

5.1.3.2 For changes which decrease the cost, the estimated value shall be the direct change in the Cost of the Work (computed per Article 7), with a reduction in the Contractor's Fee of (3.75%) percent.

5.1.3.3 After values have been computed per 5.1.3.1 and 5.1.3.2 above, these estimated values shall be used to establish the adjusted Guaranteed Maximum Price.

5.1.3.4 Billings for the Cost of the Work on changes will be actual costs (per Article 7), and will be incorporated into the billings for the Project as a whole, not reported separately.

5.1.3.5 If the Contractor is asked by the owner to perform "tenant work," over and above the changes in the base building described above, then such "tenant work" shall be handled under a separate agreement.

§ 5.1.4 After completion of the Project, and after the Guaranteed Maximum Price has been adjusted per Article 5.1.3 above, it shall be compared to the total of the Cost of the Work (defined in Article 7), plus the Contractor's Fee (Article 5.1.2). If the final Guaranteed Maximum Price exceeds the total of the cost of the Work plus any unused monies from the line item contingency noted in 5.2.1.2 and 5.2.1.3 plus Contractor's fee, then the difference ("Savings") shall be divided between the Owner and Contractor. The Owner will be credited with the first \$50,000 in Savings, thereafter the Owner will be credited with 75% of the Savings, and will pay the Contractor 25% of the Savings as Additional Fee.

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed Eighteen-Million One-Hundred Twenty-Four Thousand Three-Hundred Twenty-Two (\$18,124,322), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

(Insert specific provisions if the Contractor is to participate in any savings.)

5.2.1.1 There is only one Guaranteed Maximum Price provided by this Contract. Although the Contractor has furnished the Owner with the Budget Line Item Breakdown (Exhibit "C"), the amounts of the individual line items in these exhibits are not guaranteed. The final cost of any particular line item may be more or less than the estimate, except for the structural concrete work which will be performed on a Lump Sum basis, as per Paragraph 7.3.2 of this Agreement. The Contractor does, however, guarantee that it will perform the work required by the Contract Documents within the Guaranteed Maximum Price.

5.2.1.2 The Guaranteed Maximum Price has been determined by computing an estimated cost, then adding a contingency factor to the estimated cost, and increasing the figure thus obtained by the Contractor's Fee.

5.2.1.3 The Contingency is intended for the Contractor's use to cover unanticipated overrun of any costs, additional cost caused by failure of any subcontractor, and any other unforeseen events. The contingency factor is not to be used by the Owner to cover the cost of changes to the Contract Documents required by the Owner, Architect or governing authority, nor for any other purpose.

§ 5.2.2 The Guaranteed Maximum Price is based on 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 when the amount expires.)

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

Description	Units	Price (\$ 0.00)
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§ 5.2.4 Allowances, if any, are as follows

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Allowance	Amount (\$ 0.00)	Included items
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§ 5.2.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:

§ 5.2.6 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.2.7 The Contractor represents and warrants to Owner that (i) it has substantial experience and expertise in building projects such as the Project, and it acknowledges that such experience and expertise were substantial and material factors in Owner's decisions to retain Contractor to build the Project, and (ii) it has carefully reviewed the Contract Documents, and has determined that they are sufficiently comprehensive and complete as to permit Contractor to build the Project within the Project Budget and the guaranteed Maximum Price and within the Contract time. Therefore Contractor acknowledges and agrees that Contractor shall not seek, and Owner shall have no obligation to agree to, any increase in the Guaranteed Maximum Price, or any extension of the Contract Time, based upon normal coordination needs of the plans and specifications.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-1997.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of AIA Document A201-1997 shall have the meanings assigned to them in AIA Document A201-1997 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-1997 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Section 5.1.2 of this Agreement.

§ 6.4 If no specific provision is made in Section 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 14 the personnel to be included and whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

7.2.2.1 Prorated salaries and expenses of the following personnel for that portion of their time spent working on this Project (regardless of work place); Project Executive, Project Manager, Project Engineer, Safety Director, Project Accountant and General Superintendent, including automobile allowances where applicable.

§ 7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

7.2.4.1 The Contractor has computed the cost of Workers' Compensation and other expenses measured by payroll for all employees, reimbursable under Article 7.2. It is agreed that the surcharges for these items, to be applied to the base wages for personnel described in Article 7, shall be 61.53%. It is recognized that minor changes and variation in this figure can occur, which are difficult or impossible to compute accurately. Therefore, the surcharges agreed on above shall be used for the duration of the Project.

§ 7.3 SUBCONTRACT COSTS

§ 7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

§ 7.3.2 **Self-Performed Work** – The Contractor will self-perform the structural concrete work for a Guaranteed lump-sum amount of \$4,392,146. The Contractor has submitted documentation supporting the Lump Sum amount to allow review by the Owner. The Owner will notify the Contractor if additional documentation is required.

§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ 7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ 7.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

7.5.2.1 Rental rates will be the prevailing rates for similar equipment at the location of the Project.

§ 7.5.3 Costs of removal of debris from the site.

§ 7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

7.5.4.1 Cellular phone charges and usage, and maintenance fees.

§ 7.5.5 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract:

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

7.6.2.1 Local business or gross receipts taxes or fees related to the Work.

§ 7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 Computers, Data processing supplies and rental rates for computers used by Contractor's personnel and related software licensing fees.

§ 7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

§ 7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval; which approval shall not be unreasonably withheld.

§ 7.6.9 Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.

§ 7.6.10 Preconstruction services not paid for outside of this contract in accordance with Preconstruction Agreement. The project will be charged a Lump Sum amount of \$45,000 for these costs as a final cost for all remaining Preconstruction services.

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of AIA Document A201-1997.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include:

§ 8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Sections 7.2.2 and 7.2.3 or as may be provided in Article 14.

§ 8.1.2 Expenses of the Contractor's principal office and offices other than the site office.

§ 8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.

§ 8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

§ 8.1.5 Rental costs of machinery and equipment, except as specifically provided in Section 7.5.2 and 7.6.6..

§ 8.1.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

§ 8.1.7 Any cost not specifically and expressly described in Article 7.

§ 8.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ 8.1.9 The following items are **not** included in the Cost of the Work and shall be paid directly by the Owner:

- Architectural and engineering fees
- Cost of all blueprints
- Utility deposits and connection fees
- Sewer, water, street, or other assessments
- Plan check and general building permit and "B" permit fees
- Soils Reports and cost of inspection and testing (subject to Article 13.5 of the General Conditions).
- Labor, material and performance bond premiums for the Work
- Premiums for Fire Insurance, All-Risk Insurance or Builder's Risk Insurance
- All costs and damage to the Project related to an earthquake
- Loan fees or financing costs related to the Owner's financing of the Project
- Sales and Leasing Costs
- All utility charges after installation of permanent systems

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained by the Contractor shall accrue to the Owner.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons or entities from whom the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work. . The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.2 If a specific bidder (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

§ 12.1.1 Based upon Applications for Payment submitted to the Architect and Owner by the Contractor and Certificates for Payment issued by the 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.

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

§ 12.1.3 Provided that an Application for Payment is received by the Architect and Owner not later than the thirtieth (30th) day of a month, the Owner shall make payment to the Contractor not later than the twentieth (20th) day of the following month. If an Application for Payment is received by the Architect and Owner after the application date fixed above, payment shall be made by the Owner not later than twenty (20) days after the Architect and Owner receives the Application for Payment.

§ 12.1.4 With each Application for Payment, the Contractor shall make available at Contractor's office submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

12.1.4.1 The Contractor will provide Conditional Lien Releases, both its own and those of subcontractors, with each Payment Request submittal and will provide unconditional lien releases for payments received.

12.1.4.2 Contractor shall provide Release of Lien Bonds to keep the Project free of liens, provided Owner has paid Contractor for work covered by the recorded lien.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values, as approved by the Owner submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

- .1 take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;
- .2 add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

- .3 add the Contractor's Fee. The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 subtract the aggregate of previous payments made by the Owner;
- .5 subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .6 subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997.

§ 12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not less than ten percent (10%). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

12.1.8.1 A retention value of ten percent (10%) will be calculated at each line item in the billing and only the net amount of each line item will be billed and have the Contractor's Fee applied. Line items that contain the Contractor's direct costs, such as General Conditions, will not have retention withheld. Some, may have retention paid out prior to final Project completion, and others may have retention percentages less than ten percent (10%) as approved by the Owner pursuant to Article 10 of this Agreement.

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 12.2 FINAL PAYMENT

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 12.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Certificate of Occupancy, or as follows:

12.2.2.1 If the contractor's work is complete, but a Certificate of Occupancy is not issued, because of administrative delay on the part of the appropriate building authority not in Contractor's control, or because of the work of separate contractors at the Project site in the employ of the Owner or any other reason beyond the control of the Contractor, then final payment will be made to the Contractor as if there was a Certificate of Occupancy.

§ 12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within thirty (30) days after delivery of the final Payment Request to the Owner by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Paragraph 12.2.1 have been met, the Owner will, within seven (7) days after receipt of the written report of the Owner's accountants, either pay the Contractor, or notify the Contractor in writing of the Owner's reasons for withholding payment as provided in Subparagraph 9.5.1 of the General Conditions. The Owner's accountants will meet with Contractor prior to the start of said 30-day period to agree on the level of detail to be provided at the Contractor's main office for the accountant's review of the Project's Costs.

§ 12.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to demand arbitration of the disputed amount without a further decision of the Architect. Such demand for arbitration shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment; failure to demand arbitration within this 30-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration, the Owner shall pay the Contractor the amount not in dispute.

§ 12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 The Contract may be terminated by the Contractor, or by the Owner for convenience, as provided in Article 14 of AIA Document A201-1997. However, the amount to be paid to the Contractor under Section 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Section 13.2 below, except that costs for demobilization will be considered Cost of the Work and the Contractor's Fee shall be calculated as noted in 13.2.2.

§ 13.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A201-1997. The amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201-1997 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

§ 13.2.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

§ 13.2.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

§ 13.2.3 Subtract the aggregate of previous payments made by the Owner.

§ 13.3 To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 13.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.2 and Section 6.4 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Agreement to a provision AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 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.)

Interest will be at two (2) points over the Reference Rate, as determined by Bank of America.

(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.)

§ 14.3 The Owner's representative is:
(Name, address and other information.)

Peter Mow
Skechers USA, Inc.
225 South Sepulveda Blvd.
Manhattan Beach, CA 90266

§ 14.4 The Contractor's representative is:
(Name, address and other information.)

Jeff Simonson
Morley Construction Company

2901 28th Street, Suite 100
Santa Monica, CA 90405

§ 14.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

§ 14.6 Other provisions:

§14.6.1 Contractor's License Notice

Contractors are required by law to be licensed and regulated by the Contractor's State License board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed with then ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826. The Contractor is a licensed Contractor under the laws of the State of California and its License Number is 166461.

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

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

§ 15.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997.

§ 15.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

§ 15.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated _____, and are as follows:

Document	Title	Pages
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§ 15.1.4 The Specifications are those contained in the Project Manual dated as in Section 15.1.3, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
---------	-------	-------

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

Number	Title	Date
--------	-------	------

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

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 15.

§ 15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:
(List here any additional documents, such as a list of alternates that are intended to form part of the Contract Documents. AIA Document A201-1997 provides 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.)

- Exhibit "A" – List of Documents
- Exhibit "B" – Scope of Work, Qualifications and Exclusions
- Exhibit "C" – Budget Line Item Breakdown
- Exhibit "D" – (NOT USED)
- Exhibit "E" – Insurance Requirements
- Exhibit "F" - Construction Schedule

ARTICLE 16 INSURANCE AND BONDS

(List required limits of liability for insurance and bonds. AIA Document A201-1997 gives other specific requirements for insurance and bonds.)

Type of insurance	Limit of liability (\$ 0.00)
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This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

/s/ Peter Mow
OWNER (Signature)

/s/ Charles Muttillo
CONTRACTOR (Signature)

Peter Mow
Senior Vice President of
Real Estate & Construction

Charles Muttillo
Vice President

(Printed name and title)

(Printed name and title)

EXHIBIT "A"

LIST OF DOCUMENTS

SKECHERS
330 S. Sepulveda Blvd., Manhattan Beach, CA 90266

MORLEY
CONSTRUCTION COMPANY
2901 28th Street, Suite 100 Santa Monica, CA 90405
PHONE: 310-399-1600 FAX: 310-314-7347

Sheet No.	Description	Date	Producer
ARCHITECTURAL			

Date: August 24, 2005

DRAWINGS

A-1.0	COVER SHEET	05/31/05	DAVID FORBES HIBBERT, AIA
A-1.1	PROJECT NOTES	05/31/05	DAVID FORBES HIBBERT, AIA
A-1.2	GENERAL NOTES	05/31/05	DAVID FORBES HIBBERT, AIA
A-1.3	ACCESSIBILITY NOTES	05/31/05	DAVID FORBES HIBBERT, AIA
A-1.4	ACCESSIBILITY NOTES	05/31/05	DAVID FORBES HIBBERT, AIA
A-1.5	ACCESSIBILITY NOTES	05/31/05	DAVID FORBES HIBBERT, AIA
A-1.6	ACCESSIBILITY NOTES	05/31/05	DAVID FORBES HIBBERT, AIA
A-2.0	SURVEY	05/31/05	DAVID FORBES HIBBERT, AIA
A-3.1	PARKING LEVEL P-3 PLAN	05/31/05	DAVID FORBES HIBBERT, AIA
A-3.2	PARKING LEVEL P-2 PLAN	05/31/05	DAVID FORBES HIBBERT, AIA
A-3.3	PARKING LEVEL P-1 PLAN	05/31/05	DAVID FORBES HIBBERT, AIA
	GROUND FLOOR / SITE		
A-3.4	PLAN	05/31/05	DAVID FORBES HIBBERT, AIA
A-3.5	SECOND FLOOR PLAN	05/31/05	DAVID FORBES HIBBERT, AIA
A-3.6	THIRD FLOOR PLAN	05/31/05	DAVID FORBES HIBBERT, AIA
A-3.7	ROOF PLAN	05/31/05	DAVID FORBES HIBBERT, AIA
	GROUND FLOOR		
A-3.8	REFLECTED CEILING PLAN	05/31/05	DAVID FORBES HIBBERT, AIA
	SECOND FLOOR		
A-3.9	REFLECTED CEILING PLAN	05/31/05	DAVID FORBES HIBBERT, AIA
	THIRD FLOOR REFLECTED		
A-3.10	CEILING PLAN	05/31/05	DAVID FORBES HIBBERT, AIA
	WEST & EAST EXTERIOR		
A-4.1	ELEVATIONS	05/31/05	DAVID FORBES HIBBERT, AIA
	SOUTH & NORTH		
A-4.2	EXTERIOR ELEVATIONS	05/31/05	DAVID FORBES HIBBERT, AIA
A-4.3	BUILDING SECTIONS	05/31/05	DAVID FORBES HIBBERT, AIA
A-4.4	BUILDING SECTIONS	05/31/05	DAVID FORBES HIBBERT, AIA
A-5.1	WALL SECTIONS	05/31/05	DAVID FORBES HIBBERT, AIA
A-5.2	WALL SECTIONS	05/31/05	DAVID FORBES HIBBERT, AIA
A-5.3	WALL SECTIONS	05/31/05	DAVID FORBES HIBBERT, AIA
A-5.4	WALL SECTIONS	05/31/05	DAVID FORBES HIBBERT, AIA
A-5.5	WALL SECTIONS	05/31/05	DAVID FORBES HIBBERT, AIA
A-5.6	WALL SECTIONS	05/31/05	DAVID FORBES HIBBERT, AIA
A-5.7	WALL SECTIONS	05/31/05	DAVID FORBES HIBBERT, AIA
	SITE, GARAGE &		
A-6.1	EXTERIOR DETAILS	05/31/05	DAVID FORBES HIBBERT, AIA
		<i>not</i>	
A-6.2		<i>received</i>	
	ENLARGED BATHROOM		
A-7.1	PLANS & ELEVATIONS	05/31/05	DAVID FORBES HIBBERT, AIA
	ENLARGED STAIR 1		
A-8.1	PLANS, SECTIONS, &	05/31/05	DAVID FORBES HIBBERT, AIA
	DETAILS		
	ENLARGED STAIR 2		
A-8.2	PLANS, SECTIONS, &	05/31/05	DAVID FORBES HIBBERT, AIA
	DETAILS		
A-8.3	STAIR DETAILS AND	05/31/05	DAVID FORBES HIBBERT, AIA
	NOTES		
A-8.4	ENLARGED ELEVATOR &	05/31/05	DAVID FORBES HIBBERT, AIA
	ELEVATOR LOBBY PLANS		
A-9.1	INTERIOR DETAILS	05/31/05	DAVID FORBES HIBBERT, AIA
	DOOR AND WINDOW		
A-10.1	SCHEDULES & NOTES	05/31/05	DAVID FORBES HIBBERT, AIA
	FINISH SCHEDULE &		
A-10.2	NOTES	05/31/05	DAVID FORBES HIBBERT, AIA
A-10.3	WALL TYPES	05/31/05	DAVID FORBES HIBBERT, AIA

CIVIL DRAWINGS

C0.01	TITLE SHEET	11/07/03	KPFF CONSULTING ENGINEERS
C1.01	GRADING PLAN	11/07/03	KPFF CONSULTING ENGINEERS
C2.01	UTILITY PLAN	11/07/03	KPFF CONSULTING ENGINEERS

STRUCTURAL DRAWINGS

S0.1	GENERAL NOTES	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S1.1	DETAILS, SCHEDULES AND NOTES	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S1.2	DETAILS	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S1.3	DETAILS	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S1.4	DETAILS	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S1.5	DETAILS	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S1.6	DETAILS	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S1.7	DETAILS	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S2.1	P-3 AND FOUNDATION PLAN	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
	P-3 NORTH / SOUTH (PORTION) SLAB		ROBERT ENGLEKIRK CONSULTING

S2.1A	REINFORCING PLAN P-3 EAST / WEST (PORTION)	04/15/05	STRUCTURAL ENGINEERS, INC. ROBERT ENGLEKIRK CONSULTING
S2.1B	SLAB REINFORCING PLAN	04/15/05	STRUCTURAL ENGINEERS, INC. ROBERT ENGLEKIRK CONSULTING
S2.2	P-2 FRAMING PLAN	04/15/05	STRUCTURAL ENGINEERS, INC. ROBERT ENGLEKIRK CONSULTING
S2.2A	P-2 NORTH / SOUTH SLAB REINFORCING PLAN	04/15/05	STRUCTURAL ENGINEERS, INC. ROBERT ENGLEKIRK CONSULTING
S2.2B	P-2 EAST / WEST SLAB REINFORCING PLAN	04/15/05	STRUCTURAL ENGINEERS, INC. ROBERT ENGLEKIRK CONSULTING
S2.3	P-1 FRAMING PLAN	04/15/05	STRUCTURAL ENGINEERS, INC. ROBERT ENGLEKIRK CONSULTING
S2.3A	P-1 NORTH / SOUTH SLAB REINFORCING PLAN	04/15/05	STRUCTURAL ENGINEERS, INC. ROBERT ENGLEKIRK CONSULTING
S2.3B	P-1 EAST / WEST SLAB REINFORCING PLAN	04/15/05	STRUCTURAL ENGINEERS, INC. ROBERT ENGLEKIRK CONSULTING
S2.4	GROUND FLOOR FRAMING PLAN	04/15/05	STRUCTURAL ENGINEERS, INC.
S2.4A	GROUND FLOOR NORTH / SOUTH SLAB REINFORCING PLAN	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S2.4B	GROUND FLOOR EAST / WEST SLAB REINFORCING PLAN	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S2.5	SECOND FLOOR FRAMING PLAN	04/15/05	STRUCTURAL ENGINEERS, INC.
S2.5A	SECOND FLOOR NORTH / SOUTH SLAB REINFORCING PLAN	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S2.5B	SECOND FLOOR EAST / WEST SLAB REINFORCING PLAN	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S2.6	THIRD FLOOR FRAMING PLAN	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S2.6A	THIRD FLOOR NORTH / SOUTH SLAB REINFORCING PLAN	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S2.6B	THIRD FLOOR EAST / WEST SLAB REINFORCING PLAN	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S2.7	ROOF FRAMING PLAN	04/15/05	STRUCTURAL ENGINEERS, INC.
S2.7A	ROOF NORTH / SOUTH SLAB REINFORCING PLAN	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S2.7B	ROOF EAST / WEST SLAB REINFORCING PLAN	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S3.1	CONCRETE FOOTING SCHEDULE, DETAILS	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S3.2	WEST & EAST WALL ELEVATIONS	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S3.3	SOUTH & NORTH WALL ELEVATIONS	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S4.1	CONCRETE COLUMN SCHEDULE, DETAILS	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S5.1	CONCRETE BEAM SCHEDULE, DETAILS	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S6.1	FRAME ELEVATIONS	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S6.2	FRAME ELEVATIONS	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S6.3	TYPICAL REINFORCEMENT DETAILS	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S7.1	DETAILS	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S7.2	DETAILS	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.
S7.3	DETAILS	04/15/05	ROBERT ENGLEKIRK CONSULTING STRUCTURAL ENGINEERS, INC.

**MECHANICAL
DRAWINGS**

	LEGEND, ABBREVIATIONS AND AIR DEVICE		
M-1.0	SCHEDULE	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-1.1	HVAC SCHEDULES	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-1.2	HVAC SCHEDULES	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-2.1	GROUND FLOOR PLAN	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-2.2	SECOND FLOOR PLAN	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-2.3	THIRD FLOOR PLAN	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-2.4	SITE / ROOF PLAN	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-2.5	PARKING LEVEL P-1 PLAN	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-2.6	PARKING LEVEL P-2 PLAN	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-2.7	PARKING LEVEL P-3 PLAN	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-2.8	BELOW PARKING LEVEL P- 3 PLAN	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-5.0	DETAILS 1	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-5.1	DETAILS 2	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-5.2	DETAILS 3	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.

M-6.0	CONDENSER / HEATING WATER PIPING RISER DIAGRAM	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-6.1	CONTROL DIAGRAMS - 1	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-6.2	CONTROL DIAGRAMS - 2	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-6.3	CONTROL DIAGRAMS - 3	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-6.4	CONTROL POINTS LIST - 1	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-7.0	TITLE 24 - 1	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
M-7.1	TITLE 24 - 2	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.

**PLUMBING
DRAWINGS**

P-1.0	PLUMBING SYMBOLS, ABBREVIATIONS, SCHEDULES AND SPECIFICATIONS PARKING LEVEL P-3	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
P-2.0	PLUMBING PLAN PARKING LEVEL P-3	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
P-3.0	PLUMBING PLAN PARKING LEVEL P-2	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
P-4.0	PLUMBING PLAN PARKING LEVEL P-1	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
P-5.0	PLUMBING PLAN GROUND FLOOR	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
P-6.0	PLUMBING PLAN SECOND FLOOR	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
P-7.0	PLUMBING PLAN THIRD FLOOR PLUMBING PLAN	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
P-8.0	ROOF PLUMBING PLAN	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
P-10.0	PLUMBING DETAILS	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
P-11.0	PLUMBING DETAILS PLUMBING RISER DIAGRAM	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
P-12.0	PLUMBING RISER DIAGRAM	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.
P-13.0	DIAGRAM	04/29/05	DAVID FRUCHTMAN & ASSOC., INC.

**ELECTRICAL
DRAWINGS**

E-1	SITE PLAN ELECTRICAL SYMBOLS, NOTES & FIXTURE SCHEDULE	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-2	GROUND FLOOR LIGHTING PLAN	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-3	GROUND FLOOR POWER PLAN	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-3.1	SECOND FLOOR LIGHTING & POWER PLAN	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-4	THIRD FLOOR LIGHTING & POWER PLAN	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-5	ROOF PLAN	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-6	PARKING LEVEL P-1 LIGHTING & POWER PLAN	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-7	PARKING LEVEL P-2 LIGHTING & POWER PLAN	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-8	PARKING LEVEL P-3 LIGHTING & POWER PLAN	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-9	SINGLE LINE RISER DIAGRAM	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-10	DETAILS LIGHTING CONTROL WIRING DIAGRAM	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-11	ENLARGED PLANS	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-11.1	ENLARGED PLANS	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-12	PANEL SCHEDULES	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-12.1	PANEL SCHEDULES	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-13	PANEL SCHEDULES	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-14	PANEL SCHEDULES	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-15	PANEL SCHEDULES	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS
E-16	TITLE - 24 CALCULATIONS	05/25/05	G&W CONSULTING ELECTRICAL ENGINEERS

**SHORING
DRAWINGS**

SH-1	EXCAVATION AND SHORING PLAN	08/02/05	BURNETT & YOUNG, INC.
SH-2	GENERAL NOTES AND SCHEDULE	08/02/05	BURNETT & YOUNG, INC.

SH-4	TYPICAL DETAILS	08/02/05	BURNETT & YOUNG, INC.
SH-5	ELEVATIONS	08/02/05	BURNETT & YOUNG, INC.
SH-6	SECTIONS	08/02/05	BURNETT & YOUNG, INC.

**LANDSCAPE
DRAWINGS**

L-001		<i>not received</i>
L-101		<i>not received</i>
L-201		<i>not received</i>
L-301		<i>not received</i>
L-302		<i>not received</i>
L-303		<i>not received</i>
L-401		<i>not received</i>
L-501		<i>not received</i>
L-502		<i>not received</i>
L-601		<i>not received</i>
L-701		<i>not received</i>

**OFFSITE
IMPROVEMENTS
DRAWINGS**

(SEPULVEDA BLVD. IMPROVEMENTS — STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION)

- - - -	TITLE SHEET	3/03	CALTRANS
X-1	CROSS SECTIONS	3/03	CALTRANS
L-1	LAYOUT	3/03	CALTRANS
C-1	CONSTRUCTION DETAILS AND PROFILES	3/03	CALTRANS
U-1	UTILITY PLAN	3/03	CALTRANS
E-1	TRAFFIC SIGNAL	05/23/03	
S-1	SIGNING AND PAVEMENT DELINEATION	NONE	

(KUHN DRIVE IMPROVEMENTS — CITY OF MANHATTAN BEACH, DEPARTMENT OF PUBLIC WORKS)

- - - -	TITLE SHEET	01/14/03	CITY OF MANHATTAN BEACH
- - - -	PLAN AND PROFILE SHEET	01/14/03	CITY OF MANHATTAN BEACH

(LONGFELLOW DRIVE IMPROVEMENTS — CITY OF MANHATTAN BEACH, DEPARTMENT OF PUBLIC WORKS)

- - - -	TITLE SHEET	01/14/03	CITY OF MANHATTAN BEACH
- - - -	PLAN AND PROFILE SHEET	01/14/03	CITY OF MANHATTAN BEACH
- - - -	STREET LIGHTING	01/14/03	CITY OF MANHATTAN BEACH

SOILS REPORT

SOILS INVESTIGATION	07/11/00	NORCAL ENGINEERING
TEMPORARY SHORING RECOMMENDATIONS <i>LETTER</i>	07/26/00	NORCAL ENGINEERING
ADDENDUM NO. 1 <i>LETTER</i>	07/31/00	NORCAL ENGINEERING
TIEBACK ANCHOR DESIGN RECOMMENDATIONS <i>LETTER</i>	07/31/00	NORCAL ENGINEERING
ADDENDUM FOUNDATION DESIGN RECOMMENDATIONS <i>LETTER</i>	08/14/00	NORCAL ENGINEERING
UPDATED GEOTECHNICAL ENGINEERING REPORT <i>LETTER</i>	02/05/01	NORCAL ENGINEERING
UPDATED TEMPORARY SHORING RECOMMENDATIONS <i>LETTER</i>	09/20/01	NORCAL ENGINEERING
UPDATED SOILS INVESTIGATION <i>LETTER</i>	09/22/03	NORCAL ENGINEERING
REVIEW OF STRUCTURAL PLANS <i>LETTER</i>	09/22/03	NORCAL ENGINEERING
FINAL SHORING DESIGN CRITERIA <i>LETTER</i>	07/01/05	NORCAL ENGINEERING

EXHIBIT "B"

SCOPE OF WORK, QUALIFICATIONS AND EXCLUSIONS

Qualifications August 24, 2005

The following qualifications will apply to Scope of Work and supercede information outlined in the Drawings:

GENERAL

1. Estimate is based on construction starting by September 1, 2005.
2. Escalation after September 1st, 2005 is excluded.
3. RFI #1 responses and addendum #1 issued by David Forbes Hibbert, AIA, dated June 23, 2005 has been included.
4. Any acoustical analysis or acoustical engineering is excluded.
5. Exterior glass walls of stair shafts are not figured as 2-HR construction.
6. The 2nd floor walls along floor opening to 1st floor lobby are figured as wall Type S1.
7. 1st floor wall between Entry Court and Office 104 is figured as wall Type S8.
8. The wall between Fan Rooms 116a and 116b is figured as Type S1.

DEWATERING

1. An ***allowance*** for labor, equipment and material of ***\$25,000*** is included for temporary construction dewatering resulting from rain and/or ground conditions.

DEMOLITION

1. Unforeseen basements, substructures, or buried objects are excluded.

SHORING

1. Shoring is based upon shoring drawings dated 7/30/05 and 8/2/05. Any corrections or deviations, required by Cal Trans, City of Manhattan Beach, or other governing agencies have been excluded.
2. Owner to obtain tie-back permission at all property lines.
3. Tie-back rod removal will consist of removal of top row of tie-backs for the shoring along Kuhn Drive and Longfellow Drive. Removals on Kuhn Drive and Longfellow Drive are limited to the removal of the unbonded rod only per shoring design drawings. Any and all other tie-backs on these elevations will be de-tensioned and left in place.
4. Tie-back rod removal on Sepulveda Blvd. and the north elevation will per shoring design drawings.
5. Cost for lagging pressure monitoring is not included.

EARTHWORK

1. Sand, gravel, and vapor barrier underneath garage slab-on-grade is excluded.

SITE UTILITIES

1. Removal of overhead power lines along Sepulveda and across Kuhn is excluded. Owner to pay fee to SCE for relocation of power lines and any other utilities located on power poles.
2. Re-routing of any existing underground utilities is excluded.

SITE CONCRETE

1. Colored concrete pavement is figured at Entry Court.
2. Standard grey concrete pavement is figured at the Mechanical Court.

LANDSCAPING

1. An ***allowance*** for labor, equipment and material of ***\$113,055*** is included for of all planting (shrubs and trees), irrigation, planter fill, pots, site furnishings, for both on and off site locations.

2. No provisions or devices for reclaimed water are included.

FOUNTAINS

1. No fountains or water features are included.

CAST-IN-PLACE CONCRETE

1. Footing elevations are assumed for the unmarked footings. Two F9 footings on gridlines B&C are assumed to be at +176.77, F16 is at +181.99, F15 is at 185.3, F14 is at +185.1, F2 on gridline 3 is at +185.77, F2 on gridline 4 is at +186.76
2. F2 on gridline 5 is at +181.86, and F1 on gridline 6 is at +181.36.
3. CMU walls are assumed for the elevator shaft per sheet S2.1.
4. Interior wall on S2.1 is calculated with an 8" thickness.
5. S2.3 Ramp walls are 42" high and 6" thick per drawing A10.3.
6. On S2.4 intake air shaft walls are assumed to be 8" thick.
7. Ramp walls on S2.4 are assumed to be 6" thick.
8. The wall on grid line B is figured from the architectural plans to extend from gridline 5 to 9 and is assumed to be 8" thick.
9. Built-up Concrete slabs are designed per Details on S7.2 and S7.3. The slab thickness is measured to be 4".
10. The steps on grid F are assumed to have a rise of 6" and a width of 3'.
11. The wall on gridline 2 on A3.5 is assumed to have a thickness of 12".
12. On S2.6 the 8" wall is assumed to extend to the edge of the window on gridline 2 at C.2.
13. The ready mix prices are based on normal shrinkage of 0.05%-0.055%.
14. Column blockouts depth is to top of grade not top of footing.
15. Waterstop is not included around columns at footings.
16. On Gridline 5:A-B an 8" concrete wall is added per the Architectural drawing A3.4 &A3.5.
17. The detail A5.6 that is referenced from A3.4 depicts a retaining wall that is not shown on the structural drawings. This wall is included and assumed to be 4' high and 58' long with a thickness of 10".
18. The retaining wall on Gridline G is assumed to be 8" thick and is referenced from A3.4.
19. All metal decks have a hard rock concrete fill.
20. The perimeter wall around the roof depicted on A4.3 is figured to be 1.5' tall and 6" thick the exterior face is sacked and the interior is touched-up.
21. Thickening of slabs over pad footings has been excluded.
22. White, colored or architectural concrete has been excluded.
23. Sawcutting of curbs for reglets as shown on 5/A6.2 has been excluded.
24. Any sandblast finish and colored concrete has been excluded.
25. Touch-up and sacking is included at exterior exposed concrete surfaces such as walls, columns and beams.
26. Sacking at interior ceilings has been excluded.
27. Exterior exposed cast-in-place planter walls to receive tough-up, sacking along with patterned tie-holes.
28. Touch-up, sacking and patterned tie-holes is included at all exterior exposed cast-in-place walls.
29. Sealing of any concrete walls or columns is not included.
30. Sealing of concrete floors in all parking, ramp, and drive aisle areas of garage is excluded. Sealing of floors in utility

rooms is provided per the finish schedule.

31. Structural concrete work is to be performed by Morley Construction Company for a lump sum amount of \$4,392,146.00.

SHOTCRETE

1. Stem walls located over perimeter footings, per typical detail 3/S3-1 are shotcrete.
2. Pilaster / columns located within perimeter foundation walls are shotcrete.
3. Shotcrete walls are figured with a rod finish.

REINFORCING STEEL

1. No rebar couplers at raker pockets are included.

MASONRY

1. Precast cap at site retaining walls is excluded.
2. Garage non-bearing masonry walls are figured as 42" high masonry walls with metal stud and drywall to the underside of the deck above.

MISCELLANEOUS METALS

1. An *allowance* for labor, equipment and material of **\$35,000** is included for the stainless steel "Ridge" canopy by Cambridge Architectural Mesh at the Sepulveda Blvd. elevation.
2. The stair stringers, guard rails, and hand rails to be galvanized, primed and painted.
3. Site railing on the west side of the building are figured as stainless steel. Glass is included at the shaded portion of the guardrail on west elevation 1/A-4.1.
4. All other steel to be shop primed and field paint.
5. Column corner guards are not included.
6. Bicycle racks are excluded.

EXPANSION JOINT

1. No expansion joints are included.

COUNTER TOPS

1. Midrange priced granite is figured for the counter tops.

ROOFING

1. Roofing is figured with a standard 10 year warrantee.

WATERPROOFING

1. The unspecified waterproofing material is assumed to be as follows:
 - a. Below Grade Waterproofing – Perimeter wall and elevator pits; is Tremco / Paraseal sheet Bentonite, and associated mastics, water stops, Tremdrain drainage board and total drain system, termination bar and sealant.
 - b. Between Slab Waterproofing – Podium Deck and Planters; is Tremco Vulkem 201 Cold Fluid Applied waterproofing and Trem Drain 1000 drainage board.
 - c. Roof Deck Waterproofing – Roof Decks on 2nd Floor and Cooling Tower #309; Merkote Weather Deck System.
 - d. Loading Space ramp and drive and the Entry/Exit ramp off Sepulveda – Tremco elastomeric traffic coating.
2. All waterproofing products come with a standard 5-year warranty.
3. No traffic coating is provided for the garage entry/exit ramp on Longfellow as there is no trench drain at this ramp.

INSULATION

1. Insulation at exterior soffits with floors above is excluded.
2. Floor insulation above garage is excluded
3. No safing is included at roof level.

SHEET METAL

1. Sawcutting for flashing is excluded.
2. Stainless steel exterior wall panels are figured with a brushed finish.

DOORS & FRAMES

1. The hollow metal frames throughout the project are figured as 16GA. The parking level and exterior frames are figured with A60 galvanizing. Exterior frames at Mechanical Court are figured as stainless steel. Interior frames are figured as cold rolled steel.
2. The hollow metal doors throughout the project are figured as 18 GA. The parking level, exterior, and utility room hollow metal doors are figured with A60 galvanizing. All interior doors are figured as cold rolled steel.
3. The SC wood doors throughout the project are figured as plain-sliced natural maple, "A" grade veneer, 5-ply construction. Wood doors are figured with a standard factory prefinish.

COILING DOORS

1. An allowance for labor, equipment and material of \$30,000 is included for coiling grilles at parking garage entries (2 locations), loading dock entries (2 locations) and one separation door between the Ground and P1 level.

GLAZING/CURTAIN WALLS

1. The curtain wall framing is based on USAC 3250 series framing for 1" glass with a section dimension of 2-1/2" x 7". This is limited to the opening above the parking garage drive along grid E and the main lobby – terrace area between grids 5 and 7.
2. The storefront framing is based on USAC OS-2 series 2"x6" offset stacking system 1" glass.
3. Non-rated narrow stile aluminum offset hung doors at door #101, 104a, and 110a. Doors will be prepped and installed with manufacturer standard hardware where ever possible in accordance with the hardware schedule noted on sheet A-10.1.
4. Door #110b is based on a NanaWall series SL45 inline commercial bi-folding door system in lieu of the noted SL-70. The SL is a hurricane door and is not required for the project location. Top hung mounted, outside swinging, (4) single lite doors, one point lockable deadbolt with lever handles on the inside and outside aluminum finish, painted finish to closely match storefront frames.
5. 1/2" clear tempered style P all glass entrance doors at door #103a prepped and install with Dorma BTS80BF floor closers, standard bottom rail locks. An allowance of \$1,000 has been applied to this project for Forms and Surface pulls specified but not clearly noted on sheet A-10.1.
6. Fleetwood project out windows, or equal, as noted on the drawings with standard friction hardware.
7. FX1454, 1-1/2" deep, extruded aluminum louvers where noted in a storefront frame, total of 9 locations. Louvers will have a factory painted finish to match the storefront frames. Excludes the projected louver assembly along grid line 2 between grids E and F.
8. Finish for all storefront/curtain wall frames to be 70% kynar, custom color, non-exotic, non-XL, non metallic.
9. System design is based on 70 mph wind city velocity, exposure C, deflection limit of L/175 not to exceed 3/4". Steel reinforcement as required is included to meet this design criteria.
10. Vision glass is based on using 1 inch insulated glass units consisting of Visteon Versalux Green 2000 as follows: 1/4" Versalux Green 2000 – 1/2" clear Argon filled space – 1/4" clear tempered as required to meet code.
11. Spandrel glass will be non-insulated Visteon Versalux Blue 2000 tempered glass.
12. 1/4" polished Misco wire glass with a UL label at door type X and W.
13. Compliance with title 24 has not been confirmed.

14. Screens have not been figured on the operable windows.
15. The Terrace windscreen is figured with standard pattern glass.

FINISH HARDWARE

1. Hinges are figured as McKinney 5 knuckle.
2. Interior latches and locks are figured as Schlage "D" series heavy duty cylindrical locks with 626 dull chrome finish.
3. Exterior locks are figured as Schlage "L" series mortise locks with 626 dull chrome finish.
4. Panic devices are figured as Von Duprin 98 series.
5. Closers are figured as LCN 4041 series.
6. Miscellaneous items by Ives, Trimco, and Pemko.
7. Finish on exterior hinges and kickplates figured as 630 stainless steel.

PLASTER, DRYWALL, METAL FRAMING

1. Vertical built-out furring of metal studs and drywall are figured behind the spandrel glass at the curtainwall.
2. Fireproofing of structural steel members is included.
3. An allowance for labor, equipment and material of \$43,715 is included for the suspended stainless steel soffit by "Hunter Douglas" at the building main entry lobby. The suspended stainless steel soffit at the loading dock is excluded.
4. Core and shell corridor and lobby walls, ceilings, shafts, etc. are not included.
5. Studs in partition Type S7a are figured as 20 GA in lieu of 16 GA.
6. Orange peel drywall finish is provided in restrooms. All other locations to receive level 4 finish.
7. No plaster work is included.

TILE

1. Stone base and wainscot is figured to meet the stone floor square. No coved base is included.

FLOORING

1. The "Lonseal" stair tread flooring and associated base products are no longer being manufactured, "Burke" Roleau Treads and 4" rubber base have been provided, in lieu specified.
2. Sheet vinyl treads at Stair Nos. 1 and 2 are excluded.

PAINTING

1. Exposed ductwork, pipe, conduit, hangers, etc. are unpainted.
2. Anti graffiti coating is not included.

MISCELLANEOUS SPECIALTIES

1. Parking access control equipment (card readers, access control arms, etc.) is excluded. Concrete curbs/islands will be provided per plans.
2. Window treatment is excluded.
3. Window washing equipment is excluded.

SIGNAGE

1. An allowance for labor, equipment and material of \$13,000 for code signage is included.
2. An allowance for labor, equipment and material of \$75,000 for the "Skechers" and the building address signage is included.

3. Signage in the garage and office building, other than code signage, are excluded.

ELEVATORS

1. An **allowance** for labor, equipment and material of **\$20,000** is included for the “Swirl” laminated glass manufactured by Bendheim at the backside of the elevator cab.
2. The elevators are figured as 3500 lb. capacity with hydraulic rams.
3. The speed is 125 fpm.
4. The elevator price includes 3 months of maintenance.

PLUMBING

1. An **allowance** for labor, equipment and material of **\$16,000** is included for of all planter drain bodies and associated piping not indicated on the drawings
2. Foundation drainage is figured around the perimeter of the garage only.
3. Pre-cast sump pit, sewer ejector pit and valve box have been provided in lieu of cast in place concrete.

FIRE SPRINKLER

1. The fire sprinkler system in the office area is figured for light hazard occupancy.
2. The fire sprinkler system in the parking area is figured for ordinary hazard occupancy.
3. Quick response recessed type heads with white factory finish are figured at all areas with finished ceiling.
4. Standard brass upright or pendant type heads are figured at all exposed ceiling areas in the office or the garage.
5. Concealed heads with painted or brushed chrome covers are figured at stainless steel soffits.

HVAC

1. The mechanical shaft at gridlines D & 9 on the third floor is omitted. The shaft will end at the underside of the third floor deck.

ELECTRICAL

1. An **allowance** for labor, equipment and material of **\$25,000** is included for a security system.
2. An **allowance** for labor, equipment and material of **\$10,000** is included for landscape lighting.
3. An **allowance** for labor, equipment and material of **\$20,000** is included for proposed Southern California Edison vault lighting, power receptacles, grounding, fans, etc. specific to SCE requirements. (note: subject scope not identified on electrical or HVAC plans)
4. Conduit only is provided, from street to main telephone room, for telephone and cable TV. No telephone, data, or cable TV cabling or termination is included.
5. Locations of devices for fire-life-safety system to be per design-build drawings in lieu of locations shown on electrical drawings.
6. Bi-amplified antenna system in garage per Manhattan Beach Police Department requirements is excluded. Costs for electrical rough-in, structural reinforcement for mounting, etc. are also excluded.

ALTERNATES

The following items are currently in review by consultants. If approved, the contractor will issue deductive change orders for the following values.

- | | | | |
|----|---------------------------------------------------------------------------------------------------------------------|------------|------------|
| 1. | Provide masonry barrier wall for garage ramp from ground floor to P-1 level in lieu of cast-in-place concrete wall. | | (\$19,650) |
| 2. | Reduce roof slab thickness by two (2) inches. | (\$11,257) | |
| 3. | Provide saw cut in lieu of diamond block-out for column bases at slab-on-grade. | (\$5,600) | |
| | Reduce shotcrete wall thickness by one and one-half (1 1/2) inches. | | |
| 4. | | (\$6,250) | |
| 5. | Omit sheet metal cover and insulation at walls and ceiling of fan room. | (\$18,365) | |

Exclusions August 24, 2005

The following items are excluded from the Scope of Work:

GENERAL

1. Permits, permit fees, plan check fees, B permit costs, grading permits, Shoring permit, AQMD permit, Army Corps of Engineers permits, California Department of Fish and Game permits, and Cal Trans permits.
2. Cost for Cal Trans tie-back removal bond.
3. Cal Trans and City of Manhattan Beach plan check corrections for shoring (not reflected on current shoring drawings dated 7/30/2005 and 8/2/2005)
4. Testing and Inspections.
5. Soft Costs.
6. Traffic study fees & School fees.
7. Utility connection charges, assessment fees, meter fees, and fire hydrant fees.
8. Fire pump and fire tank (if required).
9. Re-routing or relocation of overhead utility lines along Sepulveda Blvd.
10. Removal of hazardous or contaminated materials and asbestos.
11. Removal of contaminated soil or existing debris encountered during excavation.
12. Drying of wet soils.
13. Temporary utility consumption costs following permanent meter installation.
14. Owner's or leasing trailer, offices, and equipment.
15. Marketing fence. (Plywood fence is included along Sepulveda Blvd., Kuhn Drive and Longfellow Drive Property Lines).
16. Methane and all other gas monitoring and mitigation.
17. Water purification system.
18. FF&E items.
19. Trash bin or compactor equipment.
20. Prevailing wages.
21. Monitoring or relocating cost associated with the wildlife species, biologists, archaeologists, paleontologists, etc.
22. Builders Risk Insurance and any requirements or provisions required by insurer.
23. Payment and Performance Bonds for Subcontractor's.
24. ALTA and/or certification survey.
25. Core and shell work at levels 2 and 3, such as, corridors, lobbies, elevator fire/smoke doors, lighting, mechanical, doors, etc., that may be required for certificate of occupancy.
26. Fire or smoke doors at elevators on office levels.
27. Tenant improvement of office space such as, dropped ceilings, flooring, painting, partitions, mechanical, electrical, fire sprinklers distributions.
28. EIR requirements or Mitigation Measures (unknown at this time).
29. Conditional use permit (CUP) resolutions not incorporated on current 5/31/05 drawings.

BUDGET LINE ITEM BREAKDOWN

SKECHERS

330 S. Sepulveda Blvd., Manhattan Beach, CA 90266

MORLEY

CONSTRUCTION COMPANY

2901 28th Street, Suite 100 Santa

Monica, CA 90405

PHONE: 310-399-1600 FAX: 310-314-7347

August 24, 2005

**TRADE LINE ITEM
SUMMARY**

ACCT	ITEM	Amount
<u>00002</u>	Street Use Permit & Flagmen	\$ <u>35,000</u>
<u>00005</u>	Survey & Layout	\$ <u>25,000</u>
<u>00070</u>	Dewatering	\$ <u>25,000</u>
<u>00082</u>	Final Clean Up	\$ <u>21,150</u>
<u>02100</u>	Demolition	<u>—</u>
<u>02100</u>	Shoring	\$ <u>1,431,600</u>
<u>02203</u>	Earthwork	\$ <u>882,491</u>
<u>02410</u>	Striping & Bumpers	\$ <u>8,570</u>
<u>02501</u>	Site Utilities	\$ <u>86,804</u>
<u>02615</u>	Concrete - Site	\$ <u>252,287</u>
<u>02800</u>	Landscape & Irrigation	\$ <u>113,055</u>
<u>02825</u>	Fountains - Allowance	<u>—</u>
<u>02864</u>	Asphalt Paving	\$ <u>137,625</u>
<u>03000</u>	Concrete - Structural	\$ <u>4,392,146</u>
<u>03200</u>	Reinforcing Steel	\$ <u>1,890,465</u>
<u>03361</u>	Shotcrete	\$ <u>443,232</u>
<u>04000</u>	Masonry	\$ <u>242,976</u>
<u>04400</u>	Stone	<u>—</u>
<u>05110</u>	Struct Steel & Misc Iron	\$ <u>409,883</u>
<u>05800</u>	Expansion Joint	<u>—</u>
<u>06100</u>	Carpentry - Rough	\$ <u>4,000</u>
<u>06200</u>	Carpentry - Finish	\$ <u>22,240</u>
<u>06245</u>	Counter Tops	\$ <u>4,470</u>
<u>07101</u>	Roofing	\$ <u>277,700</u>
<u>07102</u>	Waterproofing	\$ <u>257,569</u>
<u>07300</u>	Insulation	\$ <u>34,100</u>
<u>07600</u>	Sheet Metal & Flashing	\$ <u>125,692</u>
<u>07900</u>	Caulking & Sealants	\$ <u>10,500</u>
<u>08111</u>	HM Doors & Frames	\$ <u>47,580</u>
<u>08330</u>	Doors - Coiling	\$ <u>30,000</u>
<u>08500</u>	Glazing	\$ <u>530,900</u>
<u>08900</u>	Finish Hardware	\$ <u>31,210</u>
<u>09010</u>	Drywall, Metal Frame	\$ <u>402,946</u>
<u>09300</u>	Tile - Ceramic	\$ <u>38,633</u>
<u>09601</u>	Carpet & Resilient	\$ <u>6,004</u>
<u>09900</u>	Painting	\$ <u>37,510</u>
<u>10001</u>	Misc Specialties	\$ <u>3,497</u>
<u>10162</u>	Toilet Accessories & Partitions	\$ <u>5,647</u>
<u>10440</u>	Signage	\$ <u>88,000</u>
<u>14200</u>	Elevators	\$ <u>235,895</u>
<u>15400</u>	Plumbing	\$ <u>633,500</u>
<u>15510</u>	Fire Sprinklers	\$ <u>244,454</u>
<u>15600</u>	HVAC	\$ <u>1,389,317</u>
<u>16000</u>	Electrical	\$ <u>807,200</u>
<u>16003</u>	Traffic Signal	\$ <u>145,250</u>
<u>17010</u>	Watchmen	\$ <u>50,000</u>
	TOTAL DIRECT COSTS	\$ <u>15,861,098</u>
	PRECONSTRUCTION	\$ <u>45,000</u>
	CONTINGENCY	\$ <u>396,527</u>

FIELD OVERHEAD
LIABILITY INSURANCE @ 0.7949%
FEE

\$	1,028,833
\$	137,768
\$	655,096
\$	18,124,322

TOTAL

EXHIBIT "D"

[Not used]

EXHIBIT "E"

**MORLEY CONSTRUCTION COMPANY
INSURANCE REQUIREMENTS SUBCONTRACTORS**

Morley Construction Company requires each Subcontractor, at its own expense, to maintain all insurance required by subcontractors under the Prime Contract and, to the extent not required by the Prime Contract, the following coverage and limits of insurance which shall be maintained with insurers, policy forms and deductibles satisfactory to Morley Construction Company and the Owner. If the Subcontractor uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, Subcontractor agrees to amend, supplement or endorse the existing coverage to do so, at no additional cost to Morley Construction Company Coverage is to be for the duration of the work under the subcontract. Any acceptance of insurance Certificates shall not limit or relieve Subcontractor of the duties and responsibilities assumed under this and the Prime Contract.

Limit requirements for A, B and C may be satisfied using any combination of primary and Excess/Umbrella liability insurance.

A. Workers' Compensation and Employer's Liability Insurance

State Workers' Compensation statutory coverage as required by law and shall include the following:

- 1) The Voluntary Compensation endorsement
- 2) The All States endorsement

Employer's Liability with limits not less than each of the following:

\$1,000,000	each accident for bodily injury
\$1,000,000	policy limit for bodily injury by disease
\$1,000,000	each employee for bodily injury by disease

B. Commercial General Liability Insurance

Such insurance must not contain any provision which would prohibit the reporting of a claim and the subsequent defense and indemnity that would normally be provided by the policy.

The Subcontractor shall carry a Commercial General Liability Policy that provides for coverage at least as broad as ISO CGL Form No. CG 00 01 11 86.

Provide limits as required for your trade in accordance with subsection 1 or 2 below or in accordance with higher limits as specified by Owner.

Morley Construction Company reserves the right to amend the required limits of insurance commensurate with the Subcontractor's risk.

If the policy is in excess of a Subcontractor SIR (self-insured retention) or a deductible, the amount of such SIR or deductible must be clearly identified on the Certificate of Insurance. Morley Construction Company reserves the right to reject any SIR in excess of \$15,000 or any deductible in excess of \$25,000, or require that the Subcontractor provide a bond on the SIR at no additional cost to Morley Construction Company To the extent first dollar coverage, including defense of any claim, is not available to Morley Construction Company or any other additional named insured because of an SIR, deductible or any form of self-insurance, Subcontractor is obligated to assume the responsibilities of the insurer until such time as the deductible, SIR or other condition of the insurer assuming its defense and/or indemnity obligations has been satisfied. Subcontractor shall be responsible to pay any deductible or SIR.

Coverage's to include, but not limited to:

- Premises/Operations
 - Products/Completed Operations for the duration of the project and a minimum of three (3) years after project completion.
 - Owners/Contractors Protective Liability
 - Blanket Contractual
 - Personal & Advertising Injury
 - Broad Form Property Damage (including Completed Operations)
 - Explosion, Collapse & Underground Damage Exclusions, (commonly known as "XCU") if any, are to be removed.
- 1) Specified Trades:** (Defined as Excavation, Shoring, Crane related work, Exterior Skin, Metal Decking over three (3) stories, Roofing, and Waterproofing. Architects, Engineers, Consultants and Design/Install Subcontractors must provide this level of coverage in addition to the Professional Liability Insurance described in Item D below.) The Limits of Liability for Bodily Injury and Property Damage Combined Single Limit under this section shall not be less than that shown below:

For subcontracts less than \$100,000:

\$2,000,000	Each Occurrence
\$2,000,000	Products/Completed Operations Aggregate
\$2,000,000	Personal and Advertising Injury
\$2,000,000	General Aggregate

For subcontracts of \$100,000 or more:

\$5,000,000	Each Occurrence
\$5,000,000	Products/Completed Operations Aggregate
\$5,000,000	Personal and Advertising Injury
\$5,000,000	General Aggregate

- 2) All Other Trades:** The Limits of Liability for Bodily Injury and Property Damage Combined Single Limit under this section will be based upon total subcontract value:

For subcontracts less than \$100,000:

\$1,000,000	Each Occurrence
\$1,000,000	Products/Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury
\$1,000,000	General Aggregate

For subcontracts \$100,000 to \$499,999:

\$2,000,000	Each Occurrence
\$2,000,000	Products/Completed Operations Aggregate
\$2,000,000	Personal and Advertising Injury
\$2,000,000	General Aggregate

For subcontracts \$500,000 and greater:

\$5,000,000	Each Occurrence
\$5,000,000	Products/Completed Operations Aggregate
\$5,000,000	Personal and Advertising Injury
\$5,000,000	General Aggregate

C. Automobile Insurance

Coverage shall be for “Any Auto”, Owned, Non-owned and Hired.

Bodily Injury Liability & Property Damage Combined Single Limit — \$1,000,000

D. Professional Liability Insurance (Errors and Omissions)

All Architects, Engineers, Surveyors, Consultants and Subcontractors with design responsibility shall provide a policy specific to this project, as follows:

An Architect’s and Engineer’s Professional Liability Policy with Limited Contractual Liability Coverage and a deductible no greater than \$25,000 per claim. This insurance shall be maintained for a total of ten (10) years from the date construction begins. Retroactive date of such policy must be on or before the date Subcontractor and Consultant began offering professional services. Limit of liability shall be not less than \$1,000,000 Per Claim.

Retroactive Date and Deductible must be shown on the Certificate of Insurance.

E. Asbestos, Lead, and/or Remediation Trades

- 1) Asbestos and/or Lead Liability:** If work contemplates asbestos or lead abatement, Subcontractor shall provide such insurance coverage on an Occurrence basis for claims arising out of abatement, removal, storage, transportation and disposal activities with a limit of liability not less than \$5,000,000 Per Occurrence.

Certificate of Insurance shall (1) attach endorsement naming Morley Construction Company, Owner and Other parties as required by Owner, as an Additional Named Insured and (2) evidence Auto Pollution Liability plus Form MCS90.

Environmental Impairment Liability: If work contemplates handling or hauling other pollutants, subcontractor will provide insurance to cover among other things, claims arising out of all hazardous material and hazardous waste remediation, storage, transportation, and disposal. Such insurance shall be written on either (a) an Occurrence basis with no sunset clause, with limits of not less than \$5,000,000 Each Occurrence/\$5,000,000 Aggregate or on (b) a Claims-Made basis with a minimum 5 year Extended Reporting Period (tail) with limits not less than \$5,000,000 each Claim/\$5,000,000 Aggregate. Such Claims-Made Policy must have a Retroactive Date which coincides with or precedes the Subcontractors start of work. Morley Construction Company reserves the right to reject any SIR/deductible in excess of \$25,000 or require that the Subcontractor provide a bond on the SIR at no additional cost to Morley Construction Company To the extent first dollar coverage, including defense of any claim, is not available to Morley Construction Company or any other additional named insured because of an SIR, deductible or any form of self-insurance, Subcontractor is obligated to assume the responsibilities of the insurer until such time as the deductible, SIR or other condition of the insurer assuming its defense and/or indemnity obligations has been satisfied. Subcontractor shall be responsible to pay any deductible or SIR.

- 2) Grading, Earthwork, and/or Shoring:** If work involves, including but not limited to, excavation, grading, hauling, or moving of dirt, even if work does not contemplate handling or hauling of pollutants, Subcontractor shall provide such insurance coverage on an Occurrence basis for claims arising out of abatement, removal, storage, transportation and disposal activities with a limit of liability not less than \$1,000,000 Per Occurrence.

Certificate of Insurance shall (1) attach endorsement naming Morley Construction Company, Owner and Other parties as required by Owner, as an Additional Named Insured and (2) evidence Auto Pollution Liability plus Form MCS90.

Environmental Impairment Liability: If work involves, including but not limited to, excavation, grading, hauling, or moving of dirt, even if work does not contemplate handling or hauling of pollutants, Subcontractor will provide insurance to cover among other things, claims arising out of all hazardous material and hazardous waste remediation, storage, transportation, and disposal. Such insurance shall be written on either (a) an Occurrence basis with no sunset clause, with limits of not less than \$1,000,000 Each Occurrence/\$1,000,000 Aggregate or on (b) a Claims-Made basis with a minimum 5 year Extended Reporting Period (tail) with limits not less than \$1,000,000 each Claim/\$1,000,000 Aggregate. Such Claims-Made Policy must have a Retroactive Date which coincides with or precedes the Subcontractors start of work. Morley Construction Company

reserves the right to reject any SIR/deductible in excess of \$25,000 or require that the Subcontractor provide a bond on the SIR at no additional cost to Morley Construction Company To the extent first dollar coverage, including defense of any claim, is not available to Morley Construction Company or any other additional named insured because of an SIR, deductible or any form of self-insurance, Subcontractor is obligated to assume the responsibilities of the insurer until such time as the deductible, SIR or other condition of the insurer assuming its defense and/or indemnity obligations has been satisfied. Subcontractor shall be responsible to pay any deductible or SIR.

Certificate of Insurance shall (1) attach endorsement naming Morley Construction Company, Owner and Other parties as required by Owner, as an Additional Named Insured and (2) evidence Auto Pollution Liability plus Form MCS90.

F. ESSENTIAL ELEMENTS

1) General Liability shall contain the following:

a) **Project Specific Additional Insured Listing:**

b) Additional Insured Endorsement: An Additional Insured Endorsement adding as an additional insured each party noted in Section F.1.a. above, or otherwise identified in the Prime Contract, as respects liabilities arising out of or related to Subcontractor's performance of **"your work"** under this contract, and providing that such insurance is primary insurance as respects the interest of the Owner and Contractor and that any other insurance maintained by the Contractor or Owner, whether primary, excess or umbrella insurance, is excess and not contributing insurance required hereunder.

Endorsement CG 20 10 11 85-"Owners, Lessees or Contractors (Form B) must be attached to your certificate. The parties intend that the insurance coverage required hereunder and/or provided by the Subcontractor apply on a primary and non-contributing basis with any other insurance policy(s) of Morley Construction Company, the Owner and those additional insured entities as identified in the Prime Contract. Such Primary wording shall be included on the Additional Insured Endorsement.

2) Modified Occurrence Liability Policies are **not** acceptable. Claims Made General Liability Policies are **not** acceptable.

3) Waivers of Subrogation, if required by the Prime Contract, will have the appropriate policies endorsed accordingly, with endorsement(s) attached to the Certificate of Insurance.

4) Prior to commencement of work, a Certificate of Insurance on the standard "ACORD" form, properly executed and signed by an authorized representative (generally the "Broker") on behalf of the insurer(s) evidencing the above coverage's and conditions, must be received by Morley Construction Company prior to any work on the job site. Subcontractor shall maintain the required Insurance and Additional Insured coverage required herein for a period of three (3) years after completion of its work on the Project.

Subcontractor further agrees, upon written request by Morley Construction Company or Owner, to furnish copies of such policies, certified by an authorized representative of the insurer(s).

5) All insurance coverage provided by the Subcontractor shall be through acceptable insurance carriers licensed in the state(s) where work is being performed with a minimum A.M. Best Company standard of A and a financial strength rating of X or greater.

6) Insurance companies are required to give thirty (30) days written notice for cancellation of policy.

7) The Cancellation Section of the Certificate of Insurance must read: "Should above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the Certificate Holder named to the left".

THE WORDS "endeavor to" AND "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative" MUST BE REMOVED/STRICKEN.

EXHIBIT "F"

CONSTRUCTION SCHEDULE

[BAR GRAPH]

AIA Document A201 — 1997

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address):

Skechers Office Building
330 South Sepulveda Blvd.
Manhattan Beach, CA 90266

THE OWNER:

(Name and address):

Duncan Investments, LLC
225 South Sepulveda Blvd.
Manhattan Beach, CA 90266

THE ARCHITECT:

(Name and address):

David Forbes Hibbert AIA
1544 20th Street, Suite 103
Santa Monica, CA 90404

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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 Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. The Owner shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's 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 the Owner or by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents 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, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 THE PROJECT MANUAL

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 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 indicated results.

§ 1.2.2 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.

§ 1.2.3 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 CAPITALIZATION

§ 1.3.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

§ 1.4.1 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.

§ 1.5 EXECUTION OF CONTRACT DOCUMENTS

§ 1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

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

§ 1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one 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 or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, 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 the Architect's consultants, 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, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. 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 or Architect's consultants' copyrights or other reserved rights.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 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 Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information 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.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.1.1 Before the Contractor begins construction, the Owner will furnish the Contractor with a letter from the Construction Lender (reasonably acceptable to the Contractor) in which the Construction Lender agrees to commit and set aside funds equal to the Contract Sum or Guaranteed Maximum Price as defined in the Article 5 of the Agreement, for the benefit of the Contractor, its subcontractors and suppliers, to pay for the work, equipment, labor, materials, supervision and services to be furnished or performed by the Contractor under this Contract.

§ 2.2.2 Except for permits and fees, including those required under Section 3.7.1, 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.

§ 2.2.3 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. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

§ 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.

§ 2.3 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 Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to 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, except to the extent required by Section 6.1.3.

§ 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 three-day period. If the Contractor within such three-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 reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services 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. 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 GENERAL

§ 3.1.1 The Contractor 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 "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 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 Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require.

§ 3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect.

§ 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

§ 3.2.4 The Contractor shall not be chargeable with knowledge of or responsible for the character, quality and quantity of subsurface conditions at the site except to the extent (i) such conditions are specifically disclosed in the Contract Documents, (ii) such conditions were reasonably inferable from information provided in the Contract Documents, (iii) such conditions were reasonably visible from an inspection of the Project site, or (iv) such conditions become known to Contractor's or subcontractors' or sub-subcontractors' personnel and direction of the Owner is not sought. The Contractor shall immediately notify the Architect and the Owner if it encounters any such subsurface conditions which it believes could (a) endanger persons or property, or (b) justify an increase in the Guaranteed Maximum Price or an extension of the Contract Time.

§ 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 the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

§ 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 or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed 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 may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

§ 3.4.3 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 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 and normal usage. If required by the 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 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 Contractor shall secure and pay for the building permit and 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, regulations and lawful orders of public authorities applicable to 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 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 Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 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 to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 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 but not in the allowances;
- .3 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 Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

§ 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 SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work consistent with Exhibit "F" of the Agreement. The 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 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 prepare and keep current, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and

Architect.

§ 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 field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered 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 by the Contract Documents the way by which 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 Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 3.12.6 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.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the 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 Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

§ 3.12.11 The Contractor has rendered and will render opinions, advice and recommendations to the Owner and the Architect in order to help reduce the overall cost. These services are provided by the Contractor at no additional fee. By doing so, the Contractor has not assumed any of the duties or obligations of the Owner or Architect. The final decision as to the use of any opinions, advice or recommendations supplied by the Contractor is, and remains, the responsibility of the Owner and Architect.

§ 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.

§ 3.14 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 or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 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 Owner may do so and the cost thereof shall be charged to the Contractor.

§ 3.16 ACCESS TO WORK

§ 3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

§ 3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner 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 or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect and Owner.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, its agents and employees 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), but only to the extent caused by the 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 Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 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 Section 3.18.1 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.

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.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

§ 4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully 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 the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents the Owner and Contractor shall keep the Architect apprised of material communications about matters arising out of or relating to the Contract. 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 separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 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 or in the activities of the Owner, Contractor or separate contractors, 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 Sections 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.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

§ 4.2.10 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.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, 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.

§ 4.2.12 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 initial 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.

§ 4.3 CLAIMS AND DISPUTES

§ 4.3.1 **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 initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 4.3.2 **Time Limits on Claims.** Claims by either party must be initiated within 45 21 days after occurrence of the event giving rise to such Claim or within 21 45 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

§ 4.3.3 **Continuing Contract Performance.** Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 4.3.4 **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 conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but 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 Section 4.4.

§ 4.3.5 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 Section 10.6.

§ 4.3.6 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 this Section 4.3.

§ 4.3.7 Claims for Additional Time

§ 4.3.7.1 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.

§ 4.3.7.2 Adverse weather is any weather-related event which causes delay to a particular day's critical task that will impact the Project completion schedule. Such weather factors as, but not limited to fog, rain, wind, and lightning could cause a delay in the schedule. The completion date as it might be established in Article 3.3 of the Agreement does include ten (10) working days adverse weather days. If adverse weather conditions are the basis for a Claim for additional time or cost, such Claim shall be documented by data substantiating that the weather conditions had an adverse effect on the scheduled construction and exceeded the specified ten (10) working days noted above.

§ 4.3.8 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, or of others for whose acts such party is legally responsible, 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 discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 4.3.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so 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.

§ 4.3.10 Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except the Contractor's fee on the work executed.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES

§ 4.4.1 Decision of Architect. Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 4.4.2 The Architect will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

§ 4.4.3 In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

§ 4.4.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

§ 4.4.5 The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be subject to mediation and arbitration.

§ 4.4.6 When a written decision of the Architect states that 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.

§ 4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 4.4.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or by arbitration.

§ 4.5 MEDIATION

§ 4.5.1 Any Claim arising out of or related to the Contract, except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

§ 4.5.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 4.5.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 4.6 ARBITRATION

§ 4.6.1 Any Claim arising out of or related to the Contract, except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5.

§ 4.6.2 Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect. All proceedings, including the hearing, shall be conducted in the county in which the Project is located.

§ 4.6.3 A demand for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 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 Section 13.7.

§ 4.6.4 Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the 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, a separate contractor 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 person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 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 Claim 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.

§ 4.6.5 Claims and Timely Assertion of Claims. The party filing 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.

§ 4.6.6 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.

§ 4.6.7 The arbitrator will award the prevailing party or parties actual attorneys' and experts' fees and expenses.

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 a separate contractor or subcontractors of a separate contractor.

§ 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 Owner through the 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 Owner Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect 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 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 has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time 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 or Architect makes reasonable objection to such substitute.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate written agreement, 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, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner 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 will 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 pursuant to Section 14.2 or 14.4 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor 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 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of 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 in Section 4.3.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the 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 then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 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 Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate 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 or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the 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 or separate contractor's 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 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ 6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the Contractor, separate 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, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 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, Contractor and Architect; a Construction Change Directive requires agreement by the Owner 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 the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

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

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on 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 Section 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 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 Architect 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 Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to Article 7 of the Agreement.

§ 7.3.7 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 Architect. 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 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

§ 7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately 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 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.

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

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day. The term "Working Days" as used in the Contract Documents shall mean Monday through Friday excluding weekends and holidays.

§ 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 and Owner. 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 the Contract Documents or 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 the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, 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 mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for the amount of time that the critical path of the construction schedule is delayed by such events.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

§ 8.3.3 This Section 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 Owner 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 Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the end of the month the Contractor shall submit to the Architect and Owner an itemized Application for Payment for operations 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 or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change

Orders.

§ 9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Contractor shall include executed conditional mechanics' lien releases for payments to itself and Subcontractors included in the current application for payment. The Contractor will provide executed unconditional mechanics' lien releases for payments previously made to itself and Subcontractors before the next payment is made by Owner.

§ 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 the costs of 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, 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 Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the 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 correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed 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 Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .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 by the Contractor 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 Contractor would not be able 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 Architect has issued a 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 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 a similar manner.

§ 9.6.3 The Architect 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 Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 Neither the Owner 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 Sections 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.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may 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, plus interest as provided for in the Contract Documents.

§ 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 that 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 shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. 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.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect 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 Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 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.

§ 9.8.5 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. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of 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 Section 11.4.1.5 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 shall prepare and submit a list to the Architect as provided under Section 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.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, 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 receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits 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 the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 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 (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 Architect so confirms, the Owner shall, upon application by the Contractor and certification by the 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 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.

§ 9.10.4 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, or provided therein, including but not limited to the warranties stated in Section 3.5 of these General Conditions.

§ 9.10.5 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.

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.

§ 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 and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .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.

§ 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 or 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 Sections 10.2.1.2 and 10.2.1.3 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 Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either 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 Section 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 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.

§10.2.8 Unless escorted by Contractor, the Owner will be responsible for the physical safety of any real estate sales people, prospective purchaser, prospective tenant, or other person invited or permitted by the Owner to enter the jobsite. The Jobsite Safety Program is not designed for non-construction personnel.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), 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 and Architect in writing.

§ 10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the 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 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 will promptly reply to the Owner in writing stating whether or not it has reasonable objection to the persons or entities proposed by the Owner. If the Contractor has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, 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 or substance presents the risk of bodily injury or death as described in Section 10.3.1 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) and provided that such damage, loss or expense is not due primarily to the gross negligence of a party seeking indemnity.

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

§ 10.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.6 EMERGENCIES

§ 10.6.1 In an emergency affecting safety of 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 Section 4.3 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;
- .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;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 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 shall be on an occurrence basis, except to the extent permitted to be on a claims-made basis per Exhibit “E”, and 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.

11.1.2.1 Contractor shall require its Subcontractors to maintain insurance as listed in Exhibit “E”.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 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 Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor’s information and belief.

§ 11.1.4 The Contractor will name the Owner as an additional insured on its general liability policy. The Owner will name the Contractor as an additional insured on the Owner’s general liability policy only for non-construction related claims. Any additional premium cost incurred by the Contractor for naming the Owner as an additional insured will be treated as a part of the Cost of the Work under Article 7 of the Agreement.

§ 11.2 OWNER’S LIABILITY INSURANCE

§ 11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner’s usual liability insurance.

§ 11.4 PROPERTY INSURANCE

§ 11.4.1 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 written on a builder’s risk “all-risk” or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. 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 Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.4.1.1 Property insurance shall be on an “all-risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, windstorm, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect’s and Contractor’s services and expenses required as a result of such insured loss.

§ 11.4.1.2 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 in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.4.1.5 Partial occupancy or use in accordance with Section 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.

§ 11.4.3 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.

§ 11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss 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.

§ 11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at 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 Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.4.6 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 Section 11.4. 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, and that its limits will not be reduced, until at least 30 days’ prior written notice has been given to the Contractor.

§ 11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-

subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss intended to be covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, 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.

§ 11.4.8 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 Section 11.4.10. 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.

§ 11.4.9 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 Section 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.4.10 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 is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ 11.4.11 The Owner shall name the Contractor as a named insured on its fire, and/or Builders Risk Insurance coverage. Regardless of whether or not earthquake or flood insurance is provided, Contractor assumes no liability for damage to the Project caused by these perils. In addition, Contractor assumes no liability for subsidence not caused by Contractor or any of its subcontractors.

§ 11.5 PERFORMANCE BOND AND PAYMENT BOND

§ 11.5.1 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.

§ 11.5.2 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.

§ 11.6 The Owner shall deliver to the Contractor such evidence, as the Contractor may reasonably request, of errors and omissions insurance covering the Architect and the soils, civil, structural, mechanical, plumbing and electrical engineers for the Project.

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 Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's examination 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 Architect has not specifically requested to examine prior to its being covered, the 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 at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ 12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, 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 Section 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. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor; Owner, however, may still make a claim for Breach of Warranty within the applicable period of limitations. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work 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.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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

§ 12.2.5 Nothing contained in this Section 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 one-year period for correction of Work as described in Section 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. Except as provided in Section 13.2.2, 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.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 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, 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.

§ 13.4.3 Notwithstanding references herein to the Architect, Subcontractors, other contractors or other persons or entities, such persons or entities are not third party beneficiaries of this Agreement. There are no third party beneficiaries of this Agreement. This Agreement may be enforced only by the Owner, its permitted assignees (such as its lender) and Contractor.

§ 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. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the 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 Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

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

§ 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 Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the 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 Causes of Action between the parties to this Agreement pertaining to acts or failure to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run as provided under applicable laws.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 45 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.
- .5 the Project is materially damaged or destroyed by the occurrences listed in Article 11.4.1.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 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.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the work executed.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive 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 and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 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, 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;
- .2 accept assignment of subcontracts pursuant to Section 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 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 Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages 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 be certified by the Architect, upon application, 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 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. 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 the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work executed.